

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO 193/2009

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE HIBBERT JA (Ag)**

BETWEEN	WILBERT CHRISTOPHER	APPLICANT
AND	DEBAYO ADEDIPE	RESPONDENT

Applicant in person

Ravil Golding instructed by Lyn-Cook, Golding & Co for the respondent

25 July and 9 December 2011

PANTON P

[1] I have read in draft the reasons for judgment of my brother Hibbert JA (Ag) and I agree with his reasoning and conclusion. There is nothing that I wish to add.

MORRISON JA

[2] I to have read the draft reasons for judgment of Hibbert JA (Ag). I agree with his reasoning and conclusion and have nothing to add.

HIBBERT JA (Ag)

[3] On 25 July 2011, the court dismissed the application to extend the time for filing the notice of appeal against the decision of Miss Jennes Anderson, Resident Magistrate for the Corporate Area, who on 5 October 2009, struck out the applicant's claim as disclosing no cause of action. We promised to put our reasons in writing and now do so.

[4] On 12 May 2009, the applicant brought an action against the respondent in the Resident Magistrate's Court for the Corporate Area seeking "to recover the sum of \$115,000.00 for \$15,000.00 losses incurred to the Plaintiff on 25 June 2008 at the Supreme Court and \$100,000.00 for defamation of the Plaintiff's character on or after the 15 September 2008 when he gave misleading information to Miss Anna Gracie at the Supreme Court in the parish of Kingston".

[5] On 5 October 2009, the learned Resident Magistrate granted the application of the respondent and struck out the claim as disclosing no proper cause of action.

[6] In the application for extension of time, the grounds relied on were stated as follows:

1. That the Appellant was unable to file the Notice of Appeal due to commitment on business during the period October 15th to 21st and was out of the immediate jurisdiction of the Sutton Street Court.
2. That due to present recession the Appellant was unable to secure the cost of the Appeal of \$6,600.00

until the 23 October 2009 when the for [sic] filing Notice of Appeal had expired.

3. That the learned trial judge erred when she dismisses [sic] the claim and did not award cost to the plaintiff or defendant without reasons or grounds.
4. That the learned trial judge erred when she fail [sic] to have the case tried as the matter was at [sic] for default judgment."
5. That the Appellant is of the opinion that because the defendant is an attorney-at-law the learned trail [sic] judge refused to have the case tried that the plaintiff could cross examined [sic] the defendant under oath."

[7] Before this court, the applicant relied on his written submissions which were filed on 30 April 2010. Of the several paragraphs only two were relevant to the application before the court. They stated:

- "14. That at the trial the respondent was present with his attorney at law. The appellant [sic] was present and the Judge after hearing the Appellant [sic] claim and how the Claim was before the Court. The Judge also heard from the respondent defence [sic] that the claim had no cause of action. The appellant [sic] pointed out to the Judge that the Clerk of the Court as an attorney at law would not have allow [sic] the claim to be filed without their [sic] was a proper cause for action. The Judge dismiss [sic] the claim for no cause of action and failed to inform the appellant [sic] the section of the act that would have guided her decision and the ground and reason for her order. The Appellant [sic] then gave verbal notice of Appeal.
15. That due to the current recession and the Appellant [sic] was out of the Jurisdiction of the Court in the time for the Appeal to be filed the Appeal was late in filing."

[8] Mr Golding submitted that the \$15,000.00 claimed as losses related to costs awarded against the applicant in a suit against Patrick Fletcher, the executor under the will of the applicant's father. He further submitted that what was claimed as defamation was a submission made in court that as there was an executor appointed under the will of the applicant's father, the applicant was not the fit and proper person to deal with the estate. This, he submitted, could not be the subject of a claim for defamation. Mr Golding also submitted that no good reason had been advanced by the applicant for his delay and further, that the court had no power to extend time for the payment of the fees for the due prosecution of the appeal.

[9] Appeals from judgments of a Resident Magistrate in civil proceedings are governed by section 256 of the Judicature (Resident Magistrates) Act. It states in part:

"The appeal may be taken and minuted in open Court at the time of pronouncing judgment, but if not so taken then a written notice of appeal shall be lodged with the Clerk of the Courts, and a copy of it shall be served upon the opposite party personally; or at his place of dwelling or upon his solicitor, within fourteen days after the date of the judgment; and the party appealing shall, at the time of taking or lodging the appeal, deposit in the Court the sum of six hundred dollars as security for the due prosecution of the appeal, and shall further within fourteen days after the taking or lodging of the appeal give security, to the extent of six thousand dollars for the payment of any costs that may be awarded against the appellant, and for the due and faithful performance of the judgment and orders of the Court of Appeal."

[10] The issues which arose in this case are similar to those which arose in, and were dealt with, by this court in **Wilbert Christopher v Attorney General of Jamaica**,

Motion No 26/2001 in a judgment delivered on 9 November 2001. The court considered the provisions of section 256 of the Judicature (Resident Magistrates) Act and the extent to which section 12 of the Judicature (Appellate Jurisdiction) Act affected them. At page 5 of the judgment of the court, Langrin JA stated:

"It seems clear that by the re-enactment of s.11 (2), now s. 12, the Legislature intended that the payment of security for costs be a formality for which the Court of Appeal may allow an appellant an extension of time within which to comply at a later date. However, the payment of security for the due prosecution of the appeal still remains a condition precedent, being omitted from section s.12. When interpreting the section, the presumption that "the mention of a thing is the exclusion of others" is most appropriate. In light of this the Court of Appeal may grant the appellant, Mr Christopher, an extension of time to pay the \$6,000. However, if the initial \$600 has not been paid the court has no other recourse but to dismiss the appeal."

[11] The applicant, having stated in his submissions at paragraph [14] that he had given verbal notice of appeal and at paragraph [2] in his grounds in support of the application that the security for the due prosecution of the appeal had not been paid, this court would have no jurisdiction to extend the time for payment.

[12] Could the applicant, having failed to meet the requirement of section 256 of the Judicature (Resident Magistrates) Act, as it relates to verbal notices of appeal now seek to have a written notice of appeal filed? This was also dealt with in the case previously cited. At page 6 of the judgment, Langrin JA stated:

"It has been noted that a written notice of appeal was lodged on March 13, 2001. This however, cannot be an effective notice of appeal. In **R v Maslanka** [1972] 12 JLR 843 the learned judge of appeal noted that the right of

appeal is indivisible. When it is exercised it is expended. A person has only one right of appeal within the 14 days. Therefore, the effective notice of appeal was the verbal notice and the limitation period set out in s.256 would be from that time."

The answer to the question posed would, therefore, be in the negative.

[13] Even if this court could grant the extension sought, the applicant would have had to show that there was a good reason for the delay and that an appeal would have some chance of success. This he has failed to do. For all the reasons stated, I concurred in the decision to refuse the application.