



In The Supreme Court of Bermuda

APPELLATE JURISDICTION

2025: No. 29

BETWEEN:

KEVIN DALEY

APPLICANT

AND

(1) DON LAURENCEO

(2) THE DEPUTY PROVOST MARSHAL

RESPONDENTS

Application for an injunction to restrain the execution of a warrant of eviction pending appeal; Rent Increases (Domestic Premises) Control Act 1978; section 3 Civil Appeals Act 1971; Civil Appeal Rules 1971; no inherent jurisdiction to entertain application for injunctive relief

MARTIN J in Chambers

DATE OF HEARING: 14 November 2025

DATE OF REASONS: 17 November 2025

Appearances:

Paul Wilson of Marc Geoffrey Ltd for the applicant

Christopher Swan of C Swan and Associates for the respondents

REASONS FOR ORDER

Introduction

1. These are the court's reasons for refusing an injunction to restrain the landlord (and the Deputy Provost Marshal ("the DPMG")) from executing the warrant to evict the tenant from premises that are occupied by the tenant under the terms of a lease.

Brief background

2. The lease of certain premises at Cottage Hill Lane in Hamilton parish were brought to an end under the Rent Increases (Domestic Premises) Control Act 1978 on the grounds that the landlord required the premises for his own occupation. The tenancy was brought to an end by the making of an order for possession by order dated 20 June 2025 which gave the tenant three months to vacate the premises, namely until 20 September 2025. Possession was not surrendered on or before that date, and the learned magistrate then issued a warrant to evict the tenant on 21 October 2025.
3. It appears that the possession order of 20 June 2025 was made with the consent of the attorneys who appeared for the tenant at the hearing, and the tenant says that this was in breach of the instructions he had given to his attorneys at the time. The tenant therefore wanted to file an appeal against the possession order and he instructed his attorneys to do so¹. The time limited for filing a Notice of Intention to Appeal against the possession order expired on 20 July 2025². A Notice of Intention to Appeal was filed on or around 16 or 17 July 2025³. On 21 July 2025 the Magistrates' Court office asked Mr Daley's former attorneys to arrange for payment of the prescribed fee of BD\$85.00, and followed up on 5 August 2025, but no payment was received⁴. The tenant's appeal was therefore not formally entered.
4. On 10 October 2025 the tenant sought an extension of time in which to appeal against the order for possession on the basis that either the tenant's counsel failed to put his case to the magistrate properly or the learned magistrate disregarded what was submitted to him⁵. No draft grounds of appeal against the possession order were prepared.
5. The learned acting magistrate before whom the application for an extension of time was heard refused that application on the basis (i) that the affidavit in support of the application failed to advance "good and substantial reasons" for the delay and failed to explain why the prescribed fee had not been paid and (ii) no draft grounds of appeal had been advanced, both failures being in breach of the express requirements of the

¹ See Mr. Daley's affidavit dated 6 October 2025 at paragraphs 2-4 and 9.

² Section 4(2) of the Civil Appeals Act 1971.

³ Exhibited to Mr. Daley's affidavit.

⁴ See footnote 2 to the learned acting magistrate's Ruling.

⁵ See Mr. Daley's affidavit at paragraph 9.

Civil Appeal Rules 1972 (“CAR”). Importantly, the learned acting magistrate considered that the absence of any draft grounds of appeal prevented her from assessing whether any proper grounds of appeal existed⁶. Accordingly, she refused the application and gave her reasons in a written ruling dated 17 October 2025.

6. The tenant has applied to the Magistrates’ Court for leave to appeal against the learned acting magistrate’s refusal to extend time for the filing an appeal against the possession order. That application has not yet been determined by a magistrate.
7. The landlord did not take further steps to execute the warrant for eviction until after the learned acting magistrate had given her decision on the application for an extension of time, but in light of her decision, he proceeded to set the date for the eviction on Monday 17 November 2025.

The present application

8. The tenant applied to this court for an urgent injunction to restrain the landlord (and the DPMG) from proceeding to execute the warrant on the basis that his challenges to the proceedings in the Magistrates Court that gave rise to the possession order have not been properly ventilated.
9. No grounds of appeal have been advanced in relation to the substantive appeal, except those summarised in paragraph 3 above, which were contained in his affidavit in support of the application for an enlargement of time.

Jurisdiction

10. This court does not have jurisdiction to entertain an application in relation to a matter by way of appeal from the Magistrates’ Court unless (i) a Notice of Intention to Appeal has been filed as of right (ii) a Notice of Intention to Appeal has been filed with leave of the Magistrates’ Court (in relation to interlocutory or costs decisions) or (iii) an application for leave to appeal has been refused by the magistrate and a new application for leave to appeal has been made to this Court in the exercise of its appeal jurisdiction under the Civil Appeals Act 1971⁷.
11. There is no appeal as of right against the decision of the learned magistrate’s refusal to extend the time for appeal: that is a discretionary matter for which leave is required. Leave to appeal that decision has not been given, therefore there is no appeal proceeding presently pending before this court. Nor can an application for leave to appeal be made to this court until leave to appeal has been refused by the magistrate⁸. If leave to appeal is refused, an application may be made to this court on application by Notice of Motion supported by an affidavit which exhibits full draft grounds of appeal⁹. Once leave has

⁶ Paragraph 6 of the learned acting magistrate’s Ruling.

⁷ Section 3 of the Civil Appeals Act 1971.

⁸ Rule 2 (1) of CAR.

⁹ Rules 2 (2) and 5 of CAR.

been granted, the record is settled, and thereafter the Registrar of the Supreme Court can enter the appeal. Once the appeal is entered, this court has jurisdiction to entertain applications for interim relief¹⁰.

12. It follows from the procedural requirements summarised above that that this court has no power to entertain an application for relief in relation to a matter for which leave to appeal is required until the application for leave to appeal from that decision has been refused by the magistrate, or (in an ordinary case) the appeal is entered by the Registrar. Neither circumstance applies in this case and there is no jurisdiction for this court to entertain an application which falls outside the procedural framework of the Civil Appeal Rules 1971. This is because the court's appellate jurisdiction is statutory: there is no inherent jurisdiction to depart from this procedural framework in respect of an appeal from the Magistrates' Court.
13. In the course of argument, it was pointed out that the court cannot grant injunctive relief in the exercise of its inherent jurisdiction or under section 19 of the Supreme Court Act 1905 unless there is a cause of action pending before the court. In this case, there is no independent cause of action in respect of which an injunction is sought as a supporting remedy (for example) as interim relief pending the trial.
14. However, for completeness, it should be noted that if (i) the appeal conditions attaching to the original Notice of Intention to Appeal dated 16 July 2025 had been complied with or (ii) an extension of time had been granted by the learned acting magistrate to re-file a Notice of Intention to Appeal or (iii) leave to appeal had been granted by the Magistrates' Court against the refusal to enlarge time, and the relevant appeal conditions had been fulfilled, the eviction proceedings would have been stayed automatically pending the determination of the appeal: section 8 of the Civil Appeals Act 1971.

No draft grounds of appeal

15. It appears clear from the record that the learned acting magistrate's decision to refuse to extend time was one to which she was entitled to arrive, given the absence of any factual material in support of the application to explain the reasons for the tenant's delay and his failure to comply with the rules, and the absence of any draft grounds of appeal that would have justified a finding that there was a ground of appeal that had a realistic (as opposed to a fanciful) prospect of success: i.e. that the substantive appeal was not hopeless.
16. In those circumstances it is difficult to see how it can be suggested that her decision to refuse the application to enlarge time falls outside the generous margin of appreciation that is given to the exercise of the magistrate's discretionary case management powers.

¹⁰ Rules 2 and 8 of CAR.

17. Accordingly, the court dismissed the application on the basis that the court has no jurisdiction to entertain it, and the court has no independent jurisdiction to grant injunctive relief unless there is a substantive cause of action pending in the court or in respect of an appeal that is pending in respect of which the court is properly seized.

18. The costs of the application were awarded to the respondents.

17 November 2025



THE HON. MR. ANDREW MARTIN
PUISNE JUDGE