

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 93/2014

MOTION NO 12/2015

**BEFORE: THE HON MISS JUSTICE PHILLIPS JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MISS JUSTICE P WILLIAMS JA (AG)**

BETWEEN	BARTHOLOMEW BROWN	1ST APPLICANT
AND	BRIDGETTE BROWN	2ND APPLICANT
AND	JAMAICA NATIONAL BUILDING SOCIETY	RESPONDENT

Written submissions filed by Bartholomew Brown and Bridgette Brown.

29 July 2016

(Considered on paper pursuant to orders nos 2 & 3 in judgment delivered 18 March 2016 and rule 1.7(2)(i) of the Court of Appeal Rules, 2002)

PHILLIPS JA

[1] By way of notice of motion, the applicants had sought leave to appeal against decisions of this court, delivered on 13 April 2015 and 18 March 2016, to Her Majesty in Council, pursuant to sections 110(1) and 110(2) of the Jamaica (Constitution) Order in Council, 1962 (the Constitution).

Background

[2] On 21 April 2015, they filed a notice of motion with an affidavit in support, seeking leave to appeal the decision of this court in SCCA No 93/2014, App No

185/2014, delivered 13 April 2015, to Her Majesty in Council. This application was before the court on 30 November 2015, but was not addressed in the judgment delivered 18 March 2016, because the said notice of motion was not placed among the several documents we were invited to peruse in this matter.

[3] On 21 March 2016, the applicants, taking full advantage of this oversight, filed an amended notice of motion, with an amended affidavit in support, seeking leave to appeal the decision handed down by this court on 18 March 2016, in SCCA No 93/2014, App Nos 126 & 197/2015 ([2016] JMCA App 7), to Her Majesty in Council, on the grounds that: (i) judges failed to hear them, failed to disclose their interests in the matter, were biased and failed to recuse themselves after a complaint was made that they were biased; (ii) Mr Earl Jarrett, General Manager of the respondent, was in breach of section 9(1)(a) and (b) of the Justices of the Peace (Official Seals) Act and the Justice of the Peace (Appointment and Code of Conduct) Rules wherein, he witnessed an affidavit sworn to by Mr Byron Ward, Legal Counsel and Corporate Secretary of the respondent, and that this court in its decision of 18 March 2016, reaffirmed that affidavit; (iii) the decision was interlocutory; (iv) the issue to be decided is of great public importance as it relates to judges failing to disclose their interest in cases and the Justice of the Peace (Appointment and Code of Conduct) Rules, and ought to be submitted to Her Majesty in Council; and (v) the matter is a civil proceeding of value exceeding the value of \$1000.00.

[4] On 24 March 2016, the applicants filed written submissions in support of their amended notice of motion. They argued that the preliminary objection taken by the

respondent's attorney that they were seeking to re-litigate issues already decided, was in fact an abuse of the process of the court, and prejudiced them (the applicants). They again argued that the judges were biased, sitting in their own cause, and had failed to disclose their interest in the matter. They also reiterated that Mr Jarrett, in witnessing Mr Ward's affidavit, was corrupt and acted unlawfully as a Justice of the Peace. The applicants also contended that the judgment of 18 March 2016 is a replica of the judgment of 4 March 2010. They stated that leave to appeal to Her Majesty in Council should be granted because guidance is required, in the instant case, as it relates to the code of conduct of judges and Justices of the Peace.

[5] In a letter to the registrar of this court dated 27 May 2016, Mr Garth McBean, QC for the respondent, indicated that on 26 May 2016, they were served with, *inter alia*, the applicants' amended notice of motion no 12/2015. However, they filed no written submissions in this motion. Mr McBean indicated that, in his view, all the matters complained of had already been determined and should not be re-listed.

[6] The applicants used the fact that the notice of motion to appeal to Her Majesty in Council was not addressed in the judgment of 18 March 2016, to obtain an adjournment of their trial in the court below to 28 May 2018, for four days. It has been brought to our attention that the applicants had filed a re-issued amended notice of appeal for SCCA No 93/2014, App No 185/2014 on 26 May 2016. However, this court has already ruled on the manner in which further matters filed by the applicants are to be dealt with, in the judgment delivered 18 March 2016, and so that appeal will not be canvassed in this judgment.

[7] Although the notice of motion filed 21 April 2015, was before the court on 30 November 2015, the amended notice of motion filed 21 March 2016, sought to challenge both judgments delivered 13 April 2015 and 18 March 2016, and in our view, represents permission for a further application filed by the applicants. As a consequence, this application for leave to appeal to Her Majesty in Council is being dealt with on paper pursuant to:

- (i) orders nos 2 and 3 in the judgment delivered on the 18 March 2016, which prohibited the applicants from making any further applications without first obtaining permission from this court and directed that any further applications made by the applicants are to be considered on paper; and
- (ii) rule 1.7(2)(i) of the Court of Appeal Rules, 2002 (CAR) which states that except where the CAR provides otherwise, this court may deal with a matter without the attendance of any parties.

Discussion and analysis

[8] Appeals from decisions of this court lie to Her Majesty in Council pursuant to section 110 of the Constitution which explicitly provides that:

“110 (1) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases-

- (a) where the matter in dispute on the appeal to Her Majesty in Council is of the value of one

thousand dollars or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of one thousand dollars or upwards, final decisions in any civil proceedings;

- (b) final decisions in proceedings for dissolution or nullity of marriage;
- (c) final decisions in any civil, criminal or other proceedings on questions as to the interpretation of this Constitution; and
- (d) such other cases as may be prescribed by Parliament.

(2) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases-

- (a) where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council, decisions in any civil proceedings; and
- (b) such other cases as may be prescribed by Parliament.

(3) Nothing in this section shall affect any right of Her Majesty to grant special leave to appeal from decisions of the Court of Appeal to Her Majesty in Council in any civil or criminal matter.

(4) The provisions of this section shall be subject to the provisions of subsection (1) of section 44 of this Constitution.

(5) A decision of the Court of Appeal such as is referred to in this section means a decision of that Court on appeal from a Court of Jamaica."

[9] The applicants contend that they are seeking leave to appeal to Her Majesty in Council pursuant to section 110(1) and (2) of the Constitution, and so a determination

must be made as to whether they have satisfied any of the conditions specified in that section.

Section 110(1) of the Constitution

[10] Section 110(1)(a) is the only provision applicable to this appeal. This court in **Georgette Scott v The General Legal Council (Ex parte Errol Cunningham)** SCCA No 118/2008, Motion No 15/2009, delivered 18 December 2009, stated that under section 110(1)(a) an appeal lies to Her Majesty in Council, as of right if it can be shown:

- “(1) that the decision being appealed is a final decision in a civil proceeding and
- (2) that the matter in dispute on the appeal is of the value of one thousand dollars or upwards, or
- (3) that the appeal involves directly or indirectly a claim to or question respecting property of a value of one thousand dollars or upwards, or
- (4) that the appeal involves a right of the value of one thousand dollars or upwards.”

[11] In the judgment delivered on 13 April 2015, (SCCA No 94/2014 App No 185/2014), the applicants had sought to challenge the decision of Panton P, on behalf of the court, which had been made orally on 24 October 2008, refusing an application for extension of time to appeal the decision of Master Lindo, who had granted the respondent’s request for an extension of time to file its defence, on the basis that the learned President had failed to disclose his interest in the matter, and that there was the new discovery that Mr Jarrett had witnessed Mr Ward’s affidavit. (See **Bartholomew Brown and Bridgette Brown v Jamaica National Building**

Society [2016] JMCA App 7, paragraph [5].) Before the delivery of that judgment on 13 April 2015, the applicants had sought to appeal Panton P's order in SCCA No 29/2009, SCCA No 70/2012 and SCCA No 14/2014, App Nos 26 and 99/2014 which were refused. They again renewed this application in SCCA No 93/2014, App Nos 126 and 197/2015 and it was refused in the judgment delivered 18 March 2016.

[12] In the judgments delivered 13 April 2015 and 18 March 2016, no decision was made regarding any property or right in excess of \$1000.00. In fact, orders were made that would restrict the plethora of frivolous applications filed by the applicants and expedite the trial process in the court below. It is evident that the proposed appeal of the decisions made on 13 April 2015 and 18 March 2016, do not emanate from a final decision of this court relating to a matter exceeding \$1000.00. Nor does the proposed appeal satisfy any condition listed in paragraph [7] herein. Consequently, the conditions under section 110(1)(a) have not been satisfied.

Section 110(2) of the Constitution

[13] Section 110(2) stipulates that, leave to appeal must be given by this court where there are questions of great or general public importance. In **Georgette Scott v The General Legal Council**, in interpreting this particular provision of the Constitution, I said at page 9 of the judgment:

“Section 110(2) of the Constitution involves the exercise of the Court's discretion. For this section to be triggered, the Court must be of the opinion that the questions, by reason of their great general and public importance or otherwise, ought to be submitted to Her Majesty in Council.

In construing this section there are three steps. Firstly, there must be the identification of the question(s) involved: the question identified must arise from the judgment of the Court of Appeal, and must be a question, the answer to which is determinative of the appeal. Secondly, it must be demonstrated that the identified question is one of which it can be properly said, arises an issue(s) which require(s) debate before Her Majesty in Council. Thirdly, it is for the applicant to persuade the Court that that question is of great general or public importance or otherwise. Obviously, if the question involved cannot be regarded as subject to serious debate, it cannot be considered one of great general or public importance."

This principle was endorsed in **Hon Gordon Stewart OJ v Senator Noel Sloley Sr and others** [2013] JMCA App 4, where Harris JA in delivering the judgment of the court at paragraph [9] said:

"As can be observed, before granting leave to appeal to Her Majesty in Council, the court must satisfy itself that the proposed appeal raises real disputable issues arising from the judgment of the court, the answers to which are determinative of the substantive issue or issues, on the merits of the appeal. Therefore, the focus of the court must be that the questions to be answered in the proposed appeal, are in the nature of great general or public importance to justify them being worthy of consideration by Her Majesty in Council."

[14] In the instant case, the proposed appeal relates to the applicants personally and cannot be said to be of any "great general or public importance". The issue with regard to the Justice of the Peace (Appointment and Code of Conduct) Rules relates to the applicants' contention that Mr Jarrett was in breach of that rule and is of no great general or public importance. The applicants have said repeatedly, in almost every application made before this court and the court below, that the judges were biased, sitting in their own cause and failed to disclose their interests in matters. However, the

law of bias is well settled and was in fact outlined by Harrison JA in **Bartholomew Brown and Bridgette Brown v Jamaica National Building Society** [2013] JMCA Civ 15 endorsing the well known principle in **Porter and another v Magill** [2002] 1 All ER 465. The principle as stated by Harrison JA was quoted by this court in **Bartholomew Brown and Bridgette Brown v Jamaica National Building Society** [2016] JMCA App 7. However, yet again, the applicants have provided no basis to substantiate any claim that any of the several judges were indeed guilty of bias and improper conduct. As a consequence, the conditions under section 110(2) have not been satisfied as the grounds listed are personal to the applicants and are of no great general or public importance.

Conclusion

[15] Accordingly, the conditions for granting leave to appeal under section 110(1) and 110(2) of the Constitution have not been satisfied. There is no appeal, in respect of the applicants, from any final decision in a civil proceeding, or any matter in dispute that is in excess of \$1000.00. There is also no appeal from a claim or question in respect of property, or any right, of the value of \$1,000.00 or upwards. Moreover, the applicants have raised no question that could be classified as being of great general or public importance which warrants consideration by Her Majesty in Council. Consequently, in my view, the applicants' amended notice of motion seeking leave to appeal the decisions of this court made on 13 April 2015 and 18 March 2016 should be refused.

SINCLAIR-HAYNES JA

[16] I have read, in draft, the judgment of my sister Phillips JA. I agree with her reasoning and conclusion and have nothing further to add.

P WILLIAMS JA (AG)

[17] I too have read the draft judgment of my sister Phillips JA and agree with her reasoning and conclusion.

PHILLIPS JA

ORDER

The amended notice of motion filed 21 March 2016 for leave to appeal to Her Majesty in Council is refused.