

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO 7/2015

APPLICATION NO 214/2015

**BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MISS JUSTICE P WILLIAMS JA (AG)**

**BETWEEN MELROSE MORRISON-GREEN APPELLANT
AND DERIQUE SPENCER RESPONDENT**

Earle DeLisser instructed by Caribbean Law Group for the appellant

Ms Susan Hill instructed by Susan Hill & Co for the respondent

17 December 2015

ORAL JUDGMENT

BROOKS JA

[1] This is an application to strike out an appeal from the decision of the learned Resident Magistrate for the parish of Saint Ann, Mr Vaughn Facey, refusing to set aside a default judgment made against the appellant. The application was made as a preliminary objection when the appeal came on for hearing.

[2] The application is based on what the applicant says is the failure of the appellant to comply with orders made at a case management conference in this court on 19 May

2015. Order 2 of those orders required the appellant to file and serve full written submissions and a bundle of authorities on or before 1 September 2015. A bundle of authorities was filed on 31 August 2015 but only the first page of same was served. No submissions were filed.

[3] Curiously, the appellant filed a bundle on 19 June 2015 containing, among others, a document entitled "Affidavit in support of court of appeal". This seemed to contain the arguments in support of the appeal.

[4] Miss Hill, for the applicant, submits that the appellant has shown a disregard for the rules and orders of the court and therefore should not be allowed to present an appeal in those circumstances. She stresses that that is especially so when the appeal has no merit and no real prospect of success.

[5] Mr DeLisser agreed that there had not been strict compliance but argued that it seemed that there was an attempt to comply. He submitted that the appellant should not be punished for the procedural flaws. He said there would be no prejudice for the respondent because the judgment debt had been satisfied.

[6] The procedural defects have been glaring but they do not stand by themselves, they follow on a history of failures and non compliance by the appellant in the Resident Magistrate's Court.

[7] We are of the view that there is also no likelihood of success in the appeal. The learned Resident Magistrate used the correct tests in refusing to set aside the default

judgment. He rejected the excuse given for failure to attend court which led to the default and he found, quite correctly, that there was no affidavit of merits in support of the application, as is required by the authorities.

[8] Bearing all the above in mind, we agree with Miss Hill that this is not a case in which to exercise a discretion in favour of the applicant. This appeal must be struck out for failure to comply with the orders of the court.

ORDER

- (1) Appeal is struck out for failure to comply with the orders of the court.
- (2) Costs to the respondent, Derique Spencer, to be taxed if not agreed.