

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

APPELLATE DIVISION

2024/ APP/STS/0003

B E T W E E N

KAREN G.I. RIGBY

APPELLANT

And

ALEXANDRA CALLENDER

RESPONDENT

Before: The Honourable Justice Darron D. Ellis

Appearances: Judith Smith for the Appellant
Giahna Soles- Hunt for the Respondent

Hearing dates: December 12 and 17, 2024

DECISION

Magistrates Court Appeal-Application to extend the time within which a Notice of Appeal may be served-Preliminary Objection for non-service of the Notice of Appeal-Matters to be considered by the Court in favour of granting or refusing relief-Principles on which the application should be considered-Grounds of Appeal-Whether the grounds of appeal have a reasonable prospect of success-The length and reasons for the delay in serving the Notice of Appeal-The degree of prejudice to the Respondent if the application is granted-Whether application for leave to file the Notice of Appeal before service is required-Court's treatment of pro se litigants.

HELD: The Appellant's application for an extension of time to serve the Notice of Appeal is denied. The appeal is dismissed with costs to the Respondent.

1. Upon a preliminary objection being raised to dismiss an appeal on the ground that the Appellant failed to file and serve the Notice of Appeal on the Respondent within the statutory period, is an application for an extension of time to file and serve the Notice of Appeal required? If the answer is yes, should the appeal be dismissed for failure to serve the Respondent with the Notice of Appeal?: **Thompson v Max** [1998] BHS J 135; **Lee v Harrison and others** (2024) 104 WIR 485; **Rochester v Chin and Matthews** (1961) WIR 40; **Mucelli v Government of Albania; Deputy Public Prosecutor in Creteil France v Moulai General Case Digest** [2009] All ER (D) 135 (Jan) and **Lukaszewski v District Court in Torun, Poland and Other Appeals; R (on the application of Halligan) v Secretary of State for the Home Department** [2012] 4 All ER 667; **R (Dinjan Hysaj) v Secretary of State for the Home Department** [2014] EWCA Civ 1633; **London Borough of Tower Hamlets v Al Ahmed** [2019] EWHC 749 (QB) referred to.
2. When an application is made for an extension of time to appeal and or to serve the Notice of Appeal, the court considers the following factors: (1) the length of the delay, (2) the reasons for the delay, (3) whether there is an arguable case on the appeal, and (4) the degree of prejudice to the Respondent if time is extended. Additionally, in weighing these factors, it would never be right to deny an appeal that may expose an injustice, particularly if doing so could result in an altogether wrong decision: **Flowers Development Company Ltd. v The Bahamas Development Company Ltd.** SCCivApp No. 14 of 2022 at para 10; **Lymington MR in Norwich & Peterborough Building Society vs. Steed** (1991) 1. WLR 449; **Rodriguez Jean Pierre (Appellant) v The King (Respondent) (Bahamas)** JCPC/2021/0105 referred to.
3. It is a recognized legal principle that the burden rests on the Applicant to demonstrate an arguable case or a good prospect of success on the proposed grounds for leave to appeal: **Flowers Development Company Ltd. v The Bahamas Development Company Ltd.** SCCivApp No. 14 of 2022 at para 10; **Lymington MR in Norwich & Peterborough**

Building Society vs. Steed (1991) 1. WLR 449; **Rodriguez Jean Pierre (Appellant) v The King (Respondent) (Bahamas)** JCPC/2021/0105; **Derek Harold Sands and Lenora Sharell Sands v Finance Corporation of The Bahamas** SCCiv App. No.29 of 2008 referred to.

4. An analysis of the factual and legal evidence, including the admission of failure to serve the Respondent, demonstrates that the prospective appeal is unlikely to succeed. The Appellant has failed to meet the burden of proof. **Flowers Development Company Ltd. v The Bahamas Development Company Ltd.** SCCivApp No. 14 of 2022; **Lymington MR in Norwich & Peterborough Building Society vs. Steed** (1991) 1. WLR 449; **Rodriguez Jean Pierre (Appellant) v The King (Respondent) (Bahamas)** JCPC/2021/0105 **Derek Harold Sands and Lenora Sharell Sands v Finance Corporation of The Bahamas** SCCiv App. No.29 of 2008 **relied upon**. Additionally, leave from the Supreme Court is required to extend the time for filing and serving a Notice of Appeal that was filed contrary to the statutory period. Applying the principles established in **Thompson v Max** [1998] BHS J 135; **Lee v Harrison and others** (2024) 104 WIR 485; **Rochester v Chin and Matthews** (1961) WIR 40; **R (Dinjan Hysaj) v Secretary of State for the Home Department** [2014] EWCA Civ 1633; **London Borough of Tower Hamlets v Al Ahmed** [2019] EWHC 749 (QB), the Appellant's application to extend the time for serving the Notice of Appeal is dismissed with costs awarded to the Respondent, due to the failure to file and serve the Notice of Appeal within the statutorily mandated time limit and the lack of a real prospect of success on appeal. Lastly, all parties (including pro se litigants) must be treated equally as per **R (Dinjan Hysaj) v Secretary of State for the Home Department** [2014] EWCA Civ 1633; **London Borough of Tower Hamlets v Al Ahmed** [2019] EWHC 749 (QB).

Ellis J

Introduction and Background

[1.] The facts in this matter are, for the most part, undisputed. Where any apparent divergence arises, the Court's findings are derived from the affidavits and documentary evidence before it.

The Court further observes that no affiants have been subjected to cross-examination. Consequently, greater weight is afforded to the contemporaneous documentary evidence submitted by the parties.

[2.] This matter appears to have a long history involving a property dispute between neighbouring parties. The Appellant owns a property described as Lot #8, Block #7 in the Westward Villas Subdivision, located in the Western District of the Island of New Providence, one of the Islands of the Commonwealth of The Bahamas, with the address being #15 Hampshire Road. The Respondent owns the adjacent parcel, located on the eastern boundary of the Appellant's property, described as Lot # 9, Block #7.

[3.] On April 28, 2023, the Respondent sued the Appellant in the Magistrates' Court, alleging that the Appellant caused damage to her fence during the construction of the Appellant's house.

[4.] On December 12, 2023, this dispute was resolved in favour of the Respondent, with the Court finding that the Appellant had caused damage to the Respondent's fence. The Court ordered the Appellant to pay the Respondent \$500 in damages and \$400 in costs (the Decision) to the Respondent.

[5.] By letter (rather than a formal Notice of Appeal) dated December 19, 2023, and filed on December 20, 2023, the Appellant filed a Notice of Appeal outside the mandated statutory period of seven days. This Notice of Appeal was never served on the Respondent or her attorneys.

[6.] The single ground in the Notice of Appeal read as follows:

"I am appealing the judgment as the Magistrate made a material legal error unsupported by any evidence that affected the outcome of my case".

[7.] The Respondent filed a Notice of Preliminary Objection against the appeal on December 5, 2024, on the following grounds:

- Failing to file and serve the purported appeal within the statutory time limit as prescribed by section 56 of the *Magistrates Court Act, Ch. 54*.
- Failing to serve the purported Notice of Appeal on the Respondent or her counsel.
- Failing to serve on the Respondent the grounds of appeal

[8.] On December 12, 2024, the parties appeared before the Court to hear the appeal and the Respondent's application. The Appellant, appearing *pro se*, was unprepared to present arguments concerning the preliminary objections of the Respondent. As a result, the Court adjourned the matter to allow the Appellant to retain counsel.

[9.] On December 17, 2024, the parties appeared before the Court, and the Appellant, now represented by counsel, applied for an application for an extension of time to serve the Notice of Appeal. The Respondent relied on the Affidavits of Natassia Rigby filed on May 14, 2024, and December 16, 2024. The Appellant relied on the Affidavit of Karen G.I. Rigby filed on December 16, 2024.

[10.] The Court proceeded to hear both notices. At the conclusion of the hearing, the Court delivered an oral decision, which I now set out in writing.

ISSUES

[11.] In determining these notices, this Court must consider two overarching issues:

- *Whether the appeal has been properly constituted given the Appellant's failure to comply with the procedural requirements under the Magistrates Act, Ch.54.*
- *Whether the Appellant has met the threshold for an extension of time to serve the Notice of Appeal.*

The Law

[12.] *Section 56 and 57 of the Magistrate Act* reads as follows:

“The appellant, within seven days after the day on which the magistrate has given his decision, shall serve a notice in writing, signed by the appellant or his counsel or attorney, on the other party and on the magistrate of his intention to appeal and of the general grounds of his appeal: Provided that any person aggrieved by the decision of a magistrate may, upon notice to the other party, apply to the court to which an appeal from such decision lies, for leave to extend the time within which the notice of appeal prescribed by this section may be served, and the court upon the hearing of such application may extend the time prescribed by this section as it deems fit.

The appellant shall within three days after the day on which he served notice of his intention to appeal, enter into a recognisance before a magistrate, with or without sureties as the magistrate may direct, conditioned to prosecute the appeal to judgment and to abide the judgment thereon of the court, and to pay such costs as may be awarded by it, or, if the magistrate thinks it expedient, he may instead of entering into recognisances give such other security by deposit of money with the magistrate or otherwise as the magistrate deems sufficient.”

[13.] *Appeals From Magistrates (Procedure) Rules Ch. 54 Rule 4* provides:

“Where a case has been heard in New Providence and a person aggrieved desires to apply for an extension of time under the provisions of the proviso to section 56 of the Act, such application shall be made by notice of motion in the Form A in the Schedule hereto, accompanied by an affidavit setting out briefly the reasons for such application, and if a copy of such notice and affidavit be served upon the other party in accordance with the provisions of rule 3 of these Rules such notice and service shall be sufficient and good.”

Preliminary Objections of Respondent

Issue:

Whether the appeal has been properly constituted given the Appellant’s failure to comply with the procedural requirements under the Magistrates Act, Ch.54.

[14.] The Respondent submits that the Appellant has failed to comply with the procedural requirements of the *Magistrates Act, Ch. 54*, which renders the instant appeal irregular.

Failing to file the instant appeal within the statutory time limit as prescribed by the act.

[15.] The Respondent avers that the appeal was filed out of time. The magistrate delivered the Decision on December 12, 2023. In accordance with the *Magistrates Act*, the deadline for filing the Notice of Appeal expired on December 19, 2023. However, the Notice of Appeal was filed on December 20, 2023. It is not disputed by the parties that it was filed out of time.

[16.] The Respondent argues that the requirement for the Appellant to file and serve a written Notice of Appeal, signed by the Appellant or counsel, on the other party and the magistrate, indicating the intention to appeal and outlining the general grounds of appeal within seven days of the magistrate's decision, is indispensable and mandated by statute.

[17.] The Respondent relies on the case of **Thompson v Max** [1998] BHS J 135. In that case, the magistrate made an order on October 19, 1995. Thompson then filed his appeal on October 30, 1995, four days after the expiration of the seven-day period. Before the appeal hearing, the Respondent advanced a preliminary objection and sought to strike out the appeal, arguing that the appeal was filed out of time and that there was no application before the Court for an extension of time to file.

[18.] There is no application before the Court for an extension of time *to file* the Notice of Appeal. Instead, the matter before the Court is an application for an extension of time *to serve* the Notice of Appeal out of time. However, this application was filed one year after the Decision in question.

[19.] **In Thompson v Max**, *Sawyer C.J.* opined at paragraphs 8, 26 & 27:

“Applying the principles laid down in section 69 of the Interpretation and General Clauses Act (Ch. 2), the notice of appeal was filed just outside the statutory period and,

as Mr. Minnis says, there is no application before me to extend the time for appealing; that would be sufficient to dispose of the preliminary objection.It is unfortunate that time was allowed to pass and that no application for an extension of time was made. In those circumstances, the respondent is entitled to succeed on his preliminary objection.”

[20.] The Appeal was dismissed by *Sawyer CJ*.

[21.] The Respondent further relies upon section 68 of the *Magistrate Act* where it states:

“68. The court may adjourn the hearing of the appeal, and may upon the hearing thereof confirm, reverse, vary or modify the decision of the magistrate or remit the matter with the opinion of the court thereon to the magistrate, or may make such other order in the matter as it may think just, and may by such order exercise any power which the magistrate might have exercised, and such order shall have the same effect and may be enforced in the same manner as if it had been made by the magistrate.”

[22.] The Respondent submits that given that the Appellant (i) filed the Notice of Appeal outside the statutory period, and (ii) failed to apply for an extension of time to file the Notice of Appeal, the appeal ought to be dismissed as in **Thompson v Max**.

[23.] In her written submissions, the Appellant does not explicitly address the Respondent’s preliminary objections. However, during oral arguments, counsel for the Appellant contended that the delay in filing was merely one day and that the Respondent suffered no material disadvantage as a result. Counsel urged the Court to disregard the preliminary objection and allow the appeal.

Failing to serve the Notice of Appeal on the Respondent or her counsel within the statutory time limit as prescribed by the Act.

[24.] The Respondent also submits that Section 56 of the *Magistrate Act* requires that a Notice of Appeal must not only be filed, but also served on the other party and the magistrate within the statutory period of seven days. The Respondent further submits that they have not been served with the Notice of Appeal at all.

[25.] In this regard, the Respondent relied on the case of **Lee v Harrison and Others** (2024) 104 WIR 485, in which the Court of Appeal of the Turks and Caicos Islands considered the effect of service outside the mandatory time frame. Paragraph 28 of the judgment states:

“In para 1 of the respondents’ summons seeks an order of the court to strike out the Notice of Intention of Appeal on the ground that it was served out of time. **Section 15(1) of the Ordinance** clearly states that **not only must the appellant give notice of his intention to appeal within 28 days, but he must also notify the opposing party or parties in the action of his intention to appeal and of the general grounds of his appeal. The position therefore is that the appellant is obligated to serve his Notice of Appeal on the respondents within the 28-day limit. Such an obligation must be strictly complied with”.**

[26.] The act in that case refers to a 28-day period as opposed to the act in this case, which refers to a 7-day period.

[27.] The Respondent further relied on the case of **Rochester v Chin and Matthews** (1961) WIR 40, where the Court held that the service of the Notice of Appeal was not a mere formality but a conditional precedent to an appeal. The Court, at page 5, states:

“As stated by us when we upheld the preliminary objection in the instant case, it is our view that the giving of notice of appeal is a condition precedent, the performance of which founds the jurisdiction of the court of appeal to hear the appeal. It is not a formality, and the provisions of the statute must be strictly complied with. The court has no power to enlarge the time when the notice is given or served out of the prescribed time.”

[28.] The Respondent further cites the cases of **Mucelli v Government of Albania; Deputy Public Prosecutor in Creteil France v Moulai** *General Case Digest* [2009] All ER (D) 135 (Jan); and **Lukaszewski v District Court in Torun, Poland and Other Appeals; R (on the application of Halligan) v Secretary of State for the Home Department** [2012] 4 All ER 667 to buttress the argument that the filing and service of the Notice of Appeal is a mandatory requirement.

[29.] The Respondent submits that the Appellant's non-compliance renders the appeal unsustainable and that both the appeal and extension of time application ought to be dismissed.

[30.] The Court accepts that it is a well-established principle of the law that the purpose of service is to ensure that the parties are aware of the nature of the proceedings, thereby affording them the opportunity to defend their position in accordance with the rules of natural justice. It is unfortunate that service was not effected in this case.

[31.] The Respondent contends that the non-compliance on the part of the Appellant renders the instant appeal unsustainable, and that both the appeal and extension of time application ought to be dismissed.

Failing to serve particulars of the grounds of appeal.

Failing to file the Notice of Appeal in the prescribed form as prescribed by the act.

[32.] The Respondent, having been made aware of the Notice of Appeal before the proceedings began, submits that, in any event, the Notice of Appeal, as it stands, lacks particulars of the grounds of appeal contrary to *Section 56 of the Magistrates Act*, which requires the Appellant to serve the other side with the grounds of appeal. The Respondent further submits that the Notice of Appeal is also not in the correct form, violating the *Magistrates (Procedure) Rules Ch. 54 Rule 4*.

[33.] The Respondent relied on the Jamaican Court of Appeal's decision in **Gordon v Russell** [2012] JMCA 6 Application No. 205/2010, where the Court refers to the judgment of **Jamaica Mineral Waters Co Ltd v the Kingston and St. Andrew Corporation** (1936) 3 JLR 10, at paragraph 37 of the decision which states:

“In *Jamaica Mineral Waters Co Ltd v the Kingston and St. Andrew Corporation* (1936) 3 JLR 10, the court reviewed section 260 of the Resident Magistrate's Law which required an appellant to serve on the respondent and file with the clerk of courts the grounds of appeal within 10 days of receiving the reasons for the Resident Magistrate's judgment.

Like JRMA section 256, section 260 of the Resident Magistrate's Law provided that "on his failure to do so his right of appeal shall cease and determine".

[34.] The Respondent submitted that the **Jamaica Mineral Waters** case establishes that the service of the grounds of appeal is a condition precedent to the perfection of a civil appeal. Failure to serve the grounds of appeal results in the cessation of the right of appeal, which cannot be cured by the Court.

[35.] It must be noted that the instant case is distinguishable, as the Magistrates Act, in this instance, does not explicitly state that a failure to provide grounds results in the automatic cessation or determination of the appeal. Nevertheless, the Respondent contends that the **Jamaica Mineral Waters** case serves as persuasive authority.

[36.] In this case, the Appellant, states in her Notice of Appeal, "*I am appealing the judgment as the Magistrate made a material legal error unsupported by any evidence that affected the outcome of my case.*" The Respondent argues that this is akin to providing no grounds, as it is too general. The Appellant has not identified any specific material legal error allegedly made by the Court. As a result, the Respondent contends that the appeal was not in the correct form, and the Respondent is placed at a disadvantage in adequately preparing for and defending the appeal.

[37.] The Respondent adds that this failure constitutes a material and significant defect that undermines the integrity of the appeal. As such, the appeal must be dismissed in the interest of justice.

[38.] The Appellant counters that the ground of appeal is clear and that, even if it is not, any deficiency in this regard should not warrant the dismissal of the appeal. Counsel for the Appellant emphasized that the Appellant acted *pro se* in filing the appeal and, therefore, was not as familiar with the process as an attorney would be.

[39.] The Court disagrees with counsel for the Appellant. In my view, the preliminary objections have merit and should be sustained, as the appeal was not properly constituted. The Notice of

Appeal was filed outside the statutorily mandated filing period. In addition to this procedural error, the Appellant has failed to serve the Respondent with the Notice of Appeal since the appeal was filed. Furthermore, the ground set out in the Notice of Appeal, in my opinion, lacks sufficient particulars to enable the Respondent to prepare its defence, and the form of the notice is also incorrect.

[40.] The Appellant is undoubtedly in breach of the *Magistrate Act*. The Appellant was required by law to file and serve the Notice of Appeal, including sufficient particulars of her grounds of appeal, within seven days of the Decision. Failing to do so, in my opinion, is prejudicial to the Respondent and has placed the Respondent at a clear disadvantage.

[41.] Nevertheless, the Court will consider the Appellant's application with the overarching objective of ensuring that justice is done.

Appellant's application for leave to extend the time for service

Issue:

- *Whether the Appellant met the threshold for an extension of time to serve the Notice of Appeal.*

[42.] The Appellant opposes the Respondent's preliminary objections and submits that the Court has discretion in determining whether to accede to the Appellant's application. The Appellant further contends that the relevant considerations for the Court are as follows:

- (a) The length of the delay;
- (b) The reason for the delay;
- (c) The chances of the appeal succeeding if time for appealing is extended; and
- (d) The degree of prejudice to the Respondent if the application is granted.

[43.] The Appellant, by Notice of Application filed on December 16, 2024, and after being served with the Respondent's preliminary objections, seeks leave of the Court for an extension of

time within which to serve the Notice of Appeal pursuant to *Section 56* of the *Magistrates Act Ch. 54*. By making this application, the Appellant acknowledges that the Notice of Appeal was not served on the Respondent in accordance with the *Magistrates Act*.

The Law

[44.] With respect to extensions of time for appeals, guidance is found in **Flowers Development Company Ltd. v The Bahamas Development Company Ltd.** SCCivApp No. 14 of 2022, at paragraph 10, where the Court of Appeal states:

“As is evident by this rule this Court is vested with wide discretion in arriving at its determination as to whether to grant an extension of time. Blackman JA in *Derek Harold Sands and Lenora Sharell Sands v Finance Corporation of The Bahamas SCCiv App. No.29 of 2008* opined that:

“15. The matters which fall for consideration on an application for an extension of time to lodge an appeal, namely: (1) the length of the delay (2) the reasons for the delay, (3) whether there is an arguable case on the appeal, and (4) the degree of prejudice to the respondent if time is extended, call for the exercise of a judicial discretion, the nature of which has been described by Lord Donaldson of Lynton MR in *Norwich & Peterborough Building Society vs. Steed* (1991) 1. WLR 449 at p. 454 as a “discretionary balancing exercise”. The discretion which is to be exercised is unfettered and should be exercised flexibly, having regard to the facts of the particular case (see *Palata Investments Ltd et al vs. Burt & Sinfield Ltd et al*, supra.)”

[45.] Further at para 15:

“To my mind the important take away is the provision of Rule 9 (1) (c) which gives this Court the power to direct a departure from these Rules in any other way where this is required in the interests of justice. The Court’s numerous authorities on extension of time applications in both civil and criminal matters in my view exhibit

attempts by the Court to do justice according to the facts and circumstances of each particular case”.

[46.] Additional guidance is found in the dictum of Lord-Lloyd Jones and Hamblen in **Rodriguez v Bahamas** JCPC/2021/0105 at paragraph 30:

“Finally in this regard, the Board's attention was drawn to the recent decision of the Court of Appeal (Isaacs, Crane-Scott and Evans JJA) in a civil appeal, **Flowers Development Co Ltd v The Bahamas Telecommunications Co Ltd** (SCCivApp No 14 of 2022), 29 November 2022. In his judgment Evans JA, with whom the other members of the Court agreed, considered the approaches of the Court of Appeal to applications for an extension of time in **Williams** and in the present case. Evans JA made the following observations (at paras 13-15) with which the Board respectfully agrees. First it could never be right or proper to deny an appeal that may expose an injustice, which may have the effect of producing an altogether wrong decision and to allow it to stand merely due to the time that has elapsed since it was made and where the other party suffers no disadvantage. Secondly, despite the apparently differing views in these two cases as to which of the four factors is more persuasive, it is important to recognise that each application will turn on its own facts and circumstances”.

The length of the delay

[47.] The Appellant submits that the delay in filing was only one day. The Appellant's Notice was filed on December 20, 2023, whereas it should have been filed by December 19, 2023. The Appellant argues that this constitutes a minor error and that no material disadvantage has been occasioned to the Respondent. The Appellant appears to emphasize the filing delay rather than the failure to serve the Notice of Appeal on the Respondent. In this regard, the Appellant relies on **Gary Grande v Scalpro Ltd.** 2016 Mag/APP/ FP/3/703, where *Hanna-Adderley J.* opined that a delay of 25 days beyond the relevant period was not so egregious as to justify denying the appeal application.

[48.] The Respondent acknowledges that the delay in filing was one day. However, the Respondent emphasizes that the law requires the Notice of Appeal to be both filed and served on

the Respondent within seven days. This requirement has not been met, and therefore, leave is required for both filing and service. In this regard, the Respondent relies on the dictum of Sawyer CJ in **Thompson v Max supra**, where the learned judge dismissed an appeal for being filed out of time.

[49.] Based on the evidence and the Appellant's application, it is not disputed that the Notice of Appeal was not served on the Respondent. While the Court agrees with the Appellant that the one-day filing delay was not egregious, the Appellant has not applied for an extension of time to file the Notice of Appeal in accordance with the law. Furthermore, the Court is of the opinion that the delay in serving the Respondent, which exceeds a year, is indeed egregious. It is unfortunate and improper that the Respondent has not been served with the Notice of Appeal.

The reason for the delay

[50.] In her affidavit, the Appellant states that the delay occurred because she relied on her previous attorney to file the appeal and that her attorney was dilatory, prompting her to proceed *pro se*. She further asserts that she received conflicting information or no assistance from the Supreme Court Registry staff and that her Notice of Appeal was initially not accepted. However, no further evidence was proffered in support of these assertions.

[51.] Counsel for the Appellant further argued that the Appellant's late start was caused by her misplaced reliance on her previous attorney, being given incorrect forms and information, and the need to seek guidance.

[52.] Most importantly, the reasons provided appear to relate to the filing of the Notice of Appeal rather than the failure to serve the Respondent. It appears that the Appellant is feigning ignorance of the appellate process and seeking a different application of the rules because she was *pro se* at the time of the filing of the Notice of Appeal.

[53.] The Respondent rejected this reasoning, stating that the filing and service of the Notice of Appeal is a mandatory requirement that must be strictly adhered to, regardless of whether a party is *pro se* or represented by counsel. In addition, the Respondent submitted that the rules apply equally to all parties, irrespective of their representation.

[53.] One of the leading authorities on treating with *pro se* litigants and applications for extension of time is the Court of Appeal's decision in *R (Dinjan Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633. In that case, the court confirmed that applications for extensions of time to appeal involving counsel or *pro se* litigants should be treated no differently. In other words, no special treatment should be afforded to *pro se* litigants. Following the principles established in *Mitchell and Denton* [2014] 1 WLR 3926, *Moore-Bick LJ* opined at paragraph 44:

“At the time the decisions which they now seek to challenge were made Mr. Benisi and Mr. Robinson were both acting in person. It is therefore convenient to consider whether the court should adopt a different approach in relation to litigants in person. The fact that a party is unrepresented is of no significance at the first stage of the inquiry when the court is assessing the seriousness and significance of the failure to comply with the rules. The more important question is whether it amounts to a good reason for the failure that has occurred. Whether there is a good reason for the failure will depend on the particular circumstances of the case, but I do not think [2015] 1 WLR 2472 at 2484 that the court can or should accept that the mere fact of being unrepresented provides a good reason for not adhering to the rules. That was the view expressed by the majority in the *Denton* case [2014] 1 WLR 3926, para 40 and, with respect, I entirely agree with it. Litigation is inevitably a complex process, and it is understandable that those who have no previous experience of it should have difficulty in finding and understanding the rules by which it is governed. The problems facing ordinary litigants are substantial and have been exacerbated by reductions in legal aid. None the less, if proceedings are not to become a free-for-all, the court must insist on litigants of all kinds following the rules. In my view, therefore, being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules.

[54.] The case of *London Borough of Tower Hamlets v Al Ahmed* [2019] EWHC 749 (QB) is also instructive. In that case, *Mr. Justice Dove* set aside an order granting an extension of time. The learned Justice observed that the fact that the appellant was a litigant in person was not a determinative factor.

[55.] I agree with counsel for the Respondent. The status of being a *pro se* litigant does not confer special privileges regarding compliance with procedural rules. The rules must be adhered to in order to maintain uniformity and ensure equal treatment of all parties.

The chances of the appeal succeeding if time for appealing is extended.

[56.] It must be noted that the only ground I can discern from the Appellant's Notice of Appeal is the assertion that the magistrate made a material legal error unsupported by the evidence. However, neither the material error nor the evidence in question has been identified. To support this ground, counsel for the Appellant argued in written submissions that the magistrate lacked sufficient evidence to conclude that the Appellant was responsible for the damage to the fence. Counsel for the Appellant further contended that, based on the preponderance of the evidence, the magistrate's conclusion was erroneous. However, counsel for the Appellant was unable to identify the specific evidence supporting this assertion to the Court.

[57.] The Respondent submits that the Appellant has failed to provide grounds beyond a general statement that the Court committed a *material legal error* unsupported by the evidence. As a result, the Respondent argues that the appeal has no reasonable prospect of success. The Respondent claims that the Appellant has failed to provide any justification for the Court to depart from the findings of fact determined by the lower court. In support of this argument, the Respondent relies on the Privy Council judgment in **Bahamasair Holdings Ltd. v Messier Dowty Inc.** [2018] UKPC 25, where it was held at paragraph 35:

“The Board adopts a similar approach. In their work, Privy Council Practice, Lord Mance and Jacob Turner at paras 5.46-5.53, state that the Judicial Committee of The Privy Council has the power to review factual findings. It will, however, review findings of fact based on oral evidence with great caution and will not normally depart from concurrent findings of fact reached by the courts below.”

[58.] The Respondent also submits that the Appellant admitted liability in the court below. This admission is reflected in line 11 of the entry dated December 12, 2023, in the Magistrate Civil Entry Transcripts, which states:

“In any event the Appellant does except[sic] that some damage was caused to the fence though minimal (the hole cut to allow the plaintiff to access the Appellant property regarding the placement of markers).”

[59.] The Respondent submits that the magistrate, having heard the submissions of counsel, had the opportunity to question the parties, and review the first-hand evidence, including survey reports, affidavits, and the comportment of the parties. Based on this assessment, the magistrate made a determination of fact, and as such, this Court should be reluctant to depart from it without clear evidence of error.

[60.] The Court prefers the submissions of counsel for the Respondent. It is universally accepted that an appellate court must exercise great caution before overturning a determination of primary fact in the court below. The appellate court must carefully deliberate and assess the weight to be given to the trial judge’s findings, particularly in light of the advantages the trial judge had as a trier of fact. As stated by the Privy Council in **Bahamasair Holdings Ltd v Messier Dowty Inc. supra**, the greater the advantage, the less willing an appellate court should be to interfere with the initial decision.

[61.] A review of the magistrate court transcripts reveals that the magistrate based her decision in part on an admission by the Appellant. This Court should not depart from the magistrate’s decision without a clear indication of error. No such error has been brought to my attention. In my view, the admission constitutes a finding of fact based on oral evidence heard by the magistrate. As stated by *Lord Mance in Privy Council Practice*, the Court should not normally depart from concurrent findings of fact reached by the courts below.

[62.] The Appellant has failed to convince the Court that there is a real prospect of success on appeal. The Appellant’s ground of appeal is vague, and no material error by the magistrate has been identified. Considering this, the Court is of the opinion that the appeal is bound to fail.

Prejudice to the Respondent

[63.] Counsel for the Appellant submits that the Respondent will not suffer any prejudice if leave is granted.

[64.] Counsel for the Respondent submits otherwise, arguing that allowing the appeal would constitute an abuse of the Court's process. She emphasizes that for nearly a year, the Respondent believed this matter was concluded, only to now be drawn back into unnecessary, burdensome, and costly litigation. Counsel further points out that the ruling in the court below ordered a payment of \$500 and \$400 in costs. She correctly highlights that the cost of this application far exceeds that amount for each party.

[65.] The Court is of the opinion that granting the extension application would cause significant prejudice to the Respondent, as she would continue to incur legal expenses in defending an appeal that, in my view, is bound to fail. In my opinion, the Appellant has not met the threshold required for an extension of time to effect service of the Notice of Appeal on the Respondent. The failure to serve the Respondent for over one year is egregious. Furthermore, the Appellant has failed to provide a valid reason for this failure. Additionally, the Court believes that the continuation of this appeal would be prejudicial to the Respondent and that the appeal, in any event, is bound to fail.

[66.] Based on the foregoing, the Court is of the opinion that the Appellant's case is misconceived and bound to fail.

CONCLUSION AND DISPOSITION

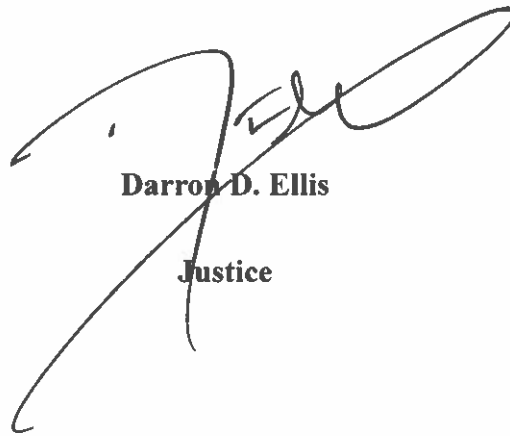
[67.] For the reasons set out above, I conclude as follows:

- i. The Respondent's preliminary objection has merit, and the appeal is not properly constituted.
- ii. After a detailed analysis, the Appellant's application for an extension of time to serve the Notice of Appeal is denied, with costs to the Respondent. This decision is

primarily based on the preliminary objection, the delay in serving the Notice of Appeal on the Respondent, and the conclusion that the appeal is bound to fail.

[68.] In the premises, I order that the Appellant's application for an extension of time to serve the Notice of Appeal on the Respondent is denied and the appeal dismissed, with costs awarded to the Respondent. Costs are summarily assessed at \$1,000.00.

Dated this 17th day of February 2025



Darroon D. Ellis
Justice