



**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE FULL COURT**

CLAIM NO. 2013 HCV 02585

**CORAM: THE HON. MR. LENNOX CAMPBELL
THE HON. MRS. JUSTICE THOMPSON-JAMES
THE HON. MR. JUSTICE BATTS**

**BETWEEN SHURENDY ADELSON QUANT CLAIMANT
AND MINISTER OF NATIONAL SECURITY DEFENDANT
AND THE ATTORNEY GENERAL OF JAMAICA**

Constitutional redress- Judicial Review- Unless Order- Claim served without seal in breach of Unless Order- whether claim to be struck out- Applicant also in apparent contemptuous breach- whether application to be heard-Application for relief from sanctions

C. Cameron, Caroline Reid-Cameron for Claimant

Lisa White, Dale Austin instructed by the Director of State Proceedings for both Defendants

Heard : 14th & 15th July, 2014

CAMPBELL J.

I have read the judgment and reasons in draft of Batts, J. and save to say that I concur, I have nothing to add.

THOMPSON-JAMES, J.

I also have been afforded the opportunity to read the judgment in draft of Batts, J. I agree with his reasons and conclusion.

BATTS, J.

- [1] This Judgment was delivered orally on the 14th July 2014. My colleagues expressed concurrence. This Judgment therefore represents the decision of this Court on preliminary issues argued by the parties. The substantive hearing was adjourned to the 22nd October, 2014.
- [2] At the commencement of the matter Counsel for the Crown endeavoured to make an application pursuant to Rule 26.5 of the Civil Procedure Rules (2002)(hereinafter referred to as the CPR) that: “the Claimant having failed to comply with the Order of the Court dated 6th June 2014 the Claim stands struck and judgment is entered for the Defendants.”
- [3] The Claimant’s Counsel on the other hand indicated that on the 10th July 2014 an application for relief from sanctions had been filed.
- [4] After an exchange with both Counsel we decided to hear the Claimant’s application for relief from sanctions before deciding whether to hear the Defendant’s application for Judgment to be entered. Our reasons for adopting this approach are two-fold:
- a. The Crown was on the face of it itself in a possibly contemptuous breach of an Order of the Court. This issue we are told is still pending and yet to be determined. It is inappropriate to entertain an application from a party which displays contempt for the Court’s orders.
 - b. Both Counsel are agreed that the Unless Order, with respect to which relief is being sought, takes effect automatically. Resolution of the issue whether or not to grant relief will almost certainly

determine the issue as to whether the Claim will be dismissed and Judgment entered.

[5] Relief from sanction is sought with respect to an Order of the Hon. Mrs. Justice Marva McDonald-Bishop made on the 6th June 2014. The relevant paragraph of the Order reads,

“1. Unless the Claimant files and serves a Further Amended Fixed Date Claim Form bearing (i) a Certificate of Truth in compliance with CPR 3.12 and (ii) the Seal of the Court in compliance with CPR 3.9 (1) (a) on or before the 27th day of June 2014 by 3 pm, the Claimants Statement of Case shall stand struck.”

[6] Order 26.8 reads as follows:

- “1. An application for relief from sanctions imposed for a failure to comply with any rule, order or direction must be
- a) Made promptly; and
 - b) Supported by evidence on affidavit
2. The Court may grant relief only if it is satisfied that –
- c) the failure to comply was not intentional
 - d) there is a good explanation for that failure and
 - e) the party in default has generally complied with all other relevant rules, practice directions, orders and directions.
3. In considering whether to grant relief the Court must have regard to–
- a) the interests of the administration of justice
 - b) whether the failure to comply was due to the party or that party’s Attorneys-at-Law
 - c) whether the failure to comply has been or can be remedied within a reasonable time
 - d) whether the trial date or any likely trial date can still be met if relief is granted; and
 - e) the effect which the granting of relief or not would have on each party

4. The court may not order the Respondent to pay the Applicant's costs in relation to any application for relief unless exceptional circumstances are shown."

[7] The Claimant relies on the Affidavits of Sandra Tulley and Xenia Myers in support of the application. The Defendant has strenuously urged that the requirements of Order 26.8 have not been satisfied.

[8] Miss Sandra Tulley describes herself as a filing clerk employed to the law firm of Carolyn Reid & Company. She depones that on the 10th June 2014 she received instructions to file a Further Amended Fixed Date Claim Form. She filed the document on the 10th June 2014. She did not watch the clerk at the Supreme Court stamp and seal the document. Upon receiving the document from the Supreme Court she failed to notice that the document was stamped with a Court stamp of the 12th May 2014. Neither did she check to see if it was sealed. This document was served on the Respondents on the 17th June 2014. On the 9th July 2014 at 5.00 p.m. she received instructions to retrieve a document from Doreen Clarke at the Supreme Court Civil Registry. On the 10th June 2014 a sealed copy of the Further Amended Fixed Date Claim Form dated 10th June 2014 was served on the Respondents by her.

[9] Xenia Myers in her Affidavit says she is a Legal Secretary employed to the Defendants' Attorneys-at-Law. She received instructions on the 10th June 2014 from Mr. Cameron, the Claimant's attorney, to further amend the Fixed Date Claim Form to bear a Certificate of Truth in compliance with CPR 3.12. I pause to observe that CPR 3.13 states a Court "may" strike out a Statement of Case which has not been verified by a Certificate of Truth. One would have thought that in a case, such as the present, where the litigant has by reference verified the truth of the content of his statement of case, a Court would be less inclined to exercise that power to strike out for absence of a certificate.

- [10] Miss Myers indicates that she prepared the Further Amended Fixed Date Claim Form pursuant to Mr. Cameron's instructions. Mr. Cameron signed the Certificate. She says instructions were given to Miss Sandra Tulley to file and serve the said document. On the 9th July 2014 she received a telephone call from Miss Doreen Clarke who spoke to Mr. Cameron and brought to his attention that whereas Justice McDonald-Bishop's Order was made on the 6th June 2014 the Further Amended Fixed Date Claim was filed on the 12th May 2014. Having done checks at the Supreme Court Miss Doreen Clarke called and informed Mr. Cameron that the document was located and had a Court Stamp dated 12th May 2014 but was crossed out and initialed and replaced with a Court Stamp dated 12th June 2014. It was surmised that an error had been made by the Court's clerk when stamping the document. Miss Tulley was instructed to attend and retrieve the corrected document.
- [11] The Affidavit indicates that the failure to comply was not intentional as the attorneys were not aware that the document had not been sealed.
- [12] The Crown sought to suggest that there was inadequate evidence to demonstrate that the failure to comply was not intentional, that there was no good explanation for the failure and that there had not been a general compliance with previous Orders. The Crown filed written submissions and relied on the authorities of ***H.B. Ramsay v Jamaica Redevelopment Foundation [2013] JMCA Civ 1. and Macon Shipping v Kefalas [2007] 1 All ER 365.***
- [13] We respectfully disagree with the Crown and remind ourselves of the words of Brooks J.A. in the H.B. Ramsay case (cited above)

"In my view, if the application has not been made promptly the Court may well, in the absence of an application for an extension of time, decide that it will not hear the application for relief. I do accept, however that the word promptly does have some measure of flexibility in its application, whether something has

been done promptly or not depends on the circumstances of the case.”

- [14] In this case one of the circumstances is that the Claimant had purported to comply. Indeed his attorney-at-law was of the view there was compliance. But for the absence of a seal on the document served there had been compliance. The application of a seal on such documents issued by the Court is routine. The clerk (Sarah Tulley) and hence the Claimant's attorney, can hardly be blamed for failing to notice that a seal was absent. They could not know of its absence until this was brought to their attention by the Crown in its application for judgment.
- [15] Insofar as the incorrect date stamp is concerned this does not impact the issue of compliance. The document had the appropriate certificate and was in fact filed on or about the 10th June 2014. We have examined the Court's file and there is on file a copy corrected in the manner described in the Affidavit Xenia Myers.
- [16] It is therefore manifest that the application for relief is prompt and that it is supported by evidence which demonstrates that any failure to comply was not intentional. The explanation is satisfactory and the breach has been remedied.
- [17] The Defendant's Attorney submitted that the Claimant had not generally complied with rules of Court. She said no Statement of Case served had the seal of the Court and that the other Fixed Date Claim did not have the relevant certificate. However that was the reason for the Unless Order. The rule cannot be taken to mean that there is not "general compliance with rules" if the previous breach is the one which led to the making of the Order for which relief is sought. Surely it must be other breaches in relation to the conduct of the action generally. In this regard there appears to have been general compliance by the Claimant with the rules.
- [18] There are other circumstances relevant to this matter which are worthy of mention. This applicant for Judicial review was in the custody of the Police when

his application was filed on the 25th day of April 2013. He wished to review the process by which and the decision of the Minister to order his deportation. One can only imagine the hurried circumstances in which his lawyers acted to commence a claim and obtain a date for hearing. By Order dated 10th April 2013 this Court granted a stay of the deportation order. That order was made by and with the consent of the Defendant. On the following day the Claimant was deported in breach of the stay. Save to acknowledge that there was a pending application for Habeas Corpus in the Resident Magistrates Court, and that he was deported on the 11th April 2013, the Defendants have not in these proceedings offered an explanation. Separate proceedings for contempt, we are told, have been instituted. On the 19th June 2013 at a time when the Claimant's attorneys were unaware their client had been deported, Orders on Case Management were made. On the 6th June 2014 at a pre-trial review, and with the issue of the breach of the Court's Order for a stay and its consequences if any still unresolved, the Unless Order of Justice McDonald-Bishop was made. It must be a cruel system of justice which would close the door to relief to a litigant in such circumstances. He after all is removed from the jurisdiction in breach of an Order of the Court and those who so breached the Court's Order are, if the Crown has its way, to have his claim dismissed for the failure of the staff of the Supreme Court to apply a seal to a document served within time?

[19] We observe furthermore that in the Macon Case cited by the Crown, Moore-Bick LJ stated at paragraph 36:

“The third consequence is that before making conditional orders, particularly orders for the striking out of statements of case or the dismissal of claims or counterclaims, the judge should consider carefully whether the sanction being imposed is appropriate in all the circumstances of the case. Of course it is impossible to foresee the nature and effect of every possible breach and the party in default can always apply for relief, but a conditional order striking out a statement of case or dismissing the claim or counterclaim is one of the most powerful weapons in the Court's case management

armoury and should not be deployed unless its consequences can be justified. I find it difficult to imagine circumstances in which such an order could properly be made for what were described in the Keen Phillips case as good housekeeping purposes.”

- [20] The sealing of documents issued by the Supreme Court is a matter for the staff of the Supreme Court. The duty to do so is imposed on the Court. See Order 3.9. As regards the Certificate of Truth, we have already observed that where a Fixed Date Claim is supported by an Affidavit which verifies the truth of the contents of the Claim Form it will be a rare case indeed whose omission of the Certificate results in a successful application to strike out. Against that background and in the context where a trial date has been fixed and Case Management Orders made and complied with, a direction to have the originating process refiled, sealed and certified could reasonably be regarded as “good housekeeping”
- [21] Viewed in this light, it became apparent that this is an appropriate case in which to grant relief from deployment of the most powerful weapon in the armoury of the Court – dismissal of a Claim.
- [22] The rule of law means nothing if protection of law is not afforded to the least or worst among us. The Claimant is alleged to be a drug kingpin. Whether that is so or not he is, save in the most exceptional of circumstances, entitled to his day in Court. He is entitled to expect that Orders of the Court will be obeyed just as he is expected to obey the Orders of the Court. His Attorneys thought they had obeyed the Unless Order. Unfortunately the Court had not sealed the document it issued. The document is now sealed and the document has the relevant certificate.
- [23] In these circumstances and for all the reasons stated above we will grant the Claimant’s application for relief from sanctions and order that:

- a) Relief from sanctions is granted for failure to serve a sealed and Further Amended Fixed Date Claim Form on or before the 27th June 2014 in accordance with the Order of this Honourable Court.
- b) The sealed and Further Amended Fixed Date Claim Form which was served on the Defendants on the 17th June 2014 will stand as properly served in accordance with the Order of the 6th June 2014.

David Batts J