

IN THE COURT OF APPEAL OF BELIZE AD 2020

CIVIL APPEAL NO 17 OF 2018

CARL RANEY

Appellant

v

(1) **WAYNE RANEY**

(2) **WAYNE RANEY** (in his capacity as the representative of the estate of Rosa Lee Raney deceased)

(3) **ERIC S MYERS** (in his capacity as legal representative of the estate of Larry L Myers deceased)

Respondents

BEFORE

The Hon Sir Manuel Sosa

The Hon Madam Justice Minnet Hafiz Bertram

The Hon Mr Justice Murrio Ducille

President

Justice of Appeal

Justice of Appeal

D Torres for the appellant/applicant.
Respondents unrepresented.

3 November 2020 (On Submissions in Writing).

SIR MANUEL SOSA P

[1] In my humble and respectful, but firm, opinion, one who is entrusted with the power to amend rules of any kind on an *ex officio* basis in circumstances where he or she is surrounded by a sea of fine intellects, such as are to be found in the legal profession in Belize, will do well constantly to remain all ears for the slightest murmur from any of those intellects indicating that the time has come to amend any particular relevant rule. Despite

the fact that the decision in the present application follows several earlier ones beginning with *Dawson v Central Bank of Belize, Civil Appeal No 18 of 2015* (judgment delivered on 20 July 2017), I have not heard the slightest murmur from within that profession, whose members are eminently qualified to speak for litigants and the general public (the most important stakeholders in the business of the administration of justice), indicating that an amendment of Order II of the Court of Appeal Rules (so as to confer on the Court the jurisdiction which, according to the decisions in question, it lacks), is desired.

[2] I have read, in draft, the judgment of Ducille JA in this application. I agree with his reasons for decision as set forth in the sixth to eighth paragraphs of that judgment. In my opinion, the correct order in the circumstances is that the application is dismissed without adjudication, for want of jurisdiction.

SIR MANUEL SOSA P

HAFIZ BERTRAM JA

[3] I have had the opportunity to read in draft the judgment prepared by my learned brother Ducille, JA and I agree that the appeal should be dismissed for the reasons stated therein.

HAFIZ BERTRAM JA

Introduction

[4] This is an application by the Appellant to re-serve the Notice of Appeal on the Third Respondent. The factual and procedural background of the application are simple though unusual.

Background

[5] On the 22nd June, 2018 the Appellant was granted leave to serve the Notice of Appeal (“Notice”) in the present action dated 6th June, 2018 out of the jurisdiction. The Order was in the following terms:

- “1. That the Court grants leave to serve the Notice of Appeal dated June 6th, 2018 on the 1st, 2nd and 3rd Respondents by registered mail to the attention of the Respondents at the following addresses:
 - (i) 1st and 2nd Respondents at 1440 15th Street, Hoxie, Kansas 67740, United States of America.
 - (ii) 3rd Respondent at 2607 N Pearly Jane Avenue, Garden City, Kansas 67846, United States of America.
2. An Order for leave to serve the Notice of Appeal upon the said Respondents by registered mail to their addresses as stated above and that the service be deemed to be good and sufficient service of the Notice of Appeal herein.
3. That the Court grants an extension of time for the service of the said Notice of Appeal dated June 6th, 2018 lodged against the decision of the Honourable Justice Sonya Young pronounced on the 21st February, 2018.

4. No Order as to costs.”

[6] The Notice was sent to all Respondents by way of registered mail to the addresses of the respective Respondents set out in the Order. The Notice sent to the Third Respondent was returned to the Appellant marked undeliverable on the 24th October, 2018. Consequently the Appellant filed an application to effect service of the Notice of Appeal on the Third Respondent at a different address. That Application is supported by the Affidavit of Carl Raney wherein the Appellant provides evidence to support his view that the Third Respondent is aware of the proceedings and by inference may be seeking to avoid service of the Notice.

[7] The Appellant has agreed to have the application determined on the papers and filed in support of the same detailed written submissions to support his contention that this Court has the jurisdiction to grant leave to re-serve the Third Respondent out of time and at a different address. The Appellant argues that the cases of *Kings Company Limited v Santa Ana Development Ltd Et al Civil Appeal No. 37 of 2018* (“*Kings Company*”) and *Sharryn Dawson v Central Bank of Belize Civil Appeal No. 18 of 2015* (“*Sharryn Dawson*”) wherein this Court concluded that it did not have the jurisdiction to grant an extension of time to serve a Notice of Appeal outside of the seven-day time limit are distinguishable from the facts of the present case and as such the principles enunciated therein do not apply.

Discussion

[8] The Appellant contends that in the present case the Appellant duly obtained an order for substituted service in accordance with the Rules of Court and acted immediately on the same. Lack of proper service on the Third Respondent was of no fault of its own, neither was it as a result of any undue delay. The Appellant posits that in these circumstances permission ought to be granted to him to re-serve the Notice of Appeal to the Third Respondent in light of it being returned as undeliverable.

[9] Order II Rule 4 of the Court of Appeal Rules provides that a copy of the Notice of Appeal shall be served on all parties directly affected by the appeal. Said service must occur within seven days after the original Notice of Appeal is filed with the Registry. The question of whether the Court has the jurisdiction to extend the time for service of the Notice of Appeal beyond the seven days has been conclusively answered by this Court in the decisions referred to at paragraph 4 above and I need not repeat the reasoning fleshed out therein except to reiterate the holdings established in that line of cases namely that in this jurisdiction there is no legal basis for this Court to grant an application for extension of time within which to serve a Notice of Appeal.

[10] The Appellant's argument that the present case is distinguishable from the facts in *Kings Company* and *Sharryn Dawson* is compelling, however a difference in facts cannot create a jurisdiction where it has been judicially determined that the said jurisdiction does not exist in law. It is for this reason that I propose the Appellant's application must be dismissed.

[11] While, as shown by my decision in *Kings Company Limited*, I am in agreement with the reasoning of the learned President in the *Sharryn Dawson* matter I am mindful of

the facts of the present case and the warning expressed by Awich, JA at paragraph 50 of his dissenting opinion therein. I encourage the Legislature and the Rules Committee to consider

making the necessary amendments to the *Court of Appeal Act and Rules*

to allow for the consideration of applications to extend time within which to serve a copy of the Notice of Appeal.

DUCILLE JA