BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Civil Appeal No. 2/2009

(C.C.J. 1/2011)

BETWEEN:

ROSEAL SERVICES LIMITED ***Appellant***

AND

MICHAEL L. CHALLIS ***Respondents***

MARCUS J.F. CLARKE

ANTHONY REID

BEFORE: The Hon. Mr. Justice Andrew Burgess, Justice of Appeal, The Hon. Mr. Justice William Chandler, Justice of Appeal (Ag.) and The Hon. Madam Justice Margaret Reifer, Justice of Appeal (Ag.).

2011: 12 May and 26 May

Mr. Barry L.V. Gale, Q.C. in association with Mrs. Leodean Worrell for the Appellant

Mr. Randall Belgrave, Q.C. in association with Mr. Damian Edghill and Mr. Naeem Patel for the Respondents

DECISION

INTRODUCTION

[1] **BURGESS JA:** This Court has before it two applications. The first is an Amended Notice of Application by the Intended Applicant/Appellant (the "Appellant") for leave to appeal to the Caribbean Court of Justice (the "CCJ") against a decision of this Court. This Application is supported by an affidavit of Mrs. Leodean Worrell. The second application is an Amended Cross Notice of Application by the Intended Respondents (the Respondents) to strike out the Appellant's Amended Application and a substantial portion of the supporting affidavit.

[2] A third application, a Notice of Application, was filed by the Respondents for orders by way of preliminary objection and/or point *in limine* that the appellant's application for leave to appeal to the CCJ not be permitted to come on for hearing or be dismissed. This Notice of Application was heard by this Court as a preliminary objection and/or point *in limine* and the orders sought were denied.

[3] The submissions spawned by the Amended Application by the Appellant for leave to appeal to the CCJ and the Amended Cross Notice of the Respondents are voluminous and detailed. To facilitate the kind of scrutiny that proper treatment of these submissions demand, judgment in respect of the Appellant's application and the Respondents' cross notice was reserved and is the subject matter of this written decision.

Factual Background

[4] We begin with an extensive exploration of the factual background to the matters raised in this action. Such an exploration is crucial to judging the merits of many of the submissions made by Counsel in this case.

Origins of the Action

[5] The tap root of the matters before this Court traces itself back to an action for specific performance of a contract of sale commenced in the High Court by the Appellant and in which an application was made for summary judgment. **Kentish J** heard and dismissed the application with costs to be agreed or taxed and ordered that the action proceed to speedy trial.

[6] The Appellant appealed the decision of **Kentish J** to this Court. The appeal was heard before a panel composed of Sir David Simmons CJ, Hon. Sherman Moore JA and Hon. Sandra Mason JA.

Order of 11 June 2010

[7] On 11 June 2010, Sir David Simmons CJ having retired, a panel composed of Hon. Sherman Moore CJ (Ag.), Hon. Sandra Mason JA and Hon. Kaye Goodridge JA (Ag.) sat to deliver the judgment of this Court which was written by Sir David Simmons CJ. Moore CJ (Ag.) read the judgment of this Court which dismissed the appeal and ordered the Appellant to pay the Respondents costs in this Court certified fit for two Attorneys-at-Law to be taxed, if not agreed, and remitted the matter to the High Court with directions as regards the trial of the action.

[8] At the conclusion of the delivery of the judgment, Counsel for the Respondents made an oral application that it be a condition of the order for costs that the costs be paid before the Appellant could proceed with its action before the High Court. Counsel for the Appellant questioned whether the Court had the authority or jurisdiction to make such an order and resisted the oral application. Counsel for the Appellant then made an oral application for a stay of execution of the order to allow his client to consider an appeal to the CCJ.

[9] Subsequent to the hearing, there was much disputation as to what was the order made by this Court on 11 June, 2010 in relation to costs. On 22 October 2010, this Court stated its order to be as follows:

> "1. That the appellant is granted a stay of execution to 23rd day of July in order to consider filing an application for leave to appeal to the Caribbean Court of Justice.
>
> 2. That, in the event that the appellant does not file an application for leave to appeal to the Caribbean Court of Justice, it shall be a condition of the appellant proceeding with the action before the High Court that it first pay to the Respondents the costs of and incidental to this Appeal, to be taxed if not agreed."

Attempts to Settle Costs

[10] After the judgment of this Court delivered on 11 June 2010, by letter dated 24 June 2010, Counsel for the Appellant wrote to Counsel for the Respondents asking that he, Counsel for the Respondents, provide the Appellant with an estimate of the amount of fees and expenses which the Respondents were claiming in an effort to ascertain whether the issue of costs could be agreed between the parties. To this Counsel for the Respondents, by letter dated 28 June 2010, replied indicating that he was unable at that time to provide the requested estimate until he had completed a full review of his files.

[11] By letter dated 13 July 2010, Counsel for the Appellant again wrote to Counsel for the Respondents requesting that Counsel for the Respondents provide Counsel for the Appellant with an estimate of the Respondents' fees and expenses. To this, Counsel for the Respondents, by letter dated 26 July 2010, indicated that his fees were in total $2,325,000.00.

[12] On 9 August 2010, Counsel for the Appellant wrote to Counsel for the Respondents requesting that he, Counsel for the Respondents, proceed to have costs taxed as the amount being claimed was in his, Counsel for the Appellant's, view excessive. Counsel for the Respondents did not reply to this letter and on 25 October 2010, Mrs. Worrell on behalf of the Appellant wrote to Counsel for the Respondents that he urgently set about having his clients' Bill of Costs taxed so that the matter could proceed to urgent trial as ordered by this Court. Again, Counsel for the Respondent did not reply.

[13] By a further letter of 8 November 2010, Mrs. Worrell again wrote to Counsel for the Respondents again indicating the urgency of the matter. Mrs. Worrell went on to indicate that the urgency arose out of the fact that interest continued to accrue at a rate in excess of $8,000.00 a day. Further, she went on to remind him of their conversation (Mrs. Worrell's and Counsel for the Respondents') wherein she advised him that she had been informed by the Court's Mr. Mark Murray that **Madam Justice Kentish** would be in Assizes during the period January 2011 to June 2011.

[14] The foregoing notwithstanding, Counsel for the Respondents took no steps to have costs taxed.

Appellant files Application for Variation of Order of 11 June 2010

[15] In light of the foregoing and in an effort to proceed with the trial in the High Court, the Appellant filed an Application

in this Court on the 16 November 2010 seeking *inter alia* an Order that the Order of the Court on the issue of costs made on 11 June 2010 and settled on the 22 October 2010 be varied to remove the condition that costs would have to be paid by the Appellant to the Respondents before the Appellant could proceed to trial in the High Court and/or such further and other relief as the Court may deem necessary and appropriate. An affidavit of Mrs. Worrell was filed on the 1 November 2010 in support of the Application.

Respondents file Bill of Costs

[16] Following the filing of the Application for Variation by the Appellant which was due to be heard on the 25 November 2010, the Respondents, on the 23 November 2010, for the first time filed their Bill of Costs and obtained a date of 7 December 2010 for taxation of these costs.

[17] On the 23 November 2010, Counsel for the Respondents filed an affidavit on behalf of the Respondents in response to the affidavits filed by Mrs. Worrell in which he, *inter alia*, charged the Appellant of refusing to settle the disputed order of this Court and claimed that this contributed largely to the Respondents' delay in filing their Application for Taxation of Costs which had at that date been filed.

Hearing of Appellant's Application for Variation

[18] The Appellant's application for variation of the order of this Court, which was made on the 11 June 2010 but only settled on the 22 October 2010, came on for hearing before this Court on 25 November 2010. At this hearing, Counsel for the Appellant made three submissions.

[19] His first submission was that the Order as pronounced by this court on the 11 June 2010 which purported to vary the written judgment was a nullity in law in that the Court as constituted on the 11 June 2010 did not have the authority, power or jurisdiction to vary the written judgment of this Court as it related to costs or otherwise given especially the provisions of **section 5** of **the Supreme Court of Judicature Act**.

[20] His second submission was that, on the assumption that his first submission was wrong and this Court did have authority, power and jurisdiction, the varied order as to costs should be further varied in the interests of justice and fairness to the Appellant in the circumstances, by removing the condition that the Appellant first pay the Respondents' costs before proceeding to trial.

[21] Counsel for the Appellant's third submission was that, again assuming that his first submission was wrong, the varied order be further varied by this Court by ordering that the Appellant pay into Court an amount which the Respondents were likely to recover in taxation and that once this money is paid into Court, that the trial should proceed in the High Court. The case of ***Thames Investments & Securities PLC v Benjamin [1984] 3 All ER 393*** was cited in support of this approach to achieve fairness and justice.

[22] Counsel for the Respondents submitted that the order should not be varied as sought in the Application for Variation. He, however, agreed to the suggestion by Counsel for the Appellant for payment of costs into Court.

[23] The matter was then adjourned to 1 December 2010 to allow the parties an opportunity to reach an agreement on a reasonable amount of costs to be paid into Court pending taxation of the Respondents' costs so that the matter could then proceed to a speedy trial in accordance with the direction given by this Court in its written judgment.

Efforts at Agreeing a Reasonable Amount of Costs

[24] Between the 25 November 2010 and 1 December 2010, Counsel for the Appellant sought to negotiate with Counsel for the Respondents an amount to be paid into Court pending taxation so that the High Court matter could proceed as was decided by this Court at the 25 November 2010 hearing. However, Counsel for the Respondents insisted on negotiating only the actual payment of the costs of the appeal to the Respondents. As a result of this impasse, Counsel for the Appellant wrote to Counsel for the Respondents on 29 November 2010 offering $500,000.00 to be paid into Court pending taxation. As was the wont, no response was received from the Respondents.

Reconvened Hearing of the Appellant's Application for Variation

[25] On 1 December 2010, this Court reconvened the hearing of the Appellant's Application for Variation. The parties informed the Court that they had not reached agreement as to an amount and the Court fixed the amount at $650,000.00.

[26] This Court disposed of the Application for Variation at paragraph 15 of its written judgment as follows:

> "We see no reason to vary the order of 11 June 2010, except to the extent suggested by Mr. Gale that the appellant pay a sum of money into court. In the circumstances it is the order of this Court that the taxation will proceed and that moneys will be paid out before the High Court action takes place."

[27] It is from this decision that the Appellant has brought before this Court a Notice of Application for Leave to Appeal to the CCJ to which the Respondents have filed a Cross Notice of Application.

Appellant's Notice of Application for Leave to Appeal to the CCJ

[28] The Appellant claims to be entitled to appeal to the CCJ as of right by virtue of **section 88** of **the Barbados**

Constitution as amended, **section 64** of **the Supreme Court of Judicature Act Cap 117**, **section 6 (a)** of **the Caribbean Court of Justice Act 2003-9 (the CCJ Act)** and the provisions of **Part 10 of the Caribbean Court of Justice (Appellate Jurisdiction) (Amendment) Rules 2008 (the CCJ Rules)**. Alternatively, the application seeks in addition or in the alternative leave to appeal to the CCJ pursuant to **section 7** of **the CCJ Act**.

[29] We will deal with these claims separately.

Appellant's "As of Right" Application- Substantive Matters

[30] The relevant statutory provision governing "as of right" appeals from this Court to the CCJ is **section 6 (a)** of **the CCJ Act**. This subsection provides as follows:

> "An appeal shall lie to the Court from decisions of the Court of Appeal as of right
>
> (a) in civil proceedings where the matter in dispute on appeal to the Court is of the value of not less than $18,250.00; or
>
> (b) where the appeal involves directly or indirectly a claim or a question respecting property or a right of the aforesaid value…"

[31] The plain words of this provision make it unmistakably clear that the only substantive matter which it is necessary for an appellant to establish for an appeal to lie to the CCJ as of right is that there is a decision of the Court of Appeal in civil proceedings and that the matter in dispute on appeal to the CCJ is of the statutory prescribed value or involves directly or indirectly a question respecting property or a right of the statutory prescribed value.

[32] This approach to **section 6 (a)** is mandated by the decision of the CCJ in ***L. O. P Investments Ltd v Demarara Bank et al (Unreported) (CCJ Application No. AL 2 of 2008) (LOP Investments)***. In that case, the President of the Court, **de la Bastide J**, delivering the judgment of the Court, stated the law in "as of right" applications under **section 6 (a)** of the **CCJ Act** to be as follows:

> "With regard to the category of case with which we are concerned here, that is, that prescribed by section 6 (a) of the CCJ Act, we have no hesitation in holding that once the proceedings are civil in nature and the matter in dispute is of the value of the prescribed amount or the appeal involves a claim or question respecting property or a right of equivalent value, leave to appeal must be granted."

[33] This statement of the law is palpably an exegesis of **section 6 (a)**. No doubt, it is for this reason that **de la Bastide J** went on to emphasize that the reference by **Nelson J** in the CCJ decision in ***Brent Griffith v Guyana Revenue Authority & the Attorney General of Guyana (Unreported) (CCJ Application No. 1 of 2006) ("the Griffith case")*** to a requirement for an applicant to also establish a "genuinely disputable issue" must be read in context and does not constitute an additional requirement in cases under **section 6 (a)**. As **de la Bastide J** pointed out, "In this category of case, there is no requirement that the Application for leave must demonstrate "a genuinely disputable issue of fact or law"."

[34] Applying this law to the facts of this case, Counsel for the Appellant urges that this appeal arises directly out of a decision of this Court ordering a variation of costs order that the Appellant pay the sum of "Bds$650,000.00 into Court…as security for the Respondents Cost". We accept Counsel for the Appellant's submission that, given that there was a decision of this Court on 1 December 2010, that the quantum involved was $650,000.00 and that the proceedings were admittedly civil, this appeal clearly meets the test laid down in the ***LOP Investments*** case.

[35] We also accept the further argument of Counsel for the Appellant that the substantive matter from which the costs Order and its variation springs is an application brought by the Appellant for summary judgment in the High Court for an order for specific performance of an agreement for sale of property valued at $64,900,000.00 and that, accordingly, this appeal indirectly relates to a claim respecting property or right of value which exceeds $18,250.00. As such the Appellant is also entitled to appeal as of right under **section 6 (a)** on this basis.

[36] We are unable to accept the contention of Counsel for the Respondents that no appeal lies as of right to the Appellant in the circumstances of this case because there was no "decision" of the Court of Appeal for purposes of **section 6 (a)**. A "decision" for purposes of this sub-section, according to Counsel, must be interpreted to mean a "final" decision and the decision from which leave to appeal is being claimed in the instant case is what he describes as an interlocutory decision and not a final decision.

[37] Counsel bases this theory on the fact that the **CCJ Act** was enacted for the purpose of incorporating a multilateral agreement or treaty which Barbados had entered into with a number of CARICOM States establishing the CCJ, namely, the agreement referred to and defined in **section 2** of **the CCJ Act** (the Agreement). The Agreement limits appeals as of right from "final" decisions of the Court below whereas appeals as of right under **section 6 (a)** of **the CCJ Act** is not so limited. For this reason, Counsel for the Respondents argues that there is a conflict between **section 6 (a)** of **the CCJ Act** and the Agreement. He argues further that where there is such a conflict between domestic legislation and a treaty and there is ambiguity in the domestic legislation, the court must presume that Parliament intended to legislate in conformity with the treaty, not in conflict with it. This approach yields the inevitable conclusion, Counsel argues, that "decisions" expressly referred to in **section 6 (a)** must be interpreted to mean "final" decisions since the expression "decisions" in **section 6 (a)** is ambiguous.

[38] We are of the view that the principles of construction which guide the courts in interpreting legislation which appears to be at variance with treaty provisions is very clear and well settled. In the **English Court of Appeal** case of ***Salomon v Commissioners of Customs and Excise [1967] 2 QB 116 at p 143*** **Diplock LJ** (as he then was) stated the principle to be as follows:

> "If the terms of the legislation are clear and unambiguous, they must be given effect to, whether or not they carry out Her Majesty's treaty obligations…"

[39] This principle was expanded upon by **Lord Diplock** in the **English House of Lords** in the case of ***Garland v British Rail Engineering Ltd [1983] 751 at 771*** where he said:

> "It is a principle of construction of United Kingdom statutes…that the words of a statute passed after the Treaty has been signed and dealing with the subject matter of the international obligation of the United Kingdom, are to be construed, if they are reasonably capable of bearing such a meaning, as intended to carry out the obligation, and not to be inconsistent with it."

[40] Of this statement, **Lord Ackner** in the **English House of Lords** case of ***Regina v Secretary of State for the Home Department, Ex parte Brind and others [1991] 1 AC 696 at 761*** said:

> "I did not take the view that Lord Diplock was intending to detract from or modify what he said in ***Salomon's*** case."

[41] It is not in the terrain of dispute, then, that the guiding principle of construction is that if the words of the legislation are clear and unambiguous, they must be given effect to, whether or not they carry out treaty obligations. On the other hand, if the words of the legislation are not clear but are reasonably capable of more than one meaning, the treaty becomes relevant in that the words are to be construed as intended to carry out the treaty obligations, and not to be inconsistent with it.

[42] In light of the foregoing, the fundamental question in this case therefore becomes whether the word "decisions" in **section 6 (a)** occasions any uncertainty or ambiguity. In our view, it does not. Counsel for the Respondents' submission that the word "decisions" is unclear and ambiguous because that noun, "decisions", is not preceded by either the adjective "final" or "interlocutory" is as baleful as it is unpersuasive. It threatens ambiguity whenever a noun is not qualified by an adjective! Given that the word "decisions" in **section 6 (a)** is clear and unambiguous, effect must be given to it whether or not it is at variance with obligation under the Agreement.

[43] Counsel for the Respondents points to a passage in the judgment of **de la Bastide J** in ***LOP Investments*** as exposing a basis on which this Court can (and in this case should) deny as of right leave to the Appellant even though the appellant may satisfy the criteria required for "as of right" leave under **section 6 (a)**. That passage at paragraph 18 of the judgment reads:

> "We do not exclude the possibility that the Court of Appeal may in rare cases take action to prevent the abuse of the process of the Court by striking out an application for leave to appeal even in as of right cases. But to justify such a step, something more than a perceived lack of merit in the proposed appeal would have to be demonstrated, in addition to that there would have to be an element of oppression, perversity or pure malice. In this context I would regard as perverse a claim which warranted the description "frivolous and vexatious"."

[44] We agree with Counsel for the Respondents that this passage recognizes the existence of an inherent jurisdiction in the Court of Appeal to refuse leave to the CCJ, even in "as of right" cases in the rare circumstances where the pursuit of an appeal to the CCJ would involve a serious abuse of process. We are not persuaded, however, by Counsel for the Respondents' contention that a proper consideration of the facts and circumstances of this case compels the conclusion that the Appellants application for leave to appeal to the CCJ in this case can be characterized as being "(a) perverse; (b) malicious; (c) frivolous and/or vexatious (d) an abuse of process".

[45] There are two major reasons why we are not so persuaded. The first is, that it appears from the judgment of **Lord Bingham** in the **English House of Lords** decision of ***Johnson v Gore Wood & Co [2000] UKHL 65; [2002] at page 30***, that the party who alleges abuse of process bears the onus of proving the abuse. In our view, the Respondents are some distance away from discharging this onus.

[46] The second is that the detailed facts recited in paragraphs 4 to 26 of this judgment are not consistent with the conclusion that the Appellants application for leave to appeal to the CCJ may be characterized as being "(a) perverse; (b) malicious; (c) frivolous and/or vexatious (d) an abuse of process" as is urged by Counsel for the Respondents. These facts reveal that numerous attempts were made by the Appellant to settle costs starting as early as with a letter dated 24 June 2010 from Counsel for the Appellant to Counsel for the Respondents and continuing up to 8 November 2010; that, once it appeared that costs could not be agreed, three letters were written variously on 9 August 2010, 28 August 2010 and 8 November 2010 by Counsel for the Appellant to Counsel for the Respondents requesting the Respondents to proceed to have costs taxed and that the Respondents did not reply to any of these letters nor proceed to taxation; that it is only after the Appellant filed its Application for a Variation on 16 November 2010 that the Respondents filed its Bill of Costs and obtained a date for taxation of costs; that after this Court adjourned on the 25 November 2010 to allow the parties an opportunity to reach an agreement on a reasonable amount of costs to be paid into Court, Counsel for the Respondents insisted on negotiating only the actual payment of costs of the appeal to the Respondents contrary to what this Court ordered.

[47] For these reasons, then, we do not feel that we can justify the exercise of the inherent jurisdiction to deny the Appellant "as of right" leave on the basis that his application for leave is an abuse of process. It has not been

demonstrated that there was any element of oppression, perversity, in the sense of a claim which warrants the description “frivolous and vexatious”, or pure malice as is required by ***LOP Investments***.

Procedural Matters Relative to Leave “As of Right”

[48] The procedural requirements for an “as of right” appeal from a local Court of Appeal to the CCJ is to be found in Rule 10.3 (2) of the CCJ Rules. This Rule provides that where an appeal is claimed “as of right”, the application to the Court below (that is the Court of Appeal) for leave shall:

> 10.3 (2) (a) identify precisely the constitutional or statutory provision under which the right of appeal is claimed;
>
> 10.3 (2) (b) state succinctly such facts as may be necessary in order to demonstrate that the applicant is entitled to appeal under the provision so identified;
>
> 10.3 (2) (c) be signed by the applicant or his attorney at law.

[49] We are of the view that the appellant’s application clearly satisfies the requirements of Rule 10.3 (2) (a) and 10.3 (2) (c) in that the application identifies **section 6 (a)** of **the CCJ Act** as the statutory provision under which the right of appeal is claimed and is signed by the Attorney at Law for the Appellant. It is not immediately obvious, however, whether the application states succinctly the facts which are necessary to demonstrate that the Appellant is entitled to appeal so as to satisfy Rule 10.3 (2) (b). Whether or not it does must depend on what that sub-rule means.

[50] In our view, Rule 10.3 (2) (b) cannot be interpreted as limiting the amount of facts that may be stated in any given application. On the contrary, it allows all such facts as are necessary in order to demonstrate that the applicant has a right to appeal to be stated in an application. The stipulation in Rule 10.3 (2) (a) is that facts which are necessary in order to demonstrate that the applicant has a right to appeal must be succinctly stated. Rule 10.3 (2) (b) therefore allows that the facts necessary to demonstrate a right of appeal will vary from one case to the other, but stipulates that, whatever the volume of facts necessary in any given case, these facts must be succinctly expressed.

[51] Given this interpretation of Rule 10.3 (2) (b), this Court is of the view that the application in this case does not offend this Rule. It states clearly and concisely facts necessary to demonstrate that the appeal is in respect of a matter which involves a dispute on appeal where the matter is of a value of not less than $18,250.00 and that the matter also involves directly or indirectly a claim or question respecting property or a right of the aforesaid value. It also states succinctly facts, which in the circumstances of this case, are necessary to demonstrate that the right to appeal is not defeated for being oppressive, perverse, in the sense of being a claim which warrants the description “frivolous and vexatious”, or pure malicious. Much of the statements of facts in the Appellant’s application are necessary for this reason.

Appeal to the CCJ pursuant to Section 7 of the CCJ Act

[52] **Section 7** of **the CCJ Act** provides as follows:

> “An appeal shall lie to the Court with the leave of the Court of Appeal
>
> (a) in civil proceedings where, in the opinion of the Court of Appeal, the question is one by reason of its great general or public importance or otherwise, ought to be submitted to the Court;
>
> (b) in such other cases as may be prescribed by any law.”

[53] Counsel for the Appellant contends that this Court ought to grant leave to the CCJ under this section in this case for two reasons. The first is that the appeal raises questions of great general importance to the administration of the courts in Barbados. The second reason adduced by Counsel for the Appellant is that the appeal raises questions which should in the opinion of this Court acting reasonably be submitted to the CCJ.

[54] We agree with Counsel for the Respondents that the matters cited by Counsel for the Appellant as being of great general importance do not reach the high standard contemplated by **section 7** of **the CCJ Act**. The Appellant’s application for leave under this section must therefore fail.

Respondents’ Amended Cross Notice of Application to Strikeout Appellant’s Notice of Application and the Worrell Affidavit

[55] On 18 March 2011, the respondents filed an Amended Cross Notice of Application to, *inter alia*, strikeout the Appellant’s Amended Notice of Application and the affidavit of Mrs. Leodean Worrell filed in support thereof. In their cross notice, the Respondents sought orders that the Appellant’s application be denied on the following grounds:

(i) that the appellant's application amounts to an attempt "to appeal paragraph 2 of the Order of [sic] Court of Appeal made on the 11th June, 2010 out of time and, as such, amounts to a collateral attack on the Order in respect of which the Court of Appeal is res judicata";

(ii) that, in the circumstances of this case, no appeal lies as of right in favour of the Appellant;

(iii) that the Appellant's application does not comply with Rule 10.3 (2) (b) of the CCJ (Appellate Jurisdiction) (Amendment) Rules 2008 in that the appellant has not stated such facts as may be necessary in order to demonstrate that it is entitled to appeal under section 6 (a) of the CCJ Act.

(iv) that the Appellant's application for leave under section 7 of the CCJ Act does not comply with Rule 10.3 (3) (a) of the CCJ (Appellate Jurisdiction) (Amendment) Rules 2008 in that point of law which the CCJ is to determine is not stated in the application; the application does not state such facts as may be necessary in order to enable this Court to determine whether leave ought to be granted; the questions raised in the application are not of great and/or public importance or otherwise, such that they ought to be submitted to the CCJ.

[56] The Respondents' cross notice further or alternatively seeks orders that the following paragraphs of the Appellant's application be struck out:

(i) paragraph 2 on the ground that there is no evidence whatsoever on the record that the Court of Appeal reversed itself or made contradictory orders as alleged thereat and that the orders made by the Court of Appeal are clear and "have been settled by the Court and perfected".

(ii) paragraphs 4 to 18 on the ground "that the matters referred to therein relate to the proceedings in relation to the said Order of the Court of Appeal made on 11th June, 2010 which are not relevant to the instant application for leave to appeal and in respect of which the Intended appellant is out of time as regards any appeal therefrom; and/or that the instant application is framed for leave to appeal the Order of the Court of Appeal made on the 1st December, 2010, whereas matters referred to in paragraph 4 to 18 are directed at an appeal of the Order of the Court of Appeal made on 11th June, 2010; that the