IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. G58 OF 2020

IN THE MATTER OF THE IMMIGRATION (TRANSITION) LAW 2018

AND

IN THE MATTER OF ORDER 55 OF THE GRAND COURT RULES

BETWEEN: **DERRICK OLIVER SMITH**

APPELLANT

AND:

IMMIGRATION APPEALS TRIBUNAL

RESPONDENT

IN CHAMBERS

Appearances	**Ms Martha Rankine for the Appellant** **Ms Celia Middleton, Crown Counsel, for the Respondent**
Before:	**The Chief Justice, the Hon. Justice Margaret Ramsay-Hale**
Date heard:	**21 November 2023**
Decision circulated:	**26 December 2023**
Written Reasons Delivered:	**2 January 2024**

HEADNOTE

Civil Procedure - Statutory Appeal pursuant to order 55 - appeal not filed and served within 28 days - Application for extension of time to appeal - Procedural requirements under Order 3, r 5 - Principles governing exercise of the court's discretion to extend time

Immigration Law - Whether an appeal lies to the Grand Court decision of the IAT to quash an appeal for failure to comply with section 21(7) and (8) of the Immigration (Transition) Act (2018)

REASONS FOR DECISION

Introduction

1. The Appellant, Mr. Derrick Smith, appeared on 21 November 2023 on an application to extend time within which to appeal against the decision of the Immigration Appeals Tribunal ("IAT") to quash his appeal pursuant to section 21(9)(b) on the ground that his notice of appeal and appeal statement failed to set out any grounds of appeal as required by section 21 (7) and (8) of the **Immigration (Transition) Law 2018** ("the Law").

2. I dismissed the application and promised to give short written reasons for my decision which might provide some guidance to the Bar on the procedure to be adopted when bringing a statutory appeal under Grand Court Rules ("GCR") O.55 and when applying for an extension of time. This I do now.

The Chronology

3. I set out a brief chronology to give an overview of the proceedings that culminated in this application being made:

21 May 2015	Application made to the Caymanian Status and Permanent Residency Board ("the Board") for the grant of permanent residence ("PRC");
5 March 2018	Notification by the Board that the application for PRC had been refused on the ground that the applicant had not attained the requisite number of points;
28 March 2018	Notice of Appeal filed;
19 July 2018	Appeal Statement filed;
30 November 2019	Tribunal's 8 November 2019 decision received by Appellant;
18 March 2020	Appellant files application for leave to extend time for appeal.
6 July 2022	Application and supporting affidavit served on the Crown

The Application to Extend Time for Appeal

4. The application for extension of time was made by a "*Notice of Originating Motion for Leave to Extend Time for Appeal"* under Order 55. The Notice of Motion did not state any grounds on which the Appellant sought to appeal against the decision of the IAT. It was endorsed only with the following plea for relief:

> *"1. That leave be granted to extend time to appeal the decision of the Immigration Appeals Tribunal dated 8 November 2019.*
>
> *2. Interim relief in the form of an injunction pending the final determination of this application and any further formal application restraining the Chief Immigration Order, Border Control, WORC an or any person or Government Department, and or Servant or agent or any of them whomsoever, from sending and or deporting the Applicant out of the Cayman Islands until these proceedings for leave to extend the time to appeal or any Order of the Court are heard and determined*."

5. The notice, which was dated 19 February 2020, was filed on 18 March 2020 by Mr. McField who was then acting on the Appellant's behalf. The application was supported by an affidavit in which the Appellant stated that he mistakenly believed that the attorney who made the application for permanent residency had filed an appeal on his behalf and that as soon as he became aware that he had not, he instructed Mr. McField in the appeal.

6. Mr. McField was subsequently appointed to the Board and ceased to act for the Appellant who took no further steps until he instructed Ms Rankine who appeared on the application. The documents on file disclose that Ms. Rankine came on record for the Appellant on 24 June 2022 and served the application on the Crown in July 2022. The matter remained in abeyance until September 2023 when the matter was set down for hearing.

The Relevant Procedural Rules

7. An appeal against a decision of the IAT lies to the Grand Court pursuant to section 23 (2) of the **Law.** As no time limit is provided by the Law, the time for appeal is the one set out in Order 55 rule 4(2) of the **Grand Court Rules** which governs the procedure for commencing a statutory appeal. The rule provides that,

> *"In the absence of any other statutory time limit, the notice must be served, and the appeal entered, within 28 days after the date of the order…or other decision against which the appeal is brought."*

8. Simply put, the appeal must be filed *and* served within 28 calendar days of the decision against which the appeal is brought.
9. O. 55, r. 3, which sets out the mode of commencing the appeal, provides at rr.3(1) and (2) that the appeal must be brought by originating motion and must state the grounds of the appeal.

10. Although the rule provides that the notice of the motion must be served on the tribunal within 28 days of the date of the decision where, as here, a decision dated 8 November 2019 was not received by the Appellant until 30 November 2019, then time runs from the later date: see *Smith v Secretary*

of State for the Environment, The Times July 6, 1987, considered by Rose J in *Ynys Mon Borough Council v Secretary of State for Wales* [1992] C.O.D. 410.

11. Where the time has run for the filing of an appeal, an application must be made for an extension of time within which to appeal under O.3, r.5. The Court has a wide discretion to enlarge the time fixed by the rules for doing any act in any proceedings, on such terms as it thinks just.

Principles governing the exercise of the Court's discretion

12. In *Frank Hall Homes v. Planning Appeals Tribunal and Central Planning Authority,* [2001 CILR Note 5], which was cited by Ms Rankine in her written submissions, Panton., Ag. J held that, in exercising its discretion to extend the time for the filing of an appeal, the court must consider the length of the delay, the reasons for it, whether there is an arguable case for the appeal and the degree of potential prejudice to other parties if time is extended. Since the overriding principle for the court is that justice must be done, the court may grant an extension notwithstanding the absence of a good reason for the delay, if there is a serious legal point to be tried and the delay consists of a few days only.

Submissions on behalf of the Appellant

13. In her written submissions, Ms Rankine submitted that the delay was not inordinate as there was a period of only two months and 18 days from the date the Appellant became aware of the decision and the application for extension of time. She submitted further that, given that the delay was as the result of a mistake made by the Appellant, the proper exercise of the Court's discretion would be to extend the time and allow the appeal to proceed.

14. In support of this submission, she relied on the decision of Bowen LJ in *Cropper v Smith* (1884) 26 ChD 700 who said this at p 710 of the judgment:

> *"Now, I think it is a well-established principle that the object of Courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. Speaking for myself, and in conformity with what I have heard laid down by the other division of the Court of Appeal and by myself as a member of it, I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy*."

15. Relying on the decision in *Frank Hall Homes*, Counsel contended that, even if the Court found that no good reasons for the delay had been advanced, the Court should exercise its discretion to extend time in the interest of justice as the Appellant had a good arguable case and there was no prejudice to the IAT in permitting the appeal to proceed.

Disposal of the Application

16. The procedural requirements that parties must follow when engaged in litigation before the Grand Court are set out in the rules of court. Although GCR O.2 provides that any failure to comply with the rules is an irregularity that does not nullify the proceedings, and expressly gives power to the Court to remedy any non-compliance, the Court nonetheless expects parties to comply with procedural rules and guidance issued.

17. The first observation I would make about the procedure adopted by the Appellant is that the rules do not provide for the application for an extension of time to be made in the O.55 r.3 originating motion as was done here. The application is to be made pursuant to O.3, r.5 by way of summons supported by affidavit: see note 55/4/2 *White Book*. The notice of the motion setting out the grounds of appeal should be exhibited to the supporting affidavit to permit the Court to consider whether there is an arguable case on appeal.

18. In the instant case, the Appellant, in breach of the rules, failed to set out any grounds of appeal against the decision of the IAT for the Court's consideration.

19. The application was not only riven with procedural errors, it was also hopelessly out of time, being moved some 4 years after the decision of the IAT was communicated to the Appellant. No good reason has been given for the delay. The Appellant may have made a mistake in assuming that his attorney would appeal the decision of the IAT but that would only explain the delay between the receipt of the decision and the filing of the notice of motion by which he sought an extension of time.

20. The delay between the filing of the application for extension of time and the service of it upon the Crown is not explained, except to say that the Appellant's former attorney came off the record. Although the Appellant instructed Ms Rankine in June 2022 to prosecute the appeal, an application to set the matter down for hearing was not made until September 2023.

21. Given the length of the delay and the absence of any good reason for it, the only proper exercise of the Court's discretion pursuant to O.3, r. 5 was to refuse to extend time for appeal.

22. While there would be no specific prejudice to the IAT if time were extended, it is not in the interest of good administration to extend time for a challenge to the decision of a public body beyond the 28 days set out in the Rules, much less a period of 4 years. I feel compelled to observe that as result of the filing of this appeal, the Appellant has been allowed to remain in the Cayman Islands for some 5 years after his application for PRC was refused, contrary to the policy of our immigration laws.

Other Matters Arising

23. Ms Middleton who appeared on behalf of the Respondent made the point that the IAT did not dismiss the Appeallant's appeal against the decision of the Board to refuse his application for permanent residence, as alleged.

24. There was no hearing on the merits. Rather, the IAT quashed the Appellant's notice of appeal and his appeal statement on the ground that the Appellant had failed to comply with section 21 of the Law. Ms Middelton submitted that, pursuant to section 21(11), the Appellant has no right of appeal against that decision.

25. The letter sent to the Appellant stated *inter alia* that:

> *"The Tribunal carefully considered the notice of appeal dated 28th March 2018 and Appeal Statement dated 19th July 2018. The Tribunal noted that no detailed grounds have been submitted by the Appellant or his agent despite numerous follow ups by the Tribunal.*
>
> *The Tribunal determined that no grounds of appeal had been put forward by the Appellant in accordance with section 21(7) and (8) of the* ***Immigration (Transition) Law, 2018****. Therefore, in accordance with section 21(9) (b) of the law, the Tribunal was satisfied that the Appellant had failed to comply with the requirement of this section and quashed the appeal without a hearing on grounds."*

26. Sections 21 (7) and (8) provide as follow:

> *"(7) Upon receipt of the reasons referred to in subsection (6) the appellant shall within twenty-eight days in the case of an appeal under this section, or fourteen days in the case of an appeal under section 20, file his or her detailed grounds of appeal upon which the hearing shall be determined by the Immigration Appeals Tribunal or the pertinent Board, and serve a copy of the grounds of appeal on the Board or the Director of WORC.*
>
> *(8) An appeal under this section or section 20 may be lodged on the ground, or grounds, and no other, that the decision in question is –*
>
> *(a) erroneous in law;*
> *(b) unreasonable;*
> *(c) contrary to the principles of natural justice; or*
> *(d) at variance with the Regulations.*
>
> *(9) Upon receipt of the detailed grounds and any subsequent information requested, the Immigration Appeals Tribunal or the pertinent Board may –*
> *...*

> *(b) if it is satisfied that the appellant has failed to comply with any of the requirements of this section, quash the appeal without a hearing on the grounds.*
>
> ...
>
> *(11) A decision under subsection (9) to quash an appeal shall not in itself give rise to a right of appeal."* [emphasis mine]

27. In my view, the phrase I have highlighted makes it clear that section 21(11) does not, in terms, preclude an appeal against a decision of the IAT to quash an appeal. It seems to me that it might be argued on appeal that the IAT erred in law in finding that the Appellant had not complied with the section.

28. It was not, however, remotely arguable in this case that the IAT had erred in quashing the Appellant's appeal against the Board's decision for the reasons that I set out below.

The Points System

29. I take the Board's reasons for refusing the Appellants application for PRC from Ms Ramkie's written submissions:

> *"When considering the application for Permanent Residence under Section 30(1) of the Immigration Law (2015) Revision, the law in effect at the time* [sic] *is required by Section 30(4) to grant or refuse the application in accordance with the score attained by the applicant when the criteria set out in the points system contained in Schedule 2 of the Immigration Regulations 2017 are applied. The maximum number of points an Applicant can acquire under the points system is two hundred and fifteen points. In order to qualify for a grant of Permanent Residence an applicant must obtain a minimum of one hundred and ten (110). The Appellant received a score of fifty-five (55) points which is insufficient to qualify for the grant of Permanent Residence."*

30. The points system sets out nine factors for which points may be awarded. There is also a deductible component within the scheme. The nine factors ("the Factors") award points for:

Factor 1 - Occupation: maximum 30 points.
Factor 2 - Education, Training and Experience: maximum 25 points.
Factor 3 - Local Investments: maximum 30 points.
Factor 4 - Financial Stability: maximum 30 points.
Factor 5 - Community Minded / Integration into the Caymanian Community: maximum 20 points.
Factor 6 - History and Culture Test: maximum 20 points.
Factor 7 - Possessing Close Caymanian Connections: there is a maximum of 100 points for certain Cuban nationals. 40 points are awarded in respect of an applicant who is the parent, son or daughter of a Caymanian, 20 points for an applicant who is the brother, sister or grandparent of a

Caymanian, provided the applicant has not received 40 points by virtue of being the parent, son or daughter of a Caymanian.
Factor 8 - Demographic and Cultural Diversity: maximum 10 points.
Factor 9 - Age Distribution: maximum 10 points.

31. The deductible components, to a maximum of 100 points, relate to character, health and the lack of a reasonably funded pension plan.

32. Remarkably, even four years out, the Appellant was still unable to particularize his points of appeal and identify the Factors for which it was contended insufficient points had been allocated by the Board and the reasons why it was being said that the Board had been wrong.

33. His *"case for appeal"* as set out in the written submissions was that,

> "*... the Board must allocate points to an applicant under each category pursuant to the points system contained in Schedule 2 of the Immigration regulations. The Appellant contends, however, that the Board failed to properly allocate it failed to award him the points he should have been awarded under the points system..."*

34. Assuming, in the absence of any evidence to the contrary, that this was the sum of the Appellant's 2018 appeal to the IAT, there could be no criticism of the IAT's decision to quash the appeal for failing to set out any detailed grounds for their consideration.

ORDER

17. The application was dismissed with no order for costs, with time for any appeal against the decision of this court to run from the date when the written reasons were handed down.

DATED THE 2 JANUARY 2024

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Hon. Chief Justice Margaret Ramsay-Hale
JUDGE OF THE GRAND COURT