In The Commonwealth of The Bahamas

In The Supreme Court

Appellate Division

2024/ APP/STS/00003

BETWEEN

KAREN G.I. RIGBY

APPELLANT

And

ALEXANDRA CALLENDER

RESPONDENT

Before: The Honourable Justice Darron D. Ellis

Appearances: Pro Se Appellant, Palincia Hunter with Toreo Taylor for the Respondent

Hearing Date: 9 September 2025

DECISION

Application for Leave to Appeal to the Court of Appeal-Court of Appeal Act-Threshold for Granting Leave-Whether the Proposed Appeal Raises an Arguable Point of Law or Has a Realistic Prospect of Success-Procedural Defects in the Magistrate's Court Appeal-Appellant Appearing *Pro Se*-Court's Duty to Ensure Fairness While Enforcing Procedural Rules-Whether the Intended Appeal is Bound to Fail-Whether Appeal grounds certified as per Section 21 of the Court of Appeal Act-Costs.

1. When an application is made for a stay order and leave to appeal to the Court of Appeal a decision of a Judge of the Supreme Court in its appellate or revisional jurisdiction involving a magistrate appeal, does the Court apply the test established in **Smith v Cosworth Casting Processes Limited** (1997) 4 All ER 840 or the test established in **Belgravia International Bank & Trust Co. Ltd. and another v. Sigma Management Bahamas Ltd. and another** (SCCivAPPnO. 75 of 2021).

Additionally, when weighing these factors, it would never be right or proper to deny an appeal that may expose an injustice, particularly if doing so could result in an entirely incorrect decision. Further, does Section 21 of the Court of Appeal Act debars a prospective Appellant from being granted leave to appeal on grounds of fact or mixed fact and law that have not been certified by a judge of the Supreme Court: **Smith v. Cosworth Casting Processes Limited** (1997) 4 All ER 840; **Belgravia International Bank & Trust Co. Ltd. and another v. Sigma Management Bahamas Ltd. and another** (SCCivAPP No. 75 of 2021); **Flowers Development Company Ltd v. The Bahamas Development Company Ltd** SCCivApp No. 14 of 2022 at para 10; **Section 21 of the Court of Appeal Act referred to.**

2. It is a recognized legal principle that the burden rests on the Appellant to demonstrate an arguable case or a realistic 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; **Keod Smith v. Coalition to Protect Clifton Bay** (SccivApp No. 20 of 2017); **Smith v. Cosworth Casting Processes Limited** (1997) 4 All ER 840; **Lymington MR in Norwich & Peterborough Building Society v. 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.**

3. It is a recognised legal principle that the burden rests on the Applicant to demonstrate that, without a stay order that the Appellant would be ruined and the successful appeal would be rendered nugatory: **Dr Glen S. Beneby v. Bentech Limited et al.**, CLE/GEN/00884 of 2018; **Linotype-Hell Finance Ltd. v. Baker** [1993] 1 WLR 321, **Esley Hanna and Eonlee Hanna v. Brady Hanna** (SCCivApp No. 182 of 2017) **referred to**.

4. An analysis of the factual and legal evidence and the proposed grounds of appeal, including the failure by the Appellant to identify any error in the Court's decision denying leave to the Appellant and the failure to appeal on a point of law alone that was certified by a Judge of the Supreme Court, the Appellant's application for leave to appeal to the Court of Appeal is dismissed with costs awarded to the Respondent. Additionally, the Appellant has not proven that without a stay she

would be ruined or a successful appeal rendered nugatory: **Flowers Development Company Ltd v The Bahamas Development Company Ltd SCCivApp No. 14 of 2022; Smith v Cosworth Casting Processes Limited** (1997) 4 All ER 840; **Keod Smith v. Coalition to Protect Clifton Bay** (SccivApp No. 20 of 2017); **Dr. Glen S. Beneby v. Bentech Limited et al.**, CLE/GEN/00884 of 2018; **Linotype-Hell Finance Ltd. v Baker** [1993] 1 WLR 321, **Esley Hanna and Eonlee Hanna v. Brady Hanna** (SCCivApp No. 182 of 2017) **Dr. Glen S. Beneby v. Bentech Limited et al.**, CLE/GEN/00884 of 2018; **Linotype-Hell Finance Ltd. v Baker** [1993] 1 WLR 321, **Esley Hanna and Eonlee Hanna v. Brady Hanna** (SCCivApp No. 182 of 2017) relied upon.

HELD: The application for leave to appeal to the Court of Appeal is dismissed. The Court finds that the proposed grounds for appeal revealed no realistic prospect of success and were bound to fail. Furthermore, the Appellant has failed to identify any errors made by the Court, and the grounds of appeal have not been certified in accordance with section 21 of the Court of Appeal Act. The statutory and legal requirements for leave were not satisfied. Costs are awarded to the Respondent, summarily assessed at $6,500.

Ellis J

Introduction and Background

[1.] The background of this matter can be found in the Court's first written decision (first decision) dated January 30, 2025, at paragraphs 1 through 10.

[2.] Following the delivery of the first decision, dismissing the appeal of the Appellant and refusing the Appellant's application for an extension of time to serve the Notice of Appeal, the Appellant, appearing pro se, made an application for leave to appeal to the Court of Appeal and for a stay of the first decision. On September 9, 2025, this Court, in an oral decision (second decision), denied the Appellant's application. The Court now provides written reasons for its second decision, which are set out below.

ISSUES

[3.] The issues for the Court to determine are as follows:

- Whether the Appellant has satisfied the criteria for the grant of leave to appeal, having regard to whether the proposed appeal raises a realistic prospect of success or a question of law of general public importance?

- Whether a stay of the decision should be granted pending the appeal?

[4.] The Appellant, in her Notice of Application filed on December 31, 2024, supported by the Affidavit of Karen Rigby filed on September 2, 2025, sets out her grounds of appeal as follows:

- That there is a good prospect of success on appeal in that the magistrate erred in fact when she determined that the Appellant admitted that she damaged the Respondent's fence and is to repair the damage.
- That the Judge did not invite input from the attorney for the Appellant as to costs.
- That there is no prejudice to the Respondent
- That the Appellant was appearing pro se.

[5.] The Respondent opposed the Appellant's application and submitted a counter-application to strike out several paragraphs from Karen Rigby's affidavit, filed on September 2, 2025. The Respondent claimed that these paragraphs were scandalous, irrelevant, and constituted an abuse of court process. The paragraphs in question included: 12-15, 17-20, 22-23, 26-28, 31-32, 35-36, 38-39, 42-43, and 45, as well as pages 25 and 26 of Exhibit KGIR-1, and Exhibits KGIR-3, KGIR-4, KGIR-8, and KGIR-9.

[6.] At the beginning of the hearing, both parties agreed that the identified paragraphs should be removed from the record. The Court issued an order to that effect.

Evidence

[7.] After the offending paragraphs were struck out, the Appellant relied on the remaining paragraphs of the affidavit of Karen Rigby, filed on September 2, 2025. The Respondent relied on the affidavit of Torreo Taylor, filed on September 8, 2025.

Submissions of the Appellant

[8.] During the hearing for leave to appeal to the Court of Appeal, the Appellant reiterated her previous arguments from the hearing involving the first decision. It is important to note that in her submissions and Notice of Application, the Appellant did not identify any errors made by this Court in its first decision, nor in the second decision. In fact, the Appellant explicitly stated in her submissions that this Court had not erred. Specifically, on page 4 of her supplemental submissions, the Appellant states:

> "1.2 No erring by Judge. My leave to appeal the ruling regarding the extension of time is not intended to in any way, form or fashion say, suggest or imply that the Honourable Justice erred in his decision dated 17 February 2025.

> 1.3 In paragraph 1 of the introduction in the Justice's Decision, it is stated that the Court's findings are derived from the affidavits and documentary evidence before it. In his decision at paragraph 41, the Honourable Justice states, "the Court will consider the Appellant's application with the overarching objective of ensuring that justice is done".
>
> 1.4 I consider the granting of this interlocutory appeal hearing as indicative of the Judge's commitment to ensuring that justice is done; and, my appeal is based upon this approach:"

[9.] Despite the failure to identify any errors of the Court, the Appellant maintains that her chances of success are strong, as the evidence will demonstrate that she did not damage the Respondents' fence. Additionally, the Appellant argued that a stay of this Court's ruling should be granted because she has already endured significant challenges in defending against the claims made by the Respondent, including substantial financial costs. However, it is important to note that no supporting evidence was provided for this assertion.

Submissions of the Respondent

[10.] The Respondent argued that in assessing whether the Judge erred in dismissing the application for an extension of time and the appeal, it is crucial to identify the correct test for the Court to apply in determining whether leave to appeal should be granted. The applicable test depends on whether the Judge's order was issued in the exercise of his case management powers.

[11.] It was submitted that when a learned judge has made an interlocutory order in the exercise of his case management powers, and the Appellant seeks leave to appeal that order, the appropriate test is summarised in the case of **Belgravia International Bank & Trust Co. Ltd. and another v. Sigma Management Bahamas Ltd. and another** (SCCivAPPnO. 75 of 2021) at paragraph 23. This test was later reaffirmed in the case of **Matthew Sewell v. AG of The Bahamas et al** (2017/CLE/gen/01181), where *Winder, CJ*, affirmed this at paragraphs 12 and 13:

> "12. The AG says that it has good prospects of success on an appeal of these interlocutory decisions. One of the decisions was made in the context of a case management decision, and the other in respect of the decision on liability, where the only witness to give evidence was Sewell"
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> 13. Isaacs JA provides a useful discussion of appeals of interlocutory decisions, made within the context of the judge's case management powers, in the above-cited case of Belgravia. He stated at paragraph 23:
>
> > It is to be noted that the intended appeal is against an interlocutory decision made within the context of the Judge's case management powers under O. 31A. As such, it is, accordingly, limited only to a request for an appellate review of the correctness (or otherwise) of the Judge's

> exercise of discretion. This Court must be satisfied that the Judge failed to apply the correct principles, or that she took into account matters which should not have been taken into account, and left out of account matters which were relevant to the strike-out application or that her ruling is so plainly wrong that it would be regarded as outside the generous ambit entrusted to a Judge: Walbrook Trustee (Jersey) Ltd & Ors v Fattal & Ors [2008] EWCA Civ 427 and Darlene Allen-Haye v Keenan Baldwin & Anr SCCivApp No. 186 of 2019."

[12.] The Respondent argues that when a party intends to appeal an order issued by a judge outside the scope of case management powers, the relevant criteria are those established by *Isaacs J* in the case of **Keod Smith v. Coalition to Protect Clifton Bay** (SccivApp No. 20 of 2017) at paragraph 23:

> "The test on a leave application is whether the proposed appeal has a realistic prospect of success or whether it raises an issue that should in the public interest be examined by the court or whether the law requires clarifying."

[13.] It was further submitted by counsel for the Respondent that this test was originally laid down by Lord Woolf in the English Court of Appeal case of **Smith v. Cosworth Casting Processes Limited** (1997) 4 All ER 840 ("Cosworth"), at pages 840 & 841:

> "The court will only refuse leave if satisfied that the applicant has no realistic prospect of succeeding on the appeal. This test is not meant to be any different from that which is sometimes used, which is that the applicant has no arguable case. Why however this court has decided to adopt the former phrase is because the use of the word 'realistic' makes It is clear that a fanciful prospect or an unrealistic argument is not sufficient.
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> The court can grant the application even if it is not so satisfied. There can be many reasons for granting leave even if the court is not satisfied that the appeal has any prospect of success. For example, the issue may be one which the court considers should, in the public interest, be examined by this court or, to be more specific, this court may take the view that the case raises an issue where the law requires clarification."

[14.] In the case of **In the matter of all those pieces parcels or lots of land situate at "Signal Point" also known as "Sumner Point" on the Island of Rum Cay one of the Islands of the Commonwealth of The Bahamas and designated Lots 2, 3, 5, 9 and 10.; In the matter of the Quieting Titles Act, 1959. In the matter of the Petition of Scott E. Findeisen and Brandon S. Findeisen** [2020] 1 BHS J. No. 24, *Charles J.*, as she then was, stated at paragraphs 10 and 14.

> "10. In addition, in certain "exceptional circumstances", the Court may grant leave even though the case has no real prospect of success but there is an issue which, in the public interest, should be examined by the Court of Appeal.....
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> 14. To sum up, in order for a court to grant leave to appeal, an applicant has to demonstrate that he has some reasonable prospect of succeeding on the appeal. The fact that a court has reached a clear view is not decisive of whether a challenge to its reasoning is arguable. On the contrary, it is a matter of judgment on an all-encompassing approach which is exercised without thorough re-argument of the same points as led to the judgment. The proposed grounds of appeal need to be considered by the court in exercising this judgment. However, it goes without saying that if there is no ground of appeal raised which has a reasonable prospect of success, leave to appeal must be refused. The court should then consider whether it is appropriate in all the circumstances of the case for the discretion to be exercised to grant leave. Discretion can only arise if there is some arguable basis of appeal".

[15.] The Respondent argued that the Judge was exercising his case management powers when he decided to dismiss the Appellant's application in the first decision. Therefore, the court must apply the test outlined in **Belgravia** to determine whether the Appellant should be granted leave to appeal.

[16.] The Respondent contended that, upon reviewing the Appellant's leave application, it is clear that the Appellant has failed to demonstrate how the Judge failed to apply the correct principles, took into account inappropriate matters, or neglected relevant considerations.

[17.] Additionally, the Respondent noted that the decisions were not so plainly wrong that it would fall outside the reasonable discretion afforded to a Judge.

[18.] Further, Counsel for the Respondent contends that, if, contrary to the Respondent's submissions, the applicable test is the test found in **Keod Smith v. Coalition to Protect Clifton Bay**, it is submitted that the Appellant has nonetheless failed to satisfy the criteria set out therein.

[19.] The Respondent added that to determine whether the Appellant has a reasonable prospect of success on appeal, it is necessary to examine the proposed grounds of appeal. The Appellant submitted an Affidavit filed on September 2nd, 2025, in support of the leave application. However, upon reviewing the Affidavit, it is evident that the Appellant has not specified any concrete grounds of appeal against the order and/or judgment of the Judge in the first or second decision. The grounds outlined in the leave application do not

identify or articulate any errors made by the Judge. It appears that the Appellant is merely attempting to reargue the same points that were previously presented in the lower court. It is important to note that this is not permissible at the leave stage, as an application for leave to appeal is not meant to be a rehearing. It was submitted that the Judge acted appropriately in dismissing the application, and the reasons provided in support of that decision are sound and fully consistent with established legal principles governing this type of application.

[20.] In relation to the stay application, the Respondent argued that the Court must consider the risk of injustice to both parties when deciding whether to grant or deny the stay. Additionally, the Court must evaluate whether, should the appealing party ultimately succeed, the judgment on appeal would be rendered nugatory. To support this argument, the Respondent referenced the principles outlined in the case of **Dr. Glen S. Beneby v. Bentech Limited et al.**, CLE/GEN/00884 of 2018. In this case, *Fraser, Snr. J.* (as she then was), thoroughly examined the principles governing a stay of execution in paragraphs 9 and 10, which read as follows:

> [9] In Tyson Strachan v Anthony Simon and others 2021/CLE/gen/00863, this Court addressed the issue of a stay of execution. At paragraph 41, it was comprehensively discussed:
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> > "[41.] This Court delved into the relevant law in relation to Stay of Execution in The Committee to Restore NYMOX Shareholder Value, Inc (CRNSV) et al v Paul Averback et al – 2023/COM/com/00057. I made the following pronouncements in that decision:
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> > 35. A case which provides useful guidance on the applicable principles in a stay application (as the Claimant's counsel relied on) is Cheryl Hamersmith-Stewart v Cromwell Trust Company Ltd et al BS 2022 SC 83 ("Cromwell Trust"). There, Charles Snr J (as she then was) made the following pronouncements:
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> > > "16 In In the Matter of the Contempt of Donna Dorsett-Major on 3 June 2020/CLE/gen/0000, Ruling delivered on 8 December 2020, this Court dealt with the applicable principles on stay pending 1 See Old Fort Bay Property Owners Association Limited v Old Fort Bay Company Limited [2022] 1 BHS j. No.10 paras 86-95 (Tab 7), See Sewell Paras 16-17 Page 11 of 16 appeal. For present purposes, I merely reiterate them as set out fully in Donna Dorsett-Major at paras 23 to 28:
> >
> > "[23] It is well established that a judge has a wide discretion with regards to the grant of a stay. This is confirmed by the learned authors of Odgers on Civil Court Actions at page 460:

> "Although the court will not without good reason delay a successful plaintiff in obtaining the fruits of his judgment, it has power to stay execution if justice requires that the defendant should have this protection [...] [The] court has wide powers under the Rules of the Supreme Court."
>
> [24] As to how that discretion ought be exercised in these circumstances, the court's considerations have only broadened with the developing case law, beginning, most notably, with the decision of Brett, LK in the case of Wilson v Church No. 2 [1879] 12 Ch. D. 454 at 459 wherein he stated "This is an application to the discretion of the Court, but I think that Mr. Benjamin has laid down the proper rule of conduct for the exercise of discretion, that where the right of appeal exists, and the question is whether the fund shall be paid out of Court, the Court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful, from being nugatory." [Emphasis added]

[21.] The Respondent submitted that this guidance has its roots in **Linotype-Hell Finance Ltd. v. Baker** [1993] 1 WLR 321, wherein *Staughton L.J.* opined at page 323:

> "It seems to me that, if the defendant can say that without a stay of execution he will be ruined and that he has an appeal which has some prospect of success, that is a legitimate ground for granting a stay of execution."

[22.] The Respondent argues that when an appellant seeks a stay of execution pending an appeal to the Court of Appeal, it is a valid reason to grant the application if the appellant can demonstrate that, without a stay of execution, they will be financially ruined and that their appeal has a reasonable chance of success. This requires providing evidence rather than mere assertions.

[23.] The Respondent also pointed out that the Court of Appeal addressed relevant principles related to stay applications in the case of **Esley Hanna and Eonlee Hanna v. Brady Hanna** (SCCivApp No. 182 of 2017) ("Esley Hanna"). In that case, *Crane-Scott J.A.* stated at paragraph 11:

> "Section 12 of the Court of Appeal Act mirrors the provisions of O 59. R.13 of the former English Rules of the Supreme Court 1965. It is therefore useful to advert to the following portions of Practice Note 59/13/1 found at pages 1076-1077 of Volume 1 of the 1999 Edition of The English Supreme Court Practice:

> "Stay of execution or of proceeding pending appeal...Neither the court below nor the Court of Appeal will grant a stay unless satisfied that there are good reasons for doing so. The Court does not "make a practice of depriving a successful litigant of the fruits of his litigation, and locking up funds to which prima facie he is entitled,"...the Court will grant it where the special circumstances of the case so require..... "...but the Court made it clear that a stay should only be granted where there are good reasons for departing from the starting principle that the successful party should not be deprived of the fruits of the judgment in his favor. The Court also emphasised that indications in past cases do not fetter the scope of the Court's discretion...'

[24.] The Respondent concluded that the Appellant's request for a stay should be denied, as no compelling or exceptional reasons have been provided to justify such relief. In this case, the Order dismissing the application requires the Appellant to pay $500 in damages, $400 in legal costs in the Magistrate's Court, and $1,000 in the Supreme Court. These amounts are clearly nominal. There is no indication that enforcing this Order would cause any significant hardship or prejudice to the Appellant, and no evidence has been presented to suggest otherwise. The sums involved are not substantial enough to render the appeal moot, even if the Appellant is ultimately successful. On the other hand, granting a stay would unjustly prevent the Respondent from receiving the benefits of her judgment. There are no special circumstances that would justify departing from this well-established position, and no risk of injustice has been demonstrated that would warrant a stay.

The Law/Analysis

[25.] Section 21 of the Court of Appeal Act is very instructive with respect to second appeal applications from the Supreme Court involving Magistrate Court rulings. Section 21 provides as follows:

> **FURTHER APPEALS**
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> 21. (1) Any person aggrieved by any judgment, order or sentence given or made by the Supreme Court in its appellate or revisional jurisdiction, whether such judgment, order or sentence has been given or made upon appeal or revision from

> a magistrate or any other court, board, committee or authority exercising judicial powers, and whether or not the proceedings are civil or criminal in nature may, subject to the provisions of the Constitution and of this Act, appeal to the court on any ground of appeal which involves a point of law alone but not upon any question of fact, nor of mixed fact and law nor against severity of sentence: **Provided that no such appeal shall be heard by the court unless a Justice of the Supreme Court or of the court shall certify that the point of law is one of general public importance**.

[26.] It appears that the grounds of appeal of the Appellant involve mixed questions of fact and law. In this regard, it seems that in accordance with section 21, leave to appeal should not be granted because only appeals involving points of law emanating from the Supreme Court decisions in an appellate or revisional jurisdiction should be heard in the Court of Appeal. Additionally, none of the proposed grounds of appeal of the Appellant has been certified by a Justice of the Supreme Court as a point of law of general public importance.

[27.] It appears to the Court that the Appellant's appeal is in contravention of Section 21 of the Court of Appeal Act, and as such, that is sufficient to deny and dispose of the application for leave to appeal and a stay of this Court's order.

[28.] Notwithstanding the foregoing conclusion, and out of an abundance of caution in the event that the Court's interpretation of Section 21 of the Court of Appeal Act is mistaken, I will proceed to consider the Appellant's request for leave to appeal on the ordinary principles and tests governing such applications.

[29.] The Appellant, during the first hearing before this Court, applied for an extension of time to file and serve the Notice of Appeal on the Respondent. The Court refused this application. The Court is not persuaded by the Respondent's argument that the Appellant is seeking permission to appeal a decision made by this Court in which it was exercising its case management powers.

[30.] The application submitted by the Appellant was made pursuant to Section 56 of the Magistrate's Act, which grants the Supreme Court the authority to extend the time for serving the Notice of Appeal. This authority is similar to the Court's case management powers. However, in this case, the power the Court was exercising when it made the initial decision was an appellate power. There seems to be a distinction between the Court's case management powers and its appellate powers under section 56. Nevertheless, even if the test from **Belgravia International Bank & Trust Co. Ltd. v. Sigma Management Bahamas Ltd.** is relevant here, the Appellant has not convinced this Court that it failed to apply the correct principles when exercising its discretion. The Appellant has not

demonstrated that the Court considered irrelevant matters, omitted relevant considerations, or that the ruling was plainly wrong.

[31.] The Court finds that the test established in **Smith v. Cosworth Casting Processes Limited** is applicable. Lord Woolf explained the test on page 840:

> "The court will only refuse leave if satisfied that the applicant has no realistic prospect of succeeding on the appeal. This test is not meant to be any different from that which is sometimes used, which is that the applicant has no arguable case. Why, however this court has decided to adopt the former phrase is because the use of the word 'realistic' makes it clear that a fanciful prospect or an unrealistic argument is not sufficient.
>
> The court can grant the application even if it is not so satisfied. There can be many reasons for granting leave even if the court is not satisfied that the appeal has any prospect of success. For example, the issue may be one which the court considers should, in the public interest, be examined by this court or, to be more specific, this court may take the view that the case raises an issue where the law requires clarification"

[32.] To properly apply the **Smith v. Cosworth** test, the Court must assess the different grounds of appeal relied upon by the Appellant. In her Notice, the Appellant listed several grounds. The Court has categorised those grounds into three headings.

Proposed Grounds of Appeal

That there is a good prospect of success on appeal in that the magistrate erred in fact when she determined that the Appellant admitted that she damaged the Respondent's fence and is to repair the damage.

[33.] In terms of the prospect of success, it is important to note that, regarding both the substantial decision and the decision on leave, the Appellant did not identify any errors made by this Court and explicitly stated that this Court was not in error. Instead, the Appellant seems to rely on repeating the arguments made in the lower Court regarding alleged errors by the Magistrate.

[34.] The Appellant contends that there is a strong chance of success on appeal because the Magistrate supposedly erred in determining that she admitted to damaging the Respondent's fence and is responsible for repairing it. The Appellant cites sections 52 and 53 of the Magistrates Act, arguing that the Magistrate lacked jurisdiction in this matter

and could not adjudicate on the ownership of the land. The Applicant appears to be saying that, as a result, the Magistrate could not have made the determination she did.

[35.] However, the Court finds this argument to be lacking merit for several reasons. First, in the Magistrates' Court, the Magistrate appears to have based her decision on a finding of fact that the Appellant admitted that damage was done to the property of the Respondent. Furthermore, it is evident that the Magistrate was not required to rule on the title to land (as there was no dispute over title) and did not make any ruling on title. It follows that Sections 52 and 53 are not applicable.

[36.] Additionally, the Applicant conceded in her submissions that the Respondent is her neighbour and the owner of the land adjacent to hers, specifically identified as Lot #9, Block #7 of Westward Villas Subdivision. Overall, the Appellant's argument is misplaced as she should be addressing any potential errors this Court may have made in denying her leave to appeal. Therefore, the Court concludes that this ground does not present a realistic chance of success, and thus, leave should not be granted.

That the Appellant was appearing pro se.

[37.] The Appellant contends that the Court should consider her circumstances differently because she appeared pro se at times and encountered difficulties with legal matters and filing documents. It is important to note that in terms of the first decision, the Appellant was represented by Counsel. However, at the hearing for leave to appeal, she represented herself.

[38.] Counsel for the Respondent argued that no special treatment or considerations should be given to a party simply because they are appearing pro se.

[39.] 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 para 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 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. Nonetheless, 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.

[40.] I agree with counsel for the Respondent. Being a pro se litigant does not confer special privileges regarding compliance with procedural rules. The rules must be adhered to in order to prevent a lack of uniformity and ensure equal treatment of all parties. This ground also fails.

That the Judge did not invite input from the attorney for the Appellant as to costs.

[41.] The Appellant argues that "the manner in which the judge awarded costs is an issue" as at the end of the proceedings, the judge did not invite input from her attorney in respect to costs.

[42.] At the conclusion of the proceedings involving the first decision, the Court indicated that, in keeping with the spirit of the Civil Procedure Rules, it intended to assess costs summarily. Counsel for the Applicant had the opportunity to make submissions or a

request regarding this matter at any time but chose not to do so. Consequently, the Court summarily assessed the costs to be a nominal amount of $1,000, to be paid by the Appellant to the Respondent.

[43.] Additionally, during the proceedings for leave to appeal to the Court of Appeal, the Appellant appeared pro se. At the end of that proceeding, the Court once again stated its intention to assess costs summarily. This time, the Appellant chose to address the Court, along with Counsel for the Respondent. Following this, the Court summarily assessed the costs. Given these circumstances, the Court believes that this ground for appeal is bound to fail.

Conclusion

[44.] After thoroughly reviewing the evidence and the submissions from both parties, as well as the proposed grounds for appeal, the Court concludes that the intended appeal does not present any arguable case or realistic prospect of success regarding any issue of law or fact that meets the legal criteria for granting leave, as outlined in **Smith v. Cosworth**. For completeness, the test as laid out by **Belgravia International Bank & Trust Co. Ltd.** was also not met, as the Appellant has not persuaded the Court that, in reaching its decision, it considered any irrelevant matters or failed to consider relevant ones, nor has the Appellant demonstrated that the ruling was plainly wrong.

Court of Appeal Act - Section 21

[45.] Additionally, the Court finds that the Appellant's grounds for appeal are based on a mixture of facts and law, and the grounds have not been certified by a Judge of the Supreme Court. According to Section 21 of the Court of Appeal Act, a person who is dissatisfied with a judge's decision in appellate or revisional jurisdiction may only appeal to the Court of Appeal on a point of law. Additionally, a Justice of the Supreme Court must certify that the point of law is of general public importance, which has not occurred in this case. Therefore, the application must be denied on this basis as well.

[46.] The Appellant has failed to identify any legal or procedural errors in the Court's rulings. The findings confirmed that the appeal was procedurally defective, having been filed and served beyond the statutory time limit, and was substantively bound to fail; these conclusions were well-supported by the factual record and applicable legal authorities.

[47.] Regarding the stay application, the Court denies the request. The Appellant has not provided sufficient justification for granting a stay and has also failed to demonstrate that she would suffer irreparable harm without a stay order or that a successful appeal would

be rendered nugatory. Therefore, there is no reason to deprive the Respondent of the benefits resulting from this litigation.

[48.] Applying the principles established in the aforementioned cases, the Court is convinced that the proposed appeal lacks merit. It does not raise a question of public or general importance, nor does it present any realistic chance of success.

[49.] Given these circumstances, the Court orders that the stay and leave application are dismissed with costs to the Respondent.

[50.] Before determining the order regarding costs, the Court heard arguments from both parties about whether costs should be summarily assessed and in what amount. After hearing those submissions, the Court awarded costs to the Respondent, summarily assessed at $6,500.

Dated this 11th day of November 2025

Darron D. Ellis

Justice