

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2017/0526

BETWEEN:

CELESTER JULES

Claimant/Judgment Creditor

And

JOSEPH LAMONTAGNE

Defendant/Judgment Debtor

CONSOLIDATED WITH:

CLAIM NO.: SLUHCV2018/0184

BETWEEN:

JOSEPH LAMONTAGNE

Claimant/Judgment Debtor

And

CELESTER JULES

Defendant/Judgment Creditor

BEFORE: **His Lordship, the Honourable Justice Rohan A Phillip**
(Judge in Open Court via Zoom)

APPEARANCES: Mr Huggins Nicholas of Counsel for the Judgment Creditor
Mrs Wauneen Louis-Harris of Counsel for the Judgment Debtor

PRESENT: Both parties

2021: July 7;
2024: September 06

DECISION

- [1] **PHILLIP, J:** This is an application by the judgment debtor, Joseph Lamontagne (“Mr Lamontagne”), filed on 29th April 2021 to set aside the judgment dated 6th May 2019 in favour of the judgment creditor, Celester Jules (“Ms Jules”) in claim No. SLUHCV2018/0184, and to strike out the judgment summons filed therein on 2nd August 2019.
- [2] On 3rd February 2021, when the judgment summons filed on 26th July 2019 in SLUHCV2017/0526 and on 2nd August 2019 SLUHCV2018/0184 came up for hearing, the court ordered the matters consolidated for the hearings of the said judgment summons and gave direction for Mr Lamontagne to file an affidavit of means setting out all assets, income and expenses, with a proposal to liquidate the judgment debts by 26th February 2021 and adjourned the matters for hearing to 21st April 2021.
- [3] When the matters came up on 21st April 2021, Mrs Louis-Harris indicated that Mr Lamontagne was requesting time to file an objection to the judgment summons and an extension of time to file the affidavit of means. Mr Nicholas did not object to the request; he believed it merely delayed the inevitable to satisfy the judgment debts. The court gave Mr Lamontagne an extension of time to file the affidavit of means previously ordered and leave to apply with brief submissions to object to the judgment summonses filed herein by 21st May 2021. Ms Jules had to file a response with brief submissions to the application by 21st June 2021, and Mr Lamontagne had to reply to Ms Jules’ response by 28th June 2021. The matters were set down for hearing on 7th July 2021.

Background

- [4] It is useful to give a brief context to understand the issues in the instant application better.
- [5] Ms Jules operated the business BCJ Enterprises, and engaged in the sale of national lottery tickets. Mr Lamontagne was a customer who purchased lottery tickets. In or about July 2017, Mr Lamontagne made threats to Ms Jules and alleged that she stole his lottery tickets from him, which had won \$400,000.00, by telling him that it did not win and did not return it to him when he had her check. He also accused her of giving the ticket to her mother, who proceeded to cash it. She took the cash and purchased a vehicle for her brother. Mr Lamontagne made these statements in sight and hearing of several customers in the business place. He further communicated these remarks to persons in the community and published them on social media, particularly Facebook.

[6] SLUHCV2017/0526 was a claim in defamation for damages for the remarks allegedly made by Mr Lamontagne about Ms Jules, while in SLUHCV2018/0184, Mr Lamontagne claimed against Ms Jules for damages of \$432,089.50 with interest thereon at a daily rate of \$65.75 per day from 16th December 2016 to date of payment for conversion, alleging she dishonestly, unlawfully and without the consent took his winning lottery ticket and converting it to her own use.

[7] SLUHCV2018/0184 was set down for trial on 6th May 2019. However, on 3rd May 2019, Mr Lamontagne filed an application supported by an affidavit sworn by Mathilda Ferdinand, a secretary employed in Mrs Louis-Harris' Chambers. Apart from the formal parts, the affidavit parroted the application seeking the following orders:

1. That the witness Celeste Jules be prohibited from giving evidence in the trial and that the matter proceed solely on the evidence of the Claimant herein.
2. Or in the alternative that this case be consolidated with Claim No. SLUHCV2017/0526 which is set down for trial on the 11th day of June 2019.
3. Or in the alternative that the two matters be heard together on the 11th day of June 2019 and the date for the trial of the matter be treated as the pre trial review.
4. Or in the alternative that the trial of the instant matter be adjourned to another date to be determined by the Court.
5. That permission be granted for the Claimant herein to file additional witness statements.
6. That the witness Celeste Jules be prohibited from giving evidence in the trial.
7. That there be no order as to costs."

[8] The grounds of the application, so far as relevant to this decision, were:

1. The case management conference order made on 28th November 2018 ("the CMC Order") stated, among other things, that the parties were to file and exchange witness statements by 28th February 2019. Mr Lamontagne filed and served his witness summary on 28th February 2019 following the CMC Order. However, Ms Jules filed her witness statement on 28th February 2019, she did not serve the witness statement until the following day, beyond the deadline stipulated by the CMC Order.
2. According to the Civil Procedure Rules 2000 (as amended) ("CPR") 29.11, Ms Jules should not be permitted to give evidence at the trial as she has not sought relief from sanctions under CPR Rule 26.8.
3. The CMC Order directed a pre-trial review conference on 14th March 2019 but was not held due to the closure of the High Court at the time.

4. The parties are the same in SLUHCV2017/0526, albeit in inverse roles, so the issues in the two cases are related. If they were heard together or consolidated, it would further the overriding objective under CPR Rule 1.1, the cases would be dealt with justly, and the court's resources would be appropriately applied to the two cases.
5. Mr Lamontagne currently resides and works in the Commonwealth of Dominica.

[9] When SLUHCV2018/0184 came up for trial on 6th May 2019, Mr Lamontagne was not present in court at the trial and judgment was given as follows:

- "1. That the Claimant's Application filed 3rd May 2019 is refused entirely.
2. That Costs are awarded to the Defendant for the Application in the sum of \$500.00.
3. That the Claimant's Case is dismissed.
4. That prescribed costs are awarded to the Defendant in this matter."

[10] Upon SLUHCV2017/0526 coming on for trial on 11th June 2019, it was ordered by consent of the parties that Mr Lamontagne shall issue a written apology to Ms Jules and pay costs to her of \$5,000.00 on or before 16th July 2019.

Application filed 29th April 2021

[11] The instant application to set aside the order dated 6th May 2018 sought the following orders:

1. The judgment dated 6th May 2019 be set aside under CPR 39.5.
2. The claim filed herein on 16th April 2018 is to be restored.
3. The judgment summons filed on 2nd October [sic August] 2019 be dismissed based on, among other things, it is a nullity.
4. The costs is to be awarded to Mr Lamontagne.

[12] The grounds in the application relevant to setting aside the order dated 6th May 2018 may be summarised as follows:

1. On 3rd May 2019, a notice of application and supporting affidavit were filed on behalf of Mr Lamontagne seeking, among other things, an adjournment of the trial because, at the time, Mr Lamontagne was outside of the jurisdiction employed in the Commonwealth of Dominica. (para 6)
2. Upon the matter coming up for trial on 6th May 2019, Mr Lamontagne was not present in court and judgment was given against him as mentioned in para [9] above. (para 7)

3. The judgment was not served Mr Lamontagne. Still, on 2nd August 2019, Ms Jules filed a judgment summons to enforce the said judgment. Mr Lamontagne only became aware of the terms of the said judgment after being served with the judgment summons in February 2021. He instructed his legal practitioner to make inquiries and advise on the way forward. (paras 8, 9 and 10)
4. CPR 39.5 and 39.6 were recited. (paras 11 and 12)
5. Mr Lamontagne had a good reason for failing to attend the hearing. He was employed overseas in the Commonwealth of Dominica then and could not travel to Saint Lucia for the trial. (para 13)
6. It is likely that had Mr Lamontagne attended the hearing, the court might have made some other judgment or order because he had complied with the CMC Order by filing and serving his witness summary by 28th February 2019, the date ordered by the court. Thus, the court could have ordered Ms Jules' witness statement filed but not served by 28th February 2019 as ordered by the court be struck out and prevent her from giving any evidence in the case. The court could likely have granted judgment to Mr Lamontagne. He would not be liable to pay any costs according to the judgment, and no judgment summons would have been filed. (para 14)

[13] On the other hand, the grounds for dismissing the judgment summons filed 2nd August 2019 were that:

1. The judgment summons was filed before serving the judgment on Mr Lamontagne. Ms Jules has not filed an affidavit of service of the judgment. (paras 15 (1) and (5))
2. The judgment summons falls afoul of the mandatory requirements of CPR 52, which stipulate that any payments by the judgment debtor must be stated and specify the date and details of the Judgment. Also, the amount of interest claimed to the date of the application and the daily rate after that (if interest is being claimed). (paras 15 (2))
3. Ms Jules failed to observe the procedure under CPR 44 for an oral examination in aid of enforcement to procure information on the means of Mr Lamontagne to satisfy the judgment debt before filing the judgment summons to imprison him for failure to pay the judgment debt. Thus, the judgment summons was improper. (paras 15 (3))

4. Practice Direction No. 2 of 2007 of the Eastern Caribbean Supreme Court clarifies the scope of CPR 52.1, stating that the part deals with applications to enforce a judgment debt against a judgment debtor for non-payment by a committal order. (paras 15 (4))
5. Ms Jules will suffer no prejudice if the court grants the orders sought because the judgment relates to costs only, to which Mr Lamontagne maintains she is not entitled in the circumstances. (paras 15 (6))

[14] Mr Lamontagne's affidavit in support of the application mirrors his application.

Mr Lamontagne's Case

[15] In her written submissions, Mrs Louis-Harris contended the applicable rule was CPR 39.5, and Mr Lamontagne's evidence was that the judgment was not served upon him. Accordingly, the time under CPR 39.5 has not commenced and the application is properly before the court. She relied on **Anison Rebess and Joyce Rebess v National Bank of Dominica**,¹ where the Court of Appeal held that:

"A defendant who has not had default judgment served on him is entitled to apply at any time up to and including an application for the enforcement of the judgment to have the judgment set aside on the basis that it has been entered for an excessive amount."

And **Bank of Saint Vincent and the Grenadines Ltd. v C & R Enterprises Ltd.**,² where the court granted the application, setting aside the order dismissing the claim on the basis that they had fulfilled the requirements of CPR 39.5.

[16] Mrs Louis-Harris stated that Mr Lamontagne advanced a good reason for not attending the hearing since he was not in Saint Lucia for work reasons, which fulfils CPR 39.5 (3) (a). Also, he has satisfied CPR 39.5 (3) (b) as the court would have likely made some other order if he had been present in court on 6th May 2019 in that judgment could have been entered in his favour since his evidence was the only evidence properly before the court. She submitted that Ms Jules had not applied for relief from sanctions following CPR 28.6 and, accordingly, would not have given any evidence in the proceedings at trial based on CPR 29.11.

¹ HCVAP2011/030

² SVGHCV2012/0275

[17] Further, Mrs Louis-Harris submitted that in **Justin Pemberton v The Attorney General of Dominica et al.**,³ the Court of Appeal overturned the order of the learned trial judge refusing an application of the claimant in this under CPR 39.5 and held:

“1. A trial judge has the power to strike out a claim when the claimant does not attend for his trial. However, a court should not exercise its power to strike out a claim if, though a party is not present, his counsel is. Presence of counsel is a sure indication that without more, the claimant is not intentionally absent and there may be a good reason for his not turning up for the trial on time”.

Mitchell JA (Acting), as he then was, explained the principle of striking out a claim where the claimant is absent thus (para [8]):

“It certainly seems a just and good rule that a claim should not be automatically struck out when counsel is present in court, but his client is not. Presence of counsel is a sure indication that, without more, the claimant is not intentionally absent and there may be some good reason for his not turning up for the trial on time. Any costs incurred by any delay or postponement may be visited on the delinquent claimant. At any rate, if the claim is struck out by the trial judge, it should be restored on an application made in good time and showing a good reason for his failing to attend. What is a good reason is not defined or limited by the rules. As Mummery LJ said in **Brazil v Brazil**,³ the court must examine all the evidence relevant to the party’s nonattendance.” [Footnotes omitted]

[18] Although not saying so, counsel submitted in the alternative, if the time of the filing of the instant application arises for consideration, the court has the discretion to extend the time under CPR 26.1 (2) (k). She referred the court to the well-known principles of the length and reasons for the delay, the chance of success, and prejudice to the parties in exercising its discretion as distilled in the cases.⁴ She stated that by applying the *ratios* in **Joseph Hyacinth v Allan Joseph**⁵ and **Mathilda Nelson v Alexis Alcide**⁶ to the case at bar, this court has the discretion to extend the time to apply to set aside the judgment of 6th May 2019.

[19] Referring to CPR 29.11, Mrs Louis-Harris contended that Mr Lamontagne’s chance of success if he was allowed to prosecute his claim was of material importance. He filed and served his witness summary on 28th February 2019 in pursuance of the CMC Order. However, Ms Jules failed to serve/exchange her witness statement by 28th February 2019 in conformity with the CMC Order, although she filed it on time. Mr Lamontagne had a high chance of success in a trial because only

³ HCVAP2010/016

⁴ CO Williams et al, Quillen v Harley and Rose v Rose were mentioned but not provided

⁵ GDAHCVAP2015/0025

⁶ SLUHCVP2018/0002

his evidence was available for the court's consideration. After all, Ms Jules failed to apply for relief from the sanctions imposed by CPR 29.11 following the requirements laid down by CPR 26.8. Accordingly, this supports the grant of the extension of time to file the notice of application pursuant to CPR 39.5.

[20] Concerning the prayer for the dismissal of the judgment summons, Mrs Louis-Harris complained first of the failure of Ms Jules to serve the judgment upon Mr Lamontagne before filing the judgment summons. She referred to ***Caribbean Metals Limited v David Mauricette***,⁷ where the parties conceded that the judgment summons was served upon the judgment debtor before the service of the judgment, and the court summarised the legal principle in this way:

[53] The Court of Appeal ruling in ***Anison Rabess et al v National Bank of Dominica***²⁸ in my view remains good law on this point. It is that a judgment creditor should not commence enforcement proceedings unless the judgment has been served on the judgment debtor and proof of service filed. Here the court found that enforcement proceedings were “***defective, null, void and of no effect***” in part because the judgment had not been served on the judgment debtors.

[54] Applying this reasoning to the present case I am prepared to hold that the judgment summons was a nullity, having been filed prior to service of the judgment. Accordingly, the order made on 18th April, 2018 which flowed from it should be set aside and I will so order. CML is at liberty to file fresh enforcement proceedings, having since served the judgment and filed proof of service.” [Footnotes omitted]

[21] Next, she sought to challenge the judgment summonses proceedings for the failure to observe the mandatory requirements of CPR 52.2, namely: Ms Jules failed to state any payment made by Mr Lamontagne, the details of the judgment requiring payment of the judgment debt, and the amount of interest claimed to the date of the judgment summons and the daily rate after that (if not applicable same should state so).

[22] Finally, the third reason for impugning the judgment summonses was the failure to follow the appropriate procedure for oral examination in aid of enforcement under CPR 44 before filing the judgment summons. Mrs Louis-Harris submitted that the court analysed the procedure of enforcement under the CPR in ***Tower Hill Merchants Ltd v Central Marketing Corporation***,⁸ so it was improper for Ms Jules to commence enforcement proceedings through the judgment

⁷ SLUHCV2017/0574

⁸ Claim Nos. ANUHCV2014/0281 and ANUHCV2014/0561, para [13]

summons because she had not invoked the procedure prescribed by CPR 44. Ms Jules may invoke the CPR Part 52 judgment summons procedure for committal only after she was seized of the information on Mr Lomontagne's means following CPR 44.

[23] Mrs Louis-Harris concluded there is a proper and legal justification for the court to exercise its discretion conferred by CPR 39.5 to set aside the judgment dated 6th May 2019, set the matter down for trial, and restore the claim filed herein on 16th April 2018. Also, the court should dismiss the judgment summons filed herein on 2nd August 2019.

[24] In her oral presentation, Mrs Louis-Harris recapped her written submissions and argued:

1. After referring to paras 6 - 2), 14 and 18 of the affidavit, she stated that exchange in the CMC Order means file and serve. Therefore, by not serving the witness statement by 28th February 2019, Ms Jules did not comply with the CMC Order.
2. Mr Lamontagne was not served with the judgment, and Ms Jules did not contradict his evidence of non-service. Thus, the natural inference was that the judgment was not served to date. Notwithstanding that **Anison Rabess and Joyce Rabess v National Bank of Dominica**⁹ is a default judgment, the ratio (page 2, paras 2 and 3) is clear that there must be compliance with CPR 42.6. Also (para 7), the need to serve does not apply only to default judgment cases. Whatever the type of the order, it must be served before enforcement.
3. There was no indication from the learned trial judge whether he considered the reasons for Mr Lamontagne's absence to determine if it was a good reason. The court did refuse the application and award costs. Still, there was no indication that it was due to a lack of good reasons why Mr Lamontagne did not attend. Still, in any event, this court can consider the application and exercise its discretion afresh under CPR 39.5.
4. The **Pembleton** case (paras 5 and 7) and other judgments indicate that the premise of these provisions was that at the time of the strikeout, the court did not and could not have had the benefit of the explanation or reasons for the party's absence.
5. Nothing prevents this court from exercising its discretion, as the CPR gives express power under CPR 39.1, so the Court of Appeal is not the proper forum in the circumstances. Mrs

⁹ HCVAP2011/030

Louis-Harris argued that the application was timely as the judgment was not served. However, CPR 26.1 (k) may be engaged if necessary, as in *Hyacinth v Joseph*.

Ms Jules' Case

[25] In his written submissions in response to the application, Mr Nicholas takes issue with the application:

1. More specifically paragraph 11 of its grounds based on CPR 39.5 that the 'party' was not present at the trial. He argued that this assertion is totally false as Mr Lamontagne was ably represented by his legal practitioner, Mrs Wauneen Louis-Harris at the trial. The definition of 'party' according to CPR 2.4 – *"includes both the party to the claim and any legal practitioner on record for that party unless any rule specifies or it is clear from the context that it relates to the client or to the legal practitioner only"*.
2. As regards the decision of the trial judge to dismiss Mr Lamontagne's application in its entirety, he could have appealed or applied to set aside the trial judge's order. The judgment complained of was that of Mr Lamontagne, who would naturally have carriage of his order.
3. The averment in paragraph 10 of the grounds of the application is again a fabrication, as Mr Lamontagne acknowledged his debt in costs to Ms Jules. On 5th August 2019, through his agent or servant or employee, Anthony Charles, his brother-in-law who was in court with him, paid \$3,500.00 towards the said costs to Ms Jules at the office of her legal practitioner.
4. Regarding paragraph 12 of the grounds of the application, the trial judge did not give credence to CPR 39.6 as he held that it was irrelevant. Mr Lamontagne cannot ask another court of similar standing to go behind the trial judge's ruling. It should be by way of an appeal.

[26] Mr Nicholas submitted in his oral presentation that there is approbating and reprobating in this case. All the submissions made regarding CPR 39.5 are, effectively, to appeal the trial judge's decision. He referred to CPR 2.4 on the meaning of a party and surmised that it was clear a party was present. Also, the trial court brushed aside the excuse, and it took two years before this application. Delay defeats equity.

- [27] Regarding SLUHCV2017/0526, Mr Nicholas stated it was effectively a consent order in the manner in which they made it. Thus, the court should not entertain the application under CPR 39.5. The time has passed because counsel was present. They have been aware of the judgment/order now since February 2021. This is the wrong court, wrong time and wrong day.
- [28] Mr Nicholas conceded the point regarding the procedural irregularities on the judgment summonses and requested to withdraw them.

Discussion

- [29] Before considering the parties' case, the court notes from the application and the parties' submissions, Mr Lamontagne was not seeking to set aside the judgment or order in SLUHCV2017/0526 but rather was only challenging the procedural irregularities regarding the judgment summons therein, although not referenced in the formal application. Also, there was much debate between the parties regarding the service of the order made on 6th May 2019 and whether Mr Lamontagne filed this application within the 14 days stipulated by CPR 39.5 (2). For reasons that will be clear shortly, I do not intend to belabour this issue and propose rather to focus on the sufficiency of the application to satisfy the requirements of CPR 39.5 (3).
- [30] CPR 39.5, captioned '*Applications to set aside judgment given in party's absence*', provides that:
- "(1) A party who was not present at a trial at which judgment was given or an order made may apply to set aside that judgment or order.
 - (2) The application must be made within 14 days after the date on which the judgment or order was served on the applicant.
 - (3) The application to set aside the judgment or order must be supported by evidence on affidavit showing –
 - (a) a good reason for failing to attend the hearing; and
 - (b) that it is likely that had the applicant attended, some other judgment or order might have been given or made."
- [31] The Jamaica provision CPR 39.6 in identical terms to CPR 39.5 above was considered and explained in **David Watson v Adolphus Sylvester Roper**¹⁰. The Court of Appeal opined that:
- "The predominant consideration therefore for the court in setting aside a judgment given after a trial in the absence of the applicant, is not whether there is a defence on the merits but the reason why the applicant had absented himself from the trial. If the absence was deliberate and not due to accident or mistake, the court would be unlikely to allow a rehearing. Other relevant considerations include the prospects of success of the applicant

¹⁰ SCCA No. 42/2005 (18th November 2005)

in a retrial; the delay in applying to set aside; the conduct of the applicant; whether the successful party would be prejudiced by the judgment being set aside; and the public interest in there being an end to litigation. This court has approved these principles, and have applied them, from time to time - See Thelma Edwards v Robinson's Car Mart and Lorenzo Archer SCCA 81/00 (un-reported) delivered 19th March 2001.

Rule 39.6 therefore gives the absent party the opportunity of explaining why he did not attend and that he has a reasonable prospect of success. It also gives the party in whose favour the judgment was given, the chance of not having to prove his case all over again, with all the attendant expense that this will involve and, if a court is satisfied that there is in truth no reasonable prospect that the judgment would be reversed.

The conditions in rule 39.6 are similar to those enunciated in the case of Shocked v Goldschmidt [1998] 1 All ER 372 but under the CPR they are cumulative. There is no residual discretion therefore, in the trial judge, to set aside the judgment, if any of the conditions is not satisfied: Barclays Bank plc v Ellis (2000) The Times, 24 October 2000."

[32] Adopting the principles enunciated in **Watson** above as applicable to this case, I find that Mr Lamontagne has failed to give a good reason for absenting himself from the trial. In his affidavit in support of the application, he deposed (para 16), *"[t]hat I had a good reason for failing to attend the hearing because I was employed overseas in Dominica at the time and could not travel to Saint Lucia for the trial."*

[33] As I have said, time and again, parties come to the court asking it to exercise its discretion in their favour. Yet, they fail or refuse to take the court into their confidence and comply with the duty of candour to the court. There is no evidence of what difficulty Mr Lamontagne experienced that he could not attend the trial or what about his job that he could not travel; thus, without evidence, it suggests that Mr Lamontagne intentionally absented himself from the trial. From as early as 28th November 2018, Mr Lamontagne would have been aware of the trial date. He had adequate time to make the necessary arrangements to attend court even if he was living and working in the Commonwealth of Dominica by then.

[34] While in principle, I agree with the dictum in **Pembleton** that a court should not strike out the case of a party whose counsel is present for the reasons given there, respectfully, that case and this are miles apart and distinguishable. In **Pembleton**, counsel was in court expecting his client and intending to proceed with the trial. In this case, counsel was present seemly to accept the adjourned date on a presumption that the court would grant the application filed on 3rd May 2019 and the trial would be adjourned. Mr Lamontagne had no intention of being present for his trial.

[35] Mr Lamontagne gives much weight to the fact that Ms Jules did not serve her witness statement, though filed in time, in keeping with the CMC Order. Also, had Mr Lamontagne attended, some other judgment or order might have been given or made. I do not think it deserves the weight given by Mr Lamontagne. It appears to me that he was not prejudiced in any material way, as Ms Jules would not have gained any unfair advantage as, for example, having the benefit of the knowledge of his witness statement before filing hers as it was already filed in compliance with the order albeit not exchanged (served).

[36] Moreover, even if the trial judge made the first order sought in the application not to allow Ms Jules to testify, it would not have resulted in a default judgment. Mr Lamontagne would still be required to prove his case, which, having read the file, is highly doubtful. Ms Jules could cross-examine him on his evidence, although she was not permitted to give evidence herself. However, it appears that Mr Lamontagne took it as a foregone conclusion that the court would grant his application for the adjournment of the trial.

[37] I am not satisfied that Mr Lamontagne has provided a good reason for his absence at the trial. As observed above, the requirements of CPR 39.5 (3) are cumulative. As such, it is not necessary for me to decide whether it is likely that had Mr Lamontagne attended, some other judgment or order might have been given or made. Therefore, the application to set aside the judgment/order dated 6th May 2019 in SLUHCV2018/0184 is dismissed.

Conclusion

[38] The court notes Mr Nicholas' concession on the procedural irregularity concerning the judgment summonses, in my view, properly so, and his submission that should Mr Lamontagne not succeed on the application to set aside the judgment, there should be no order as to costs. I believe this is appropriate, as both sides have failed in their respective application – Mr Lamontagne to set aside the judgment/order dated 6th May 2019 in SLUHCV2018/0184 and Ms Jules in maintaining her judgment summonses. Accordingly, there shall be no order as to costs.

[39] IT IS ORDERED THAT:

1. The application to set aside the judgment/order dated 6th May 2019 in SLUHCV2018/0184 is dismissed.

2. The judgment summonses filed on 26th July 2019 and 2nd August 2019 herein were withdrawn and stand dismissed.
3. There is no order as to costs.

**Justice Rohan A Phillip
High Court Judge**

By the Court



Registrar