

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP P (AG)
THE HON MR JUSTICE D FRASER JA
THE HON MRS JUSTICE G FRASER JA (AG)**

APPLICATION NO COA2021APP00141

**BETWEEN SUN ENERGY SYSTEMS COMPANY LIMITED APPLICANT
AND TRELAWNY AGGREGATES LIMITED RESPONDENT**

Dr Mario Anderson instructed by Barbican Law Clinic for the applicant

Miss Nadine Lawson instructed by Mensa Legal Services for the respondent

22 February 2022

MCDONALD-BISHOP P (AG)

[1] This is an application for extension of time to file and serve a notice of appeal from the judgment of Her Honour Mrs Beaumont-Daley, judge of the Parish Court for the Corporate Area – Civil Division (‘the parish judge’), made on 12 May 2021, and for the payment of the sums required as security for costs of the appeal.

[2] Sun Energy Systems Company Limited (‘Sun Energy’), the plaintiff before the Parish Court, was granted a licence to operate a quarry located at Long Pond in the parish of Trelawny. It contracted Mr Percival Hussey, who entered into discussions with Trelawny Aggregates Limited (‘Trelawny Aggregates’), the defendant in the Parish Court, to sell stones derived from Sun Energy’s quarrying activities. Sun Energy sold stones to Trelawny Aggregates on several occasions after that.

[3] In or around October 2017, Trelawny Aggregates indicated that it needed material of a specific size and could not accept material that did not meet that requirement. Sun Energy advised Trelawny Aggregates that there would be a price increase because of the additional costs attendant on the rental of the equipment needed for Sun Energy to meet the specific size requirements. Additional supplies of the stones at the specified requirements were made after 5 November 2017. However, Sun Energy alleges that Trelawny Aggregates has not paid the invoices for those supplies.

[4] In December 2018, Sun Energy commenced an action in the Corporate Area Parish Court, Civil Division, seeking payment of the sum of \$875,700.00 as sums due and owing to it. On 12 May 2021, the parish judge found that Sun Energy had failed to prove its case and ordered judgment in favour of Trelawny Aggregates. Sun Energy gave verbal notice of its intention to appeal but did nothing else on that date to perfect that notice of appeal.

[5] The application for extension of time is supported by the affidavit of Mitzie Smith sworn on 27 July 2021. Miss Smith deposes that she is a legal secretary and paralegal with the attorneys-at-law for Sun Energy and that, on 26 May 2021, she visited the court's office located at Sutton Street in the parish of Kingston to file the notice and grounds of appeal. However, the court's office did not accept the documents for reasons unknown to her. The written notice and grounds of appeal were subsequently accepted by the court's office on 27 May 2021, and Sun Energy paid the sum of \$5,000.00 for the prosecution of the appeal. Exhibited to the affidavit of Miss Smith is a copy receipt dated 27 May 2021 in the sum of \$5,000.00, bearing the stamp of the Corporate Area Parish Court – Civil Division. At the bottom of the page, exhibiting the receipt, is a note also dated 27 May 2021 bearing the stamp of the Corporate Area Parish Court – Civil Division, stating that:

“The applicant came yesterday May 26, 2021 to pay and file Notice of Appeal. The documents were not accepted due to an administrative issue. Therefore, the documents were filed and lodge [sic] with the Clerk today.”

[6] On 7 June 2021, Miss Smith went back to the court's office to pay the sum of \$15,000.00 as security for the costs of the appeal, but the court's office rejected this payment. Miss Smith deposed that the clerk of the courts told her that since Sun Energy had given verbal notice of appeal in court, the sum for the due prosecution of the appeal ought to have been paid the same day. On this basis, the clerk of the court advised her that the applicant required an extension of time to proceed. The actions of the court's office have triggered this application before the court.

[7] Dr Anderson, on behalf of Sun Energy, contended that the court's office had misinterpreted the law by insisting that the sum of \$5,000.00 should have been paid on the same day that the verbal notice of appeal was given, rather than on the day when the notice of appeal was lodged. Counsel also relied on the case of **Ralford Gordon v Angene Russell** [2012] JMCA App 6 (**'Gordon v Russell'**) in outlining the power of the court to grant the orders sought by the applicant and the principles regarding the approach to be taken by the court in considering this application.

[8] Miss Lawson, on behalf of Trelawny Aggregates, conceded that based on the authority of **Mark Younis v Alvin Ranglin T/A DD Record** [2020] JMCA App 21 (**'Younis v Ranglin'**), Sun Energy ought to have been allowed to file its notice and grounds of appeal when it attempted to do so on 26 May 2021 and that the court's office erred in this regard. However, counsel argued that even though it was the actions of the court's office which contributed to the non-compliance of Sun Energy, "the undisputed fact is that the notice [of appeal] was not filed and accepted by the Parish Court within the requisite period" and thus an application to extend the time to file and serve the notice of appeal is necessary for Sun Energy to comply with section 256 of the JPCA.

[9] Counsel further acknowledged in her written submissions that pursuant to section 12(2) of the Judicature (Appellate Jurisdiction) Act ('JAJA'), this court is empowered to extend the time for filing a notice of appeal and for the payment of the sum required as security for costs. She submitted that, in exercising its discretion

whether to grant an extension of time, the court must consider the factors set out in **Leymon Strachan v Gleaner Company Limited and Dudley Stokes** (unreported), Court of Appeal, Jamaica, Motion No 12/1999, judgment delivered 6 December 1999 (**Leymon Strachan**). These factors are the length of the delay, the reasons for the delay, whether there is an arguable case for an appeal, and the degree of prejudice to the other party if time is extended.

[10] Miss Lawson took no issue with Sun Energy's submissions regarding the length and reasons for the delay. However, she initially contended in her written submissions that Sun Energy has shown no basis for the court to find an arguable case for an appeal. In this regard, counsel pointed to the sole affidavit of Mitzie Smith filed by Sun Energy, which she submitted, disclosed no information as to the merits of the appeal despite this being one of the stated grounds on which Sun Energy has sought an order for an extension of time. During oral arguments, however, Miss Lawson accepted that once the reason for the notice of appeal being out of time was due to the erroneous action of the court's office, then the merits of the appeal would not be a material consideration for the court on this application.

[11] Although Miss Lawson made extensive and admirable written submissions on the factors to be considered on an application such as this, especially on the question of the arguability of the appeal, her concession was rightly made. Given the circumstances of this case, the factors laid down in **Leymon Strachan**, and other related authorities cannot be applied with full vigour in our consideration of this application. We have found this to be so due to what transpired in this case and the differences between the statutory framework governing appeals from the Parish Court and those governing appeals from the Supreme Court.

[12] Section 251 of the JPCA provides, in part, that:

“Subject to the provisions of the following sections, an appeal shall lie from the judgment, decree, or order of a Court in all civil proceedings, upon any point of law, or upon

the admission or rejection of evidence, or upon the question of the judgment, decree, or order being founded upon legal evidence or legal presumption, or upon the question of the insufficiency of the facts found to support the judgment, decree, or order; ...”

[13] Section 12 of the JAJA also deals with the right of appeal from the Parish Court in civil proceedings. Section 12(1) states:

“12. – (1) Subject to the provisions of this Act, to the provisions of the Judicature (Parish Court) Act, regulating appeals from Parish Courts in civil proceedings, and to rules made under that Act, an appeal shall lie to the Court from any judgment, decree or order of a Parish Court in all civil proceedings.”

[14] Section 256 of the JPCA sets out the procedure relating to civil appeals from the Parish Court; it states:

“256. The appeal may be taken and minuted in open Court at the time of pronouncing judgment, but if not so taken then a written notice of appeal shall be lodged with the Clerk of the Courts, and a copy of it shall be served upon the opposite party personally, or at his place of dwelling or upon his solicitor, within fourteen days after the date of the judgment; and the party appealing shall, at the time of taking or lodging the appeal, deposit in the Court the sum of [five thousand dollars] as security for the due prosecution of the appeal, and shall further within fourteen days after the taking or lodging of the appeal give security, to the extent of [fifteen thousand dollars] for the payment of any costs that may be awarded against the appellant, and for the due and faithful performance of the judgment and orders of the Court of Appeal.

Such last-mentioned security shall be given either by deposit of money in the Court, or by the party appealing entering into a bond, with two sureties to be approved by respondent, or, in case of dispute, by the Clerk of the Courts with an appeal to the [Judge of the Parish Court]. No stamp duty shall be payable on such bond.

There shall be no stay of proceedings on any judgment except upon payment into Court of the whole sum, if any, found by the judgment, and costs if any, or unless the [Judge of the Parish Court], on cause shown, shall see fit to order a stay of proceedings.

On the appellant complying with the foregoing requirements, the [Judge of the Parish Court] shall draw up, for the information of the Court of Appeal, a statement of his reasons for the judgment, decree, or order appealed against.

Such statement shall be lodged with the Clerk of the Courts, who shall give notice thereof to the parties, and allow them to peruse and keep a copy of the same.

The appellant shall, within twenty-one days after the day on which he received such notice as aforesaid, draw up and serve on the respondent, and file with the Clerk of the Courts, the grounds of appeal, and on his failure to do so his right to appeal shall, subject to the provisions of section 266, cease and determine.

If the appellant after giving notice of appeal and giving security as aforesaid, fails duly to prosecute the appeal, he shall forfeit as a court fee the sum of [five thousand dollars] deposited as aforesaid.

If he appears in person or by counsel before the Court of Appeal in support of his appeal, he shall be entitled to a return of the said sum of [five thousand dollars] whatever may be the event of the appeal.”

[15] The following procedure is established by section 256 of the JPCA with regard to an appeal from the Parish Court in civil proceedings and constantly repeated in several authorities from this court (see **Gordon v Russell** and **Younis v Ranglin**):

- (i) The process may be commenced either by (a) giving verbal notice of appeal in open court at the time of the pronouncement of the judgment, or (b) lodging a written notice of appeal with the clerk of the courts within 14 days of the judgment.

- (ii) The appellant must serve a copy of the written notice of appeal on the opposite party within 14 days after the date of the judgment.
- (iii) The appellant must pay in the Parish Court the sums required for the prosecution of the appeal at the time of giving the verbal notice or lodging the written notice of appeal.
- (iv) The appellant must further pay in the Parish Court the sums required as security for costs within 14 days after the verbal notice of appeal or the lodging of the written notice.
- (v) On the appellant complying with the foregoing requirements, the parish judge shall draw up a statement of his/her reasons for the judgment, decree or order appealed against, and lodge this statement with the clerk of the courts.
- (vi) The clerk of court must give notice to the parties of the lodging of the parish judge's statement and allow the parties to peruse and keep a copy of the statement.
- (vii) Within 21 days after the day of receiving notice of the lodging of the parish judge's statement, the appellant must draw up, serve on the respondent, and file with the clerk of the courts, the grounds of appeal.
- (viii) Where the appellant fails to comply with the provision for the drawing up, serving and filing of the grounds of appeal, his right to appeal shall, subject to the provisions of section 266, cease and determine.

[16] By virtue of section 266 of the JPCA, the provisions of the JPCA conferring a right of appeal in civil proceedings "shall be construed liberally in favour of such right". And,

in the interests of justice, this court is empowered to allow the hearing of an appeal where the failure of an appellant to comply with any of the formalities prescribed by the JPCA is as a result of inadvertence, ignorance or necessity. This section states:

“266. The provisions of this Act conferring a right of appeal in civil causes and matters shall be construed liberally in favour of such right; and in case any of the formalities prescribed by this Act shall have been inadvertently, or from ignorance or necessity omitted to be observed it shall be lawful for the Court of Appeal, if it appear that such omission has arisen from, inadvertence, ignorance, or necessity, and if the justice of the case shall appear to so require, with or without terms, to admit the appellant to impeach the judgment, order or proceedings appealed from.”

[17] A similar provision to section 266 of the JPCA does not exist within the statutory framework governing appeals from the Supreme Court. This could well be due to the fact that a significant number of the litigants in the Parish Court may be unrepresented and so could be deprived of access to justice if there is strict insistence on formalities for bringing an appeal. Accordingly, the unique statutory framework governing Parish Court appeals cannot be overlooked in determining applications in this court for extension of time, especially as it relates to the release of the parish judge's reasons for the decision being appealed against and the time fixed for filing the grounds of appeal.

[18] The filing of the grounds of appeal is not due until after several procedural steps are completed, including the payment of the prescribed sums and service on the litigant of the statement of the reasons for the decision of the parish judge. For this reason, this court's ability to assess the merits of an appeal may be severely curtailed given the absence of the written reasons for the parish judge's decision and the notes of proceedings as well as the fact that the filing and service of the grounds of appeal are not statutorily due upon the filing of the notice of appeal. Therefore, 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. This is particularly true in

cases involving self-represented litigants who may not be able to clearly articulate their grounds of appeal.

[19] I would recommend that, unless it is plain and obvious that the appeal from the Parish Court is hopeless, this court ought to liberally construe the right to appeal from that court and not consider itself shackled by previous authorities governing appeals from the Supreme Court.

[20] Having considered the circumstances of this case against the background of the statutory framework and the related observations noted above, I find that had the court's office not refused to accept the notice of appeal and the \$5,000.00 on 26 May 2021, when the attempt was made by Sun Energy to file it, Sun Energy would have complied with the provisions of the JPCA. The non-payment of the \$5,000.00 on the day the verbal notice of appeal was given in open court would have rendered that notice of appeal invalid and, therefore, ineffectual in initiating the appeal process. However, section 256 of the JPCA provides that the party desirous of filing an appeal may do so by an alternative method: by lodging a written notice of appeal at the court and paying the \$5,000.00 at the time of lodging the appeal.

[21] The judgment having been delivered on 12 May 2021 meant that the applicant had up to 26 May 2021 to file a written notice of appeal and to pay \$5,000.00 on the lodging of the appeal in compliance with section 256 of the JPCA. The refusal of the court's office to accept the applicant's written notice of appeal on 26 May 2021 resulted in the written notice being filed on 27 May 2021, which was one day outside of the stipulated period of "within [14] days after the date of the judgment". It is indisputable that the late filing of the notice of appeal on 27 May 2021 was due to the inexplicable refusal of the court's office to accept it on 26 May 2021, when it would have been within time. Furthermore, the purported directive of the clerk of the courts on 7 June 2021, which prevented the applicant from paying into court the further sum of \$15,000.00, as security for costs, within the stipulated time, only served to compound the issue.

[22] Therefore, on 26 May 2021, when the written notice of appeal was being filed along with the payment of \$5,000.00, Sun Energy acted in accordance with the JPCA with the filing of its appeal. The court's office should have accepted the written notice with the \$5,000.00 as well as the \$15,000.00 presented by Sun Energy on 7 June 2021. Its failure to do so is an error in law, which was prejudicial to Sun Energy's right of appeal.

[23] In conclusion, the court's office fell into error in refusing to allow Sun Energy to take all necessary steps to file its appeal on 26 May 2021 and perfect it on 7 June 2021. Due to this error and not any on the part of Sun Energy, the notice of appeal was filed out of time on 27 May 2021. Sun Energy would be entitled, without more, to an extension of time to 27 May 2021 and for its appeal to stand as properly filed. This is what justice demands.

[24] In the circumstances, there is no need for any examination as to whether the appeal has merit. Furthermore, and in any event, the nature of the dispute between the parties as to whether the appeal is arguable would warrant an examination of the notes of evidence and the learned parish judge's reasons for her decision, which are not yet lawfully due to be made available to this court.

[25] I would, therefore, declare that, for all intents and purposes, the notice of appeal was properly filed on 27 May 2021 and, therefore, shall stand as if filed within time.

D FRASER JA

[26] I agree with the reasoning, conclusion and orders proposed by McDonald-Bishop P (Ag).

G FRASER JA (AG)

[27] I, too, agree with the reasoning, conclusion and proposed orders of McDonald-Bishop P (Ag).

MCDONALD-BISHOP P (AG)

ORDER

1. The application filed on 27 July 2021 for an extension of time to file and serve notice and grounds of appeal from the judgment of Her Honour Mrs Beaumont-Daley made on 12 May 2021 in the Corporate Area Parish Court – Civil Division, is granted.
2. The notice and grounds of appeal filed on 27 May 2021 are permitted to stand as properly filed within time.
3. The Corporate Area Parish Court – Civil Division is to accept payment of \$15,000.00 from Sun Energy Systems Company Limited, the applicant, as the security for costs of the appeal to be paid on or before 25 February 2022.
4. Time is extended to 4 March 2022 to service the notice and grounds of appeal filed on 27 May 2021 on Trelawny Aggregates Limited, the respondent.
5. Upon payment of the \$15,000.00 as security for costs of the appeal, Sun Energy Systems Company Limited, the applicant, would be in full compliance with section 256 of the Judicature (Parish Court) Act and, therefore, Her Honour Mrs Beaumont-Daley is to draw up a statement of her reasons for the orders appealed against for the information of this court in accordance with section 256 of the Judicature (Parish Court) Act.
6. Upon service of the said reasons for the judgment, Sun Energy Systems Company Limited shall be at liberty to file and serve supplemental grounds of appeal in accordance with sections 256 and 257 of the Judicature (Parish Court) Act.

7. There shall be no order as to costs of this application.