

COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

HCVAP 2008/002

BETWEEN:

JUSTINA HONORE

Appellant

and

[1] CLEMENT ROLLE

[2] THE ATTORNEY GENERAL OF DOMINICA

Respondents

Before:

The Hon. Mr. Denys Barrow, SC

Justice of Appeal

On paper:

Ms. Dawn Yearwood-Stewart for the Appellant

The Solicitor General for the Respondents

2008: March 7.

JUDGMENT

- [1] **BARROW, J.A.:** Upon perusing the notice of appeal, this appeal appeared to be an appeal against an interlocutory order of Master Pearletta Lanns contained in the Order dated 20th December 2007 and there was no indication that leave to appeal had been obtained. In response to my directions to counsel to address the question whether it was an interlocutory appeal, counsel for the appellant filed submissions conceding that this was an appeal against an interlocutory order and that leave to appeal had not been obtained.

- [2] Counsel submitted, however, that the appeal should not be struck out as nullity (see **Oliver Macdonna v. Benjamin Richardson**¹) because it was a procedural appeal and such an appeal did not require leave.
- [3] The short response to that submission is that it flies in the face of the **Oliver Macdonna** decision which counsel relied on. As counsel accepted, a procedural appeal is a subset of an interlocutory appeal so that all procedural appeals are interlocutory appeals. If the proposed appeal does not fall within one of the exceptions to the need for leave provided in the **Eastern Caribbean Supreme Court (Dominica) Act** Cap. 4.02 at section 30(2)(g), it can be brought only with leave.
- [4] Counsel thought that because rule 62.5(a) provides a 7 day time limit for filing a procedural appeal such an appeal does not need leave because it stands in contrast to the requirement in rule 62.5 (b) that an appeal for which leave is required must be filled within 14 days of the date when such leave was granted.
- [5] The frequently misunderstood scheme of rule 62.5 was fully explained in **Craig Reeves v. Platinum Trading Management Ltd**² at paragraphs 21 and following. In brief, there are some interlocutory appeals, and hence some procedural appeals, that do not need leave. If the proposed appeal is a procedural appeal and it does not need leave then it must be filed within 7 days of the date of the decision (see rule 62.5 (a)). If it is a procedural appeal that needs leave it must be filed within 14 days of the date when such leave was granted. (see rule 62.5 (b)).
- [6] For completeness, I mention that if the proposed appeal is an interlocutory appeal which is not also a procedural appeal, and it does not need leave (because it falls within one of the exceptions in section 30 (2) of the Supreme Court Act), it must be filed within 42 days of the date when the order or judgment appealed against was served on the appellant, in accordance with rule 62.5(c).

¹ Anguilla Civil Appeal No. 3 of 2005 (delivered on 29th June, 2007)

² Saint Christopher and Nevis HCVAP 2007/022 (delivered on 25th February, 2008)

[7] I conclude, therefore, that this procedural appeal needed leave to be brought and without leave having been obtained the purported appeal is a nullity and must be struck out, which I hereby order.

[8] The point on which the purported appeal was defeated was not taken by the respondents and the court received no submissions from the respondents on the point. The respondents could have spared themselves the making of submissions on the purported appeal if they had taken the point. In the circumstances, I make no order as to costs.

Denys Barrow, SC
Justice of Appeal