

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NUMBER 236/2018

**BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MR JUSTICE BROOKS JA
THE HON MISS JUSTICE P WILLIAMS JA**

**BETWEEN CHRISTOPHER ROBINSON APPLICANT
AND RODNEY GARVEY RESPONDENT**

Ms Judith Clarke instructed by Judith M Clarke & Co for the applicant

Respondent in person

7 November 2018

BROOKS JA

[1] The applicant Mr Christopher Robinson seeks orders:

- a) granting an extension of time within which to file a notice of appeal from the judgment of Parish Court Judge, Her Honour Miss Opal Smith, delivered on 8 August 2018 in Plaintiff No 5667/2015; and
- b) staying execution of the said judgment pending the outcome of the appeal.

[2] The application originates from the decision of the learned Parish Court Judge, who ruled in favour of Mr Rodney Garvey in Mr Garvey's claim against Mr Robinson for recovery of possession of land. She found that Mr Garvey had satisfied her, by virtue of his production of a certificate of registered title, that he was the owner of the land. She ordered Mr Robinson, who claims to have lived unmolested on the land all his 40 plus years, to deliver up possession forthwith.

[3] Mr Robinson represented himself in the proceedings before the learned Parish Court Judge. It is only after she had ruled against him that he sought assistance from attorneys-at-law. By then, the time for filing a notice of appeal had passed.

[4] He asserts, in his notice of application for court orders, that he has a real prospect of success in his proposed appeal.

[5] Mr Robinson has since filed a claim in the Supreme Court, challenging Mr Garvey's title. He claims that that title was procured by fraud.

[6] He seeks to appeal from the learned Parish Court Judge's decision on the basis that the learned Parish Court Judge considered the claim under the wrong provisions of the Judicature (Parish Courts) Act. He asserts that, in the claim before her, he contested the validity of Mr Garvey's title. That contest, he asserts, was not considered by the learned Parish Court Judge, who, instead, dealt with the claim as one for recovery of possession from a person who has no right of possession. He complains that she was wrong to have done so. It would seem, albeit based on the limited

information provided, that Mr Robinson's proposed appeal would have a real prospect of success.

[7] Mr Garvey appeared in person before this court at the hearing of Mr Robinson's application. He indicated that he wished time to instruct an attorney-at-law to assist him with dealing with the application.

[8] We took the view that the court's time would be better spent and it would be more cost effective for both parties if the application were considered at this time, rather than if it were to be adjourned.

[9] This court is allowed, in such cases, by virtue of section 12(2) of the Judicature (Appellate Jurisdiction) Act, to extend the time within which to file and serve a notice of appeal.

[10] Based on the prospect of Mr Robinson's appeal succeeding, and in the light of the fact that Mr Robinson is challenging Mr Garvey's title in the Supreme Court, the justice of the case suggests that he should be granted an extension of time in which to appeal. The length of time that he asserts that he has been on the land, using it, in part, as his home, before Mr Garvey filed his claim, would also justify a stay of execution of the judgment.

[11] There should, however, be orders ensuring that he pursues his appeal.

[12] The orders therefore are as follows:

1. The time within which to file and serve a notice of appeal from the judgment of Her Honour Miss Opal

Smith in Plaintiff No 5667/2015, which judgment was delivered on 8 August 2018, is hereby extended to 20 November 2018.

2. The execution of the said judgment is stayed pending the outcome of the appeal or any further or other order of this court.
3. The stay of execution shall lapse if the applicant shall fail to file a notice of appeal in accordance with order number 1 herein, or otherwise fail to comply with any requirement of the Judicature (Parish Courts) Act or any of the rules and or orders of this court in respect of the prosecution of his appeal.
4. No order as to costs.
5. The applicant's attorneys-at-law shall prepare file and serve the formal order hereof on or before 20 November 2018.