

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO 1/2015**

**MOTION NO 14/2015**

**BEFORE: THE HON MR JUSTICE DUKHARAN JA  
THE HON MR JUSTICE BROOKS JA  
THE HON MISS JUSTICE P WILLIAMS JA (AG)**

**BETWEEN ALEXANDER OKUONGHAE APPLICANT  
AND UNIVERSITY OF TECHNOLOGY JAMAICA RESPONDENT**

**Applicant in person**

**Gavin Goffe and Jermaine Case instructed by Myers Fletcher and Gordon for the respondent**

**5 October 2015**

**ORAL JUDGMENT**

**BROOKS JA**

[1] On 29 May 2015, this court refused an application by Mr Alexander Okuonghae for permission to appeal from the decision of McDonald-Bishop J (as she then was) handed down on 19 September 2014. The court ruled that Mr Okuonghae had proceeded incorrectly before it, in that he had a right of appeal and there was no basis on which he could again be given permission to appeal.

[2] In the course of its judgment, the court noted that Mr Okuonghae had filed his notice of appeal outside of the time permitted by the Court of Appeal Rules (CAR). The court, in an attempt to assist Mr Okuonghae, since he was appearing in person, suggested that the proper course to be pursued was for him to apply for an extension of time in which to file his notice and grounds of appeal. Mr Okuonghae has ignored that guidance and has instead filed the present application for leave to appeal to Her Majesty in Council from the decision of this court.

[3] His application asserts that there is an appeal as of right under section 110(1)(a) of the Constitution. It also seems to suggest that there is a basis for a referral to Her Majesty in Council on the basis of section 110(2)(a), which speaks to matters of general or public importance. The notice of motion asserts that the issue in dispute raises “an arguable point of law of general public importance”.

[4] Mr Okuonghae cannot succeed on either of these bases. Before stating the reasons for his failure, the decision of this court, which was handed down on 29 May 2015, will, for clarity, be set out:

- “1. The application for permission to appeal is dismissed.
2. Costs to the respondent to be agreed or taxed.”

[5] The reason for his failure to meet the requirements of section 110(1)(a) is that the decision of this court was not a final decision in civil proceedings. It was an application for permission to appeal. The application not having satisfied that

requirement, Mr Okuonghae has no appeal as of right to Her Majesty in Council (see **Ledgister and Others v Bank of Nova Scotia Jamaica Limited** [2014] JMCA App 1, at paragraph [15]).

[6] There are two aspects to his failure to meet the requirements of section 110(2). The first is that the decision of this court, from which Mr Okuonghae seeks leave to appeal, concerns a plain, straightforward rule of this court, concerning the times allowed for filing a notice of appeal in this court. The decision does not involve, as section 110(2)(a) requires, a question of “great general or public importance”. Nor can it be said that it is otherwise qualified to be submitted to Her Majesty in Council.

[7] The relevant rule considered by the decision is rule 1.11 of the CAR. It states:

“(1) The notice of appeal must be filed at the registry and served in accordance with rule 1.15-

(a) in the case of a procedural appeal, within 7 days of the date the decision appealed against was made;

(b) where permission is required, within 14 days of the date when such permission was granted; or

(c) in the case of any other appeal within 42 days of the date when the order or judgment appealed against was served on the appellant.

(2) The court below may extend the times set out in paragraph (1).”

[8] Phillips JA, in her judgment in respect of Mr Okuonghae’s application for permission to appeal, was characteristically careful in explaining the provision in rule

1.11 that applied to him. The learned judge stated the pith of the decision at paragraph [31] of her judgment when she said:

“The judgment of McDonald-Bishop J being final, the applicant has a right of appeal to this court and does not require permission to appeal. His notice of appeal, however, having been filed on 12 January 2015 would have been outside the 42 days as required by the CAR as it ought to have been filed before 1 November 2014. The applicant would therefore have required an extension of time in order to file, and pursue his appeal. Williams J was correct in finding that the applicant’s application in the court below for permission to appeal was misconceived.”

[9] The learned judge of appeal, recognising that Mr Okuonghae was representing himself, went further and outlined the step that he was to have taken thereafter. She said at paragraph [32]:

“In my view, as the applicant acts in person, the overriding objective would demand, in the interests of justice, equity and fairness that he be given an opportunity to file the proper application namely, for an extension of time to appeal, as although he had endeavoured to comply with the rules, he was misguided. It is true though that inspite [sic] of having received correct advice from Mr Goffe [counsel for the respondent] as to how to proceed in this court, he refused to follow it. However, if he is interested in pursuing the matter in the Court of Appeal he will have no choice but to file the appropriate application for an extension of time to file the notice and grounds of appeal....”

[10] Unfortunately, Mr Okuonghae again chose to disregard correct legal advice, and has proceeded instead with the application presently before the court.

[11] The second point to be made in respect of the attempt to pursue an application under section 110(2) is that the substantive issue which was before McDonald-Bishop J,

is not the subject matter of the decision of this court. It is to be noted that both subsections (1) and (2) of section 110 speak to appeals to Her Majesty in Council being from decisions of this court. Both subsections commence with the words "An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council". McDonald-Bishop J's decision, not being a decision of this court, does not qualify for consideration in the context of section 110(2).

[12] Mr Okuonghae's application for leave to appeal to Her Majesty in Council must therefore fail.

### **Order**

[13] Based on the above reasoning the orders are:

- (1) The application for leave to appeal to Her Majesty in Council is refused.
- (2) Costs to the respondent to be taxed if not agreed.
- (3) The costs of this application and the costs of the application which was determined on 29 May 2015 are to be paid before the applicant may file any further application in this court.