Neutral Citation No: [2024] NICA 69	*Ref:*	**McC12629**
	ICOS No:	**24/59758/01**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**21/10/2024**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

JODY NESBITT
and
DIANA NESBITT

Appellants

and

LAND AND PROPERTY SERVICES

Respondent

The Appellants were self-representing
Mr Cathal Doran (instructed by the Departmental Solicitors Office) for the Respondent

---

Before: McCloskey LJ and McBride J

McCLOSKEY LJ (*delivering the ex-tempore judgment of the court*)

Introduction

[1] The court has considered in full all of the materials including the written submissions of both parties and the oral submissions of Mr Nesbitt on behalf of the two appellants, Mr and Mrs Nesbitt. Having done so we are unanimous in our assessment that this appeal has no merit.

[2] This court, being the Court of Appeal, is the third court in which these proceedings have been transacted. The first court was Newtownards Magistrates' Court. That court made a decree against the two appellants, Jody and Diana Nesbitt, in the amount of £3,975.17 at the suit of Land and Property Services. That amount represented the amount of rates due by Mr and Mrs Nesbitt to that agency. The debt was undisputed and remains so. An appeal to Downpatrick County Court ensued. This gave rise to an initial listing on 12 April 2024 and a further listing on 7 June 2024.

[3] The decision of that court is recorded in a two-page judgment provided by His Honour Judge Miller on the same date, 7 June 2024. By that decision the judge dismissed the appeal of Mr and Mrs Nesbitt. That, in turn, gave rise to an exchange

of communications between Mr and Mrs Nesbitt, on the one hand, and the county court on the other. Detailing those communications is unnecessary. In substance, the outcome of those communications was a refusal by Judge Miller to state a case for the opinion of this court. We would add that this refusal was premature since the judge was not in receipt of a requisition to state a case for the opinion of this court formulating coherently a suggested question of law. Nonetheless, his decision was one of refusal and, as appears from [1] above, is in substance unassailable.

[4] This has given rise to an application to this court by Mr and Mrs Nesbitt for an order compelling Judge Miller to state a case for the opinion of this court. Having established this morning for the first time that there was the aforementioned refusal decision, the provisions engaged by this application are Article 61 of the County Courts Order 1980 and Order 61 of the Rules of the Court of Judicature.

[5] This court receives applications of this kind from time to time and in determining them we apply a well-established test, namely whether the decision of the lower court is arguably erroneous in law.

[6] In this case we acknowledge that the judge may have been in error in his characterisation of the parties to what the appellants contend was a bill of exchange. Nonetheless, we are satisfied that this characterisation was an immaterial error on the part of the judge. Fundamentally, as a matter of law, it was not open to the appellants to compel the respondent, the Land and Property Services, to accept payment of the rates due by the mechanism of a bill of exchange. That is the fundamental legal rule engaged at every stage of these proceedings. The bill of exchange, as the appellants characterise it, could not be unilaterally forced upon Land and Property Services. The appellants' central contention has at every stage been that as a matter of law they could in effect do so. There is no legal rule to this effect and no supporting authority, statutory nor otherwise. Their contention is misconceived accordingly. It follows that the judge did not err in dismissing the appeal. This court is satisfied that there is no arguable material error or law in the decision of Judge Miller.

[7] Accordingly, we refuse the relief sought in the opening paragraph of the document entitled "Summons to State a Case" dated 5 July 2024.

[8] The parties shall give consideration to the issue of costs. If the respondent determines to apply for an order for costs against the appellants, it will do so in writing electronically on an A4 page font size 12 minimum and confined to that size. That will be done within seven days of receiving the judgment of the court. Equally, if the respondent determines not to apply for costs, that will be communicated to the court within the same seven-day period. If the respondent does make an application for costs, the appellants will have a further period of seven days within which to reply in writing. Once again, there will be the same spatial restriction in their response. No further listing is scheduled at this stage and a paper judicial resolution of this issue is most likely. The court will address in its final order any necessary ancillary or incidental matter which arises.