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**IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN**

Cause No: D 80/2006

BETWEEN:

ANNE ROSALIND OWEN FOSTER

PETITIONER

AND:

ROBERT DON FOSTER

RESPONDENT

Appearances:

**Mr. Anthony Akiwumi of Stuarts for
the Respondent/Appellant**

**Mr. Jayson Wood of Appleby for the
Petitioner**

Before:

The Hon. Mr. Justice Charles Quin

Heard:

9th May 2011

JUDGMENT



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1. The Respondent/Appellant filed seven grounds of appeal in support of his Summons for leave to appeal against my Extempore Ruling dated the 14th January 2011 and my Judgment dated the 31st January 2011.
2. I base my reasons for this decision on two grounds, namely 1 and 3.
3. The Respondent's first and primary ground of appeal is consequent upon my finding that the Court had jurisdiction, either by application of the Civil Procedure Rules of the Supreme Court of Jamaica (by virtue of s.4 of the Matrimonial Causes Law) or under its inherent jurisdiction to strike out the

1 Respondent's application dated the 23rd September 2010 made pursuant to
2 s.23 of the Matrimonial Causes Law. The Respondent submits that I had no
3 jurisdiction to apply the Civil Procedure Rules of the Supreme Court of
4 Jamaica nor to invoke the Court's inherent jurisdiction, which the
5 Respondent submits is expressly excluded by the Grand Court Rules of the
6 Cayman Islands.

7 4. Ground three of the Respondent's grounds for appeal is that I erred in finding
8 that there was no basis upon which the Consent Order could be set aside on
9 the ground of lack of legal representation, and that I failed to deal with the
10 legal principles identified in the Court of Appeal decision of *Ebanks v. Plain*
11 [1988-89] CILR 421 and failed to follow them.

12 5. It is agreed between both counsel that the general rule is found in *Telesystem*
13 *International Wireless Incorporated and T.I.W Do Brasil Limitada v.*
14 *CVC/Opportunity Equity Partners L.P. and Three Others* [2001] CILR

15 Note 21 which held that:

16 *“The general test of whether leave to appeal should be granted is: Does*
17 *the appeal have a real (i.e. realistic, not fanciful) prospect of success?*
18 *(Swain v. Hillman) [1999] T.L.R. 745, dicta of Lord Woolf, M.R.*
19 *applied). In exceptional circumstances, leave will be granted even where*
20 *no such prospect exists if the appeal involves an issue which should be*
21 *examined by the Court of Appeal in the public interest, e.g. when a*
22 *public policy issue arises or a binding authority requires*
23 *reconsideration. The relative significance of the issues and the costs*
24 *necessary to examine them will be a relevant factor.”*

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26 6. Paragraph 4 of the Explanatory Note to the Court of Appeal (Amendment)
27 Rules 2009 provides further assistance and reads at B:

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“...exceptionally, the public interest requires the Court of Appeal to consider, or reconsider, the issue that would be raised in the proposed appeal.”

7. The Respondent’s primary ground is that I had no jurisdiction either under the applicable rules or under the inherent jurisdiction of the Court to strike out the Appellant’s Summons dated the 23rd September 2010 to discharge or vary paragraph 8 of the Consent Order of Henderson J. dated the 6th of June 2006. To put it another way, does s.23 of the Matrimonial Causes Law preclude a strike out application and effectively mean that there are no time limits for a party to apply to vary or to discharge a property Order such as that agreed between the parties and ordered by Henderson J. on the 6th June 2006.

8. The question of whether the Court has power under the Rules of the Supreme Court of Jamaica and its own inherent jurisdiction to strike out a party’s application to vary or discharge an Order in a matrimonial cause is an issue of public importance which should be examined by the Court of Appeal, and further, the Court of Appeal decision in *Ebanks v. Plain* is a binding authority that deserves consideration, if not reconsideration.

9. Although I was satisfied on all the material before me that the Respondent’s application to vary/discharge paragraph 8 of the Consent Order should be struck out, I have to accept that my decision does involve issues in the public interest. Having read the helpful Skeleton Arguments of both counsel and reviewed their oral submissions, I consider that both Grounds 1 and 3 of the Respondent’s grounds of appeal are questions of public importance which the Court of Appeal should review and pronounce upon.

1 10. For these reasons I grant the Respondent's application for leave to appeal to
2 the Court of Appeal of the Cayman Islands in relation to my extempore
3 Ruling dated the 14th January 2011 and my Judgment dated the 31st January
4 2011 in this matter.

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6 11. I have reserved the question of costs. However, as agreed between counsel at
7 the end of the hearing I will hear submissions as to costs at a convenient time
8 to both counsel, if they so wish.

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12 **Dated this the 13th May 2011**

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16 **Honourable Mr. Justice Charles Quin**
17 **Judge of the Grand Court**

