

ANGUILLA

IN THE COURT OF APPEAL

MAGISTERIAL CIVIL APPEAL NO. 7 OF 2002

BETWEEN:

CAROLINE DAVIES

Appellant

and

MAUNDAYS BAY MANAGEMENT LIMITED

Respondent

Before:

The Hon. Mr. Adrian D. Saunders

Justice of Appeal

On written submissions:

2003: June 25;
October 20.

JUDGMENT

[1] **SAUNDERS, J.A.:** On the 29th August, 2002 the learned Magistrate dismissed a civil complaint filed by Maundays Bay Management Limited (MBM) against Ms. Davies. At the hearing, counsel for Ms. Davies had objected to the prosecution of the claim on the ground that it was frivolous and vexatious. After listening to counsel the Magistrate refused to entertain the claim on the ground that it raised issues that were then before the High Court in other proceedings between the same parties. The Magistrate accordingly dismissed the claim but declined to make any order as to costs against MBM. Ms. Davies is aggrieved about the refusal to make an award of costs in her favour. She has accordingly appealed to the court of appeal on the ground that the learned Magistrate's decision "is unreasonable and cannot be supported having regard to the evidence". The court has directed that the appeal be heard by a single judge of the court on the written submissions of Counsel.

- [2] In their written submissions, counsel for MBM raised a number of preliminary points. Counsel submitted that Ms. Davies ought first to have obtained leave to appeal as this was an appeal only against the discretionary exercise of a costs order. The procedure in the Magistrate's court is governed by the Magistrate's Code of Procedure Act (MCPA). An appeal solely on costs is not specifically provided for in the MCPA. Counsel submits that such an appeal is possible only because section 177 of the Act provides that in all matters of procedure not covered by the Act the procedure applicable to the High Court shall apply. Section 29 of the Eastern Caribbean Supreme Court (Anguilla) Act deals, *inter alia*, with the circumstances of a litigant who seeks to appeal only in respect of an order on costs. Where such costs fall within the discretion of the court, then such an appellant must first seek leave. Counsel suggests that in the absence of an order granting leave to appeal, there is no appeal before this court and the same should be struck out.
- [3] This is an attractive argument with which I am inclined to agree but I would have liked to have seen the appellant's response to it. Given that this matter is being dealt with only on paper, I prefer to decide it on the substantive issue because I consider that in any event this appeal should fail.
- [4] The learned Magistrate in his reasons for his decision stated that he denied the application for costs on three different grounds. First of all he stated that although counsel for Mrs. Davies succeeded in having MBM's claim dismissed, the dismissal was not grounded upon the arguments advanced by counsel. Secondly, the Magistrate hinted that the matter of any costs thrown away could be addressed in the extant High Court proceedings. Thirdly, the Magistrate said that there was no bad faith on the part of MBM in bringing the claim.
- [5] I cannot agree that in declining to make an order for costs, what the learned Magistrate did was unreasonable or arbitrary. Nor can it be said that the

Magistrate failed to exercise his discretion. From an examination of the reasons for his decision the Magistrate clearly weighed in his mind the matter of whether or not to award costs. He declined so to do. I entirely disagree with the view of counsel for Mrs. Davies' that, in choosing not to award costs, the Magistrate did what "no reasonable Magistrate properly directing himself in law would have done". Another Magistrate may have come to a different conclusion. It is well established law however that the function of an appellate tribunal is not to substitute its own discretion for that of the court below. See: **Eagil Trust v Piggott-Brown** (1985) 3 A.E.R. 120.

[6] In all the circumstances, if at all there is a valid appeal before this court, I would dismiss it with costs to the respondent. I hope that the parties can resolve all the outstanding issues between them in the extant proceedings in the High Court.

[7] On the matter of costs in this court, I must confess to some difficulty in quantifying the proper amount. I have been unable to discern the amount that was claimed by MBM in the Magistrate's court. Given that this matter was dealt with on paper and it is an appeal from a Magisterial action, I would order the appellant to pay the costs of this appeal which I fix in the sum of EC\$750.00.

Adrian Saunders
Justice of Appeal