

**JAMAICA**

**IN THE COURT OF APPEAL**

**APPLICATION NO COA2019APP00094**

**BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP JA  
THE HON MRS JUSTICE SINCLAIR-HAYNES JA  
THE HON MRS JUSTICE FOSTER-PUSEY JA**

<b>BETWEEN</b>	<b>MARK YOUNIS</b>	<b>APPLICANT</b>
<b>AND</b>	<b>ALVIN RANGLIN T/A GG RECORD</b>	<b>RESPONDENT</b>

**Jalil Dabdoub instructed by Dabdoub, Dabdoub & Co for the applicant**

**Respondent not appearing or being represented**

**20 May 2019 and 6 May 2020**

**MCDONALD-BISHOP JA**

[1] This is an application for extension of time to file a notice of appeal. It emanated from an order of the Senior Parish Court Judge for the Corporate Area, Civil Division ("the judge"), made on 11 March 2019. The judge ordered that the applicant, Mr Mark Younis, and/or his tenants and/or his agents were to cease and desist from entering the property, belonging to the respondent, Mr Alvin Ranglin (trading as GG Record), located at a disclosed address in the Corporate Area ("the property").

[2] This application sought to determine, in the first instance, whether a notice of appeal that was filed in the parish court on 22 March 2019 in respect of that order, had been properly filed to initiate an appeal to this court, in accordance with the Judicature (Parish Courts) Act ("the Act"). The second issue was whether, if the notice of appeal was not properly filed, time should be extended for it to be filed and served.

[3] On 20 May 2019, after hearing arguments from counsel, Mr Jalil Dabdoub, who appeared on behalf of the applicant, the respondent having been served with notice of the hearing and not appearing, the court made the following decision with consequential orders :

- "1. No extension of time is necessary for the filing of the Notice and Grounds of Appeal. The Notice and Grounds of Appeal filed in the Corporate Area Parish Court (Civil Division) on the 22<sup>nd</sup> day of March 2019, was properly filed within time and is valid and effectual for commencing the Appeal.
2. Late service having been effected on the respondent, time is granted to the 4<sup>th</sup> day of April 2019 for service of the Notice and Grounds of Appeal filed on the 22<sup>nd</sup> day of March 2019 on the respondent.
3. The service effected on the 4<sup>th</sup> of April 2019 shall stand in good stead.
4. The applicant having complied fully with the provisions of Section 256 of the Judicature (Parish Courts) Act, the Senior Parish Court Judge is to draw up a statement of reasons for the orders appealed against, in accordance with Section 256 of the Act.
5. No order as to costs.

6. The applicant's attorneys-at-law are to prepare, file and serve all orders made in these proceedings on or before the 7th day of June 2019."

[4] We promised at the conclusion of the hearing to give our reasons in writing at a later date. With an apology for the delay, this is in fulfilment of that promise.

### **The background**

[5] A brief overview of the facts leading up to the filing of the application in this court, on 30 April 2019, will be provided to put into context the reason for our decision. These facts were garnered from the applicant's affidavit, which was filed in support of his application. Although the respondent was served with notice of the proceedings, no affidavit in response was filed by him. The relevant facts are as follows.

[6] On 2 August 2017, the respondent commenced an action against the applicant seeking the sum of \$138,861.75 for the damage which he alleged had been done to the property by the applicant and which caused him to incur expenses in the amount being claimed in taking remedial measures. The damage arose, it was alleged, from the action of the respondent throwing things on to the property. It is important to note that there was no claim for trespass or injunctive relief.

[7] On 11 March 2019, which was the Return Day in the Parish Court, the matter came up for hearing before the judge in open court. The applicant was not present, reportedly, due to ill-health, but was represented by his counsel, Mr Dabdoub. Exhibited to the applicant's affidavit filed in this court was a sick leave certificate dated 10 March

2019 and signed by a medical practitioner. It is, however, unclear from the affidavit whether this sick leave certificate was brought to the attention of the judge.

[8] The applicant deposed that the judge, "without hearing any evidence whatsoever from either party and in [his] absence made an order", to the effect that neither he nor his tenants and/or his agents were permitted to enter the property. Mr Dabdoub, on the applicant's behalf, proceeded to note his objection to the order and indicated that he was giving a verbal notice of appeal concerning the order.

[9] According to the applicant, the judge refused to minute the notice of appeal and requested of Mr Dabdoub his grounds of appeal. Mr Dabdoub is said to have stated one ground of appeal and asked of the judge that she re-read her order to assist with his formulation of other grounds of appeal. The judge, however, it is alleged, refused to minute the appeal or to re-read her order for the benefit of counsel. As a result, no further steps were taken by Mr Dabdoub, on that day, in furtherance of the intended appeal.

[10] On 22 March 2019, which would have been 10 days from the making of the order, Mr Dabdoub lodged written notice and grounds of appeal at the Parish Court. He also paid the sums required for the due prosecution of the appeal and security for costs. Of pertinence to the appeal was the applicant's complaint that: (a) there was no claim by the respondent in trespass; (b) the judge had erred in making an order when there was insufficient evidence before her, including that of the applicant, which would

have enabled her to make a decision; and (c) the judge erred in extending the order to the applicant's tenants and/or agents, they not being parties to the proceedings.

[11] The court's office accepted the written notice and grounds of appeal together with the sums paid on that date. A copy of the filed notice and grounds of appeal was, however, not returned to Mr Dabdoub. As such, on 25 March 2019, additional copies of the notice and grounds of appeal were filed at the Parish Court, and a duly stamped copy of the document was then returned to Mr Dabdoub.

[12] The applicant stated that the respondent was subsequently served with a copy of the written notice and grounds of appeal on 4 April 2019.

[13] On 3 April 2019, Mr Dabdoub received a letter from the Parish Court, dated 26 March 2019. The letter confirmed the court's receipt of the applicant's written notice and grounds of appeal together with the sums which had been paid for the due prosecution of the appeal and security for costs. The letter also indicated that:

"We regret to inform you that the courts [sic] office has erred in accepting your Written Notice of appeal on March 22, 2019, an examination of the records reflects that you gave verbal notice of appeal on March 11, 2019 and that your appeal was minuted in open court and as such the sums for security for due prosecution should have been paid on the same day (.S.256 of JRMA).

Please make the necessary application for a refund of the sums paid."

[14] The effect of this letter was that the Parish Court rejected the applicant's notice and grounds of appeal. This letter brought to the fore the question of whether notice of an appeal was given correctly on behalf of the applicant.

[15] These series of events were the catalyst for the filing of the notice of application for court orders before this court.

### **The application before this court**

[16] On 20 May 2019, when the matter came up for hearing, the court granted leave for the notice of application for court orders to be amended and re-filed. Service of the amended application was dispensed with as the changes were not so material as to cause prejudice to the respondent. It was merely a matter of re-arranging the sequence in which the consequential orders being sought were set out in the notice of application.

[17] The orders sought by the applicant on the amended notice of application were as follows :

- "1. That the time for service of the Notice and Grounds of Appeal on [the respondent] be extended.
2. In the alternative that permission, be granted for an extension of time within which to file and serve Notice and Grounds of Appeal and for payment of the sums for due prosecution of the appeal and security for costs of the appeal,,

Together with the following consequential Orders:

3. That the Appeal filed on March 22<sup>nd</sup>, 2019 was properly filed in accordance with the provisions of The Judicature (Resident Magistrates) Act;

4. That [the] Honourable Parish Court Judge erred by refusing the application of the Applicant's Attorney-at-Law to state, in open court, the order she had made;
5. That [the applicant] in accordance with the Judicature (Resident Magistrates) Act timely paid the sums for the due prosecution of the appeal and the security for costs of the appeal;
6. That the Learned Clerk of the Courts do immediately forward to this Honourable Court the Notice and Grounds of Appeal filed by the applicant.
7. That the Learned Clerk of the Courts do forthwith return to the Applicant's Attorney-at-Law the receipt for the due prosecution of the appeal and the security for costs of the appeal paid to the Court's Office on the 22nd day of March 2019.
8. That the Parish Judge of the Parish Court do draw up for the information of the Court of Appeal, a statement of her reasons for the Judgment/Order appealed against.
9. Such further and other relief as this Honourable Court deems just in the circumstances.
10. That the costs of the application be costs in the cause."

[18] The application was based on the following grounds:

- "1. The Applicant did on the 22<sup>nd</sup> day of March 2019, duly file in the Parish Court a Notice and Grounds of Appeal in compliance with Section 256 of the judicature (Resident Magistrates) Act within 14 days of the Order made by the Parish Judge;
2. That the sums for Security for Costs and due prosecution of the Appeal were duly paid at the time of filing;
3. That [the] Clerk of the Courts of the Parish Court has stated that no Appeal was properly filed and as a result the Parish Judge shall not be drawing up for

the information of the Court of Appeal, a statement of her reasons for the Judgment/Order appealed against,

4. The Applicant has an arguable case on Appeal,
5. There has been no delay in filing a Notice and Grounds of Appeal and no delay in paying the sum required for the due prosecution of the appeal as well as the sum required to be paid as security or [sic] costs.
6. There has been no delay in the filing of this Application for an extension of time as the [the applicant] only received confirmation of the Clerk of Court's position in respect to the [applicant's] Notice and Grounds of Appeal on the 14<sup>th</sup> April 2019.
7. The Applicant has an arguable case for an appeal.
8. There would be no prejudice to the [respondent] if an extension of time to file the appeal is granted."

## **Analysis and findings**

### **Issue 1: The validity of the notice of appeal**

[19] Concerning an appeal from civil proceedings in the parish courts, section 251 of the Act provides that:

"Subject to the provisions of the following sections, an appeal shall lie from the judgment, decree, or order of a Court in all civil proceedings, upon any point of law, or upon the admission or rejection of evidence, or upon the question of the judgment, decree, or order being founded upon legal evidence or legal presumption, or upon the question of the insufficiency of the facts found to support the judgment, decree, or order;..."

A final order, having been made in the proceedings, meant that the applicant would have been at liberty to lodge an appeal against that order.

[20] Critical, therefore, to the resolution of the question of whether an appeal was properly lodged by the applicant is section 256 of the Act. This section prescribes procedures that are to be followed by a party in bringing an appeal in the Parish Court.

Section 256 reads:

“256. The appeal may be taken and minuted in open Court at the time of pronouncing judgment, but if not so taken then a written notice of appeal shall be lodged with the Clerk of the Courts, and a copy of it shall be served upon the opposite party personally, or at his place of dwelling or upon his [attorney-at-law], within fourteen days after the date of the judgment; and the party appealing shall, at the time of taking or lodging the appeal, deposit in the Court the sum of five thousand dollars as security for the due prosecution of the appeal, and shall further within fourteen days after the taking or lodging of the appeal give security, to the extent of fifteen thousand dollars for the payment of any costs that may be awarded against the appellant, and for the due and faithful performance of the judgment and orders of the Court of Appeal.

Such last-mentioned security shall be given either by deposit of money in the Court, or by the party appealing entering into a bond, with two sureties to be approved by the respondent, or, in case of dispute, by the Clerk of the Courts with an appeal to the [parish judge]. No stamp duty shall be payable on such bond.

...

On the appellant complying with the foregoing requirements, the [parish judge] shall draw up, for the information of the Court of Appeal, a statement of his reasons for the judgment, decree, or order appealed against.

Such statement shall be lodged with the Clerk of the Courts, who shall give notice thereof to the parties, and allow them to peruse and keep a copy of the same.

The appellant shall, within twenty one days after the day on which he received such notice as aforesaid, draw up and

serve on the respondent, and file with the Clerk of the Courts, the grounds of appeal, and on his failure to do so his right to appeal shall, subject to the provisions of section 266, cease and determine.

If the appellant after giving notice of appeal and giving security as aforesaid, fails duly to prosecute the appeal, he shall forfeit as a court fee the sum of six hundred dollars deposited as aforesaid.

If he appears in person or by counsel before the Court of Appeal in support of his appeal, he shall be entitled to a return of the said sum of six hundred dollars whatever may be the event of the appeal.”

[21] Section 256 of the Act stipulates, therefore, that a party who wishes to appeal a decision of a parish judge in civil proceedings, may commence the process by adopting either of the following two methods:

- i. giving verbal notice of appeal in open court at the time of the pronouncement of the judgment; or
- ii. lodging with the Clerk of the Courts, within 14 days of the judgment, written notice of appeal.

[22] Irrespective of which of the above methods is adopted to commence the appeal, the party seeking to appeal is also required to:

- i. serve a copy of the written notice of appeal on the opposite party within 14 days after the date of the judgment;

- ii. pay into court the sums required as security for the due prosecution of the appeal at the time of the taking of the verbal notice or the lodging of the written notice of appeal; and
- iii. pay into court a further sum as security for costs within 14 days after the taking of the verbal notice or the lodging of the written notice.

[23] Phillips JA, in **Ralford Gordon v Angene Russell** [2012] JMCA App 6, made the following observations in reviewing section 256 of the Act:

"[16] Section 256 therefore contemplates that in order for a civil appeal from the [Parish Court] to be heard, the appellant must:

- (i) give notice of appeal at the time of judgment, or within 14 days of such judgment;
- (ii) serve notice of appeal on the opposite party within 14 days of judgment;
- (iii) deposit in the court the sum of \$600.00 for the due prosecution of the appeal at the time of taking or lodging the appeal;
- (iv) give security for costs and for the due and faithful performance of the judgment and orders of the Court of Appeal in the sum of \$6000.00 within 14 days after taking or lodging the appeal. On the appellant complying with requirements (i) through (iii), the magistrate will draw up a statement of his reasons for the judgment, decree or order appealed against, and lodge this statement with the clerk of the courts who will give notice to the parties.
- (v) draw up and serve grounds of appeal, on the respondent and file these grounds with the clerk of the courts within 21 days of receiving notice from the

clerk of the magistrate's reasons. If the appellant fails to draw up, serve and file grounds, his right to appeal 'shall, subject to the provisions of section 266, cease and determine'."

[24] In that case, the parish judge had made an order on 2 September 2010. The attorney-at-law gave verbal notice of appeal in open court, but no sums had been paid into court in accordance with section 256 of the Act. Subsequently, on 14 September 2010, written notice and grounds of appeal were filed but, again, no sums paid into court. On 4 October 2010, the attorney-at-law received a letter from the parish court indicating that the notice and grounds of appeal were being returned as they had failed to pay the sums required for the due prosecution of the appeal and security for costs.

[25] Phillips JA concluded (with the concurrence of the other members of the court) that the court could exercise its discretion to extend the time for the filing and serving of the notice of appeal, notwithstanding the applicant's failure to comply with some of the procedural requirements prescribed by section 256 of the Act.

[26] The facts, in this case, are not so dissimilar to the situation which obtained in **Ralford Gordon v Angene Russell**. Of relevance is that:

- i. an order was made by the judge on 11 March 2019;
- ii. Mr Dabdoub in open court requested that his appeal be minuted. Notwithstanding what has been said to have transpired between counsel and the judge, no further step was taken by him, on that day, in furtherance of the appeal. This is to say that counsel, at

that time, did not make any payment to the court for the due prosecution of the appeal and security for costs;

- iii. on 22 March 2019, written notice with grounds of appeal was filed at the Parish Court, and all the sums required in accordance with section 256 of the Act were correctly paid into court; and
- iv. on 4 April 2019, the respondent was served with the notice and grounds of appeal, albeit after the time limited for service by section 256 of the Act.

[27] Notwithstanding the fact that Mr Dabdoub had verbally stated in open court the applicant's intention to appeal, the appeal had not been perfected on that date, because there was non-compliance with the other procedural requirements of section 256 of the Act.

[28] In these circumstances, the failure of the applicant to perfect the verbal notice of appeal by paying the requisite sum, at the material time, did not preclude him from taking the steps required at a later date, to remedy the defect in the commencement of his appeal. There was no indication in the endorsement on the plaint of the order made, which was signed by the judge, that she had minuted the notice of appeal made in open court. In any event, a party desirous to file an appeal is empowered by the Act to give notice of appeal at the time of judgment, or, within 14 days of the judgment. The applicant would, therefore, have had until 25 March 2019 to give notice of his intention to appeal and to comply with all other procedural requirements stipulated by

the Act for perfecting the appeal. This means, therefore, that the applicant would have been at liberty to file the relevant written notice of appeal within 14 days of the date of the order.

[29] On 22 March 2019, when Mr Dabdoub filed the notice and grounds of appeal and paid into court all the sums stipulated by the Act, the applicant, at that time, would have appropriately lodged his written notice of appeal. His attempt at taking a verbal notice of appeal would have been of no moment. That method of giving notice of appeal was rendered a nullity by the applicant's failure to have it perfected by paying the sum of money that was lawfully due at the time.

[30] Consequently, the assertion of the clerk of the court in the letter delivered to Mr Dabdoub, after the appeal had been lodged, to the effect that the court's office had erred in accepting the written notice and grounds of appeal, would have been incorrect.

[31] The appeal filed on 22 March 2019, was properly filed, within time, and was effectual to commence the appeal. There was, therefore, no need for this court to exercise its discretion to extend the time for the applicant to file his notice of appeal.

[32] There was also no need for the time to be extended for the applicant to file his grounds of appeal, as the time for doing so had not yet arrived. The grounds of appeal would have been due 21 days after he had received notice from the clerk of the court that the judge had drawn up the statement of her reasons for judgment for the benefit of this court. He had received no notice at the time he sought to file his grounds of

appeal. Accordingly, the filing of grounds of appeal was premature and, so, the applicant would not be bound to pursue those grounds.

## **Issue 2: Extension of time for service of the notice of appeal**

[33] I now turn to the issue of the service of the notice of appeal on the respondent on 4 April 2019. Section 256 of the Act stipulates that the respondent was to be served with a copy of the written notice of appeal personally, or at his place of dwelling or upon his attorney-at-law, within 14 days after the date of the judgment. The respondent should have therefore been served with the written notice of appeal by 25 March 2019. The service on the respondent was clearly out of time.

[34] Section 266 of the Act stipulates that where the justice of the case requires, the Court of Appeal may permit an appellant to impeach a judgment, even in circumstances where they may have failed to comply with certain formalities prescribed by the Act. The section provides:

### **"Powers of Court of Appeal**

**266. The provisions of this Act conferring a right of appeal in civil causes and matters shall be construed liberally in favour of such right;** and in case any of the formalities prescribed by this Act shall have been inadvertently, or from ignorance or necessity omitted to be observed it shall be lawful for the Court of Appeal, if it appear that such omission has arisen from, inadvertence, ignorance, or necessity, and if the justice of the case shall appear to so require, with or without terms, to admit the appellant to impeach the judgment, order or proceedings appealed from." (Emphasis added)

[35] Section 266 must be considered in conjunction with section 12(2) of the Judicature (Appellate Jurisdiction) Act, which states that:

“ 12 (1)...

**(2) Notwithstanding anything to the contrary the time within which-**

**(a) notice of appeal may be given, or served;**

(b) security for the costs of the appeal and for the due and faithful performance of the judgment and orders of the Court of Appeal may be given;

(c) grounds of appeal may be filed or served,

in relation to appeals under this section may, upon application made in such manner as may be prescribed by rules of court, be extended by the Court at any time.”  
(Emphasis added)

[36] A party is not at large to ignore the requirements of the Act for the bringing of their appeal. However, when the relevant statutory provisions referenced above are read together, it is clear that the court is required to adopt a liberal approach when examining an individual's failure to comply with the formalities prescribed by the Act in exercising their right of appeal.

[37] The court is empowered to exercise its discretion, where necessary, to extend the time for the service of the notice of appeal. In deciding whether to exercise this discretion, the court must consider:

- (i) the length of the delay;
- (ii) the reason for the delay in serving the notice;

- (iii) whether there is an arguable case for appeal; and
- (iv) any prejudice that may be suffered as a result of the grant of the extension of time.

[38] It was also borne in mind that, notwithstanding the absence of a good reason for the delay, the court "is not bound to reject an application for an extension of time, as the overriding principle is that justice has to be done." See **Jamaica Public Service Company Limited v Rose Marie Samuels** [2010] JMCA App 23, per Morrison JA (as he then was) as well as **Ralford Gordon v Angene Russell**. Each factor was considered in turn.

(i) Length of the delay

(ii) Reason for the delay

[39] The applicant had until 25 March 2019, to have served the respondent with notice of appeal. It was, however, not served until 4 April 2019, some 10 days later. Mr Dabdoub submitted that the applicant acted with alacrity and with clear intention to prosecute his appeal. Counsel, however, argued that the delay in service on the respondent was mainly due to administrative errors on the part of the Parish Court's personnel who had failed to return a filed copy of the notice and grounds of appeal upon the filing of the documents. As a consequence, further copies had to be submitted to the court to be stamped in order to effect service.

[40] Counsel also placed reliance on the affidavit evidence of a legal clerk of his firm. The clerk deposed that upon receiving a stamped copy of the notice and grounds of

appeal from the Parish Court on 26 March 2019, he immediately took steps to serve the document on the respondent. He stated that before serving the respondent, he had made several visits to the respondent's home and business address in an attempt to effect service. He was, however, only able to effect service on the respondent after being "tipped off" as to his whereabouts.

[41] When one considers the length of the delay and the reasons given for the late service, it could not be said that the delay was inordinate. The applicant demonstrated that steps had been taken at all times to bring the notice of appeal to the respondent's attention. There was sufficient and good reason for the late service.

[42] This did not, however, conclusively resolve the issue. The court also had to consider whether the applicant had an arguable case for an appeal.

*(iii) Whether there is an arguable case for appeal*

[43] This court did not have the benefit of the judge's reason for making the order she did because the court's office was labouring under the misapprehension that the notice of appeal was out of time. Therefore, there would have been no legal obligation on the judge to prepare the statement of her reasons for judgment. It is after the provision of that statement that the applicant would have been required to prepare his grounds of appeal.

[44] This court, however, was provided with some proposed grounds that the applicant intends to pursue which was augmented by the submissions of counsel. The main thrust of the appeal would seem to give rise to the following questions:

(a) whether the judge erred in law when she made the order in the absence of evidence from the parties; and

(b) whether she erred in making the order, she did in circumstances where there was no claim in trespass, and the applicant's tenants were not parties to the proceedings.

[45] Mr Dabdoub argued that section 183 of the Act envisaged that before the judge could have disposed of the matter in the way that she did, evidence ought to have been taken by her in open court. This was of particular importance, according to Mr Dabdoub, as the circumstances of the case meant that the order made by the judge amounted to an injunction. In support of this proposed grounds, counsel relied on cases such as **Anthony Hendricks v Commissioner of Customs** [2018] JMCA Misc 1; **Metalee Thomas v The Asset Recovery Agency** [2010] JMCA Civ 6; and **Jade Overseas Holdings Limited v Palmyra Properties Limited (in receivership) and others** [2014] JMCA Civ 9.

[46] Counsel further questioned whether an injunction could have properly been granted on the plaint, which claimed a specific sum in damages only and there was no claim in trespass. He also raised the point that the judge was wrong to have made the order in the absence of the applicant who was ill.

[47] Given the fact that this is not the substantive appeal, this court recognised that it would be imprudent to express, in detail, its opinion on the likely outcome of the appeal. We were not in any position to properly assess what would have informed the

judge's decision to make the particular order that she did and what evidence, if any, was considered at the time.

[48] The question of whether the judge adopted the correct procedure in making the order on the Return Day and on the plaint before her, appeared to be a live one for the investigation of the court. It was concluded that there was an arguable case for an appeal with a realistic prospect of success.

*(iv) Risk of prejudice*

[49] There was no affidavit in response from the respondent and, so, the court was not seized of any material evidence, which pointed to any risk of injustice to him if the extension of time was granted. The prejudice would have been greater to the applicant, who had acted with alacrity from the outset to pursue his appeal and to serve the respondent. He had difficulties locating the respondent to effect personal service. In any event, and in the absence of anything to the contrary, the respondent was taken to have been well aware of the challenge being raised by the applicant to the judge's decision. This awareness would have come from the service of the relevant documents on him on 4 April 2019 as well as the service of this application on him.

**Conclusion**

[50] I concluded that this was an appropriate case for the court to extend the time for the service of the notice of appeal. All the relevant factors that were considered by the court were found to have favoured the grant of the application, having regard to the overriding objective. These were:

- a. the notice of appeal was filed within time;
- b. there was no inordinate delay in the service of the notice of appeal on the respondent, albeit late;
- c. there was a good explanation for the delay;
- d. there was an arguable case for appeal with a realistic prospect of success; and
- e. there was no discernible risk of injustice to the respondent but a higher risk of prejudice to the applicant.

[51] For all the reasons discussed above, I agreed with my learned colleagues that the application should be granted and that the consequential orders detailed in paragraph [3] be made.

**SINCLAIR-HAYNES JA**

[52] I have read in draft the reasons of my sister McDonald-Bishop JA and agree with her reasoning and conclusion.

**FOSTER-PUSEY JA**

[53] I, too, have read the draft the reasons for judgment of McDonald-Bishop JA and agree with her reasoning and conclusion.