JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 81 OF 2005

MOTION NO. 45/05

BEFORE: **THE HON. MR. JUSTICE FORTE, P.**
THE HON. MR. JUSTICE PANTON, J.A.
THE HON. MRS. JUSTICE McCALLA. J.A. (Ag.)

BETWEEN: **KEN SALES AND MARKETING LTD.** **APPELLANT**

AND: **BEVERLEY LEVY** **RESPONDENT**

Ms. Carol Davis, Ms. Gillian Mullings and Ms. Audrey Reynolds for the appellant.

Dr. Lloyd Barnett, instructed by Hart, Muirhead and Fatta, for the respondent.

September 26, 27 and 29, 2005

FORTE, P.

During the course of the submissions in respect of this application, questions have arisen as to whether this is a procedural appeal, and whether a single judge of this Court can constitute the Court and so finally dispose of the matter. Whether or not this is so, greatly affects the outcome of the case. I speak for myself when I say that I am not convinced, having regard to all the arguments put forward, that this is in fact a procedural appeal. I am of the view

that my lord Panton shares these sentiments, so I will ask him to give his reasons.

PANTON, J.A.

This matter was listed as an application to vary or discharge the order of a single judge. When it was called on, Dr. Barnett took a preliminary point. He submitted that the Court had no jurisdiction to hear the application as the single judge, Karl Harrison, J.A., had before him a procedural appeal which he has disposed of. There was, he submitted, no provision for any further hearing in the matter.

Ms. Davis responded that a procedural appeal is the same as a procedural application. That being so, there is provision for the Court to hear the instant application.

The position therefore is that both parties are saying that this is a procedural appeal. If they are correct, then Rule 2.4 of the Court of Appeal Rules 2002 governs the situation. A procedural appeal is one in which the decision appealed from "does not directly decide the substantive issues in a claim" (Rule 1.1(8)). So far as a procedural appeal is concerned, the general rule is that it is considered on paper by a single judge of the Court. The single judge is clothed with the authority to exercise any power of the Court. However, the single judge may refer the appeal to the Court. There is no provision in the

Rules for varying or discharging the order of a single judge in these circumstances.

Ms. Davis submitted that there was never any intention that a single judge of the Court should have the final say in a matter of this nature. The Court, she submitted, means at least two judges. In this respect, she based her position on sections 4 and 5 of the Judicature (Appellate Jurisdiction) Act. There is no need at this time to analyse this submission, given the view I take of the strength of Rule 2.4. However, Ms. Davis said that in any event, Rule 2.11, which (on the face of it) deals with procedural applications, and applications to vary or discharge orders by a single judge, is applicable and is available to the appellant.

These submissions by Ms. Davis seem to ignore the fact that appellate procedures, especially in civil proceedings, have undergone radical legislative changes since 2002. There can be no question that several matters that used to occupy the attention of 3 judges sitting together in open court no longer do so. They may now be disposed of by a single judge in Chambers, and even without an oral hearing. The fact of the matter is that there are many matters which may now be disposed of speedily, comfortably, fairly and justly on the basis of written submissions. And the Rules have made adequate provision for this to happen.

In the instant situation, the appellant has an order for sale in respect of lands not owned by the respondent. To bind those lands with the order for sale,

the appellant, in keeping with the provisions of s.134 of the Registration of Titles Act, is required to enter this order in the Register Book. This was done.

On January 19, 2005, Campbell J. ordered thus:

> "That the time for leaving with the Registrar of Titles certificate of sale for entry on the Register pursuant to Orders for sale first made in the suit herein by this Honourable Court on 15th January, 2003 be extended until completion of the sale of the lands."

The respondent was not a party to the original claim. However, she had earlier entered the picture as an interested party and lodged caveats against dealings with the lands. In the capacity of an interested party, she sought to set aside the order of Campbell, J. She succeeded as Pusey, J. (Ag.) obliged. He did so on the ground that the respondent had not been advised of the proceedings before Campbell, J.

The result of the order made by Pusey, J. (Ag.) is that the appellant's right to enter its order for sale in the Register Book has been determined. A final decision has been made as to the right and its duration. The substantive issue between the appellant and the respondent has therefore been decided. In my view, this situation casts grave doubt on the correctness of the view that this is a procedural appeal.

In the circumstances, the proceedings before K. Harrison, J.A., were null and void, and the notice and grounds of appeal filed on June 29, 2005, against the decision of Pusey, J., (Ag.) ought to be treated as being directed to this Court. The matter should therefore proceed, as appeals do, in the normal way.

McCALLA, J.A. (Ag.)

I am in agreement with the reasons advanced by my brother, Panton, J.A. and I too, conclude that this is not a procedural appeal.

FORTE, P.

ORDER;

The order of the single judge of appeal is declared null and void, and is accordingly set aside. Matter to proceed as an appeal in the normal way. Extension of time granted. All time limits to run from September 29, 2005. No order as to costs.