IN THE COURT OF APPEAL
TURKS & CAICOS ISLANDS

CL-AP 11 & 12/23

BETWEEN:

DUNCANSON & CO.
(Beryn Duncanson dba)

Appellant

AND

(1) EAST WIND DEVELOPMENT COMPANY LTD
(2) WILLIAM DEAN REEVES
(3) RICHARDSON ARTHUR
(4) JEFFREY HERMAN
(5) RONNIE MOORE
(6) JOHN FLEMING
(7) WILLIAM MADDOX
(8) WB CORPORATE MANAGEMENT LTD
(9) SAUNDERS & CO. (Norman Saunders Jr. dba)

Respondents

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DATE HEARD: **16th OCTOBER 2023**
DATE DELIVERED: **27th OCTOBER 2023**

Before:

The Honourable Mr. Justice K. Neville Adderley **- President Ag**

The Honourable Mr. Justice Stanley John **- Justice of Appeal**

The Honourable Mr. Justice Bernard Turner **- Justice of Appeal**

Appearances:

Mr. B. Duncanson	**In Person**
Mr. C. Griffith KC, and Mr D. Smith	**For the Respondent**
Ms. C. Hippolyte	**For the Attorney General as an Interested Party**

Appeals - Application for Recusal – Refusal to Recuse – Leave to appeal – Application for Stay/Adjournment Pending Appeal refused- Whether the judge exercised proper discretion – Principles to be applied on Stay/Adjournment Pending Appeal

As a result of the filing and service of the Originating Summons in CL150/2022 the Registrar of Lands as an Interested Party, imposed a restriction on the disposition of lands of the First Defendant/Respondent.

On 21 June 2023 an oral application by the Plaintiff/Appellant for an adjournment sine die of CL150 was made. On 29 June 2023 Selochan J refused the application for an adjournment sine die. On 24 July 2023 the appellant filed an application for Selochan J to recuse himself.

On 31 July 2023 Selochan J ruled on the appellant's application for recusal. He found that it was an abuse of process and refused to recuse himself. He granted the appellant leave to appeal the decision, as well as leave to appeal the decision on the application for an adjournment sine die, but refused to stay the proceedings.

By an Amended Notice of Motion filed on 21 August 2023 the appellant sought to appeal the ruling refusing to stay actions CL 150/22 and CL 97/22(The Registrar of Lands application) pending an appeal by the appellant. This court is now being asked to determine the reasonableness or otherwise of the Judge's exercise of his discretion to refuse the appellant's application for a stay pending appeal.

Held: The judge exercised his discretion on the correct principles, and there has been no miscarriage of justice. Accordingly, the appeal is dismissed. The Appellant to pay the Respondents' costs to be taxed if not agreed.

Cases Considered

1. ***Bibby v Partap [1996] 1 WLR 931***
2. ***Maxwell v. Keun and Others [1928] 1 K.B. 645***
3. ***Collymore v George (2008) 72 WIR 229***
4. ***Hinckley and South Leicestershire Permanent Benefit Building Society v Freeman [1940] 4 All ER 212, [1941] Ch 32***
5. ***Re Yates' Settlement Trusts, Yates v Paterson [1954] 1 All ER 619, [1954] 1 WLR 564***
6. ***Maxwell v Keun [1928] 1 KB 645, [1927] All ER Rep 335.***
7. ***Gayle v Reid (1965) 8 WIR 257.***
8. ***Hadmor Productions Ltd v Hamilton [1983] 1 AC 191***
9. ***Dufour v Helenair Corp Ltd (1996) 52 WIR 188***

10. ***) Old Fort Bay Property Owners Association Ltd v Old Fort Bay Company Ltd; (2) Matthew Chance Hudson v Old Fort Bay Company Ltd; (3) Old Fort Bay Company Ltd v Old Fort Bay Property Owners Association Ltd BS 2022 SC 022.***
11. ***Paulista Ltd v Alfredo Neves Penteado Moraes; Moraes v Paulista Ltd [2013] 1 BHS J. No. 21***
12. ***Ratnam v Cumarasamy [1964] 3 All ER 933***
13. ***Charles Osenton & Co v Johnston [1941] 2 All ER 245***
14. ***Wembley National Stadium Limited v Wembley (London) Limited [2000] Lexis Citation 2361***
15. ***Broughton v Kop Football (Cayman) Ltd [2012] EWCA Civ 1743***
16. ***Pride Valley Foods Ltd v Hall & Partners and another [2002] EWHC 1254***
17. ***Naim Lone v Michael Petrou [2022] EWHC 3283***
18. ***(1) Duncanson & Co. (Beryn Duncanson DBA) v East Wind Development Company Ltd and Ors.; (2) Beryn Duncanson (DBA Duncanson & Co.) v The Registrar of Lands and Anor. [2023] TCASC 57, 5 May 2023***
19. ***Pride Valley Foods Ltd v Hall & Partners and another [2002] EWHC 1254 (TCC)***

JUDGMENT

JOHN JA:

1. This is one of several interlocutory appeals by the appellant against orders made by judges below (CL-AP 08/23, 11/23, 13/23, 14/23).

2. By an Amended Notice of Motion filed on 21 August 2023 the appellant sought to appeal a ruling made by Selochan J on 17 August 2023 refusing to stay actions CL 150/22 and CL 97/22 pending an appeal by the appellant.

3. This appeal has its genesis in the consolidated actions CL 150/2022 and CL97/2022 in which the appellant sought certain orders and declarations. In CL150/2022 the Plaintiff/Appellant by Originating Summons filed on 11 October 2022 claimed *inter alia*:

> that there was a written contract with the First Defendant, East Wind Development Company Ltd., for legal services to be provided to the First Defendant. According to the Plaintiff, certain sums became due and owing to the Plaintiff under the written contract, culminating in a settlement agreement dated 14th June, 2007. The Plaintiff further contends that Defendants 2 to 7 acted fraudulently by transferring and selling various parcels of land in breach of that settlement. The Plaintiff is also asking for, inter alia, full disclosure and accounting by the Defendants. The Plaintiff claims in the alternative that even if there was no concluded contract for legal services between the parties, the Plaintiff would still be entitled to a quantum meruit for all their work produced as assessed up until 2004 and 2007, plus interest for the legal services in equity and under the general principles of Restitution due to the Defendant's delay and acts of fraud[1].

[1] See [2023] TCASC 16, 18 August 2023 at [2].

4. As a result of the filing and service of the Originating Summons in CL150/2022 the Registrar of Lands (hereinafter referred to as the Registrar) as an Interested Party, imposed a restriction on the disposition of lands of the First Defendant/Respondent in action CL97/2022.

5. The restriction was entered pursuant to section 132 of the Registered Land Ordinance CAP 9:01 which provides:

> 132(1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, after directing such inquiries to be made and notices to be served and hearing such persons as he thinks fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land lease or charge.
>
> (2) A restriction may be expressed to endure -
>
> (a) for a particular period; or
>
> (b) until the occurrence of a particular event; or
>
> (c) until the making of a further order, and may prohibit or restrict all dealings or only such dealings as do not comply with specified conditions, and the restriction shall be registered in the appropriate register
>
> (3) The Registrar shall order a restriction to be entered in any case where it appears to him that the power of the proprietor to deal with the land, lease or charge is restricted.

6. On 24 July 2023 the appellant filed an application for Selochan J to recuse himself[2]. The learned Judge had previously considered the issue of his recusal on an oral application by the appellant for an adjournment sine die made on 21 June 2023. On 29 June 2023 Selochan J refused the application for an adjournment sine die and was not satisfied that such an adjournment ought to have been granted simply because an application for recusal had been made[3].

7. On 31 July 2023 Selochan J ruled on the appellant's application for recusal. He found that it was an abuse of process[4]. He granted the appellant leave to appeal the decision, as well as leave to appeal the decision on the application for an adjournment sine die, but refused to stay the proceedings. Selochan J proceeded to hear arguments on whether the Registrar acted lawfully in registering the restriction[5]. In a written judgment delivered on 18 August 2023 Selochan J ruled at paragraphs 54 and 55 of his judgment:

> *"54. I have come to the following conclusions based on the principles extracted from the authorities:*
>
> *a. The Plaintiff has failed to establish any legal or equitable interest in any of the Interested party's properties so as to justify the registering of the restriction.*
>
> *b. There was no charging order at the time of the registration of the restriction and the Plaintiff's claim could not have created a charge over the Interested Party's lands, the claim being primarily a*

[2] See [2023] TCASC 16, 18 August 2023 at [14].
[3] See [2023] TCASC 75, 29 June 2023 at [17].
[4] See [2023] TCASC 16, 18 August 2023 at [17].
[5] See [2023] TCASC 16, 18 August 2023 at [18].

contractual claim which acts in personam and which would not affect the lands of the Interested Party unless and until a charging order is made.

c. The Plaintiff's claim at this stage is for an unliquidated debt. Even if the Plaintiff is successful in his action on the issue of liability, the issue of quantum would remain in dispute.

55. It is therefore the considered and respectful opinion of this court that the Registrar erred in registering the restriction."

8. The Plaintiff/Appellant lodged an appeal against the Judge's Order and sought a stay pending the appeal (CL-AP 08/23, 11/23, 13/23, 14/23). Selochan J also refused any stay pending appeal in respect of either of the matters. Somewhat belatedly, on 28 September 2023 Selochan J provided his reasons for dismissing the 24 July 2023 application for recusal, stating that the appellant had *"failed to provide any good reasons why a stay should be granted"*[6].

9. This court is now being asked to determine the reasonableness or otherwise of the Judge's exercise of his discretion to refuse the appellant's application for a stay pending appeal.

10. In support of the application the appellant filed an affidavit (the 4th affidavit of Beryl Sigurd Duncanson) to which he annexed several exhibits. One of the exhibits was a letter from his firm addressed to the Honourable Chief Justice and Registrar. In that

[6] See [2023] TCASC 82, 28 September 2023 at [8].

correspondence he referred to his earlier application to this Court on 7 June 2023 where the court gave certain directions. I set out paragraph 3 of the letter seriatim having regard to its importance on this application:

> We say that the Court of Appeal made certain directions on the Wednesday 7th June. 2023, which when properly considered in all the words used required transfer to another existing judge, but that did not entitle the Registry to now foist upon the Applicants a wholly unknown new judge to try our multi-million-dollar contract dispute. An entirely newbie judge wholly as yet unknown to us within this Territory, or indeed being unknown anywhere for judging, having zero track record because he has in fact zero judging experience anywhere; [Footnotes 2 & 3, and 4 & 5]
>
> All that being said, without prejudice to generality and our full intent to continue opposing the said neophyte judge Mr Justice Christopher Selochan, we do believe we are entitled per normal protocol in such cases to full disclosure to the following questions to he answered by the new judge, again entirely without prejudice to our position opposing same:-
>
> > 1. Where and on what date is the Gazetted Notice of the subject judge's instrument of appointment, as none can be found. Who, which counsel in the A- G's Chambers or otherwise being particular with exact identity/ties, and when, did said person draft the purported instrument and Notice of Appointment of new judge Mr Christopher Selochan? Said instrument purportedly dated 13th February 2023. [Footnote 6]

2. When, and where, was the instrument of appointment by former Governor Dakin actually signed? [Whereas Governor Dakin has been gone from these shores well over 2 months now.]

3. We shall require the AG's Chambers, who are hereby put on notice hereby, to arrange sworn evidence by affidavit as to all these facts.

4. Which persons now currently living in, or in any manner working from or invested in the Turks & Caicos islands within the last 20 years, does the newbie judge Mr Selochan have connections to either as friends, or as professional or connections through any charitable or other association [In which case also state the name of said charity or charities or other type organization].

5. Is the newbie judge Mr Selochan currently now, or ever, had any Masonic membership or association? Or any friendship or other association to either the Registrar, the Chief Justice, or Justice Mr Anthony Gruchot?

6. Does the newbie judge have personal friendship and/or family connection or other social or professional association with fellow Trinidadians formerly or currently within the TCI Court system, such as to the Registrar Mr Narendra Lalbeharry, or to the Court of Appeal Justice Mr Stanley John [all Trinidadians]?

7. Has the newbie judge any current or former clients in his law firm chambers in Trinidad or any other contract or legal connection to any one of the following persons or entities: i. East Wind Development Co. Ltd; ii, Mr Dean Reeves; ii. Mr Richardson Arthur; iii. Mr Keith Burant and/or Meridian Trust and/or Meridian Mortgage Corporation; iv. Lord

Michael Ashcroft; iv. Belize Bank; v. British Caribbean Bank; vi. RBC; vii. Mr Indar Mahase of Trinidad [formerly of RBC bank]; viii. FCIB bank; ix. Scotiabank; x. Mr Justice Sir Elliott Mottley [and/or any of the Mottley family]; ix. Madam Chief Justice Margaret Ramsey-Hale [now of Cayman]?

8. Such further disclosure deemed further necessary from the new judge in coming days [without prejudice to generality, and without prejudice to the applicant and all clients' objections herein].

11. The appellant also exhibited an affidavit of Paul Mark Mathews, the 2nd Defendant in CL87/2020 Proprietors of STRATA Plan #102 v Flamingo Crossing Ltd. (1st Defendant) and Paul Mathews (2nd Defendant). That Affidavit was in support of an application for recusal of Justice Selochan.

The Appellant's Skeleton

12. Mr. Duncanson referenced the Jamaican Court of Appeal case of **Perkins v Irving (1997) 34 J.L.R.,** and the case of **Michael Eugene Misick and Ors. v. R**,[7] in support of his submission that once his application invoked the Constitution, the judge did not have a discretion, and that he was entitled to an automatic stay. Both cases were referenced by Gruchot J in **(1) Duncanson & Co. (Beryn Duncanson DBA) v East Wind Development Company Ltd and Ors.; (2) Beryn Duncanson (DBA Duncanson & Co.) v The Registrar of Lands and Anor.[8].**

[7] [2015] TCACA 12, 18 September 2023.
[8] [2023] TCASC 57, 5 May 2023.

The Respondent's Skeleton

13. In Response, Counsel referenced **Hammond Suddard Solicitors v Agrichem International Holdings [2001] EWCA Civ 2065**, **Goldsmith v O'Brien [2015] EWHC 510 (Ch)** and **Wilson v Church (No. 2) (1879) 12 Ch D. 454**, in submitting that the application for a stay is misconceived and that the case of **Misick** does not assist the appellant, as merely referencing the Constitution is insufficient to invoke a Constitutional challenge (see paragraphs 28 and 29 of **Misick**).

The Law

The Power of a Trial Judge to Adjourn/Stay Proceedings Pending Appeal

14. In **Bibby v Partap [1996] 1 WLR 931** Lord Nicholls of Birkenhead giving the judgment said at page 934:

> **Under English law a court of first instance which grants relief, whether interlocutory or final, has an inherent power to suspend ("stay") its order until an appeal or would-be appeal to the Court of Appeal is disposed of. The Court of Appeal has a like jurisdiction**. The existence of these parallel jurisdictions is assumed, and thereby confirmed, by R.S.C., Ord. 59, r. 13 (1):
>
> > "Except so far as the court below or the Court of Appeal or a single judge [of the Court of Appeal] may otherwise direct … an appeal shall not

operate as a stay of execution or of proceedings under the decision of the court below; …" (Emphasis added.)

In the ordinary course an application for a stay should be made to the court of first instance. It is obviously convenient, and it is the usual practice, for the application to be made to the judge whose decision is sought to be appealed, and for the application to be made at the time judgment is given. If the judge refuses a stay as asked, or imposes unacceptable terms, the appellant or would-be appellant may renew his application to the Court of Appeal: see Cropper v. Smith (1883) 24 Ch.D. 305. This is in accordance with R.S.C., Ord. 59, r. 14(4):

> "Wherever under these rules an application may be made either to the court below or to the Court of Appeal, it shall not be made in the first instance to the Court of Appeal, except where there are special circumstances which make it impossible or impracticable to apply to the court below."

These general principles are well established…

[Emphasis Mine]

15. **Section 12 (1) (a) of the Court of Appeal Rules of Bahamas**, which applies *mutatis mutandis* in the Turks and Caicos Islands[9], similarly provides:

[9] See Rule 4 COURT OF APPEAL (PRACTICE AND PROCEDURE) RULES– SECTION 22, Court of Appeal Ordinance CAP 2.01.

12. (1) Except so far as the court below or the court may otherwise direct —

(a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;

16. It follows therefore that the Court of Appeal has the jurisdiction and power to hear an appeal against a judge's refusal to grant a stay. If it allows the appeal, the Court of Appeal may vacate the orders made by the judge in the impugned matter. Subject to the restrictions in Section 5 (which are not applicable in this case), **Section 4 of the Court of Appeal Ordinance CAP 2.02** provides:

> ***"…the Court shall have jurisdiction to hear and determine appeals from any judgment or order of the Supreme Court given or made in civil proceedings****, or to order a new trial if the Court thinks fit,* ***and, for all purposes of and incidental to the hearing and determination of any such appeal and the amendment, execution and enforcement of any judgment or order made thereon, the Court shall, subject as aforesaid, have all the powers, authority and jurisdiction of the Supreme Court:*** *Provided that no judgment or order of the Supreme Court shall be altered or reversed in any case in which the Court is satisfied that the effect of the judgment or order is to effect substantial justice between the parties."*
>
> [Emphasis Mine]

17. Further, Order 28 sets out the rules of procedure for Originating Summons. O. 28, r. 1 and O. 28, r 5 provide:

APPLICATION (0. 28, r. 1)

1. The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these rules or by or under any Ordinance; and, subject as aforesaid, Order 32, rule 5, shall apply in relation to originating summonses as it applies in relation to other summonses.

ADJOURNMENT OF SUMMONS (0. 28, r. 5)

5. (1) The hearing of the summons by the Court may (if necessary) be adjourned from time to time, either generally or to a particular date, as may be appropriate, and the powers of the Court under rule 4 may be exercised at any resumed hearing.

(2) If the hearing of the summons is adjourned generally, any party may restore it to the list on 14 days' notice to every other party, and rule 3(4) shall apply in relation to any such adjourned hearing.

18. O. 35, r 3 provides:

ADJOURNMENT OF TRIAL (0. 35, r. 3)

3**. The Judge may, if he thinks it expedient in the interest of justice, adjourn a trial for such time, and to such place, and upon such terms, if any, as he thinks fit.**

19. The power to stay/adjourn proceedings pending appeal is a case management power of the first instance judge.

The Law on the Court of Appeal Interfering with the Case Management Discretion of a Trial Judge Refusing to Adjourn/Stay Proceedings pending an appeal

20. In **Maxwell v. Keun and Others** [1928] 1 K.B. 645, Lord Hanworth M.R said at pages 649 to 650:

> **It is obvious - indeed, it is almost an essential of our system and practice - that the discretion of a judge should be not only respected but upheld; and in Order XXXVI., r. 34 - if, indeed, a rule were necessary - it is plainly said that "the judge may, if he think it expedient for the interests of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms, if any, as he shall think fit." It is said, and said cogently, that, inasmuch as the Lord Chief Justice is armed with that discretion, the Court of Appeal ought not to interfere with the discretion exercised judicially; that this discretion was exercised judicially; that in a matter of what cases should be in the list to be tried by him it must surely be a matter for the judgment of the Lord Chief Justice; and that, even if there be an appeal, this Court ought to have respect for the discretion appropriately exercised.**
>
> With these arguments I agree**. It is obvious that there must not be any attempt to interfere with the discretion of the learned judge in reference to the trial. It is most important that we should uphold that discretion**. But *Sackville*

West v. Attorney-General (1), to which our attention has been called, gives an illustration that, although **it is only on very rare occasions that the discretion of a learned judge will be interfered with,** yet that there may be such occasions. It is a decision of the Court of Appeal, and therefore one which is binding upon this Court. The statement is made in the judgment, which is a judgment of Cozens-Hardy M.R. and Moulton and Buckley L.JJ., that, "although it could not be said that under no circumstances would the Court of Appeal be justified in interfering with the discretion of the learned judge in a Court below as to the proper mode and time of trying an action, yet it would only be in the most extraordinary circumstances that an application to review the decision of the learned judge as to the conduct of the business in his own Court could succeed; that the only case in which the Court of Appeal would so interfere would be if satisfied that the decision was such that, notwithstanding any exercise by the learned judge of the power of control which he would have over the action when it came on for trial, justice did not result, and he had failed to see that such would be the effect of his decision."

Now, I desire closely to follow and respectfully to agree with that statement of the principles on which the Court ought to act, and I ask myself, in the present circumstances, what will happen if the order stands, or, rather, if no order is made and the case comes on for trial this term….

[Emphasis Mine]

21. In the Guyana case of **Collymore v George (2008) 72 WIR 229,** Ramson JA at pages 235 and 236 said:

> Counsel for the appellant advanced amended grounds which warranted the attention of this court, these being necessary in the light of the bare and unhelpful grounds appended to the notice of appeal**. His first major concern was the failure of the learned trial judge to grant an adjournment** to accommodate the then counsel for defendants' request for them to be given a further opportunity to return to Guyana for the purpose of testifying on their behalf. Counsel's submission is worth reproducing verbatim. It runs thus:
>
> > 'The learned trial judge failed to and/or failed properly to exercise his discretion to grant the appellant an adjournment to establish his defence in the *interest of justice*, especially when the respondent *would have suffered no prejudice by an adjournment*.'

***Firstly*, the learned counsel relied on Ord 33, r 4 of the High Court Rules, Cap 3:02 which reads as follows:**

> **'The Court may, if <u>it appears to be expedient in the interests of justice</u>, <u>postpone</u> or <u>adjourn</u> a trial for such time and to such place, and upon such terms, if any, as it may think fit.' (Underscoring mine.)**

To this end he relied upon the authority of *Hinckley and South Leicestershire Permanent Benefit Building Society v Freeman* [1940] 4 All ER 212, [1941] Ch 32 and Ord 35, r 3 of the RSC (1967 White Book) which is, in pari materia, reflective of its Guyanese counterpart.

In giving its approval to *Hinckley*'s case the Court of Appeal in *Re Yates' Settlement Trusts, Yates v Paterson* [1954] 1 All ER 619, [1954] 1 WLR 564 held: the Court of Appeal has jurisdiction to entertain an appeal from an order of a judge adjourning a case, but as such an order was prima facie entirely within the discretion of the judge, the court would be reluctant to interfere with it: *Maxwell v Keun* [1928] 1 KB 645, [1927] All ER Rep 335. As in any other judicial act, it was subject to review: *Gayle v Reid* (1965) 8 WIR 257.

Conversely, where the trial judge refuses to grant an adjournment, this court will be slow to interfere even if we were of the view that we may have decided differently had the initial discretion been ours (see *Hadmor Productions Ltd v Hamilton* [1983] 1 AC 191) but not where, in principle, his decision did not 'exceed the generous ambit within which reasonable disagreement is possible' (see *Dufour v Helenair Corp Ltd* (1996) 52 WIR 188). In the light of the fact that both parties resided in the USA and the respondent returned to Guyana to prosecute her case and remained here over the period of postponements granted by the learned trial judge under Ord 33, r 4 to allow for the appellant to be present to testify in his defence, coupled with the age of the respondent (75 yrs), would it have been 'expedient in the interests of justice' to *further adjourn* the trial under the same provision? If justice was to remain even-handed, we think not, and therefore the learned trial judge ought not to be faulted as he did not 'think it fit' in the circumstances:

'There is, I think, no doubt that, if a judge adjourns a case, just as if he refuses an adjournment of a case, he has performed a judicial act which can be reviewed by this court, though I need not say that an adjournment, or a refusal of an adjournment, is a matter prima facie entirely within the discretion of the judge. This court would, therefore, be very slow to interfere with any such order …' (*Yates' Settlement Trusts, Re, Yates v Paterson* [1954] 1 All ER 619per Evershed MR.)

22. In the Bahamian consolidated cases of, **(1) Old Fort Bay Property Owners Association Ltd v Old Fort Bay Company Ltd; (2) Matthew Chance Hudson v Old Fort Bay Company Ltd; (3) Old Fort Bay Company Ltd v Old Fort Bay Property Owners Association Ltd BS 2022 SC 022** Indra H. Charles J said at paragraphs 79 to 82:

Case management powers — an unfettered discretion

79. It cannot be disputed that judges have wide and unfettered discretion when managing cases. These powers exist inherently and also under Order 31A Rule 18(2)(s) which provides that the Court has the power to " *take any other step, give any other direction or make any other order for the purpose of managing the case and ensuring the just resolution of the case."*

80. In *Paulista Ltd v Alfredo Neves Penteado Moraes*; *Moraes v Paulista Ltd* [2013] 1 BHS J. No. 21, Conteh JA had this to say at para 29:

> **"Discretion is an integral part of the case management function and powers of the trial judge.** This enables the judge to decide, whether in a given case, there should be a preliminary trial of issues. Order 31A, Part I, (see S.I 44 of 2004), supplements the Rules on the powers of the Supreme Court in case managing of actions."

81. At para 27, Conteh JA also stated:

> **"Order 33, rr. 1, 3 and 4 of the Rules of the Supreme Court, undoubtedly confers such discretion on a trial judge in civil cases. It is discretion, which if properly exercised, an appellate court should uphold and not lightly interfere with"**.

82. In **Maria Iglesias Rouco**, this Court comprehensively confirmed the unfettered nature of case management powers and the approach of appellate courts not to interfere with the discretion of a lower court unless the Court has misdirected itself on law, has failed to take relevant factors into account, has taken into account irrelevant factors or has come to a decision that is plainly wrong. At paras 59–63 of the Ruling, this Court stated:

> **"[59] The approach of appellate courts to the review of judicial discretions and case management decisions is well-established**.
>
> **[60] An appellate court will not interfere with the discretion of a lower court unless it is satisfied that the discretion has been exercised on a wrong principle and should have been exercised**

in a different way or unless clearly satisfied that there has been a miscarriage of justice. In *Ratnam v Cumarasamy* [1964] 3 All ER 933, Lord Guest giving the advice of the Privy Council stated at page 934:

> **"The principles on which a court will act in reviewing the discretion exercised by a lower court are well settled.** There is a presumption that the judge has rightly exercised his discretion: (*Charles Osenton & Co v Johnston* [1941] 2 All ER 245 at p 257; [1942] AC 130 at p 148), **per Lord Wright.** The court will not interfere unless it is clearly satisfied that the discretion has been exercised on a wrong principle and should have been exercised in a contrary way or that there has been a miscarriage of justice: *Evans v Bartlam*."

[61] As Mr. Deal correctly submitted, appellate courts will rarely allow appeals against case management decisions and will uphold robust and fair case management decisions. By its nature, case management is "quintessentially" a matter for the first instance judge seised of the proceedings. In *Wembley National Stadium Limited v Wembley (London) Limited* [2000] Lexis Citation 2361, Parker LJ said at paragraph 54:

> **"The issue whether to grant expedition, and if so how much and on what terms, was a matter essentially for the discretion of the judge.** As is well-known, this court will not lightly interfere with the exercise of judicial discretion. That applies, in my judgment, with particular force to case management decisions. The whole purpose of case management would be frustrated if an appeal route against case management decisions were thought to be readily available to the dissatisfied party. The reality is quite the contrary, in my judgment. Case management rarely involve issues of principle, and the onus on a dissatisfied party to demonstrate that a case management decision is plainly wrong cannot be easily discharged. By its nature, case management is quintessentially a matter for the court in which the proceedings are being conducted, and the scope for intervention by an appellate court in relation to case management decisions taken by that court is necessarily limited, in my view. Only in the most compelling circumstances, as I see it, would intervention of that kind be warranted."

[62] However, an appellate court may interfere with a case management decision if satisfied that the judge has misdirected

himself in law, has failed to take relevant factors into account, has taken into account irrelevant factors or has come to a decision that is plainly wrong. In *Broughton v Kop Football (Cayman) Ltd* [2012] EWCA Civ 1743, **Lewison LJ said at paragraph 51:**

> **"Case management decisions are discretionary decisions.** They often involve an attempt to find the least worst solution where parties have diametrically opposed interests. The discretion involved is entrusted to the first instance judge. An appellate court does not exercise the discretion for itself. It can interfere with the exercise of the discretion by a first instance judge where he has misdirected himself in law, has failed to take relevant factors into account, has taken into account irrelevant factors or has come to a decision that is plainly wrong in the sense of being outside the generous ambit where reasonable decision makers may disagree. So the question is not whether we would have made the same decisions as the judge. The question is whether the judge's decision was wrong in the sense that I have explained."

[64] The breadth of the court's case management powers is self-evident in Order 31A itself but nowhere more than in O.31A, r. 18 (s). The wide terms of this open-ended section expressly states that

the Court may "take any other step, give any other direction or make any other order for the purpose of managing the case and ensuring the just resolution of the case." [Emphasis added]

Considerations which should be made by a trial judge on an application for an adjournment.

23. In **Pride Valley Foods Ltd v Hall & Partners and another [2002] EWHC 1254 (TCC)** Toulmin J helpfully set out the considerations which a judge should make in the exercise of his discretion. At paragraphs [15] and [16] he said:

> [15] Again there is little or no dispute between the parties as to how I should approach the application for an adjournment. Under CPR Pt 3.1(2)(b) I have power commensurate with the overriding objective to adjourn or bring forward a hearing. A helpful list of possible considerations was given in a judicial review case (now an administrative law case) by Simon Brown LJ in R v Kingston upon Thames Justices, ex parte Martin [1994] Imm AR 172. This list was clearly not intended to be exhaustive. Considerations included:
>
> > **"the importance of the proceedings and the likely consequence to the party seeking an adjournment; the risk of his being prejudiced in the conduct of the proceedings if the application is refused; the risk of prejudice or other disadvantage to the other party if the adjournment is granted; the convenience of the court and the interests of justice generally in the despatch of court business; the**

> **desirability of not delaying future litigants by adjourning early and thus leaving the court empty and the extent to which the applicant himself had been responsible for creating the difficulty which is said to require the adjournment in the first place; the extent to which, in short, the applicant brought the problem upon himself."**
>
> [16] While prepared to accept the guidance which was afforded by Simon Brown LJ, Mr Davidson QC said that this amounted to no more than saying that in the circumstances of the case **I should weigh fairly the advantages and disadvantages of refusing and agreeing to the application.**

24. The case of **Naim Lone v Michael Petrou [2022] EWHC 3283 (SCCO),** is a perfect example of a judge refusing an application. In that case, Leonard J, refused an application to stay proceedings where the Claimant, a solicitor, had alleged that he was biased and had applied for a stay of proceedings, pending an investigation by the Ministry of Justice into his conduct in the proceedings. In refusing the application for a stay Leonard J said at paragraph 127:

> I have no doubt that both of the Claimant's applications for recusal and for a stay are totally without merit, and that I have a duty to certify that fact in my order dismissing the applications. The former is based upon a litany of imaginary wrongs, and the latter upon an investigation procedure that does not exist.

Discussion

25. The authorities make the following principles clear where the application for a stay/adjournment of proceedings pending appeal is made prior to the hearing, as distinct from where an application is made for a stay pending appeal of a judgment:

    a. An appeal does not operate as a stay. This includes an appeal from a decision of a trial judge refusing to recuse (as was the case in **(1) Duncanson & Co. (Beryn Duncanson DBA) v East Wind Development Company Ltd and Ors.; (2) Beryn Duncanson (DBA Duncanson & Co.) v The Registrar of Lands and Anor. [2023] TCASC 57, 5 May 2023, at para. 61);**

    b. The mere reference to Section 21 of the Constitution does entitle an appellant to an automatic stay/adjournment (See **Misick** at paragraphs 28 and 29).

    c. An application for a stay/adjournment pending appeal must first be made before the judge whose decision is being impugned;

    d. At that stage, the judge while continuing to perform a judicial act is in effect carrying out a case management exercise;

    e. If a stay/adjournment is refused, the appellant may renew the application before the Court of Appeal, as the appellant did in the instant case;

    f. An appellant must satisfy the Court of Appeal that the discretion of the trial judge has been exercised on a wrong principle and should have been exercised in a different way, or clearly satisfy the Court that there has been a miscarriage of justice (see **Maria Iglesias Rouco** and **Ratnam v Cumarasamy** in **Old Fort Bay Property (supra**)).

    g. In determining whether the judge applied the correct principles in refusing to grant the stay/adjournment, the considerations set out by Toulmin J in **Pride**

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are apropos.

26. Having considered the authorities and principles, in our view we are satisfied that the judge exercised his discretion on the correct principles, and there has been no miscarriage of justice. In his ruling of 28 September 2023, the judge made it clear that in refusing the application for a stay he considered that the appellant *"failed to provide any good reasons why a stay should be granted"*[10]. It was the appellant's duty to provide the court with evidence of legitimate reasons for the grant of a stay/adjournment, which he failed to do. Further, Selochan J was not called upon to make any final determination of any application or question under section 21 of the Constitution.

Conclusion

27. Accordingly, the appeal is dismissed. The Appellant to pay the Respondents' costs to be taxed if not agreed.

_____

John, JA

I agree

_____

Adderley JA, President (Ag)

I also agree

_____

Turner, JA

[10] See [2023] TCASC 82, 28 September 2023 at [8].