

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2006/0587

BETWEEN:

ASHANDI EDWARDS

Claimant

and

**RHOLDA BHOLA
LENORE BHOLA**

Defendants

Appearances:

Mr. Derick Sylvester for the Claimant

Mrs. P. Nicola Byer for the Defendants

2013: April 24;
June 24.

[1] **MOHAMMED, J.:** The Claimant has applied for permission to appeal to the Court of Appeal ("the instant application") against a decision of the Master rendered on the 9th October, 2012. The Master dismissed the Claimant's application which sought permission of the Court to sell certain properties of the Defendants to satisfy a judgment obtained by the Claimant against the Defendants in the sum of \$51,685.25 plus interest and costs.

[2] The instant application is based on the following four grounds:

(1) The affidavit in support of the application before the Master was not deficient.

- (2) The Master misapplied and misunderstood the provisions of Sections 50 and 52 of the Civil Procedure Act Cap 55 ("the Act") which governs applications for sale of land.
- (3) The Master failed to appreciate the obligations on the Defendants under Section 50(2) of the Act.
- (4) The Master did not have the jurisdiction to determine the application in any event.

[3] Counsel for the Defendants opposed the instant application on the basis that all the grounds will fail.

[4] In applications for leave to appeal the onus is on the Applicant, in this case the Claimant to demonstrate that the intended appeal has a realistic prospect of success. For the reasons set out hereafter the Claimant has discharged this burden. The instant application is granted with costs to be assessed if not agreed.

What is the test the Court is to apply for leave to appeal?

[5] The Court must be persuaded that the Applicant, in this case the Claimant, has a realistic prospect of success¹ on the appeal. In **Othneil Sylvester v Faellesje, A Danish Foundation**², Barrow JA described the burden on the appellant as "The appellant needs to show that the intended appeal has a realistic prospect of success³ which is a heavier burden than showing only that he has an arguable appeal".

Was the affidavit in support of the application before the Master deficient?

- [6] In paragraph 2 of the instant application one of the grounds for leave to appeal the Master's ruling was "The learned Master erred when she found that the affidavit in support of the application filed by the Applicant on 29th June 2012 was deficient". However, this deficiency is not set out as a reason in the Master's written reasons for dismissing the Claimant's application. While both parties have made submissions on this issue since this is not one of the Master's reasons for dismissing the application before her, I find that there is no realistic prospect of the Claimant succeeding with this ground of appeal.

Did the Master misapply and misunderstand the provisions of Sections 50 and 52 of the Act which governs applications for sale of land?

- [7] Section 50 (2) of the Act states:
- "If the Court is satisfied by oath or affidavit that the decree remains wholly or in part unsatisfied, and that the judgment debtor is beneficially entitled to any land in Grenada and has no other property in Grenada against which the decree can be enforced, the Court may order his or her interest in the land or any part thereof to be sold."
- [8] The reasons given by the Master for not granting the order are set out in paragraphs 3 and 4 of her written reasons, which state:

"3. The judgment creditor's application did not address these requirements at all such that the court was unable to satisfy itself of the defendants' ownership of property, other than land. In fact there is an indication from the affidavit and from the pleadings itself of the defendants owning a supermarket which may well imply ownership of property other than land.

4. In any event it is not for the court to speculate but for the judgment creditor to satisfy the court on application and in order for its application to be successful.”

- [9] Paragraph 7 of the affidavit of Jacinta Williams filed on 29th June, 2012 in support of the application before the Master set out the Defendants’ interest in various parcels of land situate in Grenada. There was no evidence in the said affidavit that the Defendants owned a supermarket to imply that the Defendants had ownership of property other than land. I am therefore persuaded that the Claimant has a realistic prospect of success in pursuing this ground on appeal.

Did the Master fail to appreciate the obligations on the Defendants under Section 50(2) of the Act?

- [10] While this was set out as a ground of appeal, the Master’s written reasons are silent on whether there was an obligation on the Defendants under section 50 (2) of the Act. While both parties have made submissions on this issue since this is not one of the Master’s reasons for dismissing the application before her, I find that there is no realistic prospect of the Claimant succeeding with this ground of appeal.

Did the Master have the jurisdiction to determine the application in any event?

- [11] Section 2 of the Act defines “Court” as “includes the High Court and the Judges thereof, and in those parts of this Act which apply to Magistrates’ Court it includes also a Magistrate’s Court”. Part VI of the Act deals with “Execution of Decree for Money against Land”. Section 49 deals with the procedure for the sale of the debtor’s land. Subsections (4), (5), (6), and (7) all refer to a Judge giving

the Claimant that based on this section the Master had no jurisdiction to deal with any application for the sale of land of a judgment debtor.

[12] While the Defendants submitted that there was a preliminary objection to the Master dealing with the instant application on the basis of her lack of jurisdiction, there is nothing set out in the Master's written reasons which addresses this preliminary objection.

[13] I therefore find that this issue raised by the Claimant has a realistic prospect of success on appeal.

Order

[14] There were four grounds of appeal in the instant application and I found that the Master's written reasons have addressed two grounds which I am of the view the Claimant have a realistic prospect of success on appeal. I therefore grant the Claimant leave to appeal the Master's Order of 9th October, 2012.

[15] The Defendants to pay the Claimant's costs of the instant application to be assessed if not agreed.


Margaret Y. Mohammed
High Court Judge