

## MACAULEY v. P.C. BONGAY and OTHERS (No. 2)

West African Court of Appeal (Deane, C.J. (G.C.), McRoberts,  
Ag. C.J. (Sierra Leone) and Sawrey-Cookson, J. (G.C.)):  
October 21st, 1931

- [1] Civil Procedure — appeals — time for appeal — leave to appeal — West African Court of Appeal may entertain application for leave to appeal within six months of judgment below — no requirement of special circumstances: The West African Court of Appeal may, by r. 11 of its Rules, entertain an application for leave to appeal to it within six months of the judgment to be appealed from, and there is no requirement that special circumstances should be shown justifying the granting of leave (page 280, line 40—page 281, line 13; page 282, lines 1—4). 5  
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- [2] Courts — West African Court of Appeal — time for appeal — leave to appeal — may entertain application for leave to appeal within six months of judgment below — no requirement of special circumstances: See [1] above. 15

The respondents brought an action against the applicant in the Circuit Court to recover possession of a plot of land.

The Circuit Court (Tew, C.J.) gave judgment for the respondents and the applicant applied to the West African Court of Appeal for leave to appeal to that court, one day before the expiry of six months from the date of judgment. 20

The respondents contended that the court had no jurisdiction to entertain the application since r. 10 of the West African Court of Appeal Rules, 1929 presupposed that the applicant should apply to the lower court within three months of judgment, and could only apply to the Court of Appeal outside that period and before the expiry of six months in special cases. No such special case had been shown here. 25

The applicant contended that the Court of Appeal could entertain the application, since neither r. 10, relating to applications to the lower court, nor r. 11, relating to applications to the Court of Appeal, drew any distinction between special leave to appeal or any other type of leave. He was therefore entitled to apply to the Court of Appeal without first applying to the lower court. 30  
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The court also considered whether there was evidence on the record or in the applicant's affidavit that the applicant's appeal fell within the terms of s. 3(a) of the West African Court of Appeal (Civil Cases) Ordinance, 1929, as amended, to permit him 40

to prosecute the appeal, or whether further evidence was necessary.

The court ordered that a supplementary affidavit should be filed.

**Legislation construed:**

West African Court of Appeal (Civil Cases) Ordinance, 1929 (No. 9 of 1929), s. 3, as amended:

The relevant terms of this section are set out at page 281, lines 14–30.

West African Court of Appeal Rules, 1929, r. 10:

The relevant terms of this rule are set out at page 280, lines 24–26.

r. 11: The relevant terms of this rule are set out at page 280, lines 27–29.

*Barlatt* for the applicant;

*Kempson* for the respondents.

DEANE, C.J. (G.C.)

This is an application for leave to appeal to the court from a final judgment delivered by Tew, C.J. on March 5th, 1931. As the date of application is September 4th, 1931, it will be seen that it has been made within six months of the date of judgment.

The rules limiting the time within which application for leave to appeal must be made are rr. 10 and 11 of the Rules of the West African Court of Appeal. Rule 10 reads: "After three months from the date of a final judgment or decision application for leave to appeal shall not be entertained by the Court below," and r. 11 reads: "After six months from the date of a final judgment or decision application for leave to appeal shall not be entertained by the Court," meaning the West African Court of Appeal. The time, therefore, within which an application for leave must be made differs accordingly as the application is made to the court below or to this court, and the argument has been founded on this difference that inasmuch as no good purpose can be shown for making the distinction between the two courts it must be taken that the legislature meant that if a litigant failed within three months to get leave from the court below he should only be entitled to get leave, if he got it, from this court, and it was fair, therefore, to suppose that the court would only grant such leave in special cases.

This argument ignores, it seems to me, the plain meaning of the language used which allows of applications being made to this

court at any time within six months, and in no wise distinguishes between such an application if made within three months and one made after that time if made within six months, and draws no distinction between the kind of leave to be granted by the two courts. If the legislature had in fact intended that the West African Court of Appeal should deal only with applications for special leave to appeal, it would, it seems to me, have said so and the word "special" would have been inserted before the words "leave to appeal" in r. 11. The argument, moreover, is not well founded inasmuch as it leaves out of account s. 3 of the West African Court of Appeal (Civil Cases) Ordinance, 1929 (as amended), which does supply a good reason for the distinction made between the two courts. The section as amended reads:

"Subject to the provisions of the next section an appeal shall lie to the Court of Appeal:-

- (a) from all final judgments and decisions of the Supreme Court or the Circuit Court
  - (i) given in respect of a claim exceeding the sum of fifty pounds; or
  - (ii) determining, directly or indirectly, a claim or question respecting money, goods, or other property, or any civil right or other matter above the amount or value of fifty pounds; and
- (b) by leave of the Judge making the order, but not otherwise, from all interlocutory orders and decisions made in the course of any suit or matter:

Provided always that no appeal shall lie, except by leave of the Court making the order,

- (a) from an order as to costs only, or
- (b) from an order made by the consent of parties."

From this it appears that applications for leave to appeal in matters mentioned in this proviso can only be made to the court below which dealt with the matter, and it is clear that the limitation period for such applications is fixed at three months because it is desirable that such an application should be made at an early date when the matter is still fresh in the mind of the judge so that he may deal with it adequately and not after the lapse of a period which would probably impair his ability to decide whether or not it was a case where he should grant special leave.

The argument, therefore, that this court should only grant leave as an indulgence fails and the applicant is in my opinion entitled to be granted conditional leave to appeal, provided that he brings his case within the terms of s. 3 (a) (i) and (ii) of the Ordinance. On the affidavit, however, that has been filed by him in support of his application, I can find no unequivocal statement showing either that the decision has been given (a) in respect of a claim exceeding the sum of £50 or (b) determining directly or indirectly a claim or question respecting money, goods or other property or any civil right or other matters above the amount or value of £50. At the most it may be said that the affidavit might raise an assumption that the value of the land, the subject-matter of the decision, is above the value of £50, but a mere suggestion in my opinion is not enough and the necessary fact must be clearly shown before the applicant can claim the right provided by the section. It will, therefore, be necessary for him to file a supplementary affidavit establishing this fact before we can say whether he is entitled to appeal or not.

McROBERTS, Ag. C.J. (Sierra Leone) and SAWREY-COOKSON, J. (G.C.) concurred.

*Ruling accordingly.*