

[2008] CCJ 9 (AJ)

**IN THE CARIBBEAN COURT OF JUSTICE  
Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF THE  
CO-OPERATIVE REPUBLIC GUYANA**

**CCJ Application No. AL 3 of 2008  
GY Civil Appeal No. 46 of 2007**

**In the Matter of a Petition by CHAMANLALL MUKHTIYAR and  
DHANDAI MUKHTIYAR for a Declaration of Title**

**BETWEEN**

**CHAMANLALL MUKHTIYAR  
DHANDAI MUKHTIYAR**

**APPELLANTS**

**AND**

**POONARDAI SUKHU  
HARDEO BALGOBIN  
RAJENDRA BALGOBIN  
ROHAN BALGOBIN**

**RESPONDENTS**

**Before The Right Honourable  
And The Honourables**

**Mr. Justice M. A. de la Bastide, President  
Mr. Justice R. Nelson  
Mr. Justice D. Pollard  
Mr. David Hayton  
Mr. Justice J. Wit**

**Appearances:**

**Mr K A Juman-Yassin for the Appellants**

**Mr Rajendra Poonai and Mr Roopnarine Satram for the Respondents**

**JUDGMENT**

**delivered orally by the President**

**The Right Honourable Mr. Justice Michael de la Bastide**

**on the 7<sup>th</sup> day of November 2008**

## JUDGMENT

- [1] Our decision is as follows. The application to this Court for special leave to appeal against the decision of the Court of Appeal, which was given on 10<sup>th</sup> June, 2008, dismissing the applicants' motion, is dismissed, and the applicants must pay the costs of that application. It also follows that the application for leave to appeal as a poor person must also be dismissed, again with costs. The reason for the dismissal of the application for special leave to appeal is that we do not consider that the appeal which it is sought to bring, is arguable.
- [2] It is manifest that the Court of Appeal did not have jurisdiction to reverse the decision it had earlier given in June 2006, dismissing the appeal from the Land Commissioner on a preliminary point. The preliminary point which was taken, was that the attorney who signed the notice of appeal from the Commissioner's decision on the petition for a declaration of ownership filed by the applicants, was not properly authorized. At the time the law in Guyana was thought to be that for an attorney to have authority to sign a notice of appeal and to appear in the Court of Appeal for the appellant, it was necessary for his client to have given him an authorization in writing which had to be filed in the High Court. In the case of *Watson v Fernandes*<sup>1</sup>, however, this Court in a judgment which was delivered on the 19<sup>th</sup> March, 2007, held that that was a mistaken view of the law and that there were no formalities attached to the giving of authority by a party to an attorney for the purpose of filing an appeal.
- [3] Of course that decision was made in a case in which what was considered to be established law in Guyana with regard to the formalities required for authorizing counsel to represent a party in an appeal, was applied by the Court of Appeal. Some three months after our decision in *Watson v Fernandes*<sup>2</sup>, that is, on the 15<sup>th</sup> June, 2007, the applicants filed their motion in the Court of Appeal seeking to have the Court of Appeal reverse the decision which it had earlier made dismissing their appeal on the basis of the preliminary objection.

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<sup>1</sup> [2007] CCJ 1 (AJ)

<sup>2</sup> *supra*

- [4] We have heard counsel's submissions to the effect that the Court of Appeal had the power to accede to that application and to reverse, in effect, its own decision and reinstate the appeal which it had dismissed. But the authorities which were cited in support of that submission in fact, in our view, tended rather to negate it.
- [5] There were two cases in particular that were relied upon. The most apposite was the case of *Arnold v Westminster Bank*<sup>3</sup> which dealt with the question whether the rule of *res judicata estoppel* is an absolute one, or is subject to exceptions. Without going into the facts of that case in any depth, it is clearly distinguishable from the instant case. In the course of the judgment delivered in that case, it was made clear that the usual course to be adopted in order to challenge a decision which is subsequently shown to have been wrong in law, is by way of an appeal rather than by resort to the court which made the decision. It was held that there may be exceptional circumstances which would permit a court to decide a point in issue differently from the way in which it had decided it previously between the same parties.
- [6] In that case the same court which had in earlier proceedings decided a point wrongly, was held entitled to correct its error and to decide the same point differently in subsequent proceedings between the same parties who were in a continuing legal relationship (lessor and lessee). That is a rather different case from the present one. There are certainly no exceptional circumstances in the instant case which would justify the Court of Appeal assuming and exercising a highly unusual jurisdiction to reverse itself on an issue which it had already decided, not only between the same parties but in the same proceedings.
- [7] The other case which was cited, *In Repayment of Compensation to Civil Servants under Article 10 of an agreement for a Treaty between Great Britain and Ireland*<sup>4</sup>, was one in which the Privy Council held that it was subject to "no inherent incompetency" in relation to the reversal of its own decision, and that it did have the power in exceptional circumstances to review and alter its own decision, even in the context of the same case. But that jurisdiction was enjoyed by the Privy Council because it was a final court. There

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<sup>3</sup> [1991] 3 All E.R. 41

<sup>4</sup> [1929] AC 242

is no basis in logic or in authority for attributing the same facility to an intermediate court such as the Guyana Court of Appeal.

[8] So that, having considered the authorities which were cited to us, we are satisfied that the Court of Appeal lacked the power to do that which the applicants were asking it to do by their motion, and therefore the Court of Appeal was right to refuse the application and dismiss the motion.

[9] In those circumstances, there is absolutely no reason to even consider granting special leave to appeal. In the course of counsel's submissions to us, we did indicate to him that the better course might have been for the applicants to have sought to challenge the 2006 decision of the Court of Appeal by applying to this Court for special leave to appeal against that decision and for an extension of time for doing so.

[10] We want to make it clear that we are giving no indication that such an application would have been successful. But certainly, it would have had the advantage at any rate of invoking a jurisdiction which this Court certainly has rather than invoking in the Court of Appeal a jurisdiction which that court lacked. The question of an amendment of the application before us was mooted. In fairness to counsel, it is true to say that the suggestion of such an amendment came from the bench, but it soon became apparent that the amendment required was so fundamental that it would be better to leave the matter to be raised, if it was to be raised at all at this stage, by a fresh application rather than by way of an amendment.

[11] This matter has been pending, in the sense that the dismissal of the applicants' appeal has been under challenge, since June 2007. We have now resolved that challenge against the applicants and it would obviously be more difficult for them to justify now a fresh challenge by the alternative route which I have indicated. But again, it is not for us to predict whether or not such an application, if made at this stage, would be entertained. We wish to emphasize that nothing we have said, either in this judgment or in the course of argument, should be taken as an indication either that we would, or that we would not, be prepared to entertain an application at this stage along the lines that I have indicated.

[12] So I would simply repeat that the application before us is dismissed with costs. There is no grant of leave to amend in order to transform the application into one for special leave to appeal against the 2006 decision. Consequently the application to appeal as a poor person is also dismissed with costs.

[13] The total costs awarded in respect of both applications are agreed at \$200,000 Guyana dollars.