

**JAMAICA**

**IN THE COURT OF APPEAL**

**RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO 13/2011**

**MOTION NO 1/12**

**BEFORE: THE HON MR JUSTICE MORRISON JA  
THE HON MISS JUSTICE PHILLIPS JA  
THE HON MR JUSTICE HIBBERT JA (AG)**

**DONOVAN PHILLIPS v R**

**Applicant in person**

**Dirk Harrison and Mrs Denise Samuels-Dingwall for the Crown**

**20 February 2012**

**ORAL JUDGMENT**

**MORRISON JA**

[1] Before the court today is a notice of motion for conditional leave to appeal to Her Majesty-in-Council filed by Mr Donovan Phillips, the applicant, on his own behalf. Mr Phillips by this application seeks leave to appeal to the Privy Council from his conviction on 31 May 2007 before a Resident Magistrate for the parish of St. Catherine for the offence of malicious destruction of property.

[2] The applicant was sentenced to pay a fine of \$150,000.00 and, in default of payment, to be imprisoned for six months.

This matter has had a long history in this court. On 25 February 2008 an application for an order extending time within which to appeal was filed by the applicant, an appeal not having been filed from the order of the learned Resident Magistrate within the time fixed by the Judicature (Resident Magistrate's Court) Act. That application was heard and on 25 February 2008, this court made an order striking out the application and the note endorsed by the President on that order is that the court has no jurisdiction to extend time to appeal. Notwithstanding that order, the matter came back before the court again three years later, on 7 February 2011. We should add that the applicant himself was not present on 25 February 2008, but on the 7 February 2011 he was present and, on that occasion, because the earlier order had been over sighted, the court made an order enlarging the time for the filing of grounds of appeal by the applicant and that order regularized the filing of some grounds of appeal already filed by Mr Phillips. It was further ordered that the original grounds of appeal filed in the Court of Appeal on 26 November 2010 were to stand as grounds of appeal in the matter. The registrar was also ordered to fix a hearing date and the appellant to put his submissions in writing.

[3] The matter came back before this court on 22 September 2011, at which time the matter was listed as Resident Magistrate Criminal Appeal No 13/2011. The matter was listed as an appeal although, it is quite clear, as the court observed on that occasion, that the matter ought to have been listed as an application. However, given the background to the matter, the court decided that it would treat the application as the hearing of the appeal. This history clearly demonstrates that every effort has been

made by the court to give Mr Phillips as full an opportunity as possible to ventilate his concerns in this matter.

[4] When the matter came before the court on 22 September 2011 the applicant, challenged the findings of the learned resident magistrate, that the witnesses for the prosecution were truthful, while he was not a truthful witness. He also submitted that the evidence relied on by the prosecution was not sufficiently cogent so as to lead to his conviction. As a result of the challenge to the resident magistrate's assessment of the evidence, the court examined the evidence presented before the resident magistrate and came to the conclusion that it could find no basis to disturb her findings of fact. Further, the court disagreed with the appellant that there was no sufficient evidence to lead to his conviction. In the result, the court concluded its brief oral judgment (which was delivered on 23 September 2011) by saying, that "In light of our findings therefore, even if there was a valid appeal before us, we would dismiss the appeal, for these reasons what was treated as the appeal before us is dismissed, the conviction and sentences imposed are affirmed".

[5] So Mr Phillips now seeks leave to appeal to Her Majesty-in-Council from the decision of this court. Although Mr Phillips' notice of motion was filed on 30 January 2012, we take no point now, in the spirit in which this appeal has obviously been accommodated, as to whether that notice of motion was out of time, although it plainly was. We are also willing to ignore the fact that the notice of motion was not supported

by an affidavit, as one would ordinarily expect it to be, and we have therefore proceeded on the basis of the copious material which Mr Phillips did place before us.

[6] Section 110 (2)(a) of the Constitution of Jamaica provides for appeals with the leave of this court, to Her-Majesty-in-Council, in cases in which, in the opinion of this court, the question involved in the appeal is one that by reason of its great general or public importance, or otherwise, ought to be submitted to Her Majesty-in-Council. Before us today, Mr Phillips has urged that this is a matter of great general or public importance, on the ground, as we understand it, that it has a bearing on the rights of men who are estranged from their wives to visit their children, without fear of molestation or any kind of hostility. As one would expect, he also points out to the court that the matter is one of great importance to him personally, because of the effect it is having on his job and his own ability to travel freely. Mr Harrison for the Crown has submitted, to the contrary, that no great general or public importance has been demonstrated in this matter and that on that basis leave to appeal to the Privy Council should not be granted.

[7] We agree with Mr Harrison. As we pointed out to the applicant during the course of the hearing, the wording of the Constitution requires the court to make a distinction between things which are of great personal importance and things which are of great general importance. We have no doubt that this matter is of tremendous importance to Mr Phillips personally. The very history of the matter before this court is a demonstration of the anxiety that it has caused him. He has told us, and we accept,

that one result of his conviction has been that the multiple indefinite visa which he had to visit the United States of America has now been renewed on a year to year basis, which, as we understand him, creates an air of uncertainty and makes it difficult for him to carry out his work, which involves some form of travelling. While we fully accept all of that, it seems to us that, all of that material falls considerably short of the threshold of great general or public importance which the Constitution requires. By fixing the criteria for final appeals in that way, the framers of the Constitution were, in our view, making it clear that only those matters that fulfilled the description of great general or public importance should be submitted to the Privy Council and in the result, therefore, the application must be dismissed.