

IN THE COURT OF APPEAL OF THE SUPREME COURT OF
JUDICATURE

APPELLATE JURISDICTION

CIVIL APPEAL NO. 63/2002

BETWEEN:

1. JAMNA PERSAUD
2. KOWSILLA PERSAUD

Appellants/Respondents

- and -

1. JAIRAM MOHABIR
2. J. MOHABIR

Respondents/Applicants

BEFORE:

Hon. Madam Justice Desiree P. Bernard	-	Chancellor
Hon. Madam Justice Claudette M.C. Singh	-	Justice of Appeal
Hon. Madam Justice Claudette L. La Bennett	-	Additional Judge

Mr. O.M. Valz, SC for Respondents/Applicants
Mrs. L. Crawford-Abbensetts for Appellants/Respondents

2003: March 4,
April 9

RULING

BERNARD, C.:

The Appellants/Respondents being dissatisfied with the decision of a Judge of the High Court in Action No. 4450/93 sought leave of this Court for an extension of time to file an appeal in the said action. The application was heard by a single judge of this Court in Chambers, who exercised his discretion and granted leave to the Appellants to file the notice of appeal within seven days of the order. The Respondents being dissatisfied with this filed a motion to the Full Bench seeking to have the learned judge's order varied or discharged on the grounds that the time within which a single

judge of this Court could grant an extension of time to appeal had expired, i.e. under **Order 2 Rule 3(3)** of the Court of Appeal Rules, and the Appellants did not comply with **Order 2 Rule 3(5)** by showing good and substantial reasons for the application and grounds of appeal which prima facie show good cause therefor; further, no application was made to have the second-named Respondent substituted when it was known to the Appellants that he had died before judgment was given, and it was not competent for the Appellants to file amended affidavits.

At the hearing of the motion Counsel for the Respondents/Applicants submitted that under **Order 2 Rule 3(3)** which provides for a judge or the Court to extend the time within which an appeal may be brought provided that an application is made within one month of the expiration of the time, was not complied with as the Appellants' summons was filed two days after the expiry date i.e. 20th July, 2002, and he made reference to **Section 40 of the Interpretation and General Clauses Act, Cap. 2:01**. He pointed out that it was not competent for the Appellants to seek leave from a single judge to file a supplementary affidavit outside of the time frame; only the Full Bench can grant such leave. Further, no good and substantial reasons have been shown by the Appellants in their application, and the belief by Counsel that a cross-appeal should have been filed instead of a separate appeal did not constitute good and substantial reasons neither do the grounds of appeal prima facie show good cause therefor. They alleged merely that the finding of the trial judge was unreasonable and against the weight of the evidence. He made reference to the case of **Monk v. Bartram (1891) 60 Q.B., 267** and **Persaud v. Ramson (1979) 26 WIR, 229**.

With regard to the continuation of the appeal notwithstanding the death of the second-named Respondent, Counsel submitted that he died

before judgment was given and therefore an appeal could not be brought against a dead person. Further, our Court of Appeal Rules are silent concerning the carrying on of proceedings on the death of an appellant, and under Section 3 of the Court of Appeal Act, Cap. 3:01 and Order 1 Rule 11 where the Act and our Rules are silent the jurisdiction of the Court shall be exercised as nearly as may be in conformity with the law and practice for the time being in force in England. The relevant practice in England is set out in the Supreme Court Practice 1988 Order 15/7/21, and an application ought to have been made to carry on the appeal. The failure of the Appellants to do so means that they have no intention to prosecute their appeal against the second-named Respondent (now deceased). He referred to Section 7 of the Law Reform (Miscellaneous Provisions) Act, Cap. 6:01, and enunciated the principle that where there is a single cause of action a release of one releases all, this being the same where there is a single subject-matter of an appeal.

Counsel for the Appellants submitted that with regard to the grounds of appeal all that needs to be shown is prima facie good cause therefor; further at the time that leave to appeal was sought details of the judgment were not available, and the grounds formulated were based on the evidence adduced in Court. She also alluded to the fact that the reason for the application for extension of time to file the appeal was that it was due to the mistake of the Appellants' legal adviser, and referred to the case of Martin v. Chow (1984) 34 WIR, 379. With regard to compliance with Order 2 Rule 3(3) Counsel contended that her application was filed within the stipulated time of one month albeit on the last day. She made reference to Sections 6(1) and 40(c) of the Interpretation and General Clauses Act (supra) and to Section 3(1) of the Public Holidays Act Cap. 19:07.

I shall consider first whether the Appellants' application was made within the time stipulated in **Order 2 Rule 3(3)**. This Rule provides that a judge of the Court may extend the time prescribed (six weeks) within which an appeal may be brought provided an application for this purpose is made within one month of the expiration of the prescribed time.

The decisions in the actions filed in the High Court were delivered on 10th May, 2002. These actions were heard together for convenience but were not consolidated. Therefore separate appeals had to be filed within six weeks of 10th May, 2002 which would have been on or before 22nd June, 2002. **Section 40(a) of the Interpretation and General Clauses Act** (supra) provides that in computing time for the purpose of any written law which prescribes a period of days within which an act is to be or may be done, such period of days from the occurrence of an event shall be reckoned **exclusively** of the day on which the event occurs. Thus the six-week period began to run from 11th May, 2002 and expired on 22nd June, 2002. The Appellants did not file a notice of appeal during this period of time. Having not done so they sought an extension of time by filing an application to a judge in chambers on 22nd July, 2002. This application is required to be filed within one month of the expiration of the six-week period. As mentioned earlier this period commenced on the day after the expiration of the six-week period, i.e. on 23rd June, 2002.

By **Section 6(1) (c) of the Interpretation and General Clauses Act**, (supra) "month" means calendar month which is generally accepted as being four weeks. This period of four weeks from 23rd June, 2002 expired on 21st July, 2002 which fell on a Sunday. **Section 3(1) of the Public Holidays Act, Cap. 19:07** defines Sunday as a public holiday. According to **Section 40(c) of the Interpretation and General Clauses Act** (supra) where the

