

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MRS JUSTICE FOSTER-PUSEY JA
THE HON MR JUSTICE FRASER JA**

MOTION NO COA2021MT00008

APPLICATION NO COA2021APP00015

BETWEEN ORVILLE GOLDING APPLICANT

AND JANICE MORRISON RESPONDENT

Mikael Lorne for the applicant

Miss Tamara Lovelace for the respondent

21 June 2021

BROOKS P

[1] This is an application for conditional leave to appeal to Her Majesty in Council from a decision of this court, made on 23 March 2021, refusing Mr Orville Golding's then application for an extension of time in which to appeal from a decision of a judge of the Parish Court.

[2] The application that Mr Golding made at that time was necessary because he had failed to file a notice of appeal in the Parish Court within the 14 days stipulated by section

256 of the Judicature (Parish Court) Act ('JPCA'). By virtue of that section, his right to appeal had ceased and determined.

[3] The application must be analysed in accordance with the requirements of section 110(1) and (2) of the Constitution. References to sections are in relation to the Constitution, unless stated otherwise.

Submissions in respect of section 110(1)

[4] Mr Lorne, on Mr Golding's behalf in this present application, asserts that Mr Golding satisfies the requirement of section 110(1) and that Mr Golding is entitled as of right to appeal to Her Majesty in Council. Learned counsel submitted that the property involved in the case before the Parish Court was a truck of a value in excess of the \$1,000.00 stipulated in section 110(1).

[5] On the issue of whether this is a final decision being appealed from, Mr Lorne submitted that even though the decision of this court was an interlocutory one, the refusal of the application brought the case to an end, and in that regard the matter is a final decision.

[6] Miss Lovelace, for the respondent Ms Janice Morrison, countered that there was no appeal in place and that the application in this court, being clearly interlocutory, the decision of this court was not a final one.

Analysis

[7] Counsel have accurately identified the major requirements of section 110(1). For these purposes, Mr Golding's appeal will lie as of right if he demonstrates that the decision he seeks to appeal was a final decision in civil proceedings and that the value of the disputed property on appeal is or exceeds \$1,000.00. These requirements are cumulative (see **Georgette Scott v The General Legal Council (Ex Parte Errol Cunningham)** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 118/2008,

judgment delivered on 18 December 2009). Even if the appeal is as of right, Mr Golding is still required to apply for and obtain this court's leave for him to appeal.

[8] There is no issue that the property involved in this case would meet the monetary requirements of the section.

[9] There is however a concern as to whether this application concerns an appeal from a final decision. The distinction between final and interlocutory decisions was fully considered in **Paul Chen Young and Others v Eagle Merchant Bank Jamaica Limited & Another** [2018] JMCA App 31. In that case, the "application test" was approved as being the determinative test in circumstances such as these to determine whether a decision is interlocutory or final. When the test is applied to this case, it is clear that since the relevant decision, which is a decision of this court, would not necessarily have resulted in finality, but depended on which party succeeded, the matter was not a final decision.

[10] There is only one decision being considered by the present application and it is the decision of this court. Mr Golding therefore fails to satisfy the cumulative requirements of section 110(1).

Submissions in respect of section 110(2)

[11] In respect of section 110(2), Mr Lorne submitted that in the interest of justice and the importance of having a litigant's case heard is of great public importance and therefore section 110(2) had been satisfied. Ms Lovelace however argued that justice was done when this court refused to grant the extension of time.

Analysis

[12] We cannot agree with Mr Lorne's submission. The consideration of what constitutes great general or public importance or otherwise was, for the purposes of section 110(2), analysed in **Paul Chen Young v Eagle Merchant Bank**. Mr Golding

must show that his appeal, was one which arose from civil proceedings and by way of “its great general or public importance or otherwise, ought to be submitted to Her Majesty”. If the question is not of great general or public importance, this court may still grant permission if the question is such that it ought to be submitted to Her Majesty in Council.

[13] The issue in the present application concerns the way in which this court exercised its discretion, as to allowing an extension of time. This is not a matter of great general or public importance, nor is there any other basis on which it should be referred to Her Majesty in Council. The court based its decision on deference to the findings of fact of a judge of the Parish Court. The case of **Bahamasair Holdings Limited v Messier Dowty Incorporated** [2018] UKPC 25, at paragraphs 32-36, makes it clear that that is an approach sanctioned by the law.

[14] Based on those reasons, therefore, the application must be refused and the orders are as follows: -

Order

1. The application for conditional leave to appeal to Her Majesty in Council, is refused.
2. Costs to the respondent to be agreed or taxed.