

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO COA2020APP00158

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

**BETWEEN DAVE GEORGE PARKINSON APPLICANT
AND EARNESTINE ROBERTS RESPONDENT**

Charles Benbow instructed by Charles A Benbow & Associates for the applicant

The respondent absent and unrepresented

6 July 2020

BROOKS JA

[1] On 6 February 2019, Palmer J gave judgment for Mrs Earnestine Roberts against Mr Dave Parkinson.

[2] Mrs Roberts sued Mr Parkinson for, among other things, a declaration that she had properly severed on joint tenancy of property owned by them. Mr Parkinson defended the claim on the basis that he had long acquired her interest in the property by adverse possession, or more correctly speaking, a possessory title.

[3] Palmer J rejected his defence.

[4] Mr Parkinson wishes to appeal but failed to file his notice of appeal within the time, stipulated by rule 1.11(1)(c) of the Court of Appeal Rules. He missed the deadline by five days and has applied for an extension of time to file his appeal. He must therefore satisfy the criteria outlined by Panton JA (as he then was) in **Leymon Strachan v The Gleaner Company Limited and Dudley Stokes** (unreported), Court of Appeal, Jamaica, Motion No 12/1999, judgment delivered on 6 December 1999. In brief, these are:

- a. the length of delay;
- b. the reason for the delay;
- c. the merits of the appeal;
- d. the prejudice to the respondent; and
- e. the overall justice of the application.

[5] The delay in this case is not inordinate.

[6] In addressing the reason for the delay, Mr Parkinson said that he was, at first, unsure what he wanted to do. When he had decided that he wanted to appeal, he approached a new attorney-at-law to file the appeal. That attorney-at-law required time to acquaint himself with the case. Those factors combined to cause the failure to file on time. The delay is not egregious and consequently, without more, the reasons can withstand scrutiny.

[7] His appeal is however not arguable. The case turns on the application of the principles in **Wills v Wills** [2003] UKPC 84. What Mr Parkinson hopes to achieve by the appeal is an order that the interest in the property should be divided in the ratio of

80:20, in his favour. Such a division would run counter to the principles in **Wills v Wills**, and is not permissible in law. The court does not have the jurisdiction to adjust the interests of the registered proprietors of property in these circumstances. Further, Mr Parkinson's proposed approach would be a denial of the defence, which he had advanced in the court below, that he had acquired Mrs Roberts' interest by way of his undisturbed possession of the property, and that he had thereby secured the entire interest by way of a possessory title.

[8] The respondent is a registered proprietor and is entitled to exercise her appropriate interest in the property. In these circumstances, the respondent would be greatly prejudiced if time is extended.

[9] Accordingly, there being no merit in the proposed appeal, Mr Parkinson's application for extension of time in which to file a notice of appeal must be refused, as there are no real prospects of success. It is important that Mr Parkinson be informed of this fact, as quickly as possible so that he does not incur unnecessary costs.

Order

1. Application for extension of time to file notice and grounds of appeal is refused.
2. No order as to costs.