

IN THE FULL COURT OF THE HIGH COURT OF THE SUPREME COURT OF
JUDICATURE ON APPEAL FROM THE DECISION OF A JUDGE IN CHAMBERS IN THE
HIGH COURT OF THE SUPREME COURT OF JUDICATURE IN ACTION NO. 2015-HC-
DEM-W-276

(CIVIL JURISDICTION)

BETWEEN:

CHARLES PELHAM MATTHEWS, through his
duly constituted Attorney, **STANLEY WILLS**,
agreeably with Power of Attorney No. 4535 of
2015, and registered in the Deeds Registry on the
20th day of July, 2015.

Appellant

-and-

RONDECIA ANN WALLACE, in her capacity as
the administratrix of the estate of Randolph
Wallace, deceased, whereas Letters of
Administration were granted to her by the High
Court of the Supreme Court of Judicature on the 4th
day of May, 2015, as No. 2015-HC-DEM-EST-241.

Respondent

The Honourable Justices Navindra A. Singh and Jo-Ann Barlow, Puisne Judges.

Mr. Neil Boston representing the Appellant.

Mr. Sanjeev Datadin representing the Respondent.

Heard on March 11th, April 5th, May 18th, June 20th and June 27th 2016.

DECISION

BACKGROUND

The Appellant instituted High Court action No. 2015-HC-DEM-W-276 against the Respondent on July 29th, 2015 and on July 30th, 2015 Justice Bovell-Drakes granted certain ex-parte interim injunctive orders in Chambers against the Respondent.

On October 16th, 2015, the Respondent applied ex-parte to the then Chief Justice Chang in Chambers for a discharge of the injunctive orders granted by Justice Bovell-Drakes and Chief Justice Chang granted the application, thereby discharging the orders, on November 9th, 2015.

The Appellant claims to have become aware of Chief Justice Chang's order on February 19th, 2016. The Appellant thereafter appealed the order of Chief Justice Chang on March 3rd, 2016 and has by the present application applied for a stay of Chief Justice Chang's discharge pending the hearing of the appeal.

Before considering the application for the stay pending appeal, counsel for both the Appellant and the Respondent were invited to submit written submissions to the Court as to whether Chief Justice Chang's order can be appealed.

Both Counsel laid over their written submissions, sadly, Mr. Datadin's submissions failed completely to address the issue raised by the Court.

ISSUE

Can Chief Justice Chang's order be appealed?

LAW

Legislation:

High Court Act CAP 3:02; Rules of the High Court Order 46 rule 16

Section 79 of the High Court Act; CAP 3:02

Cases referred to:

Toolsie Persaud Limited v National Industrial and Commerce Investments Ltd. and Multicinemas Guyana Inc. Appeal Nos. 66/ 67 of 2011 [Full Court of the Supreme Court of Guyana]

ANALYSIS

Let us examine the path provided for ex-parte applications with respect to applications for interim injunctions in the High Court. When a party applies ex-parte to a Judge in Chambers for an interim injunction there are two possible outcomes, it is either granted or refused.

Should the application be granted, then the applicant serves the enjoined party with the interim injunction order and an inter-partes summons for the continuation of the injunction and for the injunction to be made interlocutory.

Should the application be refused, then the applicant may simply make an application for an interlocutory injunction to the Chamber Court by way of inter-partes summons OR the applicant

may make another ex-parte application for the interim injunction to the Full Court of the Supreme Court under Order 46 rule 16 of the Rules of the High Court.

It must be noted that this application to the Full Court is **not** an appeal, it is another ex-parte application for the interim injunction.

Should this application to the Full Court be granted then the applicant serves the enjoined party with the interim injunction order and an inter-partes summons for the continuation of the injunction and for the injunction to be made interlocutory in Chamber Court.

Should this application to the Full Court be refused then the applicant may either cease all efforts in obtaining an interim injunction or the applicant may make the application for an interlocutory injunction to the Chamber Court.

Now, let's examine the position of the enjoined party. A party against whom an interim injunction has been granted by way of an ex-parte application, having been served with the injunction order and the inter-partes summons to continue that injunction has two options. That enjoined party may attend Court on the date stated in the summons to continue the injunction and proceed inter-partes OR that party may make an ex-parte application, before the return date of the summons, to a Judge in Chambers, to have that interim injunction discharged.

Should that ex-parte application be refused, then that party may attend Court on the return date of the summons to continue the injunction and proceed inter-partes OR that party may make another ex-parte application for the discharge of the interim injunction to the Full Court of the Supreme Court under Order 46 rule 16 of the Rules of the High Court.

It is noted at this point that most of the processes discussed thus far were dealt with and resolved in Toolsie Persaud Limited v National Industrial and Commerce Investments Ltd. and Multicinemas Guyana Inc.

Should this application to the Full Court be refused then the enjoined party will have to deal with the inter-partes summons to continue that injunction back in Chamber Court.

Should this application to the Full Court be granted then the interim injunction would stand discharged and the party who had applied for the injunction order may either cease all efforts in

obtaining an injunction or that party may make an application for an interlocutory injunction to the Chamber Court.

Should the Judge in Chambers grant the ex-parte application for discharge then the interim injunction would stand discharged and the party who had applied for the injunction order may either cease all efforts in obtaining an injunction or that party may make an application for an interlocutory injunction to the Chamber Court.

Counsel for the Appellant argues that Section 79 of the High Court Act; CAP 3:02 entitles his client to appeal this ex-parte discharge.

Where a party applies for an injunction by way of an inter-partes summons, after hearing all parties, should the Court grant an injunction, such an injunction would be an interlocutory injunction, temporary, until the trial and final determination of the cause, however, where a party applies for an injunction by way of an ex-parte application, after hearing **only** that party, should the Court grant an injunction, such an injunction would be an interim injunction, provisional, until the Court has had the opportunity to hear both sides with respect to the application for injunction.

Since an interim injunction is provisional in nature, the remedy of the enjoined party is not an appeal but rather one of the options aforementioned. Similarly, the discharge of that provisional order cannot attract an appeal.

As was stated Toolsie Persaud Limited v National Industrial and Commerce Investments Ltd. and Multicinemas Guyana Inc., *“He who picks up a particular procedural sword can perish by the same procedural sword”*.

Had the Respondent’s ex-parte application for discharge been refused by the Chief Justice and had she renewed her application to the Full Court as she was entitled to do and further had the Full Court granted her application to discharge, the Appellant would have had no right of appeal against the Full Court’s order to discharge, how then can such a right exist against the Chief Justice’s order.

In the circumstances discussed above, section 79 of the High Court Act would not be applicable, since this is not an interlocutory appeal. Further, Chief Justice Chang's order is not a final order as contemplated in section 6 of the Court of Appeal Act; CAP 3:01.

In the circumstances, the application for a stay of Chief Justice Chang's order pending appeal is refused.

No order as to costs.

Justice N. A. Singh

I concur.

Justice J. Barlow