

APPENDIX I

COMPARATIVE TABLE OF THE COURT OF APPEAL RULES, 1962 and 2002

AS TO STAYS OF EXECUTION

	Title II Court of Appeal Rules, 1962 Civil appeals from the Supreme Court		Court of Appeal Rules, 2002 Section 2 - Civil Appeals (applies to Supreme Court and R.M. civil appeals by R21)
R21(a)	Except so far as the Court below or the court may otherwise direct – (a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the Court below.	R2.14	Except so far as the Court below or the court or a single judge may otherwise direct
(b)	No intermediate act or proceeding shall be invalidated by an appeal.	(a)	An appeal does not operate as a stay of execution or of proceedings under the decision of the court below;
		(b)	No intermediate act or proceeding is invalidated by an appeal.
R22(4)	Wherever under the provisions of the Law or of these Rules an application may be made either to the Court below or to the Court, it shall be made in the first instance to the Court below.		No equivalent in the Court of Rules, 2002.
R33(1)	In any cause or matter pending before the Court, a single Judge of the Court may, upon application, make order for	R2.11(1)	A single judge may make orders –
(c)	A stay of execution on any judgment appealed from pending the determination of such appeal and may hear, determine and make orders on any interlocutory application.	(b)	For a stay of execution of any judgment or order against which an appeal has been made pending the determination of the appeal; and
(2)	Every order made by a single Judge of the Court in pursuance of this rule may be discharged or varied by the Court.	(e)	On any other procedural application.
		(2)	Any order made by a single judge may be varied or discharged by the Court.
R 34(2)	Any other application under Rule 33 shall be made by summons or motion on notice such applications shall be supported by affidavit, a copy of which shall be served with the summons or notice of motion.	R1.1 (10)	The following Parts and rules of the Civil Procedure Rules 2002 apply to appeals to the Court subject to any necessary modifications. - Part II (applications)
	No equivalent in Court of Appeal Rules 1962	R2.10(1)	Procedural applications to court Any application (other than an application for permission to appeal) to the Court must be made in writing in the first instance and be considered by a single judge.
		(2)	Where the record has been referred to a single judge under Rule 2.9 the application is wherever practicable to be considered by that judge.

APPENDIX 2

The writer has found 12 Jamaican decisions in which single judges of appeal or the Court of Appeal itself considered the merits of granting a stay in each case. All of these cases except for *Stewart v Rose* and *Richard Spence and Leonie Spence v Maurice Hitchins and Audley Hitchins* are judgments of single judges of appeal. *Stewart v Rose* concerned a judgment of the Court of Appeal on an application for stay in relation to an order by a Resident Magistrate for recovery of possession. *Richard Spence and Leonie Spence v Maurice Hitchins and Audley Hitchins* is a judgment of the court in relation to an application to discharge an order by a Supreme Court judge refusing a stay (the rule is unclear and is silent as to whether to stay was granted). In all of the cases, except *Gleaner Co. Ltd v Charles Wright* the applications were granted.

The cases are as follows:

- 1) *Gleaner Co. Ltd v Charles Wright* (1976) 15 J.L.R. 18. Application by respondent to Court of Appeal to set aside order by single judge of appeal granting a stay of execution. Judgment of Court delivered on November 4, 1976.

Application granted.

The court said "it is hereby ordered that the applicant herein should have the cost of this application and also the costs of the application before Watkins J.A. Certificate for counsel before Watkins J.A." (Watkins J.A. was a single judge of appeal who granted the initial stay which was discharged by the Court of Appeal)

- 2) *Stewart v Rose* (1997) 34 J.L.R 294. Order for recovery of possession against a defendant/appellant. Application by defendant/appellant to Court of Appeal. Application granted. Judgment of Court of Appeal delivered on June 17, 1997.

Application granted. Costs in the cause.

- 3) *Flowers, Foliage and Plants of Jamaica Limited and Jennifer Wright and Douglas Wright v Jamaica Citizens Bank Limited* 34 J.L.R. Judgment of the Court of Appeal delivered on September 29, 1997

Application granted. Judgment silent as to costs.

- 4) *Kingsley Thomas v Collins Innis*. SCCA No.99 of 2005. Application No. 162 of 2005 Judgment of a single judge of appeal, Harrison J.A. delivered on February 14, 2006.

Application granted. Judgment silent as to costs.

- 5) *Rahul Singh and Commonwealth Communications LLC and Ocean Petroleum Inc. v Kingston Telecom Ltd and Cable and Wireless Ja. Ltd* SCCA 48 of 2006, Applications 72 and 80 of 2006. Judgment of single judge of appeal, Harris J.A. Judgment delivered on Dec 5, 2006.

Application granted. Security for costs awarded – see paragraph 26.5 of

7) *Watersports Enterprises Ltd and Jamaica Grande Limited and Grand Resort Limited v Urban Development Corporation* SCCA No.110 of 2008. Application No. 159 of 08. Judgment of single judge of appeal, Harrison J.A. delivered on February 4, 2009.

Application granted. No order as to costs.

8) *Milford Trading Company Limited v Garth Pearce* SSCA No.31 of 2009. Application No. 46/09. Judgment of a single judge of appeal, Harris J.A. delivered on May 28, 2009

Application granted. Judgment silent as to costs.

9) *Kern Spencer v Director of Public Prosecutions and Attorney General of Jamaica*, SSCA No. 81 of 2009, Application No.121 of 2009. Judgment of a single judge of appeal, Morrison J.A. delivered on June 24, 2009.

Application denied. Costs are costs in the appeal

10) *Richard Spence and Leonie Spence v Maurice Hitchins and Audley Hitchins*, SCCS No. 127 of 2005, Application No. 29 of 06. Judgment of Court of Appeal delivered on November 16, 2009.

Application for discharge of order of single judge striking out appeal and stay. Application for discharge granted. Costs of the application to the applicants to be agreed or taxed. (Judgment silent as to whether stay was granted)

11) *Cable & Wireless Jamaica Limited (T/A LIME) V Digicel (Jamaica) Limited* SSCA No. 148.2009, Application No. 196/09. Judgment of a single judge, Morrison J.A. delivered on December 16, 2009

Application granted. Costs of the application to be costs in the appeal.

12) *Capital Solutions Ltd v Terryon Walsh and the Administrator General of Jamaica and Karlene Bisnott* SCCA No.1/2010, Application Nos. 2/2010 and 6/2010. Judgment of a single judge of appeal Phillips J.A. delivered in February 9, 2010.

Application granted. Costs to be costs in the appeal.