[2026] JMSC Civ 55

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023CV0216

BETWEEN	**THE ADMINISTRATOR-GENERAL FOR JAMAICA (Administrator of Estate Kevin Andrew Robinson)**	**CLAIMANT**
AND	**WHITE DIAMOND HOTELS & RESORT LIMITED (t/a Royalton White Sands)**	**DEFENDANT**

(No. 2)

IN CHAMBERS

Oraina Lawrence and Sabrina Daley, Attorneys-at-law for the claimant

Samantha Grant and Kyle Fong instructed by DunnCox, Attorneys-at-law for the defendant

Heard: 26th February and 5th May 2026

Civil Practice and Procedure - Establishment and effect of conditional order - Rule 26.1(7) - Rule 27.11 - Whether application to vary date for compliance in conditional order is to be made pursuant to rule 26.8 or rule 27.11 - Considerations on application to vary under rule 26.1(7) - Whether time for compliance with conditional order should be varied - Rules 26.3(1) (a) and (b) - Considerations for striking out - Whether statements of case should be struck out for noncompliance with court orders or as an abuse of process - Rule 9.6 - Whether procedure to dispute court's jurisdiction to try claim or to refuse jurisdiction properly engaged

C. BARNABY, J

BACKGROUND

[1] The substantive claim in this matter would be grounded in negligence and/or breach of the **Occupier's Liability Act** (hereinafter called **"the OLA"**). It

arises out of the alleged electrocution of Mr. Robinson on or about 21st October 2016 while he was allegedly engaged in the servicing of the electrical plant at the Defendant's resort. It would allege that Mr. Robinson suffered injuries in consequence, to which he later succumbed.

[2] The Claimant commenced the claim on 5th July 2023 with the filing of a Claim Form and Particulars of Claim, and for circumstances set out in **The Administrator General for Jamaica (Administrator of Estate of Kevin Andrew Robinson deceased) v White Diamond Hotels & Resort Ltd (t/a Royalton White Sands)** [2025] JMSC Civ 39 (hereinafter called "the Judgment"), those pleadings remained unsettled. On 31st March 2025 after refusing an application by the Claimant to extend the time for making a claim under the **Fatal Accidents Act** (hereinafter called **"the FAA"**), for which reasons are also set out in the Judgment, I made the following orders.

> *(4) … [T]he Claimant is to **file and serve** an amended claim form and amended particulars of claim within fourteen (14) days of today's date **in order to continue the claim** under the Law Reform Miscellaneous Provisions Act.*
>
> *(5) The Defendant is permitted to file and serve a defence to the amend claim filed and served pursuant to order 4 herein, within forty-two (42) days of service of the amended claim form and amended particulars of claim.*
>
> *(6) The term "NEG 1" is to be inserted in the top center of the first page of any documents filed, prior to their filing at the Registry.*
>
> [Emphasis added]

[3] Pursuant to the court order, the Claimant was required to file and serve the Amended Claim Form and an Amended Particulars of Claim (hereinafter called "the Amended Pleadings") on or before 14th April 2025. Date stamp on record shows that the Claimant filed them on 14th April 2025 at 4:00 p.m. The Amended Pleadings were purportedly served on 15th April 2025.

Further, in clear disregard of the court's order that time would not be extended for the Claimant to pursue a claim under the **FAA**, I observe that a claim for damages pursuant to the very Act continues to be included in the Amended Pleadings.

[4] On 26th February 2026, the applications below came on for hearing before me, having been adjourned from 4th December 2025 on account of issues at the Claimant's offices which were said to have hindered preparation for the hearing.

(a) The Claimant's *Notice of Application for Court Orders* filed 1st May 2025 supported by the *Affidavit of Allia Leith-Palmer in Support of Notice of Application for Court Orders* sworn and filed 1st May 2025, to which the Defendant filed the *Affidavit of Allyson Mitchell Opposing Claimant's Notice of Application for Court Orders* which was sworn and filed 13th October 2025. In her affidavit Ms. Mitchell seeks leave to refer to and rely on the *Affidavit of Allyson Mitchell* filed 30th November 2023, *Affidavit of Francine Molison* filed 7th December 2023, *Affidavit of Kymberly Hanniford* filed 7th November 2024, and the *Affidavit of Allyson Mitchell* filed 11th August 2025. These latter affidavits were filed in the proceedings in respect of the applications which are the subject of the Judgment.

(b) The Defendant's *Notice of Application for Court Orders* filed 11th August 2025, which is supported by the *Affidavit of Allyson Mitchell in Support of Defendant's Notice of Application for Court Orders* sworn and filed 6th June and 11th August 2025 respectively.

[5] The Claimant acknowledges that the Amended Pleadings would have been served late and by her application seeks to vary the time limit at order (4) (hereinafter called "Order 4") to read:

> *(4) … the Claimant is to file and serve an amended claim form and amended particulars of claim within* ***fifteen (15)*** *days of today's date in order to continue the claim under the Law Reform Miscellaneous Provisions Act.*
>
> *[Emphasis added]*

[6] The Defendant seeks a declaration that the Amended Pleadings filed but not served on or before 14th April 2025 ceased to be valid as of 15th April 2025. In the alternative, it prays for an order that the Amended Pleadings which were filed but not served on or before 14th April 2025 be struck out.

[7] The parties filed and exchanged written submissions and authorities, and presented oral arguments at the hearing. On conclusion of those arguments, decisions on the applications were reserved to today's date. In fulfilment of that promise, the court's reasons for decision and orders on the applications are now returned.

ISSUES

[8] While I have duly considered all the evidence, arguments and authorities in respect of both applications, I have not found it necessary to address them specifically, having regard to what I consider are the core and dispositive issues on the applications. They are:

- *(i) Whether the Claimant's application to vary the time for compliance with Order 4 should be granted.*
  - *a. Whether Order 4 establishes a sanction; and if it does, the effect of the sanction.*
  - *b. Whether the application to vary the date for compliance in Order 4 should comprise of an*

application for relief from sanction and for an extension of time pursuant to CPR rule 27.11(4).

c. *Whether it is appropriate to grant the Claimant's application for variation of the date in Order 4 in the absence of any material change in circumstances since the order was made or any contention that the court was misled in some way as to the correct factual position before it when the order was made.*

(ii) *Whether the Amended Pleadings which were filed but not served on or before 14th April 2025 ceased to exist as of 15th April 2025.*

(iii) *Whether the Claimant's statement of case should be struck out on the grounds of non-compliance with court orders and/or as an abuse of process.*

REASONS

Issues (i) and (ii)

Whether the Claimant's application to vary the time for compliance with Order 4 should be granted.

a. ***Whether Order 4 establishes a sanction; and if it does, the effect of the sanction.***

b. ***Whether the application to vary the date for compliance in Order 4 should comprise of an application for relief from sanction and for an extension of time pursuant to CPR rule 27.11(4).***

c. ***Whether it is appropriate to grant the Claimant's application for variation of the date in Order 4 in the absence of any material change in circumstances since the order was made or any contention that the court was misled in some way as to the correct factual position before it when the order was made.***

AND

Whether the Amended Pleadings which were filed but not served on or before 14th April 2025 ceased to exist as of 15th April 2025.

Establishment and effect of sanction

[9] Order 4 was made almost two (2) years after the claim was initiated, following significant and unnecessary delays in the meaningful progression of the claim along the litigation continuum, and in circumstances where this court previously found that the Defendant was prejudiced in defending the claim on account of delay, in refusing to extend the time to file a claim under the **FAA**. Time was of the essence. The order was accordingly made to compel the Claimant to move with alacrity that was not previously displayed by her, to enable the court to efficiently manage the case towards disposition. Fourteen (14) days to remove the aspects of the pleadings which concerned the claim under the **FAA** and to file and serve those amended pleadings appeared eminently reasonable. There is no contention to the contrary.

[10] At paragraph [19] of the Judgment I indicated that *"[i]t is my view that the words "sanction" and "imposed" in Part 26 of the CPR and at rule 26.8 specifically, are entirely capable of their natural meaning… [so that] the term "sanctions imposed" means the establishment or application of a penalty."* I remain of that view.

[11] The word "*in order to"* which appears at Order 4 is an often-used subordinating conjunction used to show cause and effect. In other words, it is used to show the direct relationship between an action or event (cause) and its consequence or outcome (effect). It follows an action, that is, "*the Claimant is to file and serve an amended claim form and amended particulars of claim within fourteen (14) days of today's date"*; and precedes an objective to which the action is aimed, that is, *"to continue the claim under the Law Reform Miscellaneous Provisions Act."* In ordinary English, usage of the words *"to continue"* signify maintaining or keeping something in existence.

[12] As submitted by the Defendant, Order 4 is a conditional order. Such orders are permitted to be made in exercise of the power of general management given at CPR rule 26.1(3) which provides that:

> *When the court makes an order or gives a direction, it may*
>
> *(a) make it subject to conditions; and*
>
> *(b) specify the consequence of failure to comply with the order or condition.*

[13] While CPR rule 26.1(4) goes on to state that conditions which the court can impose *"include*" those listed in the subparagraphs which follow, the list is not exhaustive. It is accordingly my view that the court is at liberty to impose such conditions which it considers may be warranted having regard to the circumstances of a case.

[14] Admittedly, Order 4 does not say that the Claimant's claim under the **LRMPA** "*will not continue"* for failure to comply with the court's orders. The order nevertheless makes it clear that to maintain or keep the **LRMPA** claim in existence, the Claimant was required to file **and** serve her Amended Pleadings on or before 14th April 2025.

[15] The Defendant put it this way in its written submissions:

> *11. … The Order explicitly stated that [service within fourteen (14) days] was required* "in order to continue the claim under the Law Reform (Miscellaneous Provisions) Act." *The March 31, 2025 Order specifies the consequence in the form of a condition precedent by the qualifying words,* "in order to continue the claim".

[16] Whichever formulation is to be preferred, it is not disputed that Order 4 required the Claimant to file as well as serve her Amended Pleadings on or before 14th April 2025 for the claim under the **LRMPA** to remain in existence, and that the failure to file **and** serve them on the Defendant by that date, would cause the claim to no longer continue or remain. The Claimant's claim under the **LRMPA** would be lost. Non-compliance establishes a penalty in my view.

[17] The consequence for noncompliance within the time limited was not lost on the Claimant, as the very affidavit in support of her application shows. In respect of prejudice to the Claimant, Mrs. Leith-Palmer avers at paragraph 9 of her affidavit that *"[t]he estate, the deceased's dependents and/or his near relations one of whom is still a minor child, will be denied an opportunity to seek redress from the court on behalf of their late father, and would experience irreparable harm."*

Applicability of CPR rule 27.11(4)

[18] The Claimant's application being one to vary an order where the date is fixed for doing something and establishes a consequence, it is my view that the procedure for variation in CPR rule 27.11 is engaged. That rule states:

> *(1) A party **must apply** to the court if that party wishes to vary a date which the court has fixed for -*
>
> *(a) a case management conference;*

> ***(b) a party to do something where the order specifies the consequences of failure to comply;***
>
> *(c) a pre-trial review;*
>
> *(d) the return of a listing questionnaire; or*
>
> *(e) the trial date or trial period.*
>
> *(2) No date set by the court or these Rules for doing any act may be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in paragraph (1).*
>
> *(3) A party seeking to vary any other date in the timetable without the agreement of the other parties must apply to the court, and the general rule is that the party must do so before that date.*
>
> ***(4) A party who applies after that date must apply -***
>
> ***(a) for relief from any sanction to which the party has become subject under these Rules or any court order; and***
>
> ***(b) for an extension of time.***
>
> [Emphases added]

[19] The word *"must"* which appears in CPR rules 27.11 (1) and (4) denotes that an application is required to vary a date where the court has ordered a party to do something by a specified date and also specifies the consequence; and that where the application to vary is being made after the date for compliance, it is mandatory that the party applies for relief from the consequence applied or established pursuant to the Rules or court order.

[20] The Defendant relies on the decision of the Court of Appeal in **George Freckleton v Aston East** [2013] JMCA Civ 39 as being confirmatory of the principle that once a conditional order is breached, the sanction imposed takes automatic effect without need for further order of the court. I harbour no doubt as to the correctness of the principle or that it was confirmed as submitted.

[21] In the **George Freckleton case,** Morrison JA (as he then was) cited with approval the decision in **Marcan Shipping (London) Ltd v Kefalas and Another** [2007] EWCA Civ 463 and the dictum of Moore-Bick LJ at paragraph 24 that

> *… it should now be clearly recognised that the sanction embodied in an 'unless' order in traditional form takes effect without the need for any further order if the party to whom it is addressed fails to comply with it in any material respect.*

[22] The order at issue in the **Marcan case**, like the **George Freckleton case,** was in the traditional form. Whether or not a conditional order is in the form of a traditional *"unless"* order does not remove the requirement for relief from any consequence which applies as a result of noncompliance with the condition. In that regard these words from Moore-Bick LJ in the **Marcan case** are called in aid.

> *[30] The scheme of the Rules [from which the CPR in this jurisdiction is substantially modelled] relating to **conditional orders** is in my view both clear and salutary in its effect, namely, that such orders mean what they say, that the consequences of non-compliance take effect in accordance with the terms of the order, but that the court has ample power to do justice under r 3.8 [which provides for relief from sanctions]…*

[23] In modification, I would remove the reference to rule 3.8 and replace it with CPR rule 26.8, which sets out the procedure for relief from sanctions in this jurisdiction.

[24] The Claimant did not file **and** serve the Amended Pleadings within the fourteen (14) days required by Order 4 - that is on or before 14th April 2025 - in order to continue the claim under the **LRMPA**. The application to vary was filed on 1st May 2025 after the date for compliance had passed. The Claimant was accordingly required to apply for relief from sanctions and for

an extension of time. No application has been made in either regard for the court's consideration. The application to vary would therefore fail.

[25] If a different view is to be taken of the effect of Order 4 and the procedure to be engaged in applying to vary the date specified in it for compliance, I go on to consider the procedure adopted by the Claimant.

Applicability of CPR rule 26.1(7)

[26] The Claimant grounds her application for variation on CPR rules 17.3 and 26.1(7), which set out the procedure for applying for interim remedy and prescribe that the general power of the court under the Rules to make an order includes a power to vary or revoke the order, respectively.

[27] Rule 26.7 is worded in like terms as rule 3.1(7) of the English equivalent of the CPR.

[28] In **Collier v. Williams** [2006] 1 WLR 1945 which was cited with approval by Hart-Hines J in **Belgravia Development Company Limited v Jaleel Handal and Another** [2023] JMSC Civ 33 and Master L. Jackson (Ag) in **Pamella Adina Francis v Pauline Janett Hamilton** [2024] JMSC Civ. 129, and I believe correctly so, it was observed that the

> *[119] … rule gives a very general power to vary or revoke an order. It appears to be unfettered. But it is a wrong exercise of this power to vary or revoke an order where there has been no material change of circumstances since the earlier order was made and/or no material is brought to the attention of the second court which was not brought to the attention of the first. A party who unsuccessfully deploys all his material before a court should not be allowed to have a second bite of the cherry merely because he failed to succeed on the first occasion.*

[29] In so concluding, the approach of Patten J in **Lloyds Investment (Scandinavia) Ltd v Christen Ager-Hanssen** [2003] EWHC 1740 (Ch) at paragraph 7 was approved. Patten J stated that the power

> *… is not confined to purely procedural orders and there is no real guidance in the White Book as to the possible limits of the jurisdiction. Although this is not intended to be an exhaustive definition of the circumstances in which the power under CPR Part 3.1(7) is exercisable, it seems to me that, for the High Court to revisit one of its earlier orders, the Applicant must either show some material change of circumstances or that the judge who made the earlier order was misled in some way, whether innocently or otherwise, as to the correct factual position before him. The latter type of case would include, for example, a case of material non-disclosure on an application for an injunction. If all that is sought is a reconsideration of the order on the basis of the same material, then that can only be done, in my judgment, in the context of an appeal. Similarly it is not, I think, open to a party to the earlier application to seek in effect to re-argue that application by relying on submissions and evidence which were available to him at the time of the earlier hearing, but which, for whatever reason, he or his legal representatives chose not to employ…*

[30] Their Lordships in the **Collier case** considered that "[*40] the circumstances outlined by Patten J are the only ones in which the power to revoke or vary an order already made should be exercised under [the rule]."

[31] On review of the evidence presented by the Claimant in support of her application, no averment has been made of any change in circumstances, material or otherwise since the making of Order; nor has it been alleged that I was misled in any way as to the correct factual position of the Claimant when I made Order 4 on 31st March 2025. In the absence of any evidence in these regards, the application to vary must also fail.

[32] For all the foregoing reasons, the Claimant's application to vary the date for compliance in Order 4 is refused.

[33] The effect of noncompliance with the order as made is that the claim under the **LRMPA** - which was the only claim which the Claimant was permitted to pursue pursuant to orders made on 31st March 2025 - no longer continues or remains. Accordingly, the declaratory relief sought by the Defendant that the Amended Pleadings which were filed but not served on or before 14th April 2025 ceased to exist as of 15th April 2025 is appropriately granted.

Issue (iii)

Whether the Claimant's statement of case should be struck out on the grounds of non-compliance with court orders and/or as an abuse of process.

[34] The application to strike out is made by the Defendant in the alternative to the declaratory relief.

[35] Under CPR rule 26.3 (1) (a) and (b), the court has a discretion to strike out a statement of case for non-compliance with its orders and/or where a statement of case constitutes an abuse of its processes. The Defendant asks that the court exercises the discretion reserved to it to strike out the Claimant's claim on both grounds.

Noncompliance with court orders

[36] As observed by McDonald-Bishop JA (as she then was) in **Branch Developments Limited v the Bank of Nova Scotia Jamaica Limited** [2014] JMSC Civ 003, striking out of a party's statement of case is the most severe sanction which a court can impose for non-compliance with its orders. Relying on the leading case of **Biguzzi v Rank Leisure PLC** [1999]

1 WLR 1926**,** the following helpful guidance in dealing with the question of striking out under the CPR is provided at paragraph [30].

> *(1) Under the CPR the keeping of time limits laid down by the CPR, or by the court itself, is very important and, in fact, is more important than it was under the old rules. The court has an unqualified discretion under the rule to strike out a case where a litigant failed to comply with a rule. The fact that a judge has the power does not necessarily mean that in applying the overriding objective, the initial approach will be to strike out the statement of case.*
>
> *(2) The court has broader powers under the rules than before. So in many cases, there would be alternatives to the draconian step of striking out the claim that would make clear that the court would not tolerate delay but would also, in accord with the overriding objective, enable the case to be dealt with justly.*
>
> *(3) Under the court's duty to manage cases, delays such as have occurred in the past, should no longer happen. The court's management powers should ensure that this does not occur.*
>
> *(4) If the court exercises those powers with circumspection, it is also essential that parties do not disregard timetables laid down. If they do so, then the court must make sure that the default does not go unmarked. If the court were to ignore delays which occur, then undoubtedly there will be a return to the previous culture of regarding time limits as being unimportant.*
>
> *(5) There are alternate powers which the courts have which they can exercise to make it clear that the courts will not tolerate delays other than striking out cases. In a great many situations those other powers will be the appropriate ones to adopt because they produce a more just result.*
>
> *(6) In considering whether a result is just, the courts are not confined to considering the relative positions of the*

parties. They have to take into account the effect of what has happened in the administration of justice generally. That involves taking into account the effect of the court's ability to hear other cases if such defaults are allowed to occur. It will also involve taking into account the need for the courts to show by their conduct that they will not tolerate the parties not complying with dates.

(7) Some alternatives to a striking out of the claim which may be more appropriate are costs orders; ordering a party to pay money into court; awarding interest at a higher or lower rate. A greater advantage of making one or other of these orders as the proper method of dealing with a default of the party is that they are much less likely to result in appeals such as this which in themselves generate huge disproportionate expense.

(8) Judges have to be trusted to exercise their wide discretion fairly and justly in all the circumstances, while recognizing their responsibility to litigants in general not to allow the same defaults to occur as had occurred in the past.

[37] Relying on the judgment of the Caribbean Court of Justice (CCJ) in **Barbados Rediffusion Service Ltd v Asha Mirchandani and Others (No 2) (**2006) 69 WIR 52, which McDonald-Bishop JA (as she then was) described as a powerful persuasive authority on the subject, this general but inexhaustive guidance, which is not dissimilar to that offered by the **Biguzzi case** was also distilled.

(1) Broadly speaking, strike-out orders should be made either when that is necessary in order to achieve fairness or when it is necessary in order to maintain respect for the authority of the court's orders. In this context "fairness" means fairness not only to the non-offending party but also to other litigants who are competing for the finite resources of the court.

(2) If there is a real risk that a fair trial may not be possible as a result of one party's failure to comply with an order of the court, that is a situation which calls for an order striking out that party's case and giving judgment against him. One way in which such a situation may come about is if crucial documents, which are not disclosed within the time prescribed by an order for discovery, are subsequently lost or destroyed, albeit without fault on the part of the non-disclosing party. Another is where a party has been so fraudulent in relation to the discovery process, for example by forging or deliberately suppressing documents and lying about it, that it is impossible to place any reliance on what he has disclosed as being either authentic or complete, without a long and expensive inquiry.

(3) With regard to the use of strike-out orders as a response to disobedience of court orders, the view of Millett J expressed in the Logicrose case (1988) The Times (London), 5 March, that such disobedience can never justify the making of a strike-out order is not accepted. The view that is preferred is that expressed by Arden LJ in the Stolzenberg case (unreported) that the fact that a fair trial is still possible does not preclude a court from making a strike-out order.

(4) It is accepted with some qualifications the principle expounded and applied in cases such as Tolley v Morris [1979] 2 All ER 561, Hytec Information Systems Ltd v Coventry City Council [1997] 1 WLR 1666 and Re Jokai Tea Holdings Ltd [1993] 1 All ER 630, ,that defiant and persistent refusal to comply with an order of the court, can justify the making of a strike-out order.

(5) While the General purpose of a strike-out order in such circumstances may be described as punitive, it is to be seen not as a retribution for some offence but as a necessary and to some extent symbolic response to a challenge to the courts authority, in circumstances in which failure to make such a response might encourage others to disobey court orders and

tend to undermine the rule of law. This is the type of disobedience that may properly be categorised as contumelious or contumacious.

(6) What is required is a balancing exercise in which account is taken of all the relevant facts and circumstances of the case. For one thing, it must be recognised that, even within the range of conduct that may be described as contumelious, there are different degrees of defiance which cannot be assessed without examining the reason for the noncompliance.

(7) The fact that what has been breached is an "unless" order has a special significance, as such an order is framed in peremptory terms which makes it clear to the party to whom it is directed, that he is being given a last chance.

(8) The previous conduct of the defaulting party will obviously be relevant, especially if it discloses a pattern of defiance. It is also relevant whether the noncompliance with the order was total or partial.

(9) Normally it will not assist the party in default to show that the noncompliance was due to the fault of his lawyer since the consequences of the lawyer's acts or omissions are as a rule visited on his client. There may be an exception made, however, when the other party has suffered no prejudice as a result of the non-compliance.

(10) Other factors which, depending on the context, have been held to be relevant include such matters as whether the party at fault is suing or being sued in a representative capacity and whether, having regard to the nature of the relief sought or to the issues raised on the pleadings, a default judgment can be regarded as a satisfactory and final resolution of the matters in dispute.

> *(11) Regard may have to be paid to the impact of the judgment not only on the party in default, but on other persons who may be affected by it.*

[38] Her Ladyship cautioned that the guiding principles in **Biguzzi case**, which I think applies with equal force to that provided by the CCJ in the **Barbados Rediffusion Service Ltd case** is to be heeded. They are not to be taken as promoting an unduly lenient approach to the imposition of sanctions. Accordingly, it must always be at the forefront of the court's mind, as stated by Smith JA in **McNaughty v Wright** SCCA No. 20/2005 delivered 25th May 2005, that

> *… [O]rders or requirements as to time are made to be complied with and are not to be lightly ignored. No court shall be astute to find excuses for such failure since obedience to the orders of the court and compliance with the rules of court are the foundation for achieving the overriding objective of enabling the court to deal with cases justly.*

[39] Delayed compliance with the court's order being the catalyst for the application to strike out, the Defendant contends that the length of the delay, the reasons for delay, the merit of the case, and whether any prejudice may be suffered by the opposing party are considerations for the court on the application to strike out the Amended Pleadings. For the contention, reliance is placed on the decision in **Charmaine Bowen v Island Victoria Bank Limited and Ors.** [2014] JMCA App 14 where Phillips JA relied on **Leymon Strachan v the Gleaner Co Ltd and Dudley Stokes**, Motion No 12/1999 delivered 6 December 1999.

[40] The criteria extracted from the **Charmaine Bowen case** properly apply on consideration of applications for extensions of time. No such application has been made, although the Claimant's submissions were largely occupied in those regards. That notwithstanding, the ultimate question being whether

striking out will produce a just result considering the overriding objective - as observed by McDonald-Bishop JA (as she then was) at paragraph [29] in the **Branch Developments Limited case** - these matters would no doubt be engaged in some way where the guidance offered by the **Biguzzi** and **Barbados Rediffusion Service Ltd cases** is followed, as I propose to do here.

[41] In the instant case the Claimant filed the Amended Pleadings but failed to serve them within the time limited by the court. Service was purported to be effected one (1) day outside of the period ordered. There is no evidence before me that a delay of one (1) day would have placed the Defendant at any greater prejudice in defending the claim than if the Amended Pleadings were served as ordered. In that sense, it might be said that the delay in service would not prevent a fair trial. The authorities are clear, however, that the fact that a fair trial is still possible does not preclude a court from making an order to strike out.

[42] What is required is a balancing exercise which takes into account all relevant facts and circumstances of a case. Among the relevant facts for consideration are the reasons for noncompliance, because as observed in the **Barbados Rediffusion Service Ltd case,** even within the range of conduct which may be considered contumelious, there are different degrees of defiance which can only be properly assessed by examining reasons for noncompliance.

[43] Mrs. Leith-Palmer's evidence is that she is advised by Ms. Lawrence, the Attorney-at-law for the Claimant, that the Amended Pleadings were not served in compliance with the court's order due to time constraint. The averment goes: by the time the documents were filed in court, and Ms. Lawrence went to the offices of the Defendant's Attorneys-at-law to effect service, those offices were already closed. It is further averred that the Defendant's Attorneys-at-law have on previous occasions objected to being served via e-mail, accordingly the documents could not have been served

by that method. Mrs. Leith-Palmer goes on to say that the failure to serve the Amended Pleadings in accordance with the court order was not intentional and that they were served as soon as reasonably practicable. That is the extent of the reasons supplied. I do not accept any of them as good or sufficient reasons for noncompliance.

[44] The Claimant was given fourteen (14) days to file and serve the Amended Pleadings. The amendments would not have been complex since they would be limited to removing portions of the pleadings which related to the claim under the **FAA**. Why it should have taken more than the fourteen (14) days to make those amendments and file and serve them is unexplained. Further, as earlier observed, a claim for damages under the **FAA** is in fact included in the Amended Pleadings contrary to the court's order that the Claimant was not permitted to pursue a claim thereunder.

[45] Pursuant to CPR rule 6.6(2) *"Any documents served after 4:00 PM on a business day or at any time on a day other than a business day is treated as having been served on the next business day."* The 14th April 2025 was a business day.

[46] In respect of the indication that the Defendant's Attorneys-at-law have previously refused to accept service by e-mail, it is observed on the court's record of the Amended Pleadings that they were filed in the registry on 14th April 2025 at 4:00 p.m. Regrettably, the registry is not yet in a position to facilitate the electronic filing of documents. It is difficult to see how a hard copy of the Amended Pleadings could simultaneously be filed at the registry, be scanned or otherwise reproduced, uploaded and emailed to the Defendant's Attorneys-at-law by 4:00 p.m. In any event, the Defendant's Attorneys-at-law are not obliged to accept service by this method if they do not desire to do so.

[47] Further still, knowing of the posture of the Defendant's Attorneys-at-law to service via e-mail, I find it difficult to conclude that Ms. Lawrence reasonably

intended to effect service by that method as Mrs. Leith-Palmer seeks to suggest. No good reason for the default appears on the evidence.

[48] Based on the time of filing of the Amended Pleadings it should have been apparent to Ms. Lawrence that she would have a difficulty complying with the court's order as to service, yet there is no evidence of any effort being made to communicate her difficulty to them. In any event, by operation of the Rules, once she arrived at those offices at any time after 4:00 p.m. to effect service, the documents would be deemed to have been served on 15th April 2025. Judicial notice is taken of the fact that the offices of the Attorneys-at-law for the Defendant is some way from the registry.

[49] When all the evidence as to filing and attempted service of the Amended Pleadings on 14th April 2025 is considered, it is clear that Ms. Lawrence waited until the very last minute to file the documents leaving herself no time to attend the offices of the Defendant's Attorneys-at-law in order to effect service by 4:00 p.m. on that day. This evidence also causes me to regard as a mere platitude the averment that the failure to comply with the court order was not intentional.

[50] Order 4 was a conditional order, made in the context of undue delay on the part of the Claimant in prosecuting the claim, and in circumstances where the court found that the Defendant was prejudiced by her dilatory conduct. A time-bound opportunity was nevertheless given to the Claimant to enable settlement of her pleadings and to continue the claim under the **LRMPA**, thereby placing an obligation on the Defendant for the first time to file a defence to the claim.

[51] This conveniently takes me to another relevant consideration, the previous conduct of the Claimant. As submitted by Counsel for the Defendant, the default which is the subject of the current applications is not an isolated incident but is among the latest in a pattern of disregard for the rules and orders of the court without any or any good reason. The defaults which

precede non-compliance with Order 4 are well documented in the Judgment, and have continued. The breaches are also referenced later in these reasons in consideration of the application to strike out for abuse of process.

[52] The unchallenged evidence is that the Claimant was made aware by correspondence dated 17th April 2025 that issue was being taken with the Amended Pleadings. In that correspondence it is expressly stated that their *"purported service"* was not accepted on account that it was in breach of Order 4. The order was reproduced in full, with portions highlighted to demonstrate that continuation of the claim under the **LRMPA** was conditional not merely on the fling of the Amended Pleadings but also their service on the Defendant within the period specified in the order. The application to vary was filed on 1st May 2025 and as earlier indicated, it contains no application for relief from sanction or an extension of time.

[53] By notice dated 18th September 2025 the parties were advised of the date of hearing for both applications, being 4th December 2025. Two (2) hours were allocated. Parties were permitted to file and serve affidavit evidence in response and reply as appropriate by specified dates, but the Claimant failed to file any such affidavits. Written submissions and authorities were also ordered to be filed and served by a date stated in the notice. The Claimant failed to comply with that order, for which the court granted an extension at the adjourned hearing on 4th December 2024. At the date of filing of the Defendant's submissions and authorities on 28th November 2025, the Claimant's application had still not been served on the Defendant.

[54] I have also considered that the Claimant brings this suit in a representative capacity and that striking out the claim would impact persons other than herself, including a minor. While a relevant consideration, it is not a basis upon which to excuse persistent disregard for the rules and orders of the court. In fact, the Claimant's representative status and the basis upon which she came to it is all the more reason for her to comply with time limits

imposed by the rules and orders of the court. Additionally, considering that she was prevented from pursuing a claim under the **FAA** because it was brought out of time, and the effect of Order 4, the Claimant should have been very alert to ensure faithful compliance with the order.

[55] Consideration has also been given to the substance of the Amended Pleadings. The claim under the **LRMPA** is grounded in negligence and breach of the **OLA,** both of which are dependent on the existence of a duty of care. The Claimant broadly contends in the pleadings that the deceased was employed by unidentified agents and or servants of the Defendant to do work on its electrical plant, and that there was failure to provide a safe system of work. She has failed, however, to provide any evidence on which she would rely to substantiate these claims or to demonstrate that she has a meritorious claim in any respect. The Defendant has denied any employment relationship or engagement of the Claimant at its resort and has presented cogent evidence, which was accepted in the Judgment, of its inability to locate any records evidencing any such relationships. The Claimant has not presented any evidence over the course of the many applications since commencement of this claim which demonstrates that there is any merit to the claim.

[56] Account is also taken of fairness as contemplated by the overriding objective, including the impact on other litigants who must compete for the scarce and finite resources of the court. The failure of the Claimant to diligently prosecute a claim in this matter, which is evidenced by the many instances of non-compliance referenced in the Judgment and the breaches here have resulted in many applications for which resources have had to be allocated for hearings, some of which were wasted due to the Claimant's conduct.

[57] I have already determined, as contained in the Judgment, that due to the passage of time and the Claimant's conduct of the litigations arising out of the alleged incident, the Defendant has suffered serious prejudice, which

will continue for as long as the claim subsists. While the Claimant rambles on in her prosecution of the claim, the Defendant incurs costs of two claims in respect of the same subject matter. To require the Defendant to continue to expend resources in defence of a case, the merits of which are more than questionable would lead to real injustice in my view.

[58] Almost ten (10) years after the alleged incident, Seven (7) years after the first claim in respect of it, and almost three (3) years after the second of two (2) claims was initiated in these courts, the court's resources are still being engaged in the settlement of the Claimant's pleadings. The Claimant has had ample opportunity to prosecute this case and in so doing has used up a disproportionate amount of the court's resources to have reached no further, and for no good or sufficient reason. In all the circumstances, I find that her statement of case is eminently qualified to be struck out for failure to comply with the orders of the court, not just to achieve fairness but with a view to maintaining respect for the authority of the court's orders. As observed by McDonald-Bishop JA (as she then was) in the **Branch Developments Limited case** at paragraph [36] (for which I hope to be forgiven in taking the liberty to reorganize only because I find it convenient for the arrangement of these reasons)

> *… [while] scrupulous steps must be taken to ensure that no one is denied access to justice, undeservedly, in circumstances that could amount to a breach of their fundamental rights to a fair trial enshrined in the Constitution…*
>
> *… the court must guard the legitimacy of its authority jealously. The message must be made clear that its orders are, indeed, meant to be obeyed. The rules and orders of the court must be perpetually effectual in ensuring the smooth administration of the civil justice system and the attainment of a just result in all cases. A culture of compliance is integral to the whole process…*

Abuse of process

[59] The Defendant submits that the proceedings have become an abuse of the court's process and that the just disposal of the claim has become unlikely due to the Claimant's repeated procedural misconduct. Among the matters relied upon by the Defendant in these regards is the failure of the Claimant to serve the first claim constituted in SU2019CV04836 which led to the setting aside of a default judgment; the failure to file affidavits within time, short-serving or failing to serve applications, failing to appear at court hearings, failing to adhere to court orders, failing to file submissions within time, failing to file judges bundles, and failing to serve the Amended Pleadings within the time ordered by the court. These breaches engage contravention of one or more of the rules of court, practice directions and court orders listed below.

a. Orders of 31st March 2025;

b. Rules 5.7, 5.9, 11.11, 26.8, 30.3, and 30.5 of the CPR;

c. Practice Direction No. 8 of 2020;

d. Orders of the Honourable Ms. Justice T. Johnson on 7th December 2023;

e. Orders of the Honourable Mr. Justice K. Anderson on 27th February, 2024; and

f. Orders of 24th September 2024.

[60] The Defendant entreats the court to rely upon the plaintiff's inactivity to establish abuse of process. It does so in reliance on dictum from of Lord Wolf in **Grovit and Others v Doctor and Others** [1997] 2 All ER 417,424 which was cited and adopted by Morrison JA (as he then was] in **Gerville Williams and Ors. v the Commissioner of the Independent Commission of Investigations and Anor.** [2014] JMCA App 7. Thus,

> *The courts exist to enable parties to have their disputes resolved. To commence and to continue litigation which you have no intention to bring to conclusion can amount to an abuse of process. Where this is the situation the party against whom the proceedings is brought is entitled to apply to have the action struck out and if justice so requires (which will frequently be the case) the courts will dismiss the action. The evidence which was relied upon to establish the abuse of process may be the plaintiff's inactivity.*

[61] While the Claimant's conduct of the prosecution leaves much to be desired as it relates to compliance with the rules and orders of the court - for which I have found that an order to strike out her claim should go in aid - I do not believe she can be accused of inactivity in the proceedings as contended by the Defendant.

[62] The enquiry should not end there, however. Consideration should be given to the duty imposed on parties to litigation by CPR rule 1.3, that is, the duty to help the court to further the overriding objective to deal with a case justly. This is expressed at rule 1.1(2) to include:

> *(a) …*
>
> *(b) saving expense;*
>
> *(c) …*
>
> *(d) ensuring that it is dealt with expeditiously and fairly; and*
>
> *(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.*

[63] While the evidence does not permit me to conclude that the Claimant has no intention to bring the litigation to a conclusion, I find that her conduct and history of non-compliance or delayed compliance with rules, practice direction and court orders is demonstrative of the absence of an intention

to have the dispute resolved in an efficient and timely manner. When I consider what the overriding objective entails and the duty imposed on parties to assist the court in achieving them, I do not see any reason why such conduct should not be treated in like manner as inactivity to enable it to be regarded as an abuse of the court's process.

[64] For reasons I have stated in addressing the application to strike out for non-compliance with court orders, it is my judgment that the cumulative conduct of the Claimant constitutes an abuse of this court's processes which warrants the striking out of her claim on this additional ground.

Refusal of jurisdiction

[65] The Defendant submitted that it was open to the court to decline jurisdiction over the claim for the Claimant's failure to serve the Amended Pleadings in accordance with Order 4, pursuant to CPR rule 9.6. Among other things, that rule provides that

> *(1) A defendant who-*
>
> *(a) disputes the court's jurisdiction to try the claim; or*
>
> *(b) argues that the court should not exercise its jurisdiction, may apply to the court for a declaration to that effect.*
>
> *(2) ….*

[66] The Defendant has not filed an application for a declaration that the court should not exercise its jurisdiction. Consequently, I decline to enquire into the submissions which have been advanced by the Defendant in that regard.

[67] It is in all the foregoing premises that I make the orders below.

ORDER

1. The Claimant's application to vary Order (4) made on 31st March 2025 is refused.

2. It is declared that the Amended Claim Form and Amended Particulars of Claim filed but not served on or before 14th April 2025 ceased to be valid as of 15th April 2025.

3. In the alternative to order 2, the Amended Claim Form and Amended Particulars of Claim filed but not served on or before 14th April 2025, are hereby struck out.

4. Costs of the applications to the Defendant, to be taxed if not agreed.

5. The Defendant's Attorneys-at-law are to prepare, filed and serve this order.

Carole S. Barnaby
Puisne Judge