

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP P
THE HON MR JUSTICE D FRASER JA
THE HON MRS JUSTICE DUNBAR GREEN JA**

MOTION NO COA2024MT00002

**BETWEEN DENISE KITSON APPELLANT
AND ROGER PHYNN RESPONDENT**

Allan Wood KC and Kevin Williams instructed by Grant, Stewart, Phillips & Company for the appellant

Respondent not appearing or represented

22 July 2024

Endorsement read by McDonald-Bishop P

[1] By notice of motion filed on 30 January 2024, the appellant, Mrs Denise Kitson, seeks conditional leave to appeal to His Majesty in Council against the decision of the Court of Appeal rendered on 15 January 2024 in **Denise Kitson v Roger Phynn** [2024] JMCA Civ 1, pursuant to sections 110(1)(a) and 110(2)(a) of the Constitution of Jamaica ('the Constitution').

[2] The appellant provided the court with proof of service of the notice of motion on the respondent, Mr Roger Phynn, and his attorney-at-law on record, Mrs Rita Allen-Brown, *via* emails on 31 January and 1 July 2024. The copy of the notice of motion served on 1 July 2024 was endorsed with the date fixed by the registrar of this court for the hearing of the motion. Notice of the hearing was also sent *via* email, by the court's registry, on 19 July 2024 to all counsel on record, including Mrs Allen-Brown. All this notwithstanding, neither the respondent nor counsel on his behalf appeared for the hearing of the motion.

[3] The court is satisfied that the notice to the respondent of today's hearing was sufficient in the circumstances, and proceeds to consider the merits of the motion in the respondent's absence.

[4] Having considered the notice of motion and affidavit in support, and having read and heard the submissions of learned King's Counsel, Mr Allan Wood, made on behalf of the appellant, we are satisfied that the appellant has met the threshold requirements for the grant of conditional leave to His Majesty in Council.

[5] The Court of Appeal's decision was a final decision in civil proceedings, and the appellant's proposed appeal to His Majesty in Council indirectly involves a question respecting the appellant's right to a solicitor's lien over property held by the respondent, in his capacity as liquidator, for unpaid legal fees in excess of \$1,000.00. Therefore, conditional leave to appeal should be granted as the proposed appeal to His Majesty in Council is as of right pursuant to section 110(1)(a) of the Constitution.

[6] We are also of the view that the question raised by the appellant as to whether a solicitor's right to a lien over a client's property for unpaid fees can be defeated by the power of liquidator under section 45(2) of the Co-operative Societies Act "to compel the attendance and examination of witnesses and the production of documents", is one that, by reason of its great general or public importance, ought to be submitted to His Majesty in Council. Accordingly, conditional leave to appeal should also be granted pursuant to section 110(2)(a) of the Constitution.

[7] We, therefore, make the following orders:

1. Leave is granted to the appellant to appeal to His Majesty in Council pursuant to sections 110(1)(a) and 110(2)(a) of the Constitution of Jamaica on condition that the appellant:

- (a) within 90 days of the date hereof, enters into security in the sum of \$1,000.00 for the due prosecution of the

appeal and the payment of all such costs as may become payable by the appellant in the event of her not obtaining an order granting her final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee ordering the appellant to pay costs of the appeal (as the case may be); and

(b) within 120 days of the date hereof, takes the necessary steps for the purposes of procuring the preparation of the record and the dispatch thereof to England.

2. Costs of the application for leave to appeal to be costs in the appeal to His Majesty in Council.