IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Application No GYCV2018/008
GYCA No 61 of 2001 and GYCA No 59 of 2009

BETWEEN

JAMES RAMSAHOYE	**APPLICANT**

AND

LINDEN MINING ENTERPRISES AND BAUXITE INDUSTRY DEVELOPMENT COMPANY LIMITED	**RESPONDENTS**

AND

JAMES RAMSAHOYE	**APPLICANT**

AND

NATIONAL INDUSTRIAL AND COMMERCIAL INVESTMENTS LIMITED	**RESPONDENT**

Before The Honourables	**Mr Justice D Hayton, JCCJ** **Mr Justice W Anderson, JCCJ** **Mme Justice M Rajnauth-Lee, JCCJ** **Mr Justice D Barrow, JCCJ** **Mr Justice A Burgess, JCCJ**

Appearances

Mr Chandrapratesh Satram, Mr Roopnarine Satram and Mr Ron Motilall for the Applicant

Mr Timothy Jonas, Mr Dennis Paul and Ms Sandia Ramnarine for the Respondents

JUDGMENT
of
The Honourable Justices Hayton, Anderson, Rajnauth-Lee and Burgess

Delivered by
The Honourable Mr Justice Burgess

and

CONCURRING JUDGMENT

of

The Honourable Mr Justice Barrow

Delivered on the 23rd day of May, 2019

JUDGMENT OF THE HONOURABLE MR JUSTICE BURGESS, JCCJ

Introduction

[1] This is an application by Mr. James Ramsahoye ("Mr. Ramsahoye") in which he seeks two orders of this Court. The first is an order pursuant to section 8 of the Guyana Caribbean Court of Justice Act, Cap 3:07 (Cap 3:07) granting him special leave to appeal the decision of the Court of Appeal of Guyana given on 20 July 2018. In that decision, the Court of Appeal discharged orders of Roy JA which he had made on 16 December 2009 sitting as a single judge of the Court of Appeal to secure the enforcement of an order of the Court of Appeal made on 3 March 2004 that the respondents pay a lump sum and a monthly pension to Mr. Ramsahoye. The basis of the Court of Appeal's decision to discharge the orders of Roy JA was that Roy JA had no jurisdiction to make such orders.

[2] The second order sought in the application is an order, if special leave is granted, directing that the application for special leave to appeal be treated as the hearing of the appeal against the decision of the Court of Appeal. In the appeal itself, the orders sought are (i) an order "setting aside and/or reversing" the decision of the Court of Appeal and restoring the orders of Roy JA, (ii) orders relating to costs and (iii) the usual order for such further relief as may be "just and appropriate in the circumstances".

Factual and Procedural Background

[3] Mr. Ramsahoye was, at all material times, the Overseas Representative in Brussels employed by the respondents, Linden Mining Enterprise Ltd (LME) and Bauxite Industrial Development Co Ltd (BIDCO), two state owned corporations in the nationalized bauxite industry. In 1998, after 26 years of service to LME and BIDCO

and their predecessor companies, Mr. Ramsahoye's employment in Brussels was terminated.

[4] At the time of the termination, Mr. Ramsahoye was 62 years old. He was offered alternative employment as the Deputy General Manager but at a substantially lower salary to what he was earning at the time of termination. He did not accept the employment offered. Instead, in 1998, he commenced an action in the High Court against LME and BIDCO for breach of contract. That action was dismissed by Legall J in June 2001, LME and BIDCO having led no evidence at the trial.

[5] Mr. Ramsahoye appealed the decision of Legall J to the Court of Appeal in Civil Appeal No. 69 of 2001 and on 3 March 2004, the Court of Appeal delivered a judgment allowing the appeal. Mr. Ramsahoye was awarded damages in the amount of US$174,032.49 for breach of contract. He was also awarded a pension in the amount of US$2,000.72 per month with effect from 1 July 1998.

[6] It is important to interject here that, while proceedings were pending in the Court of Appeal against LME and BIDCO, the assets of BIDCO were transferred to National Industrial and Commercial Investments Ltd (NICIL), a company wholly owned by the Government of Guyana, by Order 45 of 2003 made under the Public Corporation Act, 1988. Of particular note is that Clause 6(3) of that Order provides as follows:

> "All proceedings commenced prior to the appointed day for the enforcement of any rights or liabilities in favour of or against the company [BIDCO] may be continued by or against NICIL and any such proceedings may be amended accordingly."

[7] To return to the chronology of this case. After the Court of Appeal's judgment of 3 March 2004, there were multiple proceedings between the parties aimed at either preventing payment of or enforcing that judgment leading up to the filing of the appeal before the Court of Appeal against the orders of Roy JA. In our judgment, a synopsis of these proceedings is very helpful in understanding the legal contours of this case.

[8] One such proceeding was brought by Mr. Ramsahoye for discovery in aid of execution against LME in order to identify assets against which execution could be taken to

enforce the 2004 judgment of the Court of Appeal. At the hearing of that proceeding, the Chairman of LME testified that LME had no assets to meet the judgment of the Court of Appeal. However, subsequent to the said testimony, Mr. Ramsahoye received a cheque from LME for the sum of US$36,506,077 and at the same time was informed that the sum of US$45,132,795 had been deducted by LME in respect of satisfying a claim by the Guyana Revenue Authority (GRA) for income tax owed by him even though no assessment for tax had been raised against his employer by GRA during his service.

[9] In order to recover the sum deducted in respect of tax, Mr. Ramsahoye instituted Proceedings No 196M of 2004 in the High Court against the GRA. In June 2005, Persaud J quashed the assessment by GRA and ordered that the entire sum be remitted to Mr. Ramsahoye.

[10] The GRA made three attempts to appeal Persaud J's decision. First, the GRA filed Civil Appeal No. 60 of 2005 against that decision but this was withdrawn by the Attorney General. Second, Civil Appeal No. 76 of 2005 was filed by the GRA seeking leave to file and serve notice of appeal against Persaud J's decision out of time. This was dismissed by the Court of Appeal in February 2007. Third, proceedings No. 29 of 2007 seeking an extension of time to file an appeal against the decision of Persaud J was dismissed by the Court of Appeal in July 2007.In the meantime, LME brought a constitutional action against the Attorney General in 2005 to impeach the judgment of 3 March 2004 of the Court of Appeal (judgment No. 69 of 2001). Mr. Ramsahoye intervened and was added as a Respondent. This action was subsequently dismissed with costs by Jainarayan Singh J.

[11] Prior to LME's 2005 constitutional action, Mr. Ramsahoye applied *ex parte* for an order that NICIL be added as a party to the proceedings by Mr. Ramsahoye to enforce the 2004 judgment against LME and BIDCO. Cummings-Edwards J granted that order on 28 July 2004. Mr. Ramsahoye then sought to levy execution on property held by NICIL to satisfy the judgment order but the execution was frustrated while the writ of execution expired.

[12] In proceedings No. 1108-CD of 2007, Mr. Ramsahoye sought a charging order against funds held by NICIL in Republic Bank which had been made party to the proceedings. An order *nisi* was granted in November 2007. This order was made absolute by Bovell-Drakes J on 14 August 2009. The order absolute was served on the Bank which refused to pay. Mr. Ramsahoye made an *ex parte* application to the High Court for an order directing payment. Chang CJ (ag.) made a further order on 21 August 2009 for the Bank to pay. The Bank paid $36,582,784 representing accrued pension payable to him until July 2009 pursuant to the further order of Chang CJ (ag) and the order absolute of 14 August 2009 of Bovell-Drakes J.

Before Roy JA (In Chambers)

[13] On 21 August 2009, NICIL filed a summons in the Court of Appeal for a stay of execution of the order of Bovell-Drakes J of 14 August 2009.

[14] By summons dated 18 October 2009 filed before the Court of Appeal, Mr. Ramsahoye applied to Roy JA, sitting as a single judge in Chambers, for the following orders:

> "(a) an Order that NICIL, the Appellant/First Respondent in Civil Appeal No. 56 of 2009 (which was then pending before the Court of Appeal awaiting a hearing date) be joined as a Respondent in the concluded Civil Appeal No. 69 of 2007, and that the title of the proceedings be amended accordingly as well as a further order that this summons filed in Civil Appeal No. 69 of 2001 be consolidated and heard together with the summons dated 21st August, 2009 filed for an Order for a stay of execution in Civil Appeal No. 56 of 2009;
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> (b) an Order that NICIL do pay to Mr. James Ramsahoye the Appellant/Plaintiff in Civil Appeal No. 69 of 2001 his monthly pension as order by the Court of Appeal on the 3rd March, 2004 in the sum of US$2001.72 or its equivalent in Guyana dollars at the conversion rate of exchange prevailing at the date of payment with effect from 1st August, 2009 and continuing on the first day of each month thereafter by a transfer from its account with Republic Bank or any other Bank to Account No. 4883237 held by Mr. James Ramsahoye at Republic Bank until the death of Mr. James Ramsahoye or further Order of the Court of Appeal;
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> (c) a further Order that all funds of NICIL wherever and by whomever held do stand charged with the payment of the said monthly pension

in accordance with the Order of the Court of Appeal made on the 3rd March, 2004 and this Order;

(d) a further Order that service of the Order made herein shall be due authority and direction to pay the said monthly pension from funds held by or in favour of NICIL upon whomsoever such service is effected;

(e) a further Order that in default payment by NICIL- or any person or authority holding funds on its behalf of the Registrar of Supreme Court is hereby authorized to act on behalf of NICIL to direct payment out of any funds wherever held on behalf of NICIL by any person or authority;

(f) an Order that all further legal process to enforce the Order of the Court of Appeal made on the 3rd March, 2004 in Civil Appeal No. 69 of 2001 be taken against NICIL to effect payment of the said monthly pension to and in favour of Mr. James Ramsahoye the Appellant/Plaintiff in Civil Appeal No. 69 of 2001."

[15] Roy JA ordered the consolidation of the summonses of NICIL and Mr. Ramsahoye. He then dismissed NICIL's summons for a stay of execution. Finally, he granted all the orders sought in Mr. Ramsahoye's summons "to enforce the judgment of the Court of Appeal of the 3rd March 2004".

The Judgment of The Court of Appeal

[16] By motion dated 24 December 2009, NICIL moved the Court of Appeal seeking the discharge or variation of the orders made by Roy JA in respect of Mr. Ramsahoye's summons. On 20 July 2018, the Court of Appeal granted the motion and discharged the orders of Roy JA on the basis that they were made in excess of jurisdiction.

[17] In arriving at its decision, the Court of Appeal held that it was bound by its earlier decision in *Commissioner General (Guyana Revenue Authority) et al v Caribbean Chemicals (Guyana) Ltd*.[1] In that case, Ramson JA, sitting as a single judge, granted a stay of execution pending appeal. He also made a conservatory order setting aside the declarations and orders of the High Court until final determination of the appeal. The

[1] Civil Appeal No 112 of 2006.

full bench of the Court of Appeal ordered the discharge of the conservatory order made by Ramson JA.

[18] The full bench of the Court of Appeal in *Caribbean Chemicals*[2] reasoned that section 27(1) of the Supreme Court of Judicature (Consolidation) Act, 1925 vested the Court of Appeal with a general jurisdiction to exercise the powers and authorities vested in or exercisable by the Supreme Court of Judicature in England as at 1 January 1958. However, the full bench declared, that that general power vested in the Court of Appeal did not devolve upon a single Justice of Appeal sitting in Chambers. His or her jurisdiction was limited to that prescribed under Order 2 Rule 16(1) of the Court of Appeal Rules Cap 3:01 (Cap 3:01). As the conservatory order made by Ramson JA did not fall within any of the orders expressly allowed under Order 2 Rule 16(1), nor under the phrase "other interlocutory application" in that Rule, the full bench concluded that that order was made "in excess of jurisdiction".

The Appeal to This Court

[19] Being dissatisfied with the decision of the Court of Appeal discharging the orders, Mr. Ramsahoye, by notice of motion with an affidavit in support dated and filed on 28 August 2018 applied to that court seeking leave as of right to appeal to the CCJ pursuant to section 6 (a) of Cap 3:07. On 8 November 2018, the Court of Appeal entered an order refusing Mr. Ramsahoye the leave sought in his motion.

[20] On 28 November 2018, Mr. Ramsahoye filed a notice of application in this Court pursuant to section 8 of Cap 3:07 seeking an order of this Court granting special leave to appeal the decision of the Court of Appeal given on 20 July 2018 discharging the orders of Roy JA. The application also sought an order, if appropriate, directing that the hearing of the application for special leave be treated as the hearing of the appeal against the 20 July 2018 judgment of the Court of Appeal. The central issue for our determination, therefore, is whether the special leave sought by the applicant should be

[2] Ibid.

granted. It is only if special leave is granted that this Court may then treat the hearing of the special leave application as the hearing of the appeal.

[21] Accordingly, we turn to considering the issue of whether special leave should be granted. Before doing so, however, we find it convenient to address an *in limine* objection to the application for special leave by Mr. Jonas, counsel for the respondent.

***In Limine* Objection**

[22] As already intimated, Mr. Jonas raised an *in limine* objection to the application for special leave contending that Mr. Ramsahoye's application for special leave under section 8 of Cap 3:07 was filed out of time. Mr. Jonas' elaborately constructed argument in this regard was premised on the fact that the Court of Appeal had correctly refused to grant Mr. Ramsahoye leave as of right under section 6 of Cap 3:07. Mr. Jonas argued that, because Mr. Ramsahoye's application was brought under section 6 of Cap 3:07 and was correctly refused by the Court of Appeal, then, by operation of Rule 10.12 of the Caribbean Court of Justice Appellate Jurisdiction Rules, 2017 ("CCJ Rules"), Mr. Ramsahoye had 42 days from the date of the decision of the Court of Appeal discharging the orders of Roy JA to make his application for leave and not 21 days after the Court of Appeal's refusal of his application for leave to appeal to this Court. Consequently, argued Mr. Jonas, Mr. Ramsahoye's application to this Court was out of time.

[23] To be sure, Rule 10.12 of CCJ Rules contains the time frames within which an applicant must apply to this Court for special leave. That Rule provides:

> "An application for special leave to appeal may be made to the Court in writing within forty-two (42) days of the date of the judgment from which special leave to appeal is sought, or in cases which leave to appeal has been sought from the court below, within twenty-one (21) days of the refusal or rescission of such leave".

[24] Mr. Jonas contends that the time frames in this Rule are to be understood in light of sections 6, 7 and 8 of Cap 3:07. These sections provide three routes by which an applicant may obtain leave to appeal to this Court. Sections 6 and 7 mark out routes through the Court of Appeal, section 6 providing for leave as of right and section 7 for

leave where the appeal raises issues of great general or public importance. Section 8 provides for the grant of special leave on an application to this Court.

[25] According to Mr. Jonas, the 42 days' time-frame in Rule 10.12 applies to all applications made directly to this Court pursuant to section 8 whereas the 21 days' time frame applies to section 8 applications after a refusal or rescission by the court below of a section 7 application. This is because section 8 is expressly stated to be subject to section 7. However, because section 8 is not stated to be subject to section 6, the 21 days rule does not apply in cases where a refusal or rescission is correctly made under section 6. The 42 days rule applies instead.

[26] We do not agree that the language of Rule 10.12 warrants the highly stylised argument of Mr. Jonas. The language of that Rule is unabashedly clear. That language does not admit of any interpretation other than that the Rule contemplates two-time frames within which applications for special leave to the Court may be made. These are (i) where the application is made directly to the Court from a judgment of the court below, within 42 days of the judgment of that court being appealed; and (ii) where the application is made after leave to this Court is refused or rescinded by the court below, within 21 days of such refusal or rescission of that court.

[27] For certain, there is nothing on the plain words of the Rule that suggests that the 21 days' time-frame for leave hinges on the correctness of the refusal of the court below as argued by Mr. Jonas. The 21 days' time-frame is triggered once there has been a refusal or rescission of leave by the court below. Once a rescission or refusal has occurred, then the applicant has 21 days from that refusal within which to approach this Court under section 8. Once leave has been refused or rescinded, the only route available to an applicant is via section 8 of the CCJ Act. This view is strengthened by the fact that the "the application pursuant to Rule 10.12 does not receive its vires from section 8 of that Act" as was observed by Nelson JCCJ in *Weel v AG of Barbados and the Medical Council*.[3]

[3] [2014] CCJ 1 (AJ), [27].

[28] A second reason why we cannot accept Mr. Jonas' argument is because Mr. Jonas' interpretation of the expression "subject to section 7" in section 8 flies in the face of the settled jurisprudence of this Court. From as long ago as its earliest decision in *Barbados Rediffusion v Asha Merchandani (No 1)*[4], de la Bastide P firmly laid down that:

> "Notwithstanding the use of the words "subject to section 7" in section 8, these two routes are separate and independent of each other and do not intersect. The limitations imposed by section 7 on the grant of leave by the Court of Appeal do not apply to the grant of special leave by this Court under section 8. Clearly the words "subject to section 7" do not have that effect."

De la Bastide PCCJ's explication of "subject to section 7" has been fully embraced by this Court's jurisprudence. In spite of this compelling authority, Mr. Jonas has offered no interpretative pathway to reconciling his argument with *Barbados Rediffusion*.

[29] In light of the foregoing, it is our judgment that Mr. Jonas' *in limine* objection must fail and we hold that Mr. Ramsahoye's application was filed timeously. The undisputed facts are that the Court of Appeal refused leave on 8 November 2018 and that Mr. Ramsahoye's application to this Court was filed on 29 of November 2018. Thus, Mr. Ramsahoye's application was made within the 21 days of the refusal by the Court of Appeal as stipulated by the second limb of Rule 10.12.

The Central Issue -The Special Leave Issue

[30] We come now to the central issue in this case. Should we grant special leave to appeal to this Court in the circumstances of this case?

[31] In *Barbados Rediffusion*,[5] de la Bastide PCCJ adumbrated the approach this Court should adopt in deciding whether to grant special leave in a particular case as follows:

> "[S]ection 8 of the CCJ Act has no doubt quite deliberately, left it entirely to this Court to formulate the principles by which it will be guided in determining whether to grant or to refuse special leave to appeal to it. We do not propose at this early stage to attempt to make any comprehensive formulation of those principles. We propose rather to deal with the matter on a case by case basis and to limit ourselves to articulating in each case the

[4] [2005] CCJ 1 (AJ).
[5] Ibid.

> principle by which we have been guided in granting or refusing special leave to appeal… we will develop our own jurisprudence in this area incrementally on an "as needed" basis."

[32] In *Barbados Rediffusion*,[6] de la Bastide PCCJ adopted a two-stage approach to the question of whether special leave should be granted or refused. The first stage was to ascertain the circumstances in which the application for special leave was made. As regards this, de le Bastide PCCJ underlined that the application for special leave in the case before the Court was made in circumstances in which there was no appeal as of right and no basis on which the Court of Appeal could have granted leave to appeal to this Court. The second stage is determining whether there is some special feature of the case which would warrant this Court giving special leave to appeal to it. In determining whether there was some special feature, this Court may articulate what test is to be applied in making such a determination. In the case before him, de la Bastide PCCJ applied the test of whether there had been either an "egregious" error of law or a substantial miscarriage of justice.

[33] Subsequent to *Barbados Rediffusion*,[7] this Court has consistently applied the two-stage approach in determining whether special leave would be granted or refused. Depending on the circumstances of an application for special leave, this Court has invoked differing tests to guide it in granting or refusing special leave. Thus, for instance, in *Weel v AG of Barbados and The Dental Council*,[8] special leave was sought in circumstances where leave was granted by the court below but was rescinded by that court because the applicant did not comply with the conditions imposed for such leave. Nelson JCCJ disposed of the application for special leave as follows:

> "The application is premised on a default in complying with a court order and on the fact that despite squandering an opportunity to appeal, the Applicant seeks a second chance. On an application of this kind, the Applicant must satisfy the Court on these matters as well as the merits of the proposed appeal. In this case, the Applicant has failed to account satisfactorily for the delay in coming to this Court or to explain his breach of the Court of Appeal's order."[9]

[6] Ibid.
[7] Ibid.
[8] Supra (n.3).
[9] Ibid.

[34] Similarly, in *Barbados Turf Club v Melnyk*,[10]Anderson JCCJ held that where the application for special leave is made directly under section 8 of the CCJ Act, the test which the Court will apply in granting special leave is whether the applicant has shown that the application has a real prospect of success. This test was affirmed by Byron PCCJ in *Systems Sales Ltd v Browne-Oxley*[11] where the special leave application was made directly under section 8 of the CCJ Act.

[35] This Court's decision *Mohan v Persaud*[12] is particularly important in the case now before us as it concerned an application for special leave where the court below had refused leave to appeal to this Court. Nelson JCCJ, delivering the judgment of the Court, stated that in such a case "the Court will give careful scrutiny to the Court of Appeal's reasons for its decision. The practice of the Court has been that it will grant special leave if there has been either an egregious error of law or a substantial miscarriage of justice".

[36] In the instant case, the application for special leave followed a correct decision of the Court of Appeal to refuse leave to the applicant to appeal to this Court as of right under section 6 of Cap 3:07. No satisfactory reason has been given to us as to why the principle stated by Nelson JCCJ in *Mohan v Persaud*[13] is not applicable in this case. Accordingly, applying that principle to this case, for Mr. Ramsahoye to obtain leave he must demonstrate there has been either an egregious error of law or a substantial miscarriage of justice.

Has there been an egregious error of law or a substantial miscarriage of justice?

[37] In answering this question, it is to be remembered that the appeal before this Court is from the decision of the Court of Appeal discharging orders of Roy JA made in Chambers on the basis that he lacked jurisdiction under Order 2 Rule 16 (1) to grant those orders. Therefore, the dispositive question before us is whether the Court of Appeal made an egregious error of law in interpreting the scope of the powers of a single Justice of Appeal sitting in Chambers pursuant to Order 2 Rule 16(1).

[10] [2011] CCJ 14 (AJ).
[11] [2014] CCJ 16 (AJ).
[12] [2012] CCJ 8 (AJ), [12].
[13] Supra (n.9).

[38] Order 2 Rule 16 of the Court of Appeal Rules provides:

> "16 (1) In any cause or matter pending before the Court, a single Judge of the Court may upon application make orders for –
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> (a) giving security for costs to be occasioned by any appeals;
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> (b) Leave to appeal in *forma pauperis*;
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> (c) a stay of execution on any judgment appealed from pending he determination of the appeal;
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> (d) an injunction restraining the defendant in the action from disposing or parting with the possession of the subject matter of the appeal pending the determination thereof;
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> (e) extension of time;
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> and hear, determine and make orders on any other interlocutory application.
>
> (2) Every order made by a single Judge of the Court in pursuance of this rule may be discharged or varied by any Judges of that Court having power to hear and determine the appeal.

[39] This Rule has its genesis in Rule 69 of the Supreme Court of Judicature Act 1925 England & Wales and has been reproduced with necessary modifications. This Rule was identically reproduced in Order II Rule 16 of the Court of Appeal Rules of Belize, Chap 90.[14] Similar provisions also exist in Order 59 Rule 20 of the Supreme Court Rules, 1975 of Trinidad and Tobago[15] and in Rule 33(1) of the Jamaica Court of Appeal Rules 1962.[16]In these three jurisdictions, the Courts of Appeal, in interpreting the provisions

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[14] Order II Rule 16 provides:

16. (1) In any cause or matter pending before the Court a single judge of the Court may upon application make orders for-

(a) giving security for costs to be occasioned by any appeals;
(b) leave to appeal in forma pauperis;
(c) a stay of execution on any judgment appealed from pending the determination of such appeal;
(d) an injunction restraining the defendant in the action from disposing or parting with the possession of the subject matter of the appeal pending the determination thereof;
(e) extension of time;

and may hear, determine and make orders on any other interlocutory application.

(2) Every order made by a single judge of the Court in pursuance of this rule may be discharged or varied by any judges of that Court having power to hear and determine the appeal.

[15] Order 59 Rule 20 provides:

"(1) Without prejudice to the provisions of these rules, in any cause or matter pending before the court, a single judge of the court may upon application make orders for –

(a) giving security for costs to be occasioned by any appeal;
(b) a stay pending the determination of such appeal;
(c) an injunction restraining the defendant in the action from disposing of or parting with the possession of the subject matter of the appeal pending the determination thereof;

and may hear, determine and make orders on any interlocutory application.

(2) Every order made by a single judge of the court in pursuance of this rule may be discharged or varied by the court."

[16]Rule 33 (1) provides:

"In any cause or matter pending before the court, a single judge of the court may, upon application, make orders for –

(a) giving security for costs to be occasioned by any appeal;
(b) leave to appeal in forma pauperis;
(c) a stay of execution on any judgment appealed from pending the determination of such appeal;
(d) an injunction restraining the defendant in the action from disposing or parting with the possession of the subject matter of the appeal pending the determination thereof;

have held that the power of a single Judge is constrained by the Rule to making the orders enumerated from (a) – (e) and other interlocutory applications[17]. In Belize Sosa J (as he then was) in *Tommy Crutchfield* (unreported) CA 7/99 28 July 1998 held that:

> "a single Justice of Appeal has only such jurisdiction as is conferred on him by the rule 16 (1) and that such jurisdiction, in so far as it extends beyond the types of order enumerated therein must be limited to orders in interlocutory applications otherwise authorized to be made under the Act or Rules."

[40] In similar vein, Gordon JA in *Gleaner Co Ltd and Anor v Stratchan* (1997) 59 WIR 315, in interpreting Rule 33(1) of the COA Rules of Jamaica 1962, held that: "A judge [in Chambers] can only act under this rule 'upon application' and, despite the generality of the term 'any other interlocutory application' used in r 33(1), this 'other' application must be construed ejusdem generis with r 33(1)(a) to (e).".

[41] This view is consistent with the view taken by the Court of Appeal of Guyana in *Narine et al v National Bank of Industry and Commerce Ltd Civ Appeal No. 75 of 2001*,[18] where Bernard C. held that: "it is also indisputable that the applications for orders listed from (a) to (e) of Rule 16(1) are interlocutory as it provides for single Judge of the Court to "hear determine and make orders on any other *interlocutory* application". (emphasis mine). The "ejusdem generis rule applies." The Court of Appeal relied on this decision when discharging Roy JA's Orders on the basis that he had exceeded his jurisdiction. The Court found that it was bound by the doctrine of *stare decisis* to the previous decisions of the Court of Appeal and could not lend legitimacy to a challenge from a single Justice of Appeal by engaging in such a challenge.

[42] The foregoing authorities show that the general words "other interlocutory application" in Order 2 Rule 16(1) must be construed narrowly and as limited to only those interlocutory applications of the type expressly listed in Order 2 Rule 16(1). The upshot of this is that Roy JA sitting in Chambers was empowered to make only those

(e) extension of time; and may hear, determine and make orders on any other interlocutory application."

[17] In Trinidad and Tobago, it was so held by Bernard CJ in *Wallen and Anor. v Baptiste and Ors*. (No.1), (1994) WIR

[18] A similar view was also expressed in *Caribbean Chemicals v The Commissioner General CA NO. 112 of 2008* (unreported).

applications enumerated from (a)-(e) and other interlocutory applications of a kind authorised by Order 2 Rule 16(1).

[43] So, were the orders granted by Roy JA of a kind permitted by Rule 16(1)? Roy JA made the following orders:

> "(a) the Appellant/First Respondent in Civil Appeal No. 56 of 2009 ("NICIL") be joined as a Respondent in Civil Appeal No. 69 of 2001 and that the title of the proceedings be amended accordingly as well as a further order that the summons of 18th September, 2009 filed in Civil Appeal No. 69 of 2001 be consolidated and heard together with the summons dated 21st August, 2009 filed for an Order for a stay of execution in Civil Appeal No. 56 of 2009;
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> (b) that NICIL do pay to Mr. James Ramsahoye the Appellant/Plaintiff in Civil Appeal No. 69 of 2001 his monthly pension as order by the Court of Appeal on the 3rd March, 2004 in the sum of US$2001.72 or its equivalent in Guyana dollars at the conversion rate of exchange prevailing at the date of payment with effect from 1st August, 2009 and continuing on the first day of each month thereafter by a transfer from its account with Republic Bank or any other Bank to Account No. 4883237 held by Mr. James Ramsahoye at Republic Bank until the death of Mr. James Ramsahoye or further Order as the Court of Appeal;
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> (c) that all funds of NICIL wherever and by whomever held do stand charged with the payment of the said monthly pension in accordance with the Order of the Court of Appeal made on the 3rd March, 2004 and this Order;
>
> (d) service of the Order made herein shall be due authority and direction to pay the said monthly pension from funds held by or in favour of NICIL upon whomsoever such service is effected;
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> (e) in default payment by NICIL or any person or authority holding funds on its behalf of the Registrar of Supreme Court is hereby authorized to act on behalf of NICIL to direct payment out of any funds wherever held on behalf of NICIL by any person or authority;
>
> (f) further legal process to enforce the Order of the Court of Appeal made on the 3rd March, 2004 in Civil Appeal No. 69 of 2001 be taken against NICIL to effect payment of the said monthly pension to and in favour of Mr. James Ramsahoye the Appellant/Plaintiff in Civil Appeal No. 69 of 2001."

[44] There can be no doubt these orders were granted to secure the enforcement of the judgment of the Court of Appeal made in Mr. Ramsahoye's favour on 3 March 2004. Indeed, Roy JA expressly so stated in his written decision. He reasoned in this regard that by virtue of section 3 of the Court of Appeal Act, "the reception provision" and section 27 of the English Supreme Court of Judicature (Consolidated) Act 1925, the Court of Appeal had a jurisdiction derived from statute to make enforcement orders.

[45] In our view, this reasoning of Roy JA is plainly wrong. Order 2 Rule 28 vests the enforcement of judgments of the Court of Appeal by the court below. Rule 28 provides:

> "Judgments of the Court shall be enforced by the Court below and a certificate under the seal of the Court and the hand of the Registrar setting forth the judgment shall be transmitted by the Registrar to the Court below and the latter shall enforce such judgment in terms of the certificate."

[46] It is trite law that the Court of Appeal as a creature of statute derives its powers and jurisdiction from its relevant statute and the rules made thereunder. Here, the Rules of the Court of Appeal expressly provide that judgments of the Court of Appeal will be enforced in the court below. There is no ambiguity in this Rule. Accordingly, Roy JA could not rely on "received laws" to make enforcement orders in the face of the express edict in Rule 28. In any event, the powers under section 27 of the Supreme Court of Judicature (Consolidated) Act, 1925 do not devolve on a single Justice of Appeal in Chambers in exercise of the functions prescribed by Order 2 Rule 16(1), but rather on the Court of Appeal which pursuant to section 37 of the Cap 3:01 is made up of no less than three judges sitting at a time.

[47] Having regard to the foregoing, it is evident that the learned Justice of Appeal acted *ultra vires* the powers conferred on him under the Rule 16(1). Rule 16(2) gives the full bench of the Court of Appeal jurisdiction to discharge or vary orders made by a single Judge under Rule 16(1). In the circumstances just discussed, the Court of Appeal exercised its Rule 16(2) powers correctly in discharging the orders of Roy JA. Accordingly, the Court can find no egregious or other error in the judgment of the Court of Appeal.

[48] We turn then to the question of substantial miscarriage of justice. Mr. Ramsahoye has adduced evidence pointing to the monumental difficulties he has encountered in enforcing the Court of Appeal judgment of 3 March 2004. However, at this stage what is before the Court is simply the question of Roy JA's jurisdiction to grant the enforcement orders. Having found that the learned Justice of Appeal, who no doubt may have been moved by Mr. Ramsahoye's plight had no jurisdiction to make those orders, we are constrained to find that Mr. Ramsahoye cannot seek protection under the umbrella of substantial miscarriage of justice from orders that were *ultra vires*. We understand that there is an appeal pending before the Court of Appeal in relation to Civil Appeal No. 56 of 2009 which would give the parties an opportunity to fully ventilate some of the orders sought by Mr. Ramsahoye. Indeed, it is agreed on all sides that this appeal should now proceed on an expedited basis. It is indeed most regrettable that since the Court of Appeal established Mr. Ramsahoye's rights to a pension over fifteen years ago he is still involved in proceedings to enforce those rights.

[49] It is plain from the foregoing that Mr. Ramsahoye has not satisfied the requirements for this Court to grant special leave in this case. He has not demonstrated that the Court of Appeal committed an egregious error, nor has he shown a substantial miscarriage of justice. In these premises, no question arises of treating the application for special leave as the appeal.

JUDGMENT OF THE HONOURABLE MR JUSTICE BARROW, JCCJ

Guiding principles to be developed

[50] In *Barbados Rediffusion Service Ltd v Mirchandani*[19] the Caribbean Court of Justice first discussed[20] the matter of the principles by which it would guide itself in deciding whether to grant or refuse applications made to it, pursuant to section 8 of the Caribbean Court of Justice Act,[21] for special leave to appeal. The Court interpreted that provision as deliberately leaving it entirely to the Court to formulate such principles. It declared

[19] Supra (n.4).
[20] Ibid, [35].
[21] Chapter 117 of the Laws of Barbados.

it would develop the principles on a case by case basis and would make no attempt at any comprehensive formulation of those principles.[22]

[51] The section 8 application in that case was for special leave to appeal to the CCJ against a Court of Appeal decision refusing the defendant's appeal to set aside a High Court order striking out a defence and entering judgment.[23] The CCJ granted special leave to appeal and in the course of its judgment established some important markers. These included that an application for special leave is not an appeal from a Court of Appeal's decision refusing leave to appeal.[24] The Court also held that there was no requirement for an applicant to have first sought and been refused leave to appeal by the Court of Appeal.[25] The Court decided, as well, that it was open to an applicant to seek special leave from the CCJ on the ground that the question raised by the appeal was one of great general or public importance even if the applicant had a right of appeal, pursuant to section 7 of the CCJ Act (with leave of the Court of Appeal), on that very ground.[26] Subsequently, in *Brent Griffith v Guyana Revenue Authority*[27] the CCJ would declare that even if an applicant could appeal as of right under section 6 of the CCJ Act because his case fell into the appropriate category, the applicant could forgo that course and apply for special leave to appeal under section 8 of the CCJ Act.[28] The Court has, therefore, clearly confirmed that it is a wide power it is given to grant special leave to appeal.

Special feature warranting special leave

[52] In the *Barbados Rediffusion* case, the CCJ limited itself to considering whether there was some special feature of the case which warranted granting special leave to appeal to itself. It said it would be wrong to attempt to conclude on whether the underlying decision was so flawed an exercise of discretion as to justify the CCJ's interfering with and quashing the order made.[29] As I understand it, the reference to considering whether

[22] Supra (n. 4), [35].
[23] Supra (n. 4), [1]: This order was the sanction for non-compliance by the defendant with an "unless" order. Such an order directs a party to do something and provides that unless the thing is done by a stated date a sanction, such as the striking out of the defence, would automatically follow.
[24] Supra (n. 4), [36].
[25] Supra (n. 4), [28]-[29].
[26] Ibid.
[27] [2015] CCJ 1 (AJ).
[28] Ibid [23], [26].
[29] Supra (n. 28), [42].

there existed some special feature warranting the grant of special leave was not an indication that a proposed appeal must present some rare or unusual or esoteric feature. The special feature considered in that case was simply whether, drawing on so much as may have been applicable to that case of the practice of the Judicial Committee of the Privy Council, there was an appearance of either an egregious error of law or a substantial miscarriage of justice.[30]

[53] There was no suggestion that in all cases one of these two features must be present for the Court to grant special leave. Nor did the Court embark on any general review to see what were all the special features that may have been present. The Court did however consider whether it was a feature of the proposed appeal that it raised a question of great general or public importance.[31] The Court also considered and dismissed the argument that the order which had not been complied with, and which led to the strike out order, was wrongly made.[32]

[54] The Court identified the possibly resulting miscarriage of justice in that case as consisting of leaving matters as they were, with the defence struck out and the defendant liable to pay substantial damages.[33] This was because of the "real risk"[34] or "the possibility"[35] that the strike out order may have been wrongly made. It was to eliminate this risk of miscarriage of justice that the Court granted special leave.[36] To be clear, the potential miscarriage of justice consisted of leaving a decision that may have been wrong, standing.

[55] It is for certain that the Court's consideration in the Barbados Rediffusion case, of the features of egregious error of law and miscarriage of justice was not intended to be exhaustive of special features that could be present and operative in future cases, generally. This follows from the Court having declared, as noted, that it would make no attempt at any comprehensive formulation of the principles by which it would guide

[30] Ibid.
[31] Supra (n. 28), [36] and [37].
[32] supra (n.28), [38].
[33] Ibid.
[34] Ibid
[35] Supra (n.4), [44].
[36] Ibid.

itself in future, when considering special leave applications. If the Court had intended, contrary to its definitive opening declaration, to limit available special features to errors of law and miscarriage of justice it would at least have considered and rejected other special features, such as those that formerly existed in the Privy Council practice. These features included: a far reaching question of law; a matter of dominant public importance; the question of construction of an Act which is of general interest to the country; concerns about the custody of children or the liberty of the citizen; the prevention of further litigation or the avoidance of unnecessary litigation; a question of great importance regardless of money value; or a question of jurisdiction to entertain appeals. This recital is made purely to recognise the sort of special features which in future cases may be available to be urged an applicant for special leave, as deserving of consideration by this Court in the principled exercise of its wide discretion to grant special leave. It is not advice that in any future case any one of them may be accepted by this Court as a feature justifying the grant of special leave.

[56] This review of the Court's original decision on granting special leave to appeal shows that the requirement, that there should be a special feature warranting the grant, is satisfied if it appears that there is "a real risk" or "a possibility" that the decision sought to be appealed is wrong. There is no need to make any preliminary determination as to the likely outcome of the proposed appeal. As the Court stated, in rejecting that approach, that was not part of its limited function at this stage.[37] This, of course, does not diminish the duty of the Court to consider whether there appeared to be potential merit to the proposed appeal. This was manifestly the exercise the Court conducted in that case and what enabled it to say there was a real risk that the underlying sanction decision was wrong and there was a potential miscarriage of justice in leaving it standing by refusing leave to appeal.

A real prospect of success?

[57] The decision in the *Barbados Rediffusion* case, to grant special leave to appeal because there was a real risk of a miscarriage of justice in leaving the strike out decision un-

[37] Supra (n.4), [42].

appealed as it may have been wrong, was effectively a decision that there was a real prospect of the appeal succeeding. Special leave to appeal was granted in that case precisely for the reason that there was "a more than negligible"[38] possibility that the defendant could succeed on appeal in showing that the "unless" and strike out orders were wrongly made.[39] I understand that conclusion as a clear determination that there is a realistic prospect of success.

[58] As my bother Burgess JCCJ has observed, at [35], both in *Barbados Turf Club v Melnyk*[40] and *System Sales Ltd v Browne-Oxley*,[41] this Court identified the special feature which warranted granting special leave to appeal as being the realistic prospect of success that the application showed. To my mind, the principle that special leave should be granted to a proposed appeal which shows a realistic prospect of succeeding applies generally to section 8 applications. This follows, in my respectful view, from the fact that the appearance of an egregious error of law or possible miscarriage of justice are both, also, indicators of a real prospect of success of the proposed appeal. Even in instances where an application for special leave must be preceded by an application for an extension of time for seeking special leave, the Court will determine both applications on the basis of whether the proposed appeal has a realistic prospect of success, as it did in *Mohan v Persaud*.[42]

[59] In *Mohan* the Court granted the applications for the extension of time and for special leave on the basis that the possible merits of the appeal trumped the absence of any plausible explanation for the delay in filing the appeal.[43] The Court held that in considering whether to refuse an extension of time the Court of Appeal should have assessed whether a refusal might result in a miscarriage of justice.[44] The Court contrasted that requirement with the "somewhat lower threshold" in *Quillen v Harney Westwood & Riegels*[45] where the applicant was granted an extension of time by showing

[38] Supra (n.4), [44].
[39] Ibid.
[40] Supra (n. 11).
[41] Supra (n.12).
[42] Supra (n.9).
[43] Ibid, [21].
[44] Ibid.
[45] (1999) 58 WIR 143 at 146

"some chance of success" of the proposed appeal. The contrast, of course, is between a real prospect of success and some chance of success on appeal. In either case, the principle that warrants the grant of special leave is that a refusal of special leave to appeal could result in a miscarriage of justice.

[60] It is to be observed that in *Mohan* the identification of potential 'miscarriage of justice' took a particular turn. In that case, the miscarriage of justice was identified by this Court on a consideration of the merits of the appeal. The Court relied on the apparent error of the trial court in perfecting a judgment for a sum greater than the judge had awarded, to find a clear indication "that there had probably been a miscarriage of justice".[46] As well, it found this misgiving furthered by the failure of the judge to consider the vitiating factor of illegality.[47] The extension of the treatment of miscarriage of justice which occurred in that case was that the Court found probable miscarriage of justice on the merits of the proposed appeal. In contrast, in the usual case an applicant need only show that, given the appearance of a realistic prospect of success, it would be a possible miscarriage of justice to refuse leave to appeal, which is what *Barbados Rediffusion* decided; see [60] above.

No special feature in this case

[61] The present application by Mr. Ramsahoye seeking special leave to appeal does not distinctly identify any special feature in the proposed appeal which the applicant says warrants the exercise of discretion in his favour. The approach the applicant has taken is to argue the merits of his proposed appeal as well as to detail the protracted and multiple litigation which he has been forced to prosecute and endure, which he argues is a grave abuse of the courts' process.

[62] In a well-developed submission, Mr. Ramsahoye argues that this Court should exercise the undoubted power which courts have to prevent abuse of their process and should grant special leave to appeal so this Court can put an end to the abuse and its consequences. Without stating a conclusion on the matter, it is a deeply troubling picture

[46] Supra (n.9), [22].
[47] Supra (n.9), [24].

of delay and denial that is presented, and this makes it regrettable that this Court cannot grant special leave to appeal. We cannot grant leave for the clear reason that the alleged abuse of process does not form part of the Court of Appeal decision that Mr Ramsahoye wishes to appeal.

[63] One of the usual special features on which Mr Ramsahoye specifically relies is miscarriage of justice. He does so by way of (justifiably) complaining of the great delay he has suffered in enforcing the judgment for damages that he obtained, on appeal, as long ago as 3 March 2004. No doubt it would give rise to the real risk or possibility of miscarriage of justice to refuse him special leave to appeal and, instead, leave standing the possibly wrong decision, if it appeared that he had a realistic prospect of succeeding on appeal. That would provide a special feature that would warrant the grant of special leave in this case. I have given full consideration to the arguments why Mr Ramsahoye contends the interpretation by the Court of Appeal of the powers of a single Justice of Appeal was wrong. I have also considered his submission that, alternatively, the Court of Appeal should have, itself, made the orders which it said the single judge did not have power to make.

[64] As elaborated by Burgess JCCJ, it is settled law that the single justice of appeal did not have the power to make the orders he purported to make. I also agree that it was not the function or purview of either the single judge or the Court of Appeal to make the orders, in the Court of Appeal, for the enforcement of the judgment in favour of Mr Ramsahoye. As stated at [46], Order 2 rule 28 of the Court of Appeal Rules is quite clear that enforcement of orders made by the appellate court is done by the court below.

[65] There is no other feature of the proposed appeal to warrant the grant of special leave. The interpretation of the law as to the power of a single judge of the Court of Appeal is settled and there is no suggestion coming from Mr Ramsahoye that this Court should revisit this interpretation and consider altering it. Rather, Mr Ramsahoye says it is a wrong interpretation (along with urging that the inherent jurisdiction of the single judge permitted him to make the orders he made). Even if, in a future case, the need to depart

from precedent is raised as a feature justifying the grant of special leave to appeal, it is not a feature present in this case.

No real prospect of success

[66] I see no realistic prospect of the proposed appeal succeeding. Accordingly, I agree that leave to appeal should be refused.

Orders

[67] Having regard to the preceding judgments the Court issues the following orders:

a. The application for special leave to appeal is dismissed.

b. The Order of the Court of Appeal dated the 20 July, 2018 is affirmed.

c. There shall be no order as to costs.

/s/ D. Hayton

The Hon Mr Justice D Hayton

/s/ W. Anderson

The Hon Mr Justice W Anderson

/s/ M. Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee

/s/ D. Barrow

The Hon Mr Justice D Barrow

/s/ A. Burgess

The Hon Mr Justice A Burgess