

**IN THE HIGH COURT OF BELIZE, A.D. 2023**

**CLAIM No. 647 of 2020**

**BETWEEN**

**EARL ARTHURS**

**CLAIMANT/APPLICANT**

**AND**

**JASMINE MIDDLETON**

**DEFENDANT/RESPONDENT**

**BEFORE THE HONOURABLE MADAM JUSTICE PATRICIA FARNESE**

**HEARING DATE:** June 2, 2023

**APPEARANCES:**

Mr. Allister T. Jenkins, Counsel for the Claimant/Applicant.

Ms. Naima Barrow, Counsel for the Defendant/Respondent.

**DECISION ON APPLICATION FOR RELIEF FROM SANCTIONS AND  
STAY OF PROCEEDINGS**

**Introduction:**

[1] This dispute arises from a costs order awarded against Mr. Arthurs after he was unsuccessful in a claim against Ms. Middleton. Mr. Arthurs argues that award was erroneously calculated and wishes to appeal the award. He is, however, out of time to file his notice of appeal. Mr. Arthurs filed his request for relief on May 3, 2023, almost one year after the costs order was made on May 10, 2022. Rule 60.5 of the *Supreme Court (Civil Procedure) Rules, 2005* (CPR) requires that notice on an

appeal be filed within 28 days of receiving notice of the decision. He asks this Court to use its discretion under CPR Rule 26.1(2)(c) to extend the time permitted for filing the notice. Mr. Arthurs also seeks a stay of the proceedings pending the appeal.

[2] Ms. Middleton opposes the application on the ground that the High Court does not have the jurisdiction to hear an appeal of a costs order. She also argues that the application is an abuse of process because she says the previous Justice assigned to this file already heard and disposed of an application for appeal. In addition, she states that Mr. Arthurs cannot satisfy the mandatory requirements for granting relief from sanctions.

[3] The subsection of the *Senior Courts Act 2022*<sup>1</sup> that deals with appeals of orders of the Registrar conflicts with the list of matters which are appealable to the Court of Appeal. I find that the principle of statutory interpretation that the specific overtakes the general resolves the conflict. The application is dismissed because the High Court does not have the jurisdiction to hear appeals of costs orders.

#### **Issues:**

[4] This application raises the following issues:

- 1. Was Mr. Arthurs given permission by the High Court to bring this application?**
- 2. Does the *Senior Courts Act 2022* provide jurisdiction to the High Court to hear this application?**
- 3. If the High Court has jurisdiction, is the present application an abuse of process because the court heard and dismissed a previous application to appeal the costs order?**
- 4. If the application is not an abuse of process, shall relief from sanctions be granted?**
- 5. If relief from sanctions is awarded, should the costs order be stayed pending the outcome of any appeal?**

#### **Analysis:**

- 1. Was Mr. Arthurs given permission by the High Court to bring this application?*

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<sup>1</sup> Act. No. 27 of 2022 [*Senior Courts Act*].

[5] Nine days after the costs order was issued, Mr. Arthurs applied under section 5(2) of the *Supreme Court of Judicature Act*<sup>2</sup> to amend the costs order or to remit the bill to the Judge for assessment. That application was dismissed on December 1, 2022. The parties dispute Shoman J's reason for dismissing the application. Mr. Arthurs argues that Shoman J did not consider the merits of the application, but dismissed the application because it was not in the proper form and ordered that the appeal be filed in the proper form. Ms. Middleton disagrees and says the substance of the application was considered and the application denied. Mr. Arthurs changed attorneys after the first appeal application was denied. His new attorney could not assist the Court with understanding the basis of Shoman J's decision.

[6] I find that the Shoman J dismissed the first appeal application without granting permission to refile the application. Shoman J made notes of her decision on a hardcopy of the application in the file. The Marshal also recorded the substance of the decision in the electronic case management system. Both set of notes indicate that the application was denied because the Registrar's certificate was not provided. Neither set of notes mentions permission to reapply. The Marshal's notes, however, speak to the costs awarded and the fact that Ms. Middleton's application to cross-examine Mr. Arthurs was adjourned. In addition, the draft order dismissing the application to appeal costs does not mention permission to refile the appeal application. That order is endorsed by Ms. Middleton's former attorney and by Shoman J. They would not have endorsed that order if permission to refile the application was given to Mr. Arthurs. Perhaps, Mr. Arthurs misunderstood a discussion that Shoman J's decision could be appealed.

[7] I also find that I cannot infer that Shoman J dismissing the application on the basis of noncompliance with the rules means she did not turn her mind to and consider the merits of the application. Shoman J's notations on the hard copies of the Parties' submissions indicate that she reviewed the written submissions. The lawyer for Ms. Middleton also confirmed that the full oral submissions were provided when I inquired during the oral hearing of the present application. It may well be that Shoman J did not feel the need to provide further reasons as the non-compliance was fatal to the application.

[8] An applicant does not have a right to have their application reheard after it is dismissed for non-compliance with the rules once the non-compliance is remedied. The Court must decide if Mr. Arthurs is attempting to ask the Court to rehear the same matter. Therefore, I turn to the question of jurisdiction.

2. *Does the Senior Courts Act 2022 provide jurisdiction to the High Court to hear this application?*

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<sup>2</sup> Cap. 91, The Substantive Laws of Belize, Rev. Ed. 2020.

[9] No. Costs orders, including those made by the Registrar, are appealable to the Court of Appeal. The High Court does not have the jurisdiction to hear Mr. Arthurs' application for leave to appeal. The High Court also does not have jurisdiction to decide the application for a stay of the order pending the appeal.

[10] The earlier application decided by Shoman J was an appeal based on section 5 of the *Supreme Court of Judicature Act* which is identical to section 11 of the *Senior Courts Act 2022*:

11(1) The Registrar shall have power and jurisdiction to do such of the things and transact such of the business which by virtue of any enactment, or by custom, or by the rules and practice of the Court, are now done and transacted by a judge sitting in chambers as may from time to time be prescribed by rules of court,

Provided that the Registrar shall have no jurisdiction in respect of matters relating to the liberty of the subject.

(2) Any person affected by any order or decision of the Registrar with respect to the exercise of any such power and jurisdiction may appeal to the Court which shall have power to hear and determine such appeal.

The *Senior Courts Act* governs the present application and section 2 specifies that the "Court" in section 11 refers to the High Court. Therefore, orders and decisions of the Registrar are appealable to the High Court.

[11] Ms. Middleton argues that subsection 201(1)(i) of the *Senior Courts Act* provides that the Court of Appeal is the proper venue for an appeal of the Registrar's decision. The import of subsection 201(1)(i) cannot be understood without reading section 201 as whole:

201(1) An appeal shall lie to the Court in any cause or matter from any order of the High Court or a judge thereof where such order is-

- (a) final and is not such an order as is referred to in paragraph (f) or (g);
- (b) an order made upon the finding or verdict of a judge or jury, as the case may be;
- (c) and order upon the application for a new trial;
- (d) a decree nisi in a matrimonial cause or an order in an Admiralty action determining liability;
- (e) an order declared by rules of court to be of the nature of a final order;
- (f) an order upon appeal from any other court, tribunal, body or person;
- (g) a final order of a judge of the High Court made in chambers;
- (h) an order made with consent of the parties;

- (i) and order as to cost;
  - (j) an order not referred to elsewhere in this subsection.
- (2) No appeal shall lie from any order referred to in sub-section (1) (f)–
- (a) except–
    - (i) upon a question of law;
    - (ii) where such order precludes any party from the exercise of his profession or calling, from the holding of public office, from membership of a public body or from the right to vote at the election of a member for any such body;
  - (b) in any other case, except with the leave of a single judge of the Court or, if that judge refuses, with the leave of the Court.
- (3) No appeal shall lie from any order referred to in sub-section (1)(g) to (j)
- (a) except
    - (i) where the liberty of the subject or the custody of infants is concerned;
    - (ii) where an injunction or the appointment of a receiver is granted or refused;
    - (iii) in the case of a decision determining the claim of any creditor or the liability of any director or other officer under the Companies Act in respect of misfeasance or otherwise;
    - (iv) in the case of an order on a special case stated under the Arbitration Act;
    - (v) in the case of an order refusing unconditional leave to defend an action;
  - (b) in any other case, except with the leave of a single judge of the Court or, if that judge refuses, with the leave of the Court.
- (4) No appeal shall lie under this Part–
- (a) from any order made in any criminal cause or matter, except from an order made in judicial review proceedings in a criminal matter;
  - (b) from an order allowing an extension of time for appealing from an order;
  - (c) from an order of a judge of the High Court giving unconditional leave to defend an action;

(d) from an order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree, except on some point which would not have been available to such party on such appeal;

(e) from any order of the High Court or a judge thereof where it is provided by any law of Belize that the decision of such Court or judge shall be final;

(f) where an order has been made against a party in default of his appearing or filing a defence or where the party is otherwise in default,

Provided that nothing in this paragraph shall be deemed to affect the right of such party to move the court of first instance for the setting aside of the default order.

(5) Where any doubt arises regarding the category set out in sub-section (1) into which an order of the High Court or a judge thereof falls—

(a) if such doubt arises on an application to the Court, it shall be determined by a single judge of the Court, subject to a right of appeal to the Court;

(b) in all other cases it shall be determined by the Court.

(6) Notwithstanding sub-section (4)(a), an appeal shall lie to the Court from the decision of the High Court, with the leave of that court or of the Court of Appeal, against any decision of the High Court granting or refusing a writ of habeas corpus.

Subsection 201(1) falls in Part III of the *Senior Courts Act* where section 187 defines “Court” as the Court of Appeal and “order” as including a “decision, judgment or decree.” Therefore, by operation of subsection 201(3)(b), a party can appeal to the Court of Appeal, the circumstances, including costs orders, listed in subsection 201(1)(g) through (i) with the Court’s permission.

[12] I find subsection 11(2) of the *Senior Courts Act* conflicts with subsections 201(1)(i) and 3(b). Subsection 11(2) directs that the Registrar’s decision must be appealed to the High Court and subsections 201(1)(i) and 3(b) send the appeal to the Court of Appeal.<sup>3</sup> The Registrar’s decision is included by reference to “any order of

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<sup>3</sup> This conflict was not created by the enactment of the *Senior Courts Act*. Section 14(1)(i) of the *Court of Appeal Act*, which was also repealed by the *Senior Courts Act*, Cap. 90, The Substantive

the High Court *or* a judge” in subsection 201(1). I cannot identify any other decision of the High Court, but decisions by the Registrar or a jury, that would not also be a decision of a judge. The list also includes at subsection 201(1)(d) “a decree nisi in a matrimonial cause”; a consequence of the *Senior Courts Act’s* removal of fault as a ground of divorce is that the Registrar issues most decrees *nisi*. Therefore, section 201 requires some decisions of the Registrar to be appealed to the Court of Appeal

[13] The longstanding principle of statutory interpretation referred to by Sir John Romily MR in *Pretty v Solly* resolves the conflict:<sup>4</sup>

The rule is, that wherever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.

Subsection 11(2) is the general provision which provides that *any* decision by the Registrar is appealable to the High Court. Subsection 201(1)(i) speaks specifically to costs. Consequently, I do not have jurisdiction to hear the present leave application.

[15] As I explained in *Best Buy Limited v Flowers*,<sup>5</sup> sections 113 and 117 of the *Senior Courts Act* that deal with appeal procedures and stay of proceedings only contemplate appeals of inferior decisions:

113(1) Every appeal from a decision of an inferior court shall be heard and determined by the Court, and the practice and procedure of the Court in cases of appeal under this section shall be in accordance with this or any other Act relating to appeals from inferior courts and any rules of court.

117(1) Where any person has filed an appeal to the Court against a decision of an inferior court, the appeal shall not by itself result in the suspension of the decision under appeal, but the appellant may, within the time prescribed for filing such appeal, apply to the inferior court which made the decision under appeal, for stay of execution of any judgment appealed from, whether civil or criminal, pending the determination of such appeal.

Subsection 199(1), however, states that the Court of Appeal has “jurisdiction... for all purposes of and incidental to the hearing and determination of any such appeal” of judgments and orders of the High Court. Having found that the costs order is

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Laws of Belize Rev. Ed. 2020, is identical to section 201(1) except for the reference to the Supreme Court rather than the High Court.

<sup>4</sup> (1859) 26 Beav 606 at 610.

<sup>5</sup> HC Claim no. 480 of 2020 at para 8.

appealable to the Court of Appeal, subsection 199(1) outlines that jurisdiction to decide the application for the stay of that order also resides with the Court of Appeal.

[11] The finding that the High Court lacks jurisdiction to hear this application dispenses with the need to address the remaining issues.

**Disposition:**

**It is ordered that: -**

1. The Application is dismissed for lack of jurisdiction.
2. Mr. Arthurs shall pay costs of the application to Ms. Middleton as agreed or assessed.

**August 18, 2023**

**Patricia Farnese  
Justice of the High Court**