



[2016] JMSC Civ. 85

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION
CLAIM NO. 2013 M 02244**

BETWEEN SHAKERIA ASAKIE GAYLE PETITIONER
AND ROUEL HONORE GAYLE RESPONDENT

Brian Moodie, instructed by Carl Dowding of Pickersgill, Dowding and Bayley-Williams,
for the Petitioner

Rudolph Smellie, of counsel, for the Respondent

Heard: April 7 and May 27, 2016

**MAINTENANCE OF SPOUSE – APPLICATION FOR INTERIM MAINTENANCE ORDER TO BE
CANCELLED – APPLICANT UNEMPLOYED AND EARNING POWER LIMITED – EXERCISE OF
DISCRETION OF COURT – APPLICATION FOR RELIEF FROM SANCTIONS**

ANDERSON, K. J

[1] The applicant – Rouel Honore Gayle had, on January 27, 2016, filed an
application for court orders, seeking orders as follows:

- ‘(i) That the interim maintenance order made herein by the Honourable Mr.
Justice K. Anderson on June 15, 2015 be cancelled.
- (ii) That the applicant be relieved from any sanctions for failing to comply with
the said order.’

- [2] That application was heard in chambers, by me as the presiding Judge, on April 7, 2016. Said application is supported by one affidavit, that being the applicant's affidavit which was also filed on January 27, 2016.
- [3] Following upon oral application which was made to the court by the counsel for the party responding to the said application, namely, Shakeria Asakie Gayle, which was not opposed by counsel for the applicant, this court had ordered cross-examination of the applicant to be undergone. Consequentially, the applicant was cross-examined and re-examined and was thereafter, questioned by the presiding Judge.
- [4] As such, this court has read the application and evidence led in support and considered same carefully, just as it has equally carefully considered all of the oral evidence which was given, as well as the respective oral submissions made by the parties' respective counsel, upon the application.
- [5] As can readily be recognized from the orders being sought on the application, this matter pertains to an interim maintenance order which had been made by me, on June 15, 2015.
- [6] Further background information is as follows: The Petitioner has filed a petition for dissolution of marriage. That petition was filed on September 4, 2013 and that petition proceeding is still, awaiting final determination by this court. Subsequent to having filed that petition and in circumstances wherein the parties are separated from one another, the petitioner applied by means of application for court orders which was filed on March 4, 2014, for the respondent (Rouel Gayle) to pay to her the sum of \$50,000.00 per month, 'being maintenance under the **Maintenance Act**.' Another order which she has sought to obtain by means of that application is: 'That the maintenance do continue until the Petitioner's death or re-marriage.'

- [7] That maintenance application was first scheduled for hearing in chambers, on October 17, 2014. Regrettably though, for varying reasons, that application has not yet been heard by this court and is next scheduled for hearing, on January 18, 2017. It is an application which is being vigorously opposed by the respondent.
- [8] On June 15, 2015, when that maintenance application came up for hearing before me, this court had then ordered, as permitted by the provisions of **section 15 (1) of the Maintenance Act**, that Rouel Gayle pay, as of July 31, 2015 and continuing as at the end of every month thereafter, until this court makes its final order as regards the petitioner's application for court orders which was filed on March 4, 2014, the sum of \$10,000.00 per month, to Shakeria Gayle. That interim maintenance order was made, following upon oral application for same, having been made by attorney Deborah Dowding, who remains as one of the attorneys on record for the petitioner.
- [9] It should be noted that no application for leave to appeal that interim maintenance order was ever made to this court, nor, as far as I am aware, was any application ever made to the Court of Appeal, for leave to appeal that interim order. That interim maintenance order therefore remains in full force and effect.
- [10] The applicant, who will hereafter in these reasons, be referred to as, 'Mr. Gayle' has not though, to date, made payment of even one cent towards the maintenance of the respondent, who will hereafter in these reasons, be referred to as, 'Mrs. Gayle.' As such, to put it otherwise, Mr. Gayle has been in absolute non-compliance with this court's interim maintenance order, albeit that he has put forward, in his affidavit evidence which has been led in support of his application to cancel that interim maintenance order, that this was, not due to any disrespect for the court, but due to his genuine inability to have done so. His reasons for that alleged inability of his have been set out in that said affidavit and were challenged during cross-examination and upon submissions.

- [11] Those reasons and other averments made in Mr. Gayle's affidavit evidence can be summarized as follows: Mr. Gayle's last term of engagement with the Jamaica Defence Force (hereinafter referred to as 'the JDF') which was, at that time, his means of livelihood, came to an end on September 30, 2015. Unless he had, prior thereto, applied for a new term of engagement, he would not be re-engaged. He did not apply to be re-engaged and thus, he was discharged on the grounds, of, 'termination of engagement,' on September 30, 2015.
- [12] Having been discharged from the JDF, Mr. Gayle no longer had that means of livelihood available to him. Upon his having, prior to September 30, 2015, decided that he would not seek re-engagement with the JDF and then having been faced with the prospect that he would have no other means of livelihood, once he had been discharged from the JDF, Mr. Gayle decided to use the funds from a loan which he had taken out in July, 2015, from the JDF credit union, to fix his car and to hire someone to use it as a taxi. The monthly payment to be paid with respect to that loan, is \$9800.00.
- [13] The 'current loan amount' as at November 23, 2015, was \$87,704.49. It is unknown to this court, whether that, 'current loan amount' sum, is the actual sum borrowed, or the outstanding sum as at November 23, 2015, being only therefore, a part of the larger sum borrowed. Mr. Gayle has not made this clear in any evidence given to this court, by him, for present purposes. Mr. Gayle was in arrears, in the sum of \$19,600.00, with respect to that loan, as at November 23, 2015.
- [14] Mr. Gayle's arrangement with that person, to use Mr. Gayle's vehicle as a taxi, began sometime in October, 2015 and was expected to have brought in to him, \$15,000.00 per week. Mr. Gayle had, according to his affidavit evidence, only received the sum of \$15,000.00 per week, on two (2) occasions, since, from the start of this business venture, the person to whom he had given his vehicle to use as a taxi, had complained that the vehicle had, 'developed problems.'

- [15] Out of the sums which he received from that business venture, he has had to be paying for repairs to that vehicle. According to Mr. Gayle's affidavit evidence, which was deponed to, on January 27, 2016 things have now gone, 'from bad to worse,' in that he has had to park his car for 'the past few weeks due to the bad gas situation and my inability to find the money to change the injector and clean the gas pump.'
- [16] Accordingly, Mr. Gayle has alleged, by means of his affidavit evidence, that, 'far from meeting the many obligations,' that he used to meet, he has, since his having been discharged from the JDF, been increasingly, 'reduced to having to rely,' on his family for his own survival and to help to maintain his son.
- [17] As regards that son of Mr. Gayle, a birth certificate which was appended to an affidavit filed by Mr. Gayle in response to Mrs. Gayle's maintenance application, on October 10, 2014, reveals that the mother of that son of Mr. Gayle, is named: Tiffany Rogena Lindsay. Her place of residence is recorded in that birth certificate, just as is his, as: 30 Lanark Avenue, Bridgeport, St. Catherine. That address is deponed to by Mr. Gayle as, in his affidavit evidence which was filed in support of his application to cancel the interim maintenance order, being the address where, at the time when he so deponed, he then lived and had his true place of abode.
- [18] Mr. Gayle's son's name is: Jhamari Joshua Gayle and his date of birth is: February 24, 2013. What that would therefore mean, is that as at the time when Mr. Gayle decided to end his employment with the JDF, as a matter of his personal and voluntary choice, Mr. Gayle then had the responsibility of maintaining a very young child, who was then only two (2) years and seven (7) months old. It is also of interest to note that the occupation of Tiffany Rogena Lindsay, as recorded in the birth certificate of Jhamari Gayle, is recorded as being 'house duties.' In all likelihood therefore, or at the very least, as far as this court presently knows, she is not making a direct financial contribution to the

maintenance of Jhamari Gayle, or for that matter, to the maintenance of either herself, or Mr. Gayle.

- [19] It should be noted that Mrs. Gayle was aware, from the time when she filed her divorce petition on September 4, 2013, that Mr. Gayle had fathered a child with another woman, during their marriage. Mrs. Gayle's divorce petition has disclosed that she and Mr. Gayle have lived separate and apart from one another, since as of July, 2009. Accordingly, it is clear that Jhamari Gayle was born a few years after Mr. and Mrs. Gayle had permanently separated from each other.
- [20] This court has for the purposes of Mr. Gayle's application to which these reasons for ruling, relate, taken judicial notice of the contents of Mrs. Gayle's divorce petition and the birth certificate of Jhamari Gayle – which was attached to affidavit evidence earlier filed in respect of Mrs. Gayle's maintenance application.
- [21] It is to be carefully considered in the context of the family obligations which Mr. Gayle would have had to meet as at the date when his engagement with the JDF came to an end, what are the reasons proffered by Mr. Gayle, in his affidavit evidence, as to why he essentially 'resigned,' or to put it more precisely, voluntarily refused to re-engage with the JDF.
- [22] He has averred that he 'resigned' from the army, because he increasingly felt that he had no alternative but to do so. He has alleged that that decision was in the making from some time ago, as he had, *'long since lost zest for army life' and had even found himself performing, way below the standard required, for the past few years.'* According to him, *'now with the onset and stress of this court case,'* he knew that he could not bring himself to apply for re-engagement, especially since, *'I knew I could not bring myself to apply for re-engagement especially since I knew I had deceived the army and feared that the army would find out, which would mean in effect a dishonourable discharge; and since I was also appalled that, having received her part of the deal, the applicant was using the*

situation to extort more than she had agreed to accept under it.’ He went on and averred that, ‘...accordingly, I made the decision in July 2015 and tendered in August 2015 the letter indicating that I would not be re-applying. And in the face of what was clearly an uncertain immediate future without any proper means of livelihood, I genuinely was not able to meet the said payments ordered by the court, even for the months before the date of my discharge.’

[23] The final averment made by Mr. Gayle in the affidavit evidence which he has filed in support of his application to cancel this court’s interim maintenance order, was an averment which was no doubt made, as a consequence of Mr. Gayle’s failure to comply with the provisions of **section 15 (6) of the Maintenance Act**.

[24] For a better understanding of **section 15 (6)**, one needs to note the provisions of **section 15 (1) (a)** of the said Act. These provisions will therefore now, each be set out: **Section 15 (1) (a)** – *‘In relation to an application for a maintenance order, the court may make an interim or final order requiring that an amount be paid periodically whether for an indefinite or limited period, or until the happening of a specified event.’*

Section 15 (6) – *‘A respondent against whom an order is made under this section shall notify the court in writing of any change in the respondent’s employment, within seven (7) days after becoming aware of the change.’*

[25] In his final averment in that affidavit of his, Mr. Gayle deponed – *‘That I was not aware of the provision in the **Maintenance Act** requiring me to advise the court in writing of my change of employment within seven (7) days of that happening, and I am informed by my attorney-at-law and verily believe that neither was he before preparing to make this application and so this is why I failed to do so.’*

[26] When Mr. Gayle was cross-examined, he gave evidence that he had been employed with the JDF for 14 years and that he was expecting to receive a lump

sum payment of over \$1.1 million, arising from his having worked with the JDF for a period over 12 years.

- [27] According to Mr. Gayle, the person who was supposed to drive his vehicle and use same as a taxi, is named – Andrew, but Mr. Gayle said that he does not know Andrew’s last name. The vehicle which was being used for that purpose, is a 2001 Mitsubishi Cedia, which is registered in Mr. Gayle’s name. Mr. Gayle testified that he owns no other vehicle. Andrew was supposed to pay for gas for the vehicle, while Mr. Gayle’s responsibility was the maintenance and upkeeping of the vehicle, inclusive of paying for oil for the vehicle. The arrangement was for Andrew to bring in \$15,000.00 per week and that was the extent of the arrangement.
- [28] Mr. Gayle also testified that he paid about \$5,000.00 between October and December, 2015, for oil servicing for the vehicle. Between October and December, 2015, he spent money on purchasing spark plugs for the vehicle, but he cannot recall how much he spent in that particular respect. He also testified that during that time period, he spent under \$3,000.00 on three (3) bulbs for the vehicle and that in December, 2015, the vehicle broke down as a result of the, ‘bad gas’ situation and has been to three (3) different garages since then, in an effort to have it repaired. His testimony was that when he testified orally, that having been on April 7, 2016, the vehicle was then still at the third garage that it had been to, since it had last broken down, which was in early December, 2015.
- [29] Mr. Gayle also gave evidence that he did not have to pay anything when his vehicle first went to the garage and that it was Andrew that had drove it there as he never sent it to that garage, but Andrew had driven it there, when he had encountered problems with it.
- [30] The first mechanic at the first garage that the vehicle went to, in early December, 2015, was not able to diagnose and fix the problem.

- [31] When the vehicle was taken to the second garage, Mr. Gayle only paid for diagnosis of the problem. In that regard, he paid \$3,500.00. He testified that he has not yet paid anything for the work done in relation to his vehicle, at the third garage, but he expects to spend further monies to repair the vehicle.
- [32] Interestingly enough, prior to his having given evidence of having paid the mechanic at the second garage that the vehicle was taken to, in order to be repaired, Mr. Gayle was asked by cross-examining counsel – what’s wrong with the motor vehicle? His answer was – *‘It’s not fully diagnosed as yet, but it happened in the time of the bad gas crisis. The most I can tell you is the fuel pressure pump is being examined right now.’*
- [33] That last – quoted answer is an interesting one, because, at a later stage while giving his evidence, Mr. Gayle testified that he had paid \$3,500.00 for diagnosis of what was wrong with his vehicle, as was done while his vehicle was at the second garage. How then, could it be truthful for him to have stated – *‘It’s not fully diagnosed as yet...?’*
- [34] Furthermore, if it wasn’t, ‘fully diagnosed as yet,’ as at the date when he provided his oral testimony to this court, that having been April 7, 2016, why then, did he testify in his affidavit which, as it ought to be recalled, was deponed to, on January 27, 2016, that the car, *‘had to be parked for the past few weeks due to the bad gas situation and my inability to find the money to change the injector and clean the gas pump.’* (Stated within last sentence of para. 4 of his affidavit evidence).
- [35] If the vehicle had not been fully diagnosed as yet, as at the date when he provided oral testimony to the court, how then could it be that prior to that, when he deponed to his affidavit evidence, he could truthfully have stated that the vehicle was parked, ‘due to the bad gas situation’ and his inability to change the injector and clean the gas pump?’ Which is the truth? It is either that Mr. Gayle

knows what is wrong with his vehicle, or he does not, because it has not yet been diagnosed.

[36] Those last few questions which this court has asked itself, really permit only one logical answer. That is, that Mr. Gayle was not throughout all of his written and oral evidence, being entirely truthful and/or frank. One is left to wonder therefore, whether the reason why he has been only partially truthful is because, he believes that it will not assist him in the court's resolution of his application which is presently under consideration, for him to be completely truthful.

[37] This court has, after careful consideration, reached that conclusion and has reached same, based on the fact that there exists very pertinent evidence which was not set out in Mr. Gayle's affidavit and which was only given in evidence and revealed to this court, as a consequence of Mr. Gayle having been cross-examined.

[38] One such example is the evidence that Mr. Gayle is expecting to receive a payment of over \$1.1 million from the JDF. That was only mentioned by Mr. Gayle, for the first time, while he was being cross-examined and interestingly enough also, Mr Gayle was re-examined by his counsel and then asked if he had any idea when it is that he is expecting to get that lump sum payment. Mr. Gayle's answer to that question, was: *'I've been checking up on it since last year, so it's any time now, I think.'*

[39] Accordingly, while emphasizing in both his affidavit and oral evidence that he is impecunious, it is, this court believes, nothing other than an attempt to hide the whole truth, which caused Mr. Gayle not to have stated anything at all about that expected income, prior to his having been specifically asked about same, during cross-examination. Mr. Gayle no doubt chose to hide the whole truth because he believes that this court's knowledge of the whole truth, would not benefit him for the purposes of his application to which these reasons for ruling, relate.

- [40] Accordingly, this court does not accept Mr. Gayle's evidence that he did not think that it would be relevant to include in his affidavit, that he was entitled to and expects to get a lump sum payment from the JDF. This court also does not accept his evidence that he did not think it was important that he was entitled to and expected to get a lump sum payment from the JDF. That evidence was given by Mr. Gayle during cross-examination.
- [41] Also during his evidence while under cross-examination, Mr. Gayle testified that he received his salary from that JDF up until the end of September, 2015. When asked by cross-examining counsel, whether he received, as part of his salary with the JDF an allowance for his spouse, Mr. Gayle's answer was, 'Yes.'
- [42] This court therefore, in the course of arriving at its decision in respect of Mr. Gayle's application which is now under consideration, had to ask itself the question: Why is it that Mr. Gayle made no payment of the sum of \$10,000.00 per month for the months of July – September, 2015, in accordance with the interim maintenance order which was made by this court?
- [43] According to Mr. Gayle's affidavit evidence, having tendered to the JDF in August, 2015, the letter informing them that he would not be applying for re-engagement and then having faced, '*an uncertain immediate future without any proper means of livelihood,*' he, '*genuinely was not able to meet the said payments ordered by the court; even for the months before the date of discharge.*'
- [44] What this court has understood from that particular averment, which is set out in para. 7 of Mr. Gayle's affidavit, is that Mr. Gayle made no payment whatsoever, between July and September, 2015, because he decided not to pay same, since he then faced an, 'uncertain, immediate future.'
- [45] It cannot be forgotten though, that, in respect of that uncertain immediate future which he then faced, he was simultaneously confronted with a child of his that he

needs to maintain and a court order for maintenance, or in other words, an interim maintenance order, that he needs to and ought to comply with.

[46] Faced with those challenges though, Mr. Gayle chose to give up the only certain means of employment which he had available to him, up until September, 2015. It is apparent to this court, that in having so chosen, he had chosen also, to prioritize certain responsibilities of his, over others. Thus, for instance, in preparing for his, 'uncertain immediate future,' he chose to use loan funds to fix his car and to hire someone to use it as a taxi. He did not choose to use any sum from the loan that he had been granted, to pay the sum owed as per the interim maintenance order.

[47] That is nothing other than Mr. Gayle having then been, as he would term it, 'unable to pay' Mrs. Gayle the modest maintenance sum required by the order, because he had chosen to place himself in a financial position wherein he would appear, at first glance, to have been unable to pay same. In truth and in fact though, he was not unable to pay same. There is a difference between being unable to make payment of the sum required to be paid, pursuant to a maintenance order as against, being unwilling to make such payment and therefore, not placing in proper prioritization, what needs to be done in one's life, to make that payment.

[48] This court is of the considered opinion that, with respect to Mr. Gayle and his current financial situation and why it is that he claims to be 'unable to pay' as per the interim maintenance order, it is not in fact that Mr. Gayle is truly unable to pay, but instead, that Mr. Gayle, being unwilling to pay, has chosen to place himself in a position which, at first glance, makes it appear as though he is unable to pay. From his evidence especially as given during cross-examination though, that first glance, 'glow of impecuniosity,' which he had, was significantly darkened and shown to be nothing other than a facade.

- [49] Having so concluded, it would be useful for the purposes of these reasons, to, at this stage, set out the most pertinent aspect of the law which has to be considered for the purposes of Mr. Gayle's application for the interim maintenance order to be cancelled and for him to be relieved from sanctions, arising from his having failed, to date, to comply with that order.
- [50] For present purposes, Mr. Gayle's application was made pursuant to the provisions of **section 18 (a) of the Maintenance Act**. There exists a **section 18 (b) and (c)**, but those provisions are of no relevance for present purposes. **Section 18 (a)** provides as follows – *'At any time after a maintenance order or an order of attachment has been made under this Act, a court may upon the application of any of the parties to the proceedings in which such order was made, vary the order in such manner as the court, thinks fit, suspend the order, revive a suspended order, or cancel the order if circumstances so warrant.'*
- [51] Mr. Gayle has applied for a cancellation of the interim maintenance order. Having applied for that particular relief, it is not open to this court, to do anything with respect to that interim maintenance order, other than to leave it as extant, or cancel it. This court cannot vary or suspend that order, as that was not a relief which was sought by Mr. Gayle, in his application for court orders. Furthermore, his counsel did not, on his behalf, seek this court's permission, for his client to be granted any other order, whether further, or in the alternative.
- [52] **Rule 11.13 of the Civil Procedure Rules (CPR)** provides that – *'An applicant may not ask at any hearing for an order which was not sought in the application unless the court gives permission.'*
- [53] The burden of satisfying this court that its discretion ought to be exercised in his favour, rested on Mr. Gayle's shoulders. In considering how it ought to exercise that discretion, this court has taken into account the overall interests of justice.

- [54] It is this court's considered opinion that a court should not cancel a maintenance order, unless satisfied either, that said order was made on a fundamentally erroneous basis, or alternatively, that to have said order remain extant would serve absolutely no useful or meaningful purpose, such as, for example, if the applicant has, subsequent to the making of the maintenance order, for whatever reason, become an invalid and thus, become unable to even take care of himself/herself, much less, earn a living and having no recognizable means of financial support such as would enable him/her to comply with that order.
- [55] That would undoubtedly be a situation in which there would not have been, on the part of such an applicant, either, 'wilful refusal,' or 'culpable neglect,' to comply with that order. It should be noted that **section 21 (1) of the Maintenance Act** provides that – '*A person shall not be committed to an adult correctional institution for default in payment under a maintenance order unless the court is satisfied that the default is due to the wilful refusal or culpable neglect of that person.*' It follows, from the wording of that section, that if there has been culpable neglect to comply with a maintenance order, that such would constitute sufficient ground for committal of the person in default of compliance with that order.
- [56] All of these things must be carefully considered by this court, or any other court to which an application has been made, to cancel a maintenance order. In the circumstances, if this court is satisfied, for present purposes, that there has been and is ongoing, conduct which is, at least, tantamount to culpable neglect to comply with this court's maintenance order, surely then, since that would be a basis for a committal order being made against the party in default, it cannot also be a basis for this court to conclude that, since the applicant seeking cancellation, is in fact, 'unable to pay,' albeit that this is due to his blameworthy ('culpable') neglect, then this court should cancel the maintenance order. Such an interpretation would be patently illogical and additionally, not in accord with common sense.

[57] Mr. Gayle has, in his application, set out two (2) grounds for the orders being sought. They are as follows:

- i. *'Section 18 of the Maintenance Act empowers the court to cancel any maintenance order, if the circumstances so warrant;'* and
- ii. *'The circumstances so warrant, in that the financial capability of the applicant to pay such maintenance has long since drastically diminished.'*

[58] The truth is though, that from the evidence referred to above, even before the financial capability of Mr. Gayle, to make such maintenance payment, had been drastically diminished, he was not making payment of even one cent towards the maintenance sum of \$10,000.00 per month, which was to have been paid. That would have been between the months of July and September, 2015.

[59] Furthermore, that drastic diminishing of Mr. Gayle's means of income, was as a matter of Mr. Gayle's voluntary choice, in circumstances wherein, according to him, he was placing himself in a situation of an uncertain, immediate future. Clearly, to my mind, Mr. Gayle must have given up his employment with the JDF because he felt that it would ultimately be, in some way, better for him to do so, than it would be, for him to retain that employment. Perhaps he did so, in order not to pay any maintenance sum whatsoever to Mrs. Gayle, whether by way of interim or even, final maintenance order.

[60] Mr. Gayle's decision not to continue with his employment with the JDF and consequentially, his placing of himself in a position wherein he appears to be unable to pay the interim maintenance sum each month, can properly be attributed by this court, to either a wilful refusal to pay, or at the very least, blameworthy neglect on his part, to pay. That being the finding of this court, it could hardly be expected that this court could and/or would exercise its discretionary powers in Mr. Gayle's favour and cancel the interim maintenance order.

- [61] This court will return to its consideration of other aspects of the evidence, further on in these reasons, but since Mr. Gayle has also applied for relief from sanctions that may be imposed arising from his failure to have complied with the interim maintenance order to date, it would be prudent at this juncture, to address same.
- [62] This court cannot grant relief from any sanctions that may be imposed upon Mr. Gayle, arising from his having, up until now, failed to comply with the interim maintenance order. What this court can do, with respect to that order, has been clearly set out in the **Maintenance Act**, section 18. In any event, no sanction has, as yet been imposed upon Mr. Gayle and it may very well be, that for varying reasons, no such sanction is ever imposed. As the saying goes – ‘sufficient unto the day.’
- [63] With there having, at least as yet, not been any sanction imposed on Mr. Gayle, **rule 26.8 of the CPR** cannot be utilized to obtain relief from sanctions. That rule, should be read along with **rule 27.8 (2)** which reads as follows: ‘*Where a party has failed to comply with any of these rules, a direction or any order, any sanction for non-compliance imposed by the rule, direction or the order has effect and rule 26.9 shall not apply.*’ **Rule 26.8** sets out conditionalities for the making of an application for relief from sanctions and what must be the court’s considerations when considering such an application. **Rule 26.8** has no pre-emptive effect whatsoever.
- [64] As can readily be recognized from the wording of that particular rule of court, it does not permit one to make an application under that rule, in order to prevent a sanction from being imposed. Instead, it permits persons to apply for relief from sanctions, in circumstances wherein, a sanction has already been imposed by the court.
- [65] Returning to the evidence now, during cross-examination, Mr. Gayle readily accepted that although he is aware that a PPV licence is required to run a vehicle

as a taxi, nonetheless he had never applied for a PPV licence in respect of the motor vehicle – his motor vehicle which he had been and wishes to continue operating as a taxi. That aspect of his evidence is of significance, because it demonstrates that Mr. Gayle will do whatever he believes to be in his best interests, regardless of even criminal law constraints.

[66] As regards his ability to maintain his son and himself, Mr. Gayle testified that with the help of his family, he receives ‘a little funds’ to feed and clothe his child and he and his son live under the same shelter with his parents, who generously provide meals for both he and his son. His son attends Elim Early Childhood School and he is in his first term there. Mr. Gayle paid his son’s first term school fees, in the sum of \$6,000.00.

[67] Again, this court has been forced to ask itself the question: How is it that Mr. Gayle can afford to and has in fact paid his son’s school fees to date, but yet, according to him, he is not in a position and never has been in a position to pay even one cent, in accordance with the interim maintenance order? The simple answer to that question is that, that is so because it is not that Mr. Gayle is wholly unable to comply with this court’s interim maintenance, but rather, that he has chosen not to comply.

[68] When he was questioned as regards what efforts he has made to get a job since he left the army, Mr. Gayle testified that he had made, ‘vast efforts’ and sent applications to, ‘several places.’ Yet, of those, ‘vast efforts,’ when asked to state where he had applied, Mr. Gayle could only state that he had applied to Guardsman and King Alarm. According to him, his family members had applied, on his behalf, to Caribbean Depot. Accordingly, as he himself agreed in his testimony, of those, ‘vast efforts’ that he made, he could only remember three (3) places.

[69] This court does not accept that Mr. Gayle has made vast efforts to obtain a job, ever since he left his employment with the JDF. This court is not even, at all,

convinced that Mr. Gayle has made any such effort at all. Mr. Gayle's evidence in material respects, such as this, lacks credibility.

[70] Mr. Gayle gave evidence that he had in fact collected from the use of his vehicle as a taxi service, while it was being operated as such, prior to it having been placed in the garage for repair work to be done, not just the \$30,000.00 (two (2) payments of \$15,000.00 each) as set out in his affidavit evidence, but on average, \$10,000.00 per week.

[71] It will be recalled that in his affidavit, Mr. Gayle testified that he had started operating his vehicle as a taxi, as per the 'arrangement' that he had, from as of sometime in October 2015. His vehicle went into the garage in early December, 2015. Accordingly, he would have earned, on average, \$10,000.00 per week, throughout that period of time and that surely must be a larger sum than \$30,000.00 which he testified to, in his affidavit. Why then, did he not tell the truth in his affidavit evidence? According to him, if his lawyer had asked him, it would have been recorded. He said that he doesn't study law, so he doesn't know what is necessary for such things.

[72] This court does not accept that explanation, because Mr. Gayle appeared to this court to be someone who is fully literate and would therefore, have recognized that what was set out in his affidavit as to his earnings from his use of his vehicle as a taxi, was wholly inaccurate. He however, swore to the contents of that affidavit, as is. That is yet another example of Mr. Gayle's lack of honesty.

[73] Finally on the issue of Mr. Gayle's honesty, or rather, his lack thereof, Mr. Gayle's testimony, in his affidavit evidence and under cross-examination, that he had deceived the JDF, also is evidence which is not favourable to his hope of obtaining the primary order which he is seeking, that being for the cancellation of the interim maintenance order. He gave evidence that while in the army, he had applied for permission to marry, when he knew it was a sham, in that it was a, 'business marriage' and a business marriage in the army, is illegal.

[74] To this court's mind, that evidence not only shows that Mr. Gayle lacks credibility, but also, that he will manipulate situations in order to achieve a personal objective of his.

[75] In the final analysis therefore, this court will not grant to Mr. Gayle, either of the reliefs which he has sought.

[76] This court's orders will be as follows:

- (i) The application by the respondent – Rouel Honore Gayle, for court orders, which was filed on January 27, 2016, is denied in its entirety.
- (ii) No order as to the costs of that application.
- (iii) The petitioner - Shakeria Asakie Gayle, shall file and serve this order.

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Hon. K. Anderson, J.