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GRENADA

Wednesday, 19th October 2011

APPLICATIONS AND APPEALS

Case Name: Carson Modeste v Renatha Cummings
[High Court Civil Appeal No. 22 of 2011]

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Intended Appellant / Applicant: Mr. Cajeton A. K. Hood

Respondent: Mrs. Celia Edwards, QC, with her, Mrs. Sabrita Khan-Ramdhani (the respondent, Renatha Cummings, was also present)

Issues: Application for leave to appeal – Application for a stay of execution – Whether the trial judge followed the proper procedure in disposing of the claim

Result / Order: [Oral delivery]

1. No leave is required for paragraph 2 of the Order granting the injunction.
2. The application for leave to appeal is granted in so far as is necessary.
3. The application in relation to those paragraphs of the order is treated as the notice of appeal along with the draft notice of appeal which was filed on 24th August 2011.
4. For the purposes of the appeal, the order of Justice Price Findlay dated 16th November 2010 is set aside, the appeal having been allowed.
5. The matter is remitted to the court below before a different judge for the fixed date claim to be heard in accordance with the rules governing fixed date

claims.

6. No order as to costs.

Reason:

Pursuant to section 33(2)(g)(ii) of the West Indies Associated States Supreme Court (Grenada) Act, Cap. 336, Revised Laws of Grenada 1990, the applicant did not require the leave of this court to file an appeal against paragraph 2 of the order made on 16th November 2010, which granted an injunction to the respondent/claimant.

The Court was however of the opinion that the applicant's application for leave to appeal did have a real prospect of success; since the court had the benefit of detailed arguments from both parties' counsel as well as all of the relevant documents before it, with the agreement of the parties, the application for leave and draft notice of appeal were treated as the appeal.

The Court found that the learned judge's order was clearly irregular, where, having on 7th October 2010 adjourned the first hearing of the fixed date claim to 2nd December 2010, the learned judge granted the questioned order in terms of the relief sought on the fixed date claim upon an application to enter judgment in default of acknowledgement of service or defence against the defendant on the fixed date claim.

The application to enter judgment was tantamount to an application for default judgment when CPR 12.2(b) clearly excludes fixed date claims from the scope of Part 12 which relates to default judgment applications and entering default judgments.

Moreover, the questioned order could only be made at the hearing of the fixed date claim after a trial held in accordance with CPR 27.2(3) and other relevant rules, and the court was satisfied that the respondent/claimant had proven his claim.

The Court further noted that the applicant/defendant's application before the learned judge to strike out the fixed date claim for abuse of process was also

irregular (under CPR 9.7(2), 9.7(3) and 9.7(6)), given the applicant's failure to file an acknowledgement of service and to make the application within the time stipulated by the rules.