COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCCivApp. No. 94 of 2021

B E T W E E N

ROSINA SMITH
Intended Appellant

AND

FIDELITY BANK (BAHAMAS) LIMITED
Intended Respondent

BEFORE: **The Honourable Sir Michael Barnett, P**
The Honourable Mr. Justice Isaacs, JA
The Honourable Madam Justice Crane-Scott, JA

APPEARANCES: **Mr. Rouschard Martin, Counsel for the Intended Appellant**

Ms. Roberta Quant, Counsel for the Intended Respondent

DATES: **13 October 2022; 14 November 2022**

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Civil appeal – Extension of time – Intended appeal four years out of time – Intended appellant initially sought to set aside judgment of the court below rather than appeal the judgment – Finality in litigation

In March 2016 the intended respondent brought an action against the intended appellant seeking possession of land mortgaged to Fidelity and for moneys due under a mortgage and further charge. When the matter came on for hearing in the court below the intended appellant, through her counsel, did not dispute the claim, but sought an adjournment to confirm the amount owing. The matter was adjourned a number of times thereafter. On 30 March 2017 the judge granted the relief sought by the intended respondent. That judgment was not appealed. Rather, the intended appellant applied to the same judge to set aside the judgment. That action was dismissed on 7 October 2020 on the basis that the court was functus.

The intended appellant then applied for an extension of time within which to appeal the judge's 7 October 2020 refusal to set aside the judgment of 30 March 2017. This Court dismissed the application.

By application filed on 16 July 2021, and affidavit in support filed on 31 January 2022, the intended appellant now seeks an extension of time within which to appeal the 30 March 2017 judgment.

Held: application to extend the time within which to appeal refused. Costs to the intended respondent, to be taxed if not agreed.

On an extension of time application, the Court considers four factors: the length of the delay, the reasons for the delay, the prospects of success and the prejudice, if any, to the intended respondent.

The length of the delay in the present case is four years; this is inordinately long. The reason for the delay appears to be a deliberate decision of the intended appellant not to appeal the 30 March 2017 decision to the Court of Appeal, but rather to seek to have the judge set aside her own judgment. The reason for the delay does not justify extending the time within which to appeal. The intended appeal has no prospects of success; none of the proposed grounds were argued before the court below.

An appellate court is not a trial court. It reviews errors of law in a judgment or in proceedings before a trial court. It is not the function of an appellate court to adjudicate upon a different kind of dispute that was not raised in the court below.

The intended appeal is woefully out of time and has no reasonable prospects of success.

Khan v Gajeepan and anor. [2012] EWCA Civ 258 applied
Rosina Smith v Fidelity Bank (Bahamas) Ltd. SCCivApp. No. 122 of 2020 considered

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J U D G M E N T

Judgment delivered by the Honourable Sir Michael Barnett, P:

1. This is an application to extend the time for appealing a judgment of Grant-Thompson, J. delivered on 30 March 2017. This application to extend the time was filed on 16 July 2021. It is four years after the judgment was delivered.

2. This matter has a bit of a history. It is the second time this matter has come before this Court of Appeal. Much of its history is set out in a judgment of this court by Crane-Scott, JA dated 6 July 2021 in Appeal Number 122 of 2020.

3. On 17 March 2016, Fidelity Bank (Bahamas) Ltd ("Fidelity" or "the Bank") brought an action against the applicant Rosina Smith ("Ms. Smith") by Originating Summons seeking possession of land mortgaged by Ms. Smith to Fidelity and for moneys due under a mortgage dated 19 November 1996 and a further charge dated 2 April 1997.

4. When the matter first came before the judge both Fidelity and Ms. Smith were represented by counsel. At that first hearing counsel for Fidelity told the judge in the presence of counsel for Smith:

> **"My lady, the defendant's attorney, Mr. Gibson, only just received instructions on this matter. His position is, as I am told, that Ms. Smith does not have an objection to the bank's claim. However, she would like an opportunity to review the amounts that they're saying that she is owning. The only thing that I would ask for today, my Lady, in respect to this, I am agreeing to adjourn the matter. However, Ms. Smith was served with the originating summons and the affidavit since the 15th of May, then with the notice to hear this matter since the 5th of July so I would ask for cost in this matter for the adjournment, my Lady."**

5. The matter was adjourned and further adjourned on a number of occasions. Ms. Smith filed no affidavit evidence denying the mortgage or the debt or any written submissions setting out Ms. Smith's position. In particular, no averments as to limitation or 'res juidcata'.

6. When the matter came before the judge on 30 March 2017, Counsel for Smith asked for a further adjournment. This was resisted by counsel for Fidelity and the judge agreed that the matter should proceed. After hearing counsel for both parties and reading the affidavits filed, the judge granted the order prayed for in the Originating Summons.

7. The Order was in the following terms:

> **"UPON APPLICATION by the Plaintiff by Originating Summons filed herein on the 17th day of May, A. D. 2016.**
>
> **AND UPON READING the Affidavit of Ms. Kelliya Roberts-Whitfield, Collections Administrator of the Plaintiff filed herein on the 17th day of May, A. D. 2016**

and the Affidavit of Rodger J. Pinder filed herein on the 2nd day of December, 2016.

AND UPON HEARING Kristy L. Kemp, of Counsel for the Plaintiff and Delisa McKenzie for the Defendant.

IT IS HEREBY ORDERED that:

1. That 120 days from the date hereof the Defendant does deliver up to the Plaintiff ALL THAT PIECE parcel or lot of land comprising a part of Oakes Field in the Western District of the Island of New Providence and being Lot Number Sixty-two (62) in the Subdivision called and known as "Stapledon Gardens";

2. That Plaintiff do not cause the Defendant to vacate the said property before the expiration of 120 days from the date hereof;

3. Judgment on the outstanding mortgage principal $187,083.50 as at 30th day of March, A.D. 2017;

4. The outstanding loan interest $194,114.08 as at the 30th day of March, A.D. 2017;

5. Statutory interest on the outstanding Judgment sum from 31st March, 2017 until payment in full at the statutory rate of 6.75% per annum; and

6. The cost of this action to be (sic) to the Plaintiff to be taxed if not agreed."

8. Ms. Smith did not appeal that decision. Instead, she retained new counsel and instead of appealing that judgment she applied to the judge to set aside her own order of 30 March 2017.

9. In addition, Ms. Smith instituted a new action on 24 August 2017. In that action Ms. Smith also sought an order setting aside the judgment of 30 March 2017 and striking out Fidelity's action on the ground that it was statute barred.

10. In a written ruling made available to the parties on 7 October 2020 the Judge dismissed Ms. Smith's application to set aside the judgment of 30 March 2017 on the ground that the court was functus.

11. Smith then sought to appeal to this Court, the judge's decision dismissing her application to set aside the judgment of 30 March 2017. It was an application for leave to appeal out of time.

12. This Court dismissed the application for leave to appeal out of time (see **Rosina Smith v Fidelity Bank (Bahamas) Ltd.** SCCivApp. No. 122 of 2020).

13. In dismissing the application Crane-Scott, JA in writing the decision of the Court said:

> **"43. It is undeniable that in pursuing her intended appeal, what Miss Smith really wishes to achieve is to set aside the learned judge's Order of 30 March 2017 which was perfected on 20 April 2017. Quite simply, this is an impossible task.**
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> **44. The intended appeal is clearly misconceived, as is her Re-Amended Summons of 26 July 2017 and the relief which she still seeks to pursue before this Court by this circuitous route. Since the Order of 30 March 2017 had been perfected, the relief sought in the Re-Amended Summons could not be pursued in the court below. What the intended appellant ought instead to have done was to appeal the Order directly to this Court.**
>
> **45. Miss Smith's numerous complaints about the propriety of the Order, including the possibility of Fidelity's mortgage action being statute-barred and res judicata and the Order being irregular may well have provided arguable points on a direct appeal to the Court of Appeal. However, the law is clear. Once the Order obtained in the Supreme Court had been perfected, there was no way for it to be set aside or discharged as the judge was clearly functus; and no judge of the Supreme Court (or this Court on the intended appeal) has jurisdiction to grant the relief which the intended appellant sought in her Re-Amended Summons.**
>
> **46. The record confirms that the judge's Order in the mortgage action was perfected on 20 April 2017. Accordingly, in keeping with the well-established common law principles outlined earlier, the learned judge was correct when she declined jurisdiction to entertain the ReAmended Summons on the basis that she was functus.**
>
> **47. We are also satisfied that the intended appeal raises no issue which ought to be examined in the public interest, nor any issue of law which requires clarification.**

As we have said, the common law on this issue is well-established and needs no further elucidation."

14. Ms. Smith, having failed in her alternate routes to have the judgment of 30 March 2017 set aside, now, four (4) years later, seeks to appeal the decision of 30 March 2017 to this Court. As I said earlier, the application for the extension of time was filed on 16 July 2021. However, the affidavit of Ms. Smith in support of the application was not filed until 31 January 2022. It was in the following terms:

"I, Rosina S. Smith of the Western District of the island of New Providence one of the islands of the Commonwealth of the Bahamas, make oath and say as follows:-

(1) That I am the person named as the Intended Appellant in this action.

(2) That insofar as the matters deposed to herein are within my own knowledge, they are true and insofar as they are in accordance with information furnished to me or derived from statements or documents which I have read they are true and correct to the best of my knowledge, information and belief.

(3) That my attorneys filed a Notice of Motion of the 16th July, 2021 that sought leave of Court for an order extending time within which to appeal the Intended Appellant's Supreme Court Order of the 30th March, 2017.

(4) That the issues of length and reasons for delay, prospects of success and prejudice are all addressed below.

(5) That it is clear that my appeal has significant prospects of success on the grounds that the Intended Respondent's second mortgage action against me is statue-barred, res judicata and the said Order of the 30th March, 2017 is irregular. Additionally, the Intended Respondent was overpaid by me (by $99,932.88) and there has been no challenge or clarification of the same. I will be seriously prejudice (sic) if my property is repossessed on the basis of time not being extended to appeal and the appeal not being allowed. These matters will be addressed more effusively below.

(6) That I make this affidavit in support of my aforesaid motion. I will present a chronological background of the facts leading up to the filing of my motion.

Chronology of Events

(7) That on the 23 June, 2003, British American Bank (1993) Limited (British American) issued a Writ of Summons in Action No. 979 of 2003, against me (the first action), claiming principal and interest and possession of a parcel of land situate at the northern end of Christie Avenue, being Lot No. 62 of Stapledon Gardens Subdivision, N. P. (the land), under a then pending mortgage between me and British American (the Mortgage).

(8) That by a Consent Order dated the 5t August, 2004, and filed in the first action on the 7th December, 2004, (the first Order) British American was granted: 1) leave to enter judgment in default of Defence; 2) possession of the land; and 3) costs of the action to be taxed if not agreed. The name of British American was thereafter changed to Fidelity Bank (Bahamas) Limited (Fidelity Bank).

(9) That on the 17th May, 2016, (about 12 yrs. Later), Fidelity Bank issued an Originating Summons against me in Action No. 743 of 2016 (the second action), claiming (inter alia): 1) possession of the land; 2) judgment for sums due and owing under the mortgage; and 3) costs to be taxed if not agreed.

(10) That on the 30th March, 2017, Fidelity Bank obtained from the Court a second Order (the second Order) in the second action, which was filed on the 20th April, 2017, granting (inter alia) Fidelity Bank: 1) possession of the land; 2) certain sums of money under the mortgage; and 3) costs to be taxed if not agreed.

(11) That on the 13th April, 2017, I took out a Summons in No. 743 of 2016, the second action, seeking to set aside the second order. This Summons was amended and the amended summons was filed on the 4th July, 2017. The Summons was re-amended on the 26th July, 2017 (hereinafter called "the Re-Amended Summons). According to my attorney and the information I have seen

in the Re-Amended Summons, the claims (inter alia) are as follows:

> **11.1 That I was not heard on the merits of the case;**
>
> **11.2 That I am not indebted to the Respondent as claimed or at all;**
>
> **11.3 That I am entitled to an accounting;**
>
> **11.4 That the matter in the second action is re (sic) judicata;**
>
> **11.5 That the right of the Respondent to possession of the land is statute barred;**
>
> **11.6 That the second action is an abuse of the process of the Court; and**
>
> **11.7 That the judgment in the second action is irregular;**

(12) That on the 24th August, 2017, I commenced, by Writ of Summons, specially indorsed, Action No. 973 of 2017, seeking an order setting aside the order or judgment made on the 30th March, 2017, and striking out the second action.

(13) That on the 26th July, 2019 I filed a Certificate of Urgency in Action No. 743 of 2016.

(14) That on the 6th August, 2019, I filed my witness statement in Actions No. 743 of 2016, Fidelity Bank (Bahamas) Limited v. Rosina Smith, and 973 of 2017, Rosina Smith v. Fidelity Bank (Bahamas) Limited (hereinafter called "the Actions).

(15) That on the 28th January, 2020, the Learned Judge in the Court below gave an order declaring herself to be functus officio and undertaking to give her written reasons in due course.

(16) That on the 29th January, 2020, I filed a Notice of Motion in the Actions for leave to appeal the decision of the Learned Judge in the Court below, delivered on the 28th January, 2020, and for a stay of execution pending the hearing of the appeal.

(17) That the Ruling (reasons) of the Learned Judge, inclusive of a rejection of my applications for stay and leave to appeal, was collected, upon request, from the Chambers of the Learned Judge on the 13th October, 2020, not having been delivered in open Court, and is dated the 24th July, 2020.

Reasons and Length for Delay

(18) That having regard for the chronology of events (at paragraph 7 above) starting from the 30th March, 2017 order which is intended to be appeal, my attorney made every effort to set aside such order. The matter was being actively pursued and as such we did not sit idly without doing anything, despite being found to have taken the wrong course of action.

(19) That the application to set aside the 30th March, 2017 order was filed about two weeks later on the 13th April, 2017 which was some seven (7) days before the order was perfected.

Perhaps my application should have been heard before the order was perfected.

(20) That despite the filing of my Summons on the 13th April, 2017 to set aside the order and a Re-Amended Summons filed on the 26th July, 2017, the Re-Amended Summons was not heard until the 17th October, 2019. Much effort was made by my attorneys to have the matter heard earlier. The two year delay was of no fault attributable to me.

(21) That after the Learned Judge, on the 28th January, 2020, dismissed the Summons to set aside the 30th March 2017 order on the grounds of her being functus officio, my attorneys immediately sought a stay and leave to appeal the following day.

(22) That I was advised by my attorneys that it would be appropriate to seek to set aside the 30th March, 2017 order on the basis that the Originating Summons was not heard on the merits and thus the order was not a final order. I was also advised that it would be easier and less expensive to seek relief in the Supreme Court rather that (sic) trouble the Court of Appeal. In the exercise of such

advice and various adjournments flowing from the Court's own volition, various delays occurred.

(23) That on the 23rd October, 2020 my attorneys filed a Notice of Motion in the Court of Appeal seeking leave to appeal the oral ruling (of the 28th January, 2020) of the Judge below to hear my 26th July, 2017 Re-amended Summons. The Intended Appellant also sought an extension to appeal out of time the order of the 28th January, 2020.

(24) That by the 14th April, 2021 the said motions were heard in full with judgment being delivered thereafter on the 6th July, 2021.

(25) That with my mother having passed away on the 17th April, 2021, the remainder of 2021 was difficult for me, emotionally and financially.

(26) That I suffered further significant financial setbacks when my only form of income from my preschool stopped almost completely due to the Covid 19 pandemic. My business was closed down for 10 months in 2021. The Ministry of Education, through letters/notices back and forth with me, halted in-person learning due to Covid 19 outbreaks in various school (sic). This resulted in school fees not being paid. A copy of the Ministry and my documents are now produced and shown to me marked as exhibit "RS1".

(27) That the Ministry of Education made it mandatory that my school make the necessary construction and other adjustments so as to comply with Covid 19 mitigation protocols. This was critical to ensure the safety of staff, students and parents and to ensure reopening of the school. As a result, I paid Solutions Construction Company to undertake and complete the necessary construction work. A copy of the document showing expenses from Solutions Construction is now produced and shown to me marked as exhibit "RS2".

(28) That the financial difficulties I encountered with my preschool business and the passing of my mother placed me in survival mode. I was mentally and physically drained and when combined with my financial plight, I lost financial focus on this matter. I could not commit

financially due to my struggles. This caused delays in filing my supporting affidavit.

(29) That it is my hope that the Court understands my vicissitudes and is lenient to the extent of granting the orders sought.

Prospects of Success

(30) That I will rely on the intended grounds of appeal and the submissions in support to persuade the Court that the intended appeal has very arguable prospects of success. It also appears from the 6th July, 2021 judgment of the Court of Appeal at paragraph 45 that the intended appeal has arguable grounds.

(31) That Intended Respondent is a large and financially able commercial bank that has not challenged the fact that they commenced the same action and issues twice against me. This was after obtaining a consent order in the first Supreme Court action of 2003. The 30th March, 2017 order of the second 2016 Supreme Court action should not survive as it clearly is an abuse of process of the Court.

(32) That there is no secret and no challenge to the fact that I overpaid the Intended Respondent by $99,932.88. It would be an injustice to me if the Intended Respondent is allowed to proceed without the intended appeal being heard.

(33) That in the first action the specially indorsed Amended Writ of Summons filed 1st. December, 2003, claimed the following amounts of principal and interest:

1. Principal $169,165.71

2. Interest ..... $ 52,038.38

Total $ 221,204.09 claimed

(34) That according to the Intended Respondent's Affidavit in support of the Originating Summons in the second 2016 action the following amounts were paid by me under the Mortgage:

1. Principal:..... $ 109,510.32 repaid by Intended Appellant

2. Interest ..... $ 211,626.65 repaid by Intended Appellant

Total ..... $ 321,136.97 repaid by Intended Appellant

3. This amounts to an overpayment of $99,932.88 between the first 2003 action (based on the consent order/judgment) and the second 2016 action (which is abusive and statute-barred). The Intended Respondent is indebted to me and thus my intended appeal has excellent prospects of success.

(35) That according to my attorney and my intended Notice of Appeal, the 30th March, 2017 judgment was irregular as a result of there being no directions for hearing of the Originating Summons and also because the Intended Responded failed to obtain leave of Court to file and serve on me a Summons for judgment.

(36) That finally, my attorney has advised that even if the second action was permissible (and we say it was not), all outstanding loan interest is statute-barred. Also, the right to bring an action for possession and money on the mortgage by way of the second action is statue-barred.

Prejudice

(37) That the Intended Respondent has been paid all it is owed pursuant to the consent order in the first action of 2003. Having a second bite at the cherry in the second action of 2016 would severely prejudice me, especially after I overpaid the Intended Responded regarding the first action.

(38) That there has been no answer by the Intended Responded as to why it instituted a second action. To allow the order of the 30th March, 2017 which flowed from the second action to stand would create serious prejudice and injustice for me.

(39) That I cannot stand up to the financial might of the Intended Responded who knows very well that it got away with an unsound and disingenuous act.

(40) That I own and manage a small business preschool and for me to be removed from where I live and have a

> **business would present serious prejudice and injustice for me. This will also cause great disruption to the education and wellbeing of my students while creating problems for their parent in finding another school.**
>
> **Conclusion**
>
> **(41) That given all circumstance (sic) stated above and set out in the submissions of my attorney, the request for extension of time to appeal should be granted and the appeal should be allowed.**
>
> **(42) That costs of this appeal should be decided in my favour having regard for all the circumstances of the case here and below."**

15. As I pointed out to counsel, the reason for the delay appears to be a deliberate decision of Ms. Smith and her advisors not to appeal the decision of 30 March 2017 to the Court of Appeal but to seek to reopen the action in order to assert claims that were not asserted by her in the proceedings that gave rise to the Order of 30 March 2017. At no time did Ms. Smith assert any limitation argument or assert that the matters raised in the action were res judicata. Indeed, it was her recorded position that she did not dispute the debt, nor did she deny the mortgage.

16. In considering an application for an extension of time within which to appeal, a court is obliged to consider the length of delay, the reasons for the delay, the prospects of success and the prejudice to the other party.

17. It is unarguable that the four-year delay is inordinately long. The reason for the delay is obvious. It is because Smith sought a different route to achieve her objective of overturning the Order of 30 March 2017. She deliberately chose (even if it was on the advice of her lawyers) not to appeal. It does not require much ingenuity to discern why she may have chosen not to appeal. She could not challenge the judgment on a basis that was never asserted before the judge and where she specifically acknowledged that she was liable under the mortgage. The only issue was the amount. She filed no affidavit evidence whatsoever, but continually sought adjournments to put off the determination of the matter.

18. The reasons for the delay do not justify the extension of time to appeal.

19. As to prospects of success, there are none. The proposed grounds of appeal are as follows:

> **"1. The Learned Judge erred in fact and in law by failing to determine and declare Supreme Court action no. 2016/CLE/gen/00743 as being res judicata and thus null and void for all intents and purposes due to there being**

action no. 2003/CLE/gen/00979 which had been finally determined by consent order involving the same property and issues with the Appellant and Respondent as parties AND alternatively if action no. 2016/CLE/gen/00743 is not res judicata, the following grounds are applicable:

2. The Learned Judge erred in fact and in law by failing to give directions (pursuant Order 28, r. 4 (2) and (4) of the Rules of the Supreme Court) as to the further conduct of proceedings at the first hearing of the Originating Summons in Supreme Court action no. 2016/CLE/gen/ 00743, thus the judgment of the 30th March, 2017 was irregular;

3. The Learned Judge erred in fact and in law by failing to determine that the Respondent was not in compliance with Order 73, r.3 of the Rules of the Supreme Court which require the Respondent to obtain leave of the Court to file a summons for default judgment and serve the same on the Appellant and therefore the judgment of the 30th March 2017 was irregular;

4. The Learned Judge erred in fact and in law by failing to determine that the Appellant paid $321,136.97 to the Respondent which was an overpayment of $99,932.88 which satisfied the judgment of $221,204.09 by consent in action no. 2003/CLE/gen/00979 and in respect thereof failed to order an accounting, all of which created a serious injustice and substantial prejudice for the Appellant;

5. The Learned Judge erred in fact and in law by failing to determine, pursuant to the Limitation Act, 1995, S. 5 (3), that action no. 2016/CLE/gen/00743 for possession was statute barred and that all interest claimed under the mortgage should have been interest claimed under the judgment of 2004 in action no. 2003/CLE/gen/00979, which interest is statute-barred based on the mortgage having merged into the judgment of 2004;

6. The Learned Judge erred in fact and in law by failing to determine that in all the circumstances the Appellant would suffer serious injustice and substantial prejudice if the judgment or order of the 30th March, 2017 was made and perfected."

20. None of these grounds were advanced in the court below. At all times Ms. Smith was represented by counsel. She never filed any affidavit evidence advancing an evidential basis for these defences. Nor did she file any submissions relying on those defences.

21. The only thing she did on 30 March 2017 was to ask for a further adjournment. Indeed, even in her affidavit in support of her application for an extension of time Ms. Smith does not assert that she has repaid the mortgaged debt. The evidence before the court was that Ms. Smith made a payment toward to mortgage debt on 27 April 2014 (which of course is relevant to any issue of limitation that may have been raised). As the judge told Smith's counsel:

> **"The court really has nothing before it to dispute the figures given by your learned friend."**

22. It is settled law that any limitation defence must be specifically pleaded.

23. There must be finality in litigation. The proposed grounds of appeal, as a defence to Fidelity's claim, if they had merit, could have and should have been advanced before the trial judge. They were not. They cannot now, four years later, be allowed to found the basis of an appeal.

24. An appellate court is not a trial court. It reviews errors of law in a judgment or in proceedings before a trial court. It is not our function to adjudicate upon a different kind of dispute that was not raised in the court below. The point was made by the English Court of Appeal in **Khan v Gajeepan and anor.** [2012] EWCA Civ 258 where the court said:

> **"4. …This is a court of appeal, not a trial court. It does not re-hear or re-try cases, it reviews cases to see if the decision was a wrong decision, that is, one that was not made in accordance with the law or with the evidence, or whether it was a procedurally irregular decision – it was not a fair trial – because matters had not been dealt with at the trial in accordance with the rules of procedure…"**

25. The trial judge was entitled to refuse the request for a further adjournment and to decide the action on the basis of the material that was before the court at that time. Complaints about procedural irregularities i.e that a directions hearing had not taken place when Ms. Smith did not ask for directions, but by her counsel did not deny the debt, but was only seeking confirmation as to the amount owed, was not, a material irregularity and could hardly be the basis for extending the period of time to appeal four years after the proceedings have been completed.

26. The proposed appeal is out of time. Whether to now grant leave to appeal out of time is entirely a matter of discretion of this Court. Ms. Smith has no right to appeal the judgment. This proposed appeal is a fanciful one. It is woefully out of time and has no reasonable prospects of success.

27. The application to extend the time within which to appeal is refused. Costs to the intended respondent, to be taxed if not agreed.

The Honourable Sir Michael Barnett, P

28. I agree.

The Honourable Mr. Justice Isaacs, JA

29. I also agree.

The Honourable Madam Justice Crane-Scott, JA