

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO 127/2015

**BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MISS JUSTICE P WILLIAMS JA (AG)**

BETWEEN	PAUL JAMIESON	APPLICANT
AND	JANICE SMITH	RESPONDENT

Applicant in person

Respondent in person

10 December 2015

ORAL JUDGMENT

BROOKS JA

[1] In this case, Mr Paul Jamieson has applied for an extension of time in which to file a notice of appeal from a judgment handed down by the Resident Magistrate for the Corporate Area, Civil Division, on 2 June 2015. In that judgment the learned Resident Magistrate ordered him to pay the sum of \$25,000.00, plus costs, to the respondent, Miss Janice Smith. Miss Smith had rented premises from him and had sued him to recover a security deposit that she said she paid to him at the beginning of the tenancy.

[2] Mr Jamieson has said that his reason for being late in filing the notice of appeal is that he made certain requests of the court's office in due time but was not given a prompt response. He said that he realised very late that the time allowed by the court, for filing the notice, had passed. He said that, before that realisation, he was unaware of the time limit.

[3] He basically gave three reasons for wanting to appeal:

1. He said that the learned Resident Magistrate was wrong to reject his evidence that Miss Smith had not paid a security deposit to him.
2. The learned Resident Magistrate was biased in that she firstly refused to have him call a witness that he wished to have testify.
3. That the learned Resident Magistrate erred in refusing to admit into evidence a power of attorney that he sought to present to her.

[4] The case concerns a question of fact which was placed before the learned Resident Magistrate as to whether or not Miss Smith had paid the security deposit to Mr Jamieson. Mr Jamieson denied that Miss Smith made any such payment.

[5] The evidence which apparently was before the learned Resident Magistrate was that the monthly rental was \$25,000.00. Miss Smith paid Mr Jamieson \$50,000.00 on

renting the premises on 17 November 2014. She said that she remained there for one month, and on 15 December 2014 she told Mr Jamieson that she would be removing from the premises on the following day. She said that she did remove, and that when she removed on 16 December 2014 she handed the keys for the premises to Mr Jamieson's gardener, who worked at the premises.

[6] The learned Resident Magistrate heard from Mr Jamieson who testified that he received from Miss Smith the first and last month's rental. He said that Miss Smith had lived in the premises for more than two months, but paid nothing more than the first payment. He said that up to the time that the matter was before this court he had not yet received the keys from Miss Smith and therefore the sum of \$25,000.00 had been used by Miss Smith in her occupation of the premises.

[7] The learned Resident Magistrate rejected Mr Jamieson's evidence and found that Miss Smith was a witness of truth. She held that the sum of \$25,000.00 was due to Miss Smith.

[8] In this court, an application for an extension of time has to be supported by an affidavit in which the applicant must give a reason for the failure to obey the rules of the Court of Appeal. The applicant must also show that he has a good basis for appealing the decision of the learned Resident Magistrate.

[9] As was stated in paragraph [2] above, Mr Jamieson's reasons for failing to file his notice of appeal in time are that he was not aware of the time limit and that he was

delayed by inefficiencies at the Resident Magistrate's Court. We, therefore, will not hold that aspect against him.

[10] However, we are of the view that the basis for his appeal from the decision of the learned Resident Magistrate cannot succeed in this court. Questions of fact are for the Resident Magistrate, or the judge in the court below, to decide. This court will not lightly disturb the learned Resident Magistrate's decision on questions of fact. The learned Resident Magistrate is the tribunal that heard and saw both parties under oath. Having done so, she preferred one witness to another. There is no error in law or in fact in her decision. It cannot properly, therefore, be set aside.

[11] In the circumstances we find that Mr Jamieson has shown no merit in his proposed appeal and his application for extension of time within which to file a notice of appeal must be refused.

[12] The orders are as follows:

1. The application for extension of time within which to file a notice of appeal is refused.
2. No order as to costs.