

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**COURT OF APPEAL**

**Magisterial Appeal No. 2 of 2015**

**BETWEEN:**

**SHERYARD DEANE**

**Intended Appellant**

**AND**

**CYNTHIA ALLAMBY**

**Intended Respondent**

**(Duly constituted attorney for  
Vesta Toppin of Cemetery Lane,  
Road View)**

**Before: The Hon. Sir Marston C.D. Gibson, KA, Chief Justice, The Hon. Sandra P. Mason and The Hon. Kaye C. Goodridge, Justices of Appeal.**

**2015: October 14, December 9**

**2016: March 2, October 13**

**Mr. Clement E. Lashley Q.C. and Ms. Honor Chase for the Intended Appellant.**

**Mr. Errol E. Niles for the Intended Respondent.**

**REASONS FOR DECISION**

**GOODRIDGE JA**

**Introduction**

[1] This is an application for an extension of time to file a notice of appeal against an order made by the magistrate of District “E” Magistrate’s Court on 21 July 2015. At the conclusion of the hearing, this Court dismissed the

application with costs to the intended respondent. We now set out below our reasons for so doing.

### **Background**

- [2] The intended respondent commenced ejectment proceedings against the intended appellant by way of a complaint filed on 6 December 2013 in the Magistrate’s Court for District “E”. The matter came on for hearing on 22 April 2015 and was adjourned to 10 June 2015.
- [3] According to the affidavit of the intended appellant, she attended court on 10 June 2015 and requested an adjournment, as her attorney-at-law was unable to attend because he was scheduled to appear in a matter in the High Court. The magistrate adjourned the matter to 21 July 2015. The intended appellant deposed that she “was of the opinion that the date given to me by the Magistrate was an error and that the date of hearing was actually Wednesday, 22<sup>nd</sup> July, 2015”, in light of the fact that the previous dates of hearing were on a Wednesday.
- [4] As a consequence, the intended appellant did not attend court on 21 July 2015 and the magistrate made the order of ejectment, requiring the intended appellant to vacate the house-spot by 22 September 2015.
- [5] The intended appellant stated further that she attended court on 22 July 2015, and went to the clerk’s office where she was informed that the matter was adjourned until 22 September 2015. It was only when the intended

appellant attended court on 22 September 2015 that she was informed by a police constable that judgment had been entered against her.

- [6] On 1 October 2015 the application for extension of time to file notice of appeal was filed by the intended appellant.

**The Law relating to appeals from the Magistrate’s Courts**

- [7] Save in cases of contempt, which is governed by **section 57(7)** of the **Supreme Court of Judicature Act, Cap. 117A**, the jurisdiction of this Court with respect to appeals from the Magistrate’s courts is extensively regulated by **Part XII, sections 238 to 267** of the **Magistrate’s Courts Act, Cap. 116A (Cap. 116A)**. For present purposes, **sections 238 and 240** are of particular relevance.

- [8] **Section 238** of **Cap. 116A** provides, inter alia:

“238 (1) Subject to this Part,

(a) where a magistrate dismisses an information or complaint or refuses to convict or make an order, the informant or complainant may appeal to the Court of Appeal;

(b) where a magistrate convicts or makes an order, the person convicted or against whom the order is made, may appeal to the Court of Appeal against such conviction or order;

(c) where a magistrate gives judgment or makes an order in exercise of his civil jurisdiction, either party to the action in which such judgment was given or order made may appeal to the Court of Appeal.”

[9] **Section 240** of **Cap. 116A** deals specifically with the procedure for initiating an appeal. That section provides:

“240.(1) An appeal shall be commenced by the appellant giving to the clerk notice of such appeal, which may be verbal or in writing in the prescribed form, and if verbal shall be forthwith reduced to writing in the prescribed form by the clerk and signed by the appellant or by his attorney-at-law.

(2) The notice of appeal shall, subject to subsection (3), be given in every case within 7 days after the day on which the magistrate dismissed the information or complaint, convicted or made the order or gave his judgment or decision.

(3) Where the magistrate has adjourned the trial of an information after conviction, the notice of appeal shall be given within 7 days after the day on which the magistrate sentences or otherwise deals with the offender ...”

### **Discussion**

[10] It is evident from the above provisions that a person who is dissatisfied with a conviction, decision, judgment or order of a magistrate has a right of appeal. However, this right is statutorily mandated in **section 240** to be exercised by filing a notice of appeal within 7 days after the day on which the magistrate convicted a person or made a decision, judgment or order.

[11] In **Oscar Maloney v Commissioner of Police, Magisterial Appeal No. 6 of 2014, (Maloney)** this Court decided that **section 240** precludes this Court from entertaining appeals not filed within the prescribed 7 days. The approach taken in **Maloney** is similar to that taken by **Wooding CJ** in the

Court of Appeal of Trinidad and Tobago in **Stanley v Andrews (1963) 5 WIR 457.**

[12] It is clear from the authorities that this Court has no jurisdiction to grant an extension of time.

[13] Assuming that this Court did have that jurisdiction, we are of the opinion that the intended appellant has not given any justifiable reasons why this Court should have exercised that jurisdiction in her favour.

**Disposal**

[14] In the circumstances the application is dismissed with costs to the intended respondent, to be assessed if not agreed.

Chief Justice

Justice of Appeal

Justice of Appeal.