[2011] JMCA App 22

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO 185/2010

BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE HIBBERT JA (Ag)

BETWEEN	**WILBERT CHRISTOPHER**	**APPLICANT**
A N D	**ANNA GRACIE**	**1ST RESPONDENT**
A N D	**RATTRAY PATTERSON RATTRAY**	**2ND RESPONDENT**

Wilbert Christopher in person

Andre Earle for the respondents

30 May and 18 November 2011

PANTON P

[1] I have read the reasons for judgment written by my learned brother, Morrison JA. I agree fully with his reasoning and conclusion. The application is devoid of merit.

MORRISON JA

[2] This is an application to discharge the order of Harris JA, sitting as a single judge of this court, made on 21 September 2010. By that order, Harris JA refused an application for extension of time within which to appeal against a decision of Her

Honour Miss Jennes Anderson, Resident Magistrate for the Corporate Area, given on 24 June 2010. In refusing the application, the learned Resident Magistrate observed that "no good reasons have been advanced in the affidavit of the applicant which would permit the grant of an extension of time to appeal".

[3] The applicant, who was the plaintiff in the court below, has for some time been involved in litigation against Alumina Partners of Jamaica ('Alpart'). Alpart is represented in that litigation by the 2nd respondent, a firm of attorneys-at-law, and the 1st respondent is an attorney-at-law and the member of the firm having conduct of various matters on behalf of Alpart.

[4] The applicant alleges that on 4 November 2008, during a hearing before a judge in chambers at the Supreme Court in connection with that litigation, the 1st respondent uttered words which were defamatory of him. As a result, the applicant brought an action against the respondents in the Corporate Area Resident Magistrate's Court, claiming damages in the sum of $250,000.00 for defamation of character arising out of the statement allegedly made by the 1st respondent. This claim came on for hearing on 24 June 2010 before the learned Resident Magistrate and the record of the court for that date indicates as follows:

> "Matter struck out - reason privilege - no costs."

[5] Dissatisfied with this outcome, on 8 July 2010 the applicant went to the Resident Magistrate's Court at Sutton Street for the purpose of filing an appeal. Apparently he had no more than $500.00 cash on him at the time and the clerk of the court with

whom he dealt refused to accept his notice of appeal for filing in the court's office. Mr Christopher alleges that, despite his having urged the clerk to accept the document under the provisions of section 254 of the Judicature (Resident Magistrates) Act ('the Act'), "which allow for the appeal to be filed without the deposit of security of cost" [sic], the clerk maintained that section 256 of the Act applied. The result of this was that the applicant was required to pay the sum of $600.00 as security for the due prosecution of the appeal immediately and, within 14 days of filing the appeal, give security, or have someone give security on his behalf, in the sum of $6000.00, for the payment of any costs.

[6] In the result, Mr Christopher did not lodge his appeal on 8 July 2010, which was the final date for appealing, and he accordingly moved the single judge of this court for an order enlarging the time. In wide-ranging submissions before us, he complained that Harris JA had failed to give the reasons for refusing his application. Further, he maintained strongly that at the hearing before the learned Resident Magistrate he had been deprived of a fair hearing as the magistrate had (i) refused to require that he be given a copy of the authority upon which the respondents relied before her; (ii) failed to give a reason for her decisions to strike out his action; and (iii) failed to appreciate that the authority relied on by the respondent was contrary to section (5)(1)(b) of the Legal Profession Act.

[7] Mr Earle in response submitted that Harris JA had correctly declined to extend time for filing an appeal in this matter because, firstly, the applicant had failed to

explain satisfactorily why the appeal was not filed in time and, secondly, that he had also failed to give any indication as to the merits of the appeal or its prospects of success, "real or fanciful". As regards the second point, Mr Earle submitted that an appeal would in fact have had no real prospect of success, on the basis of the decisions of this court in ***Wilbert Christopher v Attorney General of Jamaica*** (Motion No 26/2001, judgment delivered 9 November 2001) and ***Bodden v Brandon*** [1952-79 CLR 67] (a Cayman Islands Appeal).

[8] In ***Christopher v Attorney General***, the court considered the effect of section 256 of the Act, which requires a prospective appellant from a decision on the civil side in the Resident Magistrates Court to deposit $600.00 as security for the prosecution of the appeal, at the time when notice of appeal is given, no later than 14 days after the judgment being appealed from. In a judgment delivered by Langrin JA (with which Forte P and Smith JA (Ag), as he then was, concurred) this court held, applying its own previous decision in ***Patterson & Nicely v Lynch*** (1973) 12 JLR 1241, that the payment of the sum of $600.00 as security for the due prosecution of an appeal was a condition precedent to the filing of the appeal, and not a mere formality. As a result, the court has no power pursuant to section 12 (2) of the Judicature (Appellate Jurisdiction) Act to extend the time for payment of the said sum and the filing of the appeal. As Langrin JA put it (at page 5), "...if the initial $600.00 has not been paid the court has no other recourse but to dismiss the appeal".

[9] In ***Bodden v Brandon,*** an action was brought against an advocate for slander allegedly committed during the course of proceedings in court. On appeal to this court, it was held that the trial judge had correctly ruled that, even if the words spoken were defamatory and malicious, the advocate was nevertheless protected by the rule of absolute privilege, which was designed to provide protection for any comments made in the course of administration of the law, whether malicious or otherwise.

[10] In my view, both of these authorities are applicable to the instant case, with the result that the application made by the applicant is bound to fail. In the first place, it is clear from ***Christopher v Attorney General***, which is binding on this court, that there is no power in the court to extend the time fixed for payment of the sum of $600.00 and that, in a case in which it has not been paid within time, the appeal must be dismissed. Even if this rule were otherwise, I would be of the view that the applicant has provided no satisfactory explanation for his failure to pay the amount in question on 8 July 2010, which was the last day upon which an appeal could have been lodged.

[11] But secondly, I also consider that ***Bodden v Brandon*** is good law and that for this reason any statement allegedly made by the 1st respondent of and concerning the applicant during a sitting of the court (albeit in chambers) attracts absolute privilege and is therefore not actionable. In my view, there is nothing in section 5(1)(b) of the Legal Profession Act to which Mr Christopher was anxious to refer us, to compel a different conclusion on this point. The fact that an attorney-at-law is also an officer of the court, which is what section 5(1)(b) states him to be, adds or takes away nothing,

in my view, from the applicability of the rule of absolute privilege in these circumstances. Indeed, one of the explicit justifications of the rule is, as Fry LJ put it in the leading older case of ***Munster v Lamb*** (1883) 11 QBD 588, 606, "the fear that if the rule were otherwise, numerous actions would be brought against persons who were merely discharging their duty".

[12] I would therefore dismiss this application, with costs to the respondents, to be taxed if not agreed.

HIBBERT JA (Ag)

[13] I also agree with the judgment prepared by Morrison JA, which I have read in draft.

PANTON P

ORDER

Application dismissed. Costs to the respondents to be taxed if not agreed.