JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 13 OF 2005

BETWEEN:	**ALCOA MINERALS OF JAMAICA LLC.**	**APPELLANT**
AND	**PAUL REID**	**RESPONDENT**

PROCEDURAL APPEAL

IN CHAMBERS

BEFORE: THE HON. MR. JUSTICE K. HARRISON, J.A.

Written submissions by John Vassell, Q.C., instructed by Dunncox for the Appellant

December 12, 2005

K. Harrison J.A:

The matter before me is a Procedural Appeal filed 31st January 2005. Notice of Appeal was served on the Attorney-at-Law for the respondent on the 31st January 2005 and a photocopy of this document exhibiting an admission of service on the Respondent was filed in the Registry of the Court of Appeal. No submissions are filed in opposition (Rule 2.4(2) – Court of Appeal Rules 2002). Although the appeal was filed in January 2005, it could not be proceeded with until certain queries were dealt with by the appellant's Attorneys. Evidence of

service of the Notice of Appeal has been supplied as well as a copy of the Order that has been appealed.

I have before me the written submissions of the Appellant.

The appeal concerns an order made by Campbell, J. at a case management conference on the 20th January 2005. At that time, the learned judge had before him, the Statement of Claim and Defence in the action.

The facts reveal that the claimant was employed to the defendant as a lead analyst. In 1993 he applied for and was granted study leave to do a degree in mechanical engineering. On completion of his studies in 1997, he was not re-employed. He was informed by the defendant that it had no vacancy consistent with his qualifications. On June 3, 1998, the defendant wrote to the Plaintiff and enclosed a cheque payment of $514,317.95 to the claimant for his services. The letter enclosing the cheque states inter alia:

> "Re redundancy payment
>
> Further to our letter dated September 24, 1997, enclosed is our cheque #308277 for $514,317.95 representing redundancy payment for the period July 01, 1985 to September 24, 1997.
>
> .....
>
> We would like to thank you for your service to Jamalco and wish you all the best in your future endeavours.
>
> Sgd. Rhena I. Gregory (Miss)
>
> Human Resources Administrator."

The claimant nevertheless filed suit on the 20th January 2000, seeking damages against the defendant for damages from wrongful dismissal in the sum of $131,823.18 and for redundancy pay in the sum of $1,186,408.60. The Statement of Claim also bears the date 20th January 2000.

A Defence was filed on the 5th June 2000 denying certain allegations. At paragraph 6, it is alleged: "Alternatively, the Plaintiff (sic) states that the Defendant made a payment to the Plaintiff in the net sum of $514,317.95 on the 14th July 1998 in relation to the Plaintiff's services with the Defendant and the Defendant states that its liability to him, if any, was wholly discharged". No Reply was filed to this Defence.

The written submissions of the appellant have revealed that Counsel for the Claimant at the hearing of the case management conference, had produced to the learned Judge in Chambers, the letter dated June 3, 1998 which had enclosed the abovementioned cheque. Counsel requested that it be re-issued since it had become stale-dated. That request was opposed by the defendant but the learned Judge nevertheless made an order for the defendant to pay the sum of $514,317.95 to the plaintiff within 30 days of the order.

The defendant being dissatisfied with the order made by the learned judge lodged an appeal and filed the following ground of appeal:

> "The learned judge failed to appreciate that the claimant's application was essentially one for judgment for the sum of $514,317.97 and that there was no application before him for such an Order or any grounds on which it could properly have been given"

In his written submissions Mr. Vassell, Q.C., submitted:

> "1. The Court, in effect, made an order for judgment in favour of the claimant in the sum of $514,317.95 when there was no application in writing before him for such an order or any grounds to support it. There would have had to be an application for, and grounds to support an Order for summary judgment and/or an Order striking out the Defence in whole or in part, or an Order for judgment upon an admission in the Defence for an Order such as that made herein to be justifiable.
>
> 2. The letter of June 3, 1998 does not amount to an admission of liability to make a redundancy payment. When the Court was informed by Counsel that the sum of $514,317.95 was offered to the claimant in full and final settlement of his claim the Court ought either to have dismissed the application or adjourned it to give the Appellant an opportunity to adduce documentary or other evidence which supports its position.
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> 3. If the Respondent construed the letter of June 3, 1998 as containing an admission, one would have expected him to file a Reply to the Defence stating so.
>
> 4. The Respondent fully appreciated that the offer of $514,317.95 was a full and final settlement offer made in circumstances where the Appellant was contending that he did not, during the period on study leave, have a subsisting contract of employment. The Defendant's letter of 24th September, 1997 referred to in the Statement of Claim makes plain that the Appellant treated the Claimant as having been released from employment when he went on study leave. The respondent rejected the appellant's offer and filed suit for his full claim. If the respondent had thought it open to him to accept the offer as part-payment, he would have done so and sued only for the balance over the admitted amount.

> 5. The Order of the Court effectively determines all the issues in the case in favour of the Respondent subject only to assessment of the quantum of the claims made – this without proper application, evidence or trial."

Now, Rule 26.1 of the Civil Procedure Rules, 2002, sets out the court's general powers of management and at 26.2 there is provision whereby the court may make orders of it own initiative. The facts, as outlined by the appellant, reveal that it was the plaintiff's Counsel who moved the court on the 20th January 2005, to make the order for the cheque to be re-issued since it was stale-dated. That application was opposed and I would have every reason to believe that it was rigorously done. The parties had reached a stage where issue was apparently joined. The defendant/appellant made a payment and pleaded it in its Defence. There was no Reply to this Defence or subsequent correspondence which could suggest that the plaintiff/respondent was treating this payment as a part-payment of the damages. That cheque was in the hands of the plaintiff for several years and he did nothing about it.

It would seem and I agree with Counsel for the appellant, when he submitted, that this request was one for judgment in the sum on the cheque. This was an unusual way to proceed having regard to the fact that there was no application before the learned judge apart from the mere oral request by Counsel for the Plaintiff. The learned judge had definitely fallen into error in acceding to this request. He had no jurisdiction by virtue of the Rules or inherently to have

made such an order. It was procedurally incorrect and such an order cannot stand.

In the circumstances, the appeal is allowed and that part of the order of the 20th January 2005, that the "claimant's application for the payment of $514,317.95 by the defendant be made within 30 days of the order" is set aside.

There shall be costs of this appeal to the appellant to be taxed if not agreed.