EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT LUCIA

SLUHCVAP2010/0035

BETWEEN:

PATRICK MORILLE

Appellant

and

HERMINA ROSELINE MORILLE

Respondent

Before:
The Hon. Mr. Davidson Kelvin Baptiste — Justice of Appeal

Appearances:
Mr. Horace Fraser for the Appellant
Ms. Esther Greene - Ernest for the Respondent

2016: February 26.

Civil appeal – Section 23 of Domestic Violence (Summary Proceedings) Act of Saint Lucia – 28 day Statutory time limit for appealing to High Court – Whether time limit absolute – Application for extension of time for appealing – Whether learned judge erred in holding that High Court has no jurisdiction to entertain application for extension of time to file appeal – Applicability of rule 26.1(2)(k), 62.14 and Part 60 of the Civil Procedure Rules 2000 – Whether inherent jurisdiction provides requisite jurisdiction to extend time – Exercise of discretion – Significant delay in making application – No good reason for delay preferred

JUDGMENT

[1] BAPTISTE J.A: Section 23(1) of the **Domestic Violence (Summary Proceedings) Act ("the Act")**[1] provides a statutory appeal to the High Court within 28 days to any person aggrieved by an order of the court or by refusal of the court to make an order. The Act defines "court" to mean the Family Court or a court of summary jurisdiction. It contains no provision to extend the time limit for appealing.

[2] In proceedings brought under the Act, the magistrate ordered the appellant to provide financial support to his former wife. The order was made on the 20th January 2009. Though aggrieved by the order, the appellant did not appeal the order within the statutory time period of 28 days but on 9th April 2010, applied to a judge of the High Court for an order for leave to extend the time to file an appeal against the magistrate's order. The judge dismissed the application on the basis that the court had no power to entertain it. This appeal stems from the judge's dismissal of the application to extend the time for appealing. The appellant contends that the learned judge erred in law in ruling that the High Court has no discretion or jurisdiction to extend the time for appealing.

[2] In dismissing the application, the learned judge reasoned that:

> "Part 60 [of CPR 2000] which deals strictly with appeals to the High Court does not give the High Court any power similar to that given to the Court of Appeal at part 62.14 [of CPR 2000] to pursue case management, and which could include an application for an extension of time to pursue the appeal. This being the situation, the court would be acting outside of the power granted to it by Part 60 to entertain such an application, and by section 28 [23] of the Domestic Violence (Summary Procedure) Act. I find that the court has no power to entertain the application."[2]

[3] Mr. Fraser, learned counsel for the appellant, recognises that the Act has no express provision for granting an extension of time to appeal against a decision of the magistrate. Mr. Fraser, however, contends that regard must be had to the court's inherent jurisdiction; the court's powers under Rule

[1] Cap 4.04, Revised Laws of Saint Lucia 2008.

[2] At para. 24 of the lower court.

26.1(2)(k) and 26.8 of the Civil Procedure Rules 2000 ("CPR 2000"); as well as section 11 of the Eastern Caribbean Supreme Court (Saint Lucia) Act.[3]

[4] Ms. Greene-Ernest submits on behalf of the respondent, that where a jurisdiction is exclusively assigned to a court - as in this case to the Family Court, the High Court only exercises such jurisdiction as the statute creating the court or such other statute as directly applies provides. Ms. Greene-Ernest posits that the Act specifically dictates the time limit for an appeal and no provision is made for an extension of the time limit. Ms. Greene-Ernest also referred to section 26 of the Act which provides that:

> "Rules of court may be made for the purpose of regulating the practice and procedure of the court in proceedings under this Act, providing for such matters as are necessary for giving full effect to this Act and for its administration."

[5] Ms. Greene-Ernest points out that no such rules have been made pursuant to section 26 of the Act and submits that in the absence of rules, the sanction is that, the appellant has lost his opportunity to appeal. Ms. Greene-Ernest agrees with the judge's conclusion and reiterates that no provision is made for extending the time limit for an appeal.

[6] As I understand the reasoning of the learned judge, Part 62 of the CPR 2000 ("Part 62") deals with appeals to the Court of Appeal; CPR 62.14(1) specifically refers to the court's case management powers under Parts 25 to 27. Whereas, Part 60 of the CPR 2000 ("Part 60") deals with appeals to the High Court and makes no reference to the court's case management powers, the court's case management powers are excluded from an appeal to the High Court.

[7] The primary legal issue in this appeal is whether the judge was wrong in concluding that the court has no jurisdiction to entertain the application for an extension of time to file the appeal. A convenient starting point would be to consider the CPR 2000. I first deal with the applicability of CPR 26.1(2)(k). As part of its general powers of case management under the CPR 2000, the court has a discretion to 'extend or shorten the time for compliance with any rule, practice direction, order or direction of the court even if the application for an extension is made after the time for

[3] Cap. 2.01, Revised Laws of Saint Lucia.

compliance has passed'[4]. The "Court" means the High Court and, where the context so admits and in Part 62, the Court of Appeal":[5] Part 60 deals with appeals to the High Court from any tribunal or person under any enactment other than an appeal by way of case stated. Part 62 deals with appeals to the Court of Appeal. CPR 62.14(1) provides that Parts 25 to 27 so far as relevant, apply to management of an appeal case as they do to the case management of a trial; however, there is no kindred provision to CPR 62.14(1) in Part 60.

[8] In my judgment, the jurisdiction to extend the time for appealing under the CPR 2000 is not derived from CPR 62.14 or Part 60. Rather, it is an incident of the court's case management powers, given sustenance by CPR 26.1(2)(k). That, of course, does not dispose of the issue, as it is necessary to consider the actual wording of CPR 26.1(2)(k) to determine its aptness to the application before the learned judge. As far as is relevant, the rule speaks to extending the time for complying with 'any rule, practice direction, order or direction of the court'. It must be noted here that the 28 day time limit for appealing, is not a rule, practice direction, order or direction of the court. It was a time limit imposed by the Act. It is not therefore amenable to be extended by invoking CPR 26.1(2)(k). Likewise, CPR 26.8 – which deals with relief from sanctions for failure to comply with any rule, order or direction, does not apply. In the circumstances CPR 26.1(2)(k) could not be invoked to extend the time for appealing the order of the magistrate. The learned judge therefore had no jurisdiction under the CPR 2000 to extend the time for appealing.

[9] As stated earlier, section 23 (1) of the Act provides a statutory right of appeal to the High Court within 28 days of the order of the magistrate. There is no express provision permitting the court to extend time on a discretionary basis. No rules have been made under section 26 of the Act for the purpose of regulating the practice and procedure of the court in proceedings thereunder. An important question is whether the 28 day time limit is absolute or rigid. Does it admit of any exception? One has to consider the purpose of imposing a time limit for appeals. I respectfully agree with the judgment of the Court in Perez de Rada Cavanilles v Spain[6] that:

---

[4] CPR 26.1(2)(K).

[5] CPR 2.4.

[6] [1998] ECHR 28090/95, at para. 45.

> "the rules on the time-limits for appeals are undoubtedly designed to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty. Those concerned must expect those rules to be applied. However, the rules in question, or the application of them, should not prevent litigants from making use of an available remedy."[7]
>
> In Perez de Rada, the time limit had been exceeded by two days. The Court considered that "the particularly strict application of a procedural rule by the domestic courts deprived the applicant of the right of access to a court".

[10] In The Queen (on the application of) Adesina & Ors and The Nursing and Midwifery Council[8], Lord Justice Maurice Kay, while stating that there is good reason for there to be time limits with a high degree of strictness, appreciated that without some margin for discretion, circumstances may cause absolute time limits to impair the very essence of the right of appeal conferred by statute. His Lordship reasoned at paragraph 15, that a discretion must only arise "in exceptional circumstances" and where the appellant "personally has done all he can to bring the appeal timeously". His Lordship opined that he did not believe that the discretion would arise save in a very small number of cases and noted that courts are experienced in exercising discretion on the basis of exceptionality.

[11] In the present case, the absence of jurisdiction under the CPR 2000 or the absence of a provision in the Act to extend the time for appealing does not mean that the appellant is without a remedy. This situation engages the court's inherent jurisdiction and the exercise of its discretion. If it were otherwise, potential injustice could result from what would be an absolute and inflexible time limit for appealing. Faced with a statutory time limit of 28 days for appealing to the High Court, the court must have a discretion, which it would exercise according to the facts of the case before it, to decide whether the time limit should be extended. The judge therefore erred in failing to consider that the court had an inherent jurisdiction in the matter. In that regard, the submission of Ms. Greene-Ernest that in the absence of rules, the appellant has lost his opportunity to appeal cannot be sustained.

---

[7] At para. 49.

[8] [2013] EWCA Civ 818 at para. 14.

[12] The question now is whether this court should exercise its discretion in extending the time for appealing. Ms. Greene-Ernest contends that if the court has jurisdiction to extend time, it should not exercise its discretion in favour of the appellant due to inordinate delay. Ms. Greene-Ernest argues that the appellant has been dilatory in the extreme. Counsel contends that the application for extension of time was not made promptly. It was made only after the time that the appellant formed the view that he could not obtain relief by way of judicial review and after the Court of Appeal refused the application for extension of time. The appellant has proferred no good reason for the delay. The reason advanced in the skeleton arguments was "new judicial thinking suggests that a distinction has to be made whether a decision of a magistrate is administrative or judicial in determining which procedure to adopt…"

[13] The appellant undoubtedly faces a daunting task. Ms. Greene-Ernest makes a powerful argument in opposition to the court extending time for appealing. The magistrate rendered her decision on 20th January 2009. The appellant had 28 days to appeal to the High Court. Instead of so doing, the appellant filed an application for leave to apply for judicial review. That application was filed on 2nd March 2009. On 31st July 2009, the appellant filed a Notice of Discontinuance. The appellant then filed an extension of time to appeal, reflecting the magistrate as the respondent. The Notice of Application to extend the time to appeal and for a stay of proceedings was filed on 3rd December 2009, approximately 11 months after the magistrate's decision. On 22nd March 2010, the Court of Appeal dismissed the application for extension of time. Some 19 days later, on 9th April 2010, the appellant filed a Notice of Application to the High Court for an extension of time to appeal and for a stay of execution. On 27th October 2010, the High Court denied the application for extension of time.

[14] It appears to me that there was significant delay by the appellant in this matter. Although the appellant engaged the court's processes, it was in a series of mis-steps. The application for extension of time was made only after the appellant formed the view that he could not obtain relief by way of judicial review and after the Court of Appeal refused the application for an extension of time. Further, no proper reason has been advanced to explain the delay. The reason advanced by

the appellant was not a good one. I agree with Ms. Greene-Ernest that the appellant made a deliberate decision to pursue judicial review rather than avail himself of the relief available under the Act of appealing to the High Court. No exceptional circumstances have been advanced to warrant the court exercising its discretion in favour of extending time to appeal. It cannot be said that the appellant has done all that he could to bring the appeal timeously. The court in the exercise of its discretion would dismiss the application for an extension of time.

[15] I am also of the view that even if the application could have been dealt with under the CPR 2000, the court would exercise its discretion against the grant of an extension of time. The delay in making the application for an extension of time to appeal was inordinate and no good reason was advanced for the delay. Regarding the prospects of success of the appeal, Mr. Fraser contends that the appeal is meritorious. He argues that section 8 of the Act does not empower a magistrate to make an order for financial support when an occupational order is being discharged and a fortiori does not empower a magistrate to make an order for a party to pay the house rent of another. Ms. Greene–Ernest contends that the appellant has no real prospect of succeeding on appeal as the magistrate acted within the jurisdiction afforded by section 8 in making the order. Ms. Greene-Ernest points out that at the time of her decision two matters were before the magistrate: the returnable date for the occupation order to decide whether it should continue and the applicant's application for the revocation of the order. Ms. Greene-Ernest contends that the magistrate heard the evidence of the parties and took into account the best interest of the minor child of the family and the order for financial support was for the benefit of both the respondent and the child.

[16] The merit of the appeal is being disputed. An application for extension of time should not be allowed to develop into disputes about the merits of the substantive appeal as this would be time consuming and lead to substantial costs being incurred. Further, in most cases the merits of an appeal will have little to do with whether it is appropriate to grant an extension of time. It is only in those cases that the court can see without much investigation that the grounds of appeal are either very strong or very weak that merit will have a significant part to play.[9] I am of the view that this is

[9] R (Dinjan Hysaj) v Secretary of State for The Home Department [2014] EWCA Civ 1633.

not such a case. With respect to prejudice, I cannot say that the degree of prejudice to the respondent is obviously substantial.

[17] In conclusion, the learned judge erred in law in concluding that the court had no jurisdiction to extend the time for appealing. In the circumstances of this case, the

inherent jurisdiction of the court provides the requisite jurisdiction. For the reasons advanced, I am not however of the view that the court should exercise its discretion in favour of the appellant in extending time to appeal. No exceptional reason exists for the court to exercise its discretion in favour of extending time to appeal. There is no order as to costs.

Davidson Kelvin Baptiste
Justice of Appeal