

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' CIVIL APPEAL NO: 9 OF 2007

**BEFORE: THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MRS. JUSTICE HARRIS, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)**

BETWEEN:	MICHAEL JAMEISON	APPELLANT
AND	JOYCE LAWRENCE	RESPONDENT

Mr. Rudolph Smellie, instructed by Daly Thwaites and Company for the Appellant

Miss Kerry-Ann Ebanks, instructed by Bishop and Fullerton for the Respondent

December 17, 2007 & February 22, 2008

HARRISON, J.A:

1. This appeal concerns the procedure to be adopted in the Resident Magistrate's Court when there is an application for the attachment of a litigant who fails to obey the order of the Court. We allowed the appeal, made no order as to costs and promised to put our reasons in writing. This is a fulfilment of that promise.
2. On the 4th day of April 2001 Linval Beckford filed a plaint in the Savanna-la-Mar Resident Magistrate's Court, against Michael Jameison. He sought an

order for possession of premises situated at Colluden District, Whitehouse in the parish of Westmoreland.

3. On the 17th December 2001, the parties by consent, agreed that the appellant would deliver up of possession of the premises on or before the 31st December 2002. A formal order was filed to this effect. It bore the penal notice which states:

"AND FURTHER NOTICE that if you fail to obey the Order of the Court you may be committed to prison for contempt of court."

4. On the 23rd December 2002, an application was made by the appellant for an extension of time within which to vacate the premises and an extension was granted by consent until the 31st January 2003.

5. Linval Beckford died and on the 15th day of February 2007, Joyce Lawrence, the Administratrix of Beckford's estate, was substituted for Beckford.

6. The appellant failed to vacate the premises and the Claimant/Respondent filed an application for a warrant of attachment to be issued. The learned Resident Magistrate heard this application on the 20th June 2007 and on the 29th June 2007 a warrant of attachment was issued for execution on the appellant.

The Order for Committal reads as follows:

"WHEREAS by order of this court, dated the 17th December 2001 by consent order for the Defendant to quit and deliver up premises situated at Culloden in the parish of Westmoreland on or before the 31st December 2002 and that the Defendant to pay costs of \$2,501.00, now upon the application of the Plaintiff and upon hearing the defendant, showing or being satisfied on oath that a copy of the said order dated 17th December 2001 and

Notice of this Application has been served on the Defendant: MICHAEL JEMEISON and upon reading the affidavits of Joyce Lawrence as Administrator of the Estate Linval Beckford, the court being of the opinion upon consideration of the facts disclosed by the said affidavits that the said Defendant: MAICHAEL JEMEISON has been guilty of contempt of this court by a breach of the said order, DOTH ORDER that the said Defendant: MICHAEL JEMEISON do stand committed to the Saint Catherine Adult Correctional Centre for his said contempt and that a Warrant of Attachment for the arrest of the said MICHAEL JEMEISON be issued to take effect from Friday, the 29th June 2007.

It is further ordered that any application for his release from custody shall be made to the judge.

DATED THE 10TH DAY OF JULY 2007.

Sgd: Collymore Gordon

RESIDENT MAGISTRATE WESTMORELAND."

7. On the 20th day of June 2007, the appellant filed a Notice of Appeal in this Court and complained that:

"The learned trial judge erred and wrongly entered an Order on the 20th June 2007 for a warrant of attachment to issue against the appellant on June 29th 2007."

8. The Warrant of Committal was executed on 17th July 2007, and the appellant was taken to the St. Catherine Adult Correctional Centre.

9. Before the appeal came up for hearing, the appellant made an application to this court for bail pending the determination of the appeal. Bail was granted by a single judge.

10. It is abundantly clear from the record of appeal that the original order which should have expired on December 31 2002, was extended by consent to

January 31, 2003. The record also reveals that it was the order of the 17th December 2001, which the learned Resident Magistrate referred to in the Order for Committal and no reference was made to the extended order.

11. In our judgment, the order which expired on January 31, 2003 ought to have been drawn up and served. The authorities have made it clear that if, as in the present case, an extension of time has been given by a second order, and it is intended to enforce the breach of that order, or of the first order coupled with the second order giving an extension of time, the second order must be drawn up and both orders served since a fresh time has been appointed with which the act of vacating the premises is to be done. See In *re Tuck, Murch v Loosemore* [1906] 1 Ch 692

12. It is not clear from the record that the appellant was present in court when the order for vacating the premises was made. But even if he was present, and the order was made by consent, this would not have made personal service of that order unnecessary. The order ought to have been served on the appellant and referred to in the order for committal. On the face of it, the application for committal was therefore bad and the order for committal irregular.

14. It was for these reasons why we agreed with Mr. Smellie that the appellant should be formally released from custody.

HARRIS, J.A: I agree.

DUKHARAN, J.A. (Ag.): I agree.

HARRISON, J.A.

ORDER: The appeal is allowed. The appellant is to be formally released from custody.