

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 80/2014

APPLICATION NO 165/2014

BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE McDONALD-BISHOP JA (Ag)

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| BETWEEN | CEBERT WRIGHT (Executor, Estate of Clarice Findlay) | 1 ST APPLICANT |
| AND | OLIVE HOPWOOD (Executrix, Estate of Clarice Findlay) | 2 ND APPLICANT |
| AND | VECAS PENNYCOOKE | 1 ST RESPONDENT |
| AND | CORDEY PENNYCOOKE | 2 ND RESPONDENT |
| AND | ISWELL PENNYCOOKE | 3 RD RESPONDENT |
| AND | MARY PENNYCOOKE | 4 TH RESPONDENT |
| AND | PAULINE PENNYCOOKE | 5 TH RESPONDENT |
| AND | ROY LEVY | 6 TH RESPONDENT |

2nd applicant in person and assisted by her daughter Ms Kemmeal Hopwood

Ms Judith Clarke instructed by Judith M Clarke and Co amicus for the respondents

2 February 2015

ORAL JUDGMENT

BROOKS JA

[1] This is an application by Ms Olive Hopwood for an extension of time in which to file a notice and grounds of appeal in respect of a judgment by P A Williams J handed down on 20 January 2011 in the Supreme Court of Judicature. In that judgment the learned trial judge gave judgment for the respondents in Ms Hopwood's claim against them for an order for possession of lands located in Warminster in the parish to St Elizabeth.

[2] In her address to this court, in support of the application, Ms Hopwood's daughter, Ms Kemmeal Hopwood, first addressed the issue of delay. She said that the reason for the delay was that, based on advice, Ms Hopwood decided to pursue the route of applying for a registered title for the land instead of appealing on the issue of possession. It is when the issue of a registered title was blocked by a caveat lodged by the respondents that Ms Hopwood returned to the option of an appeal.

[3] We have considered those points and the affidavit evidence in that regard. We have also considered the submissions of Ms Clarke who has assisted the court despite the absence of instructions from the respondents. It is our view that the length of the delay is unreasonable and the explanation for it is untenable.

[4] Firstly, the application was filed in late 2014, almost four years after the judgment had been delivered. Secondly, the reason given shows that Ms Hopwood had

deliberately decided that the appeal process was not the appropriate method of resolving her difficulty.

[5] We find that in light of the delay and Ms Hopwood's deliberate choice of relief, that she has not overcome the first hurdles in respect of applications for extension of time.

[6] We are also of the view that even if she were granted permission to appeal, Ms Hopwood would not have had a real prospect of success on appeal. The issue before the learned trial judge turned on the credibility of the witnesses and the documentary evidence placed before her. She ruled based on the totality of the evidence that Ms Hopwood had not proved an entitlement to possession as against the respondents.

[7] Normally, this court, which does not have the privilege of seeing or hearing the witnesses as they testify in the court below, will not, in circumstances where credibility is the issue, lightly disturb a finding by a trial judge, who had that advantage.

[8] Ms Kemmeal Hopwood complained about the fact that a probated will had not been placed in evidence, although it was in the possession of Ms Olive Hopwood's counsel, and said that may have made a difference had it been tendered and admitted. We note, however, that the learned trial judge did make reference to the contents of the will and did assess its impact although she said the will had not been relied upon.

[9] We are of the view that as this case turns on the credibility of the evidence before the learned trial judge, and the record does not show anything that indicates

that she made any obvious error, there is nothing that would justify granting permission to appeal in this case.

[10] The application for extension of time is refused, and in light of the fact that Ms Clarke has said that she had no instruction from the respondents, there shall be no order as to costs.

[11] We are pleased however that Ms Clarke, in the highest traditions of the bar, has appeared, despite the handicap, and we thank her for her assistance.

ORDER

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