

1 The oral judgment of the court was delivered by
2 Crane-Scott, JA:

3 On 28th November, 2019 the would-be Appellants
4 Benjamin Coupland Simmons and Br-Iland Responsible Development
5 Ltd. filed a purported Notice of Appeal Motion in which they
6 sought to appeal from part of the written Judgment of the
7 Hon. Justice Diane Stewart made on 17th October, 2019, whereby
8 the learned justice:

9 Firstly, refused to award costs to the Applicants
10 for the Applicants' interim injunction application and the
11 Interested Party for its abandoned security for costs
12 application and 4M's application to set aside the interim
13 injunction and for fortification as particularized at
14 paragraph 80 of the Judgment.

15 Secondly, awarded costs of the substantive judicial
16 review hearing in the Supreme Court to 4M and 50 percent of
17 the costs of the Town Planning Committee (TPC) to be paid by
18 the Applicants/Appellants as particularized at paragraph 84 of
19 the Judgment.

20 And, thirdly, refused to award costs to the
21 Applicants/Appellants for the substantive judicial review
22 application.

23 The purported Notice of Appeal Motion also sought
24 the following reliefs:

25 Firstly, quashing of the learned judge's award of

1 costs of the substantive judicial review hearing in the
2 Supreme Court to 4M and 50 percent of the costs of the TCP to
3 be paid by the Applicants/Appellants as contained in paragraph
4 84 of the Judgment.

5 Secondly, an order reversing the costs order made
6 against the Applicants/Appellants.

7 Thirdly, an order quashing the learned judge's
8 refusal to award costs to the Applicants/Appellants.

9 And, fourthly, an award to them of the costs of the
10 substantive judicial review on a standard basis against the
11 Town Planning Committee or alternatively against 4M.

12 The various grounds of the purported appeal were set
13 out in the Notice of Appeal Motion filed on 28th November,
14 2019.

15 The Interested Party, that would be 4M Harbour
16 Island Ltd., then applied by Notice of Motion shortly after,
17 that is on 4th December, 2019 seeking an order that the
18 purported Notice of Appeal Motion be struck out with costs to
19 be paid by the would-be Appellants on the ground that (i) the
20 Appeal Motion had been lodged without the grant of leave by
21 the Supreme Court or by the Court of Appeal as required by
22 section 11(e) of the Court of Appeal Act; and (ii) on the
23 further basis that the appeal is not competent and/or is a
24 nullity.

25 Notwithstanding that the Motion to Strike was filed

1 on 4th December, no action was taken by the would-be
2 Appellants to obtain leave in the court below or even before
3 this court. Despite the Motion to Strike the would-be
4 Appellants continued to ready the appeal for hearing before
5 the court.

6 Supplementary Notice of Appeal Motions were filed
7 firstly on 5th December, 2019 and once again, most recently,
8 on 9th March, 2020 purporting to amend the purported Notice of
9 Appeal of 28th November, 2019.

10 At a previous hearing of this court on 9th September
11 the matter was adjourned for substantive hearing on
12 13th October, 2020, and so the matter came on before us on
13 that basis.

14 At the start of the hearing counsel for the
15 Interested Party, Mr. Hunt, drew attention to the Interested
16 Party's unheard Motion to Strike on the basis as I have
17 already laid out, namely that this court had no jurisdiction
18 to proceed with an appeal which initially started as an appeal
19 against costs which required leave of the court below or of
20 this court before it could be competent.

21 We heard arguments and Mr. Hunt this morning pointed
22 out that the purported Supplementary Notice of Appeal Motion
23 that had been filed by the would-be Appellants could not amend
24 something that was initially a nullity.

25 The court heard arguments for and against the

1 application and the court noted section 10 and section 11(e)
2 of the Court of Appeal Act which clearly set out what appeals
3 lie and do not lie from the court below and on what condition.

4 We noted that the Intended Appellants did not secure
5 the necessary leave as required by the statute. The
6 consequences of a would-be Appellant's failure to obtain leave
7 as required by section 11 of the Court of Appeal Act have been
8 repeatedly dealt with in previous decisions of the court. The
9 would-be Appellants in this case failed to obtain leave to
10 appeal. In the circumstances, the Notice of Appeal Motion of
11 28th November, 2019 is a nullity and the appeal is not
12 properly before this court. We have no jurisdiction in the
13 matter. We therefore accede to the Interested Party's Motion
14 to Strike.

15 Consequently, the Notice of Appeal Motion filed on
16 28th November, 2019 is incompetent and a nullity and could not
17 be amended by Supplementary Notices filed by the would-be
18 Appellants purporting to amend it.

19 Costs follow the event and costs are awarded to the
20 Interested Party to be taxed if not agreed.

21 That is the order of the court.

22 Dated this 13th day of October, 2020

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CRANE-SCOTT, JA