

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 1/2008

MOTION NO. 1/2010

BEFORE: THE HON. MR JUSTICE PANTON, P.
THE HON. MR JUSTICE HARRISON, J.A.
THE HON. MR JUSTICE DUKHARAN, J.A.

BETWEEN	JAMAICA STEEL WORKS LIMITED (Former Jamaica Steel and Plastic Ltd)	1 st APPLICANT
AND	ISHMAEL GAFOOR	2 nd APPLICANT
AND	AMELITA GAFOOR	3 rd APPLICANT
AND	RICHARD VASCONCELLOS	RESPONDENT

Wentworth Charles and Floyd Green, instructed by Wentworth Charles & Co. for the 3rd applicant

Lawrence Haynes for the respondent

1 & 3 March 2010

ORAL JUDGMENT

PANTON, P.

[1] This is a motion in which conditional leave is being sought by the applicant Amelita Gafoor, to appeal to Her Majesty in Council against the decision of the Court of Appeal which was handed down on 18 December 2009.

[2] The motion for this leave was filed on 18 January 2010. The position is that, objection was taken by the respondent on the ground that the motion was filed out of time.

[3] Mr Wentworth Charles on behalf of the applicant, in oral as well as written submissions, has contended that the Judicial Committee (Appellate Jurisdiction) Rules Order 2009 has effectively revoked rule 3 of the Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962. Rule 3 reads:

"Applications to the court for leave to appeal shall be made by motion or petition within 21 days of the date of the judgment to be appealed from and the applicant shall give all other parties concerned notice of his intended application."

The rule which Mr Charles relies on is one which he contends gives 56 days instead of 21. We are guided by the Interpretation Act to which both Mr Lawrence Haynes and Mr Charles have referred in their submissions. Section 8 (1)(d) of the Interpretation Act states:

"8 – (1) In computing time for the purpose of any Act, unless the contrary intention appears –

(a) ...

(b) ...

(c) ...

(d) when an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time."

By Mr Haynes' interpretation of the section, the applicant is out of time by 10 days. By Mr Charles' interpretation, which provides for the exclusion of Saturdays and Public Holidays, the applicant would be out by a mere 1 day.

[4] With the greatest of respect to the authorities in the United Kingdom, I do not think there is any authority there to amend the Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962 and so rule 3 has not been affected. Indeed, the 2009 Rules which have been referred to, do indicate that any question of a revocation of the 1962 Order is really referring to, so far as the proceedings go in the United Kingdom before the Judicial Committee of the Privy Council. This is what it says, so far as partial revocations are concerned:

"The instruments listed in column 1 ... are revoked only and in so far as they relate to the powers of the Judicial Committee of the Privy Council and the procedure to be adopted by it with respect to proceedings before it."

This has nothing to do with rule 3 of the 1962 Order. This court has consistently stated that it has no jurisdiction to extend time to appeal to Her Majesty in Council. In one of the cases referred to by Mr Charles, **R v Lancy Simpson** (1977) 15 JLR 190, it was stated that there is no power to extend time. Another case referred to by Mr Charles which confirms the position, is the case of **Ramson v Harbour Cold Storage** SCCA No 57/78 delivered 27 April 1982.

[5] In the situation that we have before us, it is my view that the applicant's reference to the 2009 Rules is merely a last ditch effort to keep a dead case alive. She is out of time and there is no provision for us to extend that time. In any event, even if there was power to extend the time, for myself, I would not, for the simple reason that she has consistently displayed contempt for the rules and orders of the court leading up to the application before the Supreme Court. Her failure to file her application within time is merely confirmation of her contemptuous attitude towards the court. That being so, the motion is dismissed and costs awarded to the respondent.

HARRISON, J.A.

[6] I fully agree with the sentiments and the views expressed by my brother, the President of this court. As far as the rules are concerned, which apply in matters of this nature seeking leave to proceed to Her Majesty in Council, rule 3 of the Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962 is applicable. It states that applications to the court for leave to appeal shall be made by motion or petition within 21 days of the date of the judgment to be appealed from. This rule has been discussed and has been decided in several cases in this court. The case of **Ramson v Harbour Cold Storage** held that this court has no power to extend that period of 21 days.

[7] I do agree with the submissions put in writing by Mr Haynes that since Mr Charles for the applicant contends that he has an appeal as of right, the applicant could have moved her motion before the Privy Council where under the new rules there is a much more liberal approach wherein time can be considered for extension. As far as this court is concerned, rule 3 has not been affected in any way by the new rules of the Privy Council established in 2009. I also agree with my brother that this motion should be dismissed.

DUKHARAN, J.A.

[8] I also agree with my brother the President and my brother Harrison that the applicant is out of time on the application for leave to appeal that is before this court. I agree with Mr Haynes that such an application continues to be governed by the provisions of the Jamaica (Procedure in Appeals) to Privy Council) Order in Council 1962.

ORDER

PANTON, P.

The motion is dismissed. Costs to the respondent to be agreed or taxed.