

**IN THE CARIBBEAN COURT OF JUSTICE  
Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF GUYANA**

**CCJ Applications No. GYCR2016/001**

**BETWEEN**

**JAMES ANTHONY HYLES**

**APPLICANT**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**On Written Submissions**

**Mr Nigel Hughes for the Appellant**

**Ms Shalimar Ali-Hack, Director of Public Prosecution, for the Respondent**

**JUDGMENT**

**of**

**Justices Saunders, Anderson and Rajnauth-Lee**

**Delivered**

**on the 13<sup>th</sup> day of July, 2016**

1. As a result of submissions made by the parties to this matter on purely procedural issues, by Order of Court dated June 14, 2016, this Court ordered and directed that the parties file written submissions on the following points:
  - i. Whether the Applicant is entitled to seek special leave to appeal a decision given by the Court of Appeal in this matter on March 8, 2016; and
  - ii. Whether the Court should grant bail pending the hearing of the special leave application.

**Entitlement to seek special leave to appeal**

2. The Director of Public Prosecutions has submitted that the Applicant is not permitted to seek special leave to appeal for the following reasons: a) only the DPP

has an appeal to the CCJ *as of right* under section 33L of the Court of Appeal Act<sup>1</sup>; b) the Applicant does not have a right to *seek special leave to appeal* under that Act, and c) a special leave application under section 8 of the Caribbean Court of Justice Act<sup>2</sup> (“the CCJ Act”) only arises when the Applicant has an appeal as of right. The Applicant does not have any such right whether under the Court of Appeal Act or the CCJ Act and therefore is ineligible to seek special leave from this Court.

3. As to a) section 33L is part of a recent amendment to the Court of Appeal Act. The section states, “*An appeal from a decision of the Court of Appeal under this Part shall lie to the Caribbean Court of Justice as of right*”. Both the Applicant and the Director seem to have adopted the view that only the Director enjoyed this right and that no appeal lay “as of right” to the Applicant under this section. The fact is, however, that the present application is not concerned with whether the Applicant has an appeal as of right. The extant application is one seeking from this Court *special leave to appeal* to the CCJ. Whether, in fact, a convicted person has been granted, by the recent amendment, an appeal as of right to this Court (as the DPP clearly has been) is a matter which is unnecessary for us to decide in these proceedings and we expressly refrain from deciding it.
4. As to b) there can be little argument with the Director’s submission here. The Court of Appeal Act does not give the Applicant a right to seek special leave to appeal to this Court. The truth is that one would not expect that Act to grant such a right. Any right to seek special leave to appeal to the CCJ is to be found in the CCJ Act<sup>3</sup>. Which brings us on to the third limb of the Director’s submission.
5. The language used in the opening words of section 8 of the CCJ Act is admittedly inelegant but, in multiple cases, this Court has clarified the relationship between

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<sup>1</sup> Cap. 3:01

<sup>2</sup> Cap. 3:07

<sup>3</sup> Cap. 3:07

sections 6, 7 and 8 of the CCJ Act. One of these cases, *Barbados Rediffusion Service Ltd v Asha Mirchandani*<sup>4</sup>, was cited by the Director. The special leave application exists independently of whether the Applicant has or had an appeal as of right or has sought and been refused leave from the Court of Appeal to appeal to the CCJ. Any litigant who is dis-satisfied with a decision of the Court of Appeal is entitled to apply directly to this Court for special leave to appeal that decision. We would naturally, however, only grant such leave if the Applicant's case is a deserving one<sup>5</sup>. In due course that determination will be made in this case, but we do not accede to the argument that the Applicant is somehow disentitled from seeking special leave from this Court.

### **Bail pending hearing of special leave application**

6. The Applicant has asked us to grant him bail pending the hearing of his application for special leave. Counsel has correctly noted that the Applicant's current status is that of an accused person awaiting trial in the High Court<sup>6</sup>. Rule 10.1 of this Court's Appellate Jurisdiction Rules states that an appeal shall commence with the filing of a notice of appeal. Naturally, in a case like this no such notice may be filed unless special leave to appeal has been obtained. In light of this we are of the view that, until special leave has been granted, this Court should be extremely slow to consider the question whether or not an applicant who has no appeal pending before us should be granted bail. Ordinarily, any application for bail in such circumstances should first be made to the appropriate lower court.

### **Conclusion**

7. The Court holds that the Applicant is entitled to seek special leave to appeal to the CCJ. Since there is no appeal pending before this Court at this time, the Court declines to consider whether the Applicant should be granted bail. In the meantime,

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<sup>4</sup> *Barbados Rediffusion Service Ltd v Asha Mirchandani, Ram Mirchandani, and McDonald Farms Ltd*, CCJ Application No. AL 0001 of 2005, BB Civil Appeal No. 18 of 2000, dated the 26<sup>th</sup> October 2005 at paragraph 29.

<sup>5</sup> *Cadogan v R (No. 2)* [2006] CCJ 4 (AJ); *R v Doyle* [2011] CCJ 4 (AJ); *Pinder v R* [2016] CCJ 13 (AJ).

<sup>6</sup> Para. 47 of the Written Submissions of the Applicant.

the Applicants must file his submissions on the application for special leave by 5<sup>th</sup> August, 2016. The Director of Public Prosecutions shall file submissions in response by 2<sup>nd</sup> September, 2016. The Applicant shall file a reply by 16<sup>th</sup> September, 2016. The Special Leave application shall be heard on 12<sup>th</sup> October, 2016 at 10:00AM by video-conference simultaneously with the hearing of the Special Leave application lodged by Mark Royden Williams.

*/s/ A. Saunders*

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The Hon Mr Justice A Saunders

*/s/ W. Anderson*

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**Mr Justice W Anderson**

*/s/ M. Rajnauth-Lee*

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**Mme Justice M Rajnauth-Lee**