

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

ANTIGUA AND BARBUDA

ANUHCVP2019/0035

BETWEEN:

**[1] THE EAST CARIBBEAN BAPTIST MISSION
[2] JERIANN GEORGE
[3] HENSWORTH JONAS**

Applicants/Intended Appellants

and

**[1] CLICO INTERNATIONAL LIFE INSURANCE LTD
[2] WILBUR HARRIGAN
(as Administrator of Clico International Life Insurance Ltd)**

Respondents/Intended Respondents

Before:

The Hon. Mr. Gerard St. C. Farara
The Hon. Mr. Brian Cottle
The Hon. Mde. Gertel Thom

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

Appearances:

Ms. Chantel A Marshall for the Applicants/Intended Appellants
Mr. Rene Butcher and with him Ms. Talia N. DaCosta for the Respondents

2025: November 27 and 28.

Application for leave to appeal to His Majesty in Council – Application for extension of time to appeal to His Majesty in Council – Jurisdiction of Court of Appeal to extend time – Whether the Court has the power to extend the 21-day time frame in Article 4 of the West Indies Associated States (Appeals to Privy Council) Order 1967

REASONS FOR DECISION

- [1] **FARARA JA [AG.]:** This matter was heard by the Court on 27th November 2025. On 28th November 2025 the Court rendered its decision and indicated that its written judgment with reasons for decision would follow shortly and be made available to the parties. We now do so.
- [2] Before this Court are two applications filed jointly by The East Caribbean Baptist Mission, Jeriann George and Hensworth Jonas (“the Applicants/Intended Appellants”), the respondents in Civil Appeal No. ANUHCVP2019/0035, (“the Appeal”). The applications concern the final judgment and decision of this Court delivered on 6th May 2025 in the Appeal (“the Judgment”). By the Judgment this Court allowed the Appeal brought by CLICO International Life Insurance Ltd (“CLICO”) and Wilbur Harrigan (as Administrator of CLICO International Life Insurance Ltd) (“W Harrigan”) and set aside the order made at paragraph [26] of the judgment of a learned judge of the High Court in the State of Antigua and Barbuda, with costs to the Appellants/Intended Respondents.

The Applications

- [3] First in time of filing is a Notice of Application filed on 30th June 2025 by the Applicants/Intended Appellants for Leave to Appeal the Judgment to the Judicial Committee of the Privy Council. Also filed on 30th June 2025 in support of this application is the affidavit of Hensworth Jonas. An amended Notice of Application for Leave to Appeal to the Privy Council was filed on 23rd October 2025. (“the Leave to Appeal Application”).
- [4] The second application, is a Notice of Application filed by the Applicants/Intended Appellants on 15th July 2025 for an order that the Leave to Appeal Application, filed out of time on 30th June 2025, be deemed properly filed (“the Deeming Application”). In support of the Deeming Application, the Applicants/Intended Appellants filed on the same day, 15th July 2025, an affidavit of Shanice Daley together with exhibit “SD -1” comprising a bundle of documents.

- [5] On 9th July 2025 the Intended Respondents, CLICO and Harrigan, filed a Notice of Opposition to the Leave to Appeal Application, which notice was amended by an Amended Notice of Opposition filed on 10th July 2025.
- [6] The Applicants/Appellants filed on 23rd October 2025 their skeleton argument in support of both applications; and on 7th November 2025, the Intended Respondents filed their skeleton argument in opposition to both applications.

Procedural History

- [7] The procedural history from delivery of the Judgment is, in brief, as follows:
- (i) The Judgment, sought to be appealed to the Privy Council, was delivered by this Court on 6th May 2025 allowing the Appeal.
 - (ii) On 26th June 2025 (some 55 days after the delivery of the Judgment) the Applicants/Intended Appellants purported to file directly with the Registry of the Judicial Committee of the Privy Council, an Application for Permission to Appeal the Judgment. This application was purportedly filed pursuant to Rule 13(1) of the **Judicial Committee (Appellate Jurisdiction) Rules 2013** (“JCPC Rules”)
 - (iii) Unsurprisingly, by correspondence dated 27th June 2025 from the Judicial Committee’s Registry the Applicants/Intended Appellants were informed that they must first apply to the Eastern Caribbean Supreme Court of Appeal “ECSC”) for leave to appeal the Judgment.
 - (iv) This prompted the Applicants/Intended Appellants to file three days later on 30th June 2025, the Leave to Appeal Application, which was subsequently amended on 23rd October 2025, as mentioned above.
 - (v) This was followed by the second application referenced above, that is, the Deeming Application filed on 15th July 2025, seeking, effectively, to have this Court extend the time for filing of the Leave to Appeal Application to 30th July 2025 and to deem the said application properly filed.

- [8] It is not in dispute that the filing of the Leave to Appeal application directly with the Privy Council was misconceived. In fact, the Applicants/Intended Appellants have, at paragraph 11 of their skeleton argument, referred to this filing as being “procedurally irregular”.
- [9] It is also beyond dispute that the right and grounds for a party to civil litigation to appeal a decision of this Court to the Privy Council is governed by section 122(1) and (2) of **The Antigua and Barbuda Constitution Order 1981** (“the Constitution”). Section 122(1)(a) governs appeals ‘as of right’ from final decisions of the Court of Appeal in civil proceedings where the matter in dispute on the appeal is of the prescribed value or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards. Currently, in Antigua and Barbuda, the ‘prescribed value’ is EC\$1500.00. Where the appeal is as of right, the Court of Appeal has no discretion to exercise and, subject to the applicant satisfying the procedural requirements, must make an order, in the first instance, granting conditional leave to appeal. Where an applicant applies under section 122(2)(a) of the Constitution he/she must satisfy the Court that the decision in civil proceedings is one where the question involved in the appeal is one that, ‘by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council’.
- [10] It is beyond dispute, that in Antigua and Barbuda appeals to the JCPC are governed by the **West Indies Associated States (Appeals to Privy Council) Order 1967** (“the 1967 Order”). **Article 4** of the 1967 Order prescribes that –
- “Applications to the Court for leave to appeal shall be made by motion or petition within **twenty-one days** of the date of the decision to be appealed from...”.
- [11] It cannot be disputed that when the Applicants/Intended Appellants purported to file on 26th June 2025 their application for leave to appeal directly with the JCPC (purportedly pursuant to rule 13(1) of the JCPC Rules), this step was misconceived, ineffective and premature. Furthermore, at the time of filing that application with the JCPC, some 51

days had elapsed since the date of delivery of the Judgment; and 30 days beyond the 21 day period prescribed by Article 4 of the 1967 Order.

[12] Further, when the Applicant filed on 30th June 2025 its Leave to Appeal Application, this was 55 days after delivery of the Judgment and 33 or 34 days beyond the time specified by Article 4. Accordingly, the Applicants/Appellants' Leave to Appeal Application was filed out of time.

[13] Both the Intended Appellants and the Intended Respondents are in agreement that the Applicants/Intended Appellants' intended appeal would satisfy the requirements for an appeal 'as of right' pursuant to section 122(1)(a) of the Constitution. Therefore, had they filed their application for leave to appeal to this Court within the prescribed 21-day period in Article 4 of the 1967 Order, the Applicants/Intended Appellants would have been entitled, subject to satisfying the procedural requirements for applying for leave to appeal to an order granting them leave.

Applicants/Intended Appellants' Submissions

[14] In support of their Deeming Application, the Applicants/Intended Appellants argue (in summary) that:

(1) While they concede that the Leave to Appeal Application was filed out of time and not in compliance with Article 4 of the 1967 Order, it is submitted that this Court, nevertheless, has the power to extend the 21-day timeframe in Article 4 and to make an order deeming the said application properly filed.

(2) In support of this primary submission, the Applicants/Intended Appellants rely on the provisions of section 122(1) of the Constitution (canvassed above) which gives them leave to appeal 'as of right'; section 56(b) of the **Eastern Caribbean Supreme Court Act**¹ which empowers the Court of

¹ Cap. 143 of the Revised Laws of Antigua and Barbuda.

Appeal to extend time for filing a notice of appeal or application for leave to appeal; **Civil Procedure Rules (Revised Edition) 2023** (“CPR”) and, specifically, rule 26.1(2)(k) which empowers the court to extend time for compliance and to do so even after the time for compliance has passed; and rule 26.9 which stipulates a general power for the court to ‘put matters right’.

- (3) On the basis of these provisions, the Applicants/Intended Appellants submit that the ‘delay’ (of 33 or 34 days) in applying to this Court for leave to appeal to His Majesty in Council, when looked at in context of their premature application to the JCPC for leave to appeal under rule 13(1) of the JCPC Rules prescribing a 56 day period, was ‘short, and reasonably explained and promptly rectified.’ They argue that during the period of delay they **‘were actively engaged in seeking leave before the ultimate appellate tribunal. This delay was technical, not substantive and the Applicants’ prompt rectification demonstrates diligence and respect for procedural compliance.’**
- (4) The Applicants/Intended Appellants also submit that they have a good reason for the delay, in that it ‘was caused by a good-faith procedural misunderstanding as to where the initial Leave Application should be filed’; and they were acting under ‘the bona fide belief that, given the constitutional right of appeal “as of right” under section 122 [of the Constitution] and the broader timeframe in the JCPC Rules, they were entitled to file directly with the Judicial Committee.’ (paragraph 22) This ‘belief’ they argue was a reasonable one, since the 1967 Order predates the Constitution and, it is submitted, cannot override its supreme provisions. Further, Rule 13(1) of the JCPC Rules **‘supersedes the narrow timeline of the 1967 Order in practice for appeals to the Privy Council.’**

- (5) Accordingly, it is submitted that the delay was ‘excusable’; and it arose from a ‘bona fide procedural error, not indifference or neglect.’ In this respect, they sought to distinguish this Court’s decision in **Fairfield Sentry Ltd v Alfredo Migani**² from the instant matter, on the basis that, unlike the present application for leave to appeal to His Majesty in Council, **Fairfield Sentry** was decided in a ‘non-constitutional context’ where the Court did not consider the ‘overriding statutory power conferred by section 56(b) of the Supreme Court Act.’
- (6) It is also submitted by the Applicants/Intended Appellants that the even if Article 4 of the 1967 Order is considered to be mandatory, ‘it must yield to later primary legislation, namely the Supreme Court Act [s. 56(b)] which expressly authorizes the Court to extend time; and the general discretion granted to the Court under CPR 26.1(2)(k) and 26.9 to regularize compliance in furtherance of justice.’
- (7) It was also submitted by the Applicant/Intended Appellant, that no ‘prejudice’ has been or could be suffered by the Intended Respondents, since the Leave to Appeal Application was filed and served within the 56 day period prescribed by rule 13(1) of the JCPC Rules.
- (8) Further, counsel for the Applicants/Intended Appellants submitted in oral argument that the 1967 Order does not prescribe any sanction for late filing of an application for leave to appeal to the JCPC, and absent a sanction this Court must have the power to extend time prescribed by Article 4. In response to a question from the Court, counsel also submitted that this Court can depart from its statement of the law in **Fairfield Sentry** at paragraphs 10 and 11 of the judgment on two bases: (1) that there is no sanction for late filing in the 1967 Order and this was not a matter considered by this Court in **Fairfield Sentry**; and (2) whereas in the instant matter the Applicants/Intended Appellants filed first an application

² BVIHCVAP2011/041-052; 054-056; 058-062 (delivered 4th October 2012, unreported.)

for leave to appeal with the Privy Council, this had not been done in **Fairfield Sentry**.

- (9) Counsel also relied on the decision of the Board in **The Attorney General v Keron Matthews**³ which dealt with the court's power to extend time under rule 26.1(1)(d) and to apply for relief from sanctions under rule 26.7 of the CPR of Trinidad and Tobago. In relation to the latter point, Lord Dyson in giving the decision of the Board reasoned that where a rule does not prescribe a sanction of failure to comply, the court ought not to imply a sanction. The Applicants/Intended Respondents' point seems to be the since the 1967 Order does not prescribe a sanction for failure to apply for leave within the 21 day limit under Article 4, this Court ought not to hold that it has no power to extend that time and to, instead, imply the 'sanction' of dismissal of the application for leave to appeal filed outside the 21 day period.
- (10) Accordingly, the Applicants/Intended Appellants' overarching submission that this Court has both a constitutional and statutory basis upon which to deem the Leave to Appeal Application to have been properly filed; and to therefore grant the said application on the basis that they have an appeal as of right to His Majesty in Council.

Intended Respondents' Submissions

- [15] The Intended Respondents, stoutly oppose the Deeming Application. They submit it is without merit, is based on various grounds and arguments which are not sound and, accordingly, ought to be refused. As a consequence of its dismissal, the Leave to Appeal Application, which is out of time, must be dismissed as well. In support of this position, the Intended Respondents make the following submissions and arguments:

- (1) While it is conceded that the Applicants/Intended Appellants have an appeal as of right under section 122(1)(a) of the Constitution, it is still

³ [2011] UKPC 38.

necessary for them to apply to the Court of Appeal and to obtain leave, although the granting of such leave would not be discretionary. **Fairfield Sentry Limited v Alfredo Migani et al**; and **William Martin v Ursil Peters**.⁴

- (2) The Applicants/Intended Appellants' reliance on section 56(b) of the Supreme Court Act is wholly misconceived. This provision deals specifically and only with notices of appeal and applications for leave to appeal to the Court of Appeal itself from decisions of the lower courts, and not with applications for leave to the Privy Council, which are matters governed solely by the 1967 Order. That this is the correct position cannot, in my view, be disputed.
- (3) Likewise submits the Intended Respondents, the reliance on CPR 26.1(2)(k) and 26.9 are equally misconceived for the simple reason that the CPR does not apply to or govern the procedure for applying for leave to appeal to the JCPC. More specifically, the provisions relied on by the Applicants/Intended Appellants are expressly stated to be concerned with an error of procedure or failure to comply with a rule, practice direction, order, or direction, and not with the 1967 Order. Additionally, there is no indication whatsoever that these provisions were intended to grant to the Court of Appeal the power to extend time for compliance with Article 4 of the 1967 Order.
- (4) In support of their submission that the Court of Appeal does not have the power to extend the time limited under Article 4 to apply for leave to appeal, whether on the basis of rule 56(b) of the Supreme Court Act, the provisions of the CPR, the inherent jurisdiction of the court or the 1967 Order itself, the Intended Respondents rely on the dicta at paragraph 11 and 12 in **Fairfield Sentry**. There it is stated (pg.8):

⁴ ANUHCVP2004/0036 (delivered 17th September 2007, unreported).

“Article 4 is clear. It lays down a time line of 21 days for the making of an application and gives no power to this Court to extend that time, and we do not consider that it would be correct to invoke the inherent jurisdiction of this Court, so as to arrogate to itself a power to extend the time as limited in Article 4, where neither in Article 4 nor in any other provision contained in the 1967 Order is such a power (save where specifically permitted) given, and thereby engage a procedure to arrive at a different outcome to that contemplated by Article 4. This power to be reserved to the JCPC under the 2009 Rules. This Court has no power to extend the time under Article 4 of the 1967 Order.”

“Accordingly, we are constrained to conclude that Sentry’s application, having been made out of time, must be dismissed, and we so order ... Having so concluded, there is no need to delve into the question of extension of time considerations.”

- (5) The Intended Respondents also submit that this Court cannot and ought not to depart in any way from its decision and reasoning in **Fairfield Sentry**. It is clear, as had been held by this Court on several occasions, that appeals from final decisions in civil proceedings are governed by the provisions of the 1967 Order. There is no provision in the 1967 Order which permits an applicant to seek an extension of time to apply for leave to appeal to his Majesty in Council. Moreover, this is not an issue of sanctions or no sanctions, but one where the Court of Appeal has no power to consider and to grant an application to extend time for failing to comply with the 21 day limit in Article 4. Further, the Applicants/Intended Appellants reliance in oral argument on Article 6 of **The Judicial Committee (Appellate Jurisdiction) Rules 2024** is misplaced and of no assistance as the power granted to the Judicial Committee to extend time relates to matters under the said Rules 2024, and not under the 1967 Order.

Analysis and Conclusion on Applications

- [16] In my judgment, the Deeming Application is wholly misconceived resting, as it is on incorrect, inapplicable, and misguided interpretations of certain statutory and other provisions. Put simply, the Deeming Application is unmeritorious and, accordingly,

must be dismissed. In reaching this conclusion, we accept as correct the various submissions and counter arguments of the Intended Respondents in opposing the Deeming Application, and in disputing the various grounds upon which it has been brought by the Applicants/Intended Appellants.

[17] None of the various statutory provisions and rules of court called in aid and relied on by the Applicants/Intended Appellants, are of any relevance to the instant applications. These provisions lend no assistance whatsoever to the Applicant/Appellants in seeking to persuade that Court that there is some legitimate or sound basis upon which it has the power to extend the 21 day timeline prescribed by **Article 4 of the 1967 Order** for applying for leave to appeal to His Majesty in Council. The 1967 Order governs all applications to this Court for leave to appeal to His Majesty in Council, be they applications grounded on a right to appeal or on the discretionary grounds of great general or public importance or otherwise.

[18] In this respect, we rely on and adopt in dismissing the Deeming Application and, by necessary extension, the Leave to Appeal Application, the guidance and pronouncements from paragraph 11 of this Court's decision in **Fairfield Sentry**, set out above: That this Court has no power to extend the said 21 day period in Article 4 is well-established by several decisions of this Court, including **Fairfield Sentry**. These principles are conclusive of the disposition of the Deeming Application, and as a consequence, the Leave to Appeal Application.

[19] Finally, the Applicants/Intended Appellants argument based on the lack of a specified sanction in the 1967 Order for a party failing to comply with the 21-day period in Article 4 is misguided. This is not an issue of sanction or lack of a sanction, but of a stipulated time for filing an application for leave to appeal to the JCPC and there being no provision in the 1967 Order for this Court to extend that prescribed time on any basis or any of the bases relied on by the Applicants/Intended Appellants.

Disposition

[20] Accordingly, and for the reasons given above, we make the following orders:

- (1) The Applicants/Intended Appellants' Notice of Application filed 15th July 2025 for an order deeming their Notice of Application filed 30th June 2025 (amended 23rd October 2025) for Leave to Appeal to His Majesty in Council the Judgment of this Court delivered 6th May 2025 in Civil Appeal ANUHCVP2019/0035, is refused and accordingly dismissed.
- (2) Consequently, the Notice of Application for Leave to Appeal the said Judgment of this Court filed 30th June 2025 (as amended) is also dismissed, having been filed out of time.
- (3) Costs of both applications to be paid by the Applicants/Intended Appellants, The East Caribbean Baptist Mission, Representative Jeriann George and Hensworth Jonas, to the Intended Respondents, CLICO International Life Insurance Ltd and Wilbur Harrigan (as Administrator of

Clico International Life Insurance Ltd), such costs to be assessed by a judge or Master of the High Court, if not agreed by the parties within 21 days of the date of this decision.

I concur.
Gertel Thom
Justice of Appeal [Ag.]

I concur.
Brian Cottle
Justice of Appeal [Ag.]

By the Court

Chief Registrar