JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MISS JUSTICE EDWARDS JA
THE HON MR JUSTICE LAING JA (AG)

PROSECUTION CRIMINAL APPEAL NO COA2023PACR00004

APPLICATION NO COA2023APP00213

BETWEEN	**LIVINGSTON HINES**	**1ST APPLICANT**
AND	**MINETTE LAWRENCE**	**2ND APPLICANT**
AND	**LOWELL LAWRENCE**	**3RD APPLICANT**
AND	**NATALIE NEIL**	**4TH APPLICANT**
AND	**DIRECTOR OF PUBLIC PROSECUTIONS**	**RESPONDENT**

Dr Mario Anderson for the applicants

Miss Judi-Ann Edwards, Mrs Sara Hope Cochrane-Spencer and Kemar Setal for the respondent

10, 11 July 2024 and 27 March 2026

Criminal law – Appeal by prosecutor – Application to strike out appeal – Whether right of appeal arises pursuant to Judicature (Parish Courts)(Amendnent) Act, section 292B(2)(a)-Judicature(Appellate Jurisdiction) (Amendment) Act - Whether section 23A is applicable to appeals

P WILLIAMS JA

[1] On 20 March 2020, Livingston Hines, Minette Lawrence, Lowell Lawrence and Natalie Neil (collectively referred to as 'the applicants') appeared in the Parish Court for the Corporate Area, Criminal Division, holden in Half-Way-Tree, on informations charging

them with several breaches of the Telecommunications Act and conspiracy. Three years later, and after several appearances, an application for a stay of proceedings was made before Her Honour Miss Maxine Ellis ('the learned Judge of the Parish Court'). That application succeeded, and the indictment was quashed. On 13 July 2023, the Director of Public Prosecutions ('the DPP') filed a prosecutor's notice of appeal pursuant to section 292B(2)(a) of the Judicature (Parish Courts) (Amendment) Act, 2021 ('the amendment to the Parish Court Act'). On 11 September 2023, the applicants filed a notice of application seeking to strike out the prosecutor's notice of appeal and for costs. Having heard and considered the submissions on 10 and 11 July 2024, we made the following orders:

> "1. The application to dismiss the Prosecutor's appeal is granted.
>
> 2. The Prosecutor's notice of appeal filed on 13 July 2023 in the Parish Court for the Corporate Area is struck out.
>
> 3. No order as to costs."

[2] At the time of the decision, we promised to put our reasons into writing. This judgment is in the fulfilment of that promise.

Background

[3] The factual circumstances relevant to the charges laid against the applicants are not material to the determination of this application. It is sufficient to outline the procedural history of the matter as set out in the chronology contained in the decision of the learned Judge of the Parish Court. On 20 March 2020, when the matter first came before the court, an order for disclosure was made. On 14 July 2020, the matter was transferred to the plea and case management court. On 15 October 2020, another order was made for disclosure. On 18 March 2021, the prosecution indicated that full disclosure had been made. On 30 May 2021, the matter was transferred to the trial court. On 14 March 2022, Dr Mario Anderson ('Dr Anderson'), one of the attorneys-at-law then appearing for the applicants, made an oral submission that the indictment was bad in

law. There is no express indication on the record as to the outcome of that submission; however, it must have been unsuccessful, as dates were thereafter fixed for trial. The dates set for trial were 10 July 2022, 1 December 2022, and 14 February 2023. The trial failed to commence on any of those dates.

[4] On 13 March 2023, the applicants filed a notice of application for a stay of the proceedings and the prosecution was afforded an opportunity to respond on or before 1 May 2023. When the matter came before the learned Judge of the Parish Court, on 8 June 2023, the prosecutor was absent, and the submissions in response to the application, which had been ordered by the court, had not yet been received. In addition, another of the attorneys-at-law in the matter revealed that she had not received full disclosure. A further adjournment was granted. On 13 June 2023, when the matter was again before the court, the prosecutor attended and confirmed that full disclosure had not been made, due to inadvertence. On 20 June 2023, when the learned Judge of the Parish Court began hearing submissions from Dr Anderson on the application for a stay of proceedings, full disclosure had still not been completed. The prosecutor requested time to respond to the application in writing. The learned Judge of the Parish Court made an order for disclosure and directed the prosecutor to outline the allegations in writing and to respond to the submissions made by Dr Anderson.

[5] The hearing of the application was completed on 30 June 2023, and the learned Judge of the Parish Court made her ruling in the following terms:

> "1) The application by the prosecution to prefer new indictment is refused.
>
> 2) The indictment is quashed.
>
> This Court is of the opinion that those particulars of the conspiracy alleged relate to matters which are in terms or substantially the offences which the statute prescribed.
>
> 3) Order for the stay of proceedings is granted. In cases as in the instant case, where there is no evidence at all, the

court ought to stay proceedings as it is an abuse of proceedings to permit such a trial.

4) The defendants Minette [sic] Lawrence, Lowell Lawrence, Natalie Neil and Livingston Hines are discharged on Information CS2020CR01382-1-8.

5) All the equipment and apparatus seized pursuant to the authority to search of 21st February 2020, March 2020 and other dates, are to be returned forthwith."

[6] On 13 July 2023, the DPP filed the prosecution's notice of appeal in the Parish Court for the Corporate Area – Criminal Division, addressed to the Registrar of the Court of Appeal. They sought to challenge the decision of the learned Judge of the Parish Court on a point of law, which resulted in the termination of the case without a verdict of conviction. The order sought was for leave to appeal against the decision of the Parish Court Judge.

[7] On 11 September 2023, the applicants filed the notice of application to strike out the prosecutor's notice of appeal.

The application

[8] In their application, the applicants set out seven grounds upon which they sought an order to strike out the prosecutor's notice of appeal, as follows:

"1. Rule 1.13(a) of the Court of Appeal Rules gives the Court a discretion to strike out the whole or part of a Notice of Appeal.

2. There is no jurisdiction under section 292B of the Judicature (Parish Courts) (Amendment) Act 2021 for a purported appeal on a point of law from the case management orders of a Parish Court Judge, before trial and the Appeal does not fall within the scope and intendment of the said amendments to the Act.

3. The appeal does not involve an administration of justice offence, or a decision of the judge on a point of law taken in a case that was tried before that judge.

4. The Court has no jurisdiction to grant leave to appeal except in accordance with the provisions of Section 292(4)(b) which provisions apply to the imposition of sentences, and the commission of an administration of justice offence.

5. The Court has no jurisdiction to set aside or otherwise disturb the orders of the Parish Judge save and except as specified by the Judicature (Appellate Jurisdiction) (Amendment) Act 2021 and the Judicature (Parish Courts) Amendment Act 2021.

6. The Prosecutor's Notice of Appeal has not been filed with the Registry of the Court of Appeal as required by Practice Direction 2 of 2021, and an extension of time has not been granted by the Court.

7. That it is just to do so."

[9] The grounds for consideration can conveniently be addressed in the two issues identified in the submissions made on behalf of the applicants:

(1) Whether the Act or the Judicature (Appellate Jurisdiction) (Amendment) Act ('JAJA') gives the DPP a right of appeal in these circumstances – Grounds 2, 3, 4, and 5.

(2) Whether the court has jurisdiction to hear such an appeal given that the procedure laid out in Practice Note 2/2021 has not been complied with and an original of the Prosecutor's Notice of Appeal has neither been filed with this court nor served on the applicants - Ground 6.

The statutory framework

[10] The provision in the amendment to the Judicature (Parish Courts) Act, which is relevant to this application, is section 292B(2). It provides as follows:

(2) Subject to subsections (3) and (5), in any case tried before a Judge of a Parish Court on indictment or on information by virtue of a special statutory jurisdiction, the prosecutor may appeal to the Court of Appeal against –

(a) a decision of the Judge –

(i) on any point of law; or

(ii) on the ground that there has been an administration of justice offence,

where the decision results in an acquittal, the quashing or staying of an indictment, the withdrawal of a case, the upholding of a no-case submission, or any other termination of the case without a verdict of conviction; or

…

(3) Where a prosecutor intends to appeal under subsection (2), or to obtain the leave of the Court of Appeal to do so, the prosecutor shall give notice thereof; in such manner as may be directed by the rules of court, within fourteen days after the date of the decision or sentence (as the case may be) or such longer period as the Court of Appeal may allow.

(4) Leave of the Court of Appeal –

(a) is not required for an appeal under subsection (2)(a)(i) or 2(b)(i);

(b) is required for an appeal under subsection (2)(a)(ii) or 2(b)(ii).

[11] The provision of JAJA referred to in the application is section 23A, which provides as follows:

"23A. – (1) Where an accused person tried on –

(a) indictment; or

(b) information before a Judge of a Parish Court by virtue of special summary jurisdiction,

has been acquitted, whether in respect of the whole or part of the indictment or information, and the prosecutor desires the opinion of the Court on –

(i) any point of law; or

(ii) any point of mixed law and fact;

that has arisen in the case, the prosecutor may refer that point to the Court and the Court shall, in accordance with this section, consider the point and give its opinion thereon.

(2) Where in any criminal proceedings –

(a) an accused person has been discharged on the grounds that–

(i) there is no case to answer;

(ii) the proceedings have been stayed as an abuse of process; or

(iii) a ruling has been issued that would otherwise have the effect of terminating the trial; and

(b) the prosecutor desires the opinion of the Court on a point of law, or any point of mixed law and fact,

the prosecutor may refer the point to the Court and the Court shall, in accordance with this section, consider the point and give its opinion thereon."

[12] Both amendments were promulgated on 2 November 2021; however, no accompanying rules of court were made in respect of either amendment. In December 2021, this court issued Practice Note No 2 of 2021, which applied to notices of appeal, notices of applications for leave to appeal, notices for extensions of time within which to file those notices and requests for the court's opinion on points of law or mixed law and fact, that the prosecution in criminal cases may wish to file pursuant to the amendments. The Practice Note aimed to eliminate uncertainty and ensure a uniform approach to the filing and treatment of notices filed by prosecution, which were to be designated differently from other appeals and applications in criminal cases. Of particular relevance to this matter, the Practice Note required that the prosecutor's notice of appeal or application for leave to appeal "shall be filed at the Court of Appeal Registry, regardless of the court from which the case originated".

[13] It is necessary to note that, subsequently, by the Court of Appeal (Amendment) Rules 2023, gazetted on 19 July 2023, the principal rules were amended by inserting,

immediately after rule 3.4, rule 3.4A, which governs appeals by a prosecutor and incorporates the forms previously introduced by the Practice Note.

Issue 1– Whether the amendment to the Judicature (Parish Courts) Act or JAJA gives the DPP a right of appeal in these circumstances – Grounds 2,3,4 and 5

Submissions

For the applicants

[14] In succinct submissions, Dr Anderson first contended that a prosecutor may only appeal where there has been a trial. He emphasised that the trial against the applicants never commenced. He pointed out that it was after hearing the application for a stay that the court granted the application, quashed the indictment and refused an oral application to prefer a new set of indictments. Counsel submitted that a careful reading of section 23A of JAJA strongly supports the view that a trial had to have commenced for the right to appeal to arise. He drew the court's attention to section 23A(1) of JAJA and submitted that a matter may be referred to this court for its opinion on a point of law or of mixed law and fact only after an accused person has been tried and acquitted. Further, he highlighted section 23(A)(2) of JAJA, which he contended makes a clear distinction between a trial and issues that may arise before the completion of the trial. He contended that this section, provided that the prosecutor may refer the matter to this court in any criminal proceedings where the trial is terminated, for example, by the upholding of a no case submission, or a stay being granted, or any other ruling with that effect has been made.

[15] Thus, Dr Anderson concluded on this issue that, when the relevant section of the Act and JAJA are read together, it becomes abundantly clear that a prosecutor can only appeal the decision of a Judge of the Parish Court on a point of law or a point of mixed law and fact after being tried and that the words "or any other termination" can only refer to instances occurring after a trial has commenced.

For the respondent

[16] In equally succinct submissions, Mr Kemar Setal ('Mr Setal'), on behalf of the Crown, commenced by contending that although section 292B(2)(a)(i) of the Act mentioned "tried before a Judge of the Parish Court", the fact that the section went on to state that "where the decision results in the quashing or staying of an indictment", it was parliament's intention to capture situations where the judge erred in the termination of a case prior to the commencement of a trial. Further, Mr Setal submitted that the inclusion of the quashing or staying of an indictment in the section, which would normally take place before the commencement of a trial, supports the position that the intent was to encompass proceedings as a whole and not be restricted to the literal meaning of a trial.

[17] It was further submitted that, applying the mischief rule in statutory interpretation, which seeks to identify the defect, wrong, or mischief that parliament intended to remedy by enacting the statute, the amendment to the Act was aimed at correcting the prosecution's inability to appeal the decisions of a Judge of the Parish Court where the error was one of law or where an offence involving the administration of justice had occurred.

[18] In acknowledging that section 23(A)(1) of JAJA provides for the referral of a point of law or point of mixed law and fact to this court for an opinion, it was submitted that this section does not address the prosecution's right of appeal and, accordingly, has no bearing on the instant application.

Discussion

[19] The court was required to determine whether section 292(B)(2)(a) of the Act conferred upon the DPP a right of appeal in circumstances where the trial of a matter had not yet commenced. The question being one of statutory construction, it was necessary to consider the principles relevant to statutory interpretation. In the foremost

text on this subject, Maxwell on the Interpretation of Statutes, 12th edition, the author states at page 29:

> "Where the language is plain and admits of but one meaning the task of interpretation can hardly be said to arise…. Where, by clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be. The interpretation of a statute is not collected from any notions which may be entertained by the court as to what is just and expedient: words are not to be construed, contrary to their meaning as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded. The duty of the court is to expound the law as it stands, and to 'leave the remedy (if one be resolved upon) to others."

[20] The courts in interpreting statutes have consistently accepted that words and phrases in a statute are firstly to be given their ordinary and natural meaning. In one of the earlier decisions from the House of Lords, **Pinner v Everett** [1969] 3 All ER 257, Lord Reid at page 258 stated:

> "In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase. We have been warned again and again that is wrong and dangerous to proceed by substituting some other words for the words of the statute."

[21] In this case, we were being invited to consider the intention of Parliament in interpreting the legislation. In this regard, the observation of Lord Reid in **Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG** [1975] AC 591 is useful. At page 613, he had this to say:

> "We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they

> said. In the comparatively few cases where the words of a statutory provision are only capable of having one meaning, that is an end of the matter and no further inquiry is permissible."

[22] The main thrust of the arguments advanced by the Crown was that this court was to ignore the ordinary and natural meaning of the words "in any case tried" and expand their meaning to include decisions made before a trial commences. We could see no basis on which to do so. Parliament meant to give the prosecution the right of appeal and may well have intended that it be restricted to decisions made in cases tried before a Judge of the Parish Court in these circumstances. Thus, for the right to appeal under this section to be triggered, there must have been the commencement of the trial with a decision resulting in the termination of the case without a verdict of conviction.

[23] In this appeal, the trial clearly had not commenced. Disclosure was yet to be completed. Although one of the orders of the learned Judge of the Parish Court was for the quashing of the indictment, it is apparent that no order for indictment had been signed, and the applicants had not been arraigned. Ultimately, the right to appeal had not been triggered, and the DPP had no right of appeal pursuant to section 292B(2)(a). Thus, the notice filed on 13 July 2023 had to be struck out.

[24] Section 23A of JAJA deals specifically with references to this court by the prosecutor on any point of law, or any point of mixed law and fact and, therefore, was not relevant to the issues raised in this application. However, notably, Dr Anderson pointed to the use of the words "in any criminal proceedings" in section 23A(2), which he asserted points to a clear distinction between a trial and issues in the criminal proceedings which may arise before a trial commences and which may result in an accused person being discharged. There could be no dispute that this assertion was indeed correct.

[25] It was observed that, in the notice of appeal, the DPP had somewhat curiously sought an order granting leave to appeal against the decision of the learned Judge of the Parish Court. However, the Act makes it clear that no such order is required for an appeal pursuant to section 292B(2)(a)(i) as is provided in section 292B(2)(4)(a).

Issue 2 - Whether the court has jurisdiction to hear such an appeal given that the procedure laid out in Practice Note 2/2021 had not been complied with and an original of the prosecutor's notice of appeal had neither been filed with this court nor served on the applicant

[26] The resolution of the first issue was sufficient to dispose of the application. However, the second issue raised could be summarily addressed for completeness. As has already been indicated, the Practice Note was issued to ensure a uniform approach for the filing and treatment of notices in matters such as this, and as such, this practice note was to provide requisite guidance.

[27] It may have been necessary to include in the Practice Note the requirement for the notice to be filed directly at the Court of Appeal Registry, given certain timelines imposed by the amendment to the Judicature (Parish Courts) Act. Section 292B(2) provides :

> "Where, under this section-
>
> (a) an application for leave to appeal is granted, the Court shall hear the appeal within twelve months after the date on which the application was made;
>
> (b) an appeal is brought in any case where leave to appeal is not required, the Court shall hear the appeal within twelve months after the date on which the brought; …"

The requirement would, therefore, ensure the appeal being brought to the attention of this court in a more timely manner, such that an attempt could be made to keep the timeline for hearing the appeal as mandated in the section.

[28] Significantly, however, the failure to file the notice of appeal in the manner directed by the Practice Note did not attract a sanction. Whilst the failure could possibly lead to a delay in the hearing of the appeal, it could not properly oust the jurisdiction of the court to hear it.

[29] These are the reasons for which we disposed of the application in the manner set out at para. [1].