

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 98/07

MOTION NO. 12/09

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A.**

BETWEEN WILLOWOOD LAKES LIMITED APPELLANT

**AND THE BOARD OF TRUSTEES OF
THE KINGSTON PORT WORKERS
SUPERANNUATION FUND RESPONDENT**

**Ian Wilkinson & Ms. Sashawah Grant, instructed by Ian G. Wilkinson &
Co. for the applicant**

**Jermaine Spence, Courtney Bailey & Miss Maria Burke, instructed by
DunnCox for the respondent**

23rd & 30th October 2009

ORAL JUDGMENT

PANTON, P.

1. This is an application for leave to appeal to Her Majesty in Council from the judgment of the Court of Appeal given on the 2nd day of July 2009 dismissing the appeal. The application is stated as being made under section 110(1) and also section 110(2) of the Constitution of Jamaica.

2. The grounds of the application are that:

- (i) the matter in dispute on the appeal to Her Majesty in Council is of the value of One Thousand Dollars (\$1000.00) or upwards and involves directly or indirectly a claim to, or question respecting property of the value of One Thousand Dollars (\$1000.00) or upwards;
- (ii) the said judgment of this Honourable Court is a final decision in civil proceedings;
- (iii) further or alternatively, the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council; and
- (iv) further or alternatively, the matter in dispute is a decision in civil proceedings.

3. In determining whether this application falls under section 110(1) consideration has to be given to the question of whether this decision of the Court of Appeal is a final decision. The meaning of the term "final decision" has indeed been interpreted by this Court in more than one case. There is the case ***Olasemo v Barnett Ltd*** (1995) 51 WIR 191 and indeed the case of ***Leymon Strachan v The Gleaner Co. Ltd and Dudley Stokes*** SCCA No. 54/97 delivered 18th December 1998.

4. This Court has clearly by these two cases adopted what may be termed "the application approach." In ***Olasemo v Barnett Ltd*** (1995) 51 WIR 191 at 195b, Rattray, P. expressed agreement "with the law as stated in the headnote" (in ***White v Brunton*** [1984] 2 All ER 606) that:

“Where an order made or judgment given on an application would finally determine the matters in the litigation, the order or judgment is final, thereby giving rise to an unfettered right of appeal.”

5. In ***Strachan v The Gleaner Co. Ltd and Dudley Stokes*** (supra) where surprisingly no mention was made of ***Olasemo v Barnett Ltd*** (above), Patterson, J.A., delivering the majority judgment on behalf of Rattray, P. and himself said:

“We were not referred to any judgment or practice of this court in this regard. It seems to me that it is for us to decide the approach that we will follow. In my view, the ‘application approach’ is the better principle and I will be guided accordingly. Lord Esher, M.R., succinctly expressed the rule to be applied when he said in ***Salaman v Warner and others*** [1891] 1 Q.B. 734 at 735:

‘The question must depend on what would be the result of the decision of the Divisional Court, assuming it to be given in favour of either of the parties. If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final but interlocutory.’”

6. In the instant case, the Court of Appeal decided that the judge below was correct in striking out the statement of case. Had the Court of Appeal decided otherwise, the action would have gone on. So, the matter is clearly not one that

fits into the category of final decision. So, under section 110(1) of the Constitution the application fails.

7. Turning to section 110(2) we must say that we have not been pointed to any fact, feature or law in this matter that elevates it to a matter of great general or public importance warranting the invocation of the jurisdiction of Her Majesty in Council.

8 In the circumstances the Motion fails. The application is dismissed with costs awarded accordingly to the respondent to be agreed or taxed.