

**COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCCrApp. No. 113 of 2020**

B E T W E E N

DONNA DORSETT-MAJOR

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

AND

THE ATTORNEY GENERAL OF THE BAHAMAS

Respondents

BEFORE: **The Honourable Mr. Justice Jones, JA
The Honourable Mr. Justice Evans, JA
The Honourable Madame Justice Bethell, JA**

APPEARANCES: **Ms. Krysta Mason-Smith with Ms. Latia Williams, Counsel for the
Applicant**

Mrs. Kayla Greene-Smith, Counsel for the Respondents

DATES: **19 October 2020; 4, 11 November 2020**

Civil appeal – Contempt proceedings – Application for a stay of contempt proceedings – Application for a stay of proceedings made in reference to a matter not under appeal – No formal stay application made to the court below - Rules 24, 25, 27 & 29 (1)(c) of the Court of Appeal Rules – Rules of the Supreme Court Order 31 Rule 18(2)(d)

On 13 October 2020 Klein, J dismissed the applicant’s constitutional motion and the declarations requested, inclusive of a declaration for a stay of the contempt proceedings to be held before Charles, J. The applicant has appealed that decision. On the same date an Urgent Summons was filed by the applicant seeking a stay pending appeal, pursuant to Rule 29(1)(c) of the Court of Appeal Rules. On 3 November 2020 an amended Urgent Summons was filed whereby the stay was also being sought pursuant to the inherent jurisdiction of the Court pursuant to Rule 24 of the Court of Appeal Rules.

The issue for this Court to decide is whether a stay of proceedings can be granted where a stay was not applied for, nor was it denied, in the court below; and from which no appeal has been filed.

Held: application dismissed; costs to the respondents, to be taxed if not agreed.

The Rules of the Supreme Court Order 31 Rule 18(2)(d) makes provision for a stay of the whole or part of any proceedings generally or until a specified date or event. Rule 27(5) of the Court of Appeal Rules provides that an application should be made in the first instance to the court below.

In the present case the applicant did not apply to Charles, J pursuant to Order 18 Rule 18(2)(d) and therefore there was no ruling handed down by Charles, J from which an appeal could emanate. As such the Court's discretion pursuant to Rules 24 and/or 29 could not be invoked.

Further, the Urgent Summons was filed in the applicant's appeal against the decision of Klein, J. The Court cannot be moved to stay a hearing not the subject of an appeal before this Court.

J U D G M E N T

Judgment delivered by the Honourable Madame Justice Bethell, JA:

1. This is an application by Donna Dorsett-Major to stay the contempt proceedings instituted against her before Charles, J.
2. On 13 October 2020, the applicant, Donna Dorsett-Major, filed a Notice of Appeal against a ruling handed down by Klein, J. on the very same date where he dismissed the applicant's constitutional motion and a number of declarations that the applicant had requested. One of the declarations sought was a stay of the contempt proceedings before a judge of concurrent jurisdiction. The said constitutional motion was brought before Klein, J during the same period that the contempt proceedings in relation to the said Donna Dorsett-Major were ongoing before Charles, J 2020/CLE/gen/0000.
3. On the same date, 13 October 2020, the applicant filed an Urgent Summons in respect to the same appeal to be heard on an application pursuant to Rule 29(1)(c) of the Rules of the Court of Appeal for a stay of proceedings in relation to the matter of contempt of court of the applicant Donna Dorsett-Major noted above. Rule 29(1)(c) gives this Court jurisdiction to stay the execution on any judgment appealed from pending the determination of an appeal.

“29 (1) In any cause or matter pending before a court, a single judge of the court may upon application make an order –

...

(c) for a stay of execution on any judgment appealed from pending the determination of such appeal..."

4. The Urgent Summons application was amended on 3 November 2020 to include the Court's exercise of its inherent jurisdiction, pursuant to Rule 24 for the said stay:

"...having regard to the written Ruling of the Honourable Justice Klein dated the 13th day of October, 2020 and the verbal Ruling of the Honourable Justice Charles of the 14th day of October, 2020 refusing to stay proceedings in the said Contempt matter." [Emphasis added]

The Issue Before the Court

Whether this Court can consider a stay of proceedings on a matter before a court where a stay of proceedings was not applied for nor was one denied and from which there has been no appeal filed

5. Ms. Mason-Smith for the applicant conceded that no formal application was filed or made before Justice Charles. She, however, stated that a request was made to Justice Charles to have those proceedings not dealt with until the matter before Justice Klein was determined.
6. Counsel for the applicant went onto state that:

"...Once the ruling was given on the 13th a request or something was sent to the judge in writing asking that the matter not be dealt with and that it be stayed..." (see 19 October 2020 transcripts – page 9:1 – 4.

7. On the following date, 14 October 2020 counsel for the applicant submitted that an application was made verbally, and the position remained the same hence the application to the Court of Appeal.
8. Mrs. Kayla Greene-Smith for the respondents submitted that the applicant's attorney invited the court not to proceed with the matter as it was now before the Court of Appeal. There was no formal or oral application to stay the proceedings nor of the Court inviting her, as a party, to respond to the application. Justice Charles did not make an order refusing a stay.
9. The Court was provided with the transcripts of 14 October 2020 in the contempt proceedings of Mrs. Donna Dorsett-Major before Charles, J. The Court noted on that day the learned judge was concerned that her directions were not complied with notwithstanding she had granted Mrs.

Dorsett-Major more than one extension of time to file the necessary affidavits. At page 13 of the rough transcripts Mr. Ducille, appearing for Mrs. Dorsett-Major, at lines 20-24 had this to say:

“What I’m saying, my Lady, is that the matter is before the Court of Appeal. And as a consequence we seek your leave not to proceed with this matter until the matter has been ventilated before the Court of Appeal.”

10. We find this to be, if it can be considered at all as such, a rather laconic application for the proceedings not to continue.
11. We note there is nothing in the transcripts to suggest that Justice Charles even considered it an application for a stay of proceedings nor were proceedings for a stay heard on the same, nor was there a ruling delivered by the learned judge refusing a stay.
12. Mrs. Greene-Smith on behalf of the respondents submitted that the application before this Court could not stand as there was not a proper application made before Justice Charles. As such she requested that this application be dismissed with costs to the respondents.
13. We agree with the position of counsel for the respondents.
14. This Court on both 19 October 2020 and on 4 November 2020 repeatedly pointed out to counsel for the applicant the many flaws in her application before the Court.
15. As pointed out by the Court, this is an appellate court; it is moved by appeals. There is no appeal before this Court emanating from a refusal of a stay of proceedings before Charles, J.
16. This application, brought by Urgent Summons, is for a stay of proceeding before Charles, J, a matter not on appeal before us.
17. Order 31 Rule 18(2)(d) states as follows:

“18(2) Except where these Rules provide otherwise, the Court may -

...

(d) stay the whole or part of any proceedings generally or until a specified date or event...”

18. The applicant failed to apply to Charles J. for a stay pursuant to Order 31 Rule 18(2)(d) of the Rules of the Supreme Court as set out above. As such there was no hearing before the learned

judge nor was there a ruling handed down by her from which an appeal can emanate before this Court.

19. We draw counsels' attention to Rule 27(5) of the Rules of the Court of Appeal:

“Wherever under the provisions of the Act or of these Rules an application may be made either to the court below or to the court, it shall be made in the first instance to the court below. [Emphasis added]

20. We are of the opinion, that Mr. Ducille's rather laconic request to Justice Charles on 14 October 2020 did not amount to an application in compliance with Order 31 Rule 18(2)(d) of the Rules of the Supreme Court.

21. As a result of such failure this Court cannot be moved as an application was not made in the court below in compliance with Rule 27 of the Court of Appeal Rules.

22. As such there is no application from a refusal of a stay from Charles, J in order to invoke the Court's discretion under Rule 29(1)(c) or Rule 24 to grant a stay.

23. An even more fatal defect is the application brought by Urgent Summons was filed under an appeal from a totally different judge of the Supreme Court. This Court cannot be moved to stay a hearing not the subject of an appeal before this Court.

24. We do not grant the application for a stay of proceedings in the contempt of court of the applicant Donna Dorsett-Major before Charles, J as there is no appeal emanating from that court.

25. Costs of the application are the respondents to be taxed if not agreed.

The Honourable Madam Justice Bethell, JA

The Honourable Mr. Justice Jones, JA

The Honourable Mr. Justice Evans, JA