

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Application No BBCV2019/007
BB Civil Appeal No 6 of 2010

BETWEEN

ESTATE OF MARJORIE ILMA KNOX
(Acting herein by EUGENE ESTWICK
JOHN KNOX who was appointed as her
personal representative for the purpose of
these proceedings by Order of Dr. the
Hon Justice Olson Alleyne made on the
10th day of October 2018)

APPLICANT

AND

JOHN VERE EVELYN DEANE
ERIC ASHBY BENTHAM DEANE
Deceased, acting herein by RICHARD
BASIL MARK DEANE duly substituted
by Order of the Hon Madam Justice
Sandra P Mason JA made on the 27th day
of February 2013

FIRST RESPONDENT
SECOND RESPONDENT

OWEN BASIL KEITH DEANE
ELIZABETH TESS ROHMANN
LYNETTE RACHEL DEANE
MURIEL EILEEN DEANE
OWEN GORDON FINDLAY DEANE
ERIC IAIN STEWART DEANE
KINGSLAND ESTATES LIMITED
CLASSIC INVESTMENTS LIMITED
PHILLIP VERNON NICHOLLS

THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT
SIXTH RESPONDENT
SEVENTH RESPONDENT
EIGHTH RESPONDENT
NINTH RESPONDENT
TENTH RESPONDENT
ELEVENTH RESPONDENT

Before The Honourables

Mr Justice Saunders, PCCJ
Mr Justice Wit, JCCJ
Mr Justice Anderson, JCCJ

On Written Submissions

Mr Philip A. McWatt and Mr Alair P. Shepherd QC for the Applicant
Ms Doria M. Moore for the Second Respondent
Mr Leslie F. Haynes QC for the Ninth Respondent
Mr Barry L. V. Gale QC and Ms Laura Harvey-Read for the Tenth Respondent

JUDGMENT
of
The Honourable Mr Justice Saunders, President and the Honourable Justices
Wit and Anderson

Delivered by
The Honourable Mr Justice Saunders, President
on the 3rd day of April 2020

JUDGMENT OF THE HONOURABLE MR JUSTICE SAUNDERS, PCCJ:

Introduction

[1] There has been a long and bitter history of litigation between Ms Marjorie Ilma Knox, now deceased, and the Respondents. Ms Knox was a shareholder in one of the Respondents, Kingsland Estates Limited (“the company”). In proceedings heard at the High Court, the Respondents obtained a garnishee order against dividends payable by the company to Ms Knox. The order was made by Worrell J. The decision to make that garnishee order was appealed. The Court of Appeal reserved its decision on the appeal in 2016. The Court of Appeal has, to date, failed to deliver its judgment. Ms Knox’s representative wants this Court to regard that failure as a dismissal of the appeal and, on the premise of that alleged dismissal, the representative seeks Special Leave to appeal to this Court the making of the garnishee order.

[2] The principal question for determination therefore is one of jurisdiction. Can this Court entertain an Application for Special Leave to appeal when no judgment has been rendered by the Court of Appeal? The background to this question can be briefly stated.

The Background

[3] The appeal against Worrell J’s order was filed on 13 September 2010. The appeal was heard by a panel of three Judges. On 14 July 2016, the Court of Appeal reserved its decision. Since then, of the three judges who sat on the panel, Burgess JA was appointed a Judge of this Court in 2019 and Mason JA was appointed Governor General of Barbados in 2017.

- [4] Ms Knox (“the deceased”) died on 29 September 2017. At the time she was resident in Florida in the United States of America. She left a will naming her daughter, Ms Kathleen Davis, also resident in Florida, as personal representative of her estate. On 5 October 2017, the will was probated in Florida.
- [5] Through a petition filed by Ms Davis, an order was issued on 21 November 2017 by the Florida Circuit Court appointing Mr Eugene Knox *administrator ad litem*. Mr Knox is the son of the deceased. According to him, this petition was a consequence of his sister’s unwillingness to become involved in the pending litigation in Barbados involving their mother.
- [6] On 24 January 2018, Mr Knox applied to the High Court of Barbados for an order to be appointed representative of the deceased’s estate. This was done at a time when the appeal had already been heard and everyone was awaiting a judgment from the Court of Appeal. In support of his Application to represent his deceased mother, he submitted the order by the Florida Circuit Court appointing him *administrator ad litem*. The Respondents claimed that the Florida Circuit Court had no jurisdiction to make Mr Knox *administrator ad litem* in respect of pending proceedings in Barbados. This contention prompted a fresh application by Mr Knox to be appointed a representative for the purpose of the pending proceedings. This second application (“the second application”) made no reference to the order issued by the Florida Circuit Court.
- [7] The parties agreed to enter an order by consent in respect of the second application. The consent order was drawn up and contained the operative word, “representative”. Before it was perfected on 10 October 2018, the word “personal” was inserted before “representative” and the order therefore read, ‘*personal* representative..... for the purposes of these proceedings’. Some of the Respondents took the view that the insertion of the word “personal” had the effect of changing the character of the order from what was originally agreed. They alerted the Registrar to the variance in the wording but nothing further was done to correct or otherwise amend the consent order.
- [8] In the meantime, as previously indicated, no decision has been rendered by the Court of Appeal in the substantive proceedings regarding the garnishee order.

This delay prompted Mr Knox’s decision to seek redress from this Court. On 28 November 2019, he filed this Application for Special Leave to Appeal. He sought to rely on *Omar Holder v The Queen*¹ in support of the view that he was entitled to leapfrog the Court of Appeal in light of the delay.

[9] *Holder* was a case in which, after a hearing, a judgment of the Court of Appeal had been reserved for almost 7 years. The appellant, a person convicted of murder by a jury, lodged an Application before this Court for Special Leave to appeal his conviction. In effect, like Mr Knox, Holder sought to leapfrog the Court of Appeal in circumstances where the Court of Appeal was taking an inordinately long time to render its judgment. It is noteworthy that Holder was granted Special Leave, but this was in circumstances where the Director of Public Prosecutions consented to such leave being granted. Before Holder’s appeal could be determined by this Court, however, the Court of Appeal delivered its judgment and so the appeal to this Court was thereby rendered moot.

[10] Mr Knox’s attempts to leapfrog the Court of Appeal is met with opposition by the Ninth and Tenth Respondents. They assert firstly that Mr Knox has no standing to continue the proceedings since Ms Davis was the person appointed as personal representative under the laws of Florida and, therefore, she should be the proper Applicant. Secondly, they say that in any event, the Court lacks jurisdiction to hear the Application and that *Holder* may not properly be relied upon by Mr Knox.

Does the Applicant have locus standi?

[11] Rule 21.8 of the Barbados Supreme Court (Civil Procedure) Rules, 2008² (the “CPR”), empowers the court to make an order and/or give directions to facilitate the continuance of proceedings after a litigant dies. The rule states:

21.8 (1) If a party to proceedings dies, the court may give directions to enable the proceedings to be carried on.

(2) An order under this rule may be made on or without an application.

¹ CCJ Application No BBCR2019/002.

² CAP 117A.

[12] Where an order is made but it contains a clerical mistake, the court may correct that mistake under rule 42.10 of the CPR:

42.10 (1) The court may at any time, without an appeal, correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission.

(2) A party applying for a correction must give notice to all other parties.

[13] It is difficult to understand what the contention is about Mr Knox's standing to bring these proceedings seeking Special Leave. The second application made by him was made precisely for the purpose of enabling him to stand in the shoes of his deceased mother in relation to pending or impending proceedings in this suit. The operative part of the order stated:

The Applicant, EUGENE ESTWICK JOHN KNOX, of Bannatyne Plantation in the parish of Christ Church in this Island, be appointed as the personal representative of MARJORIE ILMA KNOX, who died on the 29th day of September 2017 for the purpose of these proceedings.

[14] The Respondents consented to the making of this order. If the drawn-up order contains a clerical mistake that error cannot thwart Mr Knox's ability to avail himself of the benefit of an order to which the Respondents had agreed. It would be a simple matter for a court to order that the word "personal" be struck from the order by consent under rule 42.10 of the CPR.

[15] The Respondents further state that, even if it was valid, the order only extended to the High Court proceedings. There is no logic in that submission. The High Court proceedings were already complete when the order was made. Indeed, the proceedings before the Court of Appeal were also complete save for the rendering of a judgment by that Court.

[16] The phrase in the order 'for the purposes of these proceedings' must be interpreted in its context. The consent order looked forward. Its purpose was not to validate or deal with anything that had occurred prior to the hearing of the appeal. Its purpose was to enable Mr Knox to address, in the place and on behalf of his deceased mother, any issues that arose out of or subsequent to the hearing before the Court of Appeal. This included receiving the judgment of the Court of Appeal and, if necessary, lodging an appeal against that judgment.³ In all the

³ See also *Plevin v Paragon Personal Finance Ltd and another* (No 2) [2017] 1 WLR 1249 [20].

circumstances, we hold that Mr Knox did not lack standing to pursue this Application for Special Leave.

Does this Court have jurisdiction to hear the case?

[17] Article III of the Agreement establishing the Caribbean Court of Justice⁴ (“the Agreement”) conferred upon this Court an Original and an Appellate jurisdiction. Article XXV of the Agreement defines the scope of the Appellate jurisdiction as follows:

1. In the exercise of its appellate jurisdiction, the Court is a superior Court of record with such jurisdiction and powers as are conferred on it by this Agreement or by the Constitution or any other law of a Contracting Party.
2. Appeals shall lie to the Court from decisions of the Court of Appeal of a Contracting Party as of right in the following cases:
 - (a)
 - (b)
 - (c)
 - (d)
 - (e)
 - (f)
3. An appeal shall lie to the Court with the leave of the Court of Appeal of a Contracting Party from the decisions of the Court of Appeal in the following cases:
 - (a)
 - (b)
4. Subject to paragraph 2, an appeal shall lie to the Court with the special leave of the Court from any decision of the Court of Appeal of a Contracting Party in any civil or criminal matter.

[18] Article XXV is replicated in sections 6, 7 and 8 of the Caribbean Court of Justice Act⁵ (“the CCJ Act”). Section 79D(1)(c) of the Constitution⁶ further emphasises that:

- 79D. (1) The Caribbean Court of Justice
- (a)
 - (b)
 - (c) shall be the final Court of Appeal from any decision given by the Court of Appeal.

⁴ Agreement Establishing the Caribbean Court of Justice (adopted 14 February 2001, entered into force 23 July 2002) 2255 UNTS 319 (CCJ Agreement).

⁵ CAP 117.

⁶ The Constitution of Barbados, CAP 1.

[19] In support of his Application for Special Leave, Mr Knox contends that since Justices Burgess and Mason have both left the Court of Appeal, that court can no longer deliver judgment. He states that this circumstance, in effect, means that his appeal has been implicitly dismissed. In support of this submission, Mr Knox relies on section 85(1) of the Constitution:

Subject to the provisions of subsection (2), the Court of Appeal established by Part 1 of this Chapter shall be constituted by not less than three Judges sitting together.

Mr Knox also relies on section 60(1) of the Supreme Court of Judicature Act Chapter⁷ :

Subject to this section and section 53, every appeal or reference to the Court of Appeal, and every matter preliminary or incidental to such an appeal or reference may only be heard before 3 judges of that court, and, if necessary, be determined according to the opinion of the majority.

[20] Mr Knox also referred to cases where lower courts made decisions without providing reasons or providing reasons which were deemed insufficient.⁸ In those cases, it was held that the litigant's right to due process was contravened and that appellate courts in those cases had an inherent jurisdiction to order a rehearing or hear the matter afresh. Mr Knox reasoned that this Court had to treat this matter as though the Court of Appeal had provided insufficient or no reasons. Mr Knox considered that this would simply be an exercise of the Court's inherent jurisdiction under Part 1.3 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2019.⁹ Part 1.3 provides that the overriding objective of those Rules is 'to ensure that the Court is accessible, fair and efficient and that unnecessary disputes over procedural matters are discouraged.'

[21] Mr Knox also drew attention to this Court's decision in *Barbados Rediffusion Service Ltd v Mirchandani*.¹⁰ In that case, this Court looked at whether there was some special feature which would warrant the grant of Special Leave in

⁷ CAP 117A.

⁸ *James v Attorney General* (Trinidad and Tobago CA, 27 February 2009) TT 2009 CA 9; *Innis v Attorney General of Saint Christopher and Nevis* [2008] UKPC 42, 73 WIR 187; *Alexander v Williams* (1984) 34 WIR 340.

⁹ Part 1.3 states:

(1) The overriding objective of these Rules is to ensure that the Court is accessible, fair and efficient and that unnecessary disputes over procedural matters are discouraged.

(2) Nothing in these Rules shall limit or otherwise affect the inherent power of the Court to actively manage cases and make such orders as may be necessary to meet the ends of justice or to prevent abuse of the process of the Court.

¹⁰ [2006] CCJ 1 (AJ), 69 WIR 52 [42].

circumstances where there was no appeal as of right and no basis upon which the Court of Appeal could have granted leave to this Court. Mr Knox contended that in this case, there was a special feature that justified the granting of Special Leave. This was the inordinate delay by the Court of Appeal, which was in Mr Knox's view, an abuse of process.

[22] The Court does not agree with these submissions. The cases of *James*, *Innis* and *Alexander* cited above¹¹ are distinguishable. They all refer to matters where the lower courts did in fact render judgments, even though those decisions were without proper or any reasons. Such cases are not applicable to the situation here where no judgment has been given.

[23] In relation to the reference to the overriding objective, it is always useful to pay regard to what was said by the Court of Appeal of the Eastern Caribbean Supreme Court in *The Treasure Island Company v Audubon Holdings Limited*:¹²

... the overriding objective ... is a statement of the principle to which the Court must seek to give effect when it interprets any provision or when it exercises any discretion specifically granted by the rules. Any discretion exercised by the Court must be found not in the overriding objective but in the specific provision itself.

[24] Barbados has a three-tiered court system with the Caribbean Court of Justice situated at the apex. Section 79D(1)(c) of the Constitution states that this Court hears appeals from decisions given by the Court of Appeal. Sections 6, 7 and 8 of the CCJ Act and Article XXV of the Agreement make it clear that an appeal lies to this Court from: decisions of the Court of Appeal as of right; with the leave of the Court of Appeal from the decisions of the Court of Appeal; and with Special Leave from this Court from decisions of the Court of Appeal. The law is unambiguous.

[25] As to the reference to "inherent jurisdiction", the inherent jurisdiction of a court is akin to an equitable residual power exercised, when necessary, to meet the ends of justice and/or to enforce rules of practice. It is a power exercised to

¹¹ *James* (n 8); *Innis* (n 8); *Alexander* (n 8).

¹² *The Treasure Island Company v Audubon Holdings Limited* (Eastern Caribbean Supreme Court CA, 20 September 2004) [2004] ECSC J0920, [24].

ensure that the court's process is fairly and effectively used.¹³ The scope of the CCJ's inherent jurisdiction encompasses power which is deep-rooted in the authority and judicial processes established by legislation, that is, the Constitution, the CCJ Act, as well as the procedural rules of Court. There is nothing in this Court's "inherent jurisdiction" that would allow it to radically enlarge its statutory remit so as to hear appeals directly from the High Court, by-passing the Court of Appeal. Some may consider it desirable that, in exceptional circumstances, this Court should be granted this power. Recently, in *International Environments Ltd v Commissioner of Income Tax*¹⁴ this Court explained that –

It is of course quite possible for a law to make provision for a litigant to leapfrog the Court of Appeal and proceed straight from the Supreme Court to the apex Court. This would be an exceptional process aimed perhaps at some unique circumstance.

The fact is, however, that unless the Parliament of Barbados so provides,¹⁵ this Court has jurisdiction only to hear appeals from decisions of the Court of Appeal. Holder was granted Special Leave only because the respondent was not objecting to the grant. The point at issue in this case was therefore never fully argued in *Holder*.

[26] In response to Mr Knox's submission that the Court of Appeal is now unable to render a decision, this Court draws attention to section 84(2)(b) of the Constitution which suggests that notwithstanding a judge's retirement or resignation, judgment may yet be delivered by that judge in respect of proceedings that were commenced before such retirement or resignation.

[27] This Court hastens to acknowledge, however, that justice delayed is justice denied. A delay of over four years in a case that turns on whether a judge was right or wrong in making a garnishee order borders on the intolerable. Mr Knox is not without remedy for any such denial. Under section 24(1) of the Constitution, he may make an application for such constitutional redress as he

¹³ See also: Halsbury's Laws of England Civil Procedure Volume 11 (2015), paras 1-503; Volume 12 (2015), paras 504-1218; Volume 12A (2015 paras 1219-1775. Civil Procedural Law; Sources and Framework. Sources of Civil Procedural Law. Inherent Jurisdiction of the Court.

¹⁴ [2019] CCJ 18 (AJ) [23].

¹⁵ See: CCJ Agreement (n 4), art XXV(1) and The Constitution of Barbados (n 6), s 79D(3).

considers himself to be entitled. It would of course be entirely inappropriate for this Court to speculate on the chances of success of any such application.

Disposal

[28] Having regard to the reasoning above, the Court orders that -

- a) the Applicant does have standing to bring these proceedings;
- b) the Applicant's application for Special Leave to Appeal be and is hereby dismissed; and
- c) each party should bear their own costs in all the circumstances.

/s/ A Saunders

The Hon Mr Justice A Saunders (President)

/s/ J Wit

The Hon Mr Justice J Wit

/s/ W Anderson

The Hon Mr Justice W Anderson