

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2006/0420

BETWEEN:

SEAN STANLEY

CLAIMANT/RESPONDENT

AND

JULIAN SUTHERLAND

DEFENDANT/APPLICANTS

AND

JUSTIN DOUGLAS

AND

BDS LIMITED trading as NICE RADIO

AND

CARLOS MALONEY trading as CROSS COUNTRY RADIO

Appearances:

Mr. Ronald Marks for the Claimant/Respondent

Mrs. Kay Bacchus-Baptiste for the 1st, 2nd and 3rd Defendants/Applicants

Ms. Suzanne Commissiong for the 4th Defendant/Applicant

2020: 22nd May

JUDGMENT ON SUBMISSIONS

Byer, J.:

- [1] By Notice of Application filed on 5th March 2019 (the March application) the defendants/applicants applied for a stay of execution of the order made by this court on the 15th January 2019 in which this court had found in favour of the claimant/respondent and sent the matter to a Master of the High court for assessment of damages.

- [2] Due to some form of administrative oversight. This application was not brought to the attention of this court until the 13th March 2020 almost a year after the filing of the same and after the learned Master had undertaken an assessment of damages on the basis of the judgment rendered by this court. As of the delivery of this decision that determination is still outstanding.
- [3] The application's sole prayer was for "*a stay of execution of the said order made on the 15th January 2019, for assessment of damages and of all enforcement proceedings in the high court until further order.*"
- [4] At the time of the filing of that application, the defendants/applicants had already filed their Notice of Appeal seeking to appeal the judgment of this court as indicated.
- [5] As indicated the application was never brought to the attention of this court but on the date set in the application the same was listed before the Master.
- [6] From the records of the court, on that date, acting Master Rickie Burnett adjourned the matter there having been no appearance of the claimant or his counsel.
- [7] On the next occasion on the 15th April 2019, there is no notation as to what was done with regard to the application for the stay but directions were issued for the hearing of the application for assessment of damages that was filed on the 5th February 2019.
- [8] The next court date of significance was the 1st July 2019. This is the first time that an order was made with regard to the application filed since March 2019 for the stay, and Master Moise (as he then was) ordered that the application for the stay should have been brought to the attention of the judge and he proceeded to deal with the assessment of damages there having been no stay and reserved on the decision.
- [9] It took a further eight months for the application to be brought before this court.
- [10] When this court looks at the nature of the March application it is clear to this court that although the prayer sought a stay of execution what was really being sought from the grounds was a stay of proceedings. In deed Ground 3 stated that the application was "in order to prevent any assessment and execution on the said judgment to the prejudice of the Appellants should they win their appeal."
- [11] Indeed this court is satisfied that if the application had been brought to this court's attention, upon filing, that this court would have had the requisite power under Part 26.1(2) (q) CPR 2000 to have issued a stay, if the court was satisfied that the defendants/applicants were so entitled.
- [12] What instead occurred was that the Master proceeded to his assessment there being no stay.
- [13] At this juncture therefore it is unclear what this court could possibly be staying as it certainly cannot be the contention of the defendant/applicant that this court issues a stay to prevent the Master from issuing his decision. Indeed there are no proceedings at this stage.

- [14] Therefore the only feasible application for the defendant /applicant would be to indeed pursue an application for a stay of execution.
- [15] However it seems to have been lost on both sides that the court given the power to grant a stay of execution is the Court of Appeal. Outside the powers of this court to consider applications for leave to appeal and within that application an application for a stay of proceedings, the power to grant a stay of execution of a judgment resides only with the Court of Appeal. In Part 62.16 of the CPR 2000 it is clearly stated that a single judge of the court (that being the Court of Appeal) may make an order for a stay of execution on any judgment or order against which an appeal has been made pending the determination of the appeal. Additionally, by the Eastern Caribbean Court of Appeal Rules the power to grant a stay of execution is stated to be within the power of a single judge of the court (again defined as the Court of Appeal) and by Section 28 a judge of the court below may wield that power only where applying to the court of appeal “...*may cause undue inconvenience or delay...*”
- [16] In this court’s mind in order for this court to be empowered to grant a stay of execution there must be some evidence before it that indicates that appealing to the Court of Appeal would have caused delay or inconvenience.
- [17] This court has scoured the affidavits in support of the application and can find no such contention or information that would invoke the jurisdiction of this court to take upon itself the hearing of the application.
- [18] In any event I am further fortified in taking this position when it is clear that the defendants/applicant have invoked the jurisdiction of the Court of Appeal by the filing of the Notice of Appeal. It is unclear to this court how at this stage the high court can be asked to intervene.
- [19] In light of these findings I therefore dismiss the application and order that the defendant/applicant be at liberty to file an application in the Court of Appeal pursuant to Part 62.16 CPR and Rules 27 and 28 of the Eastern Caribbean Supreme Court Court of Appeal Rules.
- [20] In the discretion of the court I further make no order as to costs as against the defendants/applicants.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar