

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 130/2012

MOTION NO 9/2013

**BEFORE: THE HON MRS JUSTICE HARRIS JA
THE HON MR JUSTICE BROOKS JA
THE HON MS JUSTICE LAWRENCE-BESWICK JA (Ag)**

BETWEEN	JOHN LEDGISTER	1ST APPLICANT
AND	SUNNYCREST ENTERPRISES LTD	2ND APPLICANT
AND	JAMAICAN REDEVELOPMENT FOUNDATION INC	RESPONDENT

1st applicant in person and on behalf of the 2nd applicant

**Mrs Sandra Minott-Phillips QC instructed by Myers Fletcher and Gordon for
the respondent**

7 October 2013

ORAL JUDGMENT

BROOKS JA

[1] On 10 May 2013, this court refused an application by Mr John Ledgister and Sunnycrest Enterprises Ltd (the applicants) to discharge or vary an order of a single judge of the court, refusing an application by the applicants for an interim injunction

pending appeal. The applicants are aggrieved by the refusal and on 21 June 2013, filed the present motion seeking permission to appeal to Her Majesty in Council. Such permission is provided for in section 110 of the Constitution of Jamaica.

[2] The respondent to the application, Jamaican Redevelopment Foundation (JRF), has filed a notice of preliminary objection to the motion. In its notice and before this court, JRF argued that the applicant's motion, having been filed more than 21 days after the judgment of the court, is out of time and therefore cannot be entertained. It further argues that this court has no authority to extend the time within which the motion may be filed.

[3] JRF's preliminary point is patently correct. As far back as 1982, this court has consistently adopted the principle that it has no power to extend the time for the filing of applications for permission to appeal to Her Majesty in Council. The time is specified as being 21 days and is stipulated by section 3 of the Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962 (hereafter called "the Order in Council"). The principle mentioned above was stated in **Chas E Ramson Ltd and Another v Harbour Cold Stores Ltd** SCCA No 57/1978 (delivered 27 April 1982).

[4] Before referring to the case itself it would be helpful to quote section 3 of the Order in Council. It states as follows:

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

[5] In **Chas E Ramson Ltd**, the applicants were late in filing their notice of motion applying for permission to appeal to Her Majesty in Council. The respondents to the application filed a notice of objection on the basis that the notice had been filed out of time. The applicants then filed an application for an extension of time in which to file the motion. The respondents countered, asserting that this court had no jurisdiction to grant an application for extension of time to file the notice of motion.

[6] In considering the issues raised by the arguments in that case, this court stated that it may only grant an extension of time where a rule or order empowered it so to do. It found, however, that because the provisions of section 3 had been established by an Order in Council, the court had no authority to extend the time that was stipulated therein. It stated at page 3 of the judgment:

“The Rules governing appeals to the Privy Council were made by Her Majesty by virtue and in the exercise of the powers in that behalf given by an Imperial Statute, the Judicial Committee Act, 1844, 7 & 8 Vict. C. 69, and by and with the advice of Her Privy Council. Amendment of those Rules does not lie within the competence of the Rules Committee of the Supreme Court of Jamaica.”

[7] After reviewing a number of cases on the issue, the court concluded its judgment as follows:

“These cases show that **this Court has no power to extend the time fixed by Sections 3 and 4 (a) of the Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962 governing the application for leave to appeal.** The respondent’s objection in limine was

well taken, and the applications [for permission to appeal to the Privy Council] were refused..." (Emphasis supplied)

The circumstances in the instant case are materially indistinguishable from those in **Chas E Ramson Ltd**. The result must, therefore, be identical despite the explanation given by the applicants for the late filing of their application.

Conclusion

[8] The applicants, having failed to file their application for leave to appeal to the Privy Council, within the time specified in the Order in Council for such applications to be filed, and this court having no authority to enlarge the time within which the application may be filed, the application for leave must be refused.

Order

[9] Based on the above reasoning the orders are:

- (1) The application for leave to appeal to the Privy Council is refused;
- (2) Costs to the respondent to be taxed if not agreed.