

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2024/0333

BETWEEN:

[1] DEBBY SAMUEL LOOBY

CLAIMANT

AND

[1] SISLYN PETERS

[2] AMBERZINE JOSEPH

[3] STEPHANIE JOSEPH

[4] VALARIE LOOBY

[5] THE ATTORNEY GENERAL OF ANTIGUA AND
BARBUDA

DEFENDANTS

Appearances:

Ms. Debby Samuel Looby Claimant in person

Ms. Talia Da Costa for the First to Fourth Defendants

Ms. Joy Dublin and Ms. Desrie Markham for the Fifth Defendant

2025: August 20

August 22 (Reissued)

REASONS FOR DECISION ON SUBMISSIONS

Background

[1] **BYER, J.:** As the litigation in this matter continues, the court was asked to determine three applications filed by the 1st to 4th defendants and the claimant.

- [2] Thus by notice of application filed on the 29th May 2025, the 1st to 4th defendant sought an unless order for the non-payment of costs awarded against the claimant on the 18th March 2025. Namely the sum of \$750.00 on the dismissal by this court of an application for recusal by this court and the sum of \$250.00 on a partial success on an application filed by the 1st to 4th defendant to strike out the claim as contained in the statement of claim. Both sums were ordered to be paid and up to the date of the filing of the application the claimant had made no payments on the said sums. The 1st to 4th defendants therefore sought an unless order pursuant to Part 26.4 CPR 2023 for the amended statement of claim filed by the claimant to stand struck out if the claimant had not made payment of the two sums by a date to be determined by the court.
- [3] As was the right¹ of the 1st to 4th defendants, the application was made without notice and this court determined that since the claimant was an unrepresented litigant that the court should give the claimant an opportunity to be heard on the application and ordered service of the application.
- [4] When the application came on for hearing on the 24th June 2025, the court case managed the matter and gave the claimant an opportunity to respond to the application and to make an application in relation to the affidavit filed by the claimant on the 12th June 2025 in breach of the order of the court of the 18th March 2025 when all witness statements or affidavits of witnesses were to be filed by the 2nd June 2025.
- [5] In response the claimant filed three applications as follows:
- i) Notice of application filed on the 2nd July 2025 for a stay of execution of the costs payment made on the order for recusal (recusal sum)
 - ii) Notice of application filed on the 2nd July 2025 for a stay of execution of the costs payment made on the strike out application (strike out sum)
 - iii) Notice of Application filed on the 11th July 2025 for an extension of time for the filing of the supplemental affidavit filed on the 12th June 2025 and for permission to file an affidavit in response to the 5th defendant
- [6] For ease of reference, I will deal with the applications in the following manner, the stay applications and the unless order application and then the extension of time application.

¹ 26.4(2) CPR2023

Unless application/ Stay of execution applications

- [7] Since the stay applications deal with the sums sought to be paid under the unless application, I will deal with those first and then consider whether the court should make an unless order in all the circumstances.
- [8] By notices of application the claimant sought to stay the payment of the sums ordered to be paid and even though the claimant filed two separate applications, the grounds of both applications were by and large the same. The claimant in her applications cited the following as her basis for the stay application
- a. that she was not a lawyer and that she was disadvantaged coming to the court and “relies on the goodwill instructions of officers of the court to allow procedure of the matter”
 - b. she was not aware that she could have applied for a stay of the order under Part 13 CPR
 - c. seeking the unless order puts the claimant at risk of being subject to an injustice.
 - d. that the court’s actions paint the claimant as a perpetrator who causes wrong instead of an upholder of “right” against the adjudicator’s apparent bias.
 - e. that the claimant is unemployed and needs the court’s assistance in delaying any “unjust” payments to allow the fair resolution and conclusion of the matter
- [9] The claimant filed evidence in support of both applications and inter alia stated therein as the nub of the information in support of the stay of the recusal sum that she did not realize she had a right to seek the setting aside of the order pursuant to Part 13 CPR and that she has an *intention* to file an application for leave to appeal and a notice of appeal in relation to the recusal order “at the earliest opportunity”. In relation to the stay application on the strike out sum, the claimant by and large repeated her evidence in relation to the recusal sum but also stated that in relation to the strike out sum, a notice of appeal *had* been filed on the 23rd April 2025 and that there was an intention to file an application for leave to appeal “shortly”. The claimant also averred that a stay should be granted against what she considered was judgment in default and that as such Part 13 CPR should apply and the order should be set aside.
- [10] The 1st to 4th defendants in reply to the application in their evidence in essence indicated that there having been no leave for appeal filed by the claimant, any notices of appeal (which they say they are aware of) are nullities and the time for

seeking such leave having long expired, meant that the claimant had no reasonable prospect for success, one of the main bases for the court to consider granting a stay.

[11] This position was further elaborated on by the 1st to 4th defendants in submissions and they relied on the authority of **C- Mobile Services Ltd v Huawei Technologies Co. Ltd**² and the fundamental point that the applicant for a stay must show whether there is a risk to one or other or both parties if the court grants or refuses a stay and that this calls for an examination of the nature of the case which includes i) taking into account all the circumstances of the case ii) that a stay is the exception rather than the rule, iii) a party seeking a stay should provide cogent evidence that the appeal will be stifled or rendered nugatory, iv) in exercising its discretion that the balance of harm test must be undertaken and v) that the court should take into account the prospects of the appeal succeeding.³

[12] The claimant also made submissions on the notices of application for a stay having filed the same on the 8th August 2025. In her submissions the claimant sought to argue the following:

Firstly, that having filed the applications for leave to appeal, those applications should be allowed to be heard and determined by the court of appeal as it is possible that the recusal sum and strike out sum would be overturned on appeal;

Secondly the stay was necessary to prevent her from suffering undue prejudice at the hands of the court and to limit the potential of suffering harm;

Thirdly, that she is presently unemployed and that she was seeking to minimize all harm that could occur if she is ordered to pay the sums, as there is a strong likelihood that the court of appeal would exercise its fiduciary duty and allow leave to appeal and that the apparent bias of the judge which calls for redress will not only be done but be seen to be done ;

Fourthly, that the stay would prevent the defendants from gaining benefits to which they are not entitled and save her from having to sue to recover the costs when she is successful on appeal;

Fifthly, that damage would be caused to the court's reputation and image by failing to adhere to procedures to ensure the court's impartiality

Sixthly the defendants, in seeking to enforce the payment of costs are subverting the rules of both divine and natural justice and would have a nugatory effect leading

² BVIHCP2014/0017

³ **NB v London Borough of Haringey** [2011] EWHC 3544 (Fam)

to the orders being executed before the appeal is heard, which would amount to an abuse of the court's process;

Seventhly and finally, that the defendant's constant filing of applications in opposition shows that they are acting as obstructionists and the fact that the court allows them to do so, allows them to unethically take advantage of the claimant as a pro se litigant before a biased court, allowing for the frustration of justice. Granting the stay will prevent the defendants from the enjoyment of their fruits resulting from biased and partial judicial decisions.

Court's considerations and analysis

- [13] In considering these applications, and particularly the applications for the stays as sought by the claimant, this court cannot be swayed by emotive argument or language as engaged by the claimant. The law in relation to the granting of a stay of execution pending appeal is now settled and the only consideration which this court must bear in mind is whether the claimant has engaged the parameters which this court must consider in exercising its discretion.
- [14] The five guiding principles accepted by our court of appeal are as set out in the **C-Mobile** case⁴ referred to and relied on by the 1st to 4th defendants. Those bear repeating here, the circumstances of the case, that the stay is the exception, that there must be cogent evidence that the appeal would be rendered a nugatory or stifled, that there must be a balancing of harm test carried out in which likely prejudice to the successful party must be considered and that the prospects of the appeal with strong grounds being laid that the appeal would be successful.
- [15] At the crux of this undertaking by the court therefore, is an assessment of what was placed before the court to make that determination. It must therefore be noted from the outset that this court has not seen the purported notice of appeal filed in relation to the strike-out sum and there is an admission by the claimant there no notice of appeal was filed in relation to the recusal sum . Therefore, as it stands, there is no evidence before this court to even make a determination as to whether a stay is appropriate. The only circumstances which are relied on in evidence are that there is an intention to appeal and that Part 13 CPR should apply to the orders made by the court and be set aside. The claimant did not in her evidence, speak to why the appeal would be rendered a nugatory, there was nothing as to what the court should place in the scales to undertake the balance of harm test. Further the claimant has failed to address her mind to the effect of the failure to file an application for leave to appeal outside of the time limit provided for in the rules of court and that without

⁴ Supra at paragraph 30

such leave, any notice of appeal that may have been filed is a nullity unless otherwise ordered by the court.

- [16] In the circumstances, this court finds it has no option but to deny the application for a stay as sought by the claimant in its present form. However, the claimant is entitled to renew her application for a stay before the court of appeal
- [17] That being said, it therefore means that the recusal sum and the strike out sum which are due to the 1st to 4th defendant are due and payable. I will however give the claimant a fair opportunity to make payment on the same, failing which the claimant will be barred from making any further applications to the court or taking any further steps in the matter. However, once the sums are paid the matter will proceed before the court to trial.
- [18] The order of the court on these applications is therefore that the applications for stay of execution are dismissed. No order as to costs. The claimant is to pay the sum of \$750.00 plus \$250.00 ordered as costs on the 18th March 2025 within 45 days of today's date, failing which the claimant will be barred from filing any further applications or taking any further steps in the proceedings.

Extension of time application

- [19] By notice of application filed the 11th July 2025 the claimant has sought an extension of time to file an affidavit out of time, namely some 10 days later and to file an affidavit in reply to the affidavit of the 5th defendant. The said application is said to be pursuant to Part 26.1(2) (k).
- [20] The affidavit in support of the application filed on the 11th July 2025 stated as the basis of the application that 1) on the 18th March 2025 when the court made the order giving her the right to file affidavits of witnesses by the 2nd June 2025, she had decided not to file any further affidavit evidence 2) that due to objectionable, scandalous and false claims by the 1st to 4th defendants she then decided she needed to clarify points raised in their affidavit evidence 3) that the 5th defendant having filed their evidence late⁵ resulting in her filing a late response. This affidavit was supplemented by the affidavit in reply by the claimant filed on the 8th August 2025, when the 1st to 4th defendants objected to the application for an extension of time stating that the claimant had proffered no good reason for the late filing, that she made a choice to file late and that there was no provision to allow a party to file reply evidence. In the reply affidavit of the claimant, the claimant also sought to rely

⁵ Order made the 24th June 2025 deemed the witness statements of the 5th defendant filed on the 3rd and 4th June 2025 properly filed

on Part 10.9(1) of the CPR for the filing of a reply within 14 days of a defence and that the affidavit of the 12th June was within time while the affidavit of the 11th July in response to the 5th defendant was also within time as the same were in fact not served on her until the 24th June 2025. She therefore advanced to the court that those affidavits were in fact her “replies”. The claimant further stated that because the affidavits contained untruths they could not be allowed to stand and the objection by the 1st to 4th defendants to the extension of time was just the 1st to 4th defendants denial of her right to be heard and that they are all part of the defendant’s intention to deny her justice. The claimant further stated that by striking out the affidavits, by not granting the extension of time would be to show the defendants of holding better moral character than herself and for the first time averred that the 4th defendant was incapable of swearing affidavit evidence in circumstances where the 4th defendant was a vulnerable person due to a psychiatric disability.⁶ Finally, the claimant stated she had shown excellent reasons why her application for an extension should be granted in the interest of justice.

[21] Both the claimant and the 1st to 4th defendants filed submissions in support of their positions. The nub of the submissions of the 1st to 4th defendant was that by the notice of application and affidavit in support the claimant had not brought herself within the parameters of what is required under Part 26.8 CPR which deals with applications for extensions of time and relief from sanctions and in fact the claimant made no prayer for relief from sanctions as would have been required, she having filed her application after the date had passed for the filing of evidence. Having failed to lead any evidence as to fall within the parameters of Part 26.8, the application was bound to fail and should be dismissed.

[22] The claimant also filed submissions which seemed to indicate that she was no longer pursuing her application for an extension of time ⁷ however in the very next paragraph the claimant sought to rely on the provisions of Part 26.1(2)(k) and that what she had filed were in fact pleadings in the form of a reply and that pursuant to Part 10.9(1) she had filed within the time frame permitted by the rules. The claimant categorically submitted that Part 26.8 did not apply and that she had in any event met the requirements under Part 26.8 (2).

Courts considerations and analysis

[23] First and foremost the court wishes to state the following:

⁶ Evidence (Special Provisions) (Amendment) Act N0.9 of 2016 Section 2

⁷ Paragraph 16 of the submissions filed 8/8/2025

a) the affidavits filed on behalf of the 5th defendant were in fact filed on the 3rd and 4th June 2025 , one and two days late respectively. The same were not served on the claimant until the end of June as she is not a person who has access to the e- litigation portal and had to be served personally by means of email. The 22 days late as indicated by the claimant in her submissions is therefore incorrect

b) the 5th defendant has made no response to the application for an extension of time and whether they had or not, the court must assess the contents of the application as filed by the applicant.

c) the court on the 18th March 2025 made an order for the filing of evidence. The pleadings at that point had in fact been closed. The same had closed at the time the 5th defendant filed their affidavit in response to the substantive claim on the 1st April 2025. In fact the claimant had filed an affidavit in response to the 1st to 4th defendant's defence and counterclaim on the 20th December 2024. Therefore there were no more pleadings to be filed and the time for any response to the 5th defendant's defence would have been the 16th April 2025. Any extension of time in relation to any documents would have been evidence to be filed, not pleadings.

[24] That being said, this court can only properly consider the claimant's application as one for an extension of time for the filing of evidence provided for by Part 29.11 CPR 2023 and relief from sanctions under Rule 26.8(2).

[25] Part 29.11 states clearly that any witness statement (and affidavit) which is not served in within the time specified, means that that witnesses cannot be called and the corollary is that evidence cannot be relied upon. In light of that, that is the explicit sanction for disobeying the order of the court, non-reliance. Once a sanction attaches, a party can seek to have relief from such sanction by applying to do so and seek an extension of time to comply.

[26] Under Part 26.8(2) of the CPR an application for relief from sanctions must address on affidavit the reasons that the relief is being sought. These are stated as the effect of granting relief or not, the interests of the administration of justice, whether the failure has been or can be remedied within a reasonable time, whether the failure was due to the party or the party's legal practitioner, whether the trial date can still be met , whether there is a good explanation for the failure, whether the party in default has generally complied with all other relevant rules, practice directions and orders and directions and whether the application was made promptly. Unlike the former formulation of the rule in the CPR 2000, there are no prerequisite adherence to any one part of the rule but rather all of the matters addressed in the rule are now to be considered in the round based on the evidence before the court.

- [27] In that regard, the only document which the court must consider is the evidence filed in support and whether any of the statements therein address the requirements of the CPR. What is clear to the court is that the claimant having not made her application pursuant to Part 26.8 or 29.11 would have sought to impress upon the court different considerations than would be relevant to the case at hand. None of the reasons advanced in both the affidavit in support and the affidavit in reply addressed the matters which the court must consider under Part 26.8(2). The claimant has wholly misconceived the nature of the application to be filed in the circumstances and as such must find herself unable to advance the application in these circumstances. The application must therefore fail.
- [28] The application for an extension of time is therefore dismissed with costs to the 1st to 4th defendant summarily assessed in the sum of \$300.00 to be paid within 30 days of today's date.
- [29] The court wishes to once again indicate to the claimant that it is not here to allow her to bring matters to the court and for the court to fix them when they are not as they should be. Perhaps the reminder of the words of the court in the case of **Shane Mahagirsingh v Issa Jones** ⁸ by Seepersad J in relation to un-represented litigants can be once again repeated here that "it must be remembered that the court is constrained to determine matters based on the law as it is applied to the operative facts and must do so in a proportionate manner which accords with the overriding objective as outlined in the civil proceedings rules....serious thought should always be given before one decides to approach the court in person, as lawyers play a critical role and their value and advice should not be disregarded. Just as one would not typically operate upon oneself if there was a medical issue, so too citizens should exercise caution and avoid as best as possible from approaching the courts without the benefit of legal guidance." If a litigant does so, it is not part of the function of the court or its staff or officers to guide direct or advise that litigant. The consequences of doing so must therefore be borne in due course.

The order of the court is therefore as follows:

1. The Notices of Application filed on 2nd July 2025 for a stay of execution are dismissed. No orders as to costs.
2. The Notice of application filed on the 29th May 2025 for an unless order is granted in part in that the sums ordered on the 18th March 2025 in the sum of \$750.00 and \$250.00 shall be paid by the claimant within 45 days of today's date failing which the claimant shall be barred from filing any further applications or taking any further steps in the matter.

⁸ CV2024-02546 Trinidad and Tobago High Court

3. The Notice of application filed on the 11th July 2025 for an extension of time and permission to file an affidavit in response is dismissed, Costs to the 1st to 4th defendants in the sum of \$300.00 to be paid within 30 days.

Nicola Byer

High Court Judge

By the Court

Registrar

