JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 18/93

COR: THE HON MR JUSTICE CAREY J A
THE HON MR JUSTICE DOWNER J A
THE HON MR JUSTICE PATTERSON J A (AG)

MOTION

BETWEEN	**WINSTON WATERS MCCALLA**	**APPELLANT**
AND	**THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL**	**RESPONDENT**

Winston Spaulding QC for appellant

Dennis Morrison QC & Allan Wood for respondent

January 26 & February 13 1995

CAREY J A

The appellant having been granted conditional leave to appeal to the Privy Council a few days ago, applied to this court for a "stay of execution" pending that appeal. We refused his application and promised to put our reasons in writing especially because Mr Spaldings QC sought to pray in aid C.A. 111/89 **Honiball & Anor v Alele** (unreported) delivered 29th April 1991. Mr Morrison QC requested that some guidance be given in the light of the language to be found in my judgment. Before complying with that request, I think it is right to remind of the beginnings of this matter. The appellant who had been summoned before the Disciplinary Committee of The General Legal Council applied to the Full Court of the Supreme Court for an order of prohibition. When this was refused, the appellant duly appealed to this court which by its order of 20th December 1994 dismissed the appeal. Its effect was to affirm the order of the Full Court, and thus require the hearing before the Disciplinary Committee to be continued.

The relevant rule is contained in the Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962, paragraph 6. It provides as follows:

> "6. Where the judgment appealed from requires the appellant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as Her Majesty in Council shall think fit to make thereon."

Learned Queen's Counsel on behalf of the appellant, argued that the appellant was required "to do an act" viz, to submit himself to the jurisdiction of the Disciplinary Committee. It is plain as plain can be that the court below, the Full Court of the Supreme Court, had made no order requiring the appellant either to pay any money or do any act. Whether he submitted or not to trial before the Disciplinary Committee was a matter of choice. He could be tried whether he choose to appear or not. His appearance before that body was not as a result of any coercive order made by the Full Court. It is equally plain that this court has the power under paragraph 6 to direct either that the judgment be carried into execution or be suspended in circumstances where the judgment appealed from requires the appellant to pay money or do an act, which for convenience, can be called a coercive order.

Mr Winston **Spaulding** QC was not unmindful of all that I have so far stated. He however, considered that reliance could be placed on some obiter in **Honiball v Alele** (supra) where I said at pp. 5 - 6:

> " Dr Barnett argued that Section 5 (b) could be invoked because its terms were wide enough to encompass a stay of proceedings. It seems to me from the scheme of the Order, that it was never intended to empower a single judge and the court on review, to deal with stays of execution. Paragraph 6 is in my view sufficiently expansive to cover all the manifestation of a judgment given against a party. It is specific to suspending or staying the carrying into effect of that judgment."

In the case under reference, the appellant Brown had not been ordered "to do an act." He had by fraudulent means secured a title to be registered in his name, and the respondent's name removed. The Registration of Titles Act gives to the Registrar of Titles the power to cancel or correct certificates of title. The judge in the court below made such an order by reason of the appellant's fraud. It was held that paragraph 6 of the Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962 was wide enough to encompass the situation of an act not of the appellant himself but of what was termed a "statutory agent" such as the Registrar of Titles.

The words from the judgment which I have cited and on which Mr Spaulding QC relied, were, regrettably, wholly unnecessary for the point which he was maintaining before us. They were altogether wider than was necessary to decide the point for in that case, the point at issue was whether the act of a statutory agent could be imputed to the appellant, and therefore be regarded as the appellant's act. This is made quite clear as well in the judgment of Downer J A. The actual words which called for interpretation, were "<u>where the judgment appealed from requires the appellant to do any act. ...</u>"

It must also be said, granted that width of language in the case, the cases are plainly distinguishable. The thrust of Mr Spaulding's contention was that the appellant had been ordered by the Full Court to do an act from which the appeal lay: of course, there never was any such order and thus the court's power to stay could not be invoked.

These then are the reasons for the refusal of a stay.

DOWNER J A

The applicant Winston McCalla an attorney-at-law in substance sought before this court a stay of proceedings of the Disciplinary Committee of the General Legal Council which proposes to continue its hearings into the charges brought against him. He had failed to secure an order of prohibition before the Supreme Court and that order was affirmed by this court (Wright & Wolfe JJA, Rattray P dissenting). Thereafter he was granted conditional leave to appeal to Her Majesty in Council pursuant to section 110 (2)(a) of the Constitution which reads:

> "110.—(2) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases—
>
> (a) where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council, decisions in any civil proceedings;"

The reasons for seeking a stay of proceedings before the Disciplinary Committee were well put by the applicant. They read as follows:

> "3. That I have been informed by Mr Raymond Clough of Clough, Long & Co., my attorneys-at-law herein and do verily believe that the Respondent had set down the hearing of the complaint against me for Saturday, the 28th day of January, 1995 and that unless the stay is granted the Respondent intends to proceed with the hearing.
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> 6. That I aver that I have a meritorious appeal and that it would be unfair to me for the Respondent to hear and determine the complaint against me while my appeal was pending.
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> WHEREFORE I HUMBLY PRAY THAT the Court orders that
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> (a) That all proceedings consequent on the decision of the Court of Appeal handed down on the 20th day of December 1994 be stayed until the determination of the Applicant/Appellant's appeal to Her Majesty in Council from the said decision;"

It is important to note that the applicant McCalla invoked the common law supervisory jurisdiction of the Supreme Court to stay the proceedings of the Disciplinary Committee and it would therefore have been appropriate to have returned to that court to request it to resort to its inherent jurisdiction to stay the proceedings of the Disciplinary Committee pending the hearing of the appeal before the Board. To my mind such a course is still open to the applicant. It is by virtue of its common law powers as a superior court of record, that the Supreme Court is empowered to supervise inferior tribunals and those powers are spelt out in section 97 (4) of the Constitution which reads:

> "97—(4) The Supreme Court shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court."

The Court of Appeal also has those powers on appeal but by going to the Supreme Court initially for the exercise of the powers sought either side could have resorted to an appeal.

Neither the mode of proceedings nor the submissions on behalf of the applicant McCalla followed that prudent course. The course followed was set out in the written outline argument. The applicant restricted himself as follows:

> " Until recently, it was the view that the relevant Rules in the Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962 should be construed more restrictively than liberally.
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> However, the Honourable Court of Appeal in 1991 in the case of Honiball v Brown and Alele, Supreme Court Civil Appeal No 111/89 stated that the Rules should be construed liberally rather than restrictively.
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> It is submitted that the question of the appellant in this case doing an act comes squarely within the requirements of the rules as interpreted by the Court of Appeal in the Honiball case."

What was referred to as the Honiball case was **Honiball & Brown v Alele** SCCA 111/89 delivered April 29 1991. In that case the coercive powers of the courts against the appellant were exercised albeit through a statutory agent. So Rule 6 of the Jamaica

(Procedure in Appeals from Privy Council) Order in Council 1962 Proclamations Rules and Regulations 1962 p. 464 was applicable. It reads:

> "6. Where the judgment appealed from requires the appellant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as Her Majesty in Council shall think fit to make thereon."

It is manifest that this rule does not cover the circumstances where a jurisdictional point is in issue as in the instant case. Let me say that if the proper course had been followed in this case it would have been difficult to refuse a stay of proceedings. A jurisdictional point of this nature may involve professional men, subject to disciplinary proceedings, as well as others who appear before inferior tribunals. I should make it plain that I only appreciated this reasoning when I began to prepare this draft so I attach no blame to Mr Spaulding QC who appeared for the applicant. His learned friend, Mr Morrison QC for the respondent, asked for guidance, no doubt because he realised the importance of the issue and he may well be appearing for an applicant in a future case. He should also bear in mind that judicial comity requires the Disciplinary Committee to stay its hand when there is a final appeal before their Lordships Board. As it is, I must adhere to my decision arrived at the close of the hearing, that the application was refused and that the agreed or taxed costs must be for the respondent.

PATTERSON, J.A. (Ag.):

On the 26th January, 1995, we refused the appellant's application for a stay of proceedings pending his appeal to Her Majesty in Council. Mr. Dennis Morrison, Q.C., who appeared for the respondent, expressed a hope that we would give some guidance in light of the court's decision in **Honiball & Brown v. Alele** S.C.C.A. 111/89 (unreported) delivered 29th April, 1991.

I have had the advantage of reading in draft the guidance given by my learned brothers, and I agree.