

SUMMARY

This was an application for special leave to appeal the decision of the Court of Appeal to refuse leave to appeal to itself.

The applicant was injured due to a collision to the shipping docks caused by the respondent, a motor vessel registered in Panama. The applicant filed a Statement of Claim against the respondent for damages and obtained a Warrant of Arrest for the vessel. On 15 November 2022, the warrant for arrest was executed. On 16 November 2022, the respondent filed a Notice of Application seeking the release of the vessel pursuant to rr 70.09(1), 70.09(3)(b) and 70.09(3)(f) of the Supreme Court (Civil Procedure) Rules 2016 (GY) ('CPR') as the sum on which the claim was initiated was paid by security of the Letter of Undertaking.

The High Court judge ordered that the vessel be released on the lodging of a Letter of Undertaking. The applicant appealed to the Full Court and sought an Urgent Application to stay the orders of the High Court judge. The Full Court dismissed the appeal and the Urgent Application.

The applicant then sought leave to appeal to the Court of Appeal but leave to appeal was refused, the court noting that the Guyana Shipping Act ('Shipping Act') provided for the acceptance of security for release of the ship by way of Letter of Undertaking.

On 12 September 2024, the applicant sought special leave to appeal to this Court. The application did not outline any proposed grounds of appeal but specified that the substance of the appeal was in relation to the interpretation of s 414 of the Shipping Act and r 70.22 of the CPR, the latter of which specifically deals with the constitution of the limitation fund. Thereafter, the parties were asked to make written submissions and on 19 December 2024, this Court ordered that the application be dismissed.

In issuing its reasons for the decision to dismiss the application, this Court noted that the proposed appeal was not from a substantive decision of the Court of Appeal. It found that while it had the broad jurisdiction to hear any appeal from the Court of Appeal, it would only intervene in decisions where the refusal of leave by the Court of Appeal to appeal to itself could occasion a gross miscarriage of justice. In reviewing the instant application,

this Court found that the proposed appeal was academic in nature, the application was not compliant with the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2024, and that the applicant sought to make arguments regarding the constitution of a limitation fund, though this was not in issue in these proceedings. Consequently, this Court found that there was no potential miscarriage of justice or an egregious error of law which warranted this Court's intervention.

Cases referred to:

Bethell v Royal Bank of Canada (Barbados) Ltd [2024] CCJ 11 (AJ) BB, BB 2024 CCJ 3 (CARILAW); *Campbell v R* [2010] UKPC 26, [2011] 2 AC 79 (JM); *Jagdeo v Ferguson* [2024] CCJ 2 (AJ) GY, GY 2024 CCJ 1 (CARILAW); *Lovell v R* [2014] CCJ 19 (AJ) (BB), BB 2014 CCJ 7 (CARILAW); *Narine (Mohan) v Persaud* [2012] CCJ 8 (AJ) (GY); *Ramsahoye v Linden Mining Enterprises* [2019] CCJ 7 (AJ) (GY), (2019) 96 WIR 425; *Sankar v Guyana Rice Development Board* [2019] CCJ 11 (AJ) (GY); *Williams v Kisson* [2023] CCJ 3 (AJ) GY; *Ya'axché Conservation Trust v Sabido* [2014] CCJ 14 (AJ) (BZ), (2014) 85 WIR 264.

Legislation referred to:

Guyana — Caribbean Court of Justice Act, Cap 3:07, Guyana Shipping Act, Cap 49:01, Supreme Court (Civil Procedure) Rules 2016.

Other Sources referred to:

Caribbean Court of Justice (Appellate Jurisdiction) Rules 2024.

REASONS FOR DECISION

Reasons:

Anderson J (Barrow and Burgess JJ concurring)

[1] - [24]

Disposition

[25]

ANDERSON J:

Introduction

[1] On 12 September 2024, the applicant sought special leave to appeal a decision of the Court of Appeal of Guyana in admiralty proceedings. On 19 December 2024, this Court ordered that the application be dismissed. The reasons for dismissal are set out below.

Background

[2] The applicant was injured due to a collision with shipping docks caused by the respondent, a motor vessel, registered in Panama. On 11 November 2022, the applicant filed a Statement of Claim against the respondent for general and special damages exceeding GYD5,000,000 and in the sum of GYD805,000 respectively. Pursuant to this claim, a Warrant of Arrest for the respondent vessel was obtained on 14 November 2022. The respondent filed a Caveat against Arrest and Requisition on 14 November 2022, and 15 November 2022 respectively. The respondent's Caveat against Arrest contained a Letter of Undertaking issued by the respondent's Protection and Indemnity Club ('P&I Club').

[3] On 15 November 2022, the warrant for arrest was executed. On 16 November 2022, the respondent filed a Notice of Application seeking the release of the vessel pursuant to rr 70.09(1), 70.09(3)(b) and 70.09(3)(f) of the Supreme Court (Civil Procedure) Rules 2016 (GY) ('CPR') as the sum on which the claim was initiated was secured by Letter of Undertaking.

[4] On hearing the application, Corbin-Lincoln J found that the application filed by the respondent was effectually an application for bail of the ship and ruled that the Letter of Undertaking was a sufficient form of security for the release of the ship on bail. The Court ordered that the ship be released on the lodging of a Letter of Undertaking in the amount of GYD10,000,000.

- [5] The applicant appealed to the Full Court and sought an Urgent Application to stay the orders of the High Court judge. The Full Court heard the Urgent Application and substantive appeal on 21 November 2022. The Full Court dismissed the appeal and the Urgent Application holding that they were frivolous and vexatious.
- [6] The applicant then sought leave to appeal to the Court of Appeal but leave to appeal was refused. The Court of Appeal judgment was filed with this Court on 25 November 2024. The judgment, delivered by Gregory JA, highlighted that pursuant to the provisions of the Guyana Shipping Act¹, the ship owner applied to the High Court for release on lodging of the requisite security. Section 414 of the Shipping Act provides that any person alleged to be liable for loss caused by a ship and seeking to limit such liability shall deposit into the High Court an amount equivalent to certain limits provided for in ss 407 and 411. Section 413 provides for the limits of liability of a ship owner arising out of any occurrence and the Letter of Undertaking from a P&I Club had been accepted as sufficient under s 414 of the Shipping Act to provide such security leading to the ship being released from detention.
- [7] The Court of Appeal acknowledged that there may be variance between r 70.22(1) of the CPR and s 414 of the Shipping Act but noted that the primary legislation took precedence over secondary legislation. There was therefore no reason for the Court of Appeal to grant leave to appeal. Accordingly, the motion was dismissed with costs to the respondent. That dismissal was followed by the present application for special leave in respect of which both parties made written submissions.

¹ Cap 49:01.

Decision of the Court of Appeal to Refuse Leave to Hear Appeal from Full Court

- [8] It is worthy of note that the decision of the Court of Appeal against which permission is sought to appeal, was a refusal to grant leave to hear the applicant's appeal from the Full Court. The Court of Appeal provided reasons for its refusal to hear the appeal.
- [9] Section 8 of the Caribbean Court of Justice Act ('CCJ Act')² provides that appeals shall lie with special leave of this Court from 'any decision' of the Court of Appeal. In *Narine (Mohan) v Persaud*³, Nelson J recognised that the broad wording of s 8 'reserves an unlimited residual discretion to prevent miscarriages of justice.'⁴
- [10] Nelson J cited in his reasoning, the decision of the Judicial Committee of the Privy Council in *Campbell v R*⁵. The Board maintained that it had residual power to hear any decision from the Court of Appeal:

In the last analysis, the combination of the points stated in para 21 above is in the Board's view decisive. There is nothing clearly or necessarily to restrict the broad language reflecting the royal prerogative power to grant special leave now enacted in statutory form in section 3 of the 1833 Act and section I of the 1844 Act. The breadth of the prerogative power, now statutorily expressed, and the very varied contexts in which it applies militate against the recognition or introduction of any formal limitation upon section 3 and section I paralleling the rule in *Lane v Esdaile*. The Board concludes therefore that the rule in *Lane v Esdaile* is not applicable on any application made for special leave to the Privy Council itself. It follows that there was power to grant special leave in this case. The fact that a domestic court of appeal has refused leave to appeal to it will however always be a relevant, and often no doubt decisive, consideration for the Board to consider when deciding whether or not to grant special leave.

- [11] Section 8 of the CCJ Act unambiguously gives this Court the widest jurisdiction to hear special leave applications to appeal decisions of the Court of Appeal. In the exercise of this unfettered power, this Court may review any decision of the Court

² Cap 3:07.

³ [2012] CCJ 8 (AJ) (GY).

⁴ *ibid* at [18].

⁵ [2010] UKPC 26, [2011] 2 AC 79 (JM) at [25].

of Appeal including the decision to refuse an application for leave to appeal to the Court of Appeal. However, the Court exercises this jurisdiction sparingly since it involves second guessing the exercise of the discretion of the Court of Appeal whether to hear an appeal to itself. Thus far, the cases where this Court has intervened have been where the Court of Appeal wrongly held that it had no jurisdiction to hear the appeal. See *Williams v Kissoon*⁶; *Jagdeo v Ferguson*⁷; and *Bethell v Royal Bank of Canada (Barbados) Ltd*⁸. Where the Court of Appeal accepts jurisdiction and exercises its discretion not to hear an appeal, this Court is unlikely to intervene unless such intervention is unavoidably necessary to prevent a gross miscarriage of justice.

Academic Nature of the Application

[12] It is undisputed that the vessel to which this application relates has left Guyana. There is no realistic probability of the ship being rearrested and returned to detention in Guyana. Accordingly, whether the Letter of Undertaking satisfied the requirements under the CPR as requisite security for its release, has now become somewhat academic. In *Ya'axché Conservation Trust v Sabido*⁹ this Court held that it would only hear academic appeals where there is a question of public law (as distinct from private law rights disputes between parties), the question is likely to arise in future, and where there are good reasons to hear such appeal in the public interest.¹⁰

[13] The applicant argues that granting this application would resolve a matter of statutory interpretation of great public importance due to the recent and continuing increase of shipping activity in Guyana. However, for reasons outlined below, it is not accepted that this application meets the threshold to warrant this Court to intervene to hear the appeal.

⁶ [2023] CCJ 3 (AJ) GY.

⁷ [2024] CCJ 2 (AJ) GY, GY 2024 CCJ 1 (CARILAW).

⁸ [2024] CCJ 11 (AJ) BB, BB 2024 CCJ 3 (CARILAW).

⁹ [2014] CCJ 14 (AJ) (BZ), (2014) 85 WIR 264.

¹⁰ *ibid* at [4].

Application Not in Regular Form

- [14] The test for special leave has been well established per *Sankar v Guyana Rice Development Board*,¹¹ which cited *Ramsahoye v Linden Mining Enterprises*.¹² The applicant must show a realistic prospect of success. Indicators for evaluating the prospect of success would include whether there is an egregious error of law or possible miscarriage of justice.¹³
- [15] This application was not in regular form. The application does not outline the proposed grounds of appeal per r 10.14 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2024 ('CCJ Rules'). The Notice of Application merely states in para 17 that the Courts below incorrectly interpreted s 414 of the Shipping Act and r 70.22 of the CPR to mean that a limitation fund can be constituted other than by payment of money into court. Whilst the applicant states that the substance of the appeal concerns the statutory interpretation of these provisions, the application has not shown how the Court of Appeal has specifically erred in its findings in accepting the Letter of Undertaking as bail for the vessel.
- [16] In *Lovell v R*¹⁴, this Court found that if little information is provided to enable the court to assess the merit of the appeal, then the application must be dismissed. The Court stated:

The point is that this Court must be satisfied that the case warrants an appeal before the final court. But if no or little information is provided to enable that court to assess the merit of the appeal or if the information provided is weak then the application must be dismissed as there would be nothing in the material before us that would come close to demonstrating what it is about the particular case that warrants a further appeal...¹⁵

¹¹ [2019] CCJ 11 (AJ) (GY).

¹² [2019] CCJ 7 (AJ) (GY), (2019) 96 WIR 425.

¹³ *Sankar* (n 11) at [13].

¹⁴ [2014] CCJ 19 (AJ) (BB), BB 2014 CCJ 7 (CARILAW).

¹⁵ *ibid* at [9].

[17] Without the proposed grounds being properly outlined, it makes the task difficult to assess the potential merits of the appeal. The Court remains unsure as to what are the errors in law on which to grant leave to appeal and the grounds of appeal that are to be argued.

Interpretation of the Shipping Act and the CPR

[18] The applicant's application avers that its appeal focuses on the statutory interpretation of two provisions: s 414 of the Shipping Act and r 70.22 of the CPR.

[19] Section 414 of the Shipping Act provides as follows:

414. (1) Any person alleged to be liable and seeking to limit his liability under this Part shall deposit into the High Court an amount at least equivalent to the limit provided for in section 407 or section 411 *as appropriate in the form of a security or guarantee*, together with interest thereon from the date of occurrence giving rise to the liability until the date such security or guarantee is deposited, and the amounts so constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

(2) A security or guarantee deposited by one of the persons mentioned in paragraphs (a),(b) or (c) of subsection (1) of section 413, or subsection (2) of the said section, or his insurer, shall be deemed to have been deposited by all persons mentioned in paragraphs (a), (b) or (c) of subsection (1) of section 413 or subsection (2) of the said section, respectively. (emphasis added).

[20] Rule 70.22 of the CPR provides as follows:

70.22 Payment into Court where Limitation of Liability

(1) The Applicant may constitute a limitation fund by paying into Court the Guyanese dollar equivalent of the number of special drawings rights to which he claims to be entitled to limit his liability under the Guyana Shipping Act, together with interest thereon from the date of the occurrence giving rise to the liability to the date of payment into Court.

(2) Where the Applicant does not know the Guyanese dollar equivalent of the number of special drawing rights on the date of payment into Court, the Applicant may calculate the same on the basis of the latest available published dollar equivalent of a special drawing right as fixed by the International Monetary Fund.

[21] Under a separate provision, the CPR provides for bail:

70.12 Bail

(1) Unless a ship that has been arrested was arrested in respect of a claim for the possession or ownership of a ship or any share therein, the Court must permit the release of the ship upon sufficient bail being provided, unless an application is made objecting to the bail provided within 7 days of the bail being provided.

(2) Unless the parties agree, the Court must determine the nature and amount of any bail.

(3) Bail on behalf of a party to a claim in rem may be given by,

(a) filing one or more bail bonds with one or more sureties; or

(b) filing a guarantee or other security from a financial institution, acceptable to the Marshal.

(4) The party on whose behalf bail is given must serve on any other party to the proceeding a copy of the bail, containing the names and addresses of the persons who have given bail on that party's behalf and of the commissioner before whom the bail bond was sworn, and file it with proof of service.

(5) Any party dissatisfied with the bail must, within 7 days, make an application for the issue of bail to be decided by the Court.

[22] The applicant seems to rely on the phrase 'paying into Court' in r 70.22 to support his argument against the acceptance of the Letter of Undertaking. He argues, correctly, that the Letter of Undertaking is not monetary. However, r 70.22 of the CPR is concerned with payment into court to constitute a limitation fund. It appears that a limitation fund was constituted in separate proceedings to which the applicant is not a party. In relation to the proceedings in which the applicant is a party, it appears that the High Court treated with the application filed for the release of the vessel from arrest as an application for bail per r 70.12 of the CPR.

[23] Although arguments on bail were addressed in the parties' submissions, the Notice of Application does not make any reference to the interpretation on r 70.12 of the CPR which treats with bail in admiralty proceedings. The constitution of the limitation fund and bail of a vessel are two separate concepts in law which are governed by two separate rules in the CPR. The applicant cannot hope to successfully argue the legality of the acceptance of a Letter of Undertaking to constitute the limitation fund when in the instant proceedings, a limitation fund was not constituted, and the court had acted on the basis of the bail regime.

[24] Therefore, this Court finds that this application is bound to fail considering i) the application is academic, ii) the application is not compliant with the CCJ Rules, iii) that the point of law which the applicant has applied to argue is not relevant to these proceedings, and iv) the failure to show any potential miscarriage of justice or egregious error in law. This Court reserves its position on the arguments as to the legality of the acceptance of the Letter of Undertaking as security for the release of a vessel for a time when it may properly be before the Court.

Disposition

[25] For the reasons set out above, the applicant did not satisfy this Court that it ought to be granted special leave to appeal and accordingly, the application was dismissed with costs to the respondent.

/s/ W Anderson

Mr. Justice Anderson

/s/ D Barrow

/s/ A Burgess

Mr. Justice Barrow

Mr. Justice Burgess