

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

TERRITORY OF THE VIRGIN ISLANDS

BVIHCVAP2023/0005

BETWEEN:

Darwin Blyden

Appellant

and

**[1] Benedicta Samuels, (Administratrix of the
Estate of Abraham Blyden, deceased)**

[2] Estelle Wheatley

Respondents

Before:

The Hon. Mde. Margaret Price Findlay

Justice of Appeal

The Hon. Mde. Esco L. Henry

Justice of Appeal

The Hon. Mr. Reginald T. A. Armour

Justice of Appeal [Ag.]

Appearances:

Mr. Sydney Bennett, KC with Ms. Anthea L. Smith for the appellant

Ms. Akilah Anderson for the 1st respondent

No appearance for the 2nd respondent

2025: April 7;
May 19.

Interlocutory appeal – Rule 20.1 of the Civil Procedure Rules (Revised Edition) 2023 – Application to amend Claim Form and Statement of Claim – Factors taken into consideration in granting permission to amend – Whether the learned master erred in dismissing the amendment application – Principles relative to exercise of discretion – When an appellate court will exercise its discretion afresh

By Claim Form and Statement of Claim dated 14th November 2022, the appellant filed a claim against the respondents and sought to raise the issue of proprietary estoppel. An amendment was made to the Claim Form and Statement of Claim on 23rd January 2023 ('the first amendment'). The appellant sought to further amend the Claim Form and Statement of Claim on 3rd May 2023 to properly lay the foundation for a claim in proprietary estoppel. The appellant filed the proposed Further Amended Claim Form and Statement of Claim along with an application for leave to amend on 3rd May 2023 just one day prior to the scheduled first case management conference.

By order dated 26th June 2023, the learned master dismissed the appellant's application to further amend the Claim Form and Statement of Claim and awarded costs to the respondents.

Being dissatisfied with the decision of the learned master, the appellant sought leave to appeal the order. By order dated 2nd April 2024, the appellant was granted leave to appeal the decision of the learned master and filed the notice of appeal on 22nd April 2024. The appellant has set out five grounds of appeal as follows: (a) The learned master had no regard to the principles upon which the discretion should be exercised, (b) the learned master wrongly concluded that the proposed amendments were superfluous, (c) the delay in applying for the amendment did not disadvantage the respondents nor harm the public interest in the efficient administration of justice, (d) the proposed amendments caused no prejudice to the respondents as the claim remained the same - however the proposed amendment placed the relevant details before the court to enable it to properly adjudicate the real dispute between the parties and (e) the refusal to grant the amendment caused real prejudice to the appellant, by preventing him from putting his case justly and adequately before the court - in his pleadings .

Held: allowing the appeal, setting aside the decision of the learned master; ordering that the re-amended Claim Form and Statement of Claim filed on 3rd May 2023 is deemed properly filed; the respondents are at liberty to re-amend their defence within 21 days of the date of this order and awarding costs to the appellant - to be assessed by a judge of the High Court within 21 days of this order, if not agreed, that:

1. An appellate court will only interfere with the exercise of a judge's discretion if the decision is plainly wrong or exceeded the generous ambit within which reasonable disagreement is possible. Before the Court can interfere, it must be shown that the judge has either erred in principle in his approach, by taking into account some feature that he should not have considered or has left out of account some factor that he should have, and as a result has made a decision that is wholly wrong.

AEI Rediffusion Music Ltd v Phonographic Performance Ltd [1999] 1 WLR 1507 applied.

2. The court is empowered under the Civil Procedure Rules to allow amendments to a Statement of Claim at a case management conference or at any time on application to the court. The factors to be considered by the court in determining an application to amend are set out under CPR 20.1(3). These factors include the promptitude of the application, prejudice to the parties, whether such prejudice can be compensated by costs or interest, whether the trial date can still be met and the administration of justice.

Rules 20.1(3) **Civil Procedure Rules (Revised Edition) 2023** applied; **Allert et al v Matheson et al** GDHCVAP2014/0007 (delivered 24th November 2014, unreported) applied.

3. The court should be guided by the general principle that amendments necessary to ensure the real questions between the parties are determined ought to be made, provided they do not cause inconvenience that cannot be compensated. The rules must be applied fairly to both parties and not in a way that prevents a litigant from putting forward their case on a mere technicality. It is in the public interest and in the interest of justice to allow amendments where the issues are relevant and have a real prospect of success. It is also inappropriate to refuse an amendment on the merits where one of the main issues turns on a disputed factual situation, as that is best resolved at trial.
4. The constituent elements of proprietary estoppel must be placed before the court in pleadings and cannot properly arise in a witness statement or in oral testimony for the first time. The party seeking to advance a claim of proprietary estoppel must in such circumstances state the promise which was made, assert that he relied on that promise and set out the detriment suffered by him in reliance on that promise. If this is done the party may then amplify in a witness statement or in oral testimony the factual matrix on which he or she relies, but not otherwise.
5. Even though courts are now less willing to grant late amendments, the application in this matter in the context of the proceedings cannot be said to have been late, being made as it was at the time of the first case management conference. However negligent or careless may have been the omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other party. There is no injustice if the other side can be compensated by costs.

Clarapede & Co v Commercial Union Association (1883) 32 WR 262 applied;
Kettemen v Hansel 1984 1 WLR 1274 applied.

JUDGMENT

- [1] **PRICE FINDLAY JA:** This appeal was filed by way of notice of appeal dated 22nd April 2024 against the decision of the learned master dated 26th June 2023 whereby she dismissed the appellant's application to further amend the Claim Form and Statement of Claim to plead specific further details in respect of his proprietary estoppel claim relating to the property that is the subject matter of the claim, and awarded costs to the respondents.
- [2] The appellants were granted leave to appeal by way of the Order of Michel CJ (Ag.) dated the 2nd April 2024.

- [3] The learned master in her oral ruling stated that she had looked at the proposed amendments and found that while the information which was pleaded did not seem to be factually inconsistent with what had already been pleaded, the proposed amendments were in her opinion superfluous. She found that the proposed amendments merely restated what was already claimed in the existing claim and that the respondents had already responded to these claims in their respective defences.
- [4] She further indicated that she had addressed her mind to Rule 20.1 (3) of the **Civil Procedure Rules (Revised edition 2023)** (“CPR” or “the Rules”) and the factors which she had to consider with respect to the application and that having done, so she was of the view that the prejudice to the respondents was greater than that to the appellant especially as the delays were at the feet of the appellant. Costs would not compensate the respondents; the application had not been made promptly and the delay in making the application had not been satisfactorily explained by the appellant.
- [5] An order for the immediate payment of costs on the application to the respondents was made.
- [6] It is from this ruling that the appellant appeals.
- [7] The grounds of appeal are as follows:
- (a) The learned master gave no regard to the principles upon which the discretion should be exercised.
 - (b) The learned master wrongly concluded that the proposed amendments were superfluous.
 - (c) The delay in applying for the amendment did not disadvantage the respondents nor harm the public interest in the efficient administration of justice.

(d) The proposed amendments caused no prejudice to the respondents as the claim remained the same but the proposed amendment placed the relevant details before the court so it could properly adjudicate the real dispute between the parties.

(e) The refusal to grant the amendment caused real prejudice to the appellant, preventing him from putting his case justly before the court to the extent that the appellant as prevented from properly pleading his case before the court.

[8] This is an appeal against the exercise of the learned master's discretion.

[9] The appellant in this matter sought to raise the issue of proprietary estoppel, it was whether or not he built on the disputed property with the consent and permission of his father.

[10] The original pleading filed by the appellant on the 14th November 2022 was as follows:

Claim Form:

"4. A declaration that the Claimant is entitled to be registered as proprietor of Parcel 163 and occupied same and constructed the dwelling house thereon from 1987 with the permission of his father Abraham Blyden prior to his death."

Statement of Claim:

" 5. In reliance on the said promise of the deceased in or around 1985, the Claimant took steps to construct a house on all that parcel of land now registered as Parcel 163 of Block 3237B of the Long Look Registration Section ('Parcel 163') (previously forming part of Parcel 4 of Block 3237B of the Long Look Registration Section 'Parcel 4'). The foundation was cut and dug, and a road was cut on Parce 163 in 1985. With the knowledge and consent of the deceased and relying on the promise of the deceased that the said Parcel would be given to him by the deceased, the Claimant commenced construction of the house on Parcel 163 in 1987.

6. As a result of the Claimant's reliance on the said promise and consent of the deceased and on the basis that having commenced construction of the dwelling house during the life of the deceased and with the consent of the

deceased and being in occupation and possession of Parcel 163 from during the lifetime of the deceased and with the consent of the deceased up to the present time, the Claimant therefore has a beneficial interest in Parcel 63.

AND THE CLAIMANT CLAIMS AS AGAINST THE DEFENDANTS FOR:

4. A declaration that the Claimant is entitled to be registered as proprietor of parcel 163 and occupied same and and constructed the dwelling house thereon from 1987 with the consent and permission of his father Abraham Blyden prior to his death. ”

[11] There was a first amendment made to the Claim Form and the Statement of Claim on the 23rd January 2023 prior to the first case management conference.

[12] The appellant sought to further amend the Claim Form and Statement of Claim on 2nd May 2023 to properly lay the foundation for a claim in proprietary estoppel.

[13] The proposed further amendments were as follows:

Claim Form:

“ 4. A declaration that the Claimant is entitled to be registered as proprietor of Parcel 163 having relied on the promise of the deceased that Parcel 163 would be given to him and having with the knowledge and consent of the deceased during his lifetime and occupied same and expended monies and constructed the dwelling house thereon from 1987 and occupied same and with the consent and permission of his father Abraham Blyden prior to his death.”

Statement of Claim:

“ 5. In reliance on the said promise of the deceased in ~~in or around~~ 1985, the Claimant took steps to construct a house on ~~all that parcel of land now registered as Parcel 163 of Block 3237B of the Long Look Registration Section (‘Parcel 163’) (previously forming part of Parcel 4 of Block 3237B of the Long Look Registration Section ‘Parcel 4’)~~. The foundation was cut and dug, and a road was cut on Parcel 163 in 1985. With the knowledge and consent of the deceased and relying on the promise of the deceased that the said Parcel would be given to him by the deceased, the Claimant commenced construction of the house on Parcel 163 in 1987.

6. As a result of the Claimant’s reliance on the said promise and consent of the deceased and on the basis that having commenced construction of the dwelling house during the life of the deceased and with the consent of the

deceased and being in occupation and possession of Parcel 163 from during the lifetime of the deceased and with the consent of the deceased up to the present time, the Claimant therefore has a beneficial interest in Parcel 63. With the knowledge and consent of the deceased, the Claimant has expended substantial monies from about 1985 in constructing and completing the building on Parcel 163 under the belief that he had or would acquire title to Parcel 163, as the deceased had encouraged or acquiesced in his endeavors and expenditure. On this basis having regard to communications forwarded on behalf of the Claimant to the First Defendant and the Claimant states that the First Defendant was aware of the Claimant's said interest in Parcel 163 and is estopped from transferring Parcel 163 to the Second Defendant.

AND THE CLAIMANT CLAIMS AGAINST THE DEFENDANTS FOR:

4. A declaration that the Claimant is entitled to be registered as proprietor of Parcel 163 having relied on the promise of the deceased that Parcel 163 would be given to him and having with the knowledge and consent of the deceased during his lifetime and occupied same and expended monies and constructed the dwelling house thereon from 1987 and occupied same and with the consent and permission of his father Abraham Blyden prior to his death."

[14] The appellant filed the proposed re amended Claim Form and Statement of Claim on the 3rd May 2023 along with the application for leave to amend. This filing and application took place one day prior to the scheduled first case management conference.

[15] The appellant submitted that in order to properly plead proprietary estoppel a litigant must plead the constituent elements of the matter, as set out in **Thorner v Major**¹:

- (1) A representation or assurance or other encouragement of sufficient clarity giving rise to an expectation by the Claimant that he would have a certain proprietary interest.
- (2) Reliance by the Claimant on the assurance, and,
- (3) Detriment to the Claimant in consequence of his reasonable reliance on the representation or assurance or other encouragement.

[16] The appellant cited CPR 8.7 (1) which states:

¹ [2009] UKHL 18.

“The Claimant must include in the Claim form or Statement of Claim a statement of all the facts on which the Claimant relies.”

- [17] It was submitted that a concise statement of the material facts would suffice in order to make clear the pleaded case as illustrated in **Steadroy Matthews v Garna O’Neal**² where Michel JA as he then was said at paragraph 30:

“Now that the parties are required to file witness statements containing their evidence and that of any other witness that they propose to call, the pleadings (or statements of case as they are titled under the Civil Procedure Rules 2000) are no longer required to contain significant detail about the party’s case. Rule 8.7 (1) of the CPR states that - “The claimant must include in the claim form or statement of claim a statement of all the facts on which the claimant relies”, which means that he must state all the facts necessary for the purpose of formulating a complete cause of action. It is to the witness statements that litigants now turn to sift the details of the other party’s case.”

- [18] The appellant posited that any factual statement regarding the general nature of the case must include the constituent elements which make up the proposed cause of action.
- [19] The respondent opposed the appeal on the ground that the learned master had properly exercised her discretion and had applied her mind to all the relevant principles and had not erred in principle or taken irrelevant factors into account or failed to take relevant factors into account and thereby arrived at a decision which was plainly wrong.
- [20] The respondent submitted that the issue of proprietary estoppel had already been adequately put before the court in the previous pleadings and that the respondent had already replied to those pleadings. Learned counsel indicated to the Court the relevant paragraphs in the defence where the respondent had replied to the pleading.

² (2018) 92 WIR 374.

- [21] The respondent further submitted that the proposed amendment served no useful purpose because the appellant had already pleaded the issue of proprietary estoppel with sufficient particularity in their previous pleadings, so that both the respondent and the court were well aware of the issues to be decided between the parties.
- [22] The respondent further submitted on the authority of **East Caribbean Flour Mills v Ken Boyea**³ that pleadings need do no more than state the general nature of the case of the pleader, that there is a clear distinction between an allegation and particulars of the allegation, and that the earlier pleadings did state the general nature of the case and there was no need for further amendments. Both the court and the respondent knew and understood that the appellant was pleading proprietary estoppel.

Discussion

- [23] An appellate court will only interfere with the exercise of a judge's discretion if it can be shown that the learned trial judge has exceeded the generous ambit within which a reasonable disagreement is possible, or if the decision arrived at is plainly wrong.
- [24] The test was stated in **AEI Rediffusion Music Ltd v Phonographic Performance Ltd**.⁴ by Wolff MR:
- “Before the Court can interfere it must be shown that the judge has either erred in principle in his approach or has left out of account or has taken into account some feature that he should or should not have considered or that his decision is wholly wrong because the Court is forced to the conclusion that he has not balanced the various factor fairly in the scale.”
- [25] The Court of Appeal is empowered to interfere where the learned trial judge's decision is clearly wrong, the appeal court does not merely substitute its own decision on a fresh exercise of discretion for the discretion of the learned judge.

³ SVGHCVP2006/0012 (delivered 16th July 2007, unreported).

⁴ [1999] 1 WLR 1507.

- [26] The Court of Appeal will not reverse the order of the learned master because it would have exercised the original discretion in a different manner.
- [27] If, however, the appeal court reached the clear conclusion that there has been a wrongful exercise of discretion, in that no weight or no sufficient weight has been given to relevant considerations then reversing the order of the court below may be justified.
- [28] The court is empowered under the CPR to allow amendments to a statement of claim at a case management conference or at any time on application to the court.
- “CPR 20.1 (1) A statement of case may be amended once, without the court’s permission, at any time prior to the date fixed by the court for the first case management conference.
- (2) The court may give permission to amend a statement of case at a case management conference or at any time on an application to the court.”
- [29] The appellant filed the further amended Statement of Claim on 3rd May 2023 without making an application to the court for so doing but instead filed an application bearing the same date asking the court for permission to further amend the Amended Claim Form and Amended Statement of Claim; and for an order that the Further Amended Claim Form and Further Amended Statement of Claim so filed be deemed properly filed.
- [30] The factors to be considered by the court in considering an application to amend are set out at CPR 20.1(3):
- “When considering an application to amend a statement of case pursuant to rule 20.1(2), the factors to which the court must have regard shall include
- (a) how promptly the applicant has applied to the court after becoming aware that the change was one which he or she wished to make;
- (b) the prejudice to the applicant if the application were refused;

- (c) the prejudice to the other parties if the change were permitted;
- (d) whether any prejudice to any other party can be compensated by the payment of costs and or interest;
- (e) whether the trial date or any likely trial date can still be met if the application is granted; and
- (f) the administration of justice.”

[31] The court in exercising its discretion ought to be guided by the general principle that amendments made should be necessary to ensure that the real questions to be decided between the parties are determined, provided that such amendments can be made without causing inconvenience to the other parties and that such inconvenience can be compensated with costs.

[32] In exercising its discretion, the court in deciding whether or not to grant the amendment must have regard to the overriding objective and the need to ensure that the real issues to be decided between the parties are properly determined.

[33] The rules are to be applied in a way which is fair to both parties and ought not to be applied in a manner which will prevent any litigant from putting its case before the court on a mere technicality. It is in the public interest and in the interest of administration of justice to allow a party to plead its case provided that it is not irrelevant and that there is a real prospect of success.

[34] It is inappropriate to refuse an amendment on the merits if one of the main issues turns on a disputed factual situation because that is a matter to be decided at the trial.

[35] In this matter the plea of proprietary estoppel was the basis of the appellant’s claim in the court below, and in accordance with the stated rules and legal principles, the appellant was required to sufficiently plead the constituent elements clearly and concisely for the court to decide the issue.

[36] The issue cannot be raised in a witness statement or in oral testimony at trial if not sufficiently and properly pleaded. A detailed witness statement or a list of documents will not suffice for a statement of the facts upon which the litigant relies.

[37] Sir John Dyson in **Charmaine Bernard v Ramesh Seebalack**⁵ at paragraph 27 stated:

“If a statement of case contains allegations which are “sufficiently made” (so that it satisfies the requirements of Part 8) there is no need to amend it in order to provide particulars. These can be provided by way of further information or in the form of a witness statement, But for the reasons stated earlier in the present case the statement of claim should have included a short statement of the heads of loss that were being claimed.”

[38] CPR 8.8 states:

“The Claimant may not rely on any allegation or factual argument which is not set out in the claim, but which could have been set out there unless the court gives permission or the parties agree.”

[39] The party seeking to advance a claim of proprietary estoppel must in these circumstances state the promise, which was made, assert that he relied on that promise and then set out the detriment suffered by him in reliance on that promise. If this is done the party can then amplify in a witness statement or in oral testimony the factual matrix on which he or she relies, but not otherwise.

[40] The court has to consider several factors in determining whether to allow an amendment to be made. Blenman JA in **Allert v Matheson**⁶ set out the principles which the court ought to consider as:

- (a) The justice to the parties.
- (b) The legitimate expectation that the basis of a claim will not be fundamentally changed at the last minute
- (c) The adverse effect on other litigants of lost judicial time.
- (d) The stage of the proceedings.

⁵ [2010] UKPC 15.

⁶ GDAHCVAP2014/0007 (delivered 24th November 2014, unreported).

(e) Whether the other side can be compensated with costs.

(f) Whether amendment would serve any useful purpose.

[41] If the amendment causes no injustice and if it raises no new evidence, it should be allowed. The principle is that amendments are usually granted so as to have the real dispute between the parties to be adjudicated provided that any prejudice occasioned to the other party by the amendment can be compensated by an order for costs. The court must also have due regard for the public interest and the administration of justice.

[42] In having regard to CPR 20 the promptness of the application is one of the considerations which the court ought to have regard, but it is qualified by the phrase, 'after becoming aware that the change was one which he or she wished to make'.

[43] Promptitude is but one of the factors to be considered but it is not determinative of an application under the Rules. The court has to take all the factors into account while bearing in mind the justice of the case.

[44] There was unchallenged evidence before the learned master that it was upon review of the pleadings in preparation for the case management conference that it became apparent that the change ought to be made. It was at that time that the application for the amendment was made. The appellant submitted the application was made in a timely manner.

[45] Further the application was made immediately prior to the case management conference. There were no case management orders in place, no trial date had been scheduled, and the nature of the pleadings would not be changed by the proposed amendments.

[46] In this matter in looking at the issue of prejudice, this Court is of the view that the finding by the learned master that the prejudice to the respondent was greater than

that to the appellant was plainly wrong. When one analyses the nature of the claim by the appellant to deprive the appellant from clearly pleading the constituent elements of proprietary estoppel would effectively put his claim in jeopardy as he could not lead viva voce evidence or evidence in a witness statement to prove his claim in the absence of proper pleadings. The clear prejudice is to the appellant if the amendment is denied.

[47] In **Clarapede & Co v Commercial Union Association**⁷ Brett MR stated:

“However negligent or careless may have been the just omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other party. There is no injustice if the other side can be compensated by costs”.

[48] Further, it was stated by Lord Keith of Kinkel in **Kettemen v Hansel**⁸:

“The rule is that the amendment should be allowed if necessary to enable the true issues in controversy between the parties to be resolved and if allowance would not result in injustice to the other party not capable of being compensated by an award of costs.”

[49] There is no discernible evidence in this matter that the grant of the amendment would visit any injustice upon the respondent or place them in a worse position with respect to their pleaded defence. This Court is of the view that upon a careful examination of the state of the pleadings and the stage of the proceedings that there was no prejudice to the respondent had the amendment been granted.

[50] The learned master, having stated that she considered the factors set out in CPR 20 in exercising her discretion, did not appear to take into account all the relevant factors that she ought to, such as the stage of the proceedings reached, whether there was a trial date set, whether an adjournment of the trial was necessary, the injustice to the appellant and whether the respondent could have been compensated by the payment of costs. She thereby erred in principle.

⁷ (1883) 32 WR 262.

⁸ [1984] 1 WLR 1274.

- [51] The learned master concluded that ‘while such applications can almost always be compensated with costs, I do not consider this factor in light of the findings above.’ Unfortunately, no further explanation was given by the learned master as to why she came to this conclusion. It is also unfortunate that neither party to this appeal sought to have the master expand on her reasoning especially as she stated that she would have done so if an appeal arose.
- [52] The constituent elements of proprietary estoppel must be properly placed before the Court in pleadings and cannot properly arise in a witness statement or in oral testimony at trial for the first time.
- [53] The learned master indicated that she had considered the factors set out in CPR 20, however when one considers all of the relevant factors and the nature of the proposed amendment, the balance between the prejudice to the appellant as opposed to the prejudice to the respondent, it is the opinion of this Court that the learned master erred by failing to consider all relevant factors and as a result arrived at a conclusion that was plainly wrong. In the circumstances, this Court must exercise the discretion and consider the appellant’s application afresh.
- [54] A decision can be overturned on appeal if a judge has taken into account irrelevant factors or failed to address relevant ones. Even where this is not the case as in this matter, it is possible for a decision to be wrong.
- [55] Sir David Eady in **Goarke v Fontaine**⁹ stated:
- “An appeal should not be allowed merely because the appellate tribunal might have given greater weight or emphasis to one or more relevant factors. Nevertheless, it must follow that if a judge can be wrong despite taking into account relevant factors and not ignoring others that he/she may in having reached a wrong conclusion have been misled in the decision-making process by not giving appropriate weight to certain factors en route....”

⁹ [2014] EWHC 1676 (QB).

He went on further:

“ One possible outcome would be simply to conclude as I am invited to..... that the district judge made a robust decision on a case management issue and it fell within the range of reasonable options open to him: accordingly an appeal tribunal should not interfere. I believe however that the circumstances require a more detailed consideration. Did the balancing exercise lead to a fair and just result?”

- [56] The court must examine the impact on the parties to the action as well as the cost implications for the litigants and the efficient conduct of the matter. It is clear that the prejudice to the appellant is that he would lose the opportunity to plead his full case on proprietary estoppel to the court. Should the amendment be granted the respondent will have the opportunity to re-amend the defence so as to answer the amended pleading. The respondent could also be compensated in costs, the prejudice to the respondent may be a delay in the case management process but no prejudice arises affecting their case in the long run.
- [57] Even though courts are now less willing to grant late adjournments the application in this matter in the context of the proceedings cannot be said to have been late, the application was made at the time of the case management conference.
- [58] Where an amendment can be made without major consequences such as vacating a trial date or stopping a trial already in progress it would be in the interests of justice and fairness to grant the amendment with an order for costs to the respondent. These proceedings were still at an early stage and there is no foreseeable injustice to the respondent if the amendment is granted. The requested amendment would have caused the respondent no injustice once they could be adequately compensated in costs.
- [59] It is the opinion of this Court that fairness and justice required that the amendment should have been granted so that the real issues between the parties could be placed before the court. No trial date has been set, and it was appropriate that the

Appellant should have been allowed to amend the Claim Form and Statement of Claim to reflect the essential elements of proprietary estoppel.

[60] It is all about striking the correct balance in deciding whether the amendment should be allowed or not. In **Ketterman** Lord Griffiths stated:

“A judge is entitled to weigh in the balance the strain the litigation imposes on the litigants especially if they are personal litigants rather than business corporations, the anxieties occasioned by facing new issues the raising of false hopes and the legitimate expectations that the trial will determine the issues one way or the other.”

[61] The justice of the case requires that this Court exercises its discretion, and the Court will do so and having considered all the relevant factors and carrying out the necessary balancing exercise, this Court will grant the application to re-amend the Claim Form and the Statement of Claim to ensure that all the issues between the parties are decided.

Disposition:

[62] This Court therefore allows the appeal, the decision of the learned master is set aside.

[63] The re-amended Claim Form and Statement of Claim filed on the 3rd May 2023 is deemed properly filed.

[64] The respondent shall be given the opportunity to re-amend their defence within 21 days of the date of this Order.

[65] The appellant will have his costs of this appeal to be assessed by a Judge of the High Court within 21 days of this order if not agreed.

I concur.
Esco L. Henry
Justice of Appeal

I concur.
Reginald T.A. Armour
Justice of Appeal (Ag)

By the Court

Deputy Chief Registrar