

IN THE CARIBBEAN COURT OF JUSTICE  
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Application No GY/A/CV2024/005  
GY Civil Appeal No 93 of 2023

BETWEEN

SUNRISE RESOURCES INC  
SUNIL SINGH  
SATYENDRA KUMAR

APPLICANTS

AND

BLUE STAR EXPORT INC

RESPONDENT

Before: Mr Justice Anderson  
Mr Justice Barrow  
Mr Justice Burgess

Date of Reasons: 14 February 2025

Appearances

Mr Sanjeev J Datadin, Ms. Mohanie Anganoo and Mr Keavon Bess for the Applicants

Mr Nirvan Singh for the Respondent

*Practice and Procedure – Special leave – No service of Notice of Appeal within prescribed time – Abuse of process – Raising fresh grounds at case management hearing – Supreme Court (Civil Procedure) Rules 2016 r 62.*

REASONS FOR DECISION

Reasons:

Barrow J (Anderson and Burgess JJ concurring)

[1] - [6]

Disposition

[7]

## **BARROW J:**

### **Introduction**

- [1] On the conclusion of the hearing at the Case Management Conference on 28 January 2025, the Court dismissed with costs the application for special leave to appeal. The intended appeal was against the decision of the Court of Appeal refusing an application to that court for leave to appeal a decision of the Full Court of the High Court.
- [2] The decision of the Full Court, for which leave to appeal to the Court of Appeal had been sought and refused, was that there had been no proper service on the respondent of the Notice of Appeal to the Full Court. It was upon this basis the Full Court dismissed the purported appeal. In the Court of Appeal, on the hearing of the application for leave to appeal to that court, junior counsel then appearing for the intended appellant fully acknowledged that the Notice of Appeal to the Full Court had not been served within the proper time. He acknowledged that the inclusion of a copy of the notice with the Record of Appeal which was served on the intended respondent a mere 13 days before that hearing was not proper service, and that the late service of the notice would have prejudiced the intended respondent. In light of the concessions, the Court of Appeal dismissed the application to it for leave to appeal.
- [3] Before this Court, counsel for the intended appellant argued that everyone in the Court of Appeal had proceeded on the error of law that a Notice of Appeal in the Full Court had to be served within a prescribed time. He drew attention to r 62.01 of the (Civil Procedure) Rules to point out that the time limit of 28 days was prescribed for the issuing of the Notice of Appeal, apparently inferring that this only referred to the filing and processing of the notice in the court registry. It was a mistake, he said, to apply that time limit to service on a respondent. Counsel was not deterred either by the repeated acknowledgement of the violation of the time

limit that his junior had made in the Court of Appeal or by the fact that he (counsel) had omitted to include as *the* ground of his application that the decision of the Court of Appeal was founded on the alleged error of law. As to the former, counsel seemed to treat it as no big deal and as to the latter, he submitted that the omission could easily be cured by allowing him to amend. It did not seem to occur to counsel that it was, in substance, an entirely new appeal he was proposing to argue and having not given notice of this intention in advance of the hearing, he was springing a surprise.

[4] The attempt described above is an abuse of the process of the court. It is a well-known principle of litigation long ago expounded in *Henderson v Henderson*<sup>1</sup> that a litigant must bring forward in litigation every matter that pertains to their cause of action and will not be permitted to litigate subsequently an issue that with reasonable diligence, they could have advanced in the earlier proceeding. In this case, there was no better place than before the Court of Appeal for the applicant to have advanced the contention that there was no time limit for serving a Notice of Appeal. In addition, the present situation falls within the ambit of *res judicata*, the principle that a party will not be permitted to litigate again a thing that has been conclusively decided. The conclusiveness of the determination lies in the acceptance by the applicant, through counsel, that it had failed to serve the Notice of Appeal in proper time. That was a concession that there was no appeal before the court.

[5] In *Bynoe v The State*<sup>2</sup> this Court repeated that it would not permit a litigant to advance before it for the first time an argument that formed no part of the case presented in the lower courts. The Court was satisfied that it would constitute an abuse of process if the appellant was permitted to introduce new grounds at that stage. This would violate the fundamental principle of the judicial process which requires that a litigant must put his whole case forward on appeal and a final

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<sup>1</sup> (1843) 3 Hare 100; 67 ER 313 at 319. See also *Halsbury's Laws of England* (5th edn, 2020) vol 12, para 1033 Abuse of Process: 'It is an abuse of process to raise in subsequent proceedings matters which could and should have been litigated in earlier proceedings.'

<sup>2</sup> [2023] CCJ 2 (AJ) BB, (2023) 101 WIR 78.

appellate court would not allow grounds to be argued before it which were not argued before the Court of Appeal.

- [6] A concluding observation relates to counsel's omission to advert to the provision following almost immediately after r 62.01(1)(c) that required service of the Notice of Appeal and which he submitted, set no time limit. Rule 62.01(3) states that the Registry must give at least 28 days' notice of the hearing of the appeal to all parties that have been served with the Notice of Appeal to the Full Court. Necessarily, the Notice of Appeal must have been served on the respondent not less than 28 days before the hearing, for the Registry to be able to give them 28 days' notice of the hearing. It would be egregious to interpret the rules as imposing no time limit for service of a Notice of Appeal on a respondent.

**Disposition**

- [7] The special leave application was dismissed.

/s/ W Anderson

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**Mr Justice Anderson**

/s/ D Barrow

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**Mr Justice Barrow**

/s/ A Burgess

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**Mr Justice Burgess**