

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

**Civil Appeal Nos. 17 of 2001,
- of 2006 and 21 of 2006**

BETWEEN:

MARJORIE ILMA KNOX

**APPELLANT/JUDGMENT
DEBTOR**

V

**JOHN VERE EVELYN DEANE
ERIC ASHBY BENTHAM DEANE**

**FIRST RESPONDENT
SECOND RESPONDENT/FIRST
JUDGMENT CREDITOR**

**OWEN BASIL KEITH DEANE
ELIZABETH TESS ROHMANN
LYNETTE RACHEL DEANE
MURIEL EILEEN DEANE
OWEN GORDON FINLAY DEANE
ERIC IAIN STUART DEANE
KINGSLAND ESTATES LIMITED**

**THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT
SIXTH RESPONDENT
SEVENTH RESPONDENT
EIGHTH RESPONDENT
NINTH RESPONDENT/
GARNISHEE**

CLASSIC INVESTMENTS LIMITED

**TENTH RESPONDENT/SECOND
JUDGMENT CREDITOR**

PHILIP VERNON NICHOLLS

ELEVENTH RESPONDENT

**BEFORE: The Hon. Sherman R. Moore, CHB, The Hon. Sandra P. Mason
and The Hon. Andrew D. Burgess, Justices of Appeal.**

2014: May 26

2015: June 19; October 21

**Mr. Alair P. Shepherd, QC in association with Mr. Phillip McWatt for the
Appellant.**

**Mr. Leslie F. Haynes, QC on behalf of Kingsland Estates Limited the Ninth
Respondent/Garnishee.**

**Mr. G. Clyde Turney, QC in association with Ms. Doria M. Moore on behalf
of Eric Ashby Bentham Deane and Classic Investments Limited, the Second
and Tenth Respondents/Judgment Creditors.**

DECISION

BURGESS JA:

INTRODUCTION

- [1] This matter concerns three applications filed by Kingsland Estates Ltd (KEL), the ninth respondent in Civil Appeal No. 17 of 2001, Civil Appeal No. - of 2006 and Civil Appeal No. 21 of 2006. Mrs. Majorie Ilma Knox (Mrs. Knox) is the appellant in all of these appeals. The applications seek orders by this Court against dividends payable by KEL to Mrs. Knox, who, KEL alleges is a shareholder in KEL. We would add as a footnote that the second application leaves blank the number of the appeal in which the application is made.
- [2] The three applications raise three potential issues in common. These are, first, whether this Court has jurisdiction to entertain the applications in the first place. If this be answered in the affirmative, then the second and third questions arise as to whether the applications are statute barred and as to whether Mrs. Knox is the owner of the shares on which the dividends were declared. It is for this reason that the applications were heard together.
- [3] We begin by outlining the background to the three applications.

BACKGROUND TO THE APPLICATIONS

1. Civil Appeal No. 6 of 2010

- [4] In all three applications, orders are sought pending the determination of Civil Appeal No. 6 of 2010. That appeal is therefore important background to these applications. Accordingly, we consider it advantageous to set out the relevant facts relating to that appeal at the very beginning.
- [5] On 29 June 2010, KEL declared a dividend. On that same date, Mr. Eric A Deane (now deceased) (Mr. Deane) and Classic Investments Ltd (Classic) applied for an order to garnish a portion of the dividend payable to Mrs. Knox for sums due to them being the costs awarded to them in HCA 1805 of 1998, “M I Knox v Eric AB Deane”.
- [6] On 2 July 2010, **Reifer J** made an *ex parte* garnishee order *nisi*.
- [7] On 13 July 2010, KEL applied by affidavit for an order that KEL set off the sum of \$284,016.75 with interest at the rate of 8% from 3 April 2006 and that Mrs. Knox’s share of the 2010 dividend should be debited by that said sum.
- [8] On 12 August 2010, the *inter partes* hearing for the garnishee order absolute was heard by **Worrell J**. He ordered that:
- (i) KEL pay to Mr. Deane the sum of \$228,266.76 out of the dividend payable to Mrs. Knox for the financial year 2009/2010;

- (ii) KEL pay to Classic the sum of \$173,452.70 out of the dividend payable to Mrs. Knox for the financial year 2009/2010; and
- (iii) KEL was entitled to set off the sum of \$284,016.75 with interest at the rate of 8% from 3 April 2006 and that that said sum be debited out of the dividend payable to Mrs. Knox for the financial year 2009/2010.

[9] By notice of appeal filed 13 September 2010, Civil Appeal No. 6 of 2010, Mrs. Knox appealed the decision of **Worrell J.** On 17 September 2010, this Court granted Mrs. Knox leave to appeal the order of **Worrell J** and, *inter alia*, ordered that the dividend of \$749,962.50 be paid into Court.

[10] From this appeal arose an interlocutory appeal with respect to security for costs in Civil Appeal No. 6 of 2010 and an appeal therefrom to the Caribbean Court of Justice, CCJ N8 of 2010.

[11] Civil Appeal No. 6 of 2010 has to date not been heard and determined by this Court.

2. Application in Civil Appeal No. 17 of 2001

[12] On 4 October 2013, KEL declared a dividend. This event triggered the filing of this application in Civil Appeal No. 17 of 2001 by KEL on 14 October 2013 for an order that the sum of \$550,000.00 being a portion of the dividend declared by KEL and payable in favour of Mrs. Knox be paid into Court pending resolution of two matters. These are (i) the taxation and final

determination of the bill of costs arising from the order of this Court made on 16 April 2003, and (ii) the determination of Civil Appeal No. 6 of 2010.

[13] We have already given the background to Civil Appeal No. 6 of 2010. We now give the background to the taxation and final determination of the bill of costs arising from the order of this Court made on 16 April 2003.

[14] By originating summons filed 23 October 1998 in HCA 1805 of 1998, Mrs. Knox applied to the court for various reliefs. On 14 June 2001, **Greenidge J**, after a lengthy trial dismissed Mrs. Knox's application. By order made on 7 September 2001, he ordered instead that Mrs. Knox pay the respondent's costs in the action certified fit for two counsel.

[15] By notice of appeal filed 20 June 2001, Mrs. Knox commenced Civil Appeal No. 17 of 2001 against the order of **Greenidge J**. On 16 April 2003, this Court dismissed Mrs. Knox's appeal and ordered that she pay the respondents' costs certified fit for two counsel.

[16] The respondents' bills of costs in the action have been filed but not yet taxed.

3. Application in Civil Appeal No. - of 2006

[17] The declaration by KEL of the dividend on 4 October 2013 also spawned the filing by KEL on 14 October 2013 of the application in "Civil Appeal No. - of 2006" for an order that the sum of \$51,912.50 being a portion of the

dividend declared by KEL on 4 October 2013 and payable in favour of Mrs. Knox be paid into Court pending resolution of two matters. These are (i) the taxation and final determination of the bill of costs arising from the order of this Court made on 16 February 2007, and (ii) the determination of Civil Appeal No. 6 of 2010.

[18] We outline the facts and circumstances of the taxation and final determination of the bill of costs arising from the order of this Court made on 16 February 2007.

[19] By originating summons filed on 3 August 2006, Mrs. Knox commenced an action, HCA 1379 of 2006, against KEL and its then directors seeking various orders pursuant to **sections 228 and 235 of the Companies Act, Cap. 308**. This action has not yet been heard or determined.

[20] In that said action, Mrs. Knox, by interlocutory summons, applied to the court for, *inter alia*, the appointment of a receiver and/or investigator to manage the affairs of KEL and further, that KEL be restrained from selling its lands at Spion Kop & Craigwell to Clermont Green Ltd for the sum of \$20,000,000.00. This summons was heard by **Blackman J** who on 27 November 2006 dismissed the summons and refused Mrs. Knox the relief sought.

[21] By notice of motion filed on 11 December 2006 and returnable on 5 February 2007, Mrs. Knox applied to this Court for leave to appeal the order of **Blackman J.** By summons dated 9 January 2007 and returnable on 5 February 2007, the respondents in the appeal applied to this Court for an order that Mrs. Knox provide security for costs of her appeal in the sum of \$1,500,000.00.

[22] This Court heard Mrs. Knox's application by way of motion on 5 February 2007 and on 16 February 2007, refused leave to appeal and dismissed the appeal with costs certified fit for two counsel. In light of the order refusing leave to appeal, the respondents' application for security for costs was not heard and determined.

4. Application in Civil Appeal No. 21 of 2006

[23] This application is another application which was filed by KEL on 14 October 2013 for an order that the sum of \$61,530.00 being a portion of the dividend declared by KEL on 4 October 2013 and payable in favour of Mrs. Knox be paid into Court pending resolution of two matters. These are (i) the final determination of the bill of costs arising from the order of this Court made on 30 July 2007, and (ii) the determination of Civil Appeal No. 6 of 2010.

- [24] The facts and circumstances of the final determination of the bill of costs arising from the order of this Court made on 30 July 2007 are set out hereafter.
- [25] By application filed on 21 April 2006, KEL sought an order in the High Court for the release of Mrs. Knox's share and interest in certain securities upon payment to Mrs. Knox of the sum of \$62,615.92. On 24 July 2006, **Goodridge J** (as she then was) granted that order. She also directed that upon the payment of the sum of \$28,962.85 with interest thereon into court by KEL, Mrs. Knox execute a release of certain of KEL's properties.
- [26] On 26 July 2006, Mrs. Knox filed a notice of appeal against the order of **Goodridge J**. By summons filed 9 January 2007 returnable on 5 February 2007, the first respondent, Andefan Holdings Ltd (Andefan), applied to this Court for an order that Mrs. Knox give security for costs in this appeal in the sum of \$60,000.00. On 10 January 2007, KEL also filed a summons, returnable on 5 February 2007, applying to this Court for an order that Mrs. Knox give security for costs in this appeal in the sum of \$40,000.00.
- [27] On 9 March 2007, **Moore JA**, sitting as a single judge, ordered that Mrs. Knox give security in the sum of \$25,000.00 for Andefan's costs and \$35,000.00 for KEL's costs occasioned by her appeal. He further ordered

that until such security for costs be given, the appeal would be stayed and that in default of such security the appeal would stand dismissed.

[28] Mrs. Knox failed and/or refused to comply with the orders of **Moore JA** and on 30 July 2007, **Connell JA**, sitting as a single judge, dismissed the notice of appeal and ordered that Mrs. Knox pay both Andefan and KEL's costs to be agreed or taxed certified fit for one counsel.

[29] The bills of costs of the respondents in this matter have been taxed in the total sum of \$61,530.00 and Mrs. Knox has filed an objection to the taxed costs. The objection has not been heard.

INHERENT JURISDICTION ISSUE

[30] It is apparent from the foregoing that none of the applications before this Court is made in any appeal pending before this Court. The application in Civil Appeal No. 17 of 2001 relates to an appeal which was dismissed by this Court in 2003; that in Civil Appeal No. - of 2006, to an appeal which was dismissed on 16 February 2007; and that in Civil Appeal No. 21 of 2006, to a notice of appeal which was dismissed on 30 July 2007. This being the case, a question naturally arises as to whether this Court has jurisdiction to hear any of these applications.

[31] Mr. Haynes QC, counsel for KEL, argues that it does. He maintains that it has inherent jurisdiction to do so. In his written submissions he expounds as follows:

“It is widely recognised that the Court has vested in it an inherent jurisdiction that:

‘...has been defined as being the reserve fund of powers, a residual source of power, which the Court may draw upon as necessary whenever it is equitable to do so, in particular to ensure the observance of due process of law, to prevent vexation or oppression, to do justice between the parties and to secure a fair trial between them.’
[*Halsbury’s Laws of England 4th Ed.*]”

[32] Relying on this authority, Mr. Haynes QC, in his written submissions, continues:

“It is submitted that in the instant case the Court can make the order for payment in under its inherent jurisdiction and that such an order would:

- i. ensure convenience and fairness in these proceedings;
and
- ii. prevent steps being taken that would render judicial proceedings inefficacious; and
- iii. prevent an abuse of the process of the Court; and
- iv. allow the Court to control the proceedings before it.”

[33] Mr. Shepherd QC, counsel for Mrs. Knox, answers these submissions by pointing out that “the jurisdiction of the Court of Appeal relates to appeals

and applications relating to “pending appeals” the court has no jurisdiction in relation to any other matter” and that “[i]n the present applications here (sic) is no pending appeal.” Mr. Shepherd QC does not deny that this Court has vested in it an inherent jurisdiction, but this he contends is exercisable only in relation to appeals or pending appeals. As the applications in this present matter do not relate to any appeal or pending appeal, Mr. Shepherd QC proffers the conclusion that there is no opportunity for this Court to invoke its inherent jurisdiction in these cases.

[34] We agree with the submissions of Mr. Shepherd QC. These are the reasons that persuade our agreement.

[35] This Court is established by **section 80 (1)** of the **Constitution** which confers on it “such jurisdiction, powers and authority” as may be conferred by the **Constitution** or any other law. **Section 52** of the **Supreme Court of Judicature Act, Cap. 117A** makes provision for this Court’s jurisdiction in matters from the High Court, the court in which the matters before us originate. That section provides that “the Court of Appeal has jurisdiction to hear and determine, in accordance with the rules of court, appeals from any judgment or order of the High Court or a judge thereof.” Clearly then, as was pointed out by Mr. Shepherd QC the particular jurisdiction with

which this Court is statutorily endowed in respect of the High Court is to hear and determine appeals from that court's judgments or orders.

[36] That said, it is not in the terrain of dispute that this Court enjoys such power as is necessary to enable it to exercise effectively its statutory jurisdiction to hear and determine appeals, or in any words an inherent or implicit jurisdiction as it was called by Lord Woolf CJ in the English Court of Appeal decision in **Taylor v Lawrence [2003] QB 528**. In the very recent decision of this Court in **Oscar Maloney v Commissioner of Police (2015) (unreported, Magisterial Appeal No. 6 of 2014) (Oscar Maloney)**, **Goodridge JA**, at **para [46]** in the judgment of this Court affirmed the law as follows:

“...this Court, as a superior court, is invested with an inherent jurisdiction which it can exercise to ensure that its authority is upheld, its ability to administer justice is not compromised and its processes and procedures are not obstructed or abused.”

[37] But, it is crucially important to clarify that this Court's inherent jurisdiction cannot be invoked as a substitute for its particular statutory jurisdiction. The inherent jurisdiction must be invoked to fulfil its particular jurisdiction of hearing and determining appeals not to destroy it. **Goodridge JA's** adumbration of this datum in **Oscar Maloney** at **para [47]** bears repetition. She said there:

“In our view, it is first necessary for the Court to have jurisdiction, whether given by statute or by rules of court, to deal with a particular matter, before it can draw on its inherent jurisdiction. We do not consider that a Court’s inherent jurisdiction can be relied upon to help to create a jurisdiction which does not exist.”

[38] There is no doubt that is, and indeed ought to be, the law. In light of this, we have concluded that this Court cannot invoke its inherent jurisdiction to hear applications not made in an appeal or pending appeal before it. For this reason therefore, it follows that the applications ought to be dismissed.

THE OTHER ISSUES

[39] As intimated at **para [2]** of this judgment, if it were determined that this Court possessed jurisdiction to hear these applications, then a second question as to whether the applications are statute barred and a third one as to whether Mrs. Knox is the owner of the shares on which the dividends were declared would arise. As we have concluded that we have no jurisdiction to hear the applications, these other questions are otiose. Consequently, it is unnecessary for us to consider them and we do not make any determination on them.

DISPOSAL

[40] The applications in Civil Appeal No. 17 of 2001, Civil Appeal No. - of 2006 and Civil Appeal No. 21 of 2006 are dismissed. The applicant in these applications will pay costs to the respondent to be assessed if not agreed.

Justice of Appeal

Justice of Appeal

Justice of Appeal