

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
(CIVIL)**

SUIT NO: NEVHCV2013/0118

In the Matter of an Action in
Defamation by Mark Brantley
against the Defendants Hensley
Daniel and Clement "Junie"
Liburd trading as Freedom 106.5
FM.

BETWEEN:

Mark Brantley - Claimant

and

**Hensley Daniel- 1st Defendant
Clement "Junie" Liburd- 2nd Defendant**

APPEARANCES:

Ms. Midge Morton for the Claimant.

**Mr. Anselm Caines holding papers for Dr. Henry Browne, Q.C for the 1st
Defendant.**

No appearance of the 2nd Defendant or his counsel.

DECISION

2014: February 25

2014: March 12

[1] **WILLIAMS, J. (Ag):** Before the Court is an application dated the 16th December 2013 by the Claimant for Judgment in Default of Defence against the 1st Defendant under CPR 12:10 (1) (b); 12:10 (4); 12:10 (5) and 16.2. Also before the Court is a Defence filed by the 1st Defendant dated the 10th January 2014 and an Application for extension of time to file a Defence filed by the 1st Defendant dated 20th January 2014. The 2nd Defendant has filed and served his Defence in this matter on the 10th day of December 2013.

[2] The grounds of the Application are that on the 7th November 2013, Mark Brantley Attorney-at-law and Deputy Premier in the Nevis Island Assembly and Minister for Tourism, Health, Gender, Social Affairs, Social Development, Youth, Sports, Community Development and Culture in the Nevis Island Administration and Leader of Her Majesty's Loyal Opposition in the Federal Parliament filed a Claim, in which he sought Damages for Slander, including aggravated damages, and an Injunction to restrain the Defendants from further speaking and/or publishing or causing to be published/republished on the radio locally, on the Internet or elsewhere certain words complained of which words are set out in Paragraph 5 and 11 of the Statement of Claim.

[3] An acknowledgment of service was filed on the 24th November 2013 in which the 1st Defendant Hensley Daniel indicated an Intention to defend the Claim.

- [4] In response to Questions 1 to 4 of the Acknowledgment of Service Form, the 1st Defendant indicated that he received the Claim Form and Statement of Claim on the 12th November 2013.
- [5] An Acknowledgment of Service was filed on the 22nd November 2013 by the 2nd Defendant in which the 2nd Defendant Clement Liburd trading as Freedom 106.5FM indicated an Intention to defend the Claim, and that it had received the Claim Form and Statement on the 11th November 2013.
- [6] On the 28th November 2013, Mr. Jarred Cotton Bailiff at the High Court Registry in the Federation of St. Kitts and Nevis swore to and filed an Affidavit of Service. In that Affidavit, he stated that he effected service of the Claim Form and Statement of Claim on Mr. Maurice Flanders who accepted service of the said documents for and on behalf of Mr. Clement “Junie” Liburd, the 2nd named Defendant in these proceedings on the 12th November 2013.
- [7] Mr. John Arthurton, Senior Bailiff at the High Court of Justice in of St. Kitts and Nevis swore to and filed an Affidavit of service dated the 3rd March 2014. Wherein he stated that he effected service of the Claim Form and Statement of Claim on the 1st Defendant Hensley Daniel on the 11th November, 2013.
- [8] I am satisfied that the Affidavit of Service filed by Mr. Arthurton meets the requirements of CPR 5.5.

[9] The 1st Defendant has indicated an Intention to defend and if service was effected on the 1st Defendant on the 12th November 2013 then he should have filed his Defence by the 11th December 2013, or if later by an agreement for an extension of Time within which to file the Defence or to an order of the Court.

[10] The 1st Defendant did not seek an extension of Time after the expiration of that time period provided for under CPR 10.3 (1), but sought to file a Defence dated 10th January 2014 and an Application for an Extension of Time to file a Defence with a sworn affidavit on the 20th January 2014.

[11] The Claimant had by that time filed an Application for Judgment in Default of defence dated the 16th December 2013.

[12] In the affidavit of Viyana Gumbs, Legal Clerk to the Law Firm of Daniel, Brantley & Associated she deposed to the facts that on the 12th day of November 2013, a filed copy of the Claim Form and Statement of Claim was served on the 1st Defendant, and that the 1st Defendant ought to have filed a Defence by or no later than the 11th day of December 2013. Paragraph 6 of the Affidavit sets out the details under which the Application is requested.

[13] The 1st Defendant in his Affidavit in support of his application for an extension of Time to file and serve his Defence states that he made several attempts to procure the services of an Attorney to assist him in filing a Defence, but was unsuccessful and had to file one by himself. He states that

he did not appreciate the consequences of filing a Defence outside of the time period stipulated by the Rules of Civil Procedure. He states further that he has a good defence to the Claim brought by the Claimant. The Court is of the view that Ignorance of the Law is not an excuse of non-compliance with the Rules of Civil Procedure, and does not accept that explanation.

DECISION OF THE COURT

[14] CPR 10:2 states that a Defendant who wishes to defend all or part of a Claim must file a Defence.

[15] CPR 10:3 (1) states that the General rule is that the period for filing a Defence is the period of 28 days after the service of the Claim Form. The dicta of Lord Dyson in the case of **The Attorney General of Trinidad and Tobago vs. Keron Matthews [2011] UPKC 38 at Paragraph 14** is instructive and states that:

“A Defence can be filed without permission of the Court after the time for filing has expired; If the Claimant does nothing or waives late service, the Defence stands and no question of sanction arises.”

[16] CPR 10:3 (5) allows the Parties to extend the time for filing a defence specified in Paragraphs (1), (2), (3), (4) of Rule 10 (3), but the Parties may not

make more than two agreements under Paragraph 5 and up to a period of fifty six (56) days. Thereafter if a Defendant requires an extension he must apply to the Court under CPR 10.3 (9).

[17] Under CPR 10:3 (9) a Defendant may apply to the Court for an order extending the time for filing a Defence. With reference to the dicta of Lord Dyson in the AG of T&T vs. Matthews he said that “there is no rule which states that if a Defendant fails to file a defence within the time specified under the CPR, no Defence may be filed unless the Court permits. The Rules however make provision for what the Parties may do if the Defendant fails to file a defence within the prescribed period. Rule 10.3 (5) provided that the Defendant may apply for an extension of time.”

[18] Under CPR 12 (1) a Claimant may obtain a Default Judgment without a Trial where the Defendant has failed to file a Defence. Rule 12.5 also provides that the Court office at the request of the Claimant **MUST** enter Judgment for failure to defend under prescribed conditions.

[19] Additionally under CPR 26:1 (2) (k) the Court is empowered to extend the time for compliance with any rule even if the application for extension of time is made after the time for compliance has elapsed.

[20] However, according to the learned Lord Dyson in the cited case “If the Defendant fails to file a Defence within the prescribed period and does not apply for an extension of time, he is at risk of a request by the Claimant that Judgment in Default should be entered in his favour. ”

[21] In applying the principles adumbrated in the **Keron Matthews** case by Lord Dyson to the present case, I must conclude that Hensley Daniel’s application dated the 20th January, 2014 for an extension of time to file a defence cannot be granted, since a Request for Judgment in Default was filed on the 16th December 2013.

[22] Additionally the Defence filed by the 1st Defendant on the 10th January 2014 is not properly before the Court, since it was filed without leave of the Court and when a Request for Judgment in Default had already been filed since the 16th December 2013 contrary to the Civil Procedure rules.

See: Richard Frederick vs. Comptroller of Customs et al [2008] C.A.

[23] In light of these circumstances, I will grant the application sought by Mr. Brantley the Claimant.

[24] I accordingly give Judgment as follows:

1. That Judgment be and is hereby entered for the Claimant against the 1st Defendant for Damages to be assessed at a time and date to be specified by the Court.

[25] I have discussed the Rules and the authorities at some length to make it pellucid to all Parties that the Law is well settled in the area of Application for Extensions of Time to file certain documents under the Civil Procedure Rules.

Lorraine Williams
High Court Judge (ag)