BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Civil Appeal No 8 of 2015

IN THE MATTER OF THE ADMINISTRATIVE JUSTICE ACT CAP. 109B OF THE LAWS OF BARBADOS

AND

IN THE MATTER OF THE PUBLIC SERVICE ACT, 2007-41

AND

IN THE MATTER OF THE GENERAL ORDERS FOR THE PUBLIC SERVICE OF BARBADOS 1970 (REVISED 1997)

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

BERTNUL RICARDO HARRISON — **First Intended Appellant**
NEVILLE CORBIN — **Second Intended Appellant**
KIM RAMSAY-MOORE — **Third Intended Appellant**
MARVIN BREWSTER — **Fourth Intended Appellant**

AND

PERMANENT SECRETARY DIVISION OF ENERGY AND TELECOMMUNICATIONS — **First Intended Respondent**

PERMANENT SECRETARY
OFFICE OF THE ATTORNEY GENERAL **Second Intended Respondent**

PERMANENT SECRETARY
PRIME MINISTER'S OFFICE **Third Intended Respondent**

PERMANENT SECRETARY
MINISTRY OF FOREIGN AFFAIRS **Fourth Intended Respondent**

PERMANENT SECRETARY
TRAINING ADMIISTRATION DIVISION **Fifth Intended Respondent**

PERMANENT SECRETARY
MINISTRY OF THE CIVIL SERVICE **Sixth Intended Respondent**

Before the Honourable Sir Marston Gibson K.A., Chief Justice; the Honourable Andrew D. Burgess; and the Honourable Kaye C. Goodridge, Justices of Appeal

2016: January 6

Mr. Guyson Mayers for the Intended Appellants
Ms. Deirdre Gay-McKenna and Mr. Jared Richards for the Intended Respondents

ORAL DECISION

Delivered by GIBSON CJ:

[1] This is an application for an extension of the time within which to file an appeal against a decision of ***Cornelius J*** dated November 13, 2014. The application is supported by the affidavit of counsel for the Applicants/Intended Appellants sworn to and filed on March 31, 2015.

[2] Counsel did not identify the relevant rule under which the application was made. Moreover, he did not file any written submissions or skeleton arguments setting out the legal basis upon which he proposed to proceed. In the absence of compliance with either **Rules 62.6(1)** or **(2)** of the **Supreme Court (Civil Procedure Rules), 2008** ("**CPR**"), which have set timelines for the filing of a notice of appeal or an application for an extension of the time within which to file the notice of appeal, the Court treated this application as one made under **CPR Rule 62.6(3)** which confers on the Court the discretion to give leave to appeal.

[3] **CPR Rule 62.6(3)** says, that "[n]otwithstanding anything in this rule, the Court or a judge...may at any time for *special reasons* give leave to file and serve a Notice of Appeal" (emphasis added). This Rule was interpreted by the decisions of this Court in ***James Ifill v. The Attorney-General et al***, ***Civil Appeal No. 3 of 2013 (Ifill)***, and ***June Blackman v. Elma Carmen Gittens-Blackman et al***, ***Civil Appeal No. 6 of 2012 (Blackman)***.

[4] As we shall show later, neither individually nor collectively are the reasons advanced by the intended Appellants "special" as understood by the decisions in ***Ifill*** or ***Blackman***. In ***Ifill***, this Court found after taking into account the considerations adumbrated in **CPR Rule 1.1 (1) and (2)** ("the overriding objective") that there were several "special reasons". The first was to be

found "in the language of **Rule 1.1(2)(c) (ii)**, 'the importance of the case.'" (see, ***Ifill***, at para [40]). ***Ifill*** concerned "the general public importance as it relates to the proper application of the provisions of **section 98** of the **Constitution**", a provision which "deals with the removal from office and the imposition of a penalty by way of disciplinary control of public officers by the Governor-General." The Court at para [42] observed that there was little or no Commonwealth Caribbean case law interpreting that provision. The Court found that an additional reason was that such a decision would have the potential of "saving expense" within the language of **CPR Rule 1.1(2)(b)**.

[5] ***Blackman*** involved an appeal from a judgment of 20 December 2011 ordering the delivery up of possession on or before 30 June 2012. The intended appellant filed her application for leave to appeal out of time on 19 June 2012, 11 days before the date by which she was to vacate the property. This Court found that the reasons offered, namely her attorney-at-law's absence from the island, that she had never received a copy of the Order or Judgment and that her daughter had been charged with murder, adding to the immediate stress and dislocation of her affairs, were not special reasons within **Rule 62.6 (3)**. In fact, it was clear that, on the day the decision of ***Cornelius J*** was delivered, the intended appellant's counsel was notified by email of the decision and a copy served on counsel 14 days later. As ***Goodridge JA***

concluded at para [30] after referring to **Rule 42.2**, "there is no doubt that the intended appellant became aware of the court's decision within a reasonable time." Moreover, her Ladyship further noted, the intended appellant's daughter had been charged with murder in March 2012, sometime after the expiry of the time for filing a notice of appeal within **Rule 62.6(1)(c)**.

[6] The reasons proffered by the intended appellants were even less convincing than those in ***Blackman***. Those reasons are contained in paragraphs 3 to 5, 6(e), 7 and 8 of the affidavit of counsel for the Applicants. Paragraphs 3 to 5 of the affidavit state:

> 3. The delay had been incurred because the multiple Claimants took time to consider whether they should appeal the decision, after which their counsel was overwhelmed by other matters preventing him from being able to give the attention demanded to present his best case before the Court of Appeal.
>
> 4. Further, counsel for the Appellants consulted senior Counsel...in an effort to have him join in this case. Commitments of senior Counsel including travel made him unavailable until now.
>
> 5. The case was an application for Judicial Review of the decision of a number of Government departments, particularly the Training Administration Division, to grant the Claimants study leave to pursue the Legal Education Certificate at the Hugh Wooding Law School in Trinidad and Tobago without pay. The Claimants contended that they had a legitimate expectation to receive paid leave as this was the common practice.

[7] Paragraphs 6(e) and 7 then state:

> 6(e). Were the Claimants entitled to have their cases individually considered? The Appellants and I regret the delay incurred and would respectfully ask the Court for an order that I may be at liberty to appeal against the decision of the learned judge notwithstanding the expiry of the time limited for so doing.

> 7. The learned judge decided the case without cross-examination of witnesses so that competing witnesses could be tested. The matter was filed as an urgent application but was adjourned on a number of occasions because the Claimants were at school in Trinidad and all parties, including the Court below, agreed that it was important that the Third Claimant give oral evidence as her evidence opposed to that of the principal defence witness.

[8] Finally, paragraph 8 of the affidavit states that "[a]lthough the Defence admitted that the Claimants had a legitimate expectation, the learned judge found otherwise, although not having heard witnesses that could have given a different view from the Defence Counsel's considered opinion." These were the sole reasons advanced for the delay in filing the appeal.

[9] We agree with counsel for the intended respondents that these were not as much reasons as excuses. We have set them out *in extenso* since to read them is to refute them. However, counsel for the respondents further submitted that, unlike ***Ifill***, the reasons were not special because there was no constitutional component. Counsel read ***Ifill*** to mean that the term "special reasons" in **Rule 62.6(3)** required the presence of a constitutional issue, as was the situation in ***Ifill***, before they could be considered "special."

[10] We wish to state emphatically that nothing in ***Ifill*** should be understood as determining, or even suggesting, that the categories of "special reasons" within the language of **CPR 62.6(3)** are closed. They are not. There is no catalogue of reasons which can be considered "special", neither are "special

reasons" limited to constitutional reasons or issues. Moreover, we also want to make the obverse point, that is, that not every constitutional reason for a failure to comply with the timelines in **Rule 62.6(3)** will be considered a special reason either. ***Ifill*** was decided on its own special facts and decided no more than set forth above.

[11] Accordingly, for the foregoing reasons, the application for leave is dismissed. However, despite the cogent argument of counsel for the intended Respondents, we have determined, exercising our discretion under **Rule 64.6(1)**, that each party shall bear his or her own costs.

Disposal

[12] The application for an extension of time in which to file an appeal is dismissed. There is no order as to costs.