

Single judge directions on procedural matters regarding the filing of arguments and responses prior to the hearing.

[2022]GCA088

**IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY
ON APPEAL FROM THE ROYAL COURT**

CIVIL DIVISION APPEAL No. 556

17 March 2022

BEFORE:

George Bompas QC

Between:

SHERBORNE CORPORATE SERVICES LIMITED

(Seychelles company no.012277)

KENILWORTH CONSULTANTS INC

(Seychelles company no.012316)

Appellants

and

The Public Trustee

Respondent

The Appellant companies in person

Advocate S. Davies for the Respondent

Bompas JA (sitting as a single judge of the Court of Appeal)

1. This is my ruling in response to an application made, on 14 March 2022, on behalf of the Appellant companies. It is given by me as a single judge, after consideration of the application on the papers.
2. The Appellants are two of the seven respondents to proceedings before the Royal Court who were, by an Act of Court dated 23 December 2021, ordered to give certain material to the Respondent, the Public Trustee. For immediate purposes the detail of what was ordered does not need further explanation. The Appellants, but only the Appellants, are now appealing in respect of that Act of Court. Their appeal is to be heard by this Court at

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the April sittings starting on Monday 25 April 2022 at a hearing which is at present to be in person on the Island in the normal way.

3. The Appellants' written statement containing their contentions on their appeal to this Court, their Case, is dated 19 January 2022, but may be taken to include a lengthy document dated 3 January 2022 which (with exhibits) makes complaint about the conduct of the proceedings leading to the making of the Act of Court.
4. In response to an email from the Senior Deputy Greffier it was confirmed on behalf of the Appellants, by email of 1 February 2022, that their Case and the other materials had been served and filed in accordance with Rule 8 of The Court of Appeal (Civil Division) (Guernsey) Rules, 1964 ("the 1964 Rules").
5. In an email of 2 February 2022 it had been explained on behalf of the Respondent that the Respondent's written statement of his contentions in answer, his Case, would be served and filed by 28 February 2022. On 28 February 2022 the Respondent duly served and filed his Case. This was within the time limited by paragraph (3) of Rule 8 the 1964 Rules.
6. The 1964 Rules make no provision for any further exchanges of written contentions or documents following service of a respondent's case, and in particular make no provision for an appellant to file any reply. Ordinarily the reply by any appellant in response to the respondent's case would be given orally at the hearing of the appeal; and there is no place (or need) for any written reply by the appellant.
7. On 3 March 2022 it was drawn to the attention of this Court that the Appellants might wish to serve further submissions and materials in support of their appeal, notwithstanding that the appeal is to be heard at the sittings of this Court in late April 2022, and notwithstanding that, having regard to what I have described above, it appeared that the present appeal is now ready.
8. What had happened was that an email from the Appellants to the Respondent on 2 March 2022 had explained that the Appellants "have been preparing a background document, which should be in the order of 36 pages together with approximately 30 or so exhibits" and that once completed this would be served.
9. On 7 March 2022 I gave a direction requiring the Appellants to make an application supported by evidence, if they wish to serve further submissions and materials; and I directed that this application should include an explanation of what these were to comprise.
10. I gave this direction because it would be unfortunate if for any reason the Appellants' appeal were unable to proceed in an orderly fashion as a result of the late introduction of

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additional matter by either side. Not least of all, if the Appellants were to file further submissions and materials, the Respondents should normally have an opportunity to put in a responsive case. That is, after all, in accordance with the sequence contemplated by the 1964 Rules. Both the Appellants and the Respondent need proper time to make arrangements to be certain they have some appropriate individual(s) to speak for them at the appeal hearing in April 2022, and to prepare their oral arguments; and this Court needs proper time to prepare and to read in.

11. On 14 March 2022 a notice of application was provided on behalf of the Appellants. It is expressed as having been given by the Appellants and as being signed by an “Authorised Signatory Acting for and on behalf of the Appellants”. Essentially the argument set out in a written submission in support of this application is that the Appellants have been led to believe by the Court that they have a right of reply to the Respondent’s Case, and that this reply might be given by 1 April 2022. For this an email of 1 February 2022 from the Court was relied on which given an illustrative timetable, concluding on 1 April 2022 and with two weeks for any response from the Appellants to the Respondent’s Case, if the appeal were to be heard in the April 2022 sittings. Also it was said in the written submission that there is an established right of reply for appellants.
12. The proposed background document and exhibits were not provided with the application and supporting submission, so it is not possible to consider those materials on this application, and the description of what they are to comprise is elliptical. The explanation given in the written submission was that the Appellants had been told by the Court that they had two weeks for their responsive submissions following the Respondent’s Case.
13. There is no established right for an appellant to submit a written reply to a respondent’s written statement of contentions: so far as Rule 8 of the 1964 Rules is concerned, a respondent has the last word as regards the written submissions. The appellant’s reply to the respondents written submissions then comes in the appellant’s oral presentation at the appeal hearing where indeed the appellant normally has the last word. However, I note what is said in the Appellants’ submissions to the effect that they had been told they would have two weeks to put in a written reply following the service of the Respondent’s Case.
14. In my judgment the way forward now is for the Appellants to be given leave to supplement their exiting Case with the proposed background document and exhibits. I would stress that the proposed background document should contain only legal argument, not fresh evidence. It is to be, borrowing the language in paragraph (1)(h) of Rule 8 of the 1964 Rules, a statement setting out the contentions to be urged by the Appellants. The exhibits should only be legal authorities or documents which were before the Royal Court in the proceedings from which the Appellants are bringing this appeal, and even then they should be confined to that which is relevant to the matters in controversy on the appeal (again

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borrowing language used in paragraph (1) of Rule 8 of the 1964 Rules). The Appellants will understand that this is an appeal, not a fresh trial.

15. As the Appellants' email of 2 March 2022 was able to give what appears to be a reasonably specific indication of the number of pages of the proposed background document and the number of exhibits, and as the Respondent was quite clear in emails first of 2 February 2022 and then of 3 March 2022 that the Respondent's Case of 28 February 2022 was to be and is complete, it should be possible for this further submission now to be finalised and served in reasonably short order and in any event by 4pm on Thursday 24 March 2022. That will have given them rather longer than the two weeks referred to in their written submissions. Accordingly, the leave to be given to the Appellants is for the proposed background document and exhibits to be served and filed by that date and time.
16. This, then, will give the Respondent just over a week (albeit not the requested 10 days) to prepare and serve any supplemental statement of contentions in answer by 4pm on Friday 1 April 2022; and I will give the Respondent leave to do so.
17. The Appellants' proposed background document must not exceed 36 pages of type using a legible font and line spacing. The Respondent's supplemental contentions must not exceed the length of the background document, again using legible font and line spacing.
18. The Appellants and the Respondent should proceed on the basis that this judgment contains the direction I am giving, and should not expect any further form of order repeating the direction given hereby and in particular in the three previous paragraphs.