[2017] **JMSC Civ 212**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2007 HCV 01261

BETWEEN	**BEVERLEY CRAMMER**	**CLAIMANT**
AND	**LINDFORD CAMPBELL**	**DEFENDANT**

HEARD IN CHAMBERS AND ON PAPER

Sidia Smith and Francois McKnight instructed by Livingston Alexander and Levy for the Claimant

Zavia Mayne, instructed by Zavia Mayne and Company for the Defendant

HEARD: October 4 and 27, 2017

APPLICATION TO SET ASIDE AN EX PARTE ORDER – RULES 11.16, 11.17 AND 11.18 OF THE CIVIL PROCEDURE RULES (CPR) – CONFISCATION OF ASSETS ORDER – CONTRAST BETWEEN CONFISCATION OF ASSETS ORDER OBTAINED UNDER PART 53 AND WRIT OF EXECUTION ISSUED UNDER PART 46 OF THE CPR – EFFECT OF ORDER OF COURT WHICH HAS UNLIMITED JURISDICTION

ANDERSON, K. J

The background to the defendant's application which was filed on September 7, 2017

[1] This matter has had a long and tortuous history and it is indeed unfortunate that that is so, because the parties were once in a common law union with one another.

[2] The parties' counsel had, during a hearing which was presided over, by me, on October 4, 2017 agreed to the two (2) applications which they respectively have

made and which are now awaiting this court's adjudication, being heard on paper. I will address the defendant's application first, because, as will become evident to those persons reading these reasons for ruling, if the defendant's application for court orders is granted, then the claimant's application for court orders cannot properly be granted.

[3] In his application for court orders which was filed on September 7, 2017, the defendant has sought as the primary reliefs, the following:

> '(i) That the orders made herein by this Honourable Court on August 16, 2017 against the defendant be set aside;
>
> (ii) Alternatively, that there be variation of the orders of the court made on August 16, 2017 herein;
>
> (iii) That the claimant be made to account for all payments made by the defendant in satisfaction of the judgment made by this Honourable Court on November 16, 2009.'

[4] At the hearing which was held on October 4, 2017, the grounds of the said application were amended and as amended can briefly be stated in full:

> '1. Pursuant to **rule 11.18 of the CPR (2002)**.
>
> 2. Pursuant to **rule 11.16 of the CPR (2002)**.
>
> 3. That the granting of the orders being sought herein will not be prejudicial to the claimants.'

Analysis of the defendant's application filed on September 7, 2017 and amended on October 4, 2017

[5] I will now address those grounds in turn, albeit, not in any typical numerical order. As regards ground number 3, it will suffice to dispose of same, that there is no doubt in my mind, that since the orders as sought, seek to either set aside altogether, or vary this court's order made on August 16, 2017 and those orders pertain to the proposed sale of the property which is registered in the defendant's name and situated at 51 Red Hills Road, Kingston 10, in the parish of St. Andrew

– which is the property comprised in Certificate of Title registered at Volume 1071 and Folio 415 of the Register Book of Titles, then, any variation or setting aside of that order, would be prejudicial to the claimant. It would only not be so, if those orders ought now, based upon the other grounds as put forward by the defendant, to be set aside, or varied. It then would not be prejudicial for this court to make the orders as now sought, because legally, it would mean that in my view, those orders ought not to have been granted and furthermore, it would also mean that I would be legally bound to set those orders aside, or vary same. Save and except if such be the case, the orders as sought, would undoubtedly be prejudicial to the claimant. To my mind therefore, ground 3, as per the amended grounds underlying this application, adds nothing to the other two (2) grounds.

[6] As regards ground one (1), suffice it to state that **rule 11.18 of the Civil Procedure Rules (hereinafter referred to as 'the CPR'**, has no applicability whatsoever to the present situation that the defendant is confronted with and which he is seeking, by means of this application, to have resolved, in his favour.

[7] The order of this court, which this application pertains to, was made by Mr. Justice Evan Brown on August 16, 2017, pursuant to a 'without notice' application for court orders, which was filed by the claimant of August 14, 2017. As such, it is **rule 11.16** which applies in circumstances wherein a respondent, to whom notice of an application was not given, wishes to set aside or vary an order made pursuant to that 'without notice' application. As will be seen, further on in these reasons, arising from the wording of **rule 11.18 of the CPR**, as compared with and distinguished from the wording of **rule 11.16 of the CPR**, it is **rule 11.16** which applies in the present context.

[8] In an earlier judgment of mine, I had made this same point. See: **Ray Electra Jobson-Walsh and Gilbert Jobson and Administrator General of Jamaica and others** – [2013] JMSC Civ. 132, especially at paragraph 6. I agree with the

submission of the claimant's counsel, that this application cannot properly succeed if founded upon **rule 11.18 of the CPR**.

[9] It is, I believe, necessary to carefully read the provisions of **rules 11.16, 11.17, and 11.18 of the CPR** in order for this court to properly address any matter relating in particular, to **rules 11.16 and 11.18 of the CPR.** To my mind, **rule 11.17** directly relates to and is to be read in connection with **rule 11.18**.

[10] **Rule 11.16** reads as follows:

> *'(1) A respondent to whom notice of an application was not given may apply to the court for any order made on the application to be set aside or varied and for the application to be dealt with again.*
>
> *(2) A respondent must make such an application not more than fourteen (14) days after the date on which the order was served on the respondent.*
>
> *(3) An order made on an application of which notice was not given must contain a statement telling the respondent of the right to make an application under this rule.'*

[11] **Rule 11.17** reads as follows:

> *'Where the applicant or any person on whom the notice of application has been server fails to attend the hearing of the application, the court may proceed in the absence of that party.'*

[12] **Rule 11.18** reads as follows:

> *'(1) A party who was not present when an order was made may apply to set aside that order.*
>
> *(2) The application must be made not more that fourteen (14) days after the date on which the order was served on the applicant.*
>
> *(3) The application to set aside the 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 order might have been made.'

[13] It is very clear, from the wording of those three (3) rules, that it is **rule 11.16** which applies to the matter at hand, as in this matter, notice of the claimant's application which led to the order having been made by my brother Judge – Evan Brown, J., was not given to the defendant. The defendant is now applying to either have that order set aside or varied.

[14] The defence counsel was, in my view therefore, wise to have amended his client's application for court orders, which is now under consideration, so as to have included for this court's consideration, as a ground, **rule 11.16 of the CPR.** With respect though, that does not go far enough. It certainly can never be a proper basis for the setting aside or variation of Evan Brown J's order, that if I were to be considering the basis or bases for that order now, I may have or even perhaps would have, decided and ordered differently. Judges of co-ordinate jurisdiction simply cannot do that. There would be chaos in our legal system, if that could be done, since precedents then, would have little or no weight at all.

[15] Thus, whilst **rule 11.16 of the CPR**, permits an application such as this one to be made, it is not nearly enough to set out that rule, as a ground of that application, since it does not at all follow that by means of having made an application pursuant to that rule, that the said application will be granted, provided that the requirements of that rule, have been complied with, by the applicant. It is otherwise for **rule 11.18**. That is the reason underlying that which has been specified in **rule 11.18 (3)**.

[16] Even if this court were to disagree with Evan Brown, J as to the appropriateness of having heard the application in respect of which, he had made the order which is now under consideration, ex parte, or in other words, without the defendant having been served with that application, by the claimant, nonetheless, I am not

of the view that such would now entitle another Judge of this same court, namely: me, to set aside the order of Evan Brown, J.

[17] If that were so, then it would mean that once an application is properly made, in accordance with the provisions of **rule 11.16** and the Judge presiding over that application takes the view that the application for the order which is then under court challenge, ought not to have been made ex parte, then, that order must be set aside by the Judge who presides over that **rule 11.16** application.

[18] For my part, I reject that contention. In **NCB v Olint Corp. Ltd**. – [2009] UKPC 16, that was certainly not the approach taken by the Privy Council, with respect to an interlocutory injunction application which, had, before Jones, J. of this court, been heard ex parte, in circumstances which the Privy Council disapproved of. Before Jones J. that ex parte application for injunctive relief, was unsuccessful, whereas, on appeal to the Court of Appeal, the injunction was granted, pending trial, which means that the appeal to our Court of Appeal, from the order of Jones J. was granted. On further appeal to the Privy Council however, NCB was successful in their appeal albeit, not on the basis of the application before Jones J. having been made and heard by this court, ex parte.

[19] Whilst the Privy Council clearly expressed the view in its judgment in that case, that ex parte applications should rarely be made and only in rare circumstances, should be entertained, or in other words, heard by this court, nonetheless, the Privy Council went on to consider whether there was even a triable issue, as that is one of the first factors to be considered by any court in this jurisdiction, which is being called upon, in an application, to grant interlocutory injunctive relief.

[20] It was the view of the Privy Council, as expressed in that judgment, that Jones J. was right to have held that there was no triable issue and to have refused an injunction on that ground. Thus, according to their Lordships as they expressed in that judgment, it was unnecessary for them to consider whether, if there had been a triable issue, it would have been proper to grant an interlocutory

injunction, or whether the company should have been left to pursue its remedy in damages. See paragraph 12 of the court's judgment.

[21] In paragraph 13 of the court's judgment, the Privy Council though, expressed their displeasure at the fact that the application before Jones J. had been made and heard ex parte and that it was, prior to that judgment, fairly common in this court, for applications to be made and heard ex parte, in circumstances wherein such should not have been permitted by this court, or facilitated by attorneys. See paragraph 13 of the court's judgment.

[22] Accordingly, to my mind, with the applicant – the defendant, having failed to set out any proper ground upon which his present application can properly succeed, his application must fail. What though, has made things even worse for the defendant, legally, as regards his present application, is that he has also not, in the affidavit which he deponed to, for the purposes of this application, provided any evidence to this court, as to any ground upon which this court can now act, in either setting aside or varying Evan Brown, J's earlier order as made in this court.

[23] Finally, as regards the defendant's said amended application, there exists no proper basis put forward by the defendant/applicant, for this court to order the claimant to account for any payments that have allegedly been made by the defendant in satisfaction of this court's judgment which was made on November 16, 2009. In any event thought, for all practical purposes, she has so accounted, in sworn evidence, provided to this court via affidavit, which was deponed to by the claimant and filed on August 14, 2017. In the circumstances, it would, in any event, be pointless for this court to now make such an order as has been sought by the defendant. This court will never lend itself to acting in vain.

[24] In the final analysis therefore, the defendant's application which was filed on September 7, 2017 and amended on October 4, 2017, is denied and the costs of that application are awarded to the claimant, with such costs to be taxed, if not

sooner agreed. The precise wording of these orders, will be set out, at the conclusion of the entirety of these reasons.

The background to the claimant's application for court orders which was filed on September 25, 2017

[25] In the claimant's application for court orders which was filed on September 25, 2017 there are two (2) primary reliefs being sought and they are as follows:

> *'1. That permission be granted for renewal of the order of the Honourable Mr. Justice Bertram Morrison dated 21st January, 2016 for a period of six (6) months from the date of this order.*
>
> *2. That the orders of the Honourable Mr. Justice Evan Brown dated 16th August, 2017 herein be allowed to stand.'*

[26] I will address the second of those two (2) primary orders being sought, first. That order is not one which ought to have been sought, at all, but in any event, for reasons already given, the order of Mr. Justice Evan Brown, as made on August 16, 2017, will not be set aside.

[27] It may be worthwhile for edification purposes though, for me to briefly state why I am of the view that such an order should never have been sought, in the first place.

[28] To my mind, that is so, for two (2) equally compelling reasons, one (1) of which is that an order of a court of unlimited jurisdiction remains valid, even if irregularly made, unless and/or until it is set aside by the order of a court. See: **Isaacs v Robertson** [1985] AC 97 (PC). This court is a court of unlimited jurisdiction. That being so, it must be improper to ask any Judge of any court, to allow for an order of a court of unlimited jurisdiction, 'to stand.'

[29] The second reason is that, even if I were to make an order that the order of my brother Judge, in this court namely: Evan Brown, J., be allowed, 'to stand,' that order could and would not carry any greater weight in law, than the order of Mr. Justice Evan Brown. It could and would not do so, because Mr. Justice Evan

Brown and I are Judges of co-ordinate jurisdiction and therefore, unless Brown J's earlier order were to be set aside by me, an order by me, that his order is allowed, 'to stand' would be of absolutely no weight legally, since my order in that regard, even if it could properly be made, could and would carry no greater weight than my brother Judge's earlier order.

[30] The first, of the orders being sought in the claimant's presently pending application, is an order renewing the order of Mr. Bertram Morrison, J which is dated January 21, 2016, for a period of six (6) months from the date when such order was made. The order of Mr. Bertram Morrison, J that the claimant wishes to have extended, was an order that the defendant's assets be confiscated and sold 'forthwith' for contempt of the order of Ms. Justice Christine McDonald dated November 16, 2009.

[31] There is presently, no dispute between the parties that to date, the defendant has not yet satisfied the judgment sums owing to the claimant, or fully complied with the judgment order which was made by Ms. Justice Christine McDonald on November 16, 2009. There has though, been partial compliance therewith, albeit, only to a limited extent.

[32] There is also no dispute that on January 21, 2016, Bertram Morrison, J had ordered, pursuant to the claimant's application for same, which had been filed on November 28, 2014, that the defendant be committed to the St. Catherine District Prison for a term of six (6) weeks, or until he shall sooner comply with the order of this Honourable Court, dated November 16, 2009. In addition, Morrison, J ordered that the, *'assets of the defendant, Linford Campbell be confiscated and sold forthwith for contempt of the order of the Honourable Ms. Christine McDonald…'* In addition to those two (2) other orders, Morrison, J ordered that costs of the claimant's application for those orders, were to be agreed or taxed and to be paid forthwith.

[33] The claimant's application which led to those orders having been made by Morrison, J had, in the listed and specified grounds for that application, stated that the application for the order for confiscation of the defendant's assets was being made pursuant to **rules 45.6(a) and 45.6(b) (ii) and 59.9(c) (ii) of the CPR, 2002** and that the application for the order for sale of the defendant's confiscated assets was being made pursuant to **rules 53.17(4) and 53.17(7) of the CPR, 2002**.

[34] It seems, from the evidence presented to this court, in support of the application now under consideration, that there does not exist, any formal order of Morrison, J made on January 21, 2016, nor any filed draft order. The minute of the court's proceedings on January 21, 2016, at the hearing in respect of this claim, which was presided over by Morrison J have though, been seen by me and I have taken judicial notice of all that which is recorded on same and in which document, the signature of the presiding Judge has ostensibly been recorded.

[35] On that minute, there is recorded *inter alia*, as follows: '*Order granted in terms of paragraphs 8, 9 and 10 of the Notice of Application filed November 28, 2014.'*

[36] I have already set out for contextual purposes, what the claimant's application which was filed on November 28, 2014 had set out therein, as the grounds of the claimant's application for confiscation and sale of the defendant's assets and it is clear that the grounds of same, were various rules of court.

[37] Suffice it to state, for present purposes, that it is my view that some of the rules of court which were relied on by the claimant's attorneys, as grounds in support of the claimant's application for confiscation and sale of the defendant's assets, ought not to have been relied on for that purpose and as a consequence, Morrison, J. made orders, based on those rules of court. Those orders though, were not at all irregular, as to my mind, even though there were some rules of court relied on by the claimant's attorney, as grounds in support of that application, which to my mind, could not properly have been relied on in support

of that application, there were though, for the purposes of that application, other rules of court relied on, which, to my mind, were properly relied on for those purposes and which therefore, properly supported the making of the orders which were made by my brother Judge, pursuant to that application.

[38] My further explanation as to why I have reached that conclusion, is set out below, as that explanation has led me to the conclusion that the claimant's application for court orders which was filed on September 25, 2017, which seeks as one of the primary reliefs, the following: '1. That permission be granted for the renewal of the order of the Honourable Mr. Justice Bertram Morrison dated 21st January 2016 for a period of six (6) months from the date of this order' cannot properly and ought not to be granted by this court.

[39] Firstly, even if the reasoning of a Judge in the making of a court order or court orders, is faulty in some respect, that does not, *ipso facto*, mean that said order or orders made by that Judge, with those reasons – which are faulty, coupled with reasons which are sound, is/are irregular.

[40] That must be so since, if there were sound reasons, which the Judge had in mind, as the reasons for the making of an order or orders, then it could not be appropriate for any court to consider said order (s) as being irregular, merely because that Judge had also, in having made said order or orders, taken into account certain irrelevant or improper considerations.

[41] Secondly, court orders do not expire and therefore, never need to be, 'renewed.' As earlier stated, a court order, even if irregular, remains valid, unless and until set aside. Thus, since no court has concluded and/or ordered that Morrison, J's order of January 21, 2016 is irregular and no court has set the said order aside, that order, right now, remains valid. If right now, the defendant is intentionally refusing to comply with any court order that is contempt of court and could result in the defendant being punished and remaining under punishment unless and

until he has complied with that order, provided that such order is for the payment of a sum of money: See **SS. 2 and 3 of the Debtors Act**, in that regard.

[42] It is correct to state that in **rule 46.1(a) and (e) of the CPR** it is provided that: *'In these rules, a 'writ of execution' means any of the following – (a) an order for the seizure and sale of goods (from 18)… (e) an order for confiscation of assets.'*

[43] There is though, a footnote below **rule 46.1**, which states as follows: *'(enforcement by an order for confiscation of assets is dealt with under Part 53).'*

[44] To my mind therefore, it is Part 53 of the CPR that is now applicable to the present matter and not, Part 46. The order made by Morrison, J was not a 'writ of execution.' That is why, the form of that order, as minuted by the Judge, did not take the form as set out in Form 18 of the CPR.

[45] When distinctions are recognised as existing between the **rules as set out in Part 46 and Part 53 of the CPR** and those distinctions are carefully considered, it is very clear that each of those **Parts of the CPR** although having some similarities, are also, markedly different, in certain material respects. In interpreting our **CPR**, those rules must always be considered contextually and whilst the claimant's counsel has done that, what it appears to me, that they have not done, is that they did not take the next step towards reaching a proper interpretation of those Parts of our **CPR**. That next step requires that there be considered firstly, the following question: Why would there be two (2) parts of the rules, addressing precisely the same subject-matter? To my mind, the only answer which both common-sense and logic will enable, is that those two (2) parts of the rules exist, because they do not, in fact address precisely the same subject-matter. That is why the footnote to **rule 46.1 of the CPR** refers to **Part 53**.

[46] **Part 53 of the CPR** addresses matters pertaining to committal etcetera, for breach of a court order and committal for contempt. That part comprises three

(3) sections. Section 1 deals with the power of the court to commit a person to prison or to make an order confiscating assets for failure to comply with (a) an order requiring that person or (b) an undertaking by that person to do an act – *(i) within a specified time; ii) by a specific date; or not to do an act. Section 2 deals with the exercise of the power of the court to punish for contempt. Section 3 sets out rules common to applications under Sections 1 and 2 of this Part.*

[47] **Rule 53.13 of the CPR** provides that, 'where satisfied that the Notice of Application has been duly served, the court may – (a) make a committal order for a fixed term against a judgment debtor who is an individual; (b) make a confiscation of assets order against a judgment debtor who is an individual or a body corporate.' In respect of this claim, Morrison, J made both of those orders. **Rule 53.13 (a) and (b) of the CPR** permitted him to do so.

[48] Nowhere in **Part 53 of the CPR** is there any provision as to such an order being valid for any limited, or specific period of time. That is not so though, as regards a writ of execution which is valid for a period of twelve (12) months beginning with the date of its issue and after that period, the judgment creditor may not take any step under the writ, unless the court has renewed it. **Rule 46.9 of the CPR** so stipulates. **Rule 46.10** sets out the rules of court which apply when one wishes to have a writ of execution renewed.

[49] In the claimant's application which was filed on September 25, 2017, the claimant's counsel have applied on the claimant's behalf, for renewal of a writ of execution. To my mind though, what Morrison J did, in January 21, 2016 was to have made an order which was based on the allegation, not merely that there were prior court orders which had not yet been complied with, by the defendant, but moreover, that the defendant had wilfully refused to comply with those earlier court orders.

[50] Under **Part 53**, an application for the requisite court orders, must always be made. That is though, not so, under **Part 46**. Under the latter, permission is

required to issue a writ of execution, only in certain clearly defined circumstances which have been specified in **rule 46.2**. Other than in those circumstances, permission of the court is not required to issue a writ of execution.

[51] Of course too, a writ of execution must have the effect of a court order, since otherwise, it would not carry with it, the legal weight that it needs to carry, in order for it to be effective in achieving its desired objective – which is to be used as a means of enforcing judgment orders that have not yet been satisfied. That is why, in **rule 46.1**, it is provided that a 'writ of execution' in the rules, means any of the following: *(a) 'an order for the seizure and sale of goods (form 18) ... and (e) an order for confiscation of assets.'* That though, does not mean and should not be understood as meaning that when, for instance, a Judge of this court, makes an order for confiscation of assets against a party determined as having been in contempt of this court, that said order is the equivalent of a writ of execution or vice versa.

[52] The distinction between **Parts 46 and 53** is also, to some extent, highlighted by the fact that **rule 53.11 (i)** provides that, '*the general rule is that the application must be heard in open court.'* No such rule exists in respect of an application for permission to issue a writ of execution, in circumstances wherein, under **Part 46**, such permission is required.

[53] The reason for that distinction, between those two (2) separate types of proceedings, is that in **Part 53**, since those proceedings are contempt of court proceedings and can result in punishment of a person, in that it has long been recognised that contempt of court proceedings are quasi-criminal in nature, such proceedings must always be heard in open court and a higher degree of proof, then, the usual 'balance of probabilities' standard, is required to be met, by the applicant, if the contempt application is to succeed. None of that applies, with respect to an application for court orders, pursuant to **Part 46 of the CPR**.

[54] Mr. Justice Morrison had ordered that the assets of the defendant be confiscated and sold and in addition, had ordered that the defendant be committed to prison for a period of six (6) weeks. There was though, no Commissioner for Confiscation appointed by this court, at that time.

[55] **Rule 53.17 of the CPR** requires that a confiscation order made under **Part 53 of the CPR,** *'must be directed to one or more commissioners (in these rules called the 'commissioners for confiscation') appointed by the court.'*

[56] There is no doubt in my mind, that at an earlier point in time, the claimant's attorneys had been of the understanding, that a Commissioner for Confiscation needed to have been appointed by this court, arising from the order of Morrison, J that the defendant's assets be confiscated and sold. That is why the claimant's attorneys filed an application on the claimant's behalf, for the appointment of a Commissioner for Confiscation. That application was filed on December 20, 2016 and the first order of this court, that was being sought, by means of that application, was worded as follows: '*That permission be granted for the bailiff for the parish of Kingston to be appointed as the Commissioner for Confiscation to enforce the formal order of the Honourable Mr. Justice Bertram Morrison made on 21st January 2016 pursuant to rule 53.17 (2) and rule 53.17 (6).'*

[57] **Rule 53.17 (6)** provides that: '*Neither – (a) the Commissioner for Confiscation or (b) the judgment creditor may sell any property seized under an order for confiscation without the permission of the court.'* Of course, Morrison J granted permission for the defendant's assets to be both confiscated and sold. That order has not expired and does not need to be renewed or refreshed. It is worthy of note, at this juncture also, that **rule 53.17 (1) of the CPR** provides that: '*A confiscation order binds the property subject to the order from the date of its issue.'* **Rule 53.17 (2)** sets out the powers of the Commissioner for Confiscation.

[58] In respect of this claim, following upon the claimant's application for same, which was placed before this court, on her behalf, by attorneys from the same law firm,

which still now represents her, that being: Livingston, Alexander and Levy, albeit, not by Ms. Sidia Smith, attorney-at-law, who is now lead counsel, from that firm, in respect of this matter, the Judge who presided over the hearing of that application, namely: Dunbar-Green, J, granted same.

[59] Accordingly, this court's orders of confiscation and sale of the defendant's assets and appointing a Commissioner for Confiscation, remain in full effect. Those orders will remain in full effect, unless this court were to, at a later stage, upon an application by the defendant, pursuant to the provisions **of rule 53.18 of the CPR**, discharge him, in which case, **rule 53.18 (2) (b) (iii)** provides that: '*The court may give such directions for dealing with the thing taken by the commissioner as it thinks fit.'*

[60] What assists in further making clear, the distinction between the issuing of a writ of execution under **Part 46 of the CPR** and the making of an order by this court, pursuant to contempt proceedings, under **Part 53 of the CPR**, is that it is specifically provided for, in **rule 46.2 (e) and (h) of the CPR**, that a writ of execution may not be issued without this court's permission, in circumstances wherein, for instance, the goods against which, it is wished to enforce the judgment or order are in the hands of a confiscator appointed by the court, or where any goods sought to be seized under a writ of execution are in the hands of a receiver or Commissioner for Confiscation appointed by the court.

[61] It seems very clear to me therefore, that an order under **Part 53 of the CPR** appointing a Commissioner for Confiscation to confiscate a party's assets and an order under **Part 53**, for those assets to be sold, are recognized by our rules of court, as being an order which, at least unless otherwise ordered, takes precedence over a writ of execution, which is why a writ of execution cannot even properly be issued, without this court's prior permission, if goods of the judgment debtor, are already on the hands of a Commissioner for Confiscation, appointed by this court.

[62] There is therefore, no need for any application to issue or re-issue a writ of execution, to be made to this court, in circumstances wherein, this court already ordered confiscation of a party's assets and moreover, ordered for those assets to be sold.

[63] For those reasons, the claimant's application for court orders which was filed in September 25, 2017, is denied. That application was wholly unwarranted, based on the particular circumstances of this particular claim.

[64] This court's orders therefore, are as follows:

i. The claimant's application for court orders which was filed on September 25, 2017, is denied and the costs of that application are awarded to the defendant, with such costs to be taxed, if not sooner agreed.

ii. The defendant's application for court orders which was filed on September 7, 2017 is denied and the costs of that application are awarded to the claimant, with such costs to be taxed, if not sooner agreed.

iii. The claimant shall file and serve this order.

……
Hon. K. Anderson, J.