

Neutral Citation No: [2024] NICA 61

Ref: McB12595

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 14/59184/14

Delivered: 10/09/2024

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

—————
NORTHERN BANK LTD

Plaintiff/Respondent

v

McAULEY and ANOTHER

Defendant/Appellant

—————
Mr McAuley appeared as a Litigant in Person
Mr Gowdy KC (instructed by King and Gowdy, Solicitors) for the Respondent

—————
Before: Keegan LCJ and McBride J
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McBRIDE J (*delivering the ex-tempore judgment of the court*)

Introduction

[1] By notice of appeal dated 20 December 2023, the appellant applies for leave to appeal to the Court of Appeal. The notice is supported by a handwritten document dated 1 May 2024. This document sets out, in summary the following grounds of appeal:

- (i) The court erred in making an order for possession.
- (ii) The court erred in enforcing the possession order which led to the occupation of his lands by third parties.
- (iii) The Court of Appeal erred in striking out his appeal against enforcement of the possession order on 30 April 2021 on the grounds he had failed to comply with their earlier order dated 14 August 2020 when the appellant had complied with that order by providing grounds of appeal.
- (iv) The court erred in granting a bankruptcy order which led to the seizure of his animals.

[2] In oral submissions Mr McAuley advised the court that the order for possession and the order for bankruptcy should be dismissed and he further sought an order declaring that the third parties, now in occupation of the lands the subject of the possession order, were squatters.

[3] The respondent resists the application on the ground that all the appellant's rights of appeal have been exhausted.

[4] To determine the issues in dispute it is necessary to set out the background in respect of the various sets of proceedings.

Possession proceedings

[5] The appellant and his wife took out a mortgage with the Northern Bank which was secured on lands owned by the parties. There was default in payment and the bank issued proceedings for possession of the lands. The lands were comprised in several folios. The lands comprised a dwelling house and agricultural lands including an out farm. On 11 February 2016 Master Hardstaff made an order for possession in respect of all the lands. This order was appealed by the appellant. On 26 June 2016 Horner J affirmed Master Hardstaff's order save in respect of the dwelling house. The appellant appealed to the Court of Appeal. On 18 May 2017 the Court of Appeal, affirmed Horner J's order save that two folios were excluded from the order as these lands had already been sold by the receiver. These lands comprised the out farm.

[6] The appellant applied to the Court of Appeal for leave to appeal to the Supreme Court. Leave to appeal was refused by the Court of Appeal on 12 December 2017. No application has been made to petition the Supreme Court.

[7] Although the appellant has a right to petition the Supreme Court, we consider such an application has no realistic prospect of success not least because of the significant lapse of time since the order was made and the fact the lands have now been sold and third parties are in possession of the lands.

[8] In all the circumstances we are satisfied that the appellant's rights of appeal have been exhausted. Insofar as the appellant seeks to reopen the possession order before this court, it is our view, that we have no further jurisdiction as the appellant's rights of appeal to this court have been exhausted.

[9] In those circumstances, the appellant has no entitlement to enter into possession of the possessed lands. Accordingly, we reject his application for an order permitting him or his invitees to enter upon the lands or to take animals onto the lands.

Enforcement of Possession Order Proceedings

[10] Due to the appellant's failure to comply with the possession order the respondent brought committal proceedings against him dated 20 November 2017. On 20 September 2019 the appellant was found guilty of contempt of court and committed to prison by Lord Justice Stephens for a period of 3 months. The appellant appealed the order for committal out of time. On 14 August 2020 the Court of Appeal ordered the appellant to lodge grounds of appeal within 14 days. On 26 August 2020 the appellant filed a written document setting out reasons why he was unable to lodge grounds of appeal. At no stage did he comply with the Court of Appeal order by lodging grounds of appeal. On 30 April 2021 the Court of Appeal struck out his appeal.

[11] The appellant now complains to this court that third parties are in possession of his lands, and he seeks an order declaring that they are squatters.

[12] We are satisfied that the appellant has exhausted all his rights of appeal to this court in respect of enforcement of the possession order. The order for possession has been enforced and the bank has now sold the land to third parties. In these circumstances, we reject his argument that the third parties presently in occupation of the lands are squatters.

Bankruptcy proceedings

[13] The third set of proceedings relate to the bankruptcy. The appellant was adjudicated bankrupt on 5 December 2017. That decision was not appealed, and it is now over six years since that order was made. Any appeal is, therefore, significantly out of time.

[14] On foot of the bankruptcy order the appellant's assets vested in the trustee in bankruptcy and accordingly the trustee had power to sell the animals as they formed part of the bankrupt's estate, and the appellant therefore had no legal entitlement to them. Accordingly, we reject his claim that the cattle were unlawfully removed.

Conclusion

[15] We dismiss the application as we are satisfied the appellant has exhausted all his rights of appeal to this court. None of the matters set out in the appellant's application and his note dated 1 May 2024 give rise to any proper application for leave to appeal and, accordingly, we strike out the notice of appeal.

[16] The appellant is ordered to pay the respondent's costs, such costs to be taxed in default of agreement.