IN THE COURT OF APPEAL OF BELIZE, A.D. 2020
CIVIL APPLICATION No 5 OF 2017

IN THE MATTER OF AN INTENDED APPEAL

LOPEZ EQUIPMENT CO. LTD. **CLAIMANT/1ST RESPONDENT**

AND

PASA BELIZE LTD. **DEFENDANT/2ND RESPONDENT**

ARIEL MITCHELL **INTERPLEADER CLAIMANT/APPLICANT**

BEFORE:

The Hon. Justice Samuel Awich — Justice of Appeal
The Hon. Madam Justice Minnet Hafiz Bertram — Justice of Appeal
The Hon Justice Murrio Ducille — Justice of Appeal

N Barrow for the claimant/1st respondent.
I Swift for the defendant/2nd respondent.
R Williams SC for the interpleader claimant/applicant.

22 October 2018 and 28 July 2020

AWICH JA

[1] The matter for our decision is a notice of motion dated 22 September 2017. It is a fresh application by Mr. Ariel Mitchell for leave to appeal a ruling of the learned trial judge Arana J. (now the Chief Justice) made on 27 February 2017, in the Supreme Court. In that decision Arana J. dismissed, "an interpleader application," by Mr. Mitchell

regarding an attachment of a vehicle on a writ of execution. Mr. Mitchell said that the vehicle was his property. The writ of attachment had been issued in Claim No. 244 of 2016. Subsequent to her ruling and dismissal of the proceedings, Arana J. refused an application for leave for Mr. Ariel Mitchell to appeal the ruling and dismissal to the Court of Appeal. Mr. Mitchell has now made his application to the Court of Appeal, for leave to appeal.

[2] The background is this. On 25 October 2016, Lopez Equipment Co. Ltd., cited in this application as, "the Claimant/First Respondent", obtained a default judgement for $1,755,868.86 plus interest at 10% per annum, against Pasa Belize Ltd., cited here as, "Defendant/Second Respondent". On 11 November 2016, Lopez Equipment Co. Ltd. filed a writ of execution for attachment of goods owned by Pasa Belize Ltd., and the writ of execution issued. On 30 November 2016, the Marshall of the Supreme Court attached a vehicle which was in the custody of Mr. Mitchell. It was licensed and registered in the name of, "Pasa Belize Ltd., in care of Ariel Mitchell".

[3] As the consequence, Mr. Mitchell served a, "notice of claim of goods," dated 3 February 2017, on the Marshall. He in turn served the notice on Lopez Equipment Co. Ltd., the judgment creditor. Lopez Equipment Co Ltd., gave notice dated 24.2.2017 to the Marshall, rejecting the claim of Mr. Mitchell to the vehicle. The stage was set, one would have thought, for an interpleader application to the Supreme Court by the Marshall under ***R.54.1 (2) read with R. 54.1(1)(b) of the Supreme Court (Civil Procedure)***, ***Rules***, ***2005***. The Marshall did not make the application.

[4] Mr. Mitchell himself filed his own "application for relief" to the Supreme Court. It was dated 1 February 2017. The date on which it was filed is not shown in the record. It was heard on 27 February 2017, by Arana J. Mr. Mitchell described the application in the Supreme Court as, "an interpleader application" or "interpleader proceeding". In this Court, his learned counsel, Mr. R. Williams SC, continued to describe the application as, "an originating application commencing interpleader proceeding".

[5] At the hearing of Mr. Mitchell's application on the 27 February 2017, before Arana J., learned counsel Ms. N. Barrow, for Lopez Equipment Co. Ltd., made an objection that, Mr. Mitchell had no **locus standi** in the interpleader application made under R54 of the Supreme Court (Civil Procedure) Rules, 2005. Arana J. upheld the objection and dismissed Mr. Mitchell's application. He then applied to the same judge for leave to appeal the order dismissing his "interpleader application". Arana J. refused leave on 28 June 2017.

[6] In a side, but separate development in the related claim, No. 244 of 2016, an application was made by Pasa Belize Ltd., for an order to set aside the default judgement entered on 21 October 2016, against Pasa Belize Ltd., on which the writ of execution which became the subject matter in this application issued. On 27 January 2017, Arana J. dismissed the application, but she granted leave to Pasa Belize Ltd., to appeal, and extended time to appeal. On an application by Lopez Equipment Co. Ltd., this Court has set aside the order for leave granted by Arana J. in Claim No. 244 of 2016. So, the default judgment entered on 21 October 2017, and the writ of execution

issued on it remain valid. That writ of execution is the court process on which the attachment of the vehicle claimed by Mr. Mitchell was made.

[7] Back to this matter, Mr. Mitchell having had his interpleader application dismissed, applied anew by the notice of motion dated 22 September 2017, to this Court for leave to appeal the decision of Arana J. made on 27 February 2017, dismissing his "interpleader application".

[8] The application and grounds are as follows:

"NOTICE OF MOTION FOR LEAVE TO APPEAL

(Section 14 (3) (b); Order II, Rules 2 (1)

TAKE NOTICE, that the Court of Appeal at Belize City, Belize will be moved on Friday the 16 day of March, 2017at 10:00 o' clock in the forenoon or as soon thereafter as counsel can be heard on the hearing of an application on the part of the Applicant for the following orders:

1. The Hon. Madam Justice Arana having refused leave to appeal the Order made on 27th February, 2017 in Supreme Court Claim No. 244 of 2016 between Lopez Equipment Co. Ltd. and Pasa Belize Ltd. dismissing the Applicant's application for relief by way of interpleader, this Court doth hereby grant the Applicant leave to appeal the said Order.

2. That the Applicant shall file his Notice of Appeal within twenty-one (21) days of this Order.

This application is made on the following grounds:

1. The Applicant is desirous of appealing against the Order of the Hon. Madame Justice Michelle Arana made on 27th February, 2017 in the Supreme Court Claim No. 244 of 2016 between Lopez Equipment Co. Ltd. and Pasa Belize Ltd., ("the Order").
2. The Order made is a final order of a Judge of the Supreme Court made in Chambers or an interlocutory order, and the Applicant requires leave to appeal.
3. The Applicant sought leave to appeal from the court below by way of Notice of Application dated 10th April, 2017. The application was heard and dismissed by the Hon. Madam Justice Arana on 28th June, 2017. The judge having refused leave to appeal, the Applicant now applies to the Court of Appeal for leave to appeal in accordance with section 14(3)(b) of the Court of Appeal Act and Order II, rule 2(1) of the Court of Appeal Rules.
4. The grounds of the intended appeal are arguable with reasonable prospect of success and there is a prima facie case that the learned trial judge erred in law.
5. It is just and proper and in the interest of good administration of justice for leave to appeal to be granted.

AND TAKE NOTICE that the intended Appellant will seek a further order that the costs of this Application by Notice of Motion be paid by the 1st Respondent and any further order as may be just in the circumstances.

A draft of the Order sought is attached.

The Affidavit of Ariel Mitchell filed herein supports this application.

DATED the 28 day of September, 2017"

The case for Mr. Mitchell.

[9] Learned counsel Mr. R. Williams, SC, for Mr. Mitchell, made an impassioned speech about the justice in allowing Mr. Mitchell to pursue, by the intended appeal, his claim for the vehicle, which Mr. Williams said was registered in the name of Mr. Mitchell, and he paid loan instalments for.

[10] On the whole, Mr. Mitchell's case was a very short one. He bought the vehicle by a bank loan, registered it in the name of Pasa Belize Ltd., in order to take advantage of a tax waiver obtained by Pasa Belize Ltd. He used the vehicle when working on a construction job of Pasa Belize Ltd., obtained by a contract with the Government of Belize. He is a shareholder and a director in the company. He was still paying the loan on the vehicle when the Marshall seized it.

[11] The proposition of law that we gathered from Mr. Williams' submission was that, Mr. Mitchell fitted the statutory description of a person authorized to bring an interpleader proceeding under ***R54.1(1)(a) of the Supreme Court (Civil Procedure) Rules 2005***, in the circumstances. He was, "a person under liability in respect of goods", the vehicle, and further that, proceedings were being taken against Mr. Mitchell, counsel argued.

[12] Mr. Williams submitted that, Arana J. erred when she ruled that, Mr. Mitchell did not have **locus standi** in making the interpleader application; she misled herself by stating that, "a person under liability", must be a "stakeholder". Counsel argued that, the word "stakeholder" was not mentioned in R54 of the Supreme Court (Civil Procedure) Rules, 2005, at all. He suggested that, the error made by Arana J. in the meaning of the description "a person under liability" stemmed from the judge using the word "stakeholder," and from the change in the practice in the Supreme Court under the old Rules of Court to the practice under the new Rules of Court, 2005.

The case for Lopez Equipment Co. Ltd.

[13] Learned counsel Ms. Barrow opposed the application to this Court for leave to appeal to this Court. She submitted that, the order made by Arana J. on 27 February 2017, was a final order, not an interlocutory order, so leave was not required to appeal the order. Counsel contended that, the order was final because it ended the

interpleader proceedings; and that, a contrary order would also have ended the interpleader proceedings. Counsel cited **John *Rudon v Santiago Castillo Ltd., Civil appeal 28 of 2016***. She also argued that, Mr. Mitchell made an application in claim No. 244 of 2016, which he was not a party to, the claim had been concluded, nothing was pending of it, so nothing was interlocutory. Counsel further argued that, the fact that, the applicant filed a notice of appeal ahead of the application for leave in the Supreme Court, was an admission that, leave was not required to appeal.

[14] Counsel submitted furthermore that, in any case, the application to this Court for leave, and the appeal were filed later than the twenty one days limit. In the case of the application for leave, 28 days after the decision of the judge on 27 February 2017; and in the case of the notice of appeal, one month and 14 days after. Counsel contended that, the application for leave should have been filed within twenty-one days after Arana J. refused leave. It was out of time.

[15] The submission by Ms. Barrow about the decision of Arana J. was that, Arana J. did not err in dismissing the application by Mr. Mitchell. Although counsel suggested that, the judge decided the interpleader proceedings finally on the merit, counsel submitted that, Mr. Mitchell was not a person referred to in R.54.1(1)(a) of the CPR, 2005, as a person under liability who could bring an interpleader application. The reason Mr. Mitchell was not a person under liability was that, no proceedings had been brought against Mr. Mitchell, counsel contended.

The reply case for Mr. Mitchell.

[16] Mr. Williams made answering submissions. Regarding whether leave was required to appeal the decision on 27 February 2017, Mr. Williams submitted that, leave was necessary because the judge did not decide the issue raised in the interpleader proceedings and also dismissed the proceedings on the ground that, it was brought prematurely. So, the decision was interlocutory, leave was required to appeal it. Further, counsel submitted that, the interpleader application was a separate free standing application from Claim No. 244 of 2016, and the default judgment in it; no question of a non-party, Mr. Mitchell, making an application under Claim No. 244 of 2016 arose.

[17] Regarding the application to this Court for leave being out of time, Mr. Williams' submission was that, no time limit is stated in the Rules for bringing the new application in the Court of Appeal, after leave to appeal has been refused in the Supreme Court. He submitted that, in that event, the law is that, the new application must be brought within a reasonable time. He submitted further that, 28 days after was a reasonable time.

Determination.

[18] It is not necessary to decide whether Arana J. erred in deciding that, Mr. Mitchell's "application for relief" was "premature." Certainly the incomplete facts show some

irregularity. Although the application was dated 1 February 2017, the date on which it was filed in the court was not shown on the application, or deposed to. If the application was also filed on 1 February 2017, it would have been filed before Mr. Mitchell gave notice of his claim to the Marshall on 3 February 2017. Moreover, notice of the date of hearing, 27 February 2017, could not have been given at least 14 days before as required by the Rules. Lopez Equipment Co. Ltd. gave notice rejecting Mr. Mitchell's claim only on 24 February 2017, just three days before the date of hearing.

[19] We decided this application for leave to appeal mainly by considering whether there is any prospect of succeeding on appeal on the ground that, Arana J. erred in ruling that, Mr. Mitchell did not have **locus standi** for bringing "the application for relief" under ***Part 54 of the SC(CPR), 2005***, to commence an interpleader proceeding.

[20] The question, whether a decision of a trial judge is interlocutory is likely to continue to vex attorneys and judges for some time. So far, decisions of trial judges cannot fit neatly into the categories of "interlocutory" or "final". We in Belize are not alone in grappling with the difficultly. It prompted Lord Denning MR, in ***Salter Rex & Co. v Ghosh [1971] 2 All ER 865*** to say that: Lord Awerstone CJ was right in logic, but Lord Esher MR was right in experience. The full passage at page 866 is the following:

> "*Then Dr. Ghosh sought to appeal from that refusal. Unfortunately, the lawyers advising Dr. Ghosh made a mistake. They thought it was a final appeal and that they had six weeks in which to appeal. They allowed four weeks to pass and then, on 3rd March 1971, they gave notice of appeal*.

They sought to lodge it with the officer of the court; but the officer of the court refused to accept it. He said that it was an interlocutory appeal and not a final appeal; and that it ought to be lodged and set down within 14 days not six weeks.

There is a note in the Supreme Court Practice 1970 under RSC Ord 59, r 4, from which it appears that different tests have been stated from time to time as to what is final and what is interlocutory. In Standard Discount Co v La Grange and Salaman v Warner, Lord Esher MR said that the test was the nature of the application to the court and not the nature of the order which the court eventually made. But in Bozson v Altrincham Urban District Council, the court said that the test was the nature of the order as made. Lord Alverstone CJ said that the test is: 'Does the judgment or order, as made, finally dispose of the rights of the parties?' Lord Alverstone CJ was right in logic, but Lord Esher MR was right in experience. Lord Esher MR's test has always been applied in practice. For instance, an appeal from a judgment under RSC Ord 14 (even apart from the new rule) has always been regarded as interlocutory and notice of appeal had to be lodged within 14 days. An appeal from an order striking out an action as being frivolous or vexatious, or as disclosing no reasonable cause of action, or dismissing it for want of prosecution - every such order is regarded as interlocutory: see Hunt v Allied Bakeries Ltd. So I would apply Lord Esher MR's test to an order refusing a new trial. I look to the application for a new trial and not to the order made. If the

application for a new trial were granted, it would clearly be interlocutory. So equally when it is refused, it is interlocutory. It was so held in an unreported case, Anglo-Auto Finance (Commercial) Ltd v Robert Dick, and we should follow it today."

[21] We have concluded that, Mr. Mitchell required leave to appeal the decision of Arana J. made on 27 February 2017. The decision was interlocutory in nature. Mr. Mitchell's application for leave has been dismissed in the Supreme Court, he is entitled to apply anew to this Court-see ***S.14 (3) (b) of the Court of Appeal Act***; ***O.II.R. 2(1); and Attorney General and Others v Jeffrey Prosser and Others***, ***Civil Appeal No. 7 of 2007***.

[22] Our task is to decide, on the material before us and the law, whether there are grounds on which we may grant leave to Mr. Mitchell for bringing his appeal against the interlocutory decision of Arana J., made on 27 February 2017, that Mr. Mitchell did not have **locus standi** in the application he brought for interpleader proceeding relief, he was not the proper person under ***R. 54.1(1) of the Supreme Court (Civil Procedure) Rules, 2005***. The judge also decided that, Mr. Mitchell's application was premature. Our role is not an appellate one at this stage.

[23] The law that we must apply to decide whether or not to grant leave to appeal has been settled in, ***Belize Telemedia Ltd v Attorney General and Others, Civil Case Appeal No. 23 of 2008***. In the case, this Court adopted ***Practice Note (Court of***

Appeal: Procedure) [1992] 1All ER 186**,** in England, as the law to be applied in our courts when considering an application for leave to appeal. That law is this:

> *"… … . The general rule applied by the Court of Appeal, and thus the relevant basis for first instance courts deciding whether to grant leave, is that leave will be given unless an appeal would have no realistic prospect of success. A fanciful prospect is insufficient. Leave may also be given in exceptional circumstances even though the case has no real prospect of success if there is an issue which, in the public interest, should be examined by the Court. Examples are where a case raises questions of great public interest or questions of general*
>
> *policy,… … ."*

The rest of the law which concerns time saving and other advantages gained by not deciding an interlocutory appeal while the trial lasts, and instead deciding all the issues at trial, does not apply to this matter because a default judgment has been entered, the claim is no longer pending.

[24] So, we proceed to examine the intended grounds of appeal and apply the law. The intended grounds of appeal for which Mr. Mitchell seeks leave from this Court to appeal are the following:

> "1. It is just and convenient for leave to be granted.
>
> 2. There is **a prima facie** case that, the trial judge erred in law.

3. The appeal will involve a question of general principle to be decided for the first time as it relates to the proper interpretation of Part 54 of the Supreme Court (Civil Procedure) Rules, 2005.
4. The question to be decided on appeal is one of grave importance and general public interest as it relates to the order of the Hon. Madame Justice Arana because the said order constitutes a radical departure from the established application and practice regarding interpleader proceedings in Belize."

[25] The question is, do the intended grounds of appeal disclose prospect of succeeding? It is our unequivocal view that, Mr. Mitchell has not demonstrated to this Court, on the facts and the law that, the intended grounds of appeal have or will have any, let alone any realistic prospect of success. It is, our view that, the intended appeal is, bound to fail. That also answers the submission that, the intended appeal has, "**a prima facie case** that the trial judge erred in law." There is no such a **prima facie case** in the record before us. We hasten to warn though that, we do not accept the suggestion that, **a prima facie case** is necessary for leave to appeal to be given-see ***the Belize Telemedia Ltd v Attorney General and Others case, and Practice Note (Court of Appeal: Procedure) [1999] I All ER 186 (England)*** for the correct law.

[26] Regarding the submission that, "the appeal involves a question of general principle to be decided for the first time", and the submission that, "the question on appeal is one of grave importance and general public interest", our observation is that, there have

been many court cases in which people who were not parties to court judgments have claimed property that have been attached on writs of execution. Arana J. in her decision referred to one of the cases that she had just decided. In this court the case was referred to simply as ***Gianni Castillo***. Generally such cases in which other people claim attached property present no special circumstances or public interest. The claim of Mr. Mitchell to the vehicle attached, the subject of this application, is no exception.

[27] In any case, our view is that, Mr. Mitchell would have an impossible task to persuade the Court of Appeal that Arana J. erred in her interpretation of R54.1(1) (a) of the Rules, and ruling that, Mr. Mitchell was not a person under liability in respect to the vehicle, he was not a stakeholder. For convenience **R54** states as follows:

54.1 (1) This Part deals with the situation where-

(a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels, and proceedings are taken against him, or are likely to be taken against him by two or more persons making adverse claims in respect of the debt, money, goods or chattels; or

(b) a claim is made to any money, goods or chattels seized or intended to be seized by the Marshall, or the proceeds or value of such goods or chattels.

(2) *The person under a liability under paragraph (1) (a) or the marshall may apply for relief.*

(3) *That procedure is called an "interpleader".*

54.2 (1) *A person who makes a claim against any money, goods or chattels seized or about to be seized by the marshall must give written notice to the marshall.*

(2) *The notice must-*

(a) *give that person's name and address for service;*

(b) *identify the money, goods or chattels claimed; and*

(c) *set out the grounds of the claim.*

(3) *Forthwith on receipt of the claim the Marshall must give written notice to the judgment creditor.*

(4) *Within 7 days after receiving the notice the judgment creditor must give notice to the marshall admitting or disputing the claim.*

(5) *Where the judgment creditor gives notice admitting the claim-*

(a) *he is liable only for the fees and expenses of the marshall incurred before the Marshall receives the notice;*

(b) the marshall must withdraw from possession of the money, goods or chattels; and

(c) the marshall may apply to the court for an order restraining any action being brought in respect of having taken possession of the money, goods or chattels.

(6) Where the judgment creditor gives notice disputing the claim or fails to give notice and the claim is not withdrawn, the marshall may apply to the court for relief under this Part.

54.3 (1) A person interpleads by filing an application for relief by way of interpleader.

(2) The application must be filed in the court office.

(3) An application other than by the Marshall must be supported by evidence on affidavit that the applicant-

(a) claims no interest in the subject matter in dispute other than for charges or costs;

(b) does not collude with any of the claimants to the subject-matter, and

(c) is willing to pay or transfer that subject-matter into court or dispose of it as the court may direct.

54.4 (1) An application by the marshall must be served on the judgment creditor and on the person claiming the money, goods or chattels.

(2) An application by any other person must be served on all persons making a claim to the money, goods or chattels.

(3) The application must be served not less than 14 days before the date fixed for hearing of the application.

54.5 (1) On an application by the marshall the court may, unless any claimant objects, summarily determine the question in issue between the parties.

(2) On any other application the court may order that-

(a) any person claiming the money, goods or chattels be made a defendant in any pending claim relating to such money, goods or chattels either in addition to, or in substitution for, the application for relief; or

(b) the issue between two or more persons claiming the money, goods or chattels be tried, and may direct which person claiming is to be claimant in those proceedings and which the defendant,

(3) Where a person making a claim to any money, goods or chattels who has been served with the application-

(a) fails to attend the hearing; or

(b) fails to comply with any order made by the court,

The court may make an order barring that person and any persons claiming under that person forever from prosecuting any claim to the money, goods or chattels as against the applicant and all persons claiming under the applicant.

(4) An order under paragraph (3) does not affect the rights as between the persons claiming the money, goods or chattels.

54.6 On an application by a marshall who has seized any goods or chattels where a person claims to be entitled to such goods by way of security, the court may order that all or part of such goods or chattels be sold and the proceeds applied in accordance with order.

[28] The entire ***Part 54 of the Rules*** is written in a straightforward way. It is easy to understand. The Part provides in details the entire law of procedure for interpleader proceeding. It provides among others: for preliminary requirements leading to the interpleader proceeding proper; for who may bring the initial "application for relief" to court; for the Court identifying and naming who will be the interpleader claimant or interpleader defendant; for the court to make any necessary order to preserve the property; for the duty of the court to identify the issue to be tried; and for the court to decide whether it will try the matter summarily or it will refer it to full trial.

[29] The application by the Marshall or the person under liability in respect to property is appropriately referred to as, "an application for relief," without specifying the relief, because at the initial stage, the court merely inquiries into the application in order to make preliminary orders such as an order, identifying the proper parties and the issues, and an order directing that, the claims may be determined summarily or referred to full trial.

[30] Both counsel suggested to us that, the law of interpleader proceeding changed in Belize when the Supreme Court (Civil Procedure) Rules, 2005, (the new Rules) replaced the Supreme Court Rules, 1989, (the old Rules). Each counsel submitted that, the change favours each counsel's submission. There is no truth in that, in regard to persons who may bring applications to commence interpleader proceeding, the issue in this matter. In the old Rules, interpleader proceeding was provided for in **Order LXIII**. The provisions in ***Part 54 of the Supreme Court (Civil Procedure) Rules, 2005*****,** regarding the persons who may bring interpleader proceedings remain the same as those in ***Order LXIII of the Supreme Court Rules, 1989***, except in some wording.

[31] To illustrate the similarity, I set out here the provisions in the Old Rules regarding the persons authorized to bring the initial "application for relief" and the provisions for the requirements for the contents of the supporting affidavits. They are the following:

ORDER LXIII

Interpleader

1. *Relief by way of interpleader may be granted-*

   (a) Where the person seeking relief (in this Order called the applicant) is under liability for any debt, money, goods or chattels, for or in respect of which he is, or expects to be, sued by two or more parties (in this Order called the claimants) making adverse claims thereto;

   (b) Where the applicant is the Registrar or other officer duly charged with the execution of process, and claim is made to any money, goods or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued.

2. *The applicant must satisfy the Court by affidavit (Form No. 30, App. B. Pt. II.) or otherwise-*

   (a) that the applicant claims no interest in the subject-matter in dispute, other than for charges or costs; and

   (b) That the applicant does not collude with any of the claimants; and

   (c) That the applicant, except where he is the Registrar or other officer duly charged with execution of process, who has seized goods and who has withdrawn from possession in consequence of the execution creditor admitting the claim of the claimant under

Rule 16 of this Order, is willing to pay or transfer the subject-matter into Court, or to dispose of it as the Court may direct.

Compare these provisions to the provisions in ***R54.1*** and ***R54.2 of the Supreme Court (Civil Procedure) Rules***, ***2005***, quoted above.

[32] So much for the law. The crux of the intended appeal is the complaint that, the trial judge erred in holding that, Mr. Mitchell had no **locus standi** to bring the application under ***Part 54 Supreme Court (Civil Procedure)***, ***Rules, 2005***, for interpleader proceeding. Our answer is that, there is no prospect of Mr. Mitchell succeeding on that intended ground. The persons authorized to bring the application are specified in ***R 54.1 (2)***, read with ***R 54.1(1) (a)*** and ***(b)***. They are persons under liability in respect to goods, but who have no personal interest in the goods, or the Marshalls of the Supreme Court. Mr. Mitchell was not a person in one of those two categories. So, he was not qualified to bring the application commencing an interpleader proceeding, he had no **locus standi**.

[33] Mr. Mitchell contended before the trial judge, and before this Court that, he was a person under liability because his vehicle was seized by the Marshall, and that meant that, the Marshall had taken proceedings against him. That contention is erroneous. An interpleader procedure ***under R54*** is a specialized procedure-compare the specialized procedure for Constitutional and Administrative Law under **Part 56 Supreme Court (Civil Procedure)**, **Rules**, **2005**. The meaning of a person under

liability for purposes of interpleader proceeding has been extensively developed in the common law. It does not include a person in the present circumstances of Mr. Mitchell.

[34] To bring an interpleader proceeding, Mr. Mitchell must be under liability for debts, goods, money or other chattels. Mr. Mitchell could qualify under that requirement. Secondly, he must have proceedings brought or are likely to be brought against him by two or more persons making adverse claims in respect to the same debts, goods, money or other chattels. Mr. Mitchell does not qualify under that requirement. No proceedings were or are being brought against him. He was not faced with two or more adverse claims in respect to the same vehicle. Examples are: ***Watson v Park Royal (Caterers) [1961] WLR 727, and Greatorex v Schackle [1895] 2QB 249***. Thirdly, when making the interpleader application, the applicant must state in an affidavit that, he claims no personal interest in the debts, goods, money or other chattels, other than for costs and charges, he does not collude with another claimant, and is willing to surrender the property. Mr. Mitchell does not qualify under this requirement. He claims personal interest in the vehicle.

[35] The answer to Mr. Williams' impassioned speech is that while Mr. Mitchell may not qualify to commence an interpleader proceeding, he may qualify to go to court by some other procedure for some cause of action, in the event the Marshall does not take up Mr. Mitchell's claim by interpleader proceeding.

[36] Interpleader proceeding under ***R.54 Supreme Court (Civil Procedure)***, ***Rules***, ***2005***, is a procedure by which the Marshalls of the courts or other persons referred to in the common law as stakeholders, can protect themselves by bringing two or more opposing claimants to the same goods to court, so that they may make their adverse claims against one another, and the Marshalls or stakeholders are freed from liability. The Marshalls or the stakeholders do not themselves claim the property. It is a special procedure for the particular purpose.

[37] There are two categories of interpleader proceedings, the Marshall's interpleader, initiated by the Marshall who has seized goods in the execution of a writ of execution, or initiated by any other official authorized by law to seize or hold property. Examples of such officials are, the Commissioner of Police, in respect to impounded or found property, and the Commissioner of Excise and Customs. The second category is a stakeholder interpleader, initiated by any other person who holds property that two or more persons who have adverse claims to the same property claim. The stakeholder himself does not have personal interest in the property. Obvious examples of stakeholders are transporters of goods, attorneys and estate agents.

[38] Arana J. was obviously familiar with the term stakeholder used in the common law. She did not err in applying the requirements of a stakeholder to Mr. Mitchell in order to determine whether he qualified to bring an application initiating an interpleader

proceeding under ***R54.1 (2) read with R.54.1 (1) (a) of Supreme Court (Civil Procedure)***, ***Rules***, ***2005***.

[39] It would not be necessary to decide the question that, this application for leave to appeal was made after twenty-one days after the trial judge had refused an application for leave and the application was time-barred, but for the efforts of both counsel. We concluded that, although the ***Court of Appeal Rules, Cap. 90 SI****,* do not expressly state a time limit for filing the renewed application to the Court of Appeal for leave, after the Supreme Court has rejected the first application, an applicant in a renewed application to the Court of Appeal for leave must file his application within twenty-one days, otherwise he will be time-barred.

[40] We were persuaded by the following. ***Section 16 of the Court of Appeal Act*** requires an applicant for leave to appeal to file his application within twenty-one days. If he is successful, he is required to file his notice of appeal together with the order for leave within twenty-one days - see ***O. II r. (1)*** *and* ***(2) of the Court of Appeal Rules***. Mr. Williams' submission was that, there was no requirement to file the renewed application for leave within twenty-one days, the applicant was required to file the application in a reasonable time; and that, twenty-eight days were a reasonable time.

[41] We were unable to accept that submission. It would create an odd situation that, when an applicant wishes to apply for leave for the first time, he is required to do so

within twenty-one days. When he succeeds this first time he applies, he is restricted to filing his notice of appeal together with the order granting leave within twenty-one days. But when he does not succeed the first time, and wishes to apply the second time, according to Mr. Williams, he may be given a longer time than twenty-one days. So, that way, in our view, he receives an automatic waiver of sorts of the twenty-one days, a bonus of sorts. We do not accept that as the intention in ***s.16 of the Act and O.II rr. 2 (1)*** and ***(2)***. We hold that, the application to this Court for leave was late and time-barred.

[42] The orders that we make are that:

(1) the application by Mr. Ariel Mitchell dated 22 September 2017, to this Court for leave to appeal the decision of Arana J. made on 27 February 2017, dismissing Mr. Mitchell's "interpleader application" is refused and dismissed;

(2) costs of this application is awarded to Lopez Equipment Co. Ltd., to be agreed or taxed; the order for costs is provisional, it shall become final in

seven days, unless parties apply in seven days for a different order for costs. The Marshall is not a party to this application.

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AWICH JA

HAFIZ-BERTRAM JA

[43] I have read in draft the judgment prepared by my learned brother, Awich JA and I am in agreement with the disposition of the appeal and the orders proposed therein.

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HAFIZ-BERTRAM JA

DUCILLE JA

[44] I have had the benefit of reading the draft judgment prepared by the Learned Justice Awich. I am in full agreement with his reasoning, conclusion and order and there is nothing that I can further add.

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DUCILLE JA