REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal Number: CA P159/2020

High Court Action Number: CV2016-01758

Between

FAZARD ALI

Trading as CLOCKWORK CONSTRUCTION & HARDWARE SUPPLIES

Appellant

AND

ISLAND ROOFING AND HARDWARE SOLUTIONS LIMITED

Respondent

Dated this the 18th day of March, 2024

Panel:
Justice of Appeal A Yorke Soo-Hon
Justice of Appeal M Dean-Armorer
Justice of Appeal M Holdip

Appearances:
Mr. A. Manwah on behalf of Fazard Ali (Trading as Clockwork Construction & Hardware Supplies)
Mr. R. Heffes-Doon instructed by Ms. S. Sookraj-Beharry on behalf of Island Roofing and Hardware Solutions

JUDGMENT

1. The Court is moved by a Notice of Application filed under Part 64.18 (2), ***CPR*** seeking the discharge of the order of Justice of Appeal Kokaram, sitting as a single Judge.

2. The order under challenge had been made on 6 December 2022, when the Judge struck out the Appellant's Notice of Appeal on the ground that the appeal disclosed no reasonable ground of appeal or that it was in vague and general terms.[1]

3. The issues which arise for our decision are two-fold. They are firstly whether, in his capacity as a single Judge of the Court of Appeal, the Judge was invested with the power to strike out a Notice of Appeal and secondly, whether the Judge was plainly wrong in holding the view that the grounds were in vague or general terms or that the grounds of appeal disclosed no reasonable cause of action.

4. Having considered the arguments of counsel, we hold the view that a single Judge was not invested with the requisite power. We also hold the view that having regard to our decision on the first issue, it is not necessary for us to consider the second issue. We therefore hold that the Judge was wrong and we set aside his order and restore the appeal.

History of the Proceedings

5. On January 17, 2017, the Respondent Island Roofing and Hardware Solutions Ltd. instituted proceedings against Fazard Ali, the Appellant in this application. The Claim was also brought against Clockwork Construction and Hardware, as second Defendant.

6. On 6 March, 2020, the trial Judge, Justice Harris delivered a written decision entering judgment against the Appellant in favour of the Claimant, Island Roofing and Hardware Solutions Ltd,[2] for the payment of the principal sum

[1] See paragraph 1 of the written reasons of the Judge
[2] Island Roofing and Hardware Solutions is the Respondent on appeal

claimed, less the sum of the invoices which were paid.[3] Justice Harris also dismissed the claim against the 2nd Defendant, Clockwork Hardware Ltd and directed that the First Defendant pay contractual interest of 2% per month.[4]

7. On July 7, 2020 the Appellant filed his Notice of Appeal.[5] At paragraph 2, under the heading *"Details of Findings of fact"*, the Appellant indicated that the details would be provided when the Judge's Notes of Evidence became available.[6] Similarly, under the headings *"Details of findings of Law"*, the Appellant indicated that these too would be provided when the Judge's Notes of Evidence became available.

8. The Appellant set out four items under the heading *"Grounds of Appeal"*. They were:
    a) The learned Judge's decision is irrational arbitrary, unreasonable and contrary to law.
    b) The learned Judge's decision cannot be supported by the evidence
    c) The learned Judge's decision is against the weight of the evidence.
    d) Further grounds to be provided when the Judge's Notes of Evidence become available.

9. On August 23, 2021, directions were sought by the Appellant. On this occasion, the Judge, sitting as a single Judge of the Court of Appeal, gave directions for the preparation of the transcript and directed that the transcript be included in the Record of Appeal which was ordered to be filed on or before November 30, 2021. The Judge made an unless order, directing that failure to file the Record of Appeal would result in the dismissal of the appeal.

10. The Record of Appeal was duly filed on November 29, 2021. It included the transcript of the Judge's Notes of Evidence.

[3] See paragraph 52 of the Judgment of Harris J
[4] See paragraph 52 (iii) of the Judgment of Harris J
[5] See the Notice of Appeal at paragraph 1 of the ROA
[6] See paragraph of the Notice of Appeal page of the ROA

11. On March 31, 2022, the Appeal once again came up before the Judge sitting as a single Judge on an Appeal Management Conference, (AMC). On this occasion, the Judge made orders respectively requiring the Appellant to send an offer of settlement to the Respondent, as well as a direction to the Respondent to respond to the offer. The AMC was adjourned to June 9, 2022.

12. On June 9, 2022, the Appeal came up again for an AMC. On this occasion the Judge gave directions for the filing and service of Written Submissions. The Appellant was directed to file and serve his Written Submissions by November 30, 2022 and the Respondent to do so January 31, 2023. An AMC was fixed for July 13, 2022.

13. On the adjourned date, the Judge referred the appeal to mediation and stayed the proceedings for 42 days, pending the mediation process. Another AMC was fixed for October 26, 2022, when a further stay of proceedings pending mediation was made and the appeal was adjourned to December 6, 2022.[7]

14. On that day, the Judge learned that mediation was unsuccessful. According to the evidence of the Appellant, the Judge, of his own volition decided that the appeal should be struck out.[8]

15. The Judge himself referred to the hearing on December 6, 2022, at paragraph 6 of his Reasons. He stated that at the October AMC, he drew the attention of the parties to the "bare grounds of appeal". At paragraph 8, the Judge referred to the AMC on December 6, 2022. He wrote:

> *"8. At the reconvened AMC, I turned the parties' attention to the bare notice of appeal. I identified for the parties a preliminary issue to be addressed, that is, whether the notice of appeal is liable to be struck out pursuant to rule 64.4(6) of the CPR. This rule provides:*
>
> *"64.4(6) The court may, with or without an application, strike out any ground which -*
>
> *(a) is in vague or general terms; or*

[7] There events were set out by the Judge at paragraph 4 of his Reasons
[8] See paragraph 4 of the affidavit of Fazard Ali filed on 21 December 2022

(b) discloses no reasonable ground of appeal."

9. Both parties addressed me on this issue and no application was made by either party for an adjournment to consider the matter.

10. The Appellant contended that the grounds sufficiently set out the grounds of appeal while the Respondent contended that the grounds were vague and too general.

11. In my view, for the reasons set out in this judgment, the grounds of appeal were both vague and general in terms and disclosed no reasonable grounds of appeal. In exercising my discretion to strike out the grounds and the appeal, I was mindful of exercising this discretion to give effect to the overriding objective by balancing the principles of equality, economy, proportionality and fairness.

The Judgment

16. In his Reasons, the Judge addressed three broad issues: that is to say: the power of the single Judge and case management of an appeal[9] , the merits of the appeal which was before him[10] and the impact of the overriding objective in this case.[11]

17. At paragraph 12 the Judge wrote:

> *"The power to strike out an appeal pursuant to Rule 64.4(6) CPR is conferred upon the Court which includes a single Judge of the Court of Appeal."*

18. This statement is echoed at paragraph 15 of the decision where the Judge said:

> *"Rule 64. 4 (6) confers upon both the full court and the single Judge the ability to deal with a procedural application to strike any ground."*

19. The Judge then referred to Part 64. 17(1) ***CPR*** and said:

[9] See paragraph 12 of the Reason
[10] See paragraph 23 of the Reasons
[11] See paragraph 32 of the Reasons

"Additionally, the Court through the single judge exercises the powers of case management."

20. At paragraph 17, the Judge considered the Appeal management conference and defined it as a term of art to describe "*....the Court's exercise of "the powers of case management through the single Judge and pursuit of the objective of case management espoused in parts 1 and 25 CPR"*.

21. He quoted the provisions of Part 25.1 which sets out the objectives of case management and the powers with which the Court is invested in the exercise of case management. The Judge cited and relied on ***Estate Management and Business Development Co. Ltd v Saiscon Ltd*** where Jamadar JA noted that *"active judicial case management has as its ultimate goal the just disposition of each matter...."*

22. The Judge referred to the foreword to ***CPR*** by CJ Sharma, who wrote:

    "the CPR are founded on a system of case flow management with active judicial management....This new procedural code is buttressed by a plethora of rules which create several in built mechanisms to foster settlement...[12].

23. The Judge observed that parties are "*enjoined by Rule 1.3 CPR*" to assist the court in giving effect to the overriding objective. The Judge cited the Privy Council decision of ***Crick v Kurt Brown***[13] and in particular the statement by their Lordships at paragraph 30 of their judgment as to the effect of Part 64.13. The Judge quoted these words:

    "13. [sic] ...CPR 64.13 gives the Court of Appeal a power to engage in active case management of its own motion by giving notice with a view to striking a notice of appeal....should it choose...." [14]

24. The Judge then proceeded to hold that the appeal was *"an Unarguable Appeal*". He held that the Notice of Appeal disclosed *"vague grounds"* and

[12] See paragraph
[13] [2020] UKPC
[14] See paragraph 22 of the Reasons

presented nothing for the Court to manage". This finding will be considered in the discussion below.

25. Again, at paragraph 30, the Judge held that *"an appeal drafted in such a perfunctory and lax manner cannot be meaningfully managed"*. The Judge then proceeded to identify those questions which would arise: He asked rhetorically, *"what are the issues for determination? Is there merit in pursuing any particular issue be resolved through a form of ADR such as arbitration mediation or JSC? Most importantly how should the Respondent prepare to defend its appeal?"*[15]

26. The Judge observed that every Appellant would hold the view that the entire judgment is flawed but that *"does not comport with the discipline of Appellate litigation underscored by rule 64.4 (6) CPR"*.[16]

27. Finally, the Judge paid tribute to the overriding objective. He cited the authority of ***Real Time systems Ltd. V Renraw Investments Ltd***[17] and stated that striking out is a power of last resort.

Submissions

28. At the hearing before the panel, learned Attorney-at-Law made brief written and *viva voce* submissions. Mr. Manwah for the Appellant submitted that Part 64.18 ***CPR*** limits the power of a single judge of the Court of Appeal and that the single Judge does not have the power to strike out an appeal.

29. Mr Manwah also argued that his grounds were concise without argument or narrative. Counsel amplified his submission at the hearing of the appeal and reiterated that his grounds were concise and in compliance with the Rules.

30. He submitted that the Rules distinguished between the power of the full Court of Appeal and that of a single Judge and argued that the Judge had not exercised his power under Part 64.18 (1), to determine any procedural

[15] See paragraph 30 of the Reasons
[16] See paragraph 30 of the Judge's Reasons
[17] Real Time systems Limited. V Renraw Investments Limited [2014]UKPC 6.

application, since this power is invoked upon an application being made before the Court and that in these proceedings there was no application and the Judge acted on his own volition.

31. Mr. Heffes-Doon for the Respondent asserted, that the grounds of appeal were drafted in the most vague and general way possible. He asserted also that the Notice of Appeal did not identify any finding of fact or of law as required by Part 64.4 (1) of ***CPR***.

32. Counsel cited ***NCB v Mahara***[18]**,** in support of his submission that a striking out order was procedural in nature and a single Justice of Appeal is empowered by Part 64.18 to deal with the matter.[19] Finally, Mr. Heffes-Doon cited ***Burgess v Stafford Hotel Ltd***[20] and argued that the Judge held an inherent discretion to strike out the Notice of Appeal.

Discussion

33. The primary question which arises for our consideration is whether the Judge exceeded his power by striking out the Appeal. Although, not stated expressly in the course of his Reasons, the Judge apparently made his order on the basis of Part 64.4 ***CPR*** which makes this provision:

> *"The Court may, with or without an application strike out any ground which-*
>
> *a) is in vague and general terms ;or*
>
> *b) discloses no reasonable ground of appeal"*

34. The power to strike, conferred by Part 64. 4, is invested in *"the Court"*. It is therefore necessary to consider the meaning of those words in the context of Part 64. The words *"the Court"* have been defined of Part 64.1 (2) of ***CPR*** to mean *"the Court of Appeal"*. The composition of the Court of Appeal for

[18] National Commercial Bank of Trinidad and Tobago v Mahara TT 1996 HC 44
[19] See paragraph 13 of the Written Submissions for the Respondent.
[20] [1990] 3 All ER 222

the purpose of exercising its jurisdiction is provided for at section 6 (2) the ***Supreme Court of Judicature Act***[21], which is set out here:

> *"Subject to this section for the purpose of exercising its jurisdiction the Court of Appeal shall be constituted in accordance with the directions of the Chief Justice and shall consist of an uneven number being not less than three."*

35. There is an exception to the rule of the three member panel in cases of procedural appeals[22], appeals from the orders of a Judge in Chambers or an order of an inferior court.[23]

36. The principal rule of legislative interpretation is the literal rule. Courts are required to apply the literal rule, unless such an interpretation is at variance with the intention of the legislator or results in manifest absurdity, in which case the court will rely on the Golden rule or the Mischief rule.[24]

37. In my view, when the literal rule is applied to Part 64.4(6) the words "the Court" must be interpreted as the Court of Appeal as constituted according to the provisions of section 6(4) of the ***Supreme Court of Judicature Act.*** This clearly excludes a single Judge. By expressly conferring power on "the Court" there is an implied exclusion of the single Judge.[25]

38. The foregoing interpretation is supported by an examination of Part 64 as a whole. One observes that the distinction between the Court and "the single Judge" pervades Part 64. For example, Part 64.14 directs that applications to the Court may be made in accordance with Part 11. Such applications must be heard by a single Judge.

39. What one finds in Part 64 and indeed of section 6 of the ***Supreme Court of Judicature Act*** is that specific powers are carved out from the general powers conferred on the full Court and are invested in the single Judge. These relate

---

[21] Ch 4:01
[22] See Part 64.9 CPR
[23] See section 6(4) Supreme Court of Judicature Act
[24] See Maxwell on the Interpretation of Statutes (12th Langan ed.) 28 et seq
[25] See the rule of "expressio unius exclusion alterius". Ibid at p. 293

to interlocutory or procedural matters and do not confer on the single judge the power to dismiss or strike out an entire appeal. Accordingly, the single judge is not empowered to dismiss for non-compliance. This must be done by the Court. See Part 64.13 ***CPR***.

40. In my view, this accords with the general policy of the administration of justice, where the decision of a single Judge sitting in the High Court can be overturned by the Court of Appeal comprising an uneven number, not less than 3 Judges. To do otherwise would imply that the decision of the single High Court Judge can be overturned collaterally by the decision of another single Judge. It is therefore my view and I hold that the Judge exceeded his jurisdiction by purporting to exercise the power conferred at Part 64 (6) ***CPR***.

41. We proceed to consider whether the Judge was empowered to strike out the appeal under Part 64.18, ***CPR*** which provides that the powers of a single judge includes the power to:

> "… *hear and determine any procedural application in the Court of Appeal*"

42. Mr. Heffes-Doon relied on ***NCB v Mahara***[26] for the proposition that a striking out application is always procedural. It is noted that in ***NCB v Mahara***, Justice Persad-Maharaj expressed the view that applications to strike out the pleadings of Plaintiffs under RSC 18 rule 1 were made at an interlocutory stage of the proceedings and not at trial. His words are not authority for saying that an application to strike out an appeal is procedural for the purpose of Part 64 (18) ***CPR***.

43. Moreover, it must be observed that ***Mahara*** was decided under the 1975 Rules, prior to the advent of ***CPR***. To blindly apply learning in a pre-CPR case would be to be like putting new wine into old wine skins.

44. Even if Mr. Heffes-Doon is correct in his citation of ***Mahara***, however, Part 64.18 empowers the single Judge to "*hear and determine any procedural application in the course of an appeal*"

[26] Ibid

45. A literal interpretation of this rule envisages that an application would first be made and that the power to hear and determine is invoked by an application being made.

46. It is unclear whether the application should be a written one which is formally filed. In my view however where Part 64 of the ***CPR*** is read as a whole, one finds that the term "application" which appears in Part 64.18 (1)[27] echoes the provisions of 64.14,[28] which requires that any application to the Court must be made in accordance with Part 11 of the ***CPR***. This rule employs the word "must" which carries a mandatory meaning.

47. It is useful to consider the provisions of Part 11,[29] which requires, as a general rule that an application be made in writing. See Part 11.4 (2). An application may be made orally in either of two circumstances: where the oral application is permitted by a rule or practice direction or the court dispenses with the requirement. Neither of those circumstances is present in this case.

48. Part 11[30] also requires that notice of an application be given to the Respondent. See Part 11 (1). By Part 11(2), an Applicant may make an application without notice if permitted by a rule or practice direction. See Part 11 (2) (a) and (b). Once again, Part 11(2) is not applicable to this matter.

49. In the hearing which took place before the Judge on December 06, 2022, there had been no application oral or otherwise. The order to strike out the appeal came about because of the Judge's initiative in observing the quality of the grounds of appeal. It is therefore my view that no application had been made and Part 64.18[31] cannot be invoked.

50. Finally, we proceed to consider whether the single Judge has an inherent jurisdiction to strike out an appeal. Mr. Heffes-Doon, in so submitting, relied

[27] CPR
[28] CPR
[29] CPR
[30] CPR
[31] CPR

on the English case of ***Burgess v Stafford Hotel Ltd*** [32]. Indeed this authority asserts:

> *"The Court of Appeal has power under its inherent jurisdiction to strike out a notice of appeal on the ground that it is frivolous, vexatious and an abuse of the process of the Court.*[33]

51. Assuming the correctness of this authority, it relates to *"the Court of Appeal"* and not to a single Judge. The distinction between the two entities has been considered above. Accordingly, it is our view and we hold that the inherent jurisdiction to strike out a Notice of Appeal is invested in the Court of Appeal consisting of 3 or more Judges, as contemplated by section 6 of the ***Supreme Court of Judicature Act***[34].

52. It follows then that it is our view that the single Judge had no power to strike any grounds in the absence of an application. It is our view that the learned Judge exceeded his power and his order must be set aside and the Notice of Appeal restored.

53. Our view is buttressed by the persuasive authority of ***Gleaner Co Ltd v Strachan***[35], in which similar issues arose before the Court of Appeal (Jamaica). The rules there considered were the ***Court of Appeal (Jamaica) Rules 1962***. Regardless of the differences in age and in jurisdiction between that Jamaican rules and our ***CPR 1998 (as amended)***, however, the relevant rules were similar in substance. The Jamaican Court of Appeal held that a single Judge of the Court of Appeal did not have the jurisdiction to set aside an order of a Judge of the Supreme Court, except on an application to that end. The latter jurisdiction, according to the Court of Appeal, was dependent upon an application being made.

54. It is interesting that some 27 years later, similar issues have engaged our attention. We find ourselves, in principle, in agreement with the decision of

[32] [1990] 3 All ER 222
[33] Ibid of p. 222
[34] Ibid
[35] (1997) 59 W.I.R. 315

the Court of Appeal of Jamaica, that the single Judge lacks the power to overrule a Judge of the High Court, unless moved by an application, so to do.

Conclusion

55. Having decided that the Judge had exceeded the power which he exercised as a single Judge, it is unnecessary to consider whether his view was correct that the grounds of appeal were vague and general. This of course would be a matter of the exercise of his discretion, which cannot easily be challenged.

56. We would wish to observe however that the time might be ripe for an amendment of Part 64[36] to confer the power on a single Judge to strike out an appeal which is devoid of any substantial ground and is in reality nothing but an empty shell.

57. We say that the time is ripe for such an amendment, having regard to the current drive to address and reduce the endemic backlog of appeals, by active case management. It is our view that the single Judge, sitting in case management should be invested with the power to dispose of patently hopeless appeals and that the implied requirement that the single Judge transfer such appeals for disposition by a full panel is inefficient and archaic.

58. Nevertheless, we are at present bound by the provisions of Part 64,[37] as they stand. For reasons stated above, therefore we hold that the Judge lacked the jurisdiction to strike out the appeal. His order is set aside and the Appeal is re-instated. There will be no order as to costs.

Dated the 18th day of March, 2024

_____

Mira Dean-Armorer JA

[36] CPR
[37] CPR