

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 103/2008

APPLICATION NO 96/2013

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE BROOKS JA**

BETWEEN PAMELETA MARIE LAMBIE APPLICANT

AND LEROY EVAN LAMBIE RESPONDENT

**Mrs Margaretta May Macaulay and Dr Randolph Williams for the applicant
Maurice Frankson instructed by Hugh Abel Levy for the respondent**

16 December 2013

ORAL JUDGMENT

PANTON P

[1] This is an application by the applicant, Pameleta Marie Lambie, to set aside an order of this court made on 29 July 2011 dismissing the applicant's appeal for want of prosecution. This dismissal had taken place as a result of the registrar's report which indicated consistent failure on the part of the applicant to comply with rules of the court so far as dealing with an appeal is concerned.

[2] The applicant had appealed against an order made by Pusey J sitting in the Supreme Court on 12 August 2008 after a two day trial, which had taken place in June and July 2008. The dispute involved property that the applicant claims to be hers of which she is the registered owner and entitled to the property in its entirety. The order made by the learned judge is to the effect that the applicant's late husband was beneficially entitled to one half interest in that property which is situated in Kingston 6 and registered at Volume 1096 Folio 496.

[3] There had been, prior to the trial, transfer in respect of that property from the applicant to her son and herself and the learned judge ordered that the transfer which had been registered was to be set aside, that there was to be a valuation of the property and that there should be appropriate division. Consequential orders were made at that time by Pusey J.

[4] The applicant before us seeks an order to set aside the court's order made on 29 July 2011 and to give her sufficient time for the filing of the record of appeal. She has also asked that this time be extended to 31 January 2014 and that there be a stay of the execution of the order of Pusey J pending the hearing and determination of the appeal.

[5] It is well known that the court frowns on delays of the nature seen here. However, the applicant filed an affidavit with supporting documents indicating the reason for her tardiness in this matter. We have heard, this afternoon, submissions from Mrs Margaretta Macaulay, who appears along with Dr Randolph Williams for the

applicant, to the effect that the applicant had been treated in a most unprofessional manner by her attorneys and that she had been given false information on several occasions and that her failure to comply with the relevant rules was due to the failure of her attorneys. Mrs Macaulay submitted that in these circumstances, the explanations and reasons that had been put forward by the applicant ought to be considered reasonable. She further submitted that there is a good prospect of success in the substantive matter given what may be termed as the inappropriate application of certain provisions of the relevant legislation. She pointed out that no affidavit was filed in response.

[6] Mr Maurice Frankson, for the respondent, has pointed to the fact that the judgment was pronounced some five years ago and that the registrar of this court was at pains to give the applicant much time to comply with the rules of court. In fact, he said that the court itself had made orders for the applicant to comply on at least two occasions and he has pointed to what he said was not the correct date from which the date should be counted. The respondent, he submitted, cannot be asked to make sacrifices on the basis that the applicant had problems with her attorneys-at-law. He also said that there were at least 14 notices and reminders that had been sent to the applicant. In all the circumstances, Mr Frankson said that the delay is inordinate and that the applicant's efforts to secure representation were very tardy. On behalf of the respondent he recognizes that all questions need to be guided by the need to see that justice is done. He said that rules must be obeyed but delays of this kind can have a detrimental effect on the administration of justice.

[7] We note that there has been no affidavit in response and also no communication between at least one of the attorneys and the applicant. We have said earlier that the court frowns on delays; however, we are very conscious of the need for justice to not only be done but should manifestly and undoubtedly be seen to be done. The evidence that has been presented in support of the application indicates to say the least, what appears to be inappropriate and surprising behavior on the part of two of the attorneys whom the applicant had retained in this matter. We are not here making any pronouncement in relation to the attorneys for the simple reason that we do not have anything from them, but on the basis of what we have seen, the behaviour includes what appears to be mercenary demands by one attorney and communication of false information as to the progress of the case by the other attorney. The applicant, we find, has good reason to feel most aggrieved by the conduct of these attorneys. As has been said, there may well be good explanation to be offered by them and so we leave it at that.

[8] The matter in dispute involves the home of the applicant. It is a most important matter and in the circumstances, we think that this is an exceptional case that requires us to grant the application notwithstanding that it is more than five years since the learned judge made this order. There is need for some finality to be brought to this matter and for there to be a determination as to the status of the ownership of this property. That having been said and bearing in mind that the appeal is yet to be heard, at this stage, we grant the application and make an order that the order of the court made on 29 July dismissing the appeal for want of prosecution be set aside and we

extend the time for filing the record of appeal to 31 January 2014. We make an order staying execution of the order of Pusey J made on 12 August 2008, pending the hearing and determination of the appeal and we take the precaution of making an order for a case management conference to be held on 11 February 2014 at 10:00 am.

In the meanwhile we made no order as to costs.

ORDER

The application is granted.

The order of the court made on 29 July 2011 dismissing the appeal for want of prosecution is set aside.

The time for filing of the record of appeal is extended to 31 January 2014.

The execution of the order made by Pusey J on 12 August 2008 is hereby stayed pending the hearing and determination of the appeal.

Case management conference to be held on 11 February 2014 at 10:00 am.

No order as to costs.