

IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

APPELLATE JURISDICTION

CIVIL APPEAL NO. 69 OF 2001

BETWEEN:

JAMES RAMSAHOYE

Appellant/Plaintiff

-and-

- 1. LINDEN MINING ENTERPRISE LIMITED**
- 2. BAUXITE INDUSTRY DEVELOPMENT COMPANY LIMITED.**

Respondents/Defendants

CIVIL APPEAL NO. 56 OF 2009

NATIONAL INDUSTRIAL AND COMMERCIAL INVESTMENTS LIMITED.

Appellants (First Respondent)

-and-

JAMES RAMSAHOYE represented herein by his attorney Walter Ramsahoye

Respondent (Applicant)

BEFORE THEIR HONOURS:

**MDE. Y. CUMMINGS-EDWARDS
MDE. D. GREGORY
MR. R. PERSAUD**

**- Chancellor (ag)
- Justice of Appeal
- Justice of Appeal**

APPEARANCES:

**Mr. T. Jonas for the Applicant
Ms. J. Stuart for the First Named Respondent
Ms. J. Ali for James Ramsahoye**

DATES:

**5th July, 2017
2nd October, 2017
19th October, 2017**

DECISION

The Court of Appeal has been moved by way of Motion at the instance of National Industrial and Commercial Investments Limited (NICIL) seeking the

discharge or variation of the following orders made on December 16th 2009 in Chambers by then Justice of Appeal B.S. Roy:

- a) the Appellant/First Respondent in Civil Appeal No. 56 of 2009 ("NICIL") be joined as a Respondent in Civil Appeal No. 69 of 2001 and that the title of the proceedings to be amended accordingly as well as a further order that the summons of 18th September, 2009 filed in Civil Appeal No. 69 of 2001 be consolidated and heard together with the summons dated 21st August, 2009 for an Order for a stay of execution in Civil Appeal No. 56 of 2009;
- b) that NICIL do pay to James Ramsahoye, the Appellant/Plaintiff in Civil Appeal No. 69 of 2001, his monthly pension as ordered by the Court of Appeal on 3rd March, 2004 in the sum of US\$2001.72 or its equivalent in Guyana dollars at the conversion rate of exchange prevailing at the date of payment with effect from 1st August, 2009 and continuing on the first day of each month thereafter by a transfer from its account with Republic Bank or any other Bank to Account No. 4883237 held by James Ramsahoye at Republic Bank until the death of James Ramsahoye or further Order as the Court of Appeal;
- c) that all funds of NICIL wherever and by whomever held do stand charged with the payment of the said monthly pension in accordance with the Order of the Court of Appeal made on the 3rd March, 2004 and this Order;
- d) service of the Order made herein shall be due authority and direction to pay the said monthly pension from funds held by or in favour of NICIL upon whomsoever such service is effected;
- e) that in default of payment by NICIL or any person or authority holding funds on its behalf the Registrar of Supreme Court is hereby authorized to act on behalf of NICIL to direct payment out of any funds wherever held on behalf of NICIL by any person or authority;
- f) that all further legal process to enforce the Order of the Court of Appeal made on the 3rd March, 2004 in Civil Appeal No. 69 of 2001 be taken against NICIL to effect payment of the said monthly pension to and in favour of James Ramsahoye the Appellant/Plaintiff in Civil Appeal No. 69 of 2001.

The grounds upon which NICIL basis its application are:

- i. the Justice of Appeal sitting in Chambers under Order 2 rule 16 of the Court of Appeal Rules has no jurisdiction to make the Orders granted on 16th December, 2009, which Orders are without the parameters of Order 2 rule 16;
- ii. NICIL is not the party to whom the liabilities of Bidco and/or Linmine have been transferred and the effect of the said Order of 16th December, 2009 is to wrongly and unlawfully impose on NICIL the liabilities of Bidco and to wrongly and unlawfully render the property of NICIL subject to the processes of execution for the purposes of enforcing payment of that liability; and
- iii. this Honourable Court has no jurisdiction to make orders for the enforcement of Orders and Judgments by way of Charging Orders or otherwise, which Orders fall within the jurisdiction of the High Court.

The several proceedings relating to this matter in the High Court and in this court which precede the filing of the Motion being considered herein are set out adequately in the written decision of Roy J.A dated December 16th 2009.

In the written submissions on behalf of NICIL it is pointed out that former Justice of Appeal of the Guyana Court of Appeal, Honourable Charles Ramson S.C, dealt with an application in Chambers for a stay of execution of a High Court Judgment in the matter of Commissioner General v. Caribbean Chemicals C.A. No. 112 of 2008. On January 12th 2009, Ramson J.A granted a stay of execution pending appeal. This was coupled with a conservatory order setting aside the declarations and orders of the High Court until the final determination of the Appeal.

An application ~~FOR~~ review of the decision of the Judge in Chambers was directed to the Full Bench of the Court of Appeal.

The Orders of Ramson J.A were set aside and discharged by the Full Bench on the ground that they were made in "excess of Jurisdiction".

Roy J.A emphatically propounded that ground in his lead judgment delivered on July 31st 2012. The learned Justice of Appeal alluded to the power vested in the Court of Appeal under Section 27 (1) of the Supreme Court of Judicature (consolidation) Act 1925 to exercise the powers and authorities vested in or exercisable by the Supreme Court of Judicature in England as at January 01, 1958. Roy J. A however declared that the above general powers did

not devolve upon a single Justice of Appeal sitting in Chambers in exercise of the functions prescribed under Order 2 Rule 16 (1) of the Court of Appeal Rules Chapter 3:01.

Cummings J.A (as she then was) held that the phrase "other interlocutory application" following the specifically defined functions in Rule 16 is "residuary". That phrase has to be considered *ejusdem generis*. This was so held by Bernard CH in Narine v. N.B.I.C C.A No. 75 of 2001.

In delivering his decision in the instant matter, Roy J.A made a remarkable *Volte face* of his findings recorded in the Judgment of the Full Bench of the Court of Appeal delivered on the 12th January 2009 in the matter of Commissioner General v. Caribbean Chemicals.

In view of the sequence of Judicial events in this matter it is not necessary, in my opinion, for this court to consider and pronounce upon the several issues raised in the grounds of the application in the Motion before us. There is a more basic and fundamental ground ~~FOR~~ the setting aside of the Decision of Roy J.A herein. It was held by this court in an earlier subsisting decision that the single Justice of Appeal sitting in Chambers is circumscribed by the specifically identified orders provided for in Order 2 R. 16 (1) of the Court of Appeal Rules.

This Court of Appeal intermediary as it is, is bound by its own earlier decision. The observations of Lord Denning M.R. in Miliangos v. George Frank Ltd [1975] 1 ALL E.R 1076 at 1084 are on point:

"The law on this subject has been authoritatively stated in Young v. Bristol Aeroplane Co. [1944] and Morelle v. Wakeling [1955]. This Court is bound to follow its own decisions except in closely defined circumstances. One of these is where a previous decision of this court, although not expressly overruled, cannot stand until a subsequent decision of the House of Lords. Another exception is where a previous decision had been given *per incuriam*....."

The Court of Appeal does not have liberty to review its own earlier decisions.

In this particular matter before us we are asked to sit on review of a decision of a single Justice of Appeal sitting in Chambers. That decision was arrived at in complete disregard and disclosure by the Justice of Appeal of binding contrary pronouncements on the law made by the Full Bench which included the very Justice of Appeal who delivered the lead Judgment.

The principle of *stare decisis* is binding upon this court. We are not concerned about the merits of a subsisting earlier decision of this Court on the issue in question. In as much as the Full Bench cannot do so, we cannot infuse

legitimacy into a challenge (direct or indirect) raised by a single Justice of Appeal sitting in Chambers by engaging in analysis of such a challenge.

In the Miliangos Case (supra) Lord Justice Lane tersely stated the settled legal position:

“.....this court is not designed or empowered to hear appeals from its own decisions. Flexibility has to this extent to be sacrificed to certainty.”

[See too; Davis v. Johnson [1978] 1 ALL ER 1132 at pp 1135 - 1140 Per Lord Diplock.] It has not escaped the attention of this court that these proceedings do not strictly constitute an appeal, but merely a review process with its origins in the Notice of Motion before us. In these circumstances a rejection of the motion would be tantamount to a review of the earlier cited decisions of the Court of Appeal. This Court is not at liberty to embark upon this process save for the exceptions noted earlier, none of which are presently applicable (see Miliangos v. George Frank Ltd and Davis v. Johnson supra)


In any event this court is in full agreement with the cited pronouncements in the cases of Commissioner General v. Caribbean Chemicals and Narine v. N.B.I.C., as it relates to the extent of the application of Order 2 rule 16 (1) of the Court of Appeal Rules.

The learned Justice of Appeal (in chambers) clearly exceeded his jurisdiction in granting those lofty orders complained of. Those orders clearly fall outside of the scope and purport of Order 2 Rule 16 (1).

In the circumstances the Motion dated 24th December 2009 by and on behalf of NICIL is granted and the Orders of Roy J.A (in chambers) dated 16th December 2009 are hereby discharged.

Costs to the Applicant (NICIL) in the sum of \$ 100,000.




R. PERSAUD
Justice of Appeal
20th July 2018