

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 4/71

BEFORE: The Hon. Mr. Justice Fox

SAMUEL BYLES

VS.

NIKITAS DRAKOTOS & MIRIKA DRAKOTOS

Mr. E. Delisser of Counsel instructed by Mr. H. McD. Messam for  
Defendant/Appellant

Mr. D. Brandon, Solicitor, for Plaintiffs/Respondents

10th March, 1971

At the hearing of this Summons for stay of execution of a judgment delivered in the Supreme Court on the 10th February, 1971, Mr. Douglas Brandon, who appeared for the Respondent, drew attention to Rule 21(1) of the Court of Appeal Rules, which provides that:-

"Except so far as the Court below or a Court may otherwise direct, - (a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the Court below;"

and to Rule 22(4) which provides that:-

" whenever under the Provisions of the Law or of these Rules an application may be made either to the Court below or to a Court, it shall be made in the first instance to the Court below."

Mr. Brandon submitted that the application should first have been made to the Court below and if refused, it could then be made to the Court of Appeal. Mr. Brandon also drew attention to the note in the Annual Practice 1962 at 1694 headed "The Application for Stay."

The position in England which is described by Order 58, Rules 12 and 13, is in every substantial respect the same as that in Jamaica.

The note in the White Book is therefore in point. It supports Mr. Brandon's submission.

In reply, Mr. Delisser suggested that once an appeal was made the only court which was competent to grant a stay of execution was the Court of Appeal.

The appeal extinguished the power of the Court below to stay execution. In support of this view Mr. Delisser drew attention to the provisions of Rule 33(1)(c) which provides that:-

"In any cause or matter pending before the Court, a single Judge of the Court may, upon application, make orders for - (c) a Stay of Execution on any judgment appealed from pending the determination of such appeal."

I cannot agree, Rule 33(1) enables a single Judge to deal with applications of this sort; and by Rule 33(2):-

"Every order made by a single Judge of the Court in pursuance of this Rule may be discharged or varied by the Court."

Rule 33 does not affect the broad general nature of the power in Rules 21 and 22. Rule 22(4) is specific. It directs that applications for stay of execution "shall be made in the first instance to the Court below." This course should have been followed.

I am satisfied that in principle the application cannot be granted. It is dismissed with costs to the Respondent.