

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 68/08

Application # 98^A/08

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MISS JUSTICE SMITH, J.A (AG.)**

BETWEEN	GRACE KENNEDY REMITTANCE SERVICES LIMITED	APPLICANT
AND	PAYMASTER (JAMAICA) LIMITED	1ST RESPONDENT
AND	PAUL LOWE	2ND RESPONDENT

**B. St. Michael Hylton, Q.C., Kirk Anderson & Courtney Bailey, instructed
by DunnCox for the Applicant**

**Miss Hilary Phillips, Q.C., & Mrs. Denise Kitson, instructed by Grant,
Stewart & Phillips & Co., for the Respondent**

14th July 2008

ORAL JUDGMENT

PANTON, P.

At this stage in this matter we find ourselves in a situation where we need to make a decision as to whether the matter before Mr. Justice Smith, J.A. was appealable. We make this preliminary statement for the reason that we suspect that counsel may wish to make further submissions.

The position is that on the 2nd of July 2008 Mr. Justice Smith, a judge of this Court made an order. What was before him was an application for stay of trial as well as a stay of the whole of the proceedings in the matter of Suit CL2000/P82. In ruling on that application he said:

“the application for the stay of the trial and/or the whole proceedings must fail.”

He had construed the direction of Mrs. Justice Marva McIntosh, in respect of the state of a certain witness to be not an order within the rules, which would have been appealable.

Both counsel, Mr. Hylton, Q.C., for the appellant and Miss Phillips, Q.C., for the respondent Paymaster Jamaica Ltd found themselves in the perhaps, unique situation where they both agreed that the judge was incorrect in the ruling that he gave so far as he is saying that the matter was not appealable.

We have looked at section 10 of the Judicature (Appellate Jurisdiction) Act as well as the Civil Procedure Rules and we have reviewed the case of ***Lans Francis et al v Moncris Investments Ltd et al*** SCCA 50 of 1992 delivered on June 23, 1992 which was based on the old Civil Procedure Code. Having considered the relevant provisions and the reasoning of the judges of the Court of Appeal in that case, we are of the view that there has been a widening of the scope of what is an order which is appealable. We are satisfied that the new rules make provisions which place the Order given by Mrs. Justice McIntosh, in the category of matters that may be appealed. So far as the learned Judge of Appeal had pronounced that the matter is not one that is appealable, we find

ourselves unable to agree with him and to that extent we are discharging the order made by him on the 2nd of July 2008. This is in keeping with the request in the Notice of Application which occupies pages 1 to 3 of the Supplemental Bundle placed before us.

PANTON, P.

ORDER

The order of Smith, J.A. made on the 2nd July 2008 is discharged.

No order as to costs.