

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

**ANGUILLA**

**AXAHCVP2020/0014**

**BETWEEN:**

**SANPHERS TRADING & INDUSTRY LTD**

Appellant

and

**MOKE INTERNATIONAL LIMITED**

Respondent

**Before:**

The Hon. Mr. Mario Michel  
The Hon. Mr. Gerard St. C. Farara  
The Hon. Mde. Esco Henry

Justice of Appeal  
Justice of Appeal [Ag.]  
Justice of Appeal [Ag.]

**Appearances:**

Mr. Thomas Astaphan, QC, with him Ms. Tona Simpson-Whyte, for the Appellant  
Ms. Tara Carter for the Respondent

---

2021: January 25;  
July 23.

---

*Interlocutory appeal - Civil appeal – Infringement of trademark - Passing off – Application by appellant to strike out statement of case pursuant to rule 26.3(1)(b) of Civil Procedure Rules 2000 – Whether statement of case discloses reasonable ground for bringing claim – Exercise of judicial discretion – Restraint by appellate court in interfering with lower court’s exercise of discretion - Whether learned master erred in dismissing the application to strike out the statement of claim for not disclosing a viable cause of action*

Moke International Limited (‘Moke International’ or ‘the respondent’) is the proprietor of a registered trademark in Anguilla in respect of the word “MOKE”, the mark for a UK engineered vehicle currently manufactured in France. MOKE vehicles are sold by Moke International in several countries, including Anguilla. Sanphers Trading & Industry Limited (‘Sanphers Trading’ or ‘the appellant’) is an Anguillan company which operates, among other businesses, a car rental business.

In January 2020, Sanphers Trading imported three Chinese manufactured motor vehicles (“the three vehicles”) which were virtually identical to the MOKE vehicles. The three vehicles carried the trademark “MOKE” which was mounted on the front and had the words, “MOKE OF AMERICA” mounted on the back.

By letter, the respondent’s lawyers in Anguilla informed Sanphers Trading that Moke International had the trademark for “MOKE” in Anguilla, that the three vehicles were not manufactured by Moke International, and that Moke International had not and did not intend to give permission to Sanphers Trading to use, hire or otherwise drive any vehicle marked “MOKE” which was not manufactured by Moke International and which is protected by its trademark registration. The letter also gave official notice to the appellant to remove the three vehicles from the market and to give a written undertaking of such discontinuance of use, failing which Moke International’s lawyers would commence proceedings against Sanphers Trading for an injunction and damages. Sanphers Trading’s lawyers responded by requesting that they be provided with a copy of the trademark rights referred to. This was duly enclosed in a letter to the appellant dated 6<sup>th</sup> February 2020.

By letter dated 12<sup>th</sup> February 2020, the appellant informed Moke International’s lawyers that they would respond by 21<sup>st</sup> February 2020 and that, without admitting any infringement of Moke International’s intellectual property rights, they ceased using and hiring the three vehicles, whilst reserving all of their rights. However, the appellant never responded to the 6<sup>th</sup> February 2020 letter.

On 2<sup>nd</sup> April 2020, Moke International filed a claim against Sanphers Trading, pursuant to sections 12 and 36 of the Trademarks Act (or “the Act”) for infringement of the “MOKE” trademark and for passing off their vehicles as being Moke International’s trademarked vehicles.

Sanphers Trading filed an acknowledgment of service but did not file a defence. Instead, they filed an application seeking, *inter alia*, an order pursuant to rule 26.3(1)(b) of the Civil Procedure Rules 2000 (“CPR”) to strike out the statement of claim as disclosing no cause of action against them (“the strike out application”). The strike out application was heard and denied by the learned master.

Being dissatisfied with the decision of the master, Sanphers Trading has appealed to this Court. The sole issue for this Court’s determination is whether the statement of claim discloses, on its face, a reasonable ground for bringing the claim, that is to say, a viable cause of action, or a cause of action known to law against the appellant.

**Held:** dismissing the appeal, directing that the matter be remitted to the High Court for case management and ordering that the appellant pays the respondent’s costs on the appeal, to be assessed by the court below, if not agreed within 21 days, that:

1. Rule 26.3(1)(b) of the CPR gives the court the power to strike out a statement of case on the basis that it discloses no reasonable ground for bringing or defending the claim. This action entails the exercise of a judicial discretion which ought not to

be overturned by an appellate court unless it is satisfied that the judge or master, in the exercise of his discretion, exceeded the generous ambit within which reasonable disagreement is possible and is therefore clearly or blatantly wrong.

2. The court's jurisdiction to strike out a statement of case is one that ought to be exercised sparingly and only in plain and obvious cases. In applying the test, the facts pleaded in the statement of case must be presumed to be true. In this case, it is clear that there are triable issues related to the interpretation and application of the word "use" in section 12 of the Act and the question of whether, on any interpretation, the appellant had used the respondent's trademark by the importation and utilisation of the three vehicles bearing the "MOKE" mark. Furthermore, the point of law advanced by the appellant is tangled with the facts of the case in a manner which may render it difficult for a court to treat with the law without treating also with the facts, thereby making the summary disposal of the matter inappropriate in the circumstances.
3. In order to succeed in a claim for passing off, the claimant must prove that: (i) it has acquired goodwill in the mark or identifying feature which the public associates with their product or service; (ii) the defendant has misrepresented his goods or services to be that of the claimant; and (iii) this misrepresentation has caused or will cause damage to its goodwill. Each element involves a factual enquiry which cannot be undertaken at this stage of the proceedings. Having regard to the averments made in the statement of claim and the assumption that every fact pleaded by the respondent is true, it is evident that there are live issues which ought to be ventilated at trial.
4. In the circumstances, where the appellant has neither established nor even asserted that the learned master made an error in principle and certainly none to the extent that would lead this Court to conclude that his decision was clearly or blatantly wrong and, further, where it is apparent that the statement of case in fact discloses two causes of action, there is no basis for this Court to interfere with the learned master's decision to deny the strike out application.

## **JUDGMENT**

- [1] **MICHEL JA:** This is an appeal against the judgment of a Master dismissing an application to strike out a statement of case.

### **Background**

- [2] Moke International Limited (hereafter 'Moke International' or 'the respondent') is a UK company which is the proprietor of a registered trademark in Anguilla in respect of the word "MOKE". MOKE is the mark for a UK engineered vehicle, which is

currently manufactured in France. MOKE vehicles are sold by Moke International in several countries, including Anguilla. Sanphers Trading & Industry Limited (hereafter 'Sanphers Trading' or 'the appellant') is an Anguillan company which operates various businesses in Anguilla, including a car rental business.

[3] In January 2020, Sanphers Trading imported into Anguilla 3 Chinese manufactured motor vehicles purchased from Sixt Car Rental, located in St. Barths. The 3 vehicles are virtually identical to the vehicles manufactured and sold by Moke International which carry the trademark "MOKE". The word "MOKE" is mounted on the front and "MOKE OF AMERICA" is mounted on the back of the 3 vehicles imported by Sanphers Trading.

[4] By a letter incorrectly dated 20<sup>th</sup> January 2019, Moke International's lawyers in Anguilla wrote to Sanphers Trading informing them that Moke International had the trademark for "MOKE" in Anguilla, that the 3 vehicles imported by Sanphers Trading were not manufactured by Moke International, and that Moke International had not and did not intend to give permission to Sanphers Trading to use, hire or otherwise drive any vehicle marked "MOKE" which was not manufactured by Moke International and which is protected by its trademark registration, because this causes confusion in the marketplace and infringes on Moke International's rights. Sanphers Trading was also informed that the letter was an official notice to them to remove the 3 vehicles from the market forthwith and to give a written undertaking of such discontinuance of use, failing which they (Moke International's lawyers) were instructed to commence proceedings against Sanphers Trading for an injunction and damages. A subsequent letter from Moke International's lawyers, dated 29<sup>th</sup> January 2020, informed Sanphers Trading of the error in the date of the previous letter and repeated the contents of that letter.

[5] Sanphers Trading's lawyers responded to the letter by an email dated 3<sup>rd</sup> February 2020 in which they requested that they be provided with a copy of the trademark

rights referred to in the letter of 29<sup>th</sup> January 2020. The email also addressed other related, but immaterial, issues.

- [6] By a letter dated 6<sup>th</sup> February 2020, Moke International's lawyers wrote to Sanphers Trading's lawyers enclosing a copy of their trademark certification in Anguilla, repeating and reiterating most of the contents of the letter of 29<sup>th</sup> January 2020, and informing them that Sanphers Trading had also infringed Moke International's intellectual property rights by importing into Anguilla motor vehicles bearing the word "MOKE".
- [7] Sanphers Trading responded by a letter from their lawyers dated 12<sup>th</sup> February 2020 stating that they should be in a position to respond to the 6<sup>th</sup> February letter by 21<sup>st</sup> February 2020 and that, in the meantime, without admitting any infringement of Moke International's intellectual property rights, they (Sanphers Trading) ceased using and hiring the 3 motor vehicles, whilst reserving all of their rights. Sanphers Trading did not, however, respond to Moke International's letter of 6<sup>th</sup> February 2020 by 21<sup>st</sup> February 2020, or at all.
- [8] On 2<sup>nd</sup> April 2020, Moke International filed a claim against Sanphers Trading, pursuant to sections 12 and 36 of the **Trademarks Act**,<sup>1</sup> for infringement of the MOKE trademark and for passing off their vehicles as being Moke International's trademarked vehicles. Moke International pleaded in their statement of claim that, notwithstanding Sanphers Trading's undertaking to remove the 3 motor vehicles from hire temporarily, Sanphers Trading subsequently used and placed the vehicles on the market for commercial hire and the vehicles have been rented to residents of and visitors to Anguilla. Moke International also pleaded that whilst they were unable to give specific dates of the acts of infringement resulting from the vehicles bearing their registered trademark being offered to the public for hire by Sanphers Trading, there is sufficient to find infringement of trademark pursuant to the **Trademarks Act**. They pleaded too that the fact that Sanphers Trading's vehicles

---

<sup>1</sup> Revised Statutes of Anguilla, Chapter T30.

which carry the “MOKE” trademark are virtually identical to Moke International’s vehicles bearing the trademark, will cause or will likely cause confusion in the Anguillan market.

- [9] Sanphers Trading filed an acknowledgment of service of the claim form and statement of claim by which Moke International brought the claim against them, but they did not file a defence to the claim. Instead, on 17<sup>th</sup> April 2020, Sanphers Trading filed an application seeking, *inter alia*, an order to strike out the statement of claim as disclosing no cause of action against them. The application was heard by a Master on 8<sup>th</sup> June 2020, and on 20<sup>th</sup> July 2020 the Master denied Sanphers Trading’s application to strike out Moke International’s statement of claim.

### **Appeal**

- [10] Sanphers Trading sought and obtained leave to appeal the decision of the Master and, by notice of appeal filed on 12<sup>th</sup> October 2020, they appealed against his decision on the following grounds:

- “(a) The Learned Master erred in law, and misdirected himself in law, when he found, by way of inference, that there was a cause of action in Trademark infringement made out on the claimant’s pleadings: Paragraphs 41 (vi) and 92 of the Judgment refers.
- (b) The Learned Master erred in law, and misdirected himself in law, by conflating the Common Law cause of action of Passing off with the statutory right of action in Trademark infringement, thus finding that the two are interdependent; which entailed the Learned Master embarking upon a wholly erroneous exercise of discretion and upon the wrong basis: Paragraphs 61, 82, 85, 89, 92, 93 and 110 of the Judgment refers.
- (c) The Learned Master erred in law and misdirected himself entirely when he correctly identified the issue which arose on the application, but proceeded to apply the wrong legal tests to the question whether the pleadings disclosed viable causes of action in law, entailing the Learned Master embarking upon an erroneous exercise of discretion in point of fundamental principle: Paragraphs 47, 49, 50, 51, 52, 53, 54, 57, 61, 75, 76, 78, 93, 97, 98, 99, 100, 101, 105, 108, 110 and 111 of the Judgment refers.

- (d) The Learned Master took into consideration irrelevant matters in coming to the conclusions of law to which he came: Paragraphs 44, 49, 75, 76, 77, 78, 89 and 93 of the Judgment refers.
- (e) The Learned Master erred in law and completely misdirected himself when he conflated the invocation of the court's summary judgment jurisdiction under Part 15 of the Civil Procedure Rules 2000, with the court's striking out jurisdiction under Civil Procedure Rules Part 26.3, entailing the Learned Master taking into consideration, advertent to and being influenced by irrelevant matters or considerations in coming to the decision to refuse the application: Paragraph 49 of the Judgment refers.
- (f) The Learned Master erred in law when he, inferentially, found that the claimant had pleaded "use" [in the statutory sense] in its Statement of Claim at paragraphs 10 and 11 by way of particulars: Paragraph 41 (vi) of the Judgment refers.
- (g) The Learned Master erred in law, and misguided himself at paragraphs [66], [67] and [68] of the Judgment, when he found that the paragraphs which he set out at paragraphs [67] and [68] applied to the appellant's application to strike out.
- (h) The Learned Master further misguided himself in law at paragraphs [69], [70], [71], [72], [73], and [74] when he failed to address the fundamental legal issue of the application before him, namely: Whether the claimant had pleaded, in law, a cause of action in Trademark Infringement and a cause of action in Passing off, and instead embarked upon a review of general principles which were not applicable, fundamentally, to the application before him.
- (i) The Learned Master erred in law when he found, inferentially, that 'In the circumstances, the defendant's application to strike out the claim on the basis that it discloses no reasonable grounds for bringing the claim must, and does fail' on the grounds that '...once the defendant has filed an acknowledgment of service (as was done in this case)...he is taken to have acquiesced and it will be then too late to successfully pursue the defendant's contention that the claim discloses no reasonable ground for bringing the action or claim.' Paragraph 93 of the Judgment refers."

[11] As required by rule 62.10(1) of the **Civil Procedure Rules 2000** ("CPR"), the notice of appeal was accompanied by the appellant's written submissions in support of the appeal. The respondent's submissions in opposition to the appeal were filed on 16<sup>th</sup> October 2020.

[12] Notwithstanding the fact that they had listed 14 grounds of appeal in their notice of appeal, in the written submissions in support of the appeal, the appellant identified the single issue in the appeal as being – “Whether the Statement of Claim discloses, on its face, a reasonable ground for bringing the claim, that is to say, a viable cause of action, or a cause of action known to law against [the appellant].”

[13] As appears from the statement of claim, the respondent’s grounds for bringing the claim against the appellant are: firstly, that the appellant infringed the trademark by importing into Anguilla and using for a commercial purpose 3 motor vehicles bearing the word “MOKE”, which vehicles are virtually identical to the respondent’s vehicles bearing the word “MOKE”, which is the respondent’s registered trademark in Anguilla and, secondly, that the identity of the appellant’s and the respondent’s vehicles, and the use of the respondent’s trademark on the appellant’s vehicles, cause confusion or will likely cause confusion in the market and lead members of the public to believe that the appellant’s and the respondent’s vehicles, both bearing the word “MOKE”, are the same.

#### **Appellant’s case**

[14] The appellant’s case on this appeal is essentially that, for there to be a viable claim of infringement by the appellant of the respondent’s trademark, it must be established that they (the appellant) had used the motor vehicles with the respondent’s trademark in a manner consistent with the appellant’s interpretation of the word “use” in section 12 of the **Trademarks Act** or that the appellant passed off their motor vehicles as being those of the respondent. The appellant’s submission that they did not infringe the respondent’s trademark is not based on a denial that the respondent had a registered trademark in the word “MOKE”, or that the appellant had imported 3 motor vehicles into Anguilla each of which had the word “MOKE” at the front of it, or that they used the 3 motor vehicles in the operation of their car rental business. All of these facts were pleaded by the respondent in their statement of claim and not denied by the appellant. The appellant, however, contends that the statement of claim does not plead that the appellant used the respondent’s



trademark in accordance with section 12 of the **Trademarks Act** and that the statement of claim does not therefore disclose any reasonable ground for bringing the claim against the appellant for infringement of trademark.

[15] With respect to the claim for passing off, the appellant submits that, in accordance with the case of **Erven Warnink BV v J Townend sons (Hull) Ltd**,<sup>2</sup> there are 5 characteristics in the absence of which no valid cause of action for passing off could arise. These 5 characteristics were identified by Lord Diplock (at page 932 of the report) as (1) 'a misrepresentation', (2) 'made by a trader in the course of trade', (3) 'to prospective customers of his or ultimate consumers of goods or services supplied by him', (4) 'which is calculated to injure the business or goodwill of another trader (in the sense that it is a reasonably foreseeable consequence)' and (5) 'which causes actual damage to a business or goodwill of a trader by whom the action is brought or (in a quia timet action) will probably do so'. The appellant contends that, for there to be a viable cause of action for passing off, the respondent must establish that the appellant was seeking to pass off their motor vehicles as being those of the respondent. The appellant contends further that these 5 characteristics identified by Lord Diplock as prerequisites to a claim for passing off were not alleged in the statement of claim and so no cause of action for passing off arises on the statement of claim. The appellant accordingly submitted that the statement of claim should have been struck out by the Master as not disclosing any reasonable ground for bringing the action against the appellant, in that it did not disclose a viable cause of action either for infringement of trademark or for passing off.

[16] In their written submissions in support of the appeal, the appellant cited several cases which they say support their argument that they had not used the respondent's trademark in the manner prohibited by section 12 of the **Trademarks Act** in order for them to be liable for infringement of the trademark. They also cited cases in support of their argument that the characteristics of a claim which are

---

<sup>2</sup> [1971] 2 All ER 927.

required in order to give rise to a claim for passing off were not present on the respondent's statement of claim.

### **Respondent's case**

- [17] The respondent's answer to the appellant's appeal is, in essence, that the first of the two grounds for bringing the claim gives rise to a cause of action of infringement of trademark, grounded in statute, whilst the second ground gives rise to a cause of action of passing off, grounded in the common law, and that the facts as pleaded in the statement of claim give rise to a reasonable ground for bringing the claim, and disclose a viable cause of action.
- [18] In their written submissions in opposition to the appeal, the respondent argued that the appellant is seeking to have this Court overturn the exercise of discretion by an inferior court, for which there is, on the facts of this case, no basis in fact or in law. They argue too that, in any event, the statement of claim does disclose a valid cause of action. They contend that it is settled in the authorities that the striking out of a party's claim is a draconian step that must only be taken when it is plain and obvious that the action cannot be sustained. They submit that the evidence led by the appellant in the lower court clearly illustrated that there are matters in dispute between the parties which ought to be ventilated at a trial and not on a strike out application.

### **Discussion and analysis**

- [19] The learned master exercised his power under rule 26.3(1)(b) of the CPR which provides:
- “26.3(1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –
- (a) ...
  - (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
  - (c) ...
  - (d) ...”

This rule allows the court to protect its processes by summarily disposing of matters where it is plain and obvious that the statement of case discloses no reasonable claim and that the claim advanced is therefore certain to fail.

[20] The decision of a Judge or Master to strike out or not to strike out a party's statement of case on the ground that it does or does not disclose a viable cause of action, entails the exercise of a judicial discretion which ought not to be overturned by an appellate court unless it is satisfied that in the exercise of his or her discretion, the Judge or Master erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations. But, even when the Judge or Master erred in principle in one of these respects, the appellate court must yet be satisfied that, as a result of the error or the degree of the error, the Judge or Master's decision - in the words of Floissac CJ in **Michel Dufour v Helenair Corporation Limited**<sup>3</sup> - '...exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong'. The appellant has not established, or even submitted, to this Court that there was any error in principle made by the Master, and certainly none of the degree which would lead this Court to conclude that the Master's decision was clearly or blatantly wrong. There is no basis, therefore, to override the Master's exercise of a judicial discretion in dismissing the application to strike out the statement of case.

[21] It is also clear that there are triable issues in this case related to the interpretation and application of the **Trademarks Act**, in particular, with respect to the meaning of the word "use" in section 12 of the Act and the question of whether, on any interpretation, the appellant had used the respondent's trademark by the importation into Anguilla and the utilisation in its car rental business of 3 motor vehicles bearing the respondent's trademark.

---

<sup>3</sup> (1996) 52 WIR 188.

- [22] I do not propose to embark upon a discussion of the appellant's interpretation of the word "use", on which interpretation they contend that the respondent has not, as a matter of law, disclosed any cause of action in infringement of trademark. I will only say that, whilst the appellant's interpretation may not be described as absurd, it may well be described as abstruse.
- [23] Even if, however, a court hearing the respondent's claim may find merit in the appellant's interpretation of the word "use" and its application to the facts of the present case, the learning on striking out pleadings should lead a court to refrain from striking out a party's statement of case on an arguable, though difficult, yet important, point of law. This approach has been advanced by the authors of **Halsbury's Laws of England**, where at paragraphs 430-435 of the 4<sup>th</sup> Edition, the authors state – "Nor will a pleading be struck out where it raises an arguable, difficult or important point of law." I take the view that the point of law advanced by the appellant on the interpretation and application of the word "use" on the facts of this case may be arguable, but it is difficult, and can be important. I also take the view that the point of law advanced is tangled with the facts of the case in a manner which may render it difficult for a court to treat with the law without treating also with the facts. In any event, for the purpose of an application to strike out a party's statement of case for not disclosing a cause of action, the facts pleaded in the statement of case must be presumed to be true. Of course, once it becomes apparent that there are factual issues to be determined in the case, the possibility of striking out the statement of claim becomes too remote to debate.
- [24] On the issue of passing off, in order to succeed in a claim for passing off, it must be shown that: (i) the claimant's goods or services have acquired goodwill or reputation in the market and are known by some distinguishing feature; (ii) there is a misrepresentation by the defendant, whether or not intentional, leading or likely to lead the public to believe that goods or services offered by the defendant are goods and services of the claimant; and (iii) the claimant has suffered or is likely to suffer

damage as a result of the erroneous belief engendered by the defendant's misrepresentation.<sup>4</sup>

- [25] Insofar as it relates to the first limb, the claimant is required to demonstrate that it has acquired a goodwill or reputation in the 'get up' or mark which the public associates with their particular product or service. This involves a factual inquiry by the court. The court may examine factors such as the visual and conceptual characteristics/features and the resemblance or similarities of the mark; any evidence of sale figures; awards received by the claimant and any references on social media. In some cases, where this does not suffice, then the conduct of a market research survey and/or evidence from witnesses confirming that the product or service was bought (or hired in this case) on the strength of the connection made between the mark and the claimant would be beneficial to the claimant's case.
- [26] In relation to the second limb, it is incumbent on the claimant to show that the defendant has made a misrepresentation, intentional or otherwise, that causes or is likely to cause the buying public to believe that the products or services being offered are those of the claimant. This again involves a factual inquiry. In the appeal at bar, the court would be primarily concerned with questions such as the association the public might make having regard to the mark, "MOKE"; whether there are visual and phonetic similarities; the nature of the market, particularly in the Anguillan context, and the nature of the service being offered or provided.
- [27] The third limb of the test requires the claimant to establish that the misrepresentation has either caused it to suffer damage or that it is likely to suffer damage to its goodwill. The damage may take the form of loss of revenue, damage to reputation, erosion of goodwill and loss of opportunity to expand.
- [28] Having regard to the averments made in the statement of claim about the identity of the appellant's and the respondent's motor vehicles, the small size of Anguilla and

---

<sup>4</sup> Reckitt & Colman Products Ltd v Borden Inc [1990] 1 All ER 873.

the confusion which is likely to be caused to members of the public who may be led to believe that the appellant's and respondent's vehicles are the same; having regard to the social media post published by an official of the appellant's business using the image of the respondent's vehicles and the respondent's trademark; and having regard to the fact that, for the purpose of an application to strike out a party's case for not disclosing a cause of action, the facts pleaded in the statement of case must be presumed to be true; the respondent's passing off claim clearly raises live issues which can only be resolved by oral and other evidence and ought therefore to be ventilated at trial.

### **Conclusion**

[29] In the circumstances, there is no error in principle made by the Master in dismissing the application by the appellant in the court below to strike out the respondent's statement of claim for not disclosing a viable cause of action. It is apparent that the statement of claim discloses not one but two causes of action, one for infringement of the respondent's trademark and the other for the passing off of the goods of the appellant as being those of the respondent. I will accordingly dismiss the appeal, direct that the matter be remitted to the High Court for case management and order the appellant to pay the respondent's costs on the appeal, to be assessed by the court below, if not agreed within 21 days.

I concur.  
**Gerard St. C. Farara**  
Justice of Appeal [Ag.]

I concur.  
**Esco Henry**  
Justice of Appeal [Ag.]

**By the Court**

**Chief Registrar [Ag.]**