BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Magisterial Appeals Nos. 8, 9 and 10 of 2014

BETWEEN:

SANDY LANE HOTEL CO. LIMITED **Appellant**

AND

WAYNE JOHNSON **Respondents**
CHARMAINE POYER
JULIANNA CATO

Before: The Hon. Sandra P. Mason, Chief Justice (Ag), The Hon. Andrew D. Burgess and The Hon. Kaye C. Goodridge, Justices of Appeal.

2017: February 9, March 16,
May 23

Mr. Satcha S.C.S. Kissoon and Mr. Philip McWatt for the Appellant.

Mr. Edmund King QC for the Respondents.

DECISION

GOODRIDGE JA

Introduction

[1] On 8 October 2014, the appellant filed three notices of appeal against the decision of the magistrate for District "E", Holetown, given on 24

September 2014, in which she gave judgment in favour of the respondents in a wrongful dismissal action.

[2] The facts reveal that the respondents had been employed by the appellant at its hotel in Sandy Lane, St James. On 30 January 2012, the respondents were summoned to a meeting with the director of food and beverage, who informed them that the appellant had certain concerns with the manner in which they were discharging their duties. The respondents were later handed letters of dismissal terminating their services.

[3] Subsequently, the respondents brought their actions for wrongful dismissal in the magistrate's court.

[4] When this matter first came on for hearing before this Court on 9 February 2017, Mr. Satcha Kissoon, counsel for the appellant, informed the Court that he had been unable to file written submissions because the magistrate's reasons had only been recently obtained. The Court then raised with counsel the question whether the appeals were properly before the Court, in light of the recent decision of the **Caribbean Court of Justice (CCJ)** in **Deane v Allamby [2016] CCJ 21** (**AJ**) (**Deane v Allamby**). The matter was then adjourned so that written submissions could be filed in this regard.

[5] On 22 February 2017, the appellant filed its written submissions. The appellant also filed a notice of application on the same date for an order that (i) it be granted leave to appeal pursuant to **Order 22** of the **Magistrate's Court (Civil Procedure) Rules, 1958 (**the **1958 Rules)**; and

(ii) if the Court was so minded to grant leave, that the notice of appeal filed on 8 October 2014 be permitted to stand as the notice of appeal in the proceedings. The application was supported by the affidavit of counsel.

[6] In his affidavit in support, Mr. Kissoon deposed that he was present in court when the magistrate delivered her decision. He indicated to the magistrate that his client would appeal, and asked for and was granted a stay of execution for 6 weeks.

[7] Counsel also stated that, having received instructions from his client, he drafted documents and circulated them to the client and senior counsel. He continued that he advised his client that it had 28 days in which to file its appeal, having regard to **Part 62.6(1)(c)** of the **CPR**.

[8] According to paragraph 7 of the affidavit, by letter dated 1 October 2014, Mr. Kissoon wrote to the magistrate and gave her "written notice that my client was appealing the said matter and would require reasons in advance of settling its grounds of appeal." This letter was hand delivered to the clerk of the magistrate's court on the same day.

[9] Counsel pointed out that the magistrate's reasons for her decision only came into his possession on 27 January 2017, despite having written for the same since 1 October 2014.

[10] Mr. Kissoon further stated that "up to the time of the filing of this application, I still believe that the applicable law that governs this appeal is the said Part 62.6(1)(c) of the CPR."

[11] On 16 March 2017, this Court, after hearing the submissions of counsel, dismissed the appeals on the basis that it had no jurisdiction to (i) hear those appeals, having regard to **section 240** of the **Magistrate's Courts Act, Cap. 116A** (**Cap.116A**); or (ii) grant an extension of time for appealing.

[12] By letter dated 30 March 2017, and received by the Court of Appeal registry on 5 April 2017, counsel for the appellant requested this Court to provide written reasons for its decision. We now set out those reasons below.

The Submissions of Counsel

[13] Mr. Kissoon's arguments may be summarised as follows:

1. There is a conflict between **section 240(2)** and **Part 62** of the **CPR** regarding the time for filing a magisterial appeal, in that the former provides for the giving of notice to the magistrate's clerk within 7 days, while the latter provides for the filing of a notice of appeal within 28 days. The most logical interpretation is that the **CPR** applies and that **section 240** was intended to be repealed and not followed in relation to magisterial appeals. Therefore the notices were filed within the prescribed time.
2. In the event that this Court forms the view that **Cap. 116A** is still in force for commencing appeals, then counsel's letter of 1 October 2014 to the magistrate gave the requisite notice and the appeals are in time.

3. If the Court is not persuaded by this argument, it is respectfully submitted that the **CCJ's** decision in **Deane v. Allamby** that there is no statutory power to extend the 7 day time limit was made per incuriam in that no reference was made to **section 30(3)(a)** of the **Interpretation Act**, **Cap.1 (Cap.1).** Relying on this section, he submitted that the **1958 Rules** are still in force and therefore the Court has power to grant an extension of time.

[14] In response to Mr. Kissoon's arguments, Mr. Edmund King QC, counsel for the respondent, made the following submissions:

1. There is no conflict between **Cap. 116A** and **Part 62** because the effect of **section 30(3)(a)** of **Cap. 1** is that the prescribed forms under the **1958 Rules** apply in so for as they are not inconsistent with anything in the new legislation.
2. Even though counsel deposed in his affidavit that he gave verbal notice to the magistrate that the appellant was appealing, there is nothing in the record "to indicate that this is so".
3. The application for an extension of time under **Order 22 r. 7** of the **1958 Rules** "is inconsistent with the finding of the **CCJ**, that there is nothing in the Magistrate's Court Act which permits this court to give an extension of time. So, that is … that 22(7) will obviously be a provision inconsistent with the Act so it can't survive and his application then will fail."

Discussion and Conclusion
Section 240 of Cap. 116A

[15] This Court's jurisdiction and powers to hear appeals from the Magistrate's courts is governed by **sections 238** to **267** of **Cap. 116A**.

[16] With specific reference to notice of appeal, **section 240** provides that an appeal shall be commenced by the appellant giving to the clerk notice of such appeal, which may be verbal or if in writing, in the prescribed form. If the notice is verbal, then the clerk shall forthwith reduce it to writing in the prescribed form. The notice must be signed by the appellant or by his attorney-at-law. In any event, **Cap. 116A** mandates that the notice of appeal shall be given within 7 days after the day on which the magistrate's decision was rendered.

[17] Recently, the **CCJ** considered the issue of this Court's jurisdiction in relation to magisterial appeals in **Deane v Allamby**. There *Byron P* stated at paras 9 to 11:

> "[9] The rules governing magisterial appeals are set out in the Magistrate's Courts Act, Cap. 116A, sections 238 to 267. There 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.
>
> [10] **Goodridge JA** relied upon a judgment she had previously given in *Oscar Maloney v. Commissioner of*

> *Police* Magisterial Appeal No. 6 of 2014, as well as the judgement of Wooding CJ in the Court of Appeal of Trinidad and Tobago in *Stanley v. Andrews*. These cases elucidate the well-established principle that powers conferred by statute must be read subject to the limitations and conditions prescribed by statute; and that where a time limit is prescribed by statute, the court does not have power to extend the time unless the statute gives it the power to do so.
>
> [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."

[18] It is clear then from **Deane v. Allamby**, that the rules governing magisterial appeals to this Court are to be found in **sections 238** to **267** and not **rule 62** of **CPR**. That being the case, we cannot agree with counsel that the appellant had 28 days in which to file notices of appeal.

[19] We must now determine whether the appellant complied with **section 240(2)**. According to this section, the appellant must give verbal or written notice to the clerk. It must be stressed that the giving of notice of appeal is not a mere formality but is a condition precedent to the commencement of the appeal.

[20] Counsel has submitted that after he indicated to the magistrate that his client would be appealing and asked for a 6 week stay of execution (which was granted) this amounted to verbal notice. This contention ignores the requirement that the notice must be given to the clerk, not to the magistrate. There is no evidence that verbal notice was given to the clerk, who would

then have been compelled to reduce that verbal notice to writing and have it signed by the appellant's counsel.

[21] Counsel also contended that the letter of 1 October 2014 was adequate written notice. However, the letter cannot be treated as notice in the prescribed form, for it was addressed to the magistrate, not to the clerk. The letter gave the magistrate notice that "my client is appealing the said matter and will require the court's reasons in advance of settling its grounds of appeal."

[22] Having regard to the foregoing, we have concluded that the appellant did not comply with the requirements of **section 240(2)** when it filed notices of appeal on 8 October 2014.

The Power to Grant an Extension of Time

[23] As we have already noted, the **CCJ** in **Deane v. Allamby** confirmed at paragraph 11 that there is no statutory power to extend the prescribed 7 day time limit. We however consider Mr. Kissoon's argument in relation to **Order 22 r. 7**. Mr. Kissoon argued that as a consequence of **section 30(3)(a)** of **Cap. 1**, **Order 22 r. 7** of the **1958 Rules** confers on this Court a power to grant an extension of time.

[24] **Order 22 r. 7** of the **1958 Rules** provides:

> "7. Parties may by consent enlarge or abridge any of the times fixed by these rules for taking any steps or filing any document, or giving any notice, in any action or matter. Where such consent cannot be obtained, either party may apply to the court, on notice to the non-

> consenting party, for an order to effect the object sought to have been obtained with the consent of the other party, and such order may be made although the application for the order is not made until after the expiration of the time allowed or appointed."

[25] Assuming that **section 30(3)(a)** has the effect of importing these Rules, there would be two preconditions which must be met before this Court could exercise the alleged jurisdiction: (i) a time for giving of notice must be specified in the Rules, and (ii) there must be some evidence of an attempt by the appellant to procure the consent of the respondent. Provided these preconditions are met, then this Court could entertain an application for the exercise of its discretion to extend time.

[26] The appellant has not satisfied the first condition, in that it has not shown that there is a time specified in the Rules. As to the second condition, there is no evidence of an attempt by the appellant to procure the consent of the respondent. In view of the fact that the two preconditions have not been met, this Court would not be in a position to entertain an application under **Order 22 r. 7**.

Disposal

[27] The notices of appeal having not been filed within the 7 day limit,

the appeals are dismissed. Costs to the respondents to be assessed if not agreed.

Chief Justice (Ag)

Justice of Appeal Justice of Appeal