

EASTERN CARIBBEAN SUPREME COURT
GRENADA

IN THE COURT OF APPEAL

HCVAP 2012/005

BETWEEN:

DONALD FREDERICK

Appellant

and

[1] CHOO LOI POI

[2] CHOO LIU YUE XIN

Respondents

Before:

The Hon. Mr. Don Mitchell

Justice of Appeal [Ag.]

On written submissions:

Mr. Dickon A Mitchell of Grant of Joseph & Co. for the Appellant

No appearance for the Respondents

2012: June 27.

Civil appeal – Exercise of judges discretion – No transcript or record of appeal available before Court

JUDGMENT

[1] MITCHELL JA [AG.]: This is an interlocutory appeal against an order made by a High Court judge. It has been passed to me as a single judge of the court to deal with it on paper pursuant to rule 62.10(5) of the Civil Procedure Rules 2000. I have been faced with a major hurdle in dealing with the appeal.

[2] There is no transcript of the hearing at which the Order in question was made. Nor is there in the record of appeal a copy in writing of the Judge's reasons for the decision. Without one or the other, this Court is unable to determine what the Judge's reasons were for

making the Order that he did.¹ An appeal court reviewing the manner in which a lower court has exercised a discretion must be given the lower court's reasons for the decision if it is to be able to deal fairly with the exercise of the discretion. In the event that a transcript is not available to be requested from the Registry in the usual way, the legal practitioner for an appellant is expected to apply to the Registrar asking for the judge to provide a written note of the reasons for the decision for the use of the Court of Appeal. In a busy Court chambers where decisions are given every day, it is not to be expected that every decision will always be the subject of considered reasons in writing. Most judges' decisions in chambers are given orally. In some courts, these decisions and the reasons for them are picked up by a court stenographer, and are available to a potential appellant on payment of the prescribed fee. In a court which does not have the benefit of a stenographer in chambers, the normal procedure is to apply to the Registrar for the judge's reasons to be put in writing. No judge who is asked to give reasons would decline to do so, not least because such a failure would only contribute to the grounds of appeal.

- [3] For the above reason the notice of appeal is dismissed. Mr. and Mrs. Choo not having played any part in this appeal proceedings, there will be no order as to costs.

Don Mitchell
Justice of Appeal [Ag.]

¹ For the duty of a judge to give reasons see *Eagil Trust Co v Pigott-Brown* [1985] 3 All ER 119 in the English Court of Appeal, followed and explained in *English v Emery Reinhold & Strike Ltd* [2002] EWCA Civ. 605, [2003] 3 All ER 385, [2002] 1 WLR 2409, cited at *The Caribbean Civil Court Practice* 2008 p. 359.