AMLS

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO: 74/04

BEFORE: THE HON MR JUSTICE FORTE, P
THE HON MR JUSTICE HARRISON, J.A.
THE HON MR JUSTICE SMITH, J.A.

BETWEEN:	ROSE-ANNE SIRJUE	APPLICANT
AND	MICHAEL SIRJUE PETER SIRJUE IAN SIRJUE CHERYL SIRJUE-McLEAN	RESPONDENTS
AND	THE ADMINISTRATOR GENERAL OF JAMAICA	RESPONDENT (2ND DEFENDANT)

Rose-Anne Sirjue in person –1st Defendant/Applicant

Dr Randolph Williams for Respondents Michael Sirjue et al

June 18, 2004

HARRISON, J.A:

By this application dated May 21, 2004, the applicant seeks:

(a) extension of time in which to apply for permission to appeal and

(b) permission to appeal

from the order of K. Harrison, J made on July 21, 2003.

The applicant relied on her affidavit dated May 21, 2004, in support of her said application.

The order of K. Harrison, J made on July 21, 2003, was a case management order. It reads:

> "1. The FIRST DEFENDANT to file Defence within 14 days of the date hereof
>
> 2. The Grant of Probate granted 18th November 2002, to be lodged in the Registry of the Supreme Court within 3 days.
>
> 3. Disclosure and inspection of documents referred to in FIXED DATE CLAIM FORM namely.
>
> Report and Affidavit of handwriting expert;
>
> lease agreement dated 8th February 1999;
>
> medical report by Dr. Robert Parchment, Family Physician dated 16th May 2003, within 7 days of the date hereof.
>
> 4. Disclosure and inspection of title to motor vehicle, furniture and other chattels of the first defendant.
>
> 5. Trial by judge alone.
>
> 6. Pre-trial review fixed for hearing 1st October 2003.
>
> 7. Trial date fixed for 27th and 28th January 2004."

At the said case management conference the applicant was represented by Mrs Aisha Mulendwe, attorney-at-law, and the other parties by their respective attorneys-at-law.

The grounds on which the applicant based her application are:

> "1.8 (1) Where an appeal may be made only with the permission of the court below or the court, a party wishing to appeal must apply for permission within 14 days of the order against which permission to appeal is sought."

However, this court has the power to extend the time to appeal even though the application for extension is made after the time for compliance has passed (Rule1.7 (2)(b)). The proper approach of the appellate court is recited in Rule 1.8(9). It reads:

> "(9) The general rule is that permission to appeal in civil cases will only be given if the court or the court below considers that an appeal will have a real chance of success."

An appellate court may, in its discretion, grant an extension of time within which to appeal, but there must be sufficient material before the court, usually in the affidavit filed in support, to ground the exercise of the discretion (**City Printery v Gleaner** (1968-9) 13 WIR 126)).

Miss Sirjue, in her challenge to the order made on July 21, 2003 complained on the ground that the claimants were not present at the case management conference as required by Rule 25.4 of the Civil Procedure Rules, 2002, therefore the order should not have been made in their absence and is therefore invalid.

Rule 25.4 is contained in section 2 of the Rule and is referable to a Dispute Resolution Conference. No such order for Dispute Resolution had

been made, nor was being conducted. Rule 25.4 was therefore not applicable. The relevant rule is Rule 27.8 under the heading "Attendance at case management conference or pre-trial review". It reads:

> "27.8 (1) Where a party is represented by an attorney-at-law, that attorney- at-law or another attorney-at-law who is fully authorized to negotiate on behalf of the client and competent to deal with the case must attend the case management conference and any pre-trial review."

At the case management conference on July 21, 2003 before K. Harrison, J the claimants were represented by Dr Randolph Williams, attorney-at-law who was present then. Furthermore, a court has the power to "dispense with the attendance of a party or representative" (Rule 27.8(3)). The applicant's contention therefore fails, in that K. Harrison, J did not err in "refusing the 1st defendant/appellant's application to have the matter struck out."

The applicant gives as the reason for her delay in seeking leave to appeal within the stipulated time that she was "ill from the time allowed in law to seek leave to appeal." The applicant tendered in this Court two medical certificates which covered the period of two (2) weeks from December 1, 2003 to December 12, 2003. This period has no relevance to the period immediately after the date of the order on July 21, 2003.

The applicant further stated that "the learned judge should have disassociated himself from the hearing." It is sufficient to state that there

was no material disclosed in the affidavit of the applicant in support to form a basis for such a course of action. This complaint also failed.

The applicant's complaint that the perfected order on case management conference dated September 26, 2003 is inconsistent with the minute of order dated July 21, 2003 in that the latter is headed "Application for revocation of grant of probate" but on the contrary, that heading was not stated on the perfected order nor was that the application being made. This Court accepted that the minute of order did have such a notation. However, that notation was merely the description of the substantive cause of action. No prejudice was caused thereby nor was this any basis to treat the order as invalid.

However, in so far as paragraph 2 of the perfected order dated July 21, 2003 and filed on September 26, 2003 reads:

> "... The Grant of Probate granted November 18, 2002 to be lodged in the Registry of the Supreme Court within 3 days;"

it is inconsistent with the minute of order dated July 21, 2003 having been omitted from the latter document. This represents an error to be dealt with by the Registrar. It does not invalidate the order.

Furthermore, the inconsistency between the minute of order dated October 1, 2003 and the perfected order filed on October 10, 2003 is, that on the latter the date of the grant of probate is stated as "November 18, 2002" whereas on the former the date is "November 8, 2002." This is a

mere clerical error which we regard as de minimis. Significantly, on 1 October, 2003 at the pre-trial review, as evidenced in the relevant minute of order, W. James, J ordered that:

> "... 1st Defendant to lodge grant of Probate granted on 8th November 2002 with the Registrar of the Supreme Court on or before 5th November, 2003."

To date, before us, the applicant had not obeyed that order. She stated that the said document is "out of the Island." The applicant is in contempt in this regard.

In respect of the disclosure and inspection of documents as ordered on July 21, 2003 the applicant stated that she had received documents numbered 4 to 7 on the list of documents (schedule 1). She stated however that she did not have the documents numbered 1 to 3. Dr. Williams for the respondents advised this Court that Miss Lawson, attorney-at-law for the applicant, attended at his office and inspected the entire list of documents and took what documents she required, on the applicant's behalf. Despite that, he advised the Court that he will further facilitate the applicant by meeting with her on request.

Dr Williams submitted that there was nothing in the affidavit of the applicant to show any chance of success in an appeal against the order of K. Harrison, J made on July 21, 2003. We agree.

For the reasons stated above, we refused the applications for extension of time and for leave to appeal. Costs are ordered to be in the cause.