

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO 232/2018

**BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MR JUSTICE F WILLIAMS JA
THE HON MR JUSTICE FRASER JA (AG)**

**BETWEEN JANET DAWN GRANT APPLICANT
(Representative of the Estate of Walford
Lawrence, deceased)**

AND VERNON W ABDUL RESPONDENT

Joseph Jarrett instructed by Joseph Jarrett & Co for the applicant

**Miss Carlene Larmond instructed by Grant Stewart Phillips & Co for the
respondent**

29 April 2019

MORRISON P

[1] The action out of which this application arises was fixed for trial in the Supreme Court for five days commencing on 8 October 2018.

[2] When the matter came on for trial on that day, various applications were made and dealt with by the judge. On the morning of 19 October 2018, the matter was, as it then appeared, ready to start. However, counsel for the applicant (who was the claimant

in the court below) applied for an adjournment of the matter on account of the applicant's illness and consequent inability to travel from the United Kingdom where she resides. A medical certificate, which, in general terms, the judge appeared to have considered satisfactory, was tendered in support of the application.

[3] In the circumstances, the judge acceded to the request for an adjournment and fixed the matter for trial on 6 July 2020. However, in the exercise of her discretion, the judge awarded two days' costs to the respondent (the defendant), on the basis that he would have had to prepare for what was listed as a five-day trial. The judge also ordered that the costs should be taxed or agreed before 28 February 2019, and paid within 14 days of the date of taxation. The judge heard and refused an application by the applicant for leave to appeal against the order for costs.

[5] Before us today is an amended application for leave to appeal against the judge's order for costs. The applicant also seeks an order staying taxation. The ground of appeal stated in the proposed notice of appeal is that, given the applicant's circumstances, the award of costs against her was unreasonable, unfair and oppressive. In this regard, Mr Jarrett relies on a number of factors. In particular, he points out that there were various other applications outstanding before the judge, the result of which could have been that the trial might not have gone on.

[6] So while Mr Jarrett accepts that the award of costs is a matter within the discretion of the courts, he submits that the judge's award in this case was aberrant, sufficiently so to bring it within the small category of cases listed in the decision of this court in **Attorney**

General v John McKay [2015] JMCA App 1 in which the appellate court will interfere with a judge's exercise of her discretion.

[7] Miss Larmond opposes the application. She points out that in fact the applications which were outstanding, certainly as they related to the applicant (the defendant in the court below), were heard by the judge on the Monday morning, 8 October 2018, they were dealt with, the judge refused them all and in fact, the judge refused leave to appeal from her orders on those applications.

[8] Still outstanding in the court below was the respondent's application for leave to tender hearsay evidence and to rely on a written statement on the ground of his own illness. It was therefore not intended by the respondent, whose claim it was, to attend for trial and it was his intention to rely on that application, if the judge has been minded to give it. So, in those circumstances, Miss Larmond submits that the case was in fact for trial and that the only reason why it did not come on was because of the application for an adjournment made by the applicant. On this basis, Miss Larmond urges us not to interfere with the judge's exercise of her discretion.

[9] We are clearly of the view that Miss Larmond is correct and that this application must be refused. Rule 1.8(7) of the Court of Appeal Rules requires that, in order to obtain leave to appeal, the applicant must satisfy the court that he or she has an appeal with a real chance of success. In our view, the proposed appeal in this case, being one from the judge's exercise of her discretion, has absolutely no chance of success.

[10] We therefore refuse the application for leave to appeal. Having heard the parties on the question of the costs, our order is that the respondent must have the costs of this application, such costs to be taxed if not agreed.

[11] The application for a stay of execution of the taxation of the costs awarded by the judge in the respondent's favour in the court below is also refused.