

IN THE COURT OF APPEAL OF BELIZE AD 2017
CIVIL APPLICATION NO 5 OF 2016

GAETON VALENCE

Applicant/Intended Appellant

v

(1) **ISOLENE AUGUSTINE**
(2) **CHESTER WILLIAMS**

Respondents/Intended Respondents

BEFORE

The Hon Mr Justice Sir Manuel Sosa
The Hon Madam Justice Minnet Hafiz Bertram
The Hon Mr Justice Murrio Ducille

President
Justice of Appeal
Justice of Appeal

N V Dujon SC for the Applicant/Intended Appellant.
E L Flowers SC for the Respondents/Intended Respondents.

26 October 2016 and 6 September 2017

SIR MANUEL SOSA P

Introduction

[1] This was an application which was described by the applicant/intended respondent ('the applicant') as one brought under 'the intrinsic power of the court' as well as under 'Order II of the court of appeal (*sic*) Rules' and which sought extension of the time for service of a true copy of the Notice of Appeal on the respondents/intended respondents ('the respondents', when referred to together in the remainder of this judgment). At the close of the hearing on 26 October 2016, the Court refused the application, with costs to the respondents, to be agreed or taxed. A further application,

purportedly made strictly orally and without being referred to in the relevant notice of motion, was, in the circumstances, regarded as not arising and accordingly dismissed without adjudication. (It follows, as I see it, that, upon refusal of the application for an extension, the appeal, not being properly before the Court, stood struck out.) The Court having given oral reasons for its judgment briefly and less than exhaustively on 26 October last, I now give my own full reasons in writing.

The law

[2] The applicable law has, in my opinion, been correctly set out in my very recent judgment in the case of *Sharryn Dawson v Central Bank of Belize*, Civil Appeal No 18 of 2015 (judgment delivered on 20 July 2017), in which case my reasons for judgment enjoyed the full concurrence of my learned Sister, Hafiz Bertram JA, and thus constituted the reasons for judgment of the majority. I see no reason to recapitulate in the present judgment. Suffice to say that the conclusion stated by me as to the existing law in my judgment in *Dawson* is that there is no known legal basis for an application for extension of the time within which to serve a notice of appeal in this jurisdiction. Accordingly, the governing legal provisions as regards service of a notice of appeal are those to be found in Order II, rule 4 of the Court of Appeal Rules ('the Rules'). (The use of this short title, without reference to the year 1965, is expressly authorised at Order I, rule 1 of the Rules.) Order II, rule 4, as material for present purposes, states as follows:

- '4.- (1) A true copy of the notice of appeal shall be served upon all parties directly affected by the appeal ...
- (2) A true copy of the notice shall be served upon the respondent within seven days after the original notice has been filed.'

The facts

[3] The Court, in orally touching briefly upon its reasons for judgment on 26 October 2016, referred more to the facts of the case than to the law. In the light of that reality, I consider it appropriate also to advert to the facts in these written reasons for judgment.

Strictly speaking, of course, there is no need to do so, given that, to begin with, there is no legal basis, as I see it, for the instant application.

[4] That said, the facts, as material, were that, in the case of the respondent Ms Augustine, she, for reasons not disclosed to the Court, was not served as required within the relevant seven-day period. In the case of the respondent Mr Williams, the affidavit evidence was that, at some point shortly after judgment was given in favour of Ms Augustine and him in the court below, he left the jurisdiction for about a month. He was thus not in the jurisdiction during the seven-day period in question. Nor, of course, was he served, as required, during that period. The Court was informed by Mr Dujon SC at the hearing that no effort was made to seek leave from a judge below to effect substituted service on Mr Williams during the relevant period.

The reasons

[5] The rest is simplicity itself.

[6] In the absence of a legal basis for the application, the Court was, to my mind, left with no alternative but to refuse it with costs.

[7] Even, however, if the law were not an unshakeable obstacle to its success, the application was, from the word Go, so to speak, absolutely doomed to failure on the facts. The omission to serve Ms Augustine was never explained and must hence, in my respectful judgment, be treated as inexcusable. And the true reason for the failure to serve Mr Williams is, given the way matters have been left by the applicant to stand, the fact that, inexplicably, no application was ever made to a judge below for leave to effect substituted service upon him. Such an application might have been made under Order I, rule 8(2) of the Rules. (In this connection, I note that which is notorious, viz that Mr Williams is, and at the material time was, a well-known officer of very senior rank in the Police Department, a fact which would have tended to render substituted service eminently practicable.) Moreover, there was no affidavit evidence to the effect that the appeal would have a good or at least reasonable prospect of success if an extension of time were to be granted.

[8] The case was thus one in which, even if the law were not against the applicant in the sense already identified above, there was no material upon which a legal discretion, if one existed, might have been exercised.

SIR MANUEL SOSA P

HAFIZ-BERTRAM JA

[9] I agree with the judgment of the learned President and I have nothing to add.

HAFIZ-BERTRAM JA

DUCILLE JA

[10] I have had the advantage of reading in draft the judgment prepared by the learned President and am in full agreement with the reasons for judgment given, and the orders proposed, in it.

DUCILLE JA