

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

(CHAMBER COURT)

Application No. P. 023 of 2018

S. M. JALEEL & COMPANY LIMITED

APPLICANT

AND

THE TAX APPEAL BOARD

RESPONDENT

BEFORE THE HONOURABLE MADAM JUSTICE JUDITH JONES

APPEARANCES: Mr. B. Atzgs for the Applicant

Ms. S. Sukram and Ms. Yee Fung for the Respondent

DATE OF DELIVERY: 10th July, 2018

RULING

1. On 1st March 2018 the Tax Appeal Board (the Board) delivered an oral decision in the appeal of SM Jaleel and Co Ltd (the Applicant). The Board provided no reasons for the decision on that date but indicated that it would deliver its written decision containing its grounds and/or reasons on or before 6th March 2018. The written decision was delivered on 8th March 2018. The Applicant being dissatisfied with the decision on 27th March 2018 filed a request with the Registrar of the Board (the Registrar) to state and sign a case for the opinion of the Court of Appeal. The request was refused by the Registrar on the basis that it was out of time.

2. In the application before me, dated 18th May 2018, the Applicant seeks orders pursuant to part 61.2 of the Civil Proceedings Rules (the CPR) that the Board state and sign a case for the opinion of the Court of Appeal within 14 days of the date of making such order or alternatively, on the basis of rule 17 of the Tax Appeal Board Rules (the Rules), an order extending the time for the filing of the requisite notice to the 27th March 2018 and that its notice in writing requesting same do stand.

3. The Board, on the other hand, submits that part 61 of the CPR has no application to appeals from the Board and that in accordance with the Act the Applicant had 21 days from the delivery of the decision to request that the Board state a case for the determination of the Court of Appeal and accordingly the request was

out of time. In any event, it submits, it was, and still is open, to the Applicant to apply to the Board to extend the time for making the request pursuant to rule 17 of the Tax Appeal Board Rules and the Applicant has failed to do so.

4. Part 61 of the CPR treats with appeals to the High Court or the Court of Appeal by way of case stated and the procedure to be followed in this regard. Part 61.1 identifies the scope of the rule and states:

“(1) This Part deals with the way in which the High Court or the Court of Appeal determines –

- (a) (i) a case stated; or
- (ii) a question of law referred to it, by a minister, magistrate, judge of a tribunal, a tribunal or other person; or
- (b) an application for an order directing a minister, magistrate, judge of a tribunal, tribunal or other person to refer a question of law to the court by way of case stated,

where under any enactment the High Court or the Court of Appeal has power to determine such matters.

(2) In this Part –

“case” includes a special case;

“clerk to the tribunal” means the clerk, secretary or other person responsible for the administration of the tribunal;

“court” means the High Court or the Court of Appeal as required by the particular enactment;

“enactment” includes the Constitution; and

“tribunal” means –

- (a) in relation to proceedings brought under section 14(4) of the Constitution, a court other than the High Court, the Court of Appeal or a Court Martial; and
- (b) in relation to any other proceedings, any tribunal constituted by or under any enactment other than a court of law.”

5. In the case of **Jimdar Catering Ltd v The Board of Inland Revenue Civil Appeal P256 of 2016** a question arose as to the proper procedure to approach the Court of Appeal in an appeal from the Board. In that case it was determined that part 61 of the CPR did not apply to appeals from the Board. I accept the position as stated in that case as reflective of the law. Insofar as part 61.1 (a) is concerned it clearly does not refer to an appeal from an assessment of tax. Insofar as 61.1 (b) is concerned the Board, being a superior court of record, cannot be considered a tribunal as defined by the rule.

6. Further it is clear that the procedure to approach the Court identified in part 61 is inconsistent with the procedure identified in the Act at section 9. Accordingly, as was stated in **Jimdar**, part 61 has no application to appeals from the Board and the procedure to commence an appeal from the Board is as set out in section 9 of the Tax Appeal Board Act Chap 4:50 (the Act). This accords with an earlier decision of the Court in the **Board of Inland Revenue v Alim Khan Juman Civ. App. 21/83** on similar provisions contained in the Income Tax Ordinance Chapter 33 No. 1. Insofar as the Board submits that Part 61 of the CPR does not apply to appeals from the Board it is therefore correct.

7. Insofar as it is relevant **section 9** of the Act states:
 - “(1) The appellant or the Board of Inland Revenue or other respondent if, dissatisfied with the decision of the Appeal Board as being erroneous in point of law, may, within twenty-one days after the

delivery of the decision or within such other time as may be prescribed by Rules of Court made under section 10, appeal against such decision by –

- (a) filing with the Registrar a notice in writing, in the prescribed form, requesting the Appeal Board to state and sign a case for the opinion of the Court of Appeal; and
 - (b) serving a copy of the said notice on the Board of Inland Revenue or other respondent or on the appellant, as the case may be.
- (2) Where the appellant requires the case to be stated, the notice shall be accompanied by a fee of ten dollars.
- (3) The case shall set forth the facts and the determination of the Appeal Board and the party requiring it shall transmit the case, when stated and signed, to the Court of Appeal within twenty-one days after receiving the same.
- (4) At or before the time when he transmits the case to the Court of Appeal, the party requiring it shall send notice in writing of the fact that case has been stated on his application, together with a copy of the case, to the other party.
- (5) The Court of Appeal shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall remit the matter to the Appeal Board with the opinion of the Court

thereon, or may make such order in relation to the matters as to the Court may seem fit.

(6) The Court of Appeal may cause the case to be sent back for amendment, and thereupon the case shall be amended accordingly, and judgment shall be delivered after it has been amended.”

8. The Applicant argues that since the Board requires a request to state a case to contain details of the parts of the decision challenged time can only start to run from the date of the reasoned decision. In support it relies on the practice followed by the Board in an earlier matter in which Attorneys had been involved. As an alternative it argues that if time starts to run from the earlier date then this Court ought to extend the time for making the request in accordance with rule 17 of the Rules.

9. Rule 17 states:

“The Court may, on the application of any party, extend the time for doing any act or taking any proceeding under these Rules or under any other rules or procedure governing the exercise of its jurisdiction by the Court, upon such terms as it may think fit; and any such extension may be ordered although the application for such extension is not made until after the expiration of the time appointed or allowed.”

10. In response the Board submits that there is no question but that the decision was delivered on 1st March 2018. In support of this submission and to counter the submission of the Applicant it refers to rule 16 of the Rules which states:

“(1) At the conclusion of the hearing of an appeal or application the Court may thereupon deliver or reserve its decision.

(2) The decision may be given orally or in writing and, where it is given orally, the Court may, at the request of any party, made at the hearing or at the time when the decision is given, state its findings of fact and reasons in law for the decision.”

11. This, it suggests, confirms that a decision does not necessarily have to state the Board’s findings of fact or reasons in law. In addition, it submits, that it was open to the Applicant to request that the Board provide its reasons at the time of making the decision but the Applicant failed to so do. There is no evidence before me whether or not on 1st March the Applicant requested the Board to state it’s finding of fact and reasons in law. In any event a determination on that narrow point is not necessary for the purposes of this decision.

12. The Court of Appeal, like the Board, is a creature of Statute. The powers of the Court of Appeal are limited to “the jurisdiction expressly conferred on it by statute or rules made under statutory authority. It does not have any inherent jurisdiction: **Commissioner of Police and another v Bermuda Broadcasting Co. Ltd and others [2008] UKPC 5**. As a Court of Appeal therefore my powers are limited to the four corners of the applicable legislation, that is, the Act and the relevant rules.

13. Rule 21 of the Rules states:

“Except as otherwise provided in the Act or in these Rules or in any written law, the Rules of the Supreme Court relating to applications to a Judge in Chambers and as to taxation of costs shall, with the necessary modifications, if any, apply to appeals and applications to the Court.”

In the **Jimdar** case, referred to earlier, it was determined that the rules made applicable by rule 21 were the CPR.

14. By section 9 of the Act the Applicant had 21 days from the date of the decision of the Board to appeal its decision by making a request to the Board through its Registrar that the Board state a case for the opinion of the Court of Appeal (the Request). It is not in dispute that if the relevant date is the date when the Applicant was informed of the outcome of its appeal then the Request was not made within the relevant period. If however the time for making the Request began to run from the date of the receipt of the reasons then the Request is within time. The Request therefore, like a notice of appeal, is the trigger that commences the appeal process.

15. It is trite law that the decision of a court is different from the reasons for its decision. The decision of a Court is conveyed by its order and is distinct from the justification for the decision. Indeed according to the **Concise Oxford Dictionary** ‘decision’ simply means: “a conclusion or resolution reached after consideration”. The requirement that, as a matter of practice, the issues the resolution of which were vital to the conclusion should be identified and the manner in which they were resolved clearly explained so that the judgment enabled the parties and any appellate tribunal to readily analyse the reasoning

essential to the decision: see **Smith v Molyneaux (2016) UKPC 35** does not prevent a court subsequent to its statement of conclusion from providing these reasons.

16. In accordance with section 9 of the Act the right to appeal runs from the date of the delivery of the decision and not from the date of the provision of the reasons for the decision. I agree with the Board rule 16 confirms that a distinction is made in the Rules between the decision and the reasons, in law and in fact, for the decision. The time for making the request therefore began to run from 1st March 2018 when the Board indicated its conclusion or determination on the appeal and not from the date of the delivery of its reasons. The practice of the Board requiring that details of that part of the decision challenged, while it may be relevant to an application for an extension of time, does not change this position.

17. The Applicant accepts that in accordance with rule 17 of the Rules upon application to it the Board has the power to extend the time for making the request. It also accepts that no application has in fact been made to the Board in accordance with the rule. It submits however that this Court has the jurisdiction to apply rule 17 and extend the time for making the Request. The effect of this submission is that the jurisdiction of the Court of Appeal in this regard is concurrent with that of the Board. I disagree. With respect to appeals from the Board this Court is a court of review only. In accordance with section 9 of the Act our jurisdiction is limited to questions of law arising on the case. This must refer to a determination by the Board. The rules give the Board the power to

extend the time. The Applicant must first seek relief from the Board under rule 17. In the absence of an application for an extension of time to make the Request and an unfavourable determination of that application by the Board there is no question of law to review or determine.

18. The factual position in this case is somewhat similar to that which applied in **Jimdar**. In that case the issue for the Court of Appeal, brought to it by way of a case stated, was the refusal of the Board to extend the time for the Board of Inland Revenue to file the statutory bundle of documents required by the Act. This resulted in a dismissal of the appeal before the Board. The Court held that in applying rule 17 the Board was required to apply the principles relevant to extensions of time as established under the CPR and enunciated in two cases: **Roland James v The AG CA 44 /2014** and **Rowley v Ramlogan CA 215/2014**. These considerations included giving effect to the overriding objective of contained in part 1.1 of the CPR.

19. It seems to me that in the instant case I have no jurisdiction to consider whether or not to extend the time for the making of the Request in the absence of an application by the Applicant to the Board pursuant to rule 17 of the Rules and a consequent refusal by the Board to extend the time in accordance with the applicable law. In those circumstances in the event of such a refusal the Applicant would be entitled to approach this court on appeal by way of case stated on a question of law in accordance with section 9 of the Act.

20. In all the circumstances therefore the application of the Applicant is dismissed on the basis that I have no jurisdiction to make the orders sought.

Judith Jones
Justice of Appeal