Mandamus — Planning authority to erect three story building obtained by Appellant amended plans to erect fourth and then six stories — amended refused. Appellants to proceed to add stories — KSAC sues Respondent (amended) to compel them to demolish added structure and injunction to restrain further construction. Full Court (mandamus) — accords stay — application for mandamus to allow proceedings against Respondent to continue. Appeal against order of Full Court — whether Full Court acted in error — appeal dismissed.

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 49/86

COR: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.

BETWEEN	AUBURN COURT LIMITED	APPELLANT
AND	TOWN & COUNTRY PLANNING AUTHORITY	RESPONDENT

Mr. Gordon Robinson for Appellant

Mr. R. Langrin, Q.C., & Mr. D. Henry for Respondent

Mr. C. Daley as "amicus curiae" for K.S.A.C.

23rd & 24th February, 1987

CAREY, J.A.:

This is both an interesting and peculiar case, and it is very necessary to get the facts and the circumstances in some perspective. This is an appeal against an order of the Full Court which had before it, an application for mandamus, and in those proceedings the Court made an order granting a stay to allow an action which had been commenced in the Supreme Court between Kingston and St. Andrew Corporation and the present appellant and a gentleman called Mr. Harry Perrier, to proceed.

Auburn Court Limited had applied and obtained planning authority to erect a three story building. They subsequently filed amended plans for the addition of a fourth story and indeed they submitted plans to add two further stories, making six in all. The

Company's advisers, Mr. Perrier and Mr. Husbands the project engineer, attended on the Authority and they sat down and discussed all the various difficulties with a committee of the Town & Country Planning Authority. Ultimately, the Authority refused that application. Auburn Court Limited were not communicated with within, they say, a six week period, which they suggest is the usual period for communications to be made, either approving or rejecting the application. By reason of that failure or of the silence by the respondent, the appellant proceeded to put up the added stories. While this was taking place, the Kingston and St. Andrew Corporation took proceedings in the Supreme Court to compel Auburn Court Limited to pull down, and demolish and remove the added structure and they claimed an injunction to restrain the defendants or their servants from further erecting or continuing in the building operation. And it is those proceedings which the Full Court says, ought to be allowed to proceed.

One of the points made before us is that, the Full Court was in error; that they had exercised their discretion wrongly in so ordering, and that there would be a great injustice to Auburn Court Limited, it having spent a considerable amount of money to erect the building.

We do not wish to say anything which is intended as any commentary or as expressing any view on the merits or otherwise of the case. It is enough to say that the facts do show that Auburn Court Limited did put up the additional structure without obtaining approval, and that the decision of refusal was made at a proper meeting of the Town and Country Planning Authority. And indeed it is not suggested in the proceedings before the Full Court that the appellant was not heard or that there was any real breach of the rules of natural justice. What appears, in our view, to have been suggested is that the reasons given by the Town and Country Planning Authority were not valid reasons.

They read rather as to the grounds for an appeal. Whether or not those are valid bases in Full Court proceedings for mandamus is not a matter for our decision.

So far as this Court is concerned, the only circumstances in which it can interfere with a discretion exercised by the Court below is to be found from dicta in a case which counsel cited to us, namely, Beck & others v. Value Capital Ltd & others (No 2) [1976] 2 All E.R. 102, at page 108 where Lord Justice Buckley who gave the judgment of the Court, said this:

> "It is not necessary for an appellant to be able to point to some matter which the judge ought to have taken into account and failed to take into account, or to something which he did take into account but should not have taken into account or to some other error in principle. It is sufficient if the appellate court is satisfied that the judge having taken all the proper circumstances into consideration, has arrived at a decision that is so clearly wrong that he must have misappreciated the weight to be given to some aspect or aspects of the case."

What Mr. Gordon Robinson has endeavoured to show is that the Full Court erred in two respects, first of all, it erred in believing that there was a right of appeal to the Resident Magistrate's Court in the particular circumstances of this case, and he demonstrated that, we think, correctly, that that was not the case. He also pointed to the view stated by the Full Court that the issues in the cases before the Supreme Court and the Full Court proceedings were similar. In so far as the first point is concerned, it is no doubt right that the Full Court may well have fallen into error, but in so far as the other point is concerned, we think they are on solid ground.

We have this morning been given copies of the pleadings and it is quite plain that the issues which are raised in both proceedings are precisely the same. There is another factor which Mr. Daley correctly brought to our attention, namely, that there are issues of

facts which have to be determined and that it is certainly more convenient that they should be heard by viva voce evidence and not evidence by affidavit.

In the event, we are satisfied that the Full Court did not fall into error, that they had material on which they could act and come to the conclusion which they did, and which is stated in the judgment of Mr. Justice Downer, where he said this, and we quote:

> "In our view, taking into account that mandamus is a discretionary remedy, it would be good judicial policy to stay these proceedings under the proceedings for which the interlocutory injunction has been granted and are determined and then these proceedings may be continued if needs be."

We think that that is eminently right and there are no reasons suggested, in our view, to incline us to interfere in the exercise of the discretion in the Court below. In the circumstances, the appeal will be dismissed and the order of the Court below is affirmed. The respondent is entitled to the cost of this appeal.