

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

SAINT LUCIA

SLUHCVP2023/0020

BETWEEN:

**[1] THE DEVELOPMENT CONTROL AUTHORITY
[2] ATTORNEY GENERAL**

Appellants

and

MONDESIR ESTATES LIMITED

Respondent

Before:

The Hon. Mr. Mario Michel
The Hon. Mr. Trevor Ward
The Hon. Mde. Esco Henry

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Mr. Anand Ramlogan SC, with him Mrs. Rochelle John-Charles and Ms. Marcellina Jouavel, for the Appellants
Mr. Peter Foster KC, with him Ms. Renee St. Rose, Ms. Marie-Ange Symmonds and Ms. Tianah Foster, for the Respondent

2024: March 11;
November 27.

Application to strike out the appeal – Appellants’ failure to file the record of appeal and skeleton arguments within 42 and 52 days respectively of receiving notice of the availability of the transcript - Application for an extension of time to file the record of appeal and skeleton arguments – Length of delay in filing the record of appeal and skeleton arguments – Reasons for the delay – Prospects of success of the appeal – Prejudice – Whether the appeal ought to be struck out owing to the appellants’ delay in filing the record of appeal and skeleton arguments – Whether an extension of time ought to be granted for the appellant to file the record of appeal and skeleton arguments - Costs – Departure from general rule that successful party shall have its costs

The parties were in a dispute over property situated in Soufriere ('the property') parts of which partly are within the southwestern section of Gros Piton and fall within an area designated as the Piton Management Area. Those parts of the property allow for limited development by virtue of recommendations made by UNESCO to the Government of Saint Lucia in the Limits of Acceptable Change Study ('the LAC Study') to maintain the designation of the Pitons as a World Heritage Site.

In April 2017, the owner of the property, Mondesir Estates Limited ('Mondesir Estates' or 'the respondent'), applied to the Development Control Authority ('the DCA') for approval to construct a single-family dwelling unit and ancillary buildings on the property. This application was rejected by the DCA on the basis that, in accordance with the LAC Study, no development was permitted in Policy Area 1 with the exception of works to improve existing trails on Gros Piton, including minor signage and interpretation. Following discussions amongst the parties, a revised application was submitted for the construction of the single-family unit, which revised application was subsequently approved. The single-family dwelling has since been built.

In July 2019, Mondesir Estates sought the DCA's approval for the construction of a multi-family residential dwelling and ancillary buildings (the 'July 2019 application'). The DCA alleged that it wrote to the Department of Sustainable Development ('the DSD'), which had oversight of the Piton Management Area, requesting its input on the application. Following advice from the DSD and the Piton Management Area Advisory Committee, by letter dated 22nd November 2019, the DCA rejected Mondesir Estates' application on the ground that the part of the property on which Mondesir Estates wished to construct the multi-family residential dwelling fell within Policy Area 1.

In December 2019, Mondesir Estates appealed this decision to the Physical Planning and Development Appeals Tribunal ('the Appeals Tribunal'). To date, this appeal has not been heard. In July 2021, Mondesir Estates submitted a further application to the DCA for the construction of a further single-family residential dwelling (the 'July 2021 application'). By letter dated 11th August 2021, the July 2021 application was rejected on the basis that the proposed development fell within Policy Area 1.

In June 2022, Mondesir Estates launched a constitutional claim against the DCA and the Attorney General seeking declaratory relief and damages on the basis that it had been deprived of the constitutional right to enjoyment of its property. In a judgment delivered on 24th July 2023, the trial judge quashed the decision of the DCA denying Mondesir Estates' July 2021 application for planning approval and remitted the application to the DCA for reconsideration.

Being dissatisfied with this ruling, the appellants appealed on 30th August 2023. On 11th September 2023, the appellants made an application for a stay of execution pending the hearing and determination of the appeal, which application was refused by a single judge in November 2023. Thereafter, no further action was taken by the appellants.

The respondent filed an application on 11th January 2024 to strike out the appeal owing to the appellants' failure to file the record of appeal and skeleton arguments within 42 days and

52 days respectively, following the receipt of the notice of availability of the transcript. On 15th January 2024, the appellants filed an application seeking an order extending the time required to file the record of appeal and skeleton arguments and an order that the record of appeal filed on 15th January 2024 and skeleton arguments filed on 11th March 2024 be deemed properly filed.

The respondent argued that the record of appeal was 32 days out of time whilst the skeleton arguments were 74 days overdue. They argue that the delay by the appellants was intentional, and this was evidenced by their failure to provide cogent reasons for the delay. The respondent further argued that the appeal had little prospect of success, and they had suffered tremendous prejudice owing to the delay in prosecuting the appeal since they were unable to develop their land. The appellants countered that the delay in filing was neither inordinate nor intentional and there were cogent reasons for the delay. They further argued that the appeal was meritorious and concerned the status of the Pitons as a World Heritage Site, which is an issue of great importance to the people of Saint Lucia.

Held: dismissing the application to strike out the notice of appeal; granting the application for an extension of time; deeming the record of appeal and skeleton arguments filed on 15th January 2024 and 11th March 2024 respectively to be properly filed; and awarding costs of the applications to the respondent, such costs to be assessed by a judge or master of the High Court, unless agreed within 21 days of the date of this judgment, that:

1. The Court has an inherent jurisdiction to guard against abuse by striking out appeals when litigants flout the rules or fail to pursue their appeals expeditiously, as well as the jurisdiction to grant an extension of time and put matters right. In determining concurrent applications to strike out an appeal and an extension of time to file the record of appeal and skeleton arguments, the court will consider the length of delay, the reasons for delay, the merits of the appeal and the prejudice to the litigants.

The Barbuda Council v The Attorney General et al Antigua and Barbuda Civil Appeal No. 12 of 1994 (delivered 15th January 2004, unreported) followed; **Wycliffe Baird v David Goldgar et al** SKBHCVP2019/0038 (delivered 22nd December 2023, unreported) followed.

2. What constitutes an inordinate delay is fact sensitive and differs from case to case. On the facts, there was a delay of 32 days in filing the record of appeal. This delay in and of itself was not inordinate. However, there was inordinate delay in the filing of the skeleton arguments, which were filed 74 days out of time. Contrary to counsel for the appellants' assertions, it would not be the proper approach to file the record of appeal only if an application for extension of time is granted. Even though the appellants filed the record of appeal, they remained delinquent for another 42 days until their skeleton arguments were filed. The stipulations of rules 62.15 and 62.14 of the Civil Procedure Rules (Revised Edition) 2023 (the "CPR") to file the record of appeal and the skeleton arguments are separate and distinct, and the appellants ought to have made every effort to file both with haste.

First Domestic Insurance Co. Ltd. v Industrial Enterprises Ltd et al DOMHCVAP2014/0024 (delivered 27th May 2020, unreported) followed.

3. The onus of preparing and filing the record of appeal rests solely on the appellant and the only obligation on the other parties is to inform the appellant of the documents they wish to have included in the record. A party's duty to inform the appellant of documents to be included in the record (CPR 62.15(2)) and the appellant's duty to file the record (CPR 62.15(3)) are separate provisions which impose separate responsibilities on the different parties to an appeal. They are not conjunctive and are simply listed chronologically in the order in which the drafters envisioned the actions would take place. The appellants' contention that the delay in filing the record was due, in part, to the respondent's failure to indicate the documents they wished to have included in the record was therefore not a cogent reason for the delay in filing the record. If the appellants were, as they claim, awaiting input from the respondent to compile the record, it was always open to them to reach out to counsel opposite, and there was no evidence that they did so.

First Domestic Insurance Co. Ltd. v Industrial Enterprises Ltd et al DOMHCVAP2014/0024 (delivered 27th May 2020, unreported) followed.

4. Where the reasons given for a delay in complying with orders of the court are, among other things, misapprehension of law, mistake of law by counsel, lack of diligence, volume of work, difficulty in communicating with clients, pressure of work, client impecuniosity, secretarial incompetence or inadvertence, these excuses are not acceptable for the purpose of explaining away the default. Consequently, counsel for the appellants' argument regarding the heavy workload of the State and what he says is a preponderance of litigation initiated by the respondent, would not amount to a cogent reason for the delay in filing the record and skeleton arguments.

Kelvin Mann v Lorden Warrington DOMHCVAP2023/0003 (delivered 6th June 2024, unreported) followed.

5. It is not the role of the Court to embark on a mini trial of the issues on appeal when determining an application to strike out the appeal. However, an evaluation of the merits is necessary to determine whether the Court ought to exercise its discretion to strike out the appeal. On the facts, there is merit in the appellants' argument that there were other seemingly appropriate avenues for redress open to the respondent, including judicial review and the Appeals Tribunal. Moreover, the respondent's contention that, since the DCA has neglected to rehear its application within 90 days pursuant to the order of the learned judge, the respondent has effectively been granted unconditional approval by virtue of section 24 of the Physical Planning and Development Act. Though not a ground canvassed in the notice of appeal, having only come into play following the initiation of the appeal, this issue may be particularly worrisome if the learned judge is found not to have had the requisite jurisdiction to entertain a constitutional claim. The appeal therefore is not without merit and raises several important issues which would benefit from ventilation before the Court.

6. The prejudice to the parties is to be weighed before determining an application to strike out the appeal. On the facts, the respondent made a bald assertion that the delay caused them to lose \$20,000.00 per day. This was not elaborated on and no evidence in support of this assertion was put before the Court. The appellants, however, argued that the appeal ought to be heard on the basis that it is a matter of fundamental public importance since the litigation concerns the Pitons and proposed developments thereon. Given these factors, the greater prejudice would lie in terminating the appeal prematurely. Thus, although the delay in filing the skeleton submissions was inordinate and there were no cogent reasons for the delay, the appeal had merit and striking out the appeal would have been more prejudicial. The application to strike out the appeal was therefore dismissed, and the extension of time application was granted.
7. Although the normal rule as to costs is that the unsuccessful party must pay the costs of the successful party, the Court has a wide discretionary power to vary the application of the general rule. This includes the power to order a successful party to pay all or part of the costs of an unsuccessful party or an order for one party to pay only certain portions of another party's costs or to make no order as to costs. In exercising this discretion, the Court must consider all the circumstances, including the conduct of the parties both before and during the proceedings and the way a party has pursued the case in general and issues within the case. On the facts, whilst the CPR does not provide an express sanction for the failure to file the record of appeal and skeleton arguments on time, such breaches are not to be taken lightly, and extensions of time are not to be granted as a matter of course. It is the appellants' delay which brought the parties before the Court, and this therefore is an appropriate case to depart from the general rule as to costs. The appellants therefore were ordered to pay the respondent's costs on both applications.

Rochamel Construction Limited v National Insurance Corporation Saint Lucia Civil Appeal No. 10 of 2003 (delivered 24th November 2023, unreported) followed.

JUDGMENT

- [1] **MICHEL JA:** Before this Court are two applications: an application by the respondent to have the appeal struck out due to the appellants' delay in filing the record of appeal and skeleton arguments; and an application by the appellants for an extension of time to file the record of appeal and skeleton arguments.

Background

- [2] As the substantive appeal has not yet come on for hearing and this judgment is confined to the determination of the two applications, I shall set out the background to this matter in brief, insofar as it is necessary to determine the applications.
- [3] At the heart of the dispute between the parties is a parcel of land comprising approximately 79 acres situate at Anse L'Ivrogne in Soufriere and registered as Block and Parcel No. 0025B 4 in the Registration Quarter of Soufriere ("the property"). Parts of the property form part of the southwestern section of Gros Piton and fall within an area designated as the Piton Management Area. Those parts allow for limited development by virtue of recommendations made by UNESCO to the Government of Saint Lucia in the Limits of Acceptable Change Study ("the LAC Study") to maintain the designation of the Pitons as a World Heritage Site.
- [4] On 10th April 2017, the owner of the property, Mondesir Estates Limited ("Mondesir Estates" or "the respondent"), applied to the Development Control Authority ("the DCA") for approval in principle to construct a single-family dwelling unit, guard house, roads and footpaths on the property. By letter dated 26th April 2017, the application was rejected on the basis that, in accordance with the LAC Study, '[n]o development is permitted in Policy Area 1 with the exception of works to improve existing trails on Gros Piton, including minor signage and interpretation.'
- [5] Following some discussion among the parties, a revised application was submitted to the DCA for the construction of a single-family dwelling, and that application was granted on 4th December 2018. The single-family dwelling has since been built.
- [6] On 30th July 2019, Mondesir Estates submitted another application to the DCA for the construction of a multi-family residential dwelling and ancillary buildings. This application was referenced as ARN750/19. The DCA alleged that it wrote to the Department of Sustainable Development ("the DSD"), which had oversight of the Piton Management Area, requesting its input on the application. Following advice

from the DSD and the Piton Management Area Advisory Committee, by letter dated 22nd November 2019, the DCA rejected Mondesir Estates' application for the second phase of their development, on the ground that it fell within Policy Area 1, which only allowed for limited development according to the LAC study.

[7] In December 2019, Mondesir Estates appealed this decision to the Physical Planning and Development Appeals Tribunal ("the Appeals Tribunal"). The Appeals Tribunal advised Mondesir Estates of the date for submissions to be made on its appeal and the date of the hearing of the appeal. The legal practitioners for Mondesir Estates wrote to the Appeals Tribunal requesting further documentation with respect to the appeal, but they received no response. To date, the appeal has not been heard.

[8] On 26th July 2021, Mondesir Estates submitted a further application to the DCA for the construction of a proposed single-family residential dwelling. This application was referenced as 773/21. By letter dated 11th August 2021, the further application was rejected on the basis that the proposed development fell within Policy Area 1.

[9] By Fixed Date Claim form filed on 9th June 2022, Mondesir Estates launched a constitutional claim against the DCA and the Attorney General seeking declaratory relief and damages on the basis that it had been deprived of the constitutional right to enjoyment of its property. The claim was heard by Innocent J on 16th January 2023 and in a written judgment delivered on 24th July 2023, he quashed the decision of the DCA denying Mondesir Estates' 26th July 2021 application for planning approval. The judge made the following orders:

"1. The court declares that the DCA's reliance on the LAC Study as the primary basis for the denial of development approval to the claimant was contrary to the Physical Planning and Development Act, unlawful and in breach of the claimant's constitutional right not to be deprived of its use and enjoyment of property otherwise than by the observance of the due process of law.

2. The court declares that the DCA's reliance on the LAC Study as the primary basis for the denial of development approval to the claimant denied

the claimant the right to the protection of the law guaranteed to it under the Constitution.

3. The court declares that the DCA's reliance on the LAC Study as the primary basis for the denial of development approval to the claimant was unlawful to the extent that the LAC Study was devoid of any statutory, legal or regulatory basis and is (sic) therefore the reliance thereon as a basis for the DCA's decision was arbitrary, illegal, unreasonable and fundamentally unfair.

4. The decision of the DCA in refusing the claimant's application for development approval is quashed and the application is remitted to the DCA for reconsideration in light of the observations and directions given by the court in this judgment.

5. That upon the review of the claimant's application the DCA should consider the question of the payment of compensation to the claimant as one of the options available should the DCA find that upon review of the claimant's application in conformity with the Act development approval ought not to be granted.

6. Costs is awarded to the claimant to be assessed if not otherwise agreed between the parties within 21 days of the date of this judgment."

[10] Being dissatisfied with this ruling, the DCA and the Attorney General (together "the appellants") filed a notice of appeal on 30th August 2023 challenging the judgment and orders of Innocent J. On 11th September 2023, the appellants made an application for a stay of execution pending the hearing and determination of the appeal, which application was refused by a single judge of this Court on 28th November 2023. Thereafter, no further action was taken by the appellants.

The applications

[11] On 11th January 2024, the respondent filed an application to strike out the appellants' notice of appeal for the failure of the appellants to file the record of appeal and skeleton arguments within 42 days¹ and 52 days² respectively, following the receipt

¹ Rule 62.15 of the Civil Procedure Rules (Revised Edition) 2023.

² Rule 62.14 of the Civil Procedure Rules (Revised Edition) 2023.

of the notice of availability of the transcript. This application was supported by the affidavit of Mr. Ian Harrison, the attorney for the respondent.

- [12] Four days later, on 15th January 2024, the appellants filed an application seeking an order extending the time required to file the record of appeal and skeleton arguments and an order that the record of appeal filed on 15th January 2024 and skeleton arguments filed on 11th March 2024 be deemed properly filed.
- [13] At the hearing of the applications before this Court, the Court considered that the determination of either application would be dispositive of the other. The grant of the application to strike out the notice of appeal would render the application for an extension of time to file the skeleton arguments and record of appeal nugatory, whilst the grant of the extension application would render nugatory the strike out application based on the late filing of the skeleton arguments and record of appeal. The Court accordingly decided to hear the applications together and directed the parties to address both applications in their submissions; the arguments for each application being, in effect, the same.

Mr. Foster KC's submissions

- [14] Mr. Foster KC, on behalf of Mondesir Estates, urged this Court to strike out the notice of appeal filed on 30th August 2023 and deny the application for an extension of time, based on the appellants' delay in filing the record of appeal and skeleton arguments. Since the parties received the notice of availability of the transcript on 1st November 2023 and the record of appeal was filed on 15th January 2024, Mr. Foster contended that it was filed 32 days out of time. Moreover, contended Mr. Foster, the skeleton arguments having been filed on the morning of the hearing, 11th March 2024, were filed 74 days out of time.
- [15] Mr. Foster KC argued that the delay by the appellants in progressing their appeal was intentional. The appellants have taken actions to delay the respondent's development of the property from the outset, including by issuing stop and

enforcement notices even after a stay of execution of the judgment in the court below was refused by this Court.

[16] He posited that the intentionality of the delay was evidenced by the appellants' failure to provide cogent reasons for the delay. The appellants cited the failure of the respondent to inform them of the documents they wished to have included in the record of appeal as one of the reasons for the delay. However, Mr. Foster KC argued that, in accordance with **First Domestic Insurance Co. Ltd. v Industrial Enterprises Ltd et al**,³ such a failure would not relieve the responsible party of the duty to prepare the record.

[17] He further posited that the appellants' reasons consisted of matters which had no nexus to the filing of the record of appeal and skeleton arguments. These included unscheduled appearances at the DCA by the respondent's representative; the DCA's representatives having to visit the property to conduct investigations; planning and enforcement applications, and correspondence. None of these reasons justify the failure of the appellants to file the necessary documents in accordance with the **Civil Procedure Rules (Revised Edition) 2023** (the "CPR"). He argued that, since the appellants had failed to provide cogent reasons for the delay, the delay was inordinate in all the circumstances of the case.

[18] In addition to the delay and the lack of good reasons therefor, Mr. Foster KC submitted that the appellants have no realistic prospect of success on their appeal. The appellants were mandated to reconsider the respondent's planning application within 90 days of the date of the judgment, failing which unconditional approval would be deemed to have been granted pursuant to section 24 of the **Physical Planning and Development Act** (the "Planning Act").⁴ Since the appellants failed to reconsider the application within the stipulated period, the respondent's

³ DOMHCVAP2014/0024 (delivered 27th May 2020, unreported).

⁴ Cap 5.12 of the Revised Laws of Saint Lucia.

development has, therefore, been unconditionally approved by effluxion of time. Consequently, the appeal ought to be struck out.

[19] Furthermore, Mr. Foster KC argued that, contrary to the appellants' contention, seeking constitutional relief instead of judicial review was the most appropriate course of action. He cited the case of **Guyana Geology and Mines Commission v BK International Inc and another**⁵ in which he says the Caribbean Court of Justice ("the CCJ") rejected the conventional thinking that an applicant must first, as a condition precedent, satisfy the court that no alternative remedies are available before triggering the constitutional jurisdiction of the court, and that the CCJ has embraced a 'substantive approach' towards fundamental rights protected under the Constitution.⁶

[20] Mr. Foster KC also argued that while constitutional rights are not absolute, any limitations to rights must be in accordance with the law, which law must provide for the manner and the extent to which a right guaranteed and protected by the Constitution can lawfully be derogated from and interfered with. The LAC study does not form part of the laws of Saint Lucia and therefore the respondent's constitutional right to the enjoyment of its property could not be restricted on that basis alone.

[21] Finally, Mr. Foster KC submitted that the respondent has suffered serious prejudice, having wrongfully been stopped from continuing the development of the property. The issuance of stop and enforcement notices despite the refusal of the stay of execution, has denied the respondent of the benefits of the judgment in its favour, while the appeal has been delayed and the prevention of construction is costing the respondent \$20,000.00 per day. The appellants, on the other hand, will suffer no prejudice should the appeal be struck out, particularly as the planning application has been deemed unconditionally approved.

Mr. Ramlogan SC's submissions

⁵ [2021] CCJ 13 AJ (GY).

⁶ See para. 28 of the respondent's skeleton arguments in support of the application to strike out the appeal.

- [22] Mr. Ramlogan SC, on behalf of the appellants, argued that what was before the Court was a simple application for an extension of time. He claimed that the record of appeal was filed 31 days out of time, because the day for filing (13th December 2023) was a national holiday in St. Lucia, therefore, the application was to be filed the following day. The record of appeal was therefore only out of time by one month.
- [23] With respect to the skeleton arguments, which were filed 74 days out of time, Mr. Ramlogan SC posited that in an effort to save costs in furtherance of the overriding objective, the appropriate course of action upon filing the application for an extension of time was to file the record of appeal and, only if the extension was granted, would it become necessary to file the skeleton arguments. This, he argued, is the practice in other jurisdictions. However, out of an abundance of caution, the skeleton arguments were filed by the appellants on the morning of the hearing of the appeal.
- [24] Mr. Ramlogan SC also submitted that the respondent's argument that it had obtained unconditional planning approval by operation of law was raised for the first time in the court below during committal proceedings initiated by the respondent (after the delivery of Innocent J's judgment) seeking an 'unless order' mandating the DCA to withdraw its stop and enforcement notices, failing which the Executive Secretary of the DCA would be committed to Bordelais Correctional Facility. If the respondent had been granted unconditional planning approval as it claims, the appeal would be rendered nugatory and the court would only need to determine the application for the unless order, since the stop and enforcement notices would be invalid.
- [25] Mr. Ramlogan SC contended that section 24 of the **Planning Act** refers to an initial application for permission to develop land. If such an application is not decided within 90 days, the applicant receives unconditional approval by operation of law. However, in the instant case, the judge in the court below made an order of remission directing the matter to be reconsidered. This, Mr. Ramlogan argued, is

not an 'application' for the purposes of section 24. Furthermore, relying on the cases of **Harrikissoon v Attorney General of Trinidad and Tobago**⁷ and **Jaroo v Attorney General of Trinidad and Tobago**,⁸ he argued that the appropriate avenue for relief would have been for the respondent to seek judicial review and not to invoke the constitutional jurisdiction of the court.

[26] Along with the respondent's late introduction of the unconditional approval argument, Mr. Ramlogan SC cited the various proceedings initiated by the respondent as part of the reason for the delay. He submitted that the DCA was inundated with applications and requests from the respondent, all of which the DCA tried to accommodate; that the resources of the State are finite; and the delay of one month was not unreasonable in the circumstances.

[27] Mr. Ramlogan SC argued that the appellants were not attempting to shift the responsibility of filing the record of appeal onto the respondent. In fact, it has been filed in full. However, the breach of the respondent in observing its mandatory obligation to inform the appellants of the documents it wished to have included in the bundle contributed to the delay. It is contemplated by the rules that the parties will collaborate in the filing of the record.

[28] Mr. Ramlogan SC posited that, in any event, the application for an extension of time ought to be granted and the application to strike out the appeal ought to be refused. The delay of one month was not inordinate and there are cogent and fulsome reasons for the delay. The appeal is meritorious, because the issue as to the applicability of section 24 of the **Planning Act**, as well as the suitability of constitutional proceedings, ought to be thoroughly ventilated on appeal. Finally, he submitted that there is no evidence which points to any legitimate prejudice being suffered by the respondent. However, the people of St. Lucia will be significantly

⁷ [1980] AC 265.

⁸ [2002] UKPC 5.

prejudiced if the status of the Pitons as a World Heritage Site is compromised by the respondent undertaking its proposed development.

Discussion

- [29] The only real issue to be decided by this Court is whether to grant the strike out application and refuse the application for an extension of time or to refuse the strike out application and grant the application for an extension of time. It is well-settled that this Court has an inherent jurisdiction to guard against abuse by striking out appeals when litigants flout the rules or fail to pursue their appeals expeditiously;⁹ as well as the jurisdiction to grant an extension of time and put matters right. In determining which jurisdiction is to be exercised in this case, the considerations to be borne in mind were set out rather succinctly by Byron CJ in **The Barbuda Council v The Attorney General et al**¹⁰ as follows:

“It is well established that the courts discretion is exercisable in accordance with its consideration of the length of delay, the reasons for delay, the merits of the appeal and the prejudice to the litigants.”

I shall consider each of these factors in turn.

Length of the delay

- [30] There was a minor dispute between the parties as to whether the delay in filing the record of appeal was 31 or 32 days. Though the resolution of that dispute is not likely to favour one side over the other, for the sake of completeness, I shall touch on it briefly.
- [31] Rule 62.15(3) of the **CPR** provides that an appellant must prepare and file the record of appeal within 42 days of receipt of the notice of availability of the transcript of proceedings in the court below. The parties received the notice on 1st November 2023. The record of appeal therefore ought to have been filed 42 days later, that is, on 14th December 2023. Mr. Ramlogan SC contended that because the 13th of

⁹ Wycliffe Baird v David Goldgar et al SKBHCVP2019/0038 (delivered 22nd December 2023, unreported).

¹⁰ Antigua and Barbuda Civil Appeal No. 12 of 1994 (delivered 15th January 2004, unreported).

December was a national holiday in St. Lucia, the appellants would have had 1 extra day to file the record of appeal. But that is not so.

- [32] Rule 3.2 of the **CPR** provides guidelines for the computation of time for complying with any timelines set out in the rules, practice directions or court orders. All such timelines are to be computed as 'clear days'. This simply means that in computing the number of days within which a party must comply with a rule, direction or order, the day on which the period begins and the day on which the period ends are not included in the computation. In the instant case, the time to file the record of appeal would have started to run from 2nd November 2023. Accordingly, the 42nd day would have fallen on 13th December 2023 - the national holiday. However, as the day on which the period ends is not included when calculating clear days, the appellants would have been required to file the record of appeal on the following day, which was 14th December 2023. Therefore, the national holiday would not have affected the timeline for filing, and since the record of appeal was filed on 15th January 2024, it was in fact filed 32 days out of time.
- [33] What constitutes an inordinate delay is fact sensitive and differs from case to case. On similar applications, this Court has found 3 months,¹¹ 6 months,¹² 8 months,¹³ and 11 months¹⁴ to be inordinate and excessive.
- [34] Counsel for the respondent directed the Court to the case of **Michael Baptiste v Yoland Bain-Joseph**¹⁵ where Edwards JA [Ag.] allowed an application to strike out the notice of appeal. In that case, the notice of availability of the transcript was given on 17th July 2007. No further steps were taken by the appellant and the respondent

¹¹ See *John Cecil Rose v Anne Marie Uralis Rose* Saint Lucia Civil Appeal No. 19 of 2003 (delivered 22nd September 2003, unreported).

¹² See *Regulator of International Banking v Petrodel Investment Advisers (Nevis) Ltd et al* NEVHCVAP2023/0008 (oral judgment delivered 17th June 2024, unreported).

¹³ See *The Barbuda Council v The Attorney General et al* Antigua and Barbuda Civil Appeal No. 12 of 1994 (delivered 15th January 2004, unreported).

¹⁴ See *First Domestic Insurance Co. Ltd. v Industrial Enterprises Ltd et al* DOMHCVAP2014/0024 (delivered 27th May 2020, unreported).

¹⁵ GDAHCVAP2006/026 (delivered 7th February 2008, unreported).

served him with an application to strike out the notice of appeal on 9th November 2007. On 20th November 2007, the court made a case management order directing him to file an affidavit in response and written submissions on or before 7th December 2007, showing cause why the appeal should not be struck out. The affidavit was filed out of time on 10th December 2007, along with the written submissions.

[35] Edwards JA [Ag.] (as she then was) noted that the appellant had failed to comply with the case management order and had failed to make a proper application for an extension of time in accordance with subrules 27.8(3) and (4) of CPR 2000. She also noted that there was no explanation for the neglect to file the skeleton arguments within time. This compelled the conclusion that the default was intentional. Although she did not regard the delay as inordinate and there was no evidence of prejudice to the respondent, there was no evidence of any serious continuing intention to prosecute the appeal. Furthermore, she was of the view that the appeal did not involve complex issues or require legal arguments of any complexity and it was accordingly struck out.

[36] Notably, the delay in **Michael Baptiste** was greater than that in the instant case and it was found not to be inordinate. However, the judge considered all the relevant factors, which together led to the conclusion that the appeal ought to be struck out. While any delay or failure to comply with the **CPR** is regrettable, I do not find the delay of 32 days in filing the record of appeal to be inordinate in and of itself. However, this is but one factor which must be considered along with the other factors set out by Byron CJ in the **Barbuda Council** case.

[37] With respect to the skeleton arguments, which were filed some 74 days out of time, the delay was undoubtedly inordinate. I do not agree with the argument by Mr. Ramlogan SC that the proper approach in a case such as this would be to file the record of appeal and then, only if the application for an extension of time is granted, then file the skeleton arguments, all in an effort to save costs. By that logic, why

even file the record of appeal? Why not file the application for an extension of time and, if it is successful, seek directions from the Court for the filing of both the record of appeal and skeleton arguments? It appears to me that the appellants simply required more time to prepare and file the skeleton arguments, particularly as they were filed on the morning of the hearing and the purported attempt at saving costs was in vain.

[38] In **First Domestic**, Blenman JA (as she then was) rejected the submission of the defaulting party (who at the time had failed to file its skeleton arguments) that the filing of the record of appeal precedes the filing of submissions. She found this to be a wholly unmeritorious argument and criticised the overall tardiness of the appellant. She noted that ‘the rule does not provide that the filing and service of the record of appeal is a condition precedent to the skeleton arguments being filed and served’,¹⁶ and I am inclined to agree. Even though the appellants filed the record of appeal, they remained delinquent for another 42 days until their skeleton arguments were filed. The stipulations of rules 62.15 and 62.14 to file the record of appeal and the skeleton arguments respectively are separate and distinct, and the appellants ought to have made every effort to file both with haste.

[39] A party in breach of any rule, order or practice direction who comes to the court to pray for some discretionary relief must put themselves in the best possible position to warrant the court exercising its discretion in their favour. It is incumbent on such a party to file all the necessary documents, make the necessary applications, and bring themselves into compliance with the rules to the greatest extent possible, and to do so with promptitude. The court may be more inclined to grant the relief sought if the party demonstrates a commitment to remedying their defaults, furthering the overriding objective and having the case dealt with expeditiously.

[40] While the delay of 74 days in filing the skeleton arguments was, in my view, inordinate, it is not necessarily fatal to the application. Upon the respondent filing

¹⁶ See para. 56.

the application to strike out the appeal, the proceedings could not progress any further until the application was heard and disposed of. Though this did not absolve the appellants of their responsibility to file their skeleton arguments promptly, I do not find that the additional delay caused any further prejudice to the respondent. Of course, this will be weighed along with the other factors.

Reasons for the delay

- [41] The appellants attributed their delay in filing the record of appeal and the skeleton arguments to two factors, firstly, the failure of the respondent to indicate the documents which it wished to have included in the record of appeal and, secondly, the heavy workload of the State, significantly contributed to by the respondent.
- [42] While both parties accepted that the responsibility of the respondent to indicate the documents it wishes to be included in the record of appeal and the responsibility of the appellant to file the record of appeal are separate and distinct, Mr. Ramlogan SC contended that the appellants' responsibility to file the record is hinged on the respondent's responsibility to indicate the documents which it wishes to be included in the record.
- [43] **First Domestic** confirmed that the onus of preparing and filing the record of appeal rests solely on an appellant and the only obligation on the other parties is to inform the appellant of the documents they wish to have included. Though the circumstances in that case differed slightly, in that a case management order had been made directing 'the parties' to prepare and file the record of appeal, it is still applicable to the case at bar. Such a direction was given in an effort to assist the parties in bringing the matter to a close, in light of its protracted journey in the court system. Blenman JA noted that the order was never intended to override the clear dictates of the **CPR**, which places the responsibility for filing the record solely on the appellant. At most, it could only have meant that the respondent should assist the appellant as much as was reasonably possible.

[44] Rules 62.15 (2) and (3) provide as follows:

“(2) Within 21 days of receipt of the notice under rule 62.12(1)(a), (b) or (c) that the transcript is available, all parties must inform the appellant of the documents that they wish to have included in the record or the core bundle.

(3) Subject to paragraph (4), within 42 days of receipt of such notice under rule 62.12(1)(a), the appellant must prepare and file with the court office 6 sets of the record (save that in respect of an appeal filed on the Electronic Litigation Portal, the appellant shall file an electronic copy of the record unless the court directs otherwise), for the use of the court comprising a copy of each of the following documents –

(a) affidavits (with exhibits) which were put in evidence before the court below;

(b) a transcript or other record of the — (i) evidence given in the court below; and (ii) judgment;

(c) the documents required by rule 39.1(5) to be lodged with the court (including any core bundle); and

(d) the notice of appeal and any counter-notices or respondents’ notices that have been served on the appellant.”

[45] Subrules (2) and (3) are separate provisions which impose separate responsibilities on the different parties to an appeal. The rules are not drafted in a way to suggest that the requirements are conjunctive or that one must necessarily flow from the other. They are simply listed chronologically in the order in which the drafters envisioned the actions would take place. Within 21 days of receipt of the notice of availability of the transcript, the other parties to the appeal would inform the appellant of any documents they wish to have included in the record; the appellant would then have 21 more days to compile any documents requested by the other parties, as well as the documents required to be included by subrule (3), and he would file the record of appeal.

[46] Failure by the other parties to comply with subrule (2) does not then permit the appellant to foist the responsibility for his own default onto them. Subrule (3) states clearly the documents which are to be included in the record of appeal and an appellant, in the normal course, would be seized of all these documents. The burden of progressing the appeal lies with the appellant who has brought the other parties back to court. Therefore, the appellant must do what he can to advance his appeal,

irrespective of defaults by the respondents or other parties. If the other parties have failed to indicate the documents they wish to have included in the record of appeal, they cannot later in the proceedings complain that documents have been omitted when the rules provided them with an opportunity to collaborate in the compilation of the record.

[47] Accordingly, I find that this was not a satisfactory reason for the delay. Furthermore, if the appellants were, as they claim, awaiting input from the respondent to compile the record, it was always open to them to write or reach out to counsel opposite, and there was no evidence that they did so.

[48] With respect to Mr. Ramlogan SC's argument regarding the heavy workload of the State and what he says is a preponderance of litigation initiated by the respondent, this is not a satisfactory excuse. As Price Findlay JA put it in **Kelvin Mann v Lorden Warrington**:¹⁷

"[64] This Court has in a number of previous decisions made it clear that where the reasons given for delay in complying with orders of the Court are among other things, misapprehension of law, mistake of law by counsel, lack of diligence, volume of work, difficulty in communicating with clients, pressure of work, client impecuniosity, secretarial incompetence or inadvertence, these excuses are not acceptable for the purpose of explaining away the default.

...

[66] It is clear that an applicant who has fallen afoul of the rules and who is requesting that the court exercise its discretion in its favour must supply the court with bona fide and cogent reasons for that failure to comply with the rule or order. Discretion cannot be exercised in a vacuum. For the court to do so there must be some evidence upon which the court can justify the exercise of that discretion."

[49] Bearing all of these considerations in mind, I am of the view that the appellants have failed to supply this Court with cogent reasons for the delay in filing the record of

¹⁷ DOMHCVAP2023/0003 (delivered 6th June 2024, unreported).

appeal. As discussed above, the reasons for the further delay in filing the skeleton arguments were also unsatisfactory.

Merits of the appeal

[50] It is not the role of this Court to embark on a mini trial of the issues on appeal and I certainly will not endeavour to do so. However, an evaluation of the merits is necessary to determine whether this Court ought to exercise its discretion to strike out the appeal.

[51] The appellants' notice of appeal filed on 30th August 2023 discloses 18 grounds of appeal which, in essence, challenge the learned judge's decision to exercise his jurisdiction in light of the fact that there was a viable alternative remedy in the form of an appeal under section 26 of the **Planning Act** and that he usurped the role and function of the Appeals Tribunal. They also complain that he erred in finding that a constitutional claim was proper and appropriate when the effective remedies lay in the realm of administrative law, and in rejecting the submission that there is no constitutional right to planning permission to develop private lands.

[52] At the hearing of the applications, the parties pointed out that there has been some divergence in the authorities from the Privy Council and the CCJ on the appropriateness of bringing constitutional claims where another remedy may exist. In **Guyana Geology**, a case cited by Mr. Foster KC, the CCJ determined that in jurisdictions where there is constitutional supremacy, courts must ensure that administrative decisions conform and comply with fundamental constitutional and human rights, values and principles.

[53] Mr. Foster KC also cited the case of **Hilaire Sears v Parole Board et al**¹⁸ where the CCJ noted as follows:

"The Court continues to caution against the unnecessary reliance on strict rules of procedure to shut out citizens from seeking constitutional relief, especially in the face of serious allegations of constitutional violations. The

¹⁸ [2022] CCJ 13 (AJ) BZ.

focus of this Court, as is the clear intention of the Constitution, is to provide flexible and effective access to justice for the peoples of Belize so that they can seek full vindication of their constitutional rights.”

[54] On the other hand, in **Jaroo v Attorney General**, the Privy Council found that the fundamental rights jurisdiction of the court should only be used in exceptional circumstances and definitely not where there is an alternative remedy. Furthermore, in **Harrikissoon**, the Privy Council determined that it is not every failure by a public authority which justifies an application for constitutional redress. This is the approach which has traditionally been taken by this Court. In **Manohardas Devidas Chandiramani v Mark Brantley et al**,¹⁹ Blenman JA said as follows:

“...section 18(2) of the Constitution gives the court the power to decline to exercise its jurisdiction if it is satisfied that there is an adequate alternative means of redress. Indeed, the misuse of this special jurisdiction is discouraged by the courts and is often and disapprovingly referred to as an abuse of the court’s process. As far back as 1979, the Privy Council in **Harrikissoon** admonished litigants against this misuse. Indeed, Lord Diplock warned against the misuse of applications for constitutional relief as a substitute for utilising the normal procedure for bringing civil claims. Furthermore, the court should not exercise its constitutional jurisdiction where an alternative means of redress exists. These admonitions remain appropriate today and ought to be adhered to.”

[55] Although Saint Lucia has since acceded to the appellate jurisdiction of the CCJ, this does not mean that learning emanating from the Privy Council is no longer of value in this jurisdiction. There were certainly other seemingly appropriate avenues for redress open to the respondent, including judicial review and the Appeals Tribunal. Nonetheless, this *prima facie* discrepancy raises a ground which is at least arguable, and which may require full ventilation on appeal to determine the current position in Saint Lucia.

[56] What is of greater concern to me is the respondent’s latest contention, which came to light at the hearing of the applications.²⁰ The respondent claims that as the DCA

¹⁹ NEVHCVP2020/0001 (delivered 9th December 2020, unreported).

²⁰ See also para. 10 of the notice of application to strike out the notice of appeal.

has neglected to rehear its application pursuant to the order of the learned judge, 90 days having elapsed, it has effectively been granted unconditional approval by virtue of section 24 of the **Planning Act**. Though not a ground canvassed in the notice of appeal, having only come into play following the initiation of the appeal, this may be particularly worrisome if the learned judge is found not to have had the requisite jurisdiction to entertain a constitutional claim. It may therefore be necessary for the substantive appeal to be heard, at which point the Court will be able to evaluate this development.

[57] Section 24 of the **Planning Act** provides as follows:

“(1) Where an application for permission to develop land is duly made to the Head of the Physical Planning and Development Division, the Head of the Physical Planning and Development Division shall give a decision within a period of 90 days from the date of receipt of the application or such extended period as may be agreed upon in writing between the applicant and the Head of the Physical Planning and Development Division.

(2) Unless the Head of the Physical Planning and Development Division gives a decision within the period prescribed by subsection (1) —

(a) in the case of an application for the erection of or any other building operations to be carried out on or in relation to a single-family dwelling house, permission shall be deemed for all purposes to have been granted unconditionally by the Head of the Physical Planning and Development Division at the expiration of such period or the last of such extended periods; and

(b) in all cases other than those mentioned in paragraph (a), the provisions of section 26 shall apply in relation to the application as if it had been refused by the Head of the Physical Planning and Development Division.”

[58] A preliminary examination of the legislation seems to contradict the interpretation advanced by the respondent. This is not a case where an applicant has sought permission from the DCA to commence a development and has not received a response, and accordingly takes it that he has received unconditional approval. Here, an application was made, considered and refused by the DCA. The order that the matter be reheard is not, in my mind, the situation contemplated by the

legislation, particularly where the DCA has made it clear that it opposes the proposed development.

[59] Furthermore, pursuant to section 24(2)(a), deemed unconditional approval relates only to single-family dwelling homes. While the respondent contends that this unconditional approval applied to application No. 773/21 (which they claim was for a single-family dwelling), the rejection of application ARN750/19 (which they claim was for a multi-family residential dwelling and ancillary buildings) was also considered by the judge and it is not clear from the judgment or the orders if one or all of the rejected applications have been remitted.

[60] In the round, it appears that there are several issues arising in this matter which would benefit from ventilation on appeal. I am therefore of the view that the appeal is not without merit.

Prejudice

[61] In the application to strike out the notice of appeal, the respondent characterised the prejudice it has suffered as a result of the delay as a loss of \$20,000.00 per day. This was not elaborated on further in its written submissions. When questioned at the hearing, Mr. Foster KC submitted that that was the cost of keeping workers on the property. He directed the court to paragraph 16 of the affidavit of Ian Harrison as evidence of these costs. The affidavit sheds no more light on these alleged costs, and this appears to be but a bald assertion with no evidence put before this Court to support it. Furthermore, there was no evidence to show that these alleged costs came about as a result of the appellants' delay in filing the record of appeal.

[62] With respect to the prejudice to the appellants if the appeal is struck out, Mr. Ramlogan SC argued that the appeal ought to be heard on the basis that it is a matter of fundamental public importance. The litigation concerns the Pitons and proposed developments thereon. The respondent is purporting to build what the DCA deems to be more in line with a commercial tourist attraction than a private

dwelling. An upset in the ecological balance could compromise the status of the Pitons as a World Heritage Site and the consequences would be dire for Saint Lucia. A delay of one month (in the filing of the record of appeal) or three months (in the filing of the skeleton arguments), in the face of ongoing protracted litigation at the behest of the respondent, should not – Mr. Ramlogan SC contends - be the reason that a matter of this nature is struck out.

- [63] I am inclined to agree with Mr. Ramlogan SC that the public interest in this matter is high. While I do understand the plight of the respondent, that it has been unable to develop its property in the manner it would like, there are other considerations to be weighed by the State in balancing the rights of individuals and the well-being of the country. There has not been a blanket denial by the DCA of all applications made by the respondent. An application for the construction of a single-family dwelling house was earlier approved by the DCA and the dwelling house has since been constructed by the respondent. However, the DCA is obliged to consider each application and the potential consequences which may flow from the grant of the application. I accordingly find that the greater prejudice would lie in terminating this appeal prematurely.

Analysis

- [64] This Court is behooved to consider the four factors discussed above in determining whether or not the appeal should be struck out. Older authorities like **Michael Baptiste** seem to have adopted a stricter approach, suggesting that where an appellant has failed to provide cogent reasons for the delay, this may be enough to be fatal to the application. In that case, Edwards JA said this:

“There is no explanation for the neglect to file the skeleton argument within the time limit computed under the rules from the date of receipt of the notes of evidence. This compels the conclusion that the default was intentional. ‘Such intentional conduct is an abuse of the process of the court.’ Though I do not regard the delay as inordinate, and there is no evidence of prejudice to the respondent, there has been no explanation for the default, or any evidence of a serious continuing intention to prosecute the appeal. Where the favourable discretion of this court is being invoked, the party seeking to do so must make full and frank disclosure in the affidavit supporting an

application for extension of time... Though striking out a notice of appeal for failure to file skeleton argument may 'at first blush' seem draconian and disproportionate, in my judgment it is fair and reasonable in the circumstances presented in the instant case. Slight or no explanations must be accorded slight or no effect."

[65] While in certain circumstances this may be the appropriate course, more recently the jurisprudence out of this Court has evolved to reflect a more purposive approach, with the ultimate goal of having meritorious appeals heard and ensuring that justice is done between the parties. This has been seen in a number of recent decisions of the Court. In **Clint Louis v Miguel Jeffrey**,²¹ there was a delay of 17 months in filing the record of appeal and skeleton arguments, and they had still not been filed as at the date of the hearing. It was accepted by both sides that the delay was inordinate. Counsel for the respondent accepted that while the reasons were not as fulsome as they could have been, they were satisfactory. Accordingly, the main thrust of the argument centered on the chances of success of the appeal. The Court was unable to say that the chances of success were hopeless and, having considered all the factors, granted an extension of time, gave directions for filing the record of appeal and skeleton arguments, and awarded costs to the respondent.

[66] Similarly, in **Sylvia O'Mard v ABI Bank et al**,²² the appellant conceded that there had been inordinate delay in the prosecution of her appeal. The Court was of the view that no good reason was proffered by the appellant for the delay other than the business of the legal practitioner which was found not to be a good reason. The Court had regard to the notice of appeal and the grounds set out therein which raised questions regarding the appellant's fundamental constitutional rights and freedoms in respect of her right or interest to property and her right of access to the court. This factor, in the Court's view, weighed heavier than the other factors in all the circumstances of the case. The Court was therefore not minded to strike out the appeal, notwithstanding the inordinate delay and the lack of a good reason therefor.

²¹ SLUHCVP2018/0010 (oral judgment delivered 8th March 2021, unreported).

²² ANUHCVP2021/0010 (oral judgment delivered 1st May 2024, unreported); this decision was delivered after the hearing of the applications.

However, the Court considered, having regard to the delay by the appellant, that the justice of the case justified the making of an unless order. The Court also considered that the justice of the case warranted an order for costs in favor of the respondents to be paid by the appellant.

[67] Furthermore, although on an application for an extension of the time within which to appeal, Webster JA [Ag.] in **Joseph Hyacinth v Allan Joseph**²³ noted:

“The principle that the court has a wide [discretion] to grant an extension of time to appeal when the applicant has good prospects of succeeding on appeal, even though he or she is guilty of inordinate delay without a good explanation, is firmly a part of the law and practice in the Eastern Caribbean and I would apply it in this case. The applicant has good prospects of succeeding on the appeal and the respondent will not suffer substantial prejudice if the time for applying for permission to appeal is extended.”

[68] Most recently, in **Caribbean Development (Antigua) Limited v Stuart Lockhart et al**,²⁴ this Court found that the applicant’s delay in filing its applications for an extension of time and leave to appeal were inordinate, its reasons for the late filing were wholly unsatisfactory, and any prejudice to either of the parties was insignificant but, upon considering the proposed grounds of appeal, the Court found that the applicant had a realistic prospect of success on its proposed appeal. The Court accordingly determined that the applicant’s clearly good prospect of success on the appeal was sufficient to override the other factors which the Court would consider in deciding whether to grant an extension of time.

[69] I said then that, in the circumstances of that case:

“... although the applicant asserts that its delay in filing an application for leave to appeal was inordinate, and although I stated earlier that I am totally unimpressed with the excuse offered by the applicant for its delay in filing an application for leave to appeal, in my view the applicant’s clearly good prospects of success on the appeal overrides the other factors on the basis of which a court will grant, or not grant, an extension of time to seek leave

²³ GDAHCVAP2015/0025 (delivered 20th June 2016, unreported).

²⁴ ANUHCVP2023/0010 (delivered 14th October 2024, unreported); this judgment was delivered after the hearing of the applications.

to appeal. I will accordingly grant the applicant an extension of time to file its application for leave to appeal the order of the learned judge.”

[70] This is not to say that this Court will grant an extension of time in every case of delay. It will not be that every matter which has some remote prospect of success and in which the appellant has delayed in the prosecution of its appeal that the Court will permit an extension. In **Bank of Nevis International Limited v Nevis IP Holdings LLC et al**,²⁵ 6 months elapsed between the notice of availability of the transcript and the filing of the record of appeal. The Court found that this period was inordinate and that no reasons for this delay were advanced by the appellant. The Court noted that the merits involved a challenge of the discretion of the trial judge and the prospects of success were not sufficient to warrant preserving the appeal. Furthermore, the respondents had suffered prejudice as a stay of execution was in place and they had been kept out of funds to which they were entitled. This was, therefore, an appropriate case to strike out the appeal.

[71] The overriding objective of the **CPR** is to ensure that cases are dealt with justly. What constitutes justice may manifest differently depending on the specific circumstances of each case. While this Court must exercise caution to avoid setting precedents that could undermine the intention and spirit of the rules, its paramount concern must always be the administration of justice.

[72] I have considered all of the factors set out by Byron CJ in **The Barbuda Council** and they have not led me to the conclusion that the notice of appeal in this case ought to be struck out. I also do not think that it can be said that the appellants do not appear to have an interest in prosecuting the appeal. Though there was delay on their part, the reasons for which I have already found not to be satisfactory, they have actively engaged in these proceedings and promptly filed an application for an extension of time following the filing of the application to strike. It seems that this case requires me to ascribe a heavier weight to the merits of the appeal and the

²⁵ NEVHCVP2022/0017 (oral judgment delivered 18th June 2024, unreported); this decision was delivered after the hearing of the applications.

potential prejudice. This appeal raises serious matters of law, including the suitability of seeking constitutional relief in this jurisdiction following its adoption of the CCJ as its final court of appeal.

- [73] Furthermore, I have had the benefit of the judgment in the court below²⁶ (which was delivered after the hearing of these applications) on the respondent's application to have the stop and enforcement notices withdrawn by the DCA. That application was dismissed and, as it stands, the parties are somewhat in limbo. Both parties may well benefit from having the appeal heard and the issues resolved. Accordingly, the balance of justice lies in refusing the application to strike out the appeal and granting the application for an extension of time.

Costs

- [74] The general rule, as is stated in rule 64.6(1), is that the Court must order the unsuccessful party to pay the costs of the successful party. However, as was said in **Rochamel Construction Limited v National Insurance Corporation**:²⁷

“...where the Court decides to make an order about the costs of any proceedings, the general rule is that, it must order the unsuccessful party to pay the costs of the successful party. The Court is, however, given very wide discretionary powers to vary the application of the general rule. These include the power to order a successful party to pay all or part of the costs of an unsuccessful party or make no order as to costs or to pay only certain portions of another person's cost. In exercising these discretions as to costs the Court is required to have regard to all the circumstances. Particular consideration must be given to the conduct of the parties both before and during the proceedings and the manner in which a party has pursued the case in general and particular issues within the case. Thus the order can be affected by whether a party has succeeded on particular issues, even if the party has not been successful in the whole of the proceedings. The Court is also required to consider whether it was reasonable for a party to pursue a particular allegation or raise a particular issue and whether the claimant gave reasonable notice of intention to pursue a claim.”

²⁶ *Mondesir Estates Limited v The Development Control Authority et al* SLUHCV2022/0262 (delivered 24th July 2023, unreported).

²⁷ *Saint Lucia Civil Appeal No. 10 of 2003* (delivered 24th November 2023, unreported).

[75] With these guidelines in mind, the costs order to be made is clear. This Court is not to be seen as condoning breaches of the **CPR**, no matter how good the reasons or how inadvertent those breaches might have been. These rules were introduced to regulate the litigation process and to set strict timelines with the intention of ensuring that cases are dealt with expeditiously and are not left to languish in the system. While the **CPR** does not provide an express sanction for the failure to file the record of appeal and skeleton arguments on time, such breaches are not to be taken lightly, and extensions of time are not to be granted as a matter of course.

[76] I am obliged to take into account the conduct of the parties, and it is the appellants' delay which has brought the parties before the Court. I think it is proper in this case, as has been found in many decisions of this Court where a party seeks an extension of time, to depart from the general rule. While the application of the overriding objective has proven fruitful for the appellants and has led to them ultimately being successful on their application, it is because of this overriding objective that I must impose costs on them.

[77] For the reasons stated above, as well as the fact that the application to strike appears to have been necessary to prompt the appellants to act, the respondent shall have its costs on these two applications.

Disposition

[78] I would accordingly make the following orders:

- (1) The application to strike out the notice of appeal filed by the respondent on 11th January 2024 is refused.
- (2) The application by the appellants for an extension of time to file the record of appeal and the skeleton arguments is granted.
- (3) The record of appeal filed on 15th January 2024 and the skeleton arguments filed on 11th March 2024 are deemed properly filed.

- (4) The respondent shall have its costs on the application to strike out the notice of appeal and the application for an extension of time, such costs to be assessed by a judge or master of the High Court, unless agreed within 21 days of the date of this judgment.

I concur.

Trevor Ward
Justice of Appeal

I concur.

Esco Henry
Justice of Appeal

By the Court

Chief Registrar