

**THE EASTERN CARIBBEAN SUPREME COURT
GRENADA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: GDAHCV 2015/0260

BETWEEN:

CARDINAL OLLIVIERRE

Claimant

and

**[1] ALGERON BELFON
[2] COLLECTOR COMPTROLLER OF CUSTOMS
[3] THE ATTORNEY GENERAL OF GRENADA**

Defendants

Appearances via zoom:

Ms. Georgelle George with Ms. Vernelle Noel for the Claimant

Ms. Karen Reid Ballantyne, Solicitor General, with A.Olowu for the Defendants

July 13, 2021
Re-issued on 16th July 2021

ORAL DECISION

[1] **ACTIE, J:** This matter comes on for trial today and the court notes that both parties are in blatant breach of the court orders made on 23rd September 2016 and 16th November 2020, respectively, without any application for an extension of time and relief from sanctions.

[2] Gilford J in an order made on the 23rd September 2016, directed the parties to file and serve at least (6) six weeks before the trial date: (a) A list of authorities which they propose to cite in support of the propositions and (b) A skeleton argument. The order further directed that the trial bundle be filed fourteen (14) days before the date fixed for trial. The matter came on for further case management

on the 16th November 2020 and was scheduled for two-day trial on July 14, 2021. The parties were further directed to comply with the order made on 23rd September 2016.

- [3] Both parties failed to comply within the timelines stipulated in the orders. The claimant filed a trial bundle on 5th July 2021, a mere seven (7) days before the trial but failed to file a list of authorities or skeleton argument as was directed by the order made by Gilford J. The claimant failed to file an application for an extension of time to comply with the orders. Further, counsel for the claimant, on the morning of the trial makes an oral application to rely on the witness statement of one of the witnesses whom she said is ill and unavailable. Again, this was in clear breach of the CPR 29.8(2)
- [4] The defendants, Attorney General Chambers, also failed to comply with the timelines in the court's orders. The Attorney-General filed submissions with authorities yesterday July 12, 2021 at 1:46 pm. The chambers also filed a supplement trial bundle July 8, 2021 without an application and knowledge of the claimant in breach of the requirements of CPR 39.1. The late filings were not supported by any application for an extension of time and relief from sanctions.
- [5] The court is deeply concerned with the continuous and blatant disregard of the timelines given in the court orders without any application for an extension of time or variation of the orders and/or relief from sanctions in keeping with the requirements of Rule 27.8(3) and 27.8(4). The parties were directed to address the court in light of the Privy Council Decision in **Crick and another v Kurt Brown & Philip v Commissioner of Police and another**.
- [6] The Privy Council in **Crick and another v Kurt Brown & Philip v Commissioner of Police and another**¹ dealt with the consequences where a party fails to file a written skeleton argument in proper time in accordance with case management directions set by the court. In that case, no excuse was offered for the failure by the Cricks to file their written submissions in compliance with the court's directions. The Court of Appeal decided that it would be unfair to Mr Brown to allow the Cricks to seek to advance the appeal by making submissions of which no notice had been given. The Court also pointed out that its members had been deprived of the opportunity of preparing for the hearing

¹2020] UKPC 32

by pre-reading the written submissions in support of it, which was liable to jeopardise the efficient and effective use of the time which had been made available that day for the hearing of the appeal. The court refused to give permission for the Cricks' counsel to present the appeal by way of substantive oral submissions about the case. The Privy Council Board at the following paragraphs held:

- “ 23. In the Civil Procedure Rules for Trinidad and Tobago the term “sanction” has a precise and specific meaning. It refers to a sanction stipulated by a rule or order of the court itself, for breach of the rule or failure to comply with the order: see *Attorney General of Trinidad and Tobago v Keron Matthews* [2011] UKPC 38, paras 15-16; *Roland James*, para 19. The directions issued by Mohammed JA in the present cases were in conventional form and did not stipulate a sanction as penalty for noncompliance with them. The effect of this was that, if there was non-compliance with the directions and a question arose how the court should proceed in the light of that, the party who failed to comply would be subject to the general case management power of the court under CPR Part 26.1. That power would fall to be exercised so as to further the overriding objective in CPR Part 1, just like any other power or discretion of the court arising under the Rules or any order made under the Rules.
27. This did not mean that there would be no consequences attaching to noncompliance with the directions. On the contrary, aside from the obvious consequence that an extension of time would be required for the filing of any written submissions, the effect would be as stated in para 24 above. Any party who failed to comply with them would be at risk of suffering such detriment as the court might think it right to impose in the exercise of its discretion, having regard to the need to further the overriding objective. A party who has failed to comply with a step directed by the court should seek an extension of time and should understand that it might be refused.
28. The Board would add that even if CPR Part 26.6(1) had had the effect that Mohammed JA should have stipulated a sanction for non-compliance with the directions, it is doubtful that this would have had any impact in the circumstances of these cases. The parties knew from the terms of the directions what they were required to do and must have appreciated that failure to comply with an order of the court would carry consequences. In the absence of a specified sanction in the order itself, they should have appreciated that the court would be bound to decide what the consequences would be by acting so as to further the overriding objective.

[7] The Privy Council held that the **Cricks** had ample notice under the directions to ensure that they filed their written submissions in time. If for any reason circumstances arose which meant they were unable to comply with the directions, they ought to have alerted the court to the problem by making a prompt application for an extension of time well in advance of the hearing date. This would have

meant that the timetable could be adjusted in such a way as to ensure that the hearing date would be effective or would have allowed the court to list another hearing for that date while postponing.

- [8] The Privy Council decision and the rationale in that case is on all fours with the facts of this case. The court notes that the parties in this claim before this court as in the **Crick's** decision failed to comply with the timelines and made no application for an extension of time. In the case at Bar, the Attorney General's written submissions were filed late, yesterday at 1:46 pm but failed to apply for an extension of time for filing their written submissions and authorities. The Attorney-General's chambers also failed to engage the claimant in filing a supplemental trial bundle. The claimant is also in breach of the timelines to file the trial bundle and failed to file skeleton arguments with authorities without any application for an extension of time.
- [9] The failure to adhere to the case management directions puts the court in an unenviable position in that the parties would seek to deploy submissions and authorities which the court would not have been privy to or even had an opportunity to pre-read for the trial estimated for two (2) days. The claimant's counsel's oral application made at the trial for time to comply with the directions cannot be countenanced. The Privy Council in the **Crick's** decision took the Court of Appeal approach in dismissing the application for the extension of time as "commendable desire to encourage a new litigation culture" and "the steps that it is taking to rid Trinidad and Tobago of the 'cancerous *laissez-faire* approach to civil litigation'". I wish to adopt the same approach.
- [10] The court in this case cannot countenance the several breaches by both the claimant and the defendants. This is not in keeping with the overriding objective of CPR 2000. Parties are to assist the court and are under an obligation to maintain the professional ethics of the profession and the sanctity of the court's orders. Unlike in the Crick's case, the parties in the case at bar did not even consider making an application for an extension of time and for relief from sanctions for the various breaches. The parties disobeyed the court's orders with impunity. Accordingly, applying the dictates of the Privy Council, this court is left with no other choice but to utilize the draconian approach to avoid an abuse of the court's processes.

IT IS HEREBY ORDERED THAT:

[11] The court exercising its case management powers hereby orders as follows:

1. Both parties being in breach of the court's orders and CPR 2000, accordingly the statement of case is struck out.
2. Each party shall bear its own costs.

Agnes Actie

High Court Judge

BY THE COURT

REGISTRAR