

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

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

CCJ Application No AL 3 of 2010
GY Civil Appeal No 115 of 2004

BETWEEN

DANIEL RAMLAGAN substituted herein
by RAMKUMARIE RAMLAGAN by Order
of the Court dated 28th January, 2009

APPLICANT

AND

NARINE SINGH

RESPONDENT

Before the Right Honourable
And the Honourables

Mr Justice de la Bastide, President
Mr Justice Saunders
Mr Justice Wit
Mr Justice Hayton
Mr Justice Anderson

Appearances

Mr Roopnarine Satram for the Applicant

Mr Khemraj Ramjattan and Mr Neil Persram for the Respondent

JUDGMENT

of The Right Honourable Mr Justice de la Bastide, President
and the Honourable Justices Saunders, Wit, Hayton and Anderson

Delivered by

The Right Honourable Mr Justice de la Bastide
on the 14th day of October, 2010

Introduction

[1] On 4th October, 2010 we heard and determined by audio conference applications in this matter for special leave to appeal and for leave to appeal as a poor person. So as to save costs, we had previously indicated to the parties that they should deploy both their oral and written submissions in a way that would permit us, without more, to render a decision on the appeal itself if indeed we were persuaded that special leave to appeal should be granted.

[2] We decided then that special leave to appeal should be granted but that leave to appeal as a poor person should be denied. Because of our reluctance to dispose of an appeal without giving the parties the opportunity of having their respective cases presented by attorneys physically present in court, we fixed the 14th October, 2010 for determination of the substantive appeal at the Seat of the Court. We made it clear to the parties that while they were entitled to avail themselves of the opportunity to be present we neither required nor expected their presence when we sat to determine the substantive appeal and in fact neither side made any further submissions at that sitting. Having considered all the submissions made earlier on 4th October, 2010, and those given in writing this is our judgment.

Background facts

[3] The parties to this action were originally Mr Narine Singh, as plaintiff and Mr Daniel Ramlagan, as defendant. Their dispute was as to the ownership of two acres of land. The case was heard at first instance by Madame Justice Cummings. In a written judgment delivered on 6th December, 2004 the judge found for Mr Singh and awarded him all the relief claimed in his Statement of Claim. A Notice of Appeal was filed on 22nd December, 2004. Mr Ramlagan died almost a year later. For the purpose of prosecuting the appeal Mr Ramlagan was succeeded by his widow as *administratrix ad litem*.

[4] The appeal was heard in December, 2009, almost five years after it was filed. During the course of the hearing the Court of Appeal, of its own motion, drew attention to the Notice of Appeal that had given rise to the appeal. The Notice had properly been signed by Mr Clifton Llewellyn John, who had acted as Attorney for Mr Ramlagan in the High Court. Below and to the left of Mr John's signature was a dotted line above the printed word "APPELLANT". On this dotted line someone (possibly Mr John himself) had written in pen *in block letters* the name "RAMLAGAN".

[5] During the course of the appeal the Court of Appeal noticed this handwritten name and became suspicious. The presiding judge asked that Mrs Ramlagan who was in the court room be shown the name "RAMLAGAN" handwritten on the Notice of Appeal. She was then asked if that was her late husband's signature. She said that it was not and on her own initiative she produced his identification card to show what his signature looked like. The Court of Appeal then concluded that the handwritten "RAMLAGAN" was a forgery, a "fraud in the face of the court" which it could not ignore.

[6] Accounts differ as to what course of action was adopted by Mr Mohanlall, representing Mrs Ramlagan at the time, in response to this surprising turn of events. Mr Singh's attorneys allege that Mr Mohanlall "conceded" the "forgery" and invited the court to dismiss the appeal. Mrs Ramlagan's version of events does not support this. She states in one affidavit that after the Court of Appeal came to its conclusion as to forgery Mr Mohanlall remarked "that the Honourable Court is free to make any finding and rule as it sees fit". In another affidavit she states in relation to the appeal that her lawyer "was denied audience and the matter was dismissed". In any event, the court dismissed the appeal and the order reflecting the dismissal does not indicate that the dismissal was consensual. No reasoned judgment has ever been produced by the Court of Appeal in this case.

[7] Mrs Ramlagan, dissatisfied with the dismissal of the appeal, applied to the Court of Appeal for leave to appeal to this Court. But the Court of Appeal also dismissed that application. It was in light of that latter dismissal that she came to this Court seeking special leave to appeal and leave to appeal as a poor person.

Special Leave to appeal and leave to appeal as a poor person

[8] The grant of special leave to appeal is always a matter of discretion. See: *Griffith v Guyana Revenue Authority* (2006) CCJ Application No. 1 of 2006. We had little hesitation in granting special leave to appeal in this case because we thought that the applicant had made out a *prima facie* case that by preventing her from pursuing on the merits her challenge of the judgment of the trial judge on the ground that the Notice of Appeal bore a forged signature purporting to be that of her husband, the Court of Appeal fell into an error which might have resulted in a miscarriage of justice. This was clearly sufficient to warrant the grant of special leave to appeal under s 8 of the Caribbean Court of Justice Act.

[9] We dismissed the application for leave to appeal as a poor person because there was no proper evidence to support it. The only evidence before us on that issue dealt with the financial circumstances of Mrs Ramlagan but when it was put to them, counsel on both sides agreed that what was relevant was not *her* means but rather the net worth of the estate of Daniel Ramlagan. On this issue no evidence was adduced.

[10] In any event in this particular case the application for leave to appeal as a poor person was of little real significance. The value of a grant of such leave is that it exempts the appellant from having to provide security for costs or to pay filing fees. But here, the respondent had made no application for security for costs and all the relevant documents had already been filed in this Court. A successful application would not protect the appellant from having to pay costs if her appeal was ultimately dismissed.

The merits of the appeal

[11] The question to be answered in this appeal is whether the Court of Appeal was wrong to dismiss the appeal. Again, we have little hesitation in answering that question in the affirmative. The Notice of Appeal bore the unquestioned signature of Mr John, the then legal representative of Mr Ramlagan who had earlier acted in that capacity before Cummings J. On the face of the notice there was nothing to suggest that it was signed by Mr John without the authority of Mr Ramlagan. The insertion of the name “RAMLAGAN” in block letters by someone other than Daniel Ramlagan provided no proper basis for concluding that Mr John acted without authority in signing and filing the Notice of Appeal. Mr John’s signature was sufficient to render it an effective Notice of Appeal. See *Watson v Fernandes* [2007] CCJ 1 (AJ).

[12] The Court of Appeal was wrong to treat the name “RAMLAGAN” handwritten in capital letters not even joined together, as a purported signature of Daniel Ramlagan. But even if the Court of Appeal entertained some concern over someone other than Mr Ramlagan having written his name in the place provided for his signature, the manner in which the court went about probing this matter left much to be desired. It is to be noted that this was not a point that seemed to trouble the respondent in the least. Mr Ramjattan, who was present at the appeal as counsel for Mr Singh, indicated to us that the somewhat unusual course of action taken by the Court of Appeal occurred *on the third day* of the hearing of the appeal.

[13] It is an extremely serious thing to accuse and then find someone, even an unnamed person, guilty of committing forgery. Before any such judicial determination is made, at the very least the specific allegation should be put to the party relying on the allegedly forged document; evidence should be properly adduced to substantiate the allegation and a reasonable opportunity given for a response to be made to it. Since the Court of Appeal introduced the allegation of

forgery and initiated the probe into it, one would have expected that the Court of Appeal would have enlisted the assistance of Mrs Ramlagan and Mr John in getting clear answers to two key questions i.e. whether Mr John had the requisite authority to sign and file the Notice of Appeal, and by whom and in what circumstances was the name “RAMLAGAN” written in the Notice of Appeal. None of those steps was taken. The Court of Appeal does not appear to have considered the eminently reasonable possibility that the person who wrote the name “RAMLAGAN” may have been seeking merely to identify the appellant rather than attempting to pass off that writing as Mr Ramlagan’s signature. Indeed it might have been written by Mr John himself who would have been well aware that it was unnecessary for the notice to contain the appellant’s signature as well as his own.

[14] In all the circumstances the action of the Court of Appeal in this case was unjustified and wrong as there was no basis for treating the Notice of Appeal as vitiated by fraud. This appeal must therefore be allowed. The case is remitted to the Court of Appeal to be heard on the merits. Since the respondent sought to the very end to justify the decision of the Court of Appeal, it is only reasonable that he should pay the costs of the appeal to this Court including the costs of the application to this Court for special leave to appeal, to be taxed, if not agreed. The order for costs made by the Court of Appeal against the appellant when it dismissed the appeal is quashed. Almost six years have elapsed since the notice of appeal was filed. We expect therefore that the appeal will be re-listed for hearing without delay.

/s/

The Rt. Hon. Mr Justice Michael de la Bastide (President)

/s/
The Hon. Mr Justice A. Saunders

/s/
The Hon. Mr Justice J. Wit

/s/
The Hon. Mr Justice D. Hayton

/s/
The Hon. Mr Justice W. Anderson