

**COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCCivApp No. 156 of 2021**

BETWEEN

DONNA DORSETT-MAJOR

Applicant/Intended Appellant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

First Respondent

AND

THE ATTORNEY GENERAL

Second Respondent

BEFORE:

**The Honourable Sir Michael Barnett, P
The Honourable Mr. Justice Evans, JA
The Honourable Sir Brian Moree, JA**

APPEARANCES:

**Ms. Tanya Wright, Counsel for the Appellant
Ms. Kayla Green-Smith with Ms. Alicia Gibson, Counsel for the
Respondent**

DATES:

1 December 2022, 14 December 2022

Civil Appeal - Procedural Law - Leave to Appeal to the Privy Council - Bahama Islands (Procedure in Appeals to Privy Council) Order, 1964, rule 3 - Computation of Time - Interpretation and General Clauses Act, section 69 - Power to Extend Time - Jurisdiction to Grant Leave to Appeal to the Privy Council

The Applicant/Intended Appellant (“the Applicant”) seeks leave to extend the time within which to apply for leave to appeal a Judgment of this Court to the Privy Council. The Applicant failed to seek leave to appeal within the 21 days from the date of the Judgment as required in Rule 3 of the Bahama Islands (Procedure in Appeals to Privy Council) Order, 1964 (“the Privy Council Rules”). The Applicant accepts that this Court has no power to extend time but argues that because this Court’s Registry (“the Registry”) was closed for one and a half days of the 21- day period, that one and a half days cannot be counted in calculating the 21 days. The Applicant concedes that the Registry was open the following day and that the application for leave could have been filed at that time. However, the Applicant argues that because the Registry was unexpectedly closed one and a half days of the 21 days, that one and a half day cannot be included in determining when the 21 days expired.

Held: Application for leave to appeal to the Privy Council is refused. Rule 3 of the Privy Council Rules provides that applications for leave to appeal should be made within 21 days after the date that a judgment is given. This Court does not have the jurisdiction to extend the period of time provided for in the Privy Council Rules.

Section 69 of the Interpretation and General Clauses Act provides clear guidelines for computing time and to compute time outside of its parameters would amount to judicial legislation. Pursuant to section 69 of the Interpretation and General Clauses Act, when computing time periods exceeding 6 days, all days including Sundays and public holidays are included. The calculation of the 21 days within which to file for leave to appeal to the Privy Council includes any day on which the Registry is closed, whether because it is a Sunday, public holiday, or for any other reason. Time can only be extended if the Registry is closed on the final day of the 21- day period.

Time prescribed by a local statute, such as the Bail Act, may be extended in exceptional circumstances if requiring strict compliance would deprive an individual of his Article 20 rights under The Constitution. However, this Court has no power to extend time when exercising a power given to it via the Privy Council Rules, which emanate from a different jurisdiction. As the Applicant failed to file her application when the Registry opened the next day, and in a timeframe that was still within the 21 days required by Rule 3 of the Privy Council Rules, this Court has no jurisdiction to grant leave to appeal to the Privy Council. The Applicant can still apply directly to His Majesty in Council for permission to appeal the Judgment.

Eric Stubbs v R SCCrApp No. 35 of 2021; applied
Shaquille Culmer v R SCCrApp. No.141 of 2019; distinguished

JUDGMENT

Judgment delivered by the Honourable Sir Michael Barnett, P:

1. This is an application by Donna Dorsett-Major ("the Applicant") for leave to appeal to His Majesty in Council. The Applicant seeks to appeal the decision of this Court dismissing her appeal against the finding of contempt made by Charles J. In that judgment, we reduced the amount of the fine from \$35,000.00 to \$20,000.00 and quashed that part of Charles J's order requiring her to pay the costs of the Attorney General, who appeared as amicus curiae.
2. The decision of this Court was delivered on 20 October 2022. The application for leave to appeal was made on 11 November 2022. The Judgment of this Court having been delivered on 20 October 2022, it is common ground that the 21 days in which to seek leave to appeal expired on 10 November 2022.

3. Rule 3 of the Bahama Islands (Procedure in Appeals to Privy Council) Order, 1964 (“the Privy Council Rules”) provides:

“Applications to the Court for leave to appeal shall be made by motion or petition within twenty-one days of the date of the judgment to be appealed from, and the applicant shall give all other parties concerned notice of his intended application.”

4. It is settled law, and common ground, that this Court does not have the jurisdiction to extend the period of time stipulated in the Privy Council Rules. In **Eric Stubbs v R** SCCrApp No. 35 of 2021, this Court (differently constituted) made it clear that it has no power to extend the time imposed by the Privy Council in the Privy Council Rules.

“27. This court has no power to extend the time imposed by the Privy Council in the 1964 Order. This point was made by the courts in [sic] at least two occasions. The Court of Appeal of Barbados in Tremblay v Bank of Nova Scotia Trust Co (Caribbean) Ltd (1999) 58 WIR 29 where in considering an identical provision in the Barbados order referred to earlier the court said:

“As to the question of extension of time within which to appeal, the Barbados (Procedure in Appeals to Privy Council) Order 1966, art 3 provides that:

'Applications to the court for leave to appeal shall be made by motion or petition within twenty-one days of the date of the judgment to be appealed from, and the applicant shall give all other parties concerned notice of his intended application.'

Apart from the mandatory terms of art 3, *Boyd-Meester v Fitz Williams* (unreported), a decision of this court, is authority for saying that this court has no jurisdiction to extend the time within which to appeal under art 3.”

28. In an earlier decision in *Harbour Cold Stores Ltd v Chas E Ramson Ltd and Others* [1980-84] LRC (Comm) 308 the Court of Appeal of Jamaica in considering the same rule said:

“These cases show that this Court has no power to extend the times fixed by sections 3 and 4(a) of the Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962 governing the application for leave to appeal.” (Emphasis added)

5. Counsel for the Applicant acknowledged that this Court has no power to extend the time but argues that this Court should hold that the Applicant is within the 21 days provided for in the Privy Council Rules because, as a result of a threat from Hurricane Nicole, the Registry of the Court of Appeal (“the Registry”) was closed from 12:00 p.m. on 8 November 2022 and the entire day on 9 November 2022. It is acknowledged that the Registry was open on 10 November 2022 and the Notice of Motion could have been filed on that day. However, Counsel argues that because the Registry was unexpectedly closed

for the one and a half days, it requires adding an additional day and a half in determining the 21 days from the day of the judgment as provided in Rule 3. She argues that to do otherwise would be to deprive her of her full 21 days and thereby breach her rights to a fair hearing within a reasonable time and the right to have adequate time and facilities to prepare her defense as provided for by Article 20(1) of The Constitution. She argued that Article 20(1) rights are applicable to all aspects of any appeal. She further argued that the allegation of contempt must be considered a criminal charge, as it has penal consequences including a fine and/or imprisonment.

6. Counsel for the Applicant has not referred us to any authority which supports her submission. As such, I regret that I cannot agree with that submission of Counsel. Rule 3 is clear: it says “*within twenty-one days*”.

7. Importantly, section 69 of the Interpretation and General Clauses Act provides:

“6. In computing time for the purposes of any written law —

(a) A period of days from the happening of any event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;

(b) If the last day of the period is a Sunday or public holiday the period shall include the next following day, not being a public holiday;

(c) Where any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day is a Sunday or public holiday, the act or proceedings shall be considered as done or taken in due time if it is done or taken on the next following day, not being a Sunday or public holiday;

(d) Where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, no Sunday or public holiday shall be reckoned in the computation of that time.”

8. If this Court were to accede to Counsel’s argument, we would be ignoring the statutory provision for computing time and engaging in judicial legislation.

9. Where the period of time provided for in any law exceeds 6 days, then all days including Sundays and public holidays are included in computing time. Accordingly, the time within which to file an application for leave to appeal includes any day on which the Registry is closed, whether because it is a Sunday, public holiday or for any other reason, unless the Registry is closed on the last day of the 21- day period.

10. Accordingly, we cannot agree that to include the day and a half when the Registry was closed amounted to a breach of the Applicant’s right to a fair trial or adequate time to prepare her defense. As pointed out during the hearing, the closure of the Registry on the day and a half did not affect her ability to prepare her application for leave and file it within

the 21 days. The Registry was open the day following day, because the threat of Hurricane Nicole had passed. Thus, there was nothing to prevent her from filing the application on the day following the day and a half, and thus be within the 21 days provided for in Rule 3. In the circumstances, we have no jurisdiction to grant leave to appeal to the Privy Council, the application having been made outside the 21 days provided for in the Privy Council Rules.

11. Further, although the Applicant did not cite it, this Court is aware of its decision in **Shaquille Culmer v R** SCCrApp. No.141 of 2019, where we considered the Bail Act and whether we had the power to extend the time fixed by statute for appealing where the statute itself did not give this Court the power to extend the time. That case also considered the Bail Act in the context of Article 20 of The Constitution. After considering the authorities, this Court (differently constituted) held that:

“28. ...the Court of Appeal does [sic] a power to hear an appeal from an accused person outside the two day statutory period in circumstances where to require strict compliance would operate to deprive an intended appellants of his Article 20 rights.” (Emphasis added)

12. This Court further held that:

“33. Whether in any particular case, the application of the statutory time limits would offend that constitutional right is fact sensitive. Neither the litigant nor the courts can cavalierly ignore the time limits imposed by statute. The [sic] “the well-established principle that powers conferred by statute must be read subject to the limitations and conditions prescribed by statute; and that where a time limit is prescribed by a statute, the court does not have power to extend the time unless the statute gives it the power to do so” is still the law. It is only where the provision would effectively deny a litigant his right to a fair trial (which includes a right of appeal) would a court be at liberty to depart from the time period imposed by statute.” (Emphasis added)

13. In my judgment, the principle in **Culmer** allowing this Court to depart from the time period imposed by statute is readily distinguishable from the present case. In the instant case, this Court is not exercising any power given to it by local statute. It is exercising a power given to it by the Privy Council itself and the Privy Council Rules regarding petitions for leave to appeal.
14. Additionally, it cannot be said that to depart from the time limit imposed by the Privy Council Rules would be to deny the Applicant her right to appeal to the Privy Council. Notably, the Applicant is not without remedy as she has the ability to apply directly to His

Majesty in Council for permission to appeal the Judgment of this Court made on 20 October 2022.

15. In the circumstances, this application for leave to appeal to the Privy Council is refused. All parties are invited to file written submissions on costs by 6 January 2023.

The Honourable Sir Michael Barnett, P

16. I agree with the disposition of this appeal.

The Honourable Mr. Justice Evans, JA

17. I also agree with the disposition of this appeal.

The Honourable Sir Brian Moree, JA