IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL FROM THE CO-OPERATIVE REPUBLIC OF GUYANA

CCJ Appeal No. GYCV2019/002
GY Civil Appeal No. 86 of 2018

BETWEEN

JOHN SOLOMON, deceased, represented by the Administrator of the estate of Fizul Mohamed by virtue of Letters of Administration No. 1152 of 2014 — **APPLICANT**

AND

DAWATTIE, deceased, represented by the Administrator Of the estate of Pooran Chandrika by virtue of Letters of Administration No. 1040 of 2012 — **RESPONDENT**

And

CCJ Appeal No. GYCV2019/003
GY Civil Appeal No. 87 of 2018

BETWEEN

KISSOON also known as Budda of Columbia, Essequibo Coast — **APPLICANT**

AND

CHANDRAWATTIE PERSAUD of Lot 3 West Columbia, Essequibo Coast — **RESPONDENT**

And

CCJ Civil Appeal No. 2019/004
GY Civil Appeal No. 88 of 2018

BETWEEN

KISSOON also known as Budda of Columbia, Essequibo Coast — **APPLICANT**

AND

GOWRIE of Lot 21 East Public Road, Westland Perseverance, Essequibo Coast — **RESPONDENT**

And

CCJ Appeal No. GYCV2019/005
GY Civil Appeal No. 89 of 2018

BETWEEN

KISSOON also known as Budda of Columbia, Essequibo Coast — **APPLICANT**

AND

S. PERSAUD represented herein by Gowrie of Lot 21 East Public Road, Westland Perseverance, Essequibo Coast — **RESPONDENT**

[Consolidated pursuant to the Order of the Court made on the 4th July 2019]

Before the Honourables **Mr Justice J Wit, JCCJ**
Mme Justice M Rajnauth-Lee, JCCJ
Mr Justice D Barrow, JCCJ

Appearances

Mr Sohan J Poonai and Mr Naresh Poonai for the Applicants

Mr Chandrapratesh V Satram, Mr Roopnarine Satram and Mr Ron Mootilal for the Respondents

REASONS FOR DECISION
of
The Honourable Justices Wit, Rajnauth-Lee and Barrow

Delivered by

The Honourable Mr Justice Barrow

on the 16th day of August 2019

[1] At the end of the hearing, this Court dismissed the applications for special leave to appeal[1] in these four consolidated appeals and promised to give reasons in writing. Counsel on both sides had asked for guidance on whether leave had been required to appeal to the Court of Appeal, from whose decision the Applicants had wished to appeal. The Court of Appeal had concluded that no appeal existed because the Applicants had not obtained leave to appeal, a conclusion with which we agree.

[1] Pursuant to s 8 of the Caribbean Court of Justice Act.

Stay of Execution

[2] The objective of the applications to this Court was to obtain 'a stay of execution of the decision' of the Rice Assessment Committee. The Committee had decided that the present Respondents were permitted to issue notices to quit to the Applicants, who were tenants of rice lands and enjoyed the benefits conferred by the *Rice Farmers Security of Tenure Act*.[2] The Applicants had appealed the Committee's decision to the Full Court of the High Court, but that court struck out the appeals for non-compliance with the requirements of s 26 of the Act, which contains the detailed provisions for appealing a Committee decision. The court also refused leave to appeal to the Court of Appeal. The Applicants filed a notice of appeal in the Court of Appeal against the Full Court's decision. They also filed, for the first time, a summons for a stay of execution of the decision of the Committee.

[3] A single judge of the Court of Appeal, Gregory JA, dismissed the summons because the notice of appeal had not been filed pursuant to leave first having been obtained. On that basis, she decided that she had no jurisdiction to hear the summons for a stay of execution.

[4] The Applicants then filed a notice of motion to the Full Bench of the Court of Appeal in which they asked for a stay of execution of the decision of the Committee, pending the hearing of the appeal to the Court of Appeal. The Full Bench dismissed this application. It was to pursue their application for a stay of execution that the Applicants sought special leave to appeal to the CCJ, the final court of appeal.

Interlocutory Applications to Appellate Courts

[5] "Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable".[3] While courts must be fully alert to this norm, legal practitioners and litigants in Guyana must accept that this fundamental right does not mean there is unqualified access. It was wholly inappropriate for the Applicants to first seek the interlocutory relief of a stay of execution in the Court of Appeal and after that in this Court. Section 30 of the Act contained clear provisions

[2] Cap. 69:02, Laws of Guyana.
[3] Access to Justice in United Nations and the Rule of Law as available at https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/ (29 July 2019)

that enabled the Applicants to apply to the Committee "to stay or suspend execution of the order or judgment or postpone the date of possession." The Applicants have given no reason why they needed to apply for any stay of execution of what was only a decision by the Committee to permit the landlord to issue a notice to quit. Before there could have been any execution against the Applicants, the landlords would have first needed to apply to the Committee for orders for the recovery of possession or ejectment. Only upon the making of such an order could there arise a need for a stay of execution. And at that stage the Applicants could have requested a stay from the Committee pending their appeal to the High Court. The Applicants have offered no justification for not seeking such an order from the Committee.

[6] Nor have the Applicants - having chosen to spurn the jurisdiction of the Committee - explained why they did not apply for the vaunted stay of execution from the Full Court, to which they first appealed; Order 46 r 18 of the Rules of the High Court recognizes the ability of that Court to order a stay.

[7] Just as there appeared to be no good reason for the Applicants' failure to seek a stay from the Committee or the Full Court, there appeared to be no good reason why, the Court of Appeal having refused a stay, they did not press for the hearing of their substantive appeal in the Court of Appeal. As the Applicants noted, the Court of Appeal did not dismiss the substantive appeal when it refused the application for a stay. The appropriate step was then for the Applicants to move for the hearing of the substantive appeal so that when it was called on, the Court of Appeal could have dismissed the appeal, having already decided on the stay application that leave was needed. The Applicants could then have appealed or applied for special leave to appeal against that decision and that would have brought the issue whether their purported appeal against the Committee's decision truly existed squarely before this Court. The issue of a stay of execution would have been subsumed in that appeal or potential appeal. That way all issues would have been settled.

[8] Instead, the Applicants applied to this Court for special leave to appeal against the refusal of the stay and, this Court having refused it, as was always a possibility, there remains pending in the Court of Appeal the Applicants' substantive appeal against the Full Court's refusal of a stay. This leaves open the startling possibility that when the Court of Appeal dismisses that appeal, as it has foretold, the Applicants will appeal or seek to appeal to this Court against that refusal.

[9] Meanwhile, there is pending before the Committee the incomplete proceedings by the Respondents for recovery of possession, including the expected application for eviction. Is there anything that stops the Applicants from opposing that application and requesting, from the Committee, the stay of execution that was always the properly available remedy to seek? For that matter, is there anything to stop the Applicants, in the event a stay is refused by the Committee, from appealing to the Full Court?

[10] The Applicants' special leave application to this Court, and their attempt to obtain, at this level, an interlocutory order for a stay, have simply further protracted and complicated these long-standing proceedings for recovery of possession. Perhaps the Applicants do not grieve at this result. As we have stated, the initial application for a stay in the Court of Appeal and its pursuit in this Court was most inappropriate. That conduct has abused the court process and made a mockery of the principle that there must be an end to litigation.

Requirement of Leave in the Court of Appeal

[11] We turn to the specific object of producing these reasons, which is to clarify why, in our view, the Applicants needed leave to appeal to the Court of Appeal. Section 6 of the Court of Appeal Act[4] is the governing provision. It states:

> "6. (1) The Court of Appeal shall have jurisdiction to hear and determine any matter arising in any civil proceedings upon a case stated or upon a question of law reserved by the Full Court or by a judge of the High Court pursuant to any power conferred in that behalf by any Act.
>
> (2) Subject as otherwise provided in this section, an appeal shall lie to the Court of Appeal in any cause or matter from any order of the Full Court or of a judge of the High Court (whether made before or after the date on which this Act comes into force) where such order is-
>
> (a) final and is not-
>
> (i) an order of a judge of the High Court made in chambers or in a summary proceeding;
>
> (ii) an order made with the consent of the parties;
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> (iii) an order as to costs;
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> (iv) an order referred to in paragraph (d);
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> (b) a decree nisi in a matrimonial cause or an order in an admiralty action determining liability;
>
> (c) declared by rules of court to be of the nature of a final order;
>
> (d) an order upon appeal from any other court, tribunal, body or person.

[4] Cap. 3:01, Laws of Guyana.

> (3) No appeal shall lie from an order referred to in subsection (2) (d)-
> (a) except-
> (i) upon a question of law; or
> (ii) where such order precludes any party from the exercise of his profession or calling, from the holding of public office, from membership of a public body or from the right to vote at the election of a member for any such body;
> (b) in any case, except with the leave of the Full Court or judge making the order or of the Court of Appeal."

[12] Section 6(1) states the principle that jurisdiction is conferred on the Court of Appeal to determine specified matters coming from the High Court (the Full Court or a judge). Next, the power is conferred in s 6(2) on the Court of Appeal to hear appeals which, also, come from the High Court. The appeals which may be heard are from the orders of the High Court which are described in the four limbs of s 6(2), designated (a) to (d). This immediately defeats the Applicants' submission that an appeal may come to the Court of Appeal directly from the Committee: appeals come from orders made by the High Court.

[13] In this case, the order that the Applicants sought to appeal fell within s 6(2)(d), being "an order upon appeal from … [an] other … tribunal …". The order, of the Full Court, had been made on an appeal from a tribunal (the Committee).

[14] As we announced, we were satisfied that s 6(3) mandates that such an appeal may only be brought with leave. The sub-section does so by declaring that no appeal shall lie from a s 6(2)(d) order (for convenience, call this "a tribunal appeal order"). That is the general proposition: no appeal lies from such an order. The proposition is then qualified by two exceptions, stated in s 6(3) (a) and (b).

[15] The first of these exceptions, in s 6(3) (a), is made up of five cases that fall within it. These are appeals (i) upon a question of law; (ii) where such order precludes any party from the exercise of his profession or calling; (iii) from the holding of public office, (iv) from membership of a public body or (v) from the right to vote at the election of a member for any such body. To repeat, these five cases comprise the first exception to the general proposition that no appeal shall lie from a tribunal appeal order. This first exception is in the nature of a class or a category of cases, from which an appeal lies.

[16] Section 6(3) (b) states the second exception to the prohibition that no appeal shall lie from a tribunal appeal order. This exception is in the nature of a condition, that must be satisfied. The condition is that leave must be obtained. It states that no appeal shall lie

"in any case, except with the leave …" of the High Court or the Court of Appeal. The plain meaning of the words "in any case" serves the purpose of limiting appeals from tribunal appeal orders. The words form part of the structure that no appeal shall lie, (A) except in any of five cases, **and** (B) that in any case, a litigant must obtain leave to bring a permitted appeal.

[17] The object of requiring leave in any case is to establish a gatekeeping function. It is not to confer an unlimited discretion whether to grant leave. In the usual case, where a discretion is conferred to permit an appeal, such as where special leave to appeal is required,[5] it is conferred on and exercised by the appellate tribunal that will hear the appeal. Where, as here, the requirement to obtain leave is to keep out those appeals which are not allowed, that gatekeeping exercise may be performed by the appellate body either from which or to which the appeal lies.[6]

[18] The need for this gatekeeping exercise was strongly demonstrated in this case. Here, the Applicants contended it was a question of law they were proposing to appeal and so they did not need leave. To the contrary, the Respondents argued it was a question of procedure and not of law. It would clearly produce significant uncertainty and confusion to allow an appellant to decide for himself that his appeal fell within the permitted category and proceed to file his appeal with no leave or licence. That would limit the respondent to making the objection, that the appeal does not fall within the permitted category, for the first time, at the stage when the appeal comes on for hearing before the Court of Appeal. It would produce significant uncertainty to leave hanging a decision as to whether an appellant has a right of appeal until that late stage. If it is then decided that the appeal did not fall within the permitted category much time, money and effort would have been wasted. That scenario was substantially what occurred on this application to this Court.

[19] The only local decision cited by counsel on the issue of whether leave was required to appeal against a tribunal appeal order was that cited by Mr Satram, counsel for the Respondents, of the Court of Appeal of Guyana *In The Matter Of The Trade Marks Act And In The Matter Of An Application By General Foods Corporation*.[7] The appeal to

[5] Cf. s 8 Caribbean Court of Justice Act, Ch 3:07 Laws of Guyana; *Brent Griffith v Guyana Revenue Authority* CCJ Application No. 1 of 2006 [18]. This approach is also seen in the English practice relating to appeals to their Court of Appeal from a decision of the High Court itself made on appeal, CPR 52.13(1) and see Burton Civil Appeals (2nd ed.) Sweet & Maxwell 2-332 and 2-342.
[6] Brent Griffith (n 5) at [19] observing that the Court of Appeal must form the view as to whether "the proposed appeal raises a genuinely disputable issue in the prescribed category of case" citing Lord Nicholls in *Alleyne-Forte v Attorney-General* [1997] 4 LRC 338, 343; (1997) 52 WIR 480, 486E.
[7] (1976) 22 WIR 253.

the Court of Appeal in that case was from a decision of a judge of the High Court, who had heard an appeal from the Registrar of Trade Marks. The Court of Appeal decided[8] that the appeal fell within the meaning of s 6(2)(d) of the Court of Appeal Act, "and leave of the Full Court having been obtained, the provisions of sub-s (3) have been complied with."[9] Contrary to the submission of counsel for the Applicants, the decision does support the contention of Mr Satram, counsel for the Respondents, that leave is required to bring a s6 (2) (d) appeal.

Is leave required only in 'other' cases?

[20] Counsel for the Applicants argued, and the view unfortunately succeeded in the Court of Appeal, that the requirement to obtain leave to appeal applied in any other case. The submission was that the right of appeal was given in the instances stated in s 6(3)(a). Full stop. It was for appeals not falling in those categories that leave was required in s 6(3)(b), it was argued. Thus, submitted the Applicants, leave was required in any 'other' case but not in those s 6(3)(a) cases.

[21] This Court rejects that view because, to start with, the word 'other' is not used in the legislation. Its introduction comes solely from counsel and serves no legislative purpose, such as to correct a drafting error or make sense of what would otherwise be absurd or meaningless. The purpose of the proposed insertion would be only to alter the perfectly plain and intended meaning.

[22] In addition, the insertion of the word 'other' would radically undo the objective of the legislation, of limiting appeals only to those that are specifically permitted, in s 6(3)(a). If, as the Applicants argue, leave to appeal could be granted 'in any other case' this would leave it completely open to a given judge to decide in what other case to grant leave. Hypothetically, the judge could grant leave to appeal on a question of fact or against a case management order. This Court had not the slightest doubt that this was not what s 6(3) of the Court of Appeal Act intended.

Costs

[23] At the conclusion of the hearing, the Court gave a decision as to the amount of costs to be paid to the Respondents, based on an inaccurate statement made to the Court as to

[8] Along with the question whether the judge's order was from "an order made in chambers"; per Crane JA at p 261.
[9] Supra (n7) at p. 260.

the amount for basic costs, stated in the Appellate Jurisdiction Rules. Appropriate steps were later taken, with the assistance of both counsel, to correct this error. We have now varied our costs order to award the single amount of GY$300,000.00 to the combined Respondents, applying the figure that had been proposed by the Applicants at the case management stage; to which counsel for the Respondents subsequently agreed.

/s/ J. Wit

The Hon Mr Justice J Wit

/s/ M. Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee

/s/ D. Barrow

The Hon Mr Justice D Barrow