



Neutral Citation Number: [2023] CA (Bda) 19 Civ

Case No: CIV/2022/002

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA
SITTING IN ITS ORIGINAL CIVIL JURISDICTION
BEFORE THE HON. CHIEF JUSTICE
CASE NUMBER 2020: No. 243**

Sessions House
Hamilton, Bermuda HM 12
Date: 21/07/2023

Before:

**THE PRESIDENT, SIR CHRISTOPHER CLARKE
JUSTICE OF APPEAL, SIR MAURICE KAY
JUSTICE OF APPEAL, DAME ELIZABETH GLOSTER**

Between:

WOLDA SALAMMA GARDNER

Appellant

-v-

**(1) THE DIRECTOR OF PUBLIC PROSECUTIONS
(2) THE ATTORNEY-GENERAL**

Respondents

Wolda Gardner, Litigant in Person

Shakira Dill-Francois, of the Attorney-General's Chambers for the Respondent

Hearing date: On the papers

RULING ON LEAVE TO APPEAL

CLARKE P:

1. By a judgment dated 18 November 2022 we dismissed the appellant's appeal against the decision of the Chief Justice, dated 3 December 2021. In his Originating Summons dated 5 August 2020 the appellant had sought relief under section 15 (1) of the Constitution including (i) a declaration that his trial had been unfair *ab initio* because at the time of the trial the Crown had (and had exercised) a right to stand by a greater number of jurors than did the defence and (ii) an order quashing his conviction.
2. On 19 December 2022 the appellant filed a Notice of Motion seeking leave to appeal to Her Late Majesty in Council and on 24 April 2023 he filed substantial submissions in support, to which the Respondents have responded.
3. Since our decision was a final determination of an appeal from a final determination by the Supreme Court of an application under section 15 of the Constitution, the appellant has, by virtue of section 2 (b) of the *Appeals Act 1911* an appeal as of right. But he still requires leave from this Court to appeal to the Privy Council or, that failing, special leave from the Privy Council.
4. In order to be entitled to such leave the appellant has to show is that there is a genuinely disputable issue: *Alleyne-Forte v Attorney General of Trinidad & Tobago* [1997] UKPC 49; *A v R (Guernsey)* [2018] UKPC 4; *Pedro v The Attorney-General* [2021] CA (Bda) Civ 14.
5. In my judgment, there are some genuinely disputable issues, the existence of which means that we should not refuse the appellant leave to appeal to the Privy Council, They include whether or not, given that the Bermuda Constitution is an English statute, the Court of Appeal was right to adopt the approach in the Irish case of *A v Governor of Arbour Hill Prison* [2016] 4 IR 88; whether or not certain decisions of the Judicial Committee in relation to rulings of unconstitutionality having retroactive effect should have led to a

different conclusion; and whether the decisions of the House of Lords in *National Westminster Bank Ltd v Spectrum Plus* [2005] UKHL 41 and other English Court of Appeal decisions referred to in the appellant's submissions should do likewise.

6. Accordingly, I would grant leave.

KAY JA

7. I agree.

GLOSTER JA

8. I, also, agree.