

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CIVIL APPEAL 2010 – 270

CV 2010 - 004144

BETWEEN

STEVE FERGUSON

ISHWAR GALBARANSINGH

Appellants/Applicants

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

PANEL: I. Archie C.J
P. Weekes J.A.
A. Soo-Hon J.A

APPEARANCES:

Mr. F. Hosein S.C. and Mr. R. Dass for the First Appellant

Mr. A. Mitchell Q.C. and Mr. R. Persad for the Second Appellant

Mr. A. Sinanan S.C. and Mr. K. Ramkissoon for the Respondent

Dated: 23 February 2011

JUDGMENT

1. We have come to the conclusion that the Court of Appeal has no inherent jurisdiction to entertain an application for bail and, in the absence of any applicable statutory provision or substantive appeal before us, the present appeal must be dismissed. Accordingly, the merits of the appellants' bail application are not explored in this judgment.
2. The Appellants, by way of an application for judicial review, challenged the validity of an order for their extradition signed by the Attorney General. Meanwhile, they unsuccessfully applied for bail before the bail judge and it is the refusal of that application that they sought to appeal in this Court.
3. The Appellants were on bail during the committal proceedings before the magistrate. Once the order for committal was made, there was of course no longer any power in the magistrate to grant bail. However, a High Court Judge granted them bail during the pendency of Habeas Corpus proceedings. When those proceedings were finally dismissed, they were re-arrested and taken into custody.
4. The Appellants then filed a constitutional motion challenging, inter alia, the validity of relevant provisions of the Extradition Act and the judge hearing the matter refused a further application for bail. The substantive motion was eventually dismissed by the Court of Appeal, which declined to entertain an application for bail at that time.
5. While the constitutional motion was under consideration by the courts, the Attorney General exercised his discretion under section 16 of the Extradition Act to order the return of the Appellants to the United States of America. After being refused at first instance, leave to challenge that decision by way

of judicial review was granted by the Court of Appeal (which heard that application together with the appeal in the constitutional motion).

6. The application for leave to file judicial review proceedings came after the refusal of bail in the constitutional motion. There was no prayer for interlocutory relief by way of grant of bail in the judicial review application and the Court of Appeal, after granting leave to apply for judicial review declined to consider the question of bail. The appellants made a fresh application for bail before a high court judge, which was refused. It is that refusal that is the subject of this appeal, which the appellants have categorized as “*procedural and interlocutory in nature*” [the significance of that will become apparent later in this judgment].

7. At the commencement of the hearing before this Court, enquiry was made as to the proper basis, if any, upon which jurisdiction to entertain the appeal could be grounded. Although argued separately and with different emphases, the collective grounds advanced by the Appellants were as follows:-

1. Section 11A of the Bail Act Chap 4:60;
2. The Inherent Jurisdiction of the Court;
3. Section 23(1) of the Judicial Review Act Chap 7:08; and
4. Section 38 of the Supreme Court of Judicature Act Chap 4:01.

We now deal with each ground in turn.

Section 11A (1) of the Bail Act Chap. 4:60

8. Section 11A(1) of the Bail Act provides that: ***“where an application is made to the High Court under section 11(1) and the High Court refuses or grants the application or varies conditions, the accused or the prosecution may appeal to the Court of Appeal.”*** Section 11(1) however speaks only to a scenario ***“where a Magistrate’s Court grants or refuses bail in criminal proceedings or imposes conditions in granting bail in criminal proceedings.”*** Thus the statutory jurisdiction of the Court of Appeal is predicated upon the prior decision of a Magistrate, which was appealed to the High Court.
9. The appellants must fail on this ground. Firstly because there is no meaningful sense in which a magistrate, who it is accepted lacks jurisdiction to grant bail upon committal, can be said to make a decision (i.e. a refusal of bail) that is reviewable by the High Court. He must first have the power to make the decision before it can be reviewed because it is the exercise of discretion that is being reviewed by the High Court.
10. Secondly, even if the appellants’ argument that such a ‘refusal’ is reviewable is accepted, the history of this case as previously recounted makes it clear that the current application bears no relationship to any such appeal. The only thing that could be remotely construed as an appeal against the magistrate’s ‘refusal’ is the application for bail in the Habeas Corpus proceedings. That application having been granted and there having been no appeal against the conditions imposed, bail lapsed upon the determination of the Habeas Corpus proceedings, as it was interlocutory in nature. Any subsequent application for bail would be a fresh application under the

inherent jurisdiction of the High Court¹ and/or the statutory jurisdiction that may be conferred by the combined effect of sections 3 and 4 of the Extradition Act, **but not section 11(1)**.

11. However, it does not follow that because the High Court has jurisdiction to entertain a bail application in extradition proceedings that the same jurisdiction resides in the Court of Appeal. We therefore turn attention now to the second limb of the Appellants' submissions on jurisdiction.

Inherent Jurisdiction of the Court

12. The appellants contend that the Court of Appeal has jurisdiction to hear an appeal from the most recent refusal of bail pursuant to an inherent jurisdiction. No authority for this proposition was proffered in written submissions or in oral argument when Counsel were questioned by the bench.
13. The general rule is that the Court of Appeal's substantive (as opposed to procedural) jurisdiction is entirely statutory. This is no doubt why it was considered necessary to specifically introduce section 11A of the Bail Act. Unfortunately it did not go far enough for the Appellants' purposes and we must resist the temptation to read more into that provision on the basis that Parliament intended to enact a more wide-ranging provision than it did. There is no evidence of that and no ambiguity in the language.
14. Nevertheless, for the sake of completeness we observe that the question of the inherent jurisdiction of Courts of Appeal to grant bail has been examined in other jurisdictions and we mention some of the cases here simply to affirm our agreement with the reasoning and approach.

¹ See **Knowles & others v Superintendent Culmer & others (PC Appeal No 45 Of 2004)**.

15. The Court of Appeal of New Zealand in **Pawel Marian Misiuk v the Queen CA 65/2010; [2010] NZCA 142** considered the question of whether it possessed an inherent jurisdiction to hear an appeal from a refusal of bail in the High Court. Venning J stated in relation to the jurisdiction of Court of Appeal at paragraphs 8 and 9:

“Jurisdiction

[8] The first issue is whether there is jurisdiction for the appeal. The Crown submits this Court has no jurisdiction to consider an appeal from the High Court dismissing an appeal from the District Court’s refusal to grant bail. The appellant submitted that in the interests of justice this Court should have, or should assume, jurisdiction.

[9] Unlike the High Court, this Court does not have an inherent jurisdiction. There is no right of appeal from the High Court to this Court except pursuant to a statutory provision giving that right. *[Emphasis ours]*

16. In New Zealand section 66(1) of the Bail Act 2000 specifically grants a right of appeal to the Court of Appeal where a High Court judge refuses bail at first instance. The section reads:

“(1) Subject to subsection (4), this section applies to any decision made (whether under any enactment or rule of law or otherwise) by a High Court Judge to—

(a) grant or refuse bail to a defendant; or

(b) impose or substitute or revoke or vary any condition of bail; or

(c) refuse to impose any condition of bail or any particular condition of bail; or

(d) refuse to vary or revoke any condition of bail.”

However, the right of appeal to the Court of Appeal does not apply if the decision of the High Court judge was made on appeal from a decision of a District Court:

“(4) Nothing in this section applies in respect of any decision made by a High Court Judge if that decision was made on appeal from any decision of a District Court.”

17. This is in contrast to the position in the Trinidad and Tobago Bail Act. Section 11A specifically grants a right of appeal to the Court of Appeal from a decision of the High Court made under section 11(1). The Bail Act however does not make provision for a right of appeal to the Court of Appeal where a High Court judge grants or refuses bail at first instance. Just as counsel in the present case argued that the Trinidad and Tobago Court of Appeal had an inherent jurisdiction to address a situation not provided for by statute, so too did counsel in **Pawel Marian Misiuk v the Queen** (supra) argue that the New Zealand Court of appeal had an inherent jurisdiction to address a situation not provided for in their Bail Act.

This argument was not accepted by their Lordships:

“[11] Section 66(1) confirms that the right of appeal to this Court from a decision of the High Court relating to bail (whether under statute or the inherent jurisdiction of the High Court) is subject to subs (4). The effect of s 66(4) is that the right of appeal under s 66(1) does not apply if the decision in the High Court was made on appeal from a decision of the District Court.

[12] The Bail Act does not provide for a second appeal on the issue of bail. An original decision of the District Court can be appealed to the High Court: s 41. An original decision of the High Court can be appealed to this Court: s 66. The intention of Parliament is clear. There is only one right of appeal in bail matters. A Full Court of the High Court in R v Lee [2001] 3 NZLR 858 (HC) confirmed that Parliament intended there would only be one right of appeal in relation to bail.

[13] In summary, there is no right of appeal under the Bail Act to this Court from a decision in the High Court on appeal from the District Court. The appellant was not able to point to any other statutory provision or enactment that provided jurisdiction. *[Emphasis ours]*

18. Although the position in New Zealand is in contrast to the statutory framework of the Trinidad and Tobago Bail Act, the reasoning of the court in the aforementioned case is still instructive. Essentially, the Court of Appeal has no inherent jurisdiction and a right of appeal to the Court can only arise pursuant to a statutory provision giving that right.
19. The jurisdiction of the Bahamas Court of Appeal was considered by the Privy Council in **Austin Knowles and Others v Superintendent Culmer (Superintendent of H.M. Prison Fox Hill) and Others PC Appeal No. 45 of 2004**. There, the court acknowledged that there was no provision in the Bahamas Bail Act Ch. 103 allowing a grant of bail to be challenged at the Court of Appeal. At paragraph 29 their Lordships stated:

“29. This contrasts with the position in the Supreme Court where the grant or the refusal of bail by a Magistrates’ Court is challenged. There the position

is clearly spelled out. If there were to be such an appeal to the Court of Appeal from a refusal of bail by the Supreme Court one would expect to find it in the Bail Act. Moreover no judgment has been cited to the Board where in the courts of The Bahamas it has been held or suggested that the Court of Appeal has an inherent jurisdiction to hear appeals from the Supreme Court against the grant of bail by the latter.” [Emphasis ours]

20. The court held that the position in Bahamas was consistent with English law:

*“30. This is consistent with the position under English law where there are detailed provisions (a) in the Bail Amendment Act 1993 as to appeal from a Magistrates’ Court to the Crown Court against the grant of bail, and against conditions imposed on the grant of bail; (b) as to the powers of the Crown Court and the High Court to grant bail respectively under section 81 of the Supreme Court Act 1981 and section 37 of the Criminal Justice Act 1948 and (c) as to the powers of the Court of Appeal under the Criminal Appeal Act 1968 for the Court of Appeal to grant bail e.g. pending an appeal to the Court of Appeal or to the House of Lords. **There is however no provision for an appeal to the Court of Appeal from a grant of bail by the High Court or by the Crown Court. Nor is there any decision recognising or suggesting an inherent jurisdiction in the Court of Appeal to hear an application against a grant of bail by the High Court or the Crown Court.**” [Emphasis ours]*

21. The Board finally concluded:

*“31. **Accordingly the Board considers that the Court of Appeal did not have jurisdiction to set aside the grant of bail on the grounds relied on** even if, as the Board has held, the Supreme Court had an inherent jurisdiction to grant bail. Despite the force of the criticisms made of the learned judge’s reasons for granting bail, neither the Board nor the Court of Appeal had jurisdiction to set aside Thompson J’s order granting bail.” [Emphasis ours]*

22. This decision echoes the principle enunciated by **Pawel Marian Misiuk v the Queen CA 65/2010; [2010] NZCA 142**, which is that in the absence of statute granting a right of appeal, the Court of Appeal does not possess inherent jurisdiction to entertain an appeal from the High Court granting or refusing bail. Although, unlike the position in the Bahamas, section 11A of the Trinidad and Tobago Bail Act provides access to the Court of Appeal, section 11A applies in a limited context. It allows for an appeal to the Court of Appeal when the High Court hears an appeal from the Magistrates’ Court. The section does not apply to an appeal from a decision of the High Court acting at first instance.

23. It is telling that it has since been thought necessary to amend the Bahamas Bail Act by **Act No. 21 of 2006 (An Act To Amend a Miscellany Of Acts)** to include the following section:

“Appeal to Court of Appeal

8A. (1) Where the Supreme Court grants or refuses a person bail, or refuses to revoke bail, the prosecution or the person, as the case may be, shall have a right of appeal to a judge of the Court of Appeal.”

We are therefore firm in the conclusion that the Court of Appeal has no inherent jurisdiction to entertain this appeal and must derive its jurisdiction from a statutory provision.

Section 23(1) Judicial Review Act Chap. 7:08

24. The Appellants also relied on sections 10(1) and 23(1) of the Judicial Review Act which are in the following terms:-

“10. (1) An interlocutory application may be made in an application for judicial review and the Court may make any interlocutory order, including an order for discovery of documents, interrogatories or cross-examination, and may grant any interim relief as it thinks fit.”;

“23. (1) A person aggrieved by a decision of the Court, including an interlocutory order, under this Act is entitled to appeal that decision as of right to the Court of Appeal.”

The short but dispositive answer to this submission is that the latest application for bail was not made in the judicial review proceedings. As may be recalled from the history set out earlier, there was no prayer for such interlocutory relief when leave to apply was sought, nor was it a relief sought during the hearing before the Court of Appeal where leave was granted. It was only discussed after the Court had delivered its decision and reasons and was no longer seised of the matter.

25. The Appellants then simply went before the Bail Judge as they were entitled to do. The fact that there were, by this time, extant judicial review proceedings, by virtue of the decision of the Court of Appeal, did not make the bail application an application in those proceedings.

26. In any event, a procedural appeal would be the wrong way to invoke the jurisdiction of the Court of Appeal. The Judicial Review Act came into force in November 2000. Section 24 gives the Rules Committee power to make rules to give effect to the Act. The Civil Procedure Rules which were subsequently promulgated specifically exclude from the definition of 'procedural appeal :-

'an order granting any relief made at an application for judicial review (including an application for leave to make the application) or under section 14(1) of the Constitution under Part 56;' [see CPR Part 64.1(2)(b)]

27. Before passing on from this ground we make the observation, without having to decide the point in this case, that it is unlikely given the self contained scheme of the Extradition Act and the restrictions in the Bail Act, that Parliament, notwithstanding sections 10 and 23 of the Judicial Review Act, could have intended there to be a right of appeal all the way to the Privy Council on the question of bail.

28. In the first place it would, in the present context, give a right of review to another High Court judge of a decision of a judge of concurrent jurisdiction, simply on the basis that judicial review proceedings are filed and the bail application is said to be 'ancillary' to those proceedings. A better analysis would be that once the extradition process is ongoing, those are the underlying proceedings and the High Court would have the jurisdiction to review the appellants' bail status if a change in circumstances warrants. In that regard cases such as **Ex parte Turkoglu [1998] Q.B.398** and **R v Sezek [2001] EWCA Civ. 795** which are in any event not binding on us must be approached with caution as those cases involved deportation or refusal of leave to enter and not extradition. The decision of the immigration officer or Home Secretary would in those instances

be the underlying and only matter with which any proceedings were concerned.

29. Once a prima facie case has been found under the Extradition Act, committal to custody is mandatory subject to the narrow exceptions set out in the Act although it may be conceded that the High Court has a residual discretion to consider the question of bail. What is interesting is that the provisions for Habeas Corpus applications under the Act do not give any right of appeal all the way to the Privy Council, as has already been established in this matter.
30. It would be very odd indeed if after an order for committal, a step taken in furtherance of that order (i.e. the issue of the warrant of the Attorney General) could, by the artifice of a judicial review application, be exploited to confer a right of appeal that did not previously exist.

Section 38 Supreme Court of Judicature Act

31. We have already determined that the bail application under consideration was not made in the judicial review proceedings. Counsel for the appellants sought to invoke the jurisdiction of the Court of Appeal on the basis that the decision in the bail application under consideration was an order made in 'civil proceedings' within the meaning of Section 38 of the Supreme Court of Judicature Act Chap 4:01. Section 38 provides as follows:

*(1) Subject as otherwise provided in this Act or in any other written law, **the Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of the High Court, in all civil proceedings** and for the purposes of and incidental to the hearing and determination of any appeal, and the amendment, execution and enforcement of any judgment or order*

made thereon, the Court of Appeal shall have all the power, authority and jurisdiction of the High Court.

...

(2) No appeal shall lie—
(a) except as provided by this Act, from any order made by a Judge of the High Court in any criminal cause or matter....

32. Our section 38(1) is similar to Section 10 of the Bahamian Court of Appeal Act (c 52), which provides:

*"Subject to the provisions of this Part of this Act and to the rules of court, **the court shall have jurisdiction to hear and determine appeals from any judgment or order of the Supreme Court given or made in civil proceedings,** and for all purposes of and incidental to the hearing and determination of any such appeal and the amendment, execution and enforcement of any judgment or order made thereon, the court shall, subject as aforesaid, have all the powers, authority and jurisdiction of the Supreme Court."*

The Bahamian provision was examined by the Privy Council in **Knowles v Culmer (Superintendent of Fox Hill Prison) [2005] 1 WLR 2546**. The Board expressly stated that it did not consider an appeal against the granting of bail "*an appeal from an order given or made in civil proceedings for the purposes of Section 10 of the Court of Appeal Act*". The Board suggested that the correct route for appealing a grant or refusal of bail would have to be based in another statute. It was said at paragraphs 28 - 29:

"There is no provision in the Bail Act 1994 (a consolidating Act) that the grant of bail by the Supreme Court may be challenged and set aside in the Court of Appeal. Nor is there in the Constitution, the Court of Appeal Act, the Extradition Act nor any other legislation produced to the Board, any express provision for such an appeal against the grant of bail. The Board does not consider that such an appeal is an appeal from an order given or

made in civil proceedings for the purposes of section 10 of the Court of Appeal Act nor is it an appeal on a point of law alone within the meaning of section 21(1) of the Court of Appeal Act nor an order of the kind specified in section 21(3) of that Act.

This contrasts with the position in the Supreme Court where the grant or the refusal of bail by a magistrates' court is challenged. There the position is clearly spelled out. If there was to be such an appeal to the Court of Appeal from a refusal of bail by the Supreme Court one would expect to find it in the Bail Act.” [Emphasis ours]

33. Brief mention ought to be made of the decision in **Turkoglu** (supra) where the Court of Appeal in England came to the opposite conclusion. At page 401, Sir John Donaldson M.R. identified two sources of jurisdiction for the Court of Appeal to consider bail. He expressly stated that where the court was concerned with an appeal against any refusal or grant of bail by the High Court, jurisdiction to consider bail arose under Section 16(1) of the United Kingdom Supreme Court Act, 1981. However, although it bears similarity to our provision, Section 16(1) has an important difference since it is not limited in its terms to civil proceedings and is therefore broader than both the Bahamian and the Trinidad and Tobago provisions. This may explain why the Privy Council in **Knowles** did not rely on **Turkoglu** in its reasoned judgment although it was referred to in submissions.

34. Notwithstanding the conclusion of Sir John Donaldson M.R. the following words are instructive on the interpretation of Section 38(1). He stated:

*“It now seems to me that where you have a pending application for leave to apply for judicial review in the High Court and the judge either grants or refuses bail, he is making an order in proceedings of which he is properly seised. **It follows that***

unless the right of appeal against the order is excluded either by statute (which almost certainly would be under section 18 of the Supreme Court Act 1981) or by judicial precedent binding on us (as in the Lane v. Esdaile type of case), **there would be a right of appeal.**” [Emphasis ours]

35. It follows therefore that where there is a statute that deals expressly with orders granting or refusing bail, one ought to look to that statute to determine if any limitations are placed on the jurisdiction of the Court. In short, in the instant case, the Supreme Court of Judicature Act ought to be read together with the Bail Act, since Section 11(A) of the Bail Act specifically addresses the issue of the appeals to the Court of Appeal and limits the circumstances in which the Court of Appeal will have jurisdiction.
36. There is an alternative approach that leads to the same conclusion. Consideration may be given to whether a bail application qualifies as “*any order made by a Judge of the High Court in any criminal cause or matter*” within Section 38(3)(a) so as to exclude the general civil jurisdiction of the Court of Appeal as prescribed by Section 38(1).
37. In this regard it is instructive to note that the definition of “*bail in criminal proceedings*” in section 3(1)(b) of the Bail Act is “***bail grantable to a person who is under arrest or for whose arrest a warrant endorsed with a direction for bail is issued.***” Further, section 4(b) of the Bail Act makes it clear that the Act applies “***to an extraditable offence under the Extradition (Commonwealth and Foreign Territories) Act.***” It follows that any order made in respect of bail for a person arrested pursuant to the Extradition Act whether before or after committal would clearly be an order in a criminal cause or matter.

38. We are fortified in this conclusion by the similar approach taken in other jurisdictions even without reference to our Bail Act provisions. In **Glasford (Michael) and Others v Commissioner of Police and Another** (1995) 48 WIR 117, the Court of Appeal of the Eastern Caribbean States considered the meaning of the phrase “*in a criminal charge and matter*”. The appellants were detained in custody and applied for writs of *habeas corpus*. Before their applications were heard, they were charged with conspiracy to murder. Thereupon, they applied to a judge in chambers for bail; their application was refused. They appealed against that refusal. On the appeal, the preliminary question was whether the judge’s decision to refuse bail is an order made in a criminal cause or matter, or alternatively, whether the Court of Appeal had the jurisdiction to hear the appeal by Section 31 of the West Indies Associated States Supreme Court (St Christopher, Nevis and Anguilla) Act 1975 which concerned appeals from the High Court in civil matters. Section 31(3)(a) which is similar to our Section 38(3)(a) provided that: ‘*No appeal shall lie under this section – (a) from any order made in any criminal cause or matter ...*’

39. At page 120 of the judgement, Sir Vincent Floissac CJ entered into a full discussion of the meaning of “*criminal cause or matter*”. He said:

*The principles which govern the question whether an order was made in a criminal cause or matter were authoritatively stated in the decisions of the House of Lords in Re Clifford and O’Sullivan [1921] 2 AC 570 and Amand v Home Secretary and Minister of Defence of Royal Netherlands Government [1943] AC 147. According to these decisions, there appear to be three pre-conditions to an order being in a criminal cause or matter. The first pre-condition is that, **at the time of the filing***

or hearing of the application on which the order was made, a charge of crime punishable by a fine, imprisonment or otherwise had been or was about to be preferred against the applicant or some other person. The second pre-condition is that **the application involved consideration of that charge of crime.** The third pre-condition is that **the direct outcome or result of the application was or might have been the applicant's or other person's trial and possible conviction and punishment by a court or judicial tribunal having or claiming jurisdiction to try, convict and punish for that crime.**

An order refusing bail satisfies those three pre-conditions... [Emphasis ours]

40. Sir Vincent Floissac CJ and Liverpool JA were both satisfied that “*the order by way of refusal of the appellants’ application for bail was an order made in a criminal cause or matter*” with the consequent result that the judge’s decision was not subject to appeal by virtue of Section 31(3)(a) of the Supreme Court Act.

41. Notably, Section 38(3)(a) of our Supreme Court of Judicature Act originated in Section 47 of the Judicature Act 1873 of England, and was more recently re-enacted as Section 18(1)(a) of the Supreme Court Act 1981. The interpretation given to the phrase ‘*criminal cause or matter*’ in England can provide guidance. In fact, the Privy Council in **Knowles** relied on the leading House of Lords authority on the meaning of “*criminal cause or matter*”, **Amand v Home Secretary and Minister of Defence of Royal Netherlands Government [1943] AC 147.**

42. In **Amand**, an order of the Divisional Court, refusing a writ of habeas corpus to a person who had been arrested with a view to his being handed over to a foreign power for trial on a charge of desertion, was held to have been made in a criminal cause or matter. Lord Wright said, at p 162:

*"The principle which I deduce from the authorities I have cited and the other relevant authorities which I have considered, is that **if the cause or matter is one which, if carried to its conclusion, might result in the conviction of the person charged and in a sentence of some punishment, such as imprisonment or fine, it is a 'criminal cause or matter'**. The person charged is thus put in jeopardy. Every order made in such a cause or matter by an English court, is an order in a criminal cause or matter, even though the order, taken by itself, is neutral in character and might equally have been made in a cause or matter which is not criminal."* [Emphasis ours]

43. More recently, in **R v Blandford Magistrates' Court, ex parte Pamment [1991] 1 All ER 218**, Taylor J, in the lead judgment stated:

*"It is conceded by counsel for the justices that the underlying proceedings to which the justices order related were criminal proceedings. They had to consider how, in the period pending those proceedings, the accused should be remanded. **Had he been granted bail, a breach of its terms would have rendered him liable to be punished.** The position of the defendant, so far as bail is concerned, is thus quite different from that of a surety. **There can be no possible ground for describing an order granting or refusing bail to a defendant as collateral to the criminal proceedings** as was held in relation to the escheatment of the surety's bail in Green's case. **The grant or refusal of bail to a defendant in criminal proceedings is an integral part of the criminal process.**"* [Emphasis ours]

Therefore, it can be alternatively concluded that a decision refusing a grant of bail is an order made "in a criminal cause

and matter” so as to be excluded from the civil jurisdiction of the court by Section 38(3)(a).

44. For the reasons set out in this judgment we have come to the conclusion that we lack jurisdiction to entertain this appeal and must therefore dismiss it without consideration of the merits.

I. Archie

Chief Justice

P. Weekes

Justice of Appeal

A. Soo-Hon

Justice of Appeal