

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MR JUSTICE D FRASER JA**

APPLICATION NO COA2023APP00218

**BETWEEN DONALD HO APPLICANT
AND ASSETS RECOVERY AGENCY RESPONDENT**

Ms Terrisha Grant instructed by Robinson & Partners for the applicant

Ms Candice Williams and Mrs Charmaine Newsome for the respondent

11 and 15 December 2023

Civil Procedure – Extension of time within which to file notice of appeal against civil forfeiture of cash – Section 80 of the Proceeds of Crime Act – Section 12 of the Judicature (Appellate Jurisdiction) Act – Sections 251, 256 and 266 of the Judicature (Parish Court) Act

BROOKS P

[1] I have read in draft the reasons for judgment of D Fraser JA and agree.

SINCLAIR-HAYNES JA

[2] I, too, have read in draft the reasons judgment of D Fraser JA and agree.

D FRASER JA

Introduction

[3] Donald Ho ('the applicant') sought to move this court to grant him an extension of time within which to file notice of appeal against the order, made by Her Honour Ms Alicia McIntosh ('the learned judge') on 7 September 2023 in the Corporate Area Parish Court (Civil Division) held at Sutton Street, that cash seized from him on 16 April 2013, be forfeited to the Asset Recovery Agency ('ARA') ('the respondent').

[4] On 11 December 2023 we made the following order:

- 1) The application for extension of time to file and serve a notice of appeal is granted.
- 2) The time to file and serve the notice of appeal is extended to 18 December 2023.
- 3) No order as to costs.

[5] We now provide the reasons for our order.

Background

[6] On 16 April 2013, police personnel conducting investigations into the robbery of the Swiss Stores Ltd jewellery store located at the corner of Church and Harbour Streets in the parish of Kingston, apprehended the applicant who was a suspect. The applicant voluntarily took the police to his home in Barbican. During a search there, 12 watches suspected to have been stolen were recovered. Cash in the amount of US\$150,954.00, £71.00, CA\$759.00, J\$658,500.00 and KYD\$85.00 was also found in a safe in the applicant's bedroom and seized. The applicant's explanation to the officers was that the cash represented earnings and savings from his family's business.

[7] On 26 April 2013 the applicant was interviewed by the police, after which he was charged with a number of offences including receiving stolen property. On 9 March 2017 the applicant was acquitted of the offence of receiving stolen property in the Corporate Area Parish Court (Criminal) holden at Half-Way-Tree.

Proceedings in the court below

[8] The ARA filed an application pursuant to section 79(1) of the Proceeds of Crime Act ('POCA') for the forfeiture of the seized cash. The applicant filed an application under section 82 (1) of POCA for release of the cash. After a hearing, on 7 September 2023, the learned judge made the order against which the applicant wishes to appeal, granting the application of the ARA for the forfeiture of the cash and refusing the application of the applicant for the release of the cash.

The application for extension of time

[9] On 26 September 2023 the applicant filed an application for extension of time within which to file notice of appeal. The application was supported by the affidavits of Terrisha Grant, counsel for the applicant and Shaun Allen, bearer for Robinson & Partners attorneys-at-law, the law firm representing the applicant.

The submissions

The applicant

[10] In written submissions counsel for the applicant outlined that, after the learned judge delivered her oral judgment, counsel erroneously asked the learned judge for leave to appeal. Subsequent checks by counsel revealed that the learned judge did not minute the indication as a verbal notice of appeal.

[11] There was further evidence that on 21 September 2023, at approximately 2:30 pm, counsel's process server attended the Parish Court at Sutton Street to file the notice of appeal. The documents were not accepted by the registry as the process server was advised that the court did not accept documents for filing after 2:00 pm. The following day, 22 September 2023, the process server again attempted to file the notice of appeal but was advised by the registry that the 14-day period for filing the notice had passed.

[12] Counsel submitted that her application should succeed as: the length of the delay was only five days (including a weekend); the reason for the delay was twofold — a misunderstanding concerning whether verbal notice of appeal was given and because the documents were wrongfully refused by the Sutton Street Court registry; the applicant had a real prospect of succeeding on his appeal; and the ARA would not suffer prejudice

if the application was granted as it was the applicant who had advanced the matter which had been in abeyance, but the applicant would suffer substantial financial loss if the application was not granted. Counsel relied on sections 256 and 266 of the Judicature (Parish Court) Act, section 12(2) of the Judicature (Appellate Jurisdiction) Act and the case of **Hubert Samuels v Pauline Karenga** [2019] JMCA App 10.

The respondent

[13] In written and oral submissions counsel for the applicant indicated that no objection was being raised to the application of the applicant. While the respondent made no comment on the reported attempts made at filing the notice of appeal on 21 and 22 September 2023, due to those facts being outside of its personal knowledge, its position was based on its interpretation of the applicable law.

[14] In brief, the position of the respondent was informed by section 80 of the POCA which stipulates that the applicant had 30 days within which to file an appeal; and was therefore within time to file when he attempted to file at Sutton Street and even when the notice of application for an extension of time was filed in this court, 18 days after the order was made by the learned judge. In coming to this view counsel considered sections 251, 256 and 266 of the Judicature (Parish Court) Act ('JPCA'), section 12(2) of the Judicature (Appellate Jurisdiction) Act ('JAJA'), section 80 of the POCA, the maxim *generalialia specialibus non derogant* and the cases of **Ralford Gordon v Angene Russell** [2012] JMCA App 6, **Mark Younis v Alvin Ranglin T/A GG Record** [2020] JMCA App 21, **Norman Williams v Gloria Townsend (Deceased, Christopher Townsend, Administrator ad litem) and Carlton Hutchinson** [2022] JMCA Civ 228 and **Independent Commission of Investigations (INDECOM) v Digicel (Jamaica) Limited** [2015] JMCA Civ 32.

Analysis

[15] Section 80 of the POCA states that:

“(1) Any party to proceedings in which an application or order is made under section 79 for the forfeiture of cash, who is aggrieved by the decision of the court in relation thereto, may appeal to the Court of Appeal in respect of the decision.

(2) An appeal under subsection (1) shall be made within the period of **thirty days** beginning with the date on which the order is made.

(3) The court hearing the appeal may make any order it thinks appropriate." (Emphasis added)

[16] We agree with counsel for the respondent that the well-known maxim *generalia specialibus non derogant*, which indicates that in statutory interpretation general words ought not to be interpreted to govern a situation addressed by specific words, applies to the resolution of this matter. The POCA, which established the civil forfeiture regime, also outlined the process for filing an appeal to the Court of Appeal. Thus, if a person is aggrieved by the decision of a court in a forfeiture application brought under section 79, pursuant to section 80, he may appeal that decision within 30 days beginning with the date on which the order is made. Therefore, the general time line of 14 days within which to perfect an appeal under section 251 of the JPCA, does not apply in cases involving the civil forfeiture of cash.

[17] The authorities of **Ralford Gordon v Angene Russell** and **Mark Younis v Alvin Ranglin T/A GG Record** make it clear that, pursuant to section 266 of the JPCA and section 12(2) of the JAJA, this court may grant an extension of time for the perfection of the appeal, where formalities prescribed by the JPCA have not been complied with due to inadvertence, ignorance or necessity and where the justice of the case shall appear to so require.

[18] Though the applicable time frame is based on the POCA and not the JPCA, given that, but for the time frame, the applicant has to follow the procedure set out in the JPCA, it appears the principles outlined in those cases would also apply to this situation. The failure to file within time was due to the errant view of the applicable law held by the registry personnel at the Parish Court at Sutton Street. Further, at the time of the application for extension of time the applicant was, in fact, still within time to file. The justice of the case, therefore, requires that the application be granted, as this was not a case where the applicant was dilatory in pursuing his appeal. This approach is in keeping with the dicta of McDonald-Bishop P(Ag) (as she then was) in the case of **Sun Energy Systems Company Limited v Trelawny Aggregates Limited** [2022] JMCA App 6.

[19] At para. [18], referencing the JPCA, she stated that:

“...to ensure that a litigant is not unjustly deprived of access to this court, there should be reasonableness coupled with flexibility in considering applications for extension of time from the Parish Courts in keeping with the dictates of section 266 of the Act.”

[20] We entirely agree. Accordingly, the application of the applicant for extension of time to file his notice of appeal was granted and the orders made in terms indicated at para. [4].