

NMC

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 113/95

**BEFORE: THE HON. MR. JUSTICE RATTRAY, PRESIDENT
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A.**

BETWEEN	DONALD PANTON	1ST APPLICANT/APELLANT
AND	JANET PANTON	2nd APPLICANT/APELLANT
AND	MINISTER OF FINANCE	RESPONDENTS
AND	THE ATTORNEY GENERAL FOR JAMAICA	
AND	FINANCIAL INSTITUTIONS SERVICES LIMITED	

***Frank Phipps QC., Walter Scott and Miss Carolyn Reid instructed by
L.G.S. Broderick & Company for Donald Panton***

***Ian Ramsay and Miss Deborah Martin instructed by L.G.S. Broderick & Company
for Janet Panton***

***Lackston Robinson instructed by Director of State Proceedings for The Attorney
General and Minister of Finance***

***John Vassell and Samuel Harrison instructed by Dunn, Cox, Orrett and
Ashenheim for Financial Institutions Services Limited***

February 10 and 11, 1997

RATTRAY P.:

The questions to be determined by the Court of Appeal in this Motion for the Court's "stay of all actions commenced in the name of Blaise Trust Company and Merchant Bank Limited, Blaise Building Society, Consolidated Holdings Limited, and/or Financial Institutions Services Ltd against the

Applicants/Appellants since their management have been taken over by the Temporary Manager and/or his nominees pending the hearing of the appeal herein", are as follows:

1. Does the Court of Appeal have jurisdiction to hear this Motion in the light of the following:
 - (a) leave has not been granted to appeal the refusal of the Constitutional Court to stay the actions, the application for which on the conclusion of the hearing of the Originating Motion by the Constitutional Court has been refused by that Court;
 - (b) a Consent Order was made by Forte JA in Chambers granting a stay until January 13, 1997 which stay was further extended by consent by the Court of Appeal until the 10th February 1997 when it was expected the appeal would be heard;
2. If the Court has jurisdiction should the stay be granted on the merits.

The jurisdiction of the Court of Appeal is that given to it by the Constitution of Jamaica, the Judicature (Appellate Jurisdiction) Act and the Court of Appeal Rules made thereunder.

Rule 21(1) reads, inter alia, as follows:

"Except so far as the Court below or the Court may otherwise direct -

- (a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the Court below."

Rule 22(4) reads as follows:

"Wherever under the provisions of the Law or of these Rules an application may be made either to the Court below or to the Court, it shall be made in the first instance to the Court below."

In *Beverley Shields v. Jennifer Graham* [12 JLR 1497] Swaby JA at p.

1498 in determining a similar question stated:

"I hold that the construction of the Rules in question contended for by the appellant's counsel is incorrect. Rule 22(4) contemplates that at the time the application for stay of execution is made there should be in existence a pending appeal."

When the Constitutional Court refused a stay of proceedings there was no pending appeal. As Swaby JA further stated at p. 1499:

"Now that there is an appeal pending an application for stay of execution (or further stay of execution) may be made either to the Court below or under the Court of Appeal Rule 21(1) and Rule 22(4) provides that where this is done such application shall be made in the first instance to the Court below."

It is to be noted that the stay of proceedings applied for in the instant case is not in relation to the judgment appealed from, but to the stay of other proceedings separate from the judgment on appeal. These proceedings have not yet arrived at a trial stage. The attractive submissions of Mr. Phipps QC and Mr. Ian Ramsay on behalf of the applicants that there is a nexus between the proceedings sought to be stayed and the judgment, the subject-matter of the appeal, on examination exposes a fatal flaw when it is recognised that the Rules of the Court of Appeal provide for stay of proceedings in judgments appealed from and are silent as to proceedings which are not the subject matter of the judgment appealed from.

Section 11(1)(f) of the Judicature (Appellate Jurisdiction) Act provides:

"No appeal shall lie -

- (f) without the leave of the Judge or of the Court of Appeal from any interlocutory judgment or any interlocutory order given or made by a judge..."

except in certain specified instances.

None of the instances cited as exceptions fall within the Order of the Constitutional Court refusing to grant a stay of its Judgment until the hearing of the appeal.

In the circumstances therefore the points taken by Mr. Vassell in relation to the preconditions for appeal not being satisfied are in our view well-founded and must succeed.

The Court of Appeal therefore is not required to express any view on the merits of the applications to stay the proceedings in the actions brought against the applicants.

The application is therefore refused with costs to the respondents.

GORDON J.A.:

I agree.

BINGHAM J.A.:

I agree.