

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

MONTSERRAT

MNIHCVAP2022/0003

BETWEEN

LLOYD RHENFORD RYAN

Appellant

and

[1] AGNES RYAN (Deceased, now represented by
Neville Blake, Executor of the Estate of the Deceased,
and appointed as legal representative in the proceedings
by order of the Court dated 25th November 2024)

[2] NEVILLE BLAKE

Respondents

Before:

The Hon. Mr. Trevor M. Ward
The Hon. Mr. Eddy D. Ventose
The Hon. Mr. Gerard St. C Farara

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

The appellant in person
Mr. Jean Kelsick for the second respondent

2024: November 25;
2025: March 11.

Civil Appeal - Application to strike out the notice of appeal – Application for an extension of time to file notice of appeal – Joint Ownership – Order severing joint ownership of property between appellant and first respondent – Registered Land Act of Montserrat – Principles for the grant of an extension of time and for the dismissal of an appeal for want of prosecution – Length of delay – Reasons for the delay – Realistic prospect of success – Prejudice to the respondent if the extension of time application is granted

For the Court's determination were two applications filed by the second respondent and the appellant respectively. The origins of these applications stem from an *ex parte* application filed by the first respondent on 24th January 2012 in the High Court pursuant to section 140 of the Registered Land Act that the property registered as Block 14/12 Parcel 11, in the names of the appellant and the first respondent in the St. John's Registration section (the "Property") was a mistake and further that the appellant be served at his last known address or by another means that the court deems fit, of the intention of the first respondent to apply to sever the joint proprietorship. In the affidavit in support of the application, the first respondent stated that in 1985 she was the sole proprietor of the Property and to enable the appellant to pursue his studies in Barbados, she allowed the name of the appellant to be added to the certificate of title so that he could obtain a loan. The first respondent also stated that the appellant's name was added to the Property on the understanding that the appellant would return the title to her name only when he completed his studies. Subsequently, on 26th July 2012, the first respondent filed an application seeking an order from the High Court to sever the joint tenancy between the appellant and the first respondent on the certificate of title to the Property by removing the name of the appellant on the said certificate of title. In the affidavit in support, the first respondent averred that at a hearing on 19th April 2012, the court ordered that a notice be placed in two issues of the local newspaper for the appellant to show cause within 30 days why his name should not be removed from the certificate of title to the Property and that two issues were published in the Montserrat Reporter on 22nd June 2012 and 6th July 2012. The first respondent stated that no response was made by the appellant and that she was therefore seeking an order for his name to be removed as joint owner with her and for the certificate of title to be registered in the name of the first respondent absolutely.

On 20th September 2012, upon hearing the application by the first respondent, the court ordered that the certificate of title of the Property registered in the joint names of the appellant and the respondent be severed and the name of the first respondent be entered on the certificate of title as the sole proprietor thereof absolutely (the "2012 Order"). The appellant filed a notice of appeal on 23rd March 2022 against the 2012 Order which was amended on 16th October 2024.

In relation to the current applications before the Court, the first application was filed by the second respondent on 19th June 2024 with supporting affidavit seeking an order that the appellant's notice of appeal filed on 23rd March 2022 be struck out. The second respondent states that: (1) the appellant filed his appeal 9.5 years late and that the appellant has not prosecuted the appeal since filing it on 23rd March 2022; and (2) the appeal is an abuse of the court's process in that it is an extension of two vexatious and oppressive claims brought by the appellant against the first respondent in the High Court. The second application was filed by the appellant on 22nd October 2024 for an extension of time to file the notice of appeal against the decision of the court dated 20th September 2012. The appellant states that he became aware of the 2012 Order on 1st August 2019 and that when he made inquiries in 2019, he was informed by the Registrar of the High Court in January 2020 that no transcript was available in respect of the hearing that led to the 2012 Order. The appellant says that: (1) once he learned of the

case in 2019, there was a misunderstanding of the filing deadlines; (2) there were unexpected delays in obtaining necessary documents and transcripts; and (3) he encountered difficulty in obtaining counsel/legal representation and when counsel was retained, the legal practitioners failed adequately to represent him and subsequently withdrew from the case. The appellant also states that he has acted diligently in pursuing this appeal and has not intentionally delayed the process; and that the second respondent will suffer no prejudice if an extension of time is granted as he already holds title to the Property and presumably continues to collect rent for the Property.

Held: granting the application for the extension of time to the appellant; ordering that the notice of appeal filed on 16th October 2024 be deemed properly filed; dismissing the second respondent's application to strike out the appeal; and making no order as to costs, that:

1. Granting an extension of time is a discretionary power of the Court, which will be exercised in favour of the applicant for good and substantial reasons. The factors which the Court will consider in the exercise of its discretion are: (1) the length of the delay; (2) the reasons for the delay; (3) the chances of the appeal succeeding if the extension is granted; and (4) the degree of prejudice to the respondent if the application is granted. These factors mirror those that must be considered in determining whether to dismiss an appeal.

John Cecil Rose v Anne Marie Uralis Rose SLUHCVP2003/0019 (delivered 22nd September 2003, unreported) followed; **The Barbuda Council v The Attorney General et al** ANUHCVP1994/0012 (delivered 15th January 2004, unreported) followed.

2. In the present case the delay in filing the notice of appeal by the appellant was inordinate and egregious having done so some 9 years and 4 months out of time. In addition, it cannot be said that the reasons for the delay were good and substantial and therefore excusable. However, having regard to all the circumstances and that the prejudice to both the parties are even, but in particular, considering the realistic prospect of demonstrating in the intended appeal that the 2012 Order could not in law sever the joint ownership of the property with the result that the appellant remains the lawful owner of the property by his right of survivorship, the scales are tipped in favour of granting the appellant's application for an extension of time to file the notice of appeal.

Keithley Lake et al v Richard Vento et al AXAHCVP2016/0012 (delivered 20th June 2019, unreported) considered; **Lindsay F.P. Grant et al v Tanzania Tobin Tanzil** SKBHCVP2020/0004 (delivered 6th July 2020, unreported) considered.

JUDGMENT

- [1] **VENTOSE JA:** Before the Court are two applications. The first application was filed by the second respondent on 19th June 2024 with supporting affidavit seeking an order striking out the appellant's notice of appeal filed on 23rd March 2022. The second application was filed by the appellant on 22nd October 2024 with supporting affidavit for an extension of time to file the notice of appeal in respect of the decision of the court dated 20th September 2012, some 12 years ago.

The Factual Background

- [2] The origin of this matter dates to 24th January 2012 when the first respondent filed an *ex parte* application in the High Court pursuant to section 140 of the **Registered Land Act**¹ that the property registered as Block 14/12 Parcel 11 in the names of the appellant and the first respondent in the St. John's Registration section (the "Property") was a mistake and further that the appellant be served at his last known address or by another means that the court deems fit, of the intention of the first respondent to apply to sever the joint proprietorship. In the affidavit in support of the application, the first respondent stated that in 1985 she was the sole proprietor of the Property and to obtain financial assistance to allow the appellant to pursue his studies in Barbados, she allowed the name of the appellant to be added to the certificate of title so that he could obtain a loan. The first respondent also stated that the appellant's name was added to the Property on the understanding that the appellant would return the title to her name only when he completed his studies.
- [3] The first respondent averred that the appellant graduated over ten years ago and despite repeated requests for him to sign over the Property back to her as they had agreed, he has failed to do so. The first respondent also averred that the appellant now lived in the United States of America and has stopped communicating with her and that any mails sent to him are returned unopened and any calls to his last known telephone number are never answered. The first respondent stated that she had six

¹ Cap 8.01 of the Laws of Montserrat 2008. Incorrectly cited in the first respondent's *ex-parte* application as the Land Registration Act.

(6) children and wished to regularize her affairs, and she was unable to do so because the title to the Property was encumbered with the name of the appellant on the certificate of title. The first respondent also stated that she was never aware of the mistake she made to add the name of the appellant to the certificate of title and was not advised of the implications of doing so. The first respondent averred that it was never her intention to give the appellant the Property absolutely if she should predecease him. The respondent averred that: (1) she was only now made aware that it was only the court that can order a correction of the registry records to allow the title of the Property to be returned to her name; and (2) the reluctance of the appellant to have his name removed and to communicate with her showed that his intention was to obtain the Property absolutely to the exclusion of her husband and his other siblings.

- [4] On 26th July 2012, the first respondent filed an application seeking an order from the High Court to sever the joint tenancy between the appellant and the first respondent on the certificate of title to the Property by removing the name of the appellant on the said certificate of title. In the affidavit in support, the first respondent averred that at a hearing on 19th April 2012, the court ordered that a notice be placed in two issues of the local newspaper for the appellant to show cause within 30 days why his name should not be removed from the certificate of title to the Property and that two issues were published in the Montserrat Reporter on 22nd June 2012 and 6th July 2012. The first respondent stated that to date no response was made by the appellant and that she was therefore seeking an order for his name to be removed as joint owner with her and for the certificate of title to be registered in the name of the first respondent absolutely.
- [5] On 20th September 2012, upon hearing the application by the first respondent, the court ordered that the certificate of title of the Property registered in the joint names of the appellant and the respondent be severed and the name of the first respondent be entered on the certificate of title as the sole proprietor thereof absolutely (the “2012 Order”).

The Appeal

- [6] In his notice of appeal filed on 23rd March 2022, the appellant states that at the time of the application and order of the court he lived in the state of Maryland in the United States of America and from 2015 he lived in the state of Virginia. He also states that he and first respondent communicated frequently via telephone in or around 2012 and that the first respondent had his telephone number. The appellant continues that it was in August 2019 that he found out that his name was removed from joint ownership of the Property.
- [7] The appellant states that on 18th July 1985 he acquired the Property for a consideration of \$5,000.00. The appellant also states that in 1985 he was accepted into the BSc (Management Studies) Program at The University of the West Indies (the "UWI") and spent the first two years pursuing (part-time) the Level I of the BSc (Management Studies) Program using the UWI distance learning program (UWIDITE). He continued that he was able to continue the BSc (Management Studies) Program full-time in Barbados from 1987-1989 from a scholarship he obtained. He got married in 1989 and lived in St. Croix. The appellant denies he was given joint ownership by the first respondent but that he derived joint ownership in the Property for consideration of \$5,000.00 and that he has been disposed of his rightful ownership of the Property.
- [8] The appellant amended his notice of appeal on 16th October 2024 in which he relies on the following additional ground of appeal:
- "2. Under the Revised Registered Land laws of Montserrat, "where the land, lease or charge is owned jointly, no proprietor is entitled to any separate share in the land and consequently: (a) disposition may be made only by all joint proprietors; and (b) on the death of a joint proprietor, his interest shall vest in the surviving proprietor or the surviving jointly." Section 101(3) of the Montserrat Registered Land Act refers: Joint Proprietors, not being trustees, may execute an instrument in the prescribed form signing that they agree to sever the joint ownership, and the severance shall be completed by registration of the joint proprietors in common in equal shares and filing the instrument.

3. I did not expressly or otherwise gave (sic) permission to the Respondent to transfer and/or sever any ownership of Block 14/12, Parcel 11 in whole or part to anyone.

4. That Block 14/12, Parcel 11 was illegally transferred to Neville Theophilus Blake by the Respondent on the 9th day of July 2019.”

- [9] The grounds of appeal, in summary, are as follows: (1) the first respondent concealed information, namely that the appellant derived ownership in consideration of \$5,000.00 and that correspondence to him was returned to her unopened; (2) that there was misrepresentation by the first respondent when the application for severance was made to the court and that there was a failure to disclose material information; (3) there was a failure by the first respondent to make full and candid disclosure at the *ex parte* application for severance; and (4) the appellant did not give permission to anyone to sever the joint ownership of the Property.

Previous Proceedings in High Court

- [10] An important part of the history of these proceedings which led to the filing of the notice of appeal on 23rd March 2022 was the other proceedings brought by the appellant to vindicate his allegation that he should be reinstated as joint owner of the Property. It will be remembered that the appellant stated that in August 2019 he found out that he was no longer a joint owner of the Property.
- [11] In 2019, acting in person, the appellant brought proceedings in Claim No. MNIHCV2019/0038 Lloyd Rhenford Ryan v Agnes Ryan against the first respondent seeking a declaration that he was entitled to a one-half interest in the Property and one half of all funds held in any bank in the joint names of the first respondent and her late husband and the appellant's father, John Christopher Ryan. In an order dated 25th March 2022, Morley J noted that during discussion there was no evidence available to the appellant that his father left any estate separate from sharing all with his wife, the first respondent, and in particular there was no evidence of any agreement with the first respondent that there should be any separate equitable interest in the building separate from his wife (the first respondent), if there ever was any such interest about which there is no evidence in any event, bearing in mind at

the time of his death (the appellant's father), and before, the Property was owned by his wife (the first respondent), not him, so that the building attaching to it would be expected in law to be hers.

- [12] Morley J also noted that, considering the above, the appellant had decided to withdraw the claim which pursued his father's estate, accepting that he could not offer evidence to show that there had been an estate to pursue. He continued that there may be an argument that the appellant had an equitable interest in the building in his own right, but which if pursued would be a different claim. Morley J therefore ordered that, first, the claim is closed as withdrawn and, second, there shall be no order as to costs.
- [13] On 13th August 2020, the appellant brought proceedings in the High Court, with claim number MNIHCV2020/0024 Lloyd Rhenford Ryan v Agnes Ryan and Neville Theophilus Blake, against two defendants, namely, the first respondent and Neville Blake, his brother, the second respondent. The appellant sought the following orders: (1) that all and any action relating to the transfer of ownership of the Property [to the second respondent] be vacated and the name of the appellant be reinstated on the title deed to the Property as joint absolute land owner; and (2) a hearing to adjudicate the reinstatement of the appellant as joint absolute owner of the Property.
- [14] The first respondent filed an affidavit on 9th September 2020 providing in summary essentially the same evidence that was found in the affidavit in support of the 2012 application for severance. The first respondent stated that the appellant's name was included on the certificate of title to the Property to enable him to obtain a loan with a local financial institution after his efforts at obtaining financial assistance from other financial institutions were unsuccessful. This was done with the express undertaking by the appellant to return the title to the name of the first respondent once he had completed his studies and the loan was paid off. The first respondent stated that the appellant failed to repay the loan, and it was her son, the second respondent, and herself who paid off the loan at the local financial institution. The first respondent also

stated that following her successful application for severance in 2012, in 2019 she transferred the Property to the second respondent.

[15] The first respondent also stated that since the matter was determined by the court in 2012 the court had no jurisdiction to revisit its own decision in 2012 and that an application was filed on 9th September 2020 by the first respondent to strike out the claim as an abuse of process. The second respondent also filed on 9th September 2020 an affidavit in support of the application to strike out the claim stating that the Property was transferred to him by the first respondent in 2019.

[16] The record of appeal or the bundle of documents do not disclose any order relating to the way this second claim was disposed of by the court. The second respondent in submissions filed in this appeal on 19th June 2024 noted at paragraph [4] that the claim was considered by the High Court on a preliminary basis, after which it was withdrawn by the appellant.

The Applications

[17] In his application for an extension of time to file the notice of appeal, the appellant states that he became aware of the 2012 Order on 1st August 2019. He stated that he made inquiries in 2019 and was informed by the Registrar of the High Court in January 2020 that no transcript was available in respect of the hearing that led to the 2012 Order. The appellant continued that: (1) once he learned of the case in 2019, there was a misunderstanding of the filing deadlines; (2) there were unexpected delays in obtaining necessary documents and transcripts; and (3) he encountered difficulty in obtaining counsel/legal representation and when counsel was retained, the legal practitioners failed adequately to represent him and subsequently withdrew from the case. The appellant states that he has acted diligently in pursuing this appeal and has not intentionally delayed the process.

[18] The appellant states that the second respondent will suffer no prejudice if an extension of time is granted as he already holds title to the Property and presumably

continues to collect rent for the Property. The appellant also states that, first, the status quo has been preserved and will continue to be preserved if an extension is granted; and second, the second respondent will suffer no prejudice by the hearing of an appeal against the 2012 Order. The appellant states that there is a good prospect of success on the appeal and that critical evidence relevant to the case was seemingly knowingly withheld from the court in 2012 by the first respondent and that, as a result, there was a need for further discovery.

[19] In the notice of opposition filed by the second respondent on 28th October 2024 the second respondent states that: (1) the length of the appellant's delay in applying for an extension of time to appeal is inordinate; (2) the reasons provided by the appellant for his delay in applying for an extension of time are not good reasons; (3) the appellant has not demonstrated that his intended appeal has a realistic prospect of success; and (4) as the Property has been transferred to the second respondent prior to the filing of the appeal, the second respondent will be severely prejudiced if leave to appeal out of time is granted to the appellant.

[20] In the application to strike out the appeal, the second respondent states that: (1) the appellant filed his appeal 9.5 years late and that the appellant has not prosecuted the appeal since filing it on 23rd March 2022; and (2) the appeal is an abuse of the court's process in that it is an extension of two vexatious and oppressive claims brought by the appellant against the first respondent in the High Court.

Analysis and Conclusions

[21] This Court in **John Cecil Rose v Anne Marie Uralis Rose**² stated at paragraph [2] that granting the extension of time is a discretionary power of the Court, which will be exercised in favour of the applicant for good and substantial reasons. It continued that the matters which the Court will consider in the exercise of its discretion are: (1) the length of the delay; (2) the reasons for the delay; (3) the chances of the appeal succeeding if the extension is granted; and (4) the degree of prejudice to the

² SLUHCVP2003/0019 (delivered 22nd September 2003, unreported).

respondent if the application is granted. These principles have been applied several times by this Court in the context of an application for an extension of time for filing a notice of appeal, including in **Carleen Pemberton v Mark Brantley**.³

- [22] These factors mirror those that must be considered in determining whether to dismiss an appeal and were set out in paragraph [7] of the decision of this Court in **The Barbuda Council v The Attorney General et al**,⁴ namely: (1) the length of the delay; (2) the reasons for the delay; (3) the merits of the appeal; and (4) the prejudice to the litigants. Consequently, the factors will be considered both in relation to the appellant's application for an extension of time to file the notice of appeal and the second respondent's application to strike out the appellant's notice of appeal.

The length of the delay

- [23] In respect of the first factor, the length of the delay, the notice of appeal was filed on 23rd March 2022 and subsequently amended on 16th October 2024. The 2012 Order was dated 20th September 2012. The application for an extension of time to file the notice of appeal was filed on 22nd October 2024. The notice of appeal was filed some 9 years, 4 months out of time. What is however more telling is that the application seeking an extension of time took another 2 years, 7 months to be filed. I agree with the submissions of the second respondent that the delay is inordinate and egregious. In my view, there has been an inordinate delay, but the more critical question is whether the delay is excusable, which invites a consideration of whether the reasons for the delay are good and substantial.

The reasons for the delay and whether excusable

- [24] In considering this second factor, in his application for an extension of time, the appellant states that he had no knowledge of the 2012 Order until he made enquiries on 1st August 2019. He states that he received a response from the Registrar of the High Court in or around late January 2020 informing him that there was no transcript

³ SKBHCVAP2011/0009 (delivered 14th October 2011, unreported).

⁴ ANUHCVP1994/0012 (delivered 15th January 2004, unreported).

available except for writing on a sheet of paper. The explanation offered by the appellant seems plausible since he states that he was living in the United States of America at the material time. The appellant did bring proceedings in the High Court in relation to the Property in 2019 and 2020 both of which were eventually withdrawn. The appellant does not rely on his status as a litigant in person to justify the delay in filing the notice of appeal or in the late filing of the application for an extension of time. In all the circumstances, it cannot be said that the reasons for the delay are good and substantial and therefore excusable.

Realistic prospects of success on appeal

- [25] In respect of the third of the four factors for consideration, that is, the chances of the appeal succeeding if the extension of time is granted, the appellant has filed an amended notice of appeal in which four grounds of appeal can be distilled. While four of them relate to matters of fact that will require a trial, the first respondent is no longer alive so this might prove difficult, albeit not impossible, for a trial to proceed. However, in relation to one of the grounds of appeal, a pure question of law arises as to whether the legal requirements for severing the joint ownership in the Property in accordance with section 101 of the **Registered Land Act** were met. This Court in **Keithley Lake et al v Richard Vento et al**⁵ in considering the equivalent section (107) of the Registered Land Act of Anguilla explained as follows:

“[29] ...

This section embodies the essence of joint ownership – each proprietor owns everything and yet owns nothing individually, and no proprietor can claim or be entitled to a separate interest in the property. All must act together or not act at all, and any disposition of the land must be with the consent of all the proprietors. The court will only have the power to make an order for the sale of one joint proprietor’s interest to the exclusion of the other proprietors’ interests, where the joint tenancy is first severed and a tenancy in common is created.

[30] Subsection (3) of section 107 provides that joint proprietors can sever the joint proprietorship by an executed instrument in the prescribed form. This provision is not exhaustive as to the ways that a joint proprietorship can be severed. The common law has long recognised that there are other ways of severing a joint proprietorship. In **Williams v Hensman** the Vice

⁵ AXAHCVP2016/0012 (delivered 20th June 2019, unreported) at paragraphs [29]-[31].

Chancellor Sir W. Page Wood set out three other ways that a joint tenancy can be severed:

"A joint-tenancy may be severed in three ways: in the first place, an act of one of the persons interested operating on his own share may create a severance as to that share. The right of each joint-tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the *jus accrescendi*. Each one is at liberty to dispose of his own interest in such manner as to sever it from the joint fund - losing, of course, at the same time, his own right of survivorship. Secondly, a joint-tenancy may be severed by mutual agreement. And, in the third place, there may be a severance by any course of dealing sufficient to intimate that the interests of all parties were mutually treated as constituting a tenancy in common. When the severance depends on an inference of this kind without any express act of severance, it will not suffice to rely on an intention, with respect to the particular share, declared only behind the backs of the other persons interested. You must find in this class of cases a course of dealing by which the shares of all the parties to the contest have been effected, as happened in the cases of *Wilson v. Bell* and *Jackson v. Jackson*."

[31] It is noteworthy that the various ways of severing a joint tenancy in both section 107(3) of the RLA and the common law methods in **Williams v Hensman** all involve the voluntary act or acts of one or more or all of the joint tenants. None of these methods apply in this case. There being no issue of severance by agreement or conduct, the sole issue is whether the operation of the judgment as a charge or the learned Master's order for the sale of parcel 209 had the effect of severing the joint tenancy."

[26] This Court in **Lindsay F.P. Grant et al v Tanzania Tobin Tanzil**⁶ explained the realistic prospects of success on appeal, the third factor, as follows:

"Realistic Prospects of Success on Appeal"

[21] As the Court observed in its decision in **Joseph Hyacinth v Allan Joseph**, in weighing up the relevant factors, the prospects of a successful appeal may in some cases be a weighty factor, which in the circumstances of a particular case may be accorded more weight than other factors which may not weigh favorably in respect of an applicant. Hence the use of the term 'good prospects of success' in **Hyacinth** as opposed to showing merely a 'realistic prospect of success'. A good prospect connotes at least a realistic prospect on the higher end of the measuring stick. As set out above, the nature of the applicants' failure, and the delay without any good explanation for it, all weigh in the scale against the grant of relief to the

⁶ SKBHC VAP2020/0004 (delivered 6th July 2020, unreported).

applicants. They would accordingly have to demonstrate that their appeal is one with good prospects of success to tilt the scale in their favour. In the context of this case, they were required to show good prospects of overturning the exercise of the trial judge's discretion by demonstrating that, in the exercise of his discretion, he "erred in principle, either by failing to take into account or giving too little or too much weight to relevant factors and considerations... and that as a result of the error or the degree of the error, in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong". Further, it is not open to this Court to substitute its own exercise of discretion for that of the trial judge."

- [27] In my view the appellant has a realistic prospect of demonstrating in the intended appeal that the 2012 Order could not in law sever the joint ownership of the property with the result that he remains the lawful owner of the Property by his right of survivorship.

The prejudice

- [28] In relation to the fourth factor, the Court must ask itself what is the extent to which the second respondent will be prejudiced if leave is granted. The appellant submits that the second respondent will suffer no prejudice if an extension of time is granted. He also submits that the second respondent already holds title to the property and presumably continues to collect rent for the property. The appellant states that the status quo has been preserved and will continue to be preserved if an extension of time is granted. The second respondent submits that he has spent approximately \$66,855.00 on the Property since it was transferred to him on 17th July 2019. The second respondent also submits that he will be prejudiced by the appellant's delay in both filing and prosecuting his appeal because the first respondent is deceased and cannot give evidence in support of the second respondent's strike out application and the second respondent stands to lose a sum exceeding \$66,855.00 spent by him on improving the Property. On balance, both parties might be prejudiced but the appellant will not have the opportunity to argue that he continues to be the lawful owner of the Property if the extension of time is not granted, whereas the second respondent could potentially be compensated for any loss if the extension is granted, and he loses on the substantive appeal.

[29] I have found that the delay in filing the notice of appeal by the appellant is inordinate and egregious and that it cannot be said that the reasons for the delay are good and substantial and therefore excusable. While the prejudice to both parties are even, I am of the view that, having regard to all the circumstances, in particular, the realistic prospect of demonstrating in the intended appeal that the 2012 Order could not in law sever the joint ownership of the property with the result that he remains the lawful owner of the Property by his right of survivorship, the scales are tipped in favour of granting the appellant's application for an extension of time to file the notice of appeal.

Disposition

[30] Based on the foregoing, I would grant the application for the extension of time to the appellant and order that the notice of appeal filed on 16th October 2024 be deemed properly filed. The second respondent's application to strike out the appeal is accordingly dismissed. The appeal shall thereafter proceed in accordance with the CPR 2023.

[31] In accordance with rule 65.11(3)(b) of the **Civil Procedure Rules (Revised Edition) 2023** ("CPR 2023"), the second respondent would have his costs on the application for an extension of time; and the appellant would have his costs on the application to strike out. Accordingly, in these circumstances, I would make no order as to costs.

[32] I am grateful for the assistance provided by learned counsel for the respondents and the appellant as a litigant in person.

I concur.

Trevor M. Ward
Justice of Appeal

I concur.

Gerard St. C Farara
Justice of Appeal [Ag.]

By the Court

Chief Registrar