JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 122/94

COR:	**THE HON MR JUSTICE CAREY JA** **THE HON MR JUSTICE GORDON JA** **THE HON MR JUSTICE WOLFE JA**	
BETWEEN	**CLIFFORD BROWN** **DIANA BROWN** **RONALD WILLIAMS**	**APPELLANTS**
A N D	**THE RESIDENT MAGISTRATE SPANISH TOWN RESIDENT MAGISTRATE'S COURT ST CATHERINE (Hon Mrs Von Cork)**	
A N D	**THE NATIONAL CONSTRUCTION COMPANY LIMITED (a once dissolved Limited Liability Company)**	**RESPONDENTS**

Berthan Macaulay QC & Mrs Margaret Macaulay for appellants

Lennox Campbell Senior Assistant Attorney General for 1st respondent

Carlton Williams for 2nd respondent

27th 28th February, 2nd & 7th April 1995

CAREY JA

On the 23rd February 1993 in the Resident Magistrate's Court for the parish of St Catherine Her Honour Mrs Von Cork commenced the hearing of several plaints in which the second respondent was the plaintiff and the present appellants were the

defendants. These suits claimed recovery of possession of lots in the possession of the appellants. We are unaware of the defence which was stated to the Resident Magistrate. The notes of evidence with which we were furnished, it is to be observed en passant, are uncertified , unchecked and bear no seal of the court. Mr Macaulay QC told us that he filed (a) counter-claim(s) as well, but that fact does not appear in the notes of evidence. It is all very untidy and unhelpful. Although as I have said, we were not told the nature of the defence pleaded from what Mr Macaulay QC made me to understand I am satisfied that the defence put forward by him did not call in question the status of the second respondent.

For reasons which we were unable to ascertain, counsel for the company in course of his examination in chief of the managing director cum chairman of the company elicited evidence that the company had been struck off the register in 1987 but in 1990 the Supreme Court had restored it to the register. Tendered in evidence to support this fact was a true copy of that order. Thereafter cross examination of the witness took place. She stated (inter alia) that she never appeared in open court at the Supreme Court, nor did she engage a lawyer. At the end of the plaintiff's case, Mr Macaulay QC who appeared below made submissions that the plaintiff was not a juristic person, and was therefore not competent to file the suits. The Resident Magistrate signed a document prepared by Mr Macaulay QC. It is in the following form:

> "There is an Order made by the Master on the 2nd of March 1989 before the Master in Chambers; issued by the Court; that the company known as National Construction Company Limited, which was removed from the Register of Companies be restored to the Register of Companies. There is also before the Court a Certified copy of the Registration Certificate issued by the Registrar of Companies, and in keeping with Section 320(6) of the Companies Act, the company is deemed to have been in existence as if its name had not been

> struck out. I find no irregularity on the face of it and I hold the plaintiff to be a proper party in this action."

We do not know why the Magistrate thought she was required to affix her signature there. For my part, I am not aware of any rule of law or practice which obliged her to do so. Mr Macaulay's reasons are not far to seek.

By reason of the unsatisfactory notes of evidence provided, it is also quite unclear whether the Resident Magistrate had put counsel for the defendants (respondents) to his election and it is equally unclear whether she called upon the defendant to make his defence. See section 185 Judicature (Resident Magistrates) Act where in absence of proof, a plaintiff can be non-suited or judgment entered for the defendant. There is however no doubt as to the course pursued by the defendants. Having obtained a sort of formal order, they applied for leave to apply for an order of certiorari to remove this order of the Resident Magistrate into the Supreme Court so that it could be quashed. Leave having been granted, the matter came before the Full Court (Rattray CJ (Ag) Panton & Reid JJ) on 10th December 1994, when it was summarily dismissed with costs.

This appeal is against that judgment of the Full Court and raises for determination, the question whether certiorari lies to quash a ruling of a resident magistrate. The Full Court in a short extempore judgment delivered by the learned acting Chief Justice gave its reasons for that decision. After stating that it did not find it necessary to decide the question of the Master's jurisdiction to make an order for the restoration of a company, the judgment continued thus:

> "... The Company is on the Companies Register and before the Resident Magistrate there was produced a Certified copy of the Registration Certificate issued by the Registrar of Companies. The Resident Magistrate clearly

> cannot go behind this, as this is conclusive as provided by section 17 of the Companies Act."

There were filed two grounds of appeal which challenged the decision of the Full Court. These grounds are as follows:

> "1. That the Full Court failed to deal with the matter raised on the application of Certiorari, that is, whether or not the Resident Magistrate, Spanish Town Court, was right in ruling that the Respondent could not be non suited, on the ground that having been struck out, the Respondent Company was restored by the Master who had no jurisdiction to do so under the Companies Act section 320(6) and the definition of the words 'the court' in section 2 of the said Companies Act, nor under the Supreme Court Act in the Masters in Chambers Rule 1966 as amended in 1967.
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> 2. That the Full Court was wrong that there was evidence on the record that the respondent Company was on the Company register. The only evidence were:
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> (a) a Certificate of Incorporation; and
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> (b) An Order of the Master restoring the Company to the Register contrary to section 320(6) of the said Companies Acts, and the definition of the word 'the court' in Section 2 of the Companies Act."

Mr Macaulay QC argued that the principal question raised before the Full Court as before the Resident Magistrate, was whether a company which had been dissolved pursuant to section 320(3) of the Companies Act and had not been regularly restored, could file suit in the Resident Magistrate's Court. A subsidiary question which he submitted, arose, related to the jurisdiction of the Master of the Supreme Court to restore a dissolved company to the register of Companies. The Full Court had misconceived these questions.

It is convenient in dealing with these arguments to begin by appreciating what the Resident Magistrate had before her. She had for trial a number of plaints in

which the second respondent as plaintiff sued the present appellants for recovery of possession. The Judicature (Resident Magistrates) Act section 184 ordains that:

> "184. On the day in that behalf named in the summons, the plaintiff shall appear, and thereupon the defendant shall be required to answer by stating shortly his defence to such plaint; and on answer being so made in Court, the Magistrate shall proceed in a summary way to try the cause, and shall give judgment without further pleading, or formal joinder of issue."

From the notes of evidence, it seems that the defence was not stated as required but the Resident Magistrate was told by Mr Macaulay QC that the defence was "as filed". Although we do not know the specific defence pleaded, we do know that it did not relate to the juristic status of the plaintiff company. Whatever the issues joined, it is plain that no issue of locus standi of the company arose for determination. There was no onus then, on the plaintiff to prove that it was what it said it was viz. a limited liability company. Strictly speaking, any question relating to this issue was wholly irrelevant. Nevertheless, the respondent's counsel (not being counsel who appeared before us) adduced evidence that the company had been struck off in 1987 and restored by the Supreme Court. The witness also produced an order of the Supreme Court to that effect. That evidence prompted Mr Macaulay QC to cross examine in that regard, and to be told that the witness had not engaged a lawyer to make an application in open court for the company.

In my view, that evidence could not and did not affect the status of the plaintiff to maintain the suits filed against the appellants. It is Mr Macaulay's contention that the Resident Magistrate upon the presentation of the order of the Supreme Court was required to determine its validity. With all respect to arguments as to the powers and jurisdiction of the Master, and whether an application to restore can be

made in chambers, these were not matters before the Resident Magistrate for determination at this conjoint trial of the several plaints. The Resident Magistrate has no appellate functions. She could no more set aside an order of the Supreme Court and declare it a nullity than ignore the order altogether. The order on the face of it was a valid order which, until set aside, remained in full force and effect. But even if contrary to the opinion I have expressed, the Resident Magistrate was required to make a determination on the issue of the legal status of the respondent, there can be no doubt she has the jurisdiction to hear and determine such an issue qua resident magistrate. If then she fell into error in her determination, no one could for a moment, reasonably argue that she had exceeded her jurisdiction.

The function then of this court is to examine the proceedings to discover whether the Full Court exercised its supervisory powers correctly. In my view, the Full Court was required in this matter to satisfy itself that the Resident Magistrate had not by some error of law exceeded her jurisdiction. The question was not simply whether she had erred in law because an appeal lies against any judgment which in the event she might have given. A resident magistrate is permitted to fall into error but that does not necessarily make the judgment amenable to certiorari. It becomes so if and only if, the magistrate can be said to be acting in excess of jurisdiction or without jurisdiction. I am reinforced in my thinking by the observations of Lord Reid in ***Anisminic Ltd v The Foreign Compensation Commission & anor*** [1969] 1 All ER 208 at p 213 when in dealing with the term "jurisdiction" he said:

> " It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word 'jurisdiction' has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the enquiry in question. But there are many cases where, although

> the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly. I understand that some confusion has been caused by my having said in ***Armah v Government of Ghana*** [1966] 3 All ER 177 at p. 187; [1968] A.C. 192 at p. 234 that, if a tribunal has jurisdiction to go right, it has jurisdiction to wrong. So it has if one uses 'jurisdiction' in the narrow original sense. If it is entitled to enter on the enquiry and does not do any of those things which I have mentioned in the course of the proceedings, then its decision is equally valid whether it is right or wrong subject only to the power of the court in certain circumstances to correct an error of law."

Certiorari is a specialized remedy which operates in the area of public law and is essentially a discretionary remedy. Where the conditionalities for its exercise do not exist, it ought not to be invoked. These conditionalities are those suggested by Lord Reid. It cannot in my judgment, be invoked by creating a record to show an error of law, which is what occurred in the instant case. At the end of the respondent's (i.e. the plaintiff's) case, the magistrate should have made an order either requiring the appellants (the defendants) to elect to stand on their submissions or she should call upon them to make their defence. Doubtless, in the course of a finding for either party, her reasons would show that she had either

accepted or rejected the submissions made. An order consistent with her finding or ruling might be wrong in law, but that would not affect her jurisdiction. An error in law would not in those circumstances I suggest amount to a nullity and thus amenable to judicial review.

For these reasons, I conclude that it would be a sleeveless errand to embark on an enquiry into whether or not the magistrate was in point of law wrong in her ruling and I decline therefore to follow Mr Macaulay QC into such an exercise. In the fulfilling of its supervisory powers, the Full Court had no such mandate. That court in its unanimous judgment said this:

> "...The theme of the submission was that the Resident Magistrate was wrong in holding that the Company, the respondent which had been struck off the Companies Register had been properly restored to the Register of Companies, although the order of restoration had been made by the Master, rather than by a Judge of the Supreme Court in open Court. We do not find it necessary to decide this point. The Company is on the Companies Register and before the Resident Magistrate there was produced a Certified copy of the Registration Certificate issued by the Registrar of Companies. The Resident Magistrate clearly cannot go behind this, as this is conclusive as provided by section 17 of the Companies Act."

The reasoning of the court was that the Resident Magistrate was bound by the order of the Supreme Court and had no jurisdiction to question that order. That being the reasoning of the Resident Magistrate, it was clear the court took the view that she was not acting in excess of or for that matter without jurisdiction. That being so, the Full Court was properly exercising its supervisory powers and not assuming an appellate function with which Mr Macaulay QC sought to imbue it.

In the result, I would in affirming the order of the court below with costs to the respondents to be taxed if not agreed, dismiss the appeal.

WOLFE, J.A.:

On February 23, 1993, Her Honour Mrs. Von Cork, then a Resident Magistrate exercising her statutory jurisdiction in the parish of St. Catherine, embarked upon the hearing of several actions for the recovery of possession from the appellants herein. As is required at the trial of an action in the Resident Magistrate's Court, the respondents when asked to state their defence said, "Defence filed". No objection was taken as to the jurisdiction of the court and the trial proceeded. During the evidence in chief of Mrs. Constance Dayes, Managing director of the National Construction Company Limited, the plaintiff in the actions, evidence was led to show that the said company had been removed from the Register of Companies in 1987, that upon application made in the Supreme Court pursuant to section 320(6) of the Companies Act, the Master in Chambers on the second day of March 1989 ordered that the name of the company be restored to the Register of Companies.

At the close of the plaintiff's case, the defence submitted that the plaintiff ought to be non-suited in that it was not a juristic persona. The learned Resident Magistrate rejected the submission. This ruling moved the defendants to seek leave to apply to the Full Court of the Supreme Court for certiorari to go to quash the ruling of the Resident Magistrate.

On the 9th day of December, 1994, the full Court of the Supreme Court (Rattray, C.J. (Ag.), Panton, Reid, JJ) dismissed the motion with costs to the respondent and granted the applicants leave to appeal.

The basis of the appellants' complaint is that the Master had no jurisdiction to order that the name of the company be restored to the Register of Companies pursuant to section 320(6) which states:

> "If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice aforesaid may, if satisfied that the company was at the time of striking off, carrying on business or in operation, or otherwise that it is just that the company be restored order the name of the company to be restored to the register, etc..."

"Court", as defined by the Act, means "the Supreme Court". In the circumstances, the appellants contended that the order made by the Master was void, the company's name has not been properly restored to the Register and it is therefore not a legal entity. Consequently:

> 1. the learned Resident Magistrate wrongly assumed jurisdiction to hear the matter, and
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> 2. her rejection of the submission to non suit the plaintiff amounted to an error on the face of the record.

Prior to this case, I would have thought it inconceivable that it could be argued that a Resident Magistrate who embarks upon the trial of an action to recover possession of land was acting without or in excess of his or her

jurisdiction. Section 85 of the Judicature (Resident Magistrates) Act gives jurisdiction to the Resident Magistrate to hear actions for recovery of possession of land. It cannot, therefore, be successfully argued that the Resident Magistrate had no jurisdiction to hear the matter. The question is, did she exceed her jurisdiction?

In the trial of any action at the close of the case for the plaintiff, the defence is entitled to make a submission of no case to answer, whereupon the court may put counsel to his election. If counsel is put to his election and the submission fails then that is the end of the matter. If he is not put to his election and the submission fails he may stand on the submission or elect to call evidence. I have set out the procedure to illustrate that it was necessary for the Magistrate to make a ruling. In making the ruling, it cannot be said that she exceeded her jurisdiction or acted without jurisdiction. Her ruling may or may not be right but it does not, in my view, give rise to certiorari. The case must now be completed and the aggrieved party proceed by way of appeal to obtain such relief as he or she may be entitled to.

The question of the non juridical nature of the company was never a stated defence. The matter became an issue during the trial. The learned Resident Magistrate had before her, in evidence, a document under the hand of a judicial officer of a superior court also the certificate of the Registrar of Companies that the company had been restored to the Register of Companies. Section 17 of the Companies Act stipulates that the Certificate of Registration under the hand of the

Registrar of Companies is conclusive that the company is duly registered. See also section 320(6) of the said Act.

In considering the question of jurisdiction, it must be noted that it cannot be said that a tribunal has acted beyond its jurisdiction merely by making a decision which is erroneous in law or fact or even one that is wholly unsupported by evidence.

In the instant case, the real complaint is that the learned Master's order restoring the company to the Register of Companies is null and void. That order, in my respectful view, cannot properly affect the jurisdiction of the learned Resident Magistrate. The remedy of the appellant must be sought elsewhere. I would, therefore, dismiss the appeal.

Before parting with this appeal, I would just wish to add that my failure to refer to the many cases cited by counsel for the appellants is not to be regarded as an act of disrespect. Having read and analysed them carefully, I concluded that they could offer no assistance in resolving the point in issue.

GORDON, J.A.:

I agree.