

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

SAINT LUCIA

SLUHCVP2022/0002

BETWEEN:

EDMUND ESTEPHANE

Appellant

and

MCDOWELL BROADCASTING CORPORATION (MBC) LIMITED

Respondent

Before:

The Hon. Mde. Gertel Thom

Justice of Appeal

The Hon. Mde. Margaret Price-Findlay

Justice of Appeal

The Hon. Mde. Esco Henry

Justice of Appeal [Ag.]

Appearances:

Ms. Candace Fletcher and Mr. Mark Maragh for the Appellant

Mr. Horace Fraser for the Respondent

2022: December 5;
2023: August 23.

Interlocutory appeal – Service – Rule 5.7 of the Civil Procedure Rules – Service of originating documents on a company – Whether service of the claim form and other supporting documents on the receptionist of the respondent at its usual place of business constituted proper service – Rule 26.9 of the Civil Procedure Rules – Whether the court has the jurisdiction under CPR 26.9 to cure procedural irregularities in service - Prescription – Whether the appellant's purported service on the respondent was sufficient to interrupt prescription – Interpretation Act – Whether the learned master erred in considering section 23 of the Interpretation Act on the matter of who may be served as the provision is only relevant where an Act is silent on the manner of service

On 28th June 2021, the appellant filed a claim against the respondent for damages for defamation for statements made by a broadcaster during a broadcast of a weekly series

entitled “Can I help you” which was aired and published on the respondent’s television station on 2nd July 2020. The appellant contended that service was effected on 1st July 2021 by leaving filed copies of the claim form, statement of claim, prescribed form, authorization code and a thumb drive containing the video recording of the broadcast, with a receptionist at the respondent’s place of business at Barnard Hill, Castries Saint Lucia. The respondent filed an acknowledgement of service on 12th July 2021 contending that it was served on 3rd July 2021. The respondent gave its address as Barnard Hill, Castries and further indicated that it intended to dispute the claim.

On 19th July 2021, the respondent filed an application pursuant to rule 9.7 of the Civil Procedure Rules 2000 (“the CPR”) to strike out the claim on the basis that the court lacked jurisdiction to try the claim due to prescription. One of the grounds upon which the application was based was the fact that the claim was served on a receptionist of the respondent at its place of business and not at the registered office located on the John Compton highway. It was further contended that given the failure to serve the document in the manner provided for by the relevant rule, service was improper. Since the time had already elapsed after the filing of the claim, it was asserted that the claim had become prescribed and therefore could not be heard by the court. The learned master agreed and accordingly struck out the appellant’s claim having decided that it had been prescribed.

Being dissatisfied with the decision of the learned master, the appellant filed a notice of appeal citing two grounds of appeal which fell to be decided by this Court: (i) Whether the learned master erred by finding that service of the claim form and supporting documents on the receptionist at the respondent’s place of business could not constitute proper service in circumstances where the respondent filed an acknowledgement of service and where the master also found that service on the respondent’s registered office was an impossibility due to defects in its address at the Registry of Companies; and (ii) Whether the learned master erred in law and misdirected himself when he considered section 23 of the Interpretation Act.

Held: allowing the appeal and making the orders set out at paragraph 58 of the judgment, that:

1. A court must carefully examine CPR 5.7 and the Companies Act with respect to the issue of service and not nitpick in order to find technicalities which put litigants out of the doors of court. For true justice to be done, matters must be allowed to come to court for final determination. Courts are interested in hearing substantive matters and unless a procedural breach proves fatal to a claim the court will use its powers under the CPR in order to have matters heard. In this case, the appellant conducted a search at the Registry of Companies and found the respondent’s registered address to be ‘John Compton Highway, Castries, St. Lucia’. This address was ambiguous and without a more specific address, service of the claim on the registered office of the respondent proved difficult, if not impossible. The appellant therefore served the receptionist of the respondent at its usual place of business. Nonetheless, it is clear that the respondent, received the claim form and the accompanying documents as it filed an acknowledgement of service within the time prescribed by the rules of court. Even though the service in this matter might have been considered procedurally irregular, it satisfied the purposes of service as it

engaged the attention of the respondent who actively participated in the proceedings thereafter.

Hoddinott v Persimmon Homes (Wessex) Ltd [2007] EWCA Civ 1203 applied; **Lapierre v Andrew** (1983) 45 A.R. 220 (QB) applied; **Barbara Angela Reid v Melroc Investments Limited t/a Access Cambio** [2019] JMSC Civ 244 applied; Rule 5.7 of the **Civil Procedure Rules 2000** considered.

2. CPR 26.9 is a provision of the rules which can be used beneficially where there has been no prejudicial effect to the other party. This Court will not allow style to triumph over substance in circumstances where no prejudice is visited on the other party. In this matter, there was no prejudice to the respondent as a result of what was, in effect, a procedural error. The respondent was not deprived of any knowledge of the fact that proceedings had been commenced against it or what the nature of the claim made against it was. In fact, they entered an acknowledgement of service. Furthermore, CPR 5.7 imposes no sanction for non-compliance with the procedures for service. The learned master therefore erred in finding that the provisions of CPR 5.7 prevented him from invoking the court's inherent powers under CPR 26.9 to correct what amounted to an irregularity in service. The learned master ought to have exercised the discretionary powers granted to the court by virtue of CPR 26.9 and deem that service in the matter was proper and that service took place before time became prescribed.

Steele v Mooney and others [2005] 1 WLR 2819 applied; **Texan Management Limited & Others v Pacific Electric Wire & Cable Company Limited** [2009] UKPC 46 applied; **Bupa Insurance Limited (trading as Bupa Global) v Roger Hunter** [2017] JMCA Civ 3 applied; **Bank of Baroda, GCC Operations and Others v Nawany Marine Shipping FZE and Others** [2016] EWHC 3089 (Comm) applied; Rule 26.9 of the **Civil Procedure Rules 2000** applied.

3. The Interpretation Act is a statute of general application in the interpretation of other statutes. It provides that when an Act is silent as to how service is to be effected, such service may be effected by one of the various means set out in the Interpretation Act. As both the CPR and the Companies Act set out very clearly the parties on whom documents ought to be served on behalf of a company, there ought to have been no recourse to the Interpretation Act in these particular circumstances and the learned master erred in so doing.

Section 23 of the **Interpretation Act** Cap. 1.06, Revised Laws of Saint Lucia 2020 considered; Part 5 of the **Civil Procedure Rules 2000** considered.

JUDGMENT

- [1] **PRICE-FINDLAY JA:** This appeal arises from a decision of the learned master whereby he struck out the appellant's claim having decided that it had been prescribed.
- [2] The respondent, a limited liability company, made an application to the court below seeking a declaration that the court had no jurisdiction to hear the claim based on prescription. Alternatively, the respondent sought an order that the claim be struck out as an abuse of process.
- [3] The learned master found that there had been no proper service and accordingly, there had been no proper judicial demand before the time was prescribed. Therefore, both the right and remedy of the appellant as against the respondent were extinguished. As a result, the court had no jurisdiction to make any order regarding remedying any of the defects in service at this stage of the trial. The learned master, as a result, struck out the appellant's claim and awarded costs to the respondent. It is against this decision of the master that the appellant has now appealed.

Brief Facts

- [4] On 28th June 2021, the appellant filed a claim against the respondent for damages for defamation for statements made by a broadcaster during a broadcast of a weekly series entitled "Can I help you" which was aired and published on the respondent's television station on 2nd July 2020.
- [5] The appellant contended that service was effected by leaving filed copies of the claim form, statement of claim, prescribed form, authorization code and a thumb drive containing the video recording of the "Can I help you" show dated 2nd July 2020 with Ms. Kiana Richard, a receptionist employed with the respondent, at the respondent's place of business at Barnard Hill, Castries St. Lucia on 1st July 2021.

- [6] The respondent filed an acknowledgement of service in the matter on 12th July 2021. In it, the respondent contended that it was served on 3rd July 2021. The respondent also gave its address on the acknowledgement of service as Barnard Hill, Castries and further indicated that it intended to dispute the claim.
- [7] On 19th July 2021, a notice of application with an accompanying affidavit was filed by the respondent pursuant to rule 9.7 of the **Civil Procedure Rules 2000** (“the CPR”) which sought to have the claim struck out on the basis that the court lacked the requisite jurisdiction to try the claim due to prescription. One of the grounds upon which the application was based was the fact that the claim was served on a receptionist of the respondent at its place of business and not at the registered office located on the John Compton highway. It was further contended that given the failure to serve the document in the manner provided for by the relevant rule, service was therefore improper. Since the time had already elapsed after the filing of the claim, it was asserted that the claim had become prescribed and therefore could not be heard by the court. The learned master agreed and accordingly struck out the appellant’s claim having decided that it had been prescribed.
- [8] Being dissatisfied with the ruling of the learned master, the appellant sought leave of the Court to appeal on 14th December 2021. That leave having been granted; the grounds of the appeal are listed as follows:
- (i) That the learned master failed to properly exercise his discretion in the matter since he erroneously held that service of the claim form and supporting documents on the receptionist of the respondent at its place of business could not constitute proper service, in circumstances where the respondent acknowledged service and where the learned master found that the respondent’s registered address was defective so as to render service at that registered office an impossibility. This therefore was not an appropriate basis for the exercise of the court’s discretion under CPR 26.9 (“**Ground 1**”);

- (ii) That the learned master erred in law and misdirected himself when he considered section 23 of the **Interpretation Act**¹ since the said provision is only of relevance where an Act is silent on the manner of service ("**Ground 2**").

Ground 1

Whether the learned master erred by finding that service of the claim form and supporting documents on the receptionist at the respondent's place of business could not constitute proper service in circumstances where the respondent filed an acknowledgement of service and where the master also found that service on the respondent's registered office was an impossibility due to defects in its address at the Registry of Companies

- [9] The appellant posited that the service of the documents at the place of business of the respondent was proper as the address given at the Registry of Companies by the respondent was incomplete and the named address was a thoroughfare stretching for many miles from Castries to Gros Islet (a distance of some 15 miles) making it difficult, if not impossible, for any process server to locate the office.
- [10] The appellant further pointed out that the purpose of service was fulfilled as it brought to the attention of the respondent the fact that proceedings had been commenced against them as well as the nature of those proceedings, to the point that the respondent filed an acknowledgement of service and indicated its intention to contest the matter.
- [11] The appellant posited that service of process is a procedural matter and if there had been an irregularity in service of the court documents, the court had a discretion under the CPR to rectify what amounted to a procedural error. He further argued that the learned master was wrong in not exercising his discretion under the CPR to rectify the procedural deficiency. That power, he asserted, lies with the court under CPR 26.9.

¹ Cap. 1.06, Revised Laws of Saint Lucia 2020.

- [12] The respondent's contention is that service of the claim form and the related documents at its place of business was improper and as such, it renders the proceedings nugatory for lack of proper service. They thus argued that the claim was prescribed as it related to and concerned them as the time for filing the claim had passed, and the appellant was unable to re-file and serve the claim properly within the prescribed time.
- [13] The respondent relied on several articles of the **Civil Code of Saint Lucia**² dealing with prescription and judicial demands. They also rely on section 23 of the **Interpretation Act** to reinforce their argument that service in this matter was improper thereby rendering the proceedings a nullity.
- [14] The appellant served the claim form and the accompanying documents on the respondent at its place of business following difficulties in ascertaining the location of its registered offices on the John Compton highway. The appellant, having conducted a search at the Registry of Companies found that there was no evidence of a specific address listed for the respondent.
- [15] The respondent having acknowledged service disputed service of the claim on the following grounds:
- (a) That in order to effect proper service the appellant had to comply with CPR 5.7; and
 - (b) The person on whom the documents were served was not a director, officer or manager of the respondent and as a result, service was not sanctioned by section 23 of the **Interpretation Act** and as such, the service on an ordinary employee of the business was therefore a nullity which was beyond the reach of the court and the court therefore had no discretion which it could exercise to rectify the defective service.

² Cap. 4.01, Revised Laws of Saint Lucia 2020.

- [16] The appellant posited that by filing an acknowledgement of service, the respondent effectively submitted to the jurisdiction of the court and that this amounted to a waiver of any perceived right to challenge the court's jurisdiction as to the manner of service.
- [17] The respondent, in response, submitted that the learned master failed to properly exercise his discretion in the matter since he erroneously held that service of the claim form and supporting documents on the receptionist of the respondent at its place of business could not constitute proper service, in circumstances where the respondent acknowledged service, and where the learned master found that the respondent's registered address was defective so as to render service at that registered office an impossibility. The respondent thus argued that this was not an appropriate basis for the exercise of the court's discretion under CPR 26.9 and that section 23 of the **Interpretation Act** is a specific statutory provision regarding how service of a claim should be effected on a corporate body. Further, there was no requirement for service to be made on the registered office. The respondent argued that service must however be effected on the secretary or clerk of the corporation and that it is the person upon whom the claim is served that matters, and not the place of service.
- [18] The respondent asserted that section 23 of the **Interpretation Act** refers to 'the secretary or clerk,' but clerk in this sense, whilst not defined by the **Act** is to be construed in light of the *ejusdem generis* rule where the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words. In this regard, the separation of an ordinary employee of the business holding the post of clerk, and the word "clerk" in the provision, ought to be a necessary exercise to do justice to the provision. The term "clerk" as set out in the provision must be construed as meaning "director" or "manager" or some officer duly authorized by the corporation to receive service on its behalf. The respondent argued that to construe it otherwise would make a nonsense of the

provision and do violence to the mischief it was designed to avoid. They further submitted that the provision could never have been intended to treat an ordinary clerk of the business as having the same authority as the secretary of a company as regards service of a claim.

Discussion

- [19] The CPR makes specific provision for the service of the claim form on a limited liability company. Rule 5.7 provides for several methods by which service may be effected on a limited liability company. Rule 5.7 reads as follows:

“5.7

Service on a limited company may be effected –

- (a) by leaving the claim form at the registered office of the company;
- (b) by sending the claim form by telex, FAX or prepaid post or cable addressed to the registered office of the company;
- (c) by serving the claim form personally on an officer or manager of the company at any place of business of the company which has a real connection with the claim;
- (d) by serving the claim form personally on any director, officer, receiver, receiver-manager or liquidator of the company; or
- (e) in any other way allowed by any enactment.”

- [20] The appellant, having filed the claim in this action, conducted a search of the Registry of Companies of Saint Lucia to ascertain the address of the respondent's registered office. What they found was an address that read 'John Compton Highway, Castries, St. Lucia.' The address was, at best, ambiguous and there was evidence before the learned master that this highway ran for many miles, and without a more specific address, service of the claim at the registered office of the respondent was difficult, if not, impossible. The appellant therefore served the relevant forms on the receptionist at the place of business of the respondent purportedly in accordance with paragraph (c) of CPR 5.7.

- [21] The learned master found that such service on the receptionist at the place of business of the respondent was defective and not in compliance with either the CPR

or the **Interpretation Act**. An evaluation of the aims of service and prescription provisions is indispensable to the resolution of this issue.

[22] Dyson LJ in **Hoddinott v Persimmon Homes (Wessex) Ltd**³ stated at paragraph 54:

“...service of the claim form serves three purposes. The first is to notify the defendant that the claimant has embarked on the formal process of litigation and to inform him of the nature of the claim. The second is to enable the defendant to participate in the process and have some say in the way in which the claim is prosecuted: until he has been served, the defendant may know that proceedings are likely to be issued, but he does not know for certain and he can do nothing to move things along. The third is to enable the court to control the litigation process.”

[23] It is accepted that under the **Civil Code** a matter where defamation is pleaded becomes prescribed within a period of one year of the date of the accrual of the cause of action. Section 2123 reads:

“2123. The following actions are prescribed by one year:

1. For slander or libel, reckoning from the day that it came to the knowledge of the party aggrieved;
2. For wages of domestic servants, merchants' clerks and other employees who are hired by the day, week or month, or for less than a year;
3. For hotel or boarding-house charges.”

[24] In **Ernest Hilaire v Allen Chastanet**,⁴ the Privy Council confirmed that the **Civil Code** specified the period of limitation and the point at which it accrued; namely on the date of knowledge of the person aggrieved rather than on the date of publication of the defamatory statement.

[25] Under the **Civil Code** therefore, prescription can only be interrupted by filing and serving a claim with the accompanying documents within the time limited to do so.

³ [2007] EWCA Civ 1203.

⁴ [2023] UKPC 22.

[26] It is noted that in spite of the claim being served on the receptionist, the respondent filed an acknowledgment of service within the time prescribed under the CPR.

[27] The appellant submitted that service, even though procedurally irregular, satisfied the purpose of service, in that, it brought to the litigant's attention the existence and substance of the claim brought against him. Furthermore, the appellant submitted that part of the court's powers of case management is the general power of the court to rectify matters where there has been a procedural error.

[28] CPR 26.9 details the general power of the court to rectify matters where there has been a procedural error, it states:

“26.9

1. This rule applies only where the consequence of failure to comply with a rule, practice direction, court order or direction has not been specified by any rule, practice direction or court order.
2. An error of procedure or failure to comply with a rule, practice direction, court order or direction does not invalidate any step taken in the proceedings, unless the court so orders.
3. If there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to put matters right.
4. The court may make such an order on or without an application by a party.”

[29] In view of CPR 26.9, it is evident that service in this matter can be described as being procedurally irregular, however, it satisfied the purpose of service as set out in the various authorities, and engaged the attention of the respondent who filed and served an acknowledgment of service in the matter.

[30] I am of the view that the appellant effectively interrupted prescription by filing and serving the claim form and the necessary accompanying documents on the respondent before the expiration of the prescriptive period.

[31] The court must carefully examine CPR 5.7 and the **Companies Act**⁵ with respect to the issue of service and not nitpick in order to find technicalities which put litigants out of the doors of court. For true justice to be done matters must be allowed to come to court for final determination. Courts are interested in hearing substantive matters and unless a procedural breach proves fatal to a claim the court will use its powers under the CPR in order to have matters heard.

[32] In **Lapierre v Andrew**,⁶ Shannon J opined at paragraph 10:

“The principle that emerges from such cases is that a defective form of service can be deemed to be good and sufficient if it can be established that the document came to the attention of the party being served and as a consequence he acquired knowledge of the general nature of the claim being pressed against him.”

[33] Given the factual matrix of this case, the respondent acquired knowledge of the claim brought against him and in fact, engaged the court by filing the required acknowledgement of service within the time prescribed by the rules.

[34] In the Jamaican case of **Barbara Angela Reid v Melroc Investments Limited t/a Access Cambio**,⁷ the court stated at paragraph 10:

“I am to point out to counsel for the Defendant that the options set out in CPR Part 5.7 are options only. The word “may” as opposed to “must” is used and this suggests that the Claimant who wishes to serve the Defendant is able to use any method which would get the documents to the attention of the Defendant. The list set out in CPR Part 5.7, in my opinion, is a list of options that can be used to serve a registered company. The purpose of service is to get the documents that are being served to the attention of the Defendant...Given the purpose of service and the place of service, I am of the view that the claim form and particulars of claim were properly served on the Defendant when they were left at Access Cambio.....Having left the documents at the principal place of business of Access Cambio, it is very likely (on a balance of probabilities) that the documents would come to the attention of the principals of the Defendant.”

⁵ Cap. 13.01, Revised Laws of Saint Lucia 2020.

⁶ (1983) 45 A.R. 220 (QB).

⁷ [2019] JMSC Civ 244.

[35] It is clear that the respondent, in these proceedings, received the claim form and the documents and engaged the court by filing an acknowledgement of service as prescribed by the rules of court. The respondent was not only provided with the necessary information about the nature of the claim, but also that the claim had been filed within the jurisdiction, and that the court had processed the claim.

[36] In these circumstances, it would have been entirely appropriate for the learned master to exercise his discretion under CPR 26.9 and deem service of the documents on the receptionist as a procedural error capable of being corrected by the court.

[37] In **Steele v Mooney and others**,⁸ Dyson LJ commenting on the English CPR r. 3.10 (the equivalent of our CPR 26.9), stated:

“...there is no need to give the phrase “error of procedure” in CPR r 3.10 an artificially restrictive meaning... [I]f the phrase “error of procedure” is given a narrow meaning, difficult questions of classification will arise. This will inevitably lead to uncertainty... r 3.10 gives the court a discretion. This must be exercised in accordance with the overriding objective of dealing with cases justly....”

[38] Furthermore, as the Privy Council indicated in **Texan Management Limited & Others v Pacific Electric Wire & Cable Company Limited**⁹ at paragraph 74:

“....except where the consequence of failure to comply with a rule has been specified, where there has been an error of procedure or failure to comply with a rule, the failure does not invalidate any step in the proceedings, and the court may make an order to put matters right: EC CPR r.26.9.”

[39] CPR 26.9 is a provision of the rules which can be used beneficially where there has been no prejudicial effect to the other party. This Court will not allow style to triumph over substance in circumstances where no prejudice is visited on the other party. In this matter, there was no prejudice to the respondent as a result of what was a procedural error. The respondent was not deprived of any knowledge of the fact that

⁸ [2005] 1 WLR 2819.

⁹ [2009] UKPC 46.

proceedings had been commenced against it or what the nature of the claim made against it was. In fact, they entered an acknowledgement of service.

[40] The court has to make a distinction between what amounts to an irregularity and what amounts to a nullity. Clearly, failure to comply with the rules contained within the CPR can amount to an irregularity which the court under its powers can correct.

[41] McDonald-Bishop JA in **Bupa Insurance Limited (trading as Bupa Global) v Roger Hunter**¹⁰ stated at paragraph 55:

“...the framers of the CPR did not intend for every breach of the rules to be taken as invalidating the proceedings and that would be so whether or not the particular rule that is engaged is stated in mandatory terms. Once the consequence for breach of the rule is not provided for by the CPR or otherwise, then consideration must be given to the provisions of rule 26.9 in determining the way forward in the proceedings.”

[42] Further, in **Bank of Baroda, GCC Operations and Others v Nawany Marine Shipping FZE and Others**,¹¹ the court said at paragraph 17:

“The key in considering whether a defect can be cured under this provision is to analyse whether there is “an error of procedure” which might otherwise invalidate a step taken in the proceedings. Thus the benefit of CPR 3.10 will be less easy to obtain where there has been no attempt at a procedural step (e.g. a complete failure of service) or the step taken is not permitted by or within the rules at all.”

[43] I find that there was no prejudicial effect visited upon the respondent as they were effectively informed by the defective service that legal process had commenced against them as well as the nature of the claim made against them. In this case, a procedural step was taken defectively rather than omitted or performed in direct contradiction to any rule. Further, rule 5.7 imposes no sanction for non-compliance with the procedures for service. It is therefore a case where the court could and should have exercised its powers under CPR 26.9 to rectify the error.

¹⁰ [2017] JMCA Civ 3.

¹¹ [2016] EWHC 3089 (Comm).

- [44] The court has the jurisdiction and the discretion to cure defects and irregularities depending on the circumstances of the particular case and procedural irregularities fall within the discretionary powers of the court to correct. If the justice of the case requires it, the court must use its discretionary powers if the circumstances are right to give effect to the overriding objective of the CPR.
- [45] Justice must also be done between the litigants and the court must balance the interests of the individual litigant as against the interest of all the parties. Justice is not served by depriving a party of their ability to have their case heard on the merits due to a procedural breach or irregularity. It has been said and I agree with the sentiment that the era when justice was readily sacrificed on the altar of technicalities is over.
- [46] The court is interested in substance rather than form, and technicalities ought not to be allowed to prevent the court from dealing with substantive matters.
- [47] As the Privy Council affirmed in **Texan Management Limited & Others v Pacific Electric Wire & Cable Company Limited**:
“[I]n the pursuit of justice, procedure is a servant and not a master.”
- [48] It is clear that justice can only be achieved if this substantive matter is heard and ultimately determined by a court.
- [49] The issue having already been decided that service was a procedural matter, and that the court could exercise its discretion by putting right procedural errors where there was no prejudice to the other party, the learned master therefore erred by finding that the provisions of CPR 5.7 prevented him from invoking the court's inherent powers under CPR 26.9 to correct what amounted to an irregularity. Consequently, I find that the learned master ought to have exercised the discretionary powers granted to the court by virtue of CPR 26.9 and deem that service in the matter was proper and that service took place before time became prescribed.

[50] Given all that I have stated above, I would exercise the court's discretion afresh and deem the claim form and the accompanying documents properly served on the respondent.

[51] As a result, I would allow this ground of appeal.

Ground 2

Whether the learned master erred in law and misdirected himself when he considered section 23 of the Interpretation Act

[52] The learned master, whilst agreeing that the objective of service was to ensure that the respondent had notice of the claim and the nature of the appellant's case, was of the view that the purpose of service must be taken in the context of the specific provisions regarding service on a limited liability company and in particular the specific provisions set out in section 23 of the **Interpretation Act**.

[53] Section 23 of the **Interpretation Act** states:

"23. Service of documents

(1) Where an enactment authorises or requires a document to be served by post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other word is used, the service of the document may be effected by prepaying, registering and posting an envelope addressed to the person on whom the document is to be served at his or her usual or last known place of abode or business and containing such document; and unless the contrary is proved, the document shall be deemed to have been served at the time at which such envelope would have been delivered in the ordinary course of post.

(2) Where an enactment authorises or requires a document to be served on any person without directing it to be served in a particular manner the service of that document may be effected—

- (a) by personal service;
- (b) by post in accordance with subsection (1);
- (c) by leaving it for him or her with some adult person at his or her usual or last known place of abode or business;
- (d) in the case of a corporate body or of any association of persons (whether incorporated or not) by delivering it to the secretary or clerk of the body or association or serving it by post on such secretary or clerk at such office; or

(e) if it is not practicable after reasonable enquiry to ascertain the name or address of an owner, lessee, or occupier of premises on whom the document ought to be served, by addressing the document to him or her by the description of “owner” or “lessee” or “occupier” of the premises (naming them) to which the document relates, and by delivering it to some person on the premises to whom it can be delivered, or by affixing it, or a copy of it to some conspicuous part of the premises.”

[54] It is a well-established principle of law that the **Interpretation Act** is the statute of general application in the interpretation of other statutes. It provides that when an Act is silent on how service is to be effected such service may be effected by one of the various means set out in the **Interpretation Act**.

[55] In this case, CPR Part 5 sets out how service can and ought to be effected on a company, requiring service on specific officers. Neither the CPR nor the **Companies Act** is silent as to the persons who ought to be served on behalf of a company, and since both the CPR and the **Companies Act** clearly set out the parties on whom a process is to be served on behalf of a corporate entity, the learned master ought not to have had recourse to the **Interpretation Act** in these circumstances. The relevance of the **Interpretation Act** will only arise where there is an absence of any terms with respect to the service of documents on a corporate entity. As a result, the provisions of the **Interpretation Act** can offer no assistance in this case and the learned master would have erred in this regard.

[56] In the circumstances, this second ground of appeal is also allowed.

Conclusion

[57] Having regard to the conclusions reached above, I would allow the appeal in its entirety. I would also direct that the matter be returned to the high court to proceed in accordance with the CPR.

Order

[58] In the circumstances, the following orders are made.

- (i) The appeal is allowed.
- (ii) The claim form and accompanying documents are deemed properly served on the respondent.
- (iii) The matter is returned to the High Court and will proceed in accordance with the CPR.
- (iv) The appellant is to be awarded costs on the appeal, such costs to be assessed by a judge or master of the court below, if not agreed within 21 days of this order.

I concur.

Gertel Thom

Justice of Appeal

I concur.

Esco Henry

Justice of Appeal [Ag.]

By the Court

Deputy Chief Registrar