

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Magisterial Application No. 4 of 2017

BETWEEN:

MERLENE DESCAIN

Intended Appellant

AND

BRENDA ALDENE ALLEYNE

Intended Respondent

Before: The Hon Sandra P. Mason, The Hon Andrew D. Burgess and The Hon Kaye C. Goodridge, Justices of Appeal

2017: February 8

April 11

Ms. Bernadette D. Callender for the Intended Appellant

No appearance by the Intended Respondent

DECISION

GOODRIDGE JA

Introduction

[1] This is an application for an extension of time to file a notice of appeal against an order of ejection (the order) made by the magistrate for District "E" (Holetown). On 8 February 2017, after hearing Ms. Callender, counsel for the intended appellant, this Court dismissed the application and made no order as to costs. Our reasons for so doing are now set out below.

Background

- [2] Briefly stated, the intended respondent commenced ejectment proceedings in the magistrate's court in 2011. Those proceedings were the subject of numerous adjournments and were finally concluded when the order was made on 12 October 2016.

The Present Application

- [3] On 6 February 2017, the intended appellant filed an urgent application seeking (i) an extension of time to file an appeal against the order, and (ii) a stay of execution of the order. The application was supported by the affidavit of the intended appellant in which it was alleged, inter alia, that the order was made in the absence of the intended appellant and her counsel who were both unaware that the matter was scheduled to be heard on the particular date.

- [4] In her written submissions, Ms. Callender contended that the order was invalid and was made without jurisdiction. In support of this contention, counsel relied on **section 147 of the Magistrate's Courts Act, Cap. 116A (Cap. 116A)** and **Eugene Leacock v Lorna Griffith [2017] CCJ 1(AJ) (Leacock v Griffith)**.

The Issue

- [5] The sole issue which arises for this Court's determination is whether this Court has the jurisdiction to grant the extension of time.

Discussion and Conclusion

[6] The jurisdiction of this Court to deal with magisterial appeals is regulated by **Part X11, sections 238 to 267 of Cap.116A**. Of particular significance is **section 240(2)** which provides that a notice of appeal must be given within 7 days after the date of the magistrate's order, judgment or decision. Further, there is no provision in **Cap. 116A** which gives to this Court the power to extend the time for the filing of a notice of appeal.

[7] In two recent decisions, namely **Oscar Maloney v Commissioner of Police, Magisterial Appeal No 6 of 2014** and **Sheryard Deane v Cynthia Allamby, Magisterial Appeal No 2 of 2015 (Deane v Allamby)**, this Court decided that it had no jurisdiction to entertain appeals not filed within the prescribed time limit or to grant an extension of time for so doing. This position was confirmed by the Caribbean Court of Justice (CCJ) in its decision given on 23 November 2016 in **Deane v Allamby [2016] CCJ 21 (AJ)** where Sir Dennis Byron President stated:

"[9] The rules governing magisterial appeals are set out in the Magistrate's Courts Act, Cap. 116A, sections 238 to 267. These rules make provision for persons who are dissatisfied with a conviction, decision, judgment or order of a magistrate to have a right of appeal and set out the procedures to be followed. The time limited for appealing is fixed by section 240(2) which prescribes that notice of appeal must be given within 7 days after the order against which it is intended to appeal was made. The statute does not make any provision for granting extensions of time.

[11] We confirm that there is no statutory power to extend the 7-day time limit prescribed by section 240(2) of the 1996 Act, Cap.116A."

[8] Having regard to the foregoing, this Court has no jurisdiction to grant an extension of time to appeal the magistrate's order and the application for a stay of execution must also fail.

[9] There is one final matter. In **Leacock v Griffith** the appellant did not give her notice of appeal against an order of ejection within the prescribed time limit. On application to this Court for an extension of time, this Court erroneously granted the appellant leave to appeal. The appeal was heard and later dismissed. In granting leave and hearing the appeal, this Court assumed a jurisdiction which it did not have and as such the proceedings were in effect a nullity. On appeal to the CCJ the appeal was allowed. However, the jurisdiction point was not addressed in the judgment, even though at para 5 reference was made to the fact that this Court granted the appellant leave to appeal.

Disposal

[10] The application is dismissed. There is no order as to costs.

Justice of Appeal

Justice of Appeal

Justice of Appeal