

Court (Civil Procedure) Rules, 2005, summarises the principles on which an application for setting aside a judgment or an order made in the absence of one party is decided. The summary is under three heads, namely that: (1) the application must be made in not more than 14 days; (2) the applicant must show that there was good reason for failing to attend the hearing; and (3) the applicant must show that on the merit, the court might have made a different order, had the applicant attended and put its side of the case to court.

3. The present application is for an order of this court to set aside its interim orders made on 29.6.2009. The application to set aside was made the same day as the subject orders which granted leave to the defendant to appeal, and stayed the claim were made. So the application was made promptly.
4. It is my view that, in the circumstances of this case illness of learned counsel Ms. Lois Young S.C., representing the Attorney General, the claimant-applicant, was good reason for having overlooked the date assigned for hearing the application by NEWCO, the defendant-respondent, for an order for leave to appeal the decision of this court

dated 9.2.2009, granting an interim order. In that decision, this court had allowed the application by the Attorney General for an interim injunction order restraining NEWCO from proceeding to enforce an international arbitration award made on 23.6.2008, in its favour in Miami, USA, against the Attorney General. We all have no control over illness. Moreover, illness suddenly introduces unexpected urgency. I also note that from court diary, the date of hearing the application, 29.6.2009, was in a period when several complicated cases in which learned counsel acted, were being tried in the Supreme Court.

5. In my view, the phrase “good reason”, must convey the ordinary meanings of the two words, and not be made complicated by overly analytical approach. The reason given for non attendance must be good enough in the particular circumstances for the court to accept it as sufficient explanation for the non attendance. There is an element of discretion of the court in assessing the reason given. The case of *Frank Henry Brazil v Frank Brazil, Appeal No. A3/2001/2571 (UK)*, cited by learned counsel Mr. Aldo Reyes, for the respondent, states an approach which I agree with.

6. As to whether on the merit of the application for leave, some other order might have been made, had Attorney General attend, my answer on a balance of the merits for and against the appeal points is in favour of the Attorney General, the present applicant. I accept however, that the proposed points of appeal by NEWCO are not hopeless. In such a state of balance, I prefer to have an applicant have his day in the Court of Appeal.
7. I dismiss the application of the Attorney General, dated 26.6.2009, for an order setting aside the order of this Court, made earlier on that day, granting to the defendant leave to appeal.
8. It remains the order of this Court that the substantive claim is stayed until the appeal is determined or the Court of Appeal has made an order to other effect. The interim order restraining the defendant from proceeding to or taking any step to enforce the award of the international arbitration made in Miami, USA, on 23.6.2008, also remains the order of this court.

9. In view of my finding on the merit that, the balance of the merits favours the present applicant, but the proposed points of appeal are not hopeless, I leave the costs of this application to be decided at the hearing of the appeal.

10. Delivered this Wednesday 7th day of October 2009
At the Supreme Court
Belize City

Sam L. Awich
Judge
Supreme Court