[2022] JMCA Civ 22

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MR JUSTICE D FRASER JA
THE HON MRS JUSTICE G FRASER JA (AG)

PARISH COURT CIVIL APPEAL NOS COA2020PCCV00021 & 22

BETWEEN	**DEKAL WIRELESS JAMAICA LIMITED**	**1ST APPELLANT**
AND	**CABLE & WIRELESS JAMAICA LIMITED**	**2ND APPELLANT**
AND	**GN HOLDINGS LIMITED**	**RESPONDENT**

Kevin Williams and Russell Cooper instructed by Grant, Stewart, Phillips and Company for the appellants

Dr Mario Anderson and Mr Everol McLeod instructed by Barbican Law Clinic for the respondent

16, 19 May and 24 June 2022

MCDONALD-BISHOP JA

[1] I have read in draft the judgment of my sister G Fraser JA (Ag) and agree with her reasoning and conclusion. There is nothing that I wish to add.

D FRASER JA

[2] I too have read the draft judgment of my sister G Fraser JA (Ag). I agree with her reasoning and conclusion and have nothing to add.

G FRASER JA (AG)

Background

[3] The 1st appellant, Dekal Wireless Jamaica Limited ('Dekal'), is a subsidiary of the 2nd appellant, Cable and Wireless Jamaica Limited ('CWJ'), which was acquired in the year 2016 (together 'the appellants'). The 2nd appellant is a telecommunications service provider registered in Jamaica. The respondent, GN Holdings Limited ('GN'), is the owner and operator of a network of Radio Broadcasting Towers ('cell tower sites') located in Planters and Marley Hill in the parish of Saint Catherine, Duncans in the parish of Trelawny, Rowlandsfield in the parish of Saint Thomas, and Shafton in the parish of Westmoreland.

[4] The respondent, GN, in its business endeavours, leased space on its towers to several different telecommunications providers, including Dekal. In 2011, Dekal (before its acquisition by CWJ) contracted orally and in writing with GN to install and use its equipment on several cell tower sites. Further agreements were brokered in 2016. The contracts expired in December of 2016 but Dekal continued to operate in accordance with the previous agreements.

[5] Disagreements arose between the parties as to the terms and usage of the cell tower sites, and between 2018 and 2019, GN filed 12 plaints in the Parish Court for the Corporate Area alleging breach of contract and failure on the part of the appellants to pay the contractually agreed monthly fees for the leasing of various cell tower sites. On 11 November 2019, the matters came on for hearing before the Senior Judge of the Parish Court, Her Honour Miss Opal Smith ('the learned Parish Court Judge'). On 18 November 2019, The learned Parish Court Judge, considered the appellants' application for court orders. That application sought an order pursuant to section 130 of the Judicature (Parish Courts) Act ('the Act') for the 12 plaints to be consolidated and transferred to the Supreme Court. On that same day, GN objected to the application for

consolidation and transfer. Ultimately, the learned Parish Court Judge made an order to consolidate and transfer 10 of the 12 plaints to the Supreme Court.

The appeal

[6] The appellants, who were the defendants in the court below, have challenged the Parish Court Judge's decision to retain the two plaints within the jurisdiction of the Parish Court. Those plaints, bearing numbers CA2019CV00021 and CA2019CV00062, are the subject of two separate appeals which we heard together.

[7] The appellants filed their appeals on 5 February 2020 before this court. In an effort to impugn the learned Parish Court Judge's decision, six grounds of appeal were filed on the appellants' behalf, namely:

> "a. The learned Parish Court judge failed to take into account relevant considerations in exercising her jurisdiction under section 130 of the Judicature Parish Courts Act when ruling on the 1st and 2nd Appellants' Notice of Application for Court Orders filed on the 8th November 2019, which was heard on the 11th and 18th of November 2019.
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> b. The learned Parish Court judge erred by failing to find that the Supreme Court is the appropriate forum to determine the issues at the heart of the dispute between the parties in all Plaints.
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> c. The learned Parish Court Judge erred by failing to countenance the inextricable link between the terms of the written and oral contracts which are in dispute in Plaints No. CA 2018 CV 04267 and Plaints No. CA 2019 CV 00021, 00022, 00023, 00024, 00052, 00053, 00054, 00055, 00061, 00062 & 00063.
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> d. The learned Parish Court Judge erred by failing to countenance the hardship which would be imposed on both parties if multiple trials are held in the Parish Court and the Supreme Court in relation to the same issues of fact and law, which may result in inconsistent findings of fact and law, and multiple appeals from the Parish Court and the Supreme Court.

> e. The learned Parish Court Judge failed to properly consider the Affidavit of Stephanie Graham which was filed on the 8th November 2019 in support of the Appellant's application to consolidate and transfer all plaints to the Supreme Court.
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> f. The learned Parish Court Judge erred by refusing to grant the Appellants time to determine the number and secure the attendance of all necessary ordinary and expert witnesses on the date set for the trial of Plaint No. CA 2019 CV 00021."

[8] All six grounds of appeal revolve around the complaint that the learned Parish Court Judge erred in separating the several claims for trial in two different jurisdictions, namely the Parish Court and the Supreme Court. In his oral submissions, counsel appearing for the appellants, Mr Kevin Williams, elected to argue grounds of appeal (a) to (d) together and ground (e) separately. He withdrew ground (f).

The appellants' submissions

[9] Whilst the appellants accepted that the learned Parish Court Judge had the jurisdiction to retain and hear the two plaints (CA2019CV00021 and CA2019CV00062), they nonetheless contended that, by virtue of section 130 of the Act, she ought to have transferred those two plaints to the Supreme Court as well.

[10] Counsel, Mr Williams, submitted that the threshold amount of $100,000.00 had been satisfied as the plaints in question had each exceeded the amount of $400,000.00. Counsel also accepted that the learned Parish Court Judge had the discretion to transfer the matters to the Supreme Court, however, the complaint he advanced was that she had not exercised that discretion judiciously.

[11] Mr Williams further submitted that the learned Parish Court Judge had focussed on the monetary limits of her jurisdiction in making her decision and that more was required where the cases in question were inextricably bound up as to the facts and the law in issue. He posited that all 12 plaints arose out of substantially the same facts and similar contracts, and that the trials will depend on the same evidence and witnesses.

The only differences concerned the amount of money involved and the physical location of each cell tower. All issues could, therefore, be dealt with in one trial and at one venue, that is the Supreme Court.

[12] Counsel argued that an examination of the "History of Case", as certified by the learned Parish Court Judge, discloses that there was no robust analysis as is required by the provision of section 130 of the Act. In support of this submission, he relied on a number of authorities which he contended showed that the learned Parish Court Judge had erred as she had not properly exercised her discretion under the section. The seminal principle distilled in these cases seems to be the undesirability of dividing or splintering claims and allocating them to different forums for determination, especially where there are aspects of commonality and related issues to be tried in those several claims.

[13] Amongst the cases cited by the appellant was the case of **Shawn Marie Smith v Winston Pinnock** [2016] JMCA Civ 37. In that case, the Resident Magistrate (now Parish Court Judge) had refused to make an order to transfer the counterclaim filed by the respondent in the Resident Magistrates Court (now Parish Court) for the parish of Saint Elizabeth, to the Supreme Court where the respondent had also filed similar claims in relation to the said property against both the appellant and her husband. In allowing the appeal Edwards JA (Ag) (as she then was), on behalf of the court, said:

> "The learned Resident Magistrate was required to balance the scales and determine whether, having regard to the fact that the parties are the same, the issues are the same, the subject matter of the dispute is the same, the real remedy sought in the counterclaim is the same, the fact that the respondent voluntarily filed suit in the Supreme Court and it was a forum of his choice and the fact that the Supreme Court had the jurisdiction to grant the declaration sought, the matter before him should be transferred to the Supreme Court. The learned Resident Magistrate erred when he failed to take account of these relevant considerations and transfer the counterclaim to the Supreme Court."

[14] Similar issues arose in two other cases cited by the appellant, namely **McNamee v Shields et al** [2012] JMCA Civ 34, and **House of Blues & Anor v Secret Paradise Resorts Ltd** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 43/2005, judgment delivered 21 September 2005. This latter case concerned the enforcement of an arbitration clause to which the 2nd appellant was not a party to. Nonetheless, a judge of the Supreme Court had stayed the entire claim and directed that all the parties were to submit to arbitration. The appellants had submitted that the undesirable result would be that part of the claim would be litigated and part arbitrated. Panton JA (as he then was), at pages 7 - 8 of the judgment, enunciated that:

> "In the situation as I understand it, there can be no benefit to anyone if two sets of proceedings are permitted … In order to prevent a multiplicity of proceedings which would result in confusion, the waste of valuable judicial time, and increased costs to the parties, I am satisfied that the stay ordered by Reid J has to be removed…"

[15] Counsel further contended that the determination of the actions rested on the interpretation of the terms of the written and oral contracts between the parties, which were identical with the exception of the references to the different cell towers and monthly fees. Furthermore, the nexus between the actions was underpinned by the fact that the parties are the same and the pleadings are substantially identical, save and except for the damages claimed in respect of each plaint (which were amended after an oral application on 18 November 2019). The court, he submitted, would also determine whether the appellants were restricted to using one apparatus per cell tower as well as the dates of breaches, if any.

[16] Counsel, in summary, itemized that separate adjudication of one or more of the plaints could lead to:

a. Inconsistent/conflicting findings of fact by different judges in the Parish Court and/or the Supreme Court;

b. Financial hardship on either party, should they be required to undertake multiple trials of the same issues and facts; and consequently the possibility of several appeals from different judgments concerning issues and facts which are all common to all 12 plaints;

c. Increased costs to the parties; and

d. Waste of valuable judicial time.

[17] The foregoing factors, Mr Williams said, demonstrated that the learned Parish Court Judge erred by failing to balance the scales of justice and to efficiently apportion the court's resources by transferring plaint no CA2019CV00021 and plaint no CA2019CV00062 to the Supreme Court, which would be the appropriate forum to determine the issues raised in the claims. It would bring finality to the matter and avoid conflicting findings of fact, which could occur if multiple trials are held in relation to the same issues, counsel argued. He also contended that the damages sought by GN for all the plaints exceed the jurisdiction of the Parish Court.

[18] Counsel relied on the case of **George Graham v Evelyn Nash** (1990) 27 JLR 570, as encapsulating the law relating to the exercise of a Parish Court Judge's discretion pursuant to section 130 of the Act. In that case the Resident Magistrate had to contend with a similar application for transfer to the Supreme Court. Carey JA, in delivering the judgment of the court, enunciated that:

> "…the real question for decision, which was, on balance which was the better forum having regard to the parties, the issues to be determined and the jurisdiction of the court to deal with all those issues at one and the same time. In exercising his discretion in the manner he did, I fear the Resident Magistrate fell into error."

[19] The learned Parish Court Judge, counsel said, also failed to properly consider the content of the affidavit of Stephanie Graham filed on 8 November 2018, in support of the application. The evidence in that affidavit addressed matters pertaining to the manner in which the fees were paid on a monthly basis, GN's unilateral increase of those fees and the need for expert evidence "to identify and establish any industry standards and market rates in relation to contractual terms, fees and best practices for the use and occupation of tower sites".

The respondent's submissions

[20] Counsel for the respondent, Dr Anderson, accepted the principles and guidance as illustrated in the several cases cited by the appellant. However, in the matter at bar, he argued, it is not entirely fair to say that the learned Parish Court Judge did not address her mind to the relevant issues. Based on the "History of Case" presented, it is apparent that she had the issues of consolidation and transfer in mind. The attorneys-at-law representing both sides were present, including counsel Miss Graham, who represented CWJ. In the end, it was the limit of the monetary jurisdiction that was the determinative factor as to whether the matters were to be transferred or not.

[21] Counsel referred to the decision of this court in **Shawn Marie Smith v Winston Pinnock** in which Edwards JA (Ag) cited the dictum of Carey JA in **George Graham v Evelyn Nash** that prolonging the determination of the issues between the parties is a factor to be considered when a judge is exercising his discretion pursuant to section 130 of the Act. The delay, counsel contended, was seriously prejudicial to GN and this was not desirable, therefore, it is not in all cases that the Supreme Court was the better forum. The learned Parish Court Judge, he said, had exercised her discretion judiciously after hearing arguments from both sides. She had considered the submissions of GN's attorney-at-law regarding the delay and that nine of the plaints related to Shafton, for which the parties were agreed that there was no written agreement for that facility and trespass was the issue to be resolved. The issues relating to Shafton were, therefore,

different from those relating to Rowlandsfield and Duncans. For Rowlandsfield, the parties had agreed to the use of a certain amount of space and equipment, thereafter more equipment was brought onto the cell tower. The contention in that claim was that the space was not defined. The appellants had not denied that additional equipment was brought there. What is in issue is the amount of space. In the circumstances, therefore, it was GN's position that there is no dispute as to the facts.

[22] Dr Anderson admitted that in relation to the cell tower at Duncans, there was some similarity of issue with the matters transferred to the Supreme Court. He, however, submitted that, in all the circumstances, it is difficult to see any risk of inconsistency in a judgment between the two courts because the parties are agreed on the material facts in the matters. Should the court agree that there is little or no risk of an inconsistent judgment then the issue as to whether it might be more convenient to have the matters resolved in one forum must be balanced against the risk or level of prejudice to the parties and in particular to GN. Additionally, counsel contended that it is a well-established principle that the court will not allow a party to make tactical use of the legal process. In support of this contention, counsel cited the cases of **Sean Greaves v Calvin Chung** [2019] JMCA Civ 45 and **National Commercial Bank Jamaica Limited v Olint Corp Limited** [2009] UKPC 16.

Analysis

[23] Upon careful consideration of the submissions from counsel, I have determined that the overarching issue for determination is whether the learned Parish Court Judge had exercised her discretion judiciously in retaining two of the 12 claims within the jurisdiction of the Parish Court. Grounds (a) to (e) will, therefore, be addressed together.

[24] The learned Parish Court Judge was empowered by section 130 of the Act to transfer the actions to the Supreme Court. The relevant section states:

> "130. No action commenced in any Court under this Act shall be removed from the said Court into the Supreme Court by any writ or process, unless the debt or damage claimed shall exceed one hundred thousand dollars; and then only by leave of the Judge of the Parish Court in which such action shall have been commenced, in any case which shall appear to the said Judge of the Parish Court fit to be tried in the Supreme Court, and subject to any order of the Supreme Court upon such terms as he shall think fit."

[25] It is the appellants' position that the learned Parish Court Judge was plainly wrong in the manner in which she exercised her discretion under that section and, therefore, she erred in law. We are mindful of the oft-cited guidance expounded in **Hadmor Productions Limited v Hamilton** [1982] 1 All ER 1042 and adopted by this court in **The Attorney General of Jamaica v John Mckay** [2012] JMCA App 1. Accordingly, this court will not interfere with the exercise of the discretion of a judge in the court below unless that judge has erred in principle, or misunderstood the law or evidence, which has led to a decision that is demonstrably wrong or which is so aberrant that no judge mindful of his duty to act judicially would have made it.

[26] In **Clive Roye v Joyce Ellis** [2017] JMCA Civ 30, this court considered the statutory power of a Parish Court Judge to transfer civil proceedings from the Parish Court to the Supreme Court pursuant to section 130 of the Act. The following was held:

> "[23] On reviewing this section of the Act, it is clear that it does give a judge of the Parish Court a discretionary power to transfer a case before her to be heard in the Supreme Court. The discretion is, however not absolute, as Mr Adedipe rightly contended. It is required to be exercised judicially, and therefore not capriciously or arbitrarily. It is for this reason, that this court is permitted by law, to interfere with the exercise of the discretion of the learned judge that is conferred on her by the section where it is clear that she relied on a wrong principle of law, incorrectly applied a correct principle, or failed to consider relevant factors; **or if the decision, if left undisturbed, will lead to injustice**. This is in keeping with the oft-repeated admonition of Lord Diplock in **Hadmor Productions Limited v Hamilton** [1983] 1 AC 191, which has been applied

> consistently by this court. In so far as is immediately relevant see, for instance, **George Graham v Elvin Nash** (1990) 27 JLR 570, a case in which the exercise of a judge's discretion under section 130 of the Act was under consideration." (Emphasis added)

[27] In determining whether the learned Parish Court Judge had erred, I had initially examined what she referred to as the "History of Case". In that document she indicated that there were no notes of evidence or reasons available, hence her attempts "to outline briefly the history of the cases and what transpired on the day in question". She mentioned that the matters came before the Parish Court on several occasions, and that on 11 November 2019, counsel acting on behalf of GN made an application for disclosure of specific information and the matters were adjourned until 18 November 2019.

[28] On the subsequent date, as recorded in her "History of Case", GN's attorney-at-law objected to the appellants' application for all the plaints to be transferred to the Supreme Court. Surprisingly, the learned Parish Court Judge noted that there was no formal application. However, the records indicate that the appellants had, in fact, filed a notice of application for court orders with an affidavit in support, sworn to by counsel Miss Stephanie Graham on 8 November 2019. The orders sought were for the consolidation and transfer of all the plaints to the Supreme Court. Suffice to say, although the learned Parish Court Judge seemed to have been unaware that there was such an application filed, the court stamp exhibited on the document supports that such an application was received at the court's office 10 days prior to the hearing.

[29] The "History of Case" revealed that the learned Parish Court Judge had posited "that if all the claims touched and concerned the same property then they should be consolidated and transferred". Both attorneys indicated to her that this was not the case. The learned Parish Court Judge went on to relate that the attorneys:

> "3. …went through the particulars of all the cases in great detail and indicated to the court which cases could be consolidated. Amendments were also made to the [sic] some of the particulars of

> claim without objection. The [GN] Attorney confirmed the cases to be consolidated and transferred to the Supreme Court. For those that could not be consolidated, and that did not exceed the jurisdiction of the court (two) he that [sic] told the Court that he wanted them to remain in the Parish Court. Consequently, trial dates were set in CA2019CV00062 and CA2019CV00021, respectively for April 16, 2020 and May 4, 2020, after consultation with both parties.
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> 4. Contrary to the picture painted by counsel for the [appellants] in his 'Notice of Appeal', a conversation and discussion took place in court. Counsel made no submissions. The only document on file from the [appellants] is a document titled 'Defence of the 1st and 2nd [Appellants]'."

[30] Based on the above excerpt, this court was left with the impression that counsel, who was present for the appellants on 18 November 2019 (not being counsel arguing the appeal), had acquiesced to the course of action ultimately decided and departed without objecting to the transfer of only 10 of the 12 plaints. It was on that basis that we raised with counsel Mr Williams, our observation of what appeared to us to have been acquiescence on the part of counsel for the appellant to the retention of the two plaints in the Parish Court. It was the court's view, as expressed to counsel in raising the point, that if there was acquiescence on the part of the appellants to the course adopted by the learned Parish Court Judge, then they ought not to be allowed to pursue the argument on appeal that the two plaints in question should have been transferred. The court also shared the view that if counsel for the appellant had an objection to the history of the case as given by the learned Parish Court Judge, an affidavit ought to have been filed and none was placed before us.

[31] In response to the concern raised by the court, Mr Williams brought to the court's attention that counsel who had conduct of the proceedings in the Parish Court, Mr David Ellis, had raised, the issue regarding the circumstances surrounding the transfer of the plaints in an affidavit filed on 12 December 2019, in support of a previously heard notice of application for court orders for an extension of time before this court. We observed that the appellants had not indicated to this panel that they were relying on documents

utilized in the prior application, and further, that those documents did not form part of the records pertinent to this appeal. However, given that the history of the case was furnished by the learned Parish Court Judge after the appellants had filed their grounds of appeal, we permitted the appellants to rely on the affidavit of Mr Ellis. As a consequence, Dr Anderson was permitted to make further submissions on behalf of GN, which he did in writing.

[32] Dr Anderson took issue with certain aspects of Mr Ellis' affidavit indicating that it "is not entirely accurate and misleading in parts and in the main supports the events as outlined by the learned judge in the Parish Court". Counsel urged this court, therefore, not to place any reliance on Mr Ellis' affidavit as it did not affect the "History of Case" as presented by the learned Parish Court Judge.

[33] In such circumstances, and indeed, in the normal course of an appeal, it would have been the judge's notes that would be relevant and preferable. However, the learned Parish Court Judge herself had reported that "there are no notes of evidence or reasons", and that she had utilized the Court Sheet in outlining the "History of Case". The court, therefore, requested certified copies of the relevant portions of the court sheet for 11 and 18 November 2019, which were provided.

[34] Accordingly, on 19 May 2022, we heard further submissions from counsel representing the parties. Mr Everol McLeod, who was holding for Dr Anderson on that day, further submitted on behalf of GN that it would be proper for GN to counter with an affidavit of its own and to address the issues being taken with the affidavit of Mr Ellis. It was not considered necessary to obtain an affidavit from the learned Parish Court Judge or GN given that only the court sheet contained the notes taken by the learned Parish Court Judge with which the court was concerned.

[35] On examination of the endorsements in the court sheet, it is observed that the extract from the court sheet for 11 November 2019 had indicated that the matter was

adjourned for mention on 18 November 2019 "for order on transfer to the [Supreme Court]". The application that the learned Parish Court Judge speaks of must be taken to mean the application filed by the appellants on 8 November 2019, notwithstanding her assertion in her "History of Case" which stated, "[p]lease note there was no formal application". She had also indicated that "there were no formal submissions made in the cases". This is significant in light of the appellants' contention that the learned Parish Court Judge failed to consider the affidavit evidence of Stephanie Graham which was filed in support of notice of application for court orders on 8 November 2019. The learned Parish Court Judge seemed not to have been aware that the application was filed.

[36] What is material for the purposes of this appeal, however, is that the court sheet confirmed that there was a contested application before the Parish Court pursuant to section 130 of the Act. Further to which the learned Parish Court Judge exercised her discretion to transfer 10 of the 12 plaints. Based on GN's own account, and our consideration of the endorsements in the court sheet, the appellants' counsel had made an oral application supported by submissions for the consolidation and transfer, to which Dr Anderson had objected. In those circumstances, it is pellucid that there was, before the learned Parish Court Judge, a hotly contested issue on which the parties did not agree. It is, therefore, inconceivable that the appellants would have thereafter quietly acquiesced to the retention of the two plaints in the face of their extensive arguments in favour of the consolidation and transfer of all the plaints.

[37] This is buttressed by Mr Ellis' affidavit which states that they did not acquiesce. There is a noticeable absence in the court sheet regarding the fact of the application and submissions being made by the appellants and the resolution of the contested issues by the learned Parish Court Judge. Mindful of her indication that there are no records or reasons, there is therefore no explanation before this court as to the basis on which she decided to consolidate and transfer 10 of the plaints to the Supreme Court and retain two

in the Parish Court. In the absence of those reasons, the appellants' criticism that she had failed to properly consider the application is, in the circumstances, irrefutable.

[38] In the absence of the Parish Court Judge's reasons for her decision and in the absence of any objective circumstances discerned by this court, the uncertainty surrounding this case does not place this court in a position to say whether she had exercised her discretion judicially or she was demonstrably wrong. We must, therefore, consider whether, in all the circumstances, she had properly exercised her discretion so as not to warrant the intervention of this court.

[39] In **Clive Roye v Joyce Ellis**, this court, upon reviewing the trial judge's reasons for exercising her discretion under section 130 of the Act, took the view that she failed to give the requisite consideration to a surveyor's report in determining the dispute between the parties as required by the relevant statute. The court found that the trial judge transferred the matter without sufficiently regarding the law and taking evidence, and so she failed to act judicially. That case can be contrasted with the case at bar on the basis that this court in determining whether to interfere with the judge's exercise of her discretion, was provided with two undated reasons from the judge which outlined her considerations. In this case, however, we were merely supplied with the Parish Court Judge's "History of Case", in circumstances where her account is at variance with the accounts of the parties.

[40] From the court sheet, we noted that on 11 November 2019, an oral application was made by counsel for the appellants for disclosure of a number of items. The learned Parish Court Judge ordered that the disclosure was to be satisfied on or before 18 November 2019, on which day the actions were set "[f]or order on transfer to the [Supreme Court]". The logical inference to be drawn from that notation is that the learned Parish Court Judge must have been aware of the existence of the appellant's application for the plaints to be transferred. The order in relation to that application was to be made

on 18 November 2019. The court sheet for 18 November 2019 denotes the following orders:

> 1. Plaint no CA2018CV04267 was transferred to the Supreme Court;
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> 2. Plaint no CA2019CV00021 was set for trial on 16 April 2020 (in the Parish Court). The particulars of claim were amended to remove "and Planters" and change the sum claimed to $815,300.00 (the records, however, indicate that the amendment was to remove references to "Rowlandsfield" and increase the sum claimed to $699,000.00);
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> 3. Plaint nos CA2019CV00022, 00023, 00024, 00053, 00054, 00055, 00061, and 00063 were consolidated and transferred to the Supreme Court;
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> 4. Plaint no CA2019CV00052 was transferred to the Supreme Court; and
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> 5. Plaint no CA2019CV00062 was set for trial on 4 May 2020 (in the Parish Court).

The above is, for the most part, reflected in the "History of Case".

[41] It should be noted that plaint nos CA2018CV04267 and CA2019CV00052, for which separate orders for transfer to the Supreme Court were made, concern the cell towers at Marley Hill and Planters. The other eight plaints that were consolidated and transferred to the Supreme Court concern the cell towers in Shafton. The two plaints that remain in the Parish Court concern cell towers in Rowlandsfield and Duncans.

[42] Based on the foregoing, it is evident why the plaints relating to the cell towers in Marley Hill, Planters and Shafton were transferred to the Supreme Court. However, what is unclear, is why the plaints for the cell towers in Rowlandsfield and Duncans were not

also transferred. GN sought to recover sums allegedly owing to it for the appellants' occupation of the cell towers at Rowlandsfield and Duncans for the period of February 2018 to June 2018 (CA2019CV00021) and April 2017 to January 2018 (CA2019CV00062).

[43] Contrary to GN's assertion that the appellants admitted liability, the appellants' defence, as filed in the Parish Court on 24 June 2019, indicated that they had not done so. However, they agreed that the outstanding sums on the invoices issued by GN since May 2017 were not paid. This they stated was due to the sums claimed by GN being in excess of the contractually stipulated sums. It was their defence that they settled the agreed monthly charges for their occupation of the cell towers at Planters, Marley's Hill, Rowlandsfield, and Duncans from April 2017 to June 2019. They refused to pay the additional sums. Furthermore, they stated that they ceased occupation of Rowlandsfield on 7 September 2018, and gave GN written notice to that effect, and so no charges should be due in that regard.

[44] As far as I was able to glean, in considering how to exercise her discretion under section 130, the learned Parish Court Judge noted that GN objected to the appellants' application for the actions to be transferred to the Supreme Court. The learned Parish Court Judge had certainly contemplated GN's arguments that the appellants admitted liability in their defence and that the cases would be disposed of faster in the Parish Court (as referred to in her "History of Case"). Additionally, upon reviewing the plaints, the sums being claimed seemingly fell within the jurisdiction of the Parish Court, once they were heard separately (as demonstrated by the separate trial dates).

[45] I do not see a basis for the contention that the appellants admitted liability. It seems to me that the issues in dispute in respect of Rowlandsfield and Duncans (CA2019CV00021 and CA2019CV00062) are similar to those arising on the other plaints which were transferred to the Supreme Court. On account of the dispute between the parties relating to the terms of the contract, liability and quantum are live issues to be tried. Having regard to the hardship the appellants have expressed, if the matters were

to be heard in separate trials, such as the expense and the need for expert evidence in all the trials, I am minded to give credence to their position. This is especially so since there were no reasons or notes of the proceedings to enable the court to ascertain the reasoning employed by the learned Parish Court Judge. The complaint of the appellants that she erred in not conducting a more robust examination of the application before her is accepted. It cannot be said that the learned Parish Court Judge had exercised her discretion judicially in all the circumstances.

[46] I wish to take this opportunity to remind the judges of the Parish Court of the need to provide reasons for their decision. In **New Falmouth Resorts Ltd v National Water Commission** [2018] JMCA Civ 13 where the court was similarly hampered by the absence of reasons from the judge, Morrison P had expressed as follows:

> "[49] … I am bound to say, naturally with the greatest of respect to the very experienced judge, that it is completely unsatisfactory that no reasons of even the most summary kind were given for a decision …
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> [50] In so saying, I readily appreciate that judges … are usually under tremendous pressure to give their decisions as quickly as possible. However, as Lord Phillips MR said in **English v Emery Reimbold & Strick Ltd** [[2002] 1 WLR 2409], '[t]here is a general recognition in the common law jurisdictions that it is desirable for judges to give reasons for their decisions ...' Such reasons can, as Lord Brown explained in **South Bucks District Council and another v Porter (No 2)** [[2004] UKHL 33], 'be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision'. The important consideration, as the authorities make plain, is that the reasons given should be sufficient to give the parties, in particular the losing party, an intelligible indication of the basis for the court's decision."

[47] If the learned Parish Court Judge had complied with that well-established practice, it would have obviated the need for this court to undergo the course of action taken. In all the circumstances, I would recommend that the appeal be allowed, the order of the Parish Court Judge be set aside and plaint nos CA2019CV00021 and CA2019CV00062 be

transferred to the Supreme Court. I would further recommend that costs should follow the event in the circumstances where the appellants have succeeded and the appeal was strenuously opposed by the respondent.

MCDONALD-BISHOP JA

ORDER

1. The appeal is allowed.

2. The orders of Her Honour Miss Opal Smith made in the Parish Court for the Corporate Area (Civil Division), on 18 November 2019, for the trials of plaint nos CA2019CV00021 and CA2019CV00062 in the Parish Court, are set aside.

3. Plaint nos CA2019CV00021 and CA2019CV00062 are transferred to the Supreme Court to be listed and considered with the 10 plaints transferred by the said order made on 18 November 2019, being plaints numbered CA2018CV04267, CA2019CV00022, CA2019CV00023, CA2019CV00024, CA2019CV00052, CA2019CV00053, CA2019CV00054, CA2019CV00055, CA2019CV 00061, and CA2019CV00063.

4.Costs are awarded to the appellants in the amount of $80,000.00.