

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO 131/2015

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

BETWEEN	EARLE SHAW McFARLANE	APPLICANT
AND	ODINGA JOHN GOLDING	RESPONDENT

Mrs Janet P Taylor and Miss Yackeisha Scott instructed by Taylor Deacon & James for the applicant

Miss Paola Arscott for the respondent

10 December 2015

ORAL JUDGMENT

BROOKS JA

[1] This is an application for extension of time in which to file a notice of appeal against a decision of the Resident Magistrate's Court for the Corporate Area, Civil Division, handed down on 5 May 2015. The applicant Mr Earle McFarlane failed to file his notice of appeal within time stipulated by the Judicature (Resident Magistrates) Act and he has now applied to this court for extension of time in which to do so. His application was filed on 10 July 2015.

[2] The background to the application, and to the case as it appeared in the Resident Magistrate's Court, is that Mr McFarlane attended an auction of real property conducted on behalf of the mortgagee of that property. Mr McFarlane was the successful bidder at the fall of the hammer and he paid a deposit for the purchase of the premises. However, the agreement for sale stipulated that he would have possession of the premises on completion of the sale.

[3] Despite that term, Mr McFarlane went to the premises before completion had taken place. There he spoke with Mr Odinga Golding, who was at the time the registered proprietor and the mortgagor of the premises. He entered into an agreement with Mr Golding whereby Mr Golding would collect rental on Mr McFarlane's behalf and pay over that sum to him. It appears that Mr Golding failed to pay any money to Mr McFarlane, who made a complaint to the police.

[4] At Mr McFarlane's instance, the police arrested Mr Golding, who is now the respondent in this application, and for some hours Mr Golding was in the custody of the police, while attempts were made to secure the money which Mr McFarlane claimed. When that sum was paid, some hours later, the police released Mr Golding. Mr Golding then sued Mr McFarlane firstly, for the return of the monies paid to him, saying that they were improperly paid, and secondly, for false imprisonment.

[5] The learned Resident Magistrate found in favour of Mr Golding and ordered the judgment for Mr Golding in the sum of \$324,218.75. The sum represented the

\$150,000.00 paid at the instance of Mr McFarlane's speaking with the police, as well as damages for false imprisonment.

[6] Applications for extension of time, within which to file a notice of appeal, require this court to examine and apply two particular sections of the Judicature (Resident Magistrates) Act. The first is section 256, which stipulates that a written notice of appeal should be lodged with the Clerk of Courts within a specific period of time. The second is section 266 which allows for this court to consider applications for extension of time and to give them the most liberal consideration. It is also necessary to examine section 12 of the Judicature (Appellate Jurisdiction) Act, which allows this court to grant an extension of time within which to appeal.

[7] The case of **Ralford Gordon and Angene Russell** [2012] JMCA App 6 is authority for the principle that this court may grant an extension of time despite the applicant having failed to meet the time limit set out in the Judicature (Resident Magistrates) Act.

[8] **Leymon Strachan v The Gleaner Co Ltd and Dudley Stokes** Motion No 12/1999, a decision of this court handed down on 6 December 1999, sets out in the judgment of Panton JA, as he then was, the basis on which an application for the extension of time should be granted. There, Panton JA said, at page 20 of the judgment:

"The legal position may therefore be summarised thus:

- (1) Rules of court providing a time-table for the conduct of litigation must prima facie be obeyed.
- (2) Where there has been a non compliance with a time table the Court has a discretion to extend time
- (3) In exercising its discretion, the Court will consider-:
 - (i) the length of the delay;
 - (ii) the reasons for the delay;
 - (iii) whether there is an arguable case for an appeal and;
 - (iv) the degree of prejudice to the other parties if time is extended
- (4) Notwithstanding the absence of a good reason for delay, the Court is not bound to reject an application for an extension of time as the overriding principle is that justice has to be done....”

The present application will have to be assessed along those lines.

[9] Firstly, the length of the delay. The delay was in excess of two months. The period from 5 May 2015 to 10 July 2015 may not be said to be an inordinate delay and therefore, by itself, the length of the delay will not be fatal to this application.

[10] Secondly, the reasons for the delay. Mr McFarlane was represented by counsel at the hearing of the trial before the learned Resident Magistrate. He therefore would have had advice as to the time frame within which he had to meet the requirements of the statute.

[11] Mr McFarlane said that he told his attorney at the time that he would have had to consider his position. Despite that, he went out of the island and allowed the time to pass. That action by Mr McFarlane shows contempt for the stipulations of the relevant statutes and the rules of this court.

[12] Nonetheless, we move on to the merits of the appeal. If he were allowed to prosecute an appeal, Mr McFarlane proposes to argue that the learned Resident Magistrate was wrong to have ordered the repayment of the sum collected by the police on his behalf. There is no merit in this ground.

[13] Mr Golding as the registered proprietor was entitled to all income from that property until he was no longer in that capacity. Mr McFarlane entered into an agreement which did not entitle him to possession of the property, and therefore income from the property, until after he had completed the purchase.

[14] On those bases, he had no entitlement to demand, from Mr Golding, any income from the property. As a result, the agreement with Mr Golding for Mr Golding to pay money to him was without a legal basis. The learned Resident Magistrate's decision in that regard cannot be faulted.

[15] In respect of the false imprisonment, it appears from the evidence that Mr McFarlane not only made the complaint to the police, concerning the agreement with Mr Golding, but was apparently the driving force behind the police, at every step of the way, in securing the payment from Mr Golding, in exchange for his release from custody. In those circumstances it may easily be found, as apparently the learned

Resident Magistrate did find, that Mr McFarlane was the person who initiated and brought about the detention of Mr Golding, without the police exercising any independent discretion or judgment. She was also entitled to find, in Mr McFarlane being so instrumental, that he was liable for that detention.

[16] There is, therefore, no basis that a proposed appeal in respect of false imprisonment has any real prospect of success.

[17] We then consider the degree of prejudice in this matter. Mr Golding has been out of pocket for the \$150,000.00, which he has paid, and is entitled to the fruits of his judgment. The prejudice to him outweighs the prejudice to Mr McFarlane in these circumstances.

[18] The justice of the case requires that the judgment of the Resident Magistrate's Court be pursued and brought to an end. In the circumstances, therefore, the application for extension of time must be refused with costs to the respondent.

[19] The orders are as follows:

1. The application for extension of time in which to file and serve notice and grounds of appeal is refused.
2. Costs to the respondent in the sum of \$30,000.00.