

# **In the Court of Appeal for the Northwest Territories**

**Citation:** *Mubili v Northwest Territories (Administrator, Maintenance Enforcement)* 2024  
NWTCA 1

**Date:** 2024 01 11

**Docket:** A1-AP-2022-000-001

**Registry:** Yellowknife, N.W.T.

**Between:**

**Viktor Mubili**

**Appellant**

- and -

**The Administrator, Maintenance Enforcement  
for the Northwest Territories and Agnes Zinyama-Mubili**

**Respondents**

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**The Court:**

**The Honourable Justice Jolaine Antonio  
The Honourable Justice Bernette Ho  
The Honourable Justice William T. de Wit**

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## **Memorandum of Judgment**

Appeal from the Decision by  
The Honourable Justice K. M. Shaner  
Dated the 3<sup>rd</sup> day of February, 2022  
(Docket: S-1-FM 2020-000 046)

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## Memorandum of Judgment

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### The Court:

[1] The appellant appeals an order of February 3, 2022 by Shaner J. He asks this Court to vacate that order; to vary the terms of the order of June 4, 2020 by Mahar J; and to make other orders on matters not argued before Shaner J.

[2] The appeal is dismissed. We have found no reviewable error in Shaner J's decision. The remainder of the relief sought does not arise from Shaner J's order and is not properly before this Court.

### Procedural history

[3] There is a long history of litigation between these parties. Only a portion of that history is relevant to this appeal.

[4] The appellant, through his then-counsel, brought an application regarding child support and child support arrears, in which Ms Zinyama-Mubili and the Administrator of Maintenance Enforcement for the Northwest Territories were named as respondents. When the matter came before Mahar J on June 4, 2020, the parties advised him they had reached an agreement. An order was entered accordingly. The order was not labelled a consent order, even though the parties had reached agreement regarding its contents.

[5] The appellant filed a motion to vary the June 2020 order. When the matter was heard on September 2, 2020, Mahar J explained the majority of the relief the appellant was seeking was in the nature of an appeal of the June 2020 order, not a variation of it. He dismissed the motion but, given the confusion about the forum, he extended the time to file a Civil Notice of Appeal with respect to his order of June 2020, such that the appeal period would commence on September 2. The effect was that the appeal period expired on October 2, 2020.

[6] The appellant appealed the September 2020 order but not the June 2020 order. This Court released reasons in that appeal on April 20, 2021, noting the appellant had raised many issues that were not properly before the Court on the appeal: *Mubili v Northwest Territories (Administrator, Maintenance Enforcement)*, 2021 NWTCA 5 at para 13. This Court concluded at paragraph 16:

Finally, this Court will not consider the father's arguments regarding the June 4, 2020 order, what amounts were properly in arrears according to the numerous Ontario orders and whether costs ought to have been ordered. It does not matter

whether the June 4, 2020 order was a “consent” order. The important thing is that the June 4, 2020 order was a final order as it relates to all credits, payments and arrears to that date. There was no indication within the order that the \$75,000 was subject to later “validation” by the court or otherwise. The chambers judge [in September 2020] set out for the father the difference between an appeal and a variation, extended the time for the father to file his appeal of the June 4, 2020 order and considered only those arguments that would have constituted grounds for variation. This was appropriate. The father did not follow those instructions and file an appeal of the June 4, 2020 order. As a result, this order is not before us and continues to stand as a valid order setting out the arrears and repayment schedule.

[7] The appellant filed another application in the Supreme Court, which came before Shaner J on February 3, 2022. It appears the applicant wished to address two topics governed by prior orders.

[8] The first was parenting time. Shaner J informed the appellant: “that application cannot be heard in this court ... because your son lives in Ontario and that is the court that has jurisdiction with respect to parenting time.” While the Northwest Territories Supreme Court could take jurisdiction in very exceptional circumstances, such circumstances were not present in this case.

[9] The second topic was child support and arrears. At the start of the discussion on this topic, Shaner J set out the context, saying: “[M]y understanding is that you disagree with [Mahar J’s] order. You appeared in the Court of Appeal. Justice Mahar had extended the time to file your appeal. It was not filed within that time. My understanding is that the Court of Appeal dismissed your appeal”.

[10] Among other submissions, the appellant said he appealed Mahar J’s September 2020 order, in particular his “refusal to revisit” the June 2020 order. He interpreted this Court’s judgment on appeal as advising him to appeal the June 4 order. However, by the time the appellate judgment was released, the extension granted by Mahar J had elapsed. He sought the registry’s “guidance to consider to grandfather me in the sense that that time was held up by the appeal process”, and “wanted to see whether it could be possible for me to pursue that [appeal of the June order] as recommended by Justice Mahar.” He was told he would need to bring an application in court.

[11] Shaner J said she could not offer the appellant advice, but referred him to Legal Aid to ask about potential next steps. She said she could not change the Court of Appeal’s prior ruling. However, she would treat the application as a variation application. She dismissed that application, saying the Supreme Court lacked jurisdiction to revisit the June 2020 order.

### **Arguments on appeal**

[12] The appellant says Shaner J’s order should be vacated. He says she erred by finding the Court of Appeal dismissed an appeal from the June 2020 order when in fact that order was never appealed. He says his proposed appeal of the June 2020 order is meritorious, and therefore Shaner

J should have further extended the time in which to appeal it. He further submits the circumstances of this case are exceptional, and Shaner J erred in finding otherwise. As noted, he also raises issues that do not arise from Shaner J's order and are not properly before this Court.

[13] The respondent Ms Zinyama-Mubili submits the appellant has identified no reviewable error in Shaner J's decision. She submits the appellant cannot meet the test for extending time to appeal. She further submits this appeal is the latest in a series of frivolous steps, in more than one jurisdiction, amounting to an abuse of the court's process.

[14] The respondent Administrator of Maintenance Enforcement for the Northwest Territories attended the hearing to respond to any questions but did not make submissions on the appeal.

### **Analysis**

[15] The appellant says Shaner J found this Court had dismissed his appeal of the June 2020 order, when there was no such appeal. In effect, he alleges an error of fact. Errors of fact are reviewed on a standard of palpable and overriding error. We are not satisfied any reviewable error was made below.

[16] It is clear from her preliminary comments that Shaner J understood Mahar J had made two orders; the appellant had appealed one and that appeal was dismissed; and the appellant had been given an extension of time to appeal the other but did not do so. We cannot interpret these comments as a finding that an appeal from the June 2020 order was filed and dismissed.

[17] We do not conclude there was any ambiguity in Shaner J's mind about which order was which at the time she made her preliminary comments. Even if there had been, the appellant's submissions explained the history of the two orders and the appeal. By the time Shaner J ruled, no ambiguity could have remained.

[18] Fundamentally, the appellant submits it would be just to give him an opportunity to adduce evidence and make submissions regarding the arrears settled by the June 2020 order. Nonetheless, from the record before us, we are unable to conclude Shaner J committed any reviewable error in declining to re-open the matter, either by way of an extension of time to appeal or by treating it as an application to vary.

[19] Finally, the appellant asserts Shaner J erred in finding that this case did not present exceptional circumstances. Nothing in the materials before us undermines that finding.

### **Conclusion**

[20] The appeal is dismissed.

[21] Costs are awarded to Ms Zinyama-Mubili in the amount of \$1200. The costs order will be enforceable by Maintenance Enforcement for the Northwest Territories.

Appeal heard on January 9, 2024

Memorandum filed at Yellowknife, NWT  
this 11th day of January, 2024

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Antonio J.A.

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Authorized to sign for: Ho J.A.

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de Wit J.A.

**Appearances:**

The Appellant V. Mubili

T. Gault

for the Respondent, The Administrator, Maintenance Enforcement for the Northwest Territories

The Respondent A. Zinyama-Mubili

**A1-AP-2022-000-001**

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**IN THE COURT OF APPEAL  
FOR THE NORTHWEST TERRITORIES**

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**Viktor Mubili**

**- and -**

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for the Northwest Territories and  
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**MEMORANDUM OF JUDGMENT**

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