

**THE EASTERN CARRIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

**SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

SKBHCV2024/0087

BETWEEN:

MSR MEDIA SKN LIMITED

Claimant/Applicant

and

HON. DR. TERRANCE DREW

(in his capacity as Minister of National Security of the
Federal Government of Saint Christopher and Nevis)

Defendant/Respondent

Appearances:

Mr. Damian Kelsick KC with him Ms. Hadya Dolphin for the Claimant/Applicant
Mr. B. St. Michael Hylton KC with him Mrs. Simone Bullen Thompson, Solicitor
General and Mr. Sundiata Gibbs for the Defendant/Respondent

2025: May 23;
July 29.

RULING

1. **GILL, J:** After an apparent end to litigation of a judicial review claim, the court is tasked to determine whether to re-open the case.
2. On March 31, 2025, the claimant applied to the court to vacate its order made on March 24, 2025 and to set aside the notice of discontinuance filed on the said date ("the application").

Background

3. The citizenship by investment (CBI) program of Saint Christopher and Nevis allows foreigners who make a substantial contribution to the development of the Federation

to qualify for citizenship through investment, either by making a donation or investing in real estate purchase.

4. The claimant MSR Media SKN Limited is a film production company and a participant in the CBI program.
5. By an amended fixed date claim for judicial review filed on July 9, 2024,¹ the claimant sought an order of certiorari quashing all decisions by the defendant Hon. Dr. Terrance Drew (who is the current Prime Minister of the Federation of St. Kitts and Nevis) in his capacity as Minister of National Security of the Federal Government, and his predecessor in office, to grant citizenship to applicants who paid less than the legal price for units in relation to a Prison Project (“the Prison Project”). Further or in the alternative, the claimant sought an order of mandamus requiring the defendant to call in and cancel all certificates of citizenship granted to applicants who made less than the legally prescribed investment in connection with the Prison Project.
6. The matter was fixed for trial on March 24, 2025.
7. On the morning of the trial, I invited counsel for the parties into Chambers in light of certain representations made on behalf of the defendant in the supplemental affidavit of Glenroy Blanchette, Permanent Secretary in the Ministry of National Security. With leave of the court, that affidavit was filed on March 19, 2025 after the last hearing of the matter on October 22, 2024 when the trial date was set. As set out in the claimant’s affidavit in support of the application, Mr. Blanchette’s affidavit revealed as follows:
 - a) The Ministry of National Security conducted an investigation into the one hundred and eighty-five (185) redacted applications that had been presented to the court by the claimant in these proceedings and identified one hundred and fifty-eight (158) applications in its records;
 - b) On receipt of the aforementioned names, the Ministry therefore issued identical notices by letters addressed to all one hundred and

¹ The original claim was filed on May 22, 2024

fifty-eight (158) persons, pursuant to section 10 of the Citizenship Act;

- c) As a result of the issue of the Notices,
 - i. one (1) of the addressees requested to be heard before, and make representations to, a Commission of Inquiry and be represented by a lawyer of his choosing.
 - ii. thirty-two (32) of the addressees paid the remainder of their unpaid investment sum stated in their citizenship application.
 - iii. Thirteen (13) of the addressees confirmed that they have not paid the investment sum stated in their citizenship application and have not to date paid the outstanding sum.
- d) The remainder of the addressees are still being processed by the Ministry with the assistance of the St. Kitts and Nevis Embassy in Dubai.
- e) On March 18, 2025, the Minister of National Security in the exercise of his authority pursuant to sections 8 and 10 of the Saint Christopher and Nevis Citizenship Act Cap. 1.05 signed the Saint Christopher and Nevis (Deprivation of Citizenship) Order, depriving the aforementioned 13 persons and their dependents of citizenship of St. Kitts and Nevis.

8. After some discussion between Counsel for the parties, on the basis of certain representations by Counsel for the defendant, Counsel for the claimant indicated that the claimant would discontinue the matter. Learned Counsel for the parties provided the court with their agreed wording, and formally in open court, I made the following order ("the order"):

"UPON the matter coming on for trial of the Fixed Date Claim;

AND UPON hearing Counsel for the Parties;

AND UPON Counsel for the Defendant indicating that action is being taken and is to be taken;

AND UPON Counsel for the Claimant indicating that in light of the indication from Counsel for the Defendant, the matter will be discontinued;

IT IS HEREBY ORDERED that:

- 1) *The trial date is vacated.*
- 2) *The Claimant shall file a Notice of Discontinuance on or before March 25, 2025.*
- 3) *By consent, there shall be no order as to costs.*
- 4) *Counsel for the Claimant has carriage of this order.”*

9. In short order, at 1:14 p.m. the same day, the claimant filed a notice of discontinuance.

10. Early that same afternoon, the St Kitts Nevis Information Service (SKNIS) published a press release under the heading “**MSR MEDIA WITHDRAWS HIGH COURT CLAIM ON DAY OF SCHEDULED TRIAL**” from the Attorney General, Ministry of Justice and Legal Affairs (“the press release”) which read as follows:

“BASSETERRE, ST. KITTS, March 24, 2025 – *The Judicial Review claim brought by MSR Media against the Government of St. Kitts and Nevis was withdrawn this morning, just before the matter was set to go to trial in the High Court.*

The case, filed in May 2024, was scheduled to be heard by Resident Judge, Her Ladyship Madame Justice Tamara Gill. According to an order issued by the court, MSR Media is to formally discontinue the claim by Tuesday March 25, 2025.

This withdrawal brings to a close the second of two legal actions initiated by MSR Media in 2024. The first – a civil RICO lawsuit filed in the United States District Court in Tampa, Florida – was also voluntarily dismissed in December 2024.

Despite the significant media attention surrounding these court filings, with the withdrawal of the Judicial Review matter, all legal proceedings brought by MSR Media against persons and entities in St. Kitts and Nevis concerning the CBI programme have now concluded.”

11. The press release was the trigger for the application. The claimant seeks to vacate the court’s order of March 24, 2025 and set aside the notice of discontinuance. The claimant alleges that the press release completely misrepresented what transpired

in court as no mention whatsoever was made of the commitment given by the Government, which was the sole basis of the claimant's decision to discontinue the matter. The claimant asserts that this misrepresentation calls into question the *bona fides* of the defendant in making representations to the court and whether the defendant had, or has, any intention whatsoever to act on those representations.

12. The claimant contends that the Attorney General has had ample opportunity to correct the press release and has failed, or refused to do so, accentuating the apparent lack of *bona fides*.
13. The claimant alleges that it was misled into making a decision to discontinue the claim.
14. In relation to the first aspect of the application, the claimant is asking the court to vacate the order on the ground that it has not yet been perfected and therefore the court has the jurisdiction to alter, or revoke it, and this is an appropriate case for the court to do so.
15. On the second limb of the application, the claimant asks the court to set aside the notice of discontinuance, not pursuant to Part 37 of the Civil Procedure Rules (Revised Edition) 2023 ("the CPR"), but on the basis that the claimant filed the notice of discontinuance in compliance with a mandatory order.
16. The claimant states that the filing of the notice of discontinuance does not render the court *functus officio* and in any event, the court in ordering the claimant to file the notice of discontinuance can, on the application to vacate its order, vacate the discontinuance filed pursuant to the order.
17. The defendant strenuously opposes the application on the following grounds:
 - a) Pursuant to CPR 37.5, the proceedings ended when the claimant filed the notice of discontinuance.
 - b) CPR 37.4(1) identifies limited circumstances in which a defendant may set aside a notice of discontinuance filed by a claimant but the

Rules contain no provision allowing a claimant to set aside its own notice.

- c) Even if CPR 37.4(1) permitted a claimant to set aside a notice of discontinuance, the required conditions have not been satisfied in this case.
- d) The court is *functus officio* and the proceedings have concluded.
- e) The orders made on March 24, 2025 took effect upon pronouncement, and there is no good reason why the formal order should not be perfected.
- f) The failure to perfect and file the approved order of the court on the E-Litigation Portal amounts to an abuse of process.
- g) In all the circumstances of the case, the application is an abuse of the process of the court.

Issues

18. The court must determine:

- 1) Whether the court is *functus officio*;
- 2) Whether the notice of discontinuance ought to be set aside;
- 3) Whether to vacate or revoke the order.

Claimant's submissions

19. The claimant relies on two well established principles:

- i. that the court has jurisdiction to amend a judgment, including to revoke it, after it has been handed down, but before the order giving effect to the judgment has been drawn up and perfected.
- ii. In exercising any discretion given to it by the Rules, the court must seek to give effect to the overriding objective.

20. The claimant contends that in the circumstances of this case where the order sought to be vacated ordered that a notice of discontinuance be filed, and that pursuant to the order, one was filed, the court's jurisdiction to vacate the order is not ousted.
21. In urging upon the court that this is an appropriate case for the court to vacate the order, the claimant submits the following:
- a) The affidavit of Lee Beasley filed in support of the application establishes that the claimant was misled by the representations of the defendant in this matter that the defendant would pursue the other applicants for citizenship under the Prison Project.
 - b) The press release, released by the Attorney General's Chambers on the very day of the hearing, March 24, 2025, makes it manifest that the defendant had no intention of pursuing the matter against the other applicants.
 - c) There has been no attempt by the defendant to rectify the press release.
 - d) To date (the date of the filing of the submissions, May 19, 2025) two months after the hearing date, no evidence has been proffered by the defendant that he took a single step to fulfill the representations made to the claimant.
 - e) In fact, the affidavit of Glenroy Blanchette consists merely of a denial of the claimant's position in this application. He has not sought to give any details of government action which would show that there was a legitimate interest in the government to pursue the other applications under the Prison Project.
22. The claimant signals its intention to refile the claim if the application is denied. Its position is that the overriding objective points to the vacating of the order rather than the refiling of the claim.

Defendant's submissions

23. The main thrust of the defendant's opposition to the application is that the court became *functus officio* when the claimant filed the notice of discontinuance. However, the defendant submits that if the court is minded to consider the application to vacate the order, this is not an appropriate case to do so.
24. The defendant asserts that as a general rule, where a court of first instance makes an order that a party seeks to challenge or undo, the proper course is to appeal the order to a higher court.
25. However, the defendant accepts and submits that where an order has not yet been perfected, the court retains jurisdiction to reconsider its decision. The defendant points out that the court does not typically revisit a decision where it has merely confirmed a negotiated position between the parties.
26. The defendant explains that the issue of reconsideration more commonly arises in cases where the judge has adjudicated upon a genuinely contested matter.
27. The defendant further submits that the mere fact that the claimant is dissatisfied with the wording of the press release is not sufficient to displace the presumption of finality.
28. For completeness, the defendant points out that even if the court were to reverse any of the orders made on March 24, 2025, the proceedings would still be at an end, in light of the effect of the filing and service of the notice of discontinuance.
29. Notwithstanding the claimant's contention that it is not making the application pursuant to Part 37 of the CPR, the defendant alleges that an order setting aside the notice of discontinuance is the true relief sought, as it is the notice of discontinuance that brought these proceedings to an end. It was the operative act that terminated the proceedings.
30. The defendant explains that once a notice of discontinuance is filed and served on a defendant, the proceedings against that defendant end, subject only to limited

procedural matters such as an application to set aside the notice or the determination of costs. The defendant submits that in this case, the claim ended on March 24, 2025, subject only to certain procedural matters, and as costs were agreed and embodied in a consent order, the sole remaining issue the claimant can raise is whether it has established the prerequisites to have the notice of discontinuance set aside.

31. Therefore, the defendant contends that the court's attention should be directed to the principles governing the setting aside of a notice of discontinuance, rather than to any attempt to revoke or vacate the court's administrative orders, which the defendant asserts were the subject of the order.
32. Accordingly, the defendant submits that the central question is whether the claimant has shown a proper basis for the setting aside of the notice of discontinuance – an inquiry distinct from and unaffected by the vacating of the court's administrative orders of March 24, 2025.
33. The defendant is adamant that in the circumstances of this case, the notice of discontinuance cannot be set aside. This is because under the CPR, in clear and unequivocal language, the right to apply to set aside a notice of discontinuance is granted to the defendant in certain prescribed conditions. The defendant argues that this is a procedural safeguard afforded to a defendant, and not a tool available to a claimant who has had a change of heart.
34. The defendant alleges that the sole basis for seeking to withdraw the discontinuance is that it has changed its mind because of the press release that was issued after it discontinued. That, the defendants submit, is not a legally sustainable basis to undo a discontinuance. It does not meet the threshold for fraud or abuse of process or any other basis involving unfairness.
35. For completeness, the defendant also addresses what he refers to as "the disingenuous contention" that CPR 37.4 does not apply because the notice of

discontinuance was filed pursuant to a mandatory order of the court. The defendant retorts that the rule contains no such exception, and none can be implied.

36. In any event, the defendant points out that the order was not the product of a contested application in which the court compelled a reluctant claimant to discontinue its claim. On the contrary, the defendant posits that the order was drafted using wording agreed upon by the parties, a fact clearly reflected in the preamble to the order, which records that, in light of the indication from the defendant's Counsel, the claimant's Counsel indicated to the court that "the matter will be discontinued".
37. The defendant contends that the court's role was to give formal effect to what was already an agreed position and accordingly, the filing of the notice of discontinuance was a voluntary and deliberate act, undertaken in accordance with an agreed arrangement and not under protest or compulsion.
38. In the event the court is minded to consider the application to revoke the order, the defendant submits that this is not an appropriate case for the revocation of the order.
39. The defendant posits that the overriding objective favours the principle of finality² as a default position, and alleges that a compelling reason has not been given that would overcome that default position.

Law and analysis

40. If the court determines that Part 37 of CPR 2023 applies, in the circumstances of this case, the application must fail.
41. CPR 37.5 reads:
 - (1) *Discontinuance against any defendant takes effect on the date when the notice of discontinuance is served on that defendant under rule 37.3(1)(a).*
 - (2) *A claim or the relevant part of a claim is brought to an end as against that defendant on that date.*

² See *AIC Ltd v Federal Airports Authority of Nigeria* [2022] UKSC 16 at paras. 32 and 39

(3) *However, this does not affect –*

(a) *any proceedings relating to costs; or*

(b) *the right of the defendant under rule 37.4 to apply to have the notice of discontinuance set aside.*

42. By virtue of CPR 5A.12(5), a notice of discontinuance would be deemed served on the defendant on the date and time it was filed on the Electronic Litigation Portal (ELP) of the Eastern Caribbean Supreme Court. In this case, applying Part 37, the notice of discontinuance was deemed served on the defendant when it was filed on the ELP at 1:14 p.m. on March 24, 2025. The rule is clear that this brings an end to the claim.³

43. Under the heading “Right to apply to have notice of discontinuance set aside”, CPR37.4 reads as follows:

(1) *Where –*

(a) *the claimant requires the defendant’s consent or the permission of the court to discontinue a claim and the claimant discontinues without the consent of the defendant or the permission of the court; or*

(b) *the claimant has failed to serve a defendant as required by rule 37.3(1)(a),*

the defendant may apply to have the notice of discontinuance set aside.

(2) *A defendant may not apply under this rule more than 28 days after the date the notice of discontinuance was served on that defendant.*

44. Under the CPR, it is a defendant who has a right to apply to set aside a notice of discontinuance. There is no specific provision allowing a claimant to do the same.

45. The point was considered in the Trinidad and Tobago case of **Jason Erskine v Jemma Osborne**⁴ where Rahim J stated:

“The claimants argue that Part 38.4 ought to be interpreted so as to permit the claimant to apply to set aside his own discontinuance. The court cannot

³ See *Green v Kingsley Stewart* [2014] JMSC Civ. 26 at para. 37

⁴ Claim No. CV2021-03877 (unreported), delivered May 15, 2024 at para. 8

accede to this argument as should this have been the intention of the rule it simply would have said so.

A reading of the rule does not result in an absurdity when the ordinary meaning of the words are applied so that there is no reason to apply a secondary meaning to the words used. It is clear that Part 38.4 is limited in scope. This part can only apply so as to permit the defendant to apply to set aside the discontinuance if it fell within the categories prescribed by Part 38.2(2) namely one in which permission is required to discontinue in the first place. Otherwise the applicable Part is 38.2(1). Part 38.2 is therefore to be read as being only of applicability where the claimant required leave to discontinue but failed to obtain such permission. The rule is therefore specific to a claimant who discontinues without leave and thereby vests the power in the defendant to set aside the improperly filed discontinuance. Even if the argument of the claimants hold (*sic*) some merit it can only lie with such an interpretation being proper in the case where the claimant ought to have obtained leave and did not but now wishes to set aside his own discontinuance on the basis that he failed to obtain leave. At the highest that is as far as the argument can take the claimants.”

46. At paragraph 11 of the judgment, the learned judge observed that a claimant may apply to strike out its own notice of discontinuance where the notice was a product of fraud or an abuse of process. His Lordship stated:

“The court accepts that it has the inherent jurisdiction to set aside any document filed in court in appropriate cases where the interests of justice require that the document be set aside. This may occur in cases where the intention of the claimant to discontinue was brought about through the wrongful actions of the defendant or a third party. Those actions would of course include but are not limited to fraud and duress. They may also include undue influence or mistake. The essence being that the actions of the claimant were not that of his own doing in that his will to decide would have been overtaken by another. In that case fairness and justice would require that the court set aside the document which is not the (*sic*) reflective of the true will of the claimant.”

47. In **Toplain Ltd v Orange Retail**,⁵ the court dealt with the issue as to whether under the English CPR, the court has jurisdiction on an application by a claimant to set aside a notice of discontinuance he served by mistake. In that case, as a result of a claimant’s solicitor’s error, a notice of discontinuance was served in the wrong set of proceedings. The defendant treated the notice as taking effect on the date the notice was served on him. The claimant then applied to set aside the notice. The

⁵ [2012] EWHC 4254 (Ch)

claimant relied on their rule 3.10 (similar to our CPR 26.9) which allowed the court to make an order to remedy an error of procedure. At paragraph 9 of the judgment, Roth J opined:

“In the ordinary course, it would, of course, only be a defendant who would seek to set aside a notice of discontinuance; it would not be the party that had itself served the notice. But I do not accept Mr. Booth’s submission that the rule thereby seeks to exclude the operation of any other rules if such rules might otherwise be applicable. The mechanism of an application under rule 38.4 [similar to our CPR 37.4] is available only to a defendant but Mr. Booth, in effect, invited the court to read rule 38.4 as if it said “*only* the defendant may apply to have a notice set aside”. Rule 38.4 deals with the right of the defendant. That right is not restricted to the situation of a solicitor’s mistake: indeed it is hard to envisage how a procedural error on the part of the defendant could arise in this situation. Since, in my judgment, Rule 38.4 does not address the question of an application by a claimant, there is no question of circumventing rule 38.4 if a claimant invokes rule 3.10 (and I would add that I do not think that the heading of this rule (and I would add that I do not think the heading of this rule can so significantly expand its actual substantive wording).”

48. The error in **Toplain** was “sending out the notice of discontinuance when none should have been sent at all”.⁶ The court held that it was open to the claimant to avail himself of the jurisdiction under CPR 3.10 to seek to set aside the notice of discontinuance served in error on its behalf.⁷

49. In the case at bar, there is no evidence of an error or mistake, fraud, undue influence or duress. Notwithstanding a subhead of the claimant’s written submissions - “Abuse of Process by Defendant”, - in oral submissions to the court, learned King’s Counsel for the claimant stated that the claimant was not relying on the circumstances of this case as being characterised as abuse of process. The claimant alleges that it was misled by the defendant’s representations.

50. Applying Part 37 of the CPR, the claim came to an end by the service on the defendant of the notice of discontinuance, that is, by the filing of the notice on the

⁶ Ibid at para. 11

⁷ Ibid at para. 14

ELP. On the evidence before the court, there is no basis for the claimant to apply to set it aside pursuant to CPR 37.4.

51. However, the claimant is adamant that the application was not brought pursuant to CPR 37.4. The claimant insists that the notice of discontinuance was filed in obedience to a mandatory order of the court and not under Part 37. In support of its position that the filing of the notice of discontinuance was not a voluntary act, the claimant submits that once the order was made, the claimant was not free to change its mind, that the order took away that ability.
52. Notwithstanding the order, I do not accept that the filing of the notice of discontinuance was not a voluntary act of the claimant. Learned Counsel for the parties agreed on the exact wording of the order. The preamble to the order reflects that Counsel for the claimant indicated that “the matter will be discontinued” in light of the indication from Counsel for the defendant. The contents of the order came from Counsel for the parties. In fact, the only input by the court on the wording of the order was the deadline for the filing of the notice of discontinuance. Learned Counsel for the claimant indicated that the notice would be filed the same day – March 24, 2025. In consideration of the exigencies of practice, it was the court’s suggestion to set the date for filing to the following day, March 25, “to be safe”. The notice was promptly filed after court at 1:14 p.m. on March 24.
53. In these circumstances, even in light of the order, it is difficult to understand the claimant’s contention that the filing of the notice of discontinuance was not a voluntary act on its part. I reject that submission. The order to file the notice of discontinuance was not necessary to allow its filing, and such an order would not normally be made. However, this was the carefully agreed upon position of Counsel for the parties for the wording of the order. It was Counsel’s joint decision to make the filing of the notice a part of the order. The “mandatory” order was made on the basis of the parties’ meeting of the minds that, among other things, the claimant would file the notice. Therefore, in my respectful view, the principles governing the filing of the notice of discontinuance under Part 37 of the CPR are applicable in this

case. The claim came to an end when the claimant filed the notice of discontinuance at 1:14 p.m. on March 24, 2025. The claimant has not demonstrated to the satisfaction of the court that as a claimant, it could apply to set aside its own notice. Even if it did, the conditions to be satisfied for the setting aside of the notice of discontinuance have not been met. The court is *functus officio*. The application to set aside the notice of discontinuance must be dismissed.

54. If I am wrong on this issue, I will consider the application to vacate the order. There is no dispute that the court has jurisdiction to alter or revoke an order when it has not yet been perfected.⁸ The contention arises as to whether this is an appropriate case to exercise that power.

55. In my view, the press release is misleading. It gives the impression that on the morning of the trial, the claimant simply decided not to proceed and to discontinue the claim against the defendant. The true picture of the reason for the claimant's action was not reflected, that is, in light of the commitment given by the defendant. To my mind, this was a serious omission from the press release. In effect, the Government was claiming a victory in the proceedings, instead of relaying the element of compromise that actually took place.

56. However, that is as far as it goes. On the evidence before the court, I am not persuaded to conclude that based on the press release, the claimant was misled into making the decision to discontinue the claim. There was no correction or clarification of the press release even after the claimant's displeasure of its contents was expressed. Further, up to the time of the hearing of the application, no steps as envisaged by the defendant's indication to take action had occurred. This notwithstanding, to my mind, it is not reasonable to conclude that based on the press release and subsequent inaction, the Government had no intention of pursuing the matter against the other applicants for citizenship under the Prison Project, and therefore the claimant was misled.

⁸ See *In re L and another (Children) (Preliminary Finding: Power to Reverse)* [2013] 1WLR 634, at paras. 16 - 19

57. Although it lacks specificity, I note the Permanent Secretary's evidence that the Government has every intention of abiding by the indication that action will be taken.
58. In my view, the misleading press release is insufficient to ground the misleading of the claimant in its decision to discontinue the claim, even coupled with the apparent tardiness of the Government.
59. In the circumstances of this case, I rule that this is not an appropriate case for the court to vacate or revoke the order. The order stands. The application fails in its entirety.

Order

60. Based on the foregoing, I make the following orders:
- 1) The claimant's application is dismissed:
 - 2) The claimant shall present the court's order dated March 24, 2025 on or before July 30, 2025 to be perfected by the learned Registrar.
 - 3) The claimant shall pay costs of the application to the defendant in the sum of \$2,500.00.
61. I thank Counsel for the parties for their useful submissions.

Tamara Gill
High Court Judge

By the Court

Registrar