IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2016HCV04356

BETWEEN	**GLANVILLE BLAKE**	**CLAIMANT**
AND	**PETER THOMPSON**	**DEFENDANT**

CONSOLIDATED WITH:

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. SU2019CV03293

BETWEEN	**RASHEKA REEVES** (Administrator in the Estate of Alverga Reeves, deceased)	**CLAIMANT**
AND	**PETER THOMPSON**	**DEFENDANT/ ANCILLARY CLAIMANT**
AND	**BLANCH VERONA CRAWFORD**	**1ST ANCILLARY DEFENDANT**
AND	**GLANVILLE BLAKE**	**2ND ANCILLARY DEFENDANT**

CONSOLIDATED WITH:

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. SU2019CV03294

BETWEEN	**RASHEKA REEVES** (Administrator in the Estate of Eric Reeves, deceased)	**1ST CLAIMANT**
AND	**RAMON REEVES** (Administrator in the Estate of Eric Reeves, deceased)	**2ND CLAIMANT**
AND	**PETER THOMPSON**	**DEFENDANT/ ANCILLARY CLAIMANT**
AND	**BLANCH VERONA CRAWFORD**	**1ST ANCILLARY DEFENDANT**
AND	**GLANVILLE BLAKE**	**2ND ANCILLARY DEFENDANT**

CONSOLIDATED WITH:

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. SU2021CV01619

BETWEEN	**RASHEKA REEVES**	**CLAIMANT**
AND	**PETER THOMPSON**	**DEFENDANT/ ANCILLARY CLAIMANT**
AND	**BLANCH VERONA CRAWFORD**	**1ST ANCILLARY DEFENDANT**
AND	**GLANVILLE BLAKE**	**2ND ANCILLARY DEFENDANT**

Mr. Andre Moulton instructed by Knight, Junor & Samuels for and on behalf of Ms. Rasheka Reeves and Mr. Ramon Reeves

Mr. Douglas Thompson and Ms. Antoinette Wynter instructed by K. Churchill Neita & Co for and on behalf of Mr. Peter Thompson

Ms. Danielle Carter instructed by Bignall Law for and on behalf of Mr. Glanville Blake

Ms. Blanch Verona Crawford is unrepresented

CIVIL PRACTICE & PROCEDURE – Whether an applicant is entitled to have a subsequent Notice of Application for relief from sanctions and/or permission for documents and witness statements to stand heard, given that earlier orders, namely an unless order resulting in the striking out of a prior application, have already dealt with the non-compliance – Application for Relief from Sanctions – Rule 26.8 of the CPR – Whether the application was made promptly – Whether the application is supported by evidence on affidavit – Whether the failure to comply was not intentional – Whether there is a good explanation for the failure – Whether the applicant has generally complied with all other relevant rules, practice directions, orders and directions

Dates Heard: November 25, 2025 and December 1, 2025

PALMER HAMILTON, J

BACKGROUND

[1] These proceedings concern 4 consolidated claims, each commenced by separate Claim Forms but involving the same Defendant. In each action, the respective

Claimants seek damages for negligence arising out of the same motor vehicle accident which occurred on or about the 19th day of August, 2016. For ease of reference, Mr. Glanville Blake will be referred to as the Applicant throughout this judgment and Mr. Peter Thompson as the Respondent. Learned Counsel Mr. Moulton did not object to the Applicant's Application and so no submissions were advanced.

THE APPLICATION

[2] The matter presently before the Court is an Application for Relief from Sanctions filed on the 17th day of April, 2025, by the Applicant in Claim No. 2016HCV04356. The Applicant is seeking the following Orders:

> *(1) The Applicant be granted relief from sanctions imposed by the Order of the Honourable Justice N. Hart-Hines dated October 22, 2024, striking out the Notice of Application for Relief from Sanctions filed on January 23, 2023, for failure to comply with the unless order of May 21, 2024, in respect of the filing of a witness statement.*
>
> *(2) The Applicant's Witness Statement, filed on April 10, 2025, be permitted to stand as if filed in compliance with the Case Management Conference orders of January 24, 2022, and the Applicant be allowed to rely on it at trial.*
>
> *(3) No order as to costs.*
>
> *(4) Such further or other relief as this Honourable Court deems just.*

[3] The grounds on which the Applicant are seeking the Orders are as follows:

> *(1) Pursuant to Rule 26.8(1) of the Civil Procedure Rules (CPR), the Court has the power to grant relief from sanctions for non-compliance with any rule, order, or direction.*
>
> *(2) The failure to comply with the unless orders of May 21, 2024, was not intentional and resulted from exceptional circumstances, including administrative errors at the Applicant's Attorneys-at-Law and challenges in coordinating with the Applicant due to his rural location and limited access to communication.*
>
> *(3) The Applicant has a good explanation for the failure, as detailed in the Affidavit of Vaughn O. Bignall filed in support of this Application.*

(4) The Applicant has acted promptly in remedying the non-compliance by filing the witness statement on April 10, 2025, within three weeks of the Court's order of March 31, 2025, which adjourned the Pre-Trial Review and set further deadlines.

(5) The trial date of December 8, 2025, remains unaffected, and granting relief will not prejudice the Defendant, as sufficient time exists for preparation.

(6) The Applicant acknowledges that a subsequent Application for Relief from Sanctions filed in 2025 erroneously sought relief for the striking out of the claim, which did not occur. This error was due to a clerical oversight and has been rectified by the present Application, which correctly addresses the October 2024 order.

(7) Granting relief is in the interest of justice and aligns with the overriding objective under CPR Rule 1.1 to deal with cases justly.

[4] The Application was accompanied by the Affidavit of Vaughn O. Bignall dated and filed on the 17th day of April, 2025.

SUBMISSIONS

[5] On the 18th day of November, 2025, when this matter came before me for a Pre-Trial Review, an Order was made for submissions and list of authorities to be filed and served on or before November 24, 2025. Neither Counsel complied with those orders. Instead, the Court heard oral submissions at the hearing of this Application. A further Order was thereafter made directing Counsel to file the authorities on which they relied. I wish to assure all parties that their submissions and cases were thoroughly considered even if not directly referenced.

LAW & ANALYSIS

A. *PRELIMINARY POINT*

[6] On the 24th day of January, 2022, Master Carnegie (Ag.) made the usual Case Management Conference Orders, in particular that Witness Statements are to be filed and exchanged on or before October 28, 2022 and Listing Questionnaire to be filed and served on or before December 16, 2022. On the 23rd day of January, 2023, Learned Counsel for the Applicant filed a Notice of Application for Relief from Sanctions for failure to comply with the abovementioned Case Management

Conference Orders. On the 21st day of May, 2024, T. Johnson J (Ag.) made an unless order directing that, unless the Claimant in Claim No. 2016HCV04356 was ready to proceed with the applications, and in particular the Notice of Application for Relief from Sanctions filed the 23rd day of January, 2023, then the applications shall stand struck out. The matter then went before Hart-Hines J who made the following Order on the 22nd day of October, 2024:

> *The Claimant in Claim # 2016HCV04356 having not* [sic] *in a position to proceed with the Notice of Application filed on the 23rd of January 2024 and elected not to proceed with the hearing of the Notice of Application. The said Notice of Application is now struck-out pursuant to the unless order made on the 21st of May 2024.*

[7] The parties made oral submissions, which were considered. However, upon reviewing the file and its documents, I became aware of certain defects in the April 17, 2025 Application. I noted that the said Application was seeking relief already addressed by earlier orders, that is, attempting to have the Witness Statement, Application to Appoint an Expert Witness, List of Documents, and Listing Questionnaire treated as filed in time, and was therefore procedurally improper.

[8] The Notice of Application filed on the 23rd day of January 2024, was struck out by my sister Hart-Hines J. To my mind, it is clear that once a Notice of Application has been struck out pursuant to an unless order, the proper course for a party wishing to challenge that decision is to appeal the order. The Applicant cannot now seek to have the Notice of Application re-heard without that being done. It is my view that, the striking out of the Applicant's Notice of Application pursuant to the unless order operates with finality. Once the unless order took effect, the Application was automatically removed from the Court's consideration without a determination on the merits, and the Applicant is left in no better position than if the Application had never been filed.

[9] It is important to note that the Application filed on the 17th day of April, 2025 does not seek relief from sanctions for failure to comply with the original Case Management Conference Orders. Instead, it effectively seeks to obtain relief from

the unless order itself. Such an application is procedurally impermissible, as the unless order was made and enforced. Attempting to use a Notice of Application for Relief from Sanctions in this manner constitutes a circumvention of the judicial process, as the proper remedy would have been an application for leave to appeal the existing orders or actually appealing the existing orders.

[10] It is noteworthy that the statement of case in Claim No. 2016HCV04356 has not been struck out**.** Accordingly, the Applicant's substantive claim remains live. Pursuant to the Civil Procedure Rules, Witness Statements, Listing Questionnaires, and List of Documents do not form part of the statement of case (see Rule 2.4). Part 29 of the CPR governs witness evidence. Specifically, Rule 29.11 which provides that a witness may not be called at trial if a witness statement has not been served, unless the Court grants permission. Permission may only be granted at trial if there is a good reason for not previously seeking relief under Rule 26.8. Therefore, the Applicant's failure to serve witness statements within the time frame specified in the Case Management Conference Orders has tangible consequences for the conduct of the trial.

[11] In **Owayne Weir v Dwayne Williams** [2025] JMSC Civ. 103, a relief from sanctions application made by both the claimant and the defendant was refused. The claimant thereafter filed an application that he be allowed to give *viva voce* evidence at trial, which Master L. Jackson refused on the basis that permitting such an application after the refusal of the relief from sanctions application would amount to circumventing the sanction imposed by the rules. Essentially, the claimant would have a second opportunity to achieve indirectly what he had already failed to obtain under Rule 26.8 of the CPR. Similarly, in the case that is before me, to permit the Applicant to pursue a subsequent application seeking essentially the same outcome would constitute an attempt to sidestep the consequences of the unless order made by Hart-Hines J on the 22nd day of October, 2024.

[12] In my view, the practical effect of striking out the Notice of Application, however, is that the procedural application for relief from sanctions has been removed from this Court's consideration. The Applicant therefore cannot rely on the Notice of Application filed on the 17th day of April, 2025 to address the non-compliance with the Case Management Orders made on the 24th day of January, 2022. The parties appear to have misunderstood the effect of the unless order and the proper procedure required to address it.

[13] It is unfortunate that the Application filed on 17th day of April 2025 proceeded, as it ought not to have been entertained given that the Notice of Application filed on the 23rd day of January, 2023 had already been struck out and the Application filed the 17th day April, 2025 improperly sought to obtain relief from the unless order. The Applicant's failure to comply with orders of the Court and the subsequent procedural missteps demonstrate the importance of following the prescribed rules and seeking appropriate remedies when a Court's order has the effect of striking out an application.

[14] It must be emphasized that Learned Counsel for the Applicant cannot now attempt to remedy non-compliance with the Case Management Conference Orders made on the 24th day of January, 2022. Any such attempt is precluded by the unless order made by Hart-Hines J in October 2024. That Application for Relief from Sanctions filed on the 23rd day of January, 2023 was before the Court, but the Applicant was not in a position to proceed, resulting in the making of the unless order. Consequently, the procedural avenues for addressing non-compliance have been exhausted, and any further attempt to revisit these matters through a subsequent Notice of Application would be improper and contrary to the principles of finality**.** It also appears to me that the Applicant, in the Application filed the 17th day of April, 2025, is seeking the same relief twice**.** The Application requests both that the relief from sanctions regarding the witness statement be heard, and that the witness statement itself be permitted to stand. This is duplicative as it was dealt with by the same unless order made on October 22, 2024.

[15] Although striking out an application pursuant to an unless order is not the same as a judicial refusal of the application, the practical effect is indistinguishable for present purposes. In light of these principles, the question that naturally arises is, where does this leave the Court and the Applicant? While, in theory, the Applicant could attempt to apply at the trial of the matter for permission to give *viva voce* evidence pursuant to CPR 29.11, the authorities including **Owayne Weir** and **Kenisha Taylor v Jermaine Holding, Jamaica Urban Transit Company Limited and Bernard Blue et al.** [2023] JMSC Civ 114, show that such an application is highly unlikely to succeed. The refusal of relief from sanctions, whether by way of an unless order or through the usual CPR 26.8 application, significantly narrows the discretion available to the trial judge. As Master L. Jackson made abundantly clear, once a litigant has failed to obtain relief from sanctions, the Court cannot then be asked to permit *viva voce* evidence in a manner that indirectly revives what the litigant has already lost. To do so would constitute a circumvention of the sanction regime and undermine the finality that unless orders are designed to achieve.

[16] The Applicant is therefore left in a position where the procedural default has not been corrected, and more importantly, cannot now be corrected through any permissible procedural route. The Applicant has no witness statement capable of being relied upon, and the prospects of obtaining permission to give oral evidence at trial are remote. Thus, the Applicant will come to trial with no evidence in support of the pleaded case. This has serious and unavoidable implications for the progression and ultimate disposition of the matter. As Master L. Jackson observed, *"It stands to reason therefore, that the burden being placed on the Claimant to prove his version of the allegations of facts as pleaded, cannot use that which he alleges (mere pleadings), to discharge that burden of proof. Additionally, the trial judge cannot use mere pleadings to determine whether the Claimant has discharged that burden or to determine which version of events as pleaded ought to be accepted over the other."* The same reasoning applies with equal force here. Pleadings are not evidence and without admissible evidence, the Applicant cannot

discharge the burden of proof imposed by law, and the Court cannot resolve disputed facts by relying on statements contained only in the statement of case.

[17] The practical consequence is that the claim cannot meaningfully proceed to trial in its current evidential state. The Applicant is now in a position where he has no evidential foundation on which his substantive case can be advanced. As such, unless the Applicant successfully appeals the striking out of the earlier application the Court will be left with a claim that cannot be proven and a trial that cannot be fairly or properly conducted.

[18] I therefore see no need to decide whether or not the Notice of Application filed on the 17th day of April, 2025 ought to be granted, as it is my opinion that the application is not rightly before the Court. However, in the event that I am wrong on this point, I will consider the orders that the Applicant is seeking in the Notice of Application filed on the 17th day of April, 2025. Before I embark on that discussion, another issue that arises is that the Notice of Application filed on the 17th day of April, 2025, which appears to seek relief from sanctions in respect of the October 22, 2024 unless order, does not make it clear whether the Applicant intends for that Application to be determined concurrently with the Application that was filed on the 23rd day of January, 2025. However, the submissions of both parties have largely addressed the January 2023 Application. In the circumstances, I will consider both matters, beginning with whether the Applicant has satisfied the conditions of Rule 26.8 to justify relief from sanctions in relation to the unless order of Hart-Hines J.

B. *THE NOTICE OF APPLICATION FILED APRIL 17, 2025*

[19] Rule 26.8 of the CPR deals with relief from sanctions and it states that:

> *(1) An application for relief from any sanction 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 –

(a) the failure to comply was not intentional;

(b) there is a good explanation for the failure; and

(c) the party in default has generally complied with all other relevant rules, practice directions and 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 attorney-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.

[20] In Jamaica, the requirements in Rule 26.8(1) and (2) operate as mandatory requirements to be met before the Court may consider relief from sanctions. Unless these prerequisites are satisfied, the Court has no discretion to proceed further. Only after they are met can the Court consider the factors in Rule 26.8(3) and any other relevant circumstances. (see **Kristin Sullivan v Rick's Café Holdings Inc T/A Rick's Café (No 2)** (unreported) Claim No. 2007HCV03502 judgment delivered April 15, 2011). It is also important to note that the burden of proof rests with the Applicant and it is he who must prove, on a balance of probabilities that the requirements in Rule 26.8(1) and (2) have been met. (see **Jonathan Davis v Dennis Tulloch** [2024] JMSC Civ. 108).

[21] Firstly, the Applicant must prove the application for relief was made promptly. Harrison J.A. in **National Irrigation Commission Ltd. v Conrad Gray and Marcia Gray** [2010] JMCA Civ 18 stated in dealing with an appeal from an order granting relief from sanctions that:

...Promptly is an ordinary English word which we would have thought had a plain and obvious meaning, but if we need to be told a bit more about

> *what it means, we do have the authority of **Regency Rolls Limited v Carnall** [2000] EWCA Civ. 379, where Arden, L.J. pointed out that the dictionary meaning of 'promptly' was 'with alacrity'. Simon Brown, L.J. said:*
>
> > *"I would accordingly construe "promptly" here to require, not that an applicant has been guilty of no needless delay whatever, but rather that he has acted with all reasonable celerity in the circumstances."*

[22] I am also guided by the Court of Appeal in **Oneil Edwards v Jamaica Public Service Company Limited** [2025] JMCA Civ 13 where it was stated by Foster-Pusey J.A. that:

> *An application for relief from sanctions, pursuant to rule 26.8, is usually made because a duty imposed by the court or the rules has not been fulfilled within the relevant timelines. So the circumstances usually involve some delay, but, nevertheless, the application for relief must be made promptly. As Arden LJ commented in Regency Rolls Limited v Carnall, it is not that the applicant has not been guilty of some delay, but the applicant must have "acted with all reasonable celerity in the circumstances". How does the court make this assessment? The court must consider the circumstances surrounding the timing of the application to determine whether it was made promptly.*

[23] The unless order of Hart-Hines J was made on the 22nd day of October, 2024 and the relief from sanctions Application was not filed until the 17th day of April, 2025. The submissions of Learned Counsel for the Applicant were focused on when the Application filed on the 23rd of January, 2023 was made. However, it is my view that before the Applicant can rely on those submissions, he must first satisfy this Court that he has met the conditions outlined in Rule 26.8 to have the Application that was filed on the 17th day of April, 2025 granted. Filing the Application for Relief from Sanctions almost 6 months after the unless order was made is in my opinion not prompt.

[24] The Court and Court of Appeal in **H.B. Ramsay & Associates Ltd and Others v Jamaica Redevelopment Foundation Inc and Another** [2012] JMSC Civ 64 and [2013] JMCA Civ 1 held that the application for relief from sanctions which was filed almost a month after the unless order sanction took effect was not made promptly. In **HBX 9000 Inc. v Price Waterhouse (A Firm)** [2015] JMCC Comm 3, which was a case relied on by Learned Counsel for the Applicant, the Court found

that a delay of about 2.5 months between when the application for relief was filed and the sanction took effect was not made promptly and the said application for relief was refused. In **National Irrigation Commission Ltd. v Conrad Gray and Marcia Gray** [2010] JMCA Civ 18, Harrison JA held that a delay of six months before making an application was *"altogether too long".* Similarly, in **Debbie-Ann Taylor v Cynthia Allen & Lenar Allen** [2020] JMSSC Civ 150, a delay of seven and a half months from knowledge of the sanction to the filing of the relief from sanctions application was held to be excessive, notwithstanding some flexibility in the concept of promptness.

[25] The Applicant has not provided any plausible explanation for this delay, and having regard to the circumstances of the case, I cannot see what possible explanation could justify a delay of approximately six months. When the unless order was made, the firm representing the Claimant was in place and able to act. Nevertheless, the application for relief from that sanction was filed only approximately six months after the unless order took effect. In support of the Application, Vaughn O. Bignall deposed that the Attorney-at-Law with conduct of the file left the firm in early 2024 and that the file was not immediately reassigned. However, the unless order was not made until October 2024, which, as a matter of common sense, is not "early 2024." Moreover, the Court's minute sheet for that date shows that an Attorney-at-Law from the firm was present when the unless order was made. This indicates that the Applicant had representation at the material time and his Counsel should have taken steps to comply with the Order.

[26] Accordingly, the Application fails at the threshold requirement of Rule 26.8(1). I see no need to further consider whether the Applicant has satisfied any of the other requirements of Rule 26.8. The failure to make the application promptly is fatal to the Application for Relief from Sanctions, and once this threshold requirement is not met, the Court is not obliged to examine the remaining criteria.

CONCLUSION

[27] The Application filed on the 17th day of April, 2025 is procedurally improper, seeking relief from an unless order that has already taken effect. On the substantive merits, the Application also fails as it was not made promptly, with no plausible explanation for the approximately 6-month delay. Therefore, the Applicant has no Witness Statement or other admissible evidence before the Court. As pleadings alone are not evidence and cannot form the basis of a trial. On either grounds/limbs, the Applicant's Notice of Application for Relief from Sanctions cannot succeed and is therefore refused. The Applicant's statement of case ought to be struck out, as he would not be able to give evidence at the trial and there is no independent evidence or material that he could put before the Court to prove his claim.

ORDERS & DISPOSITION

[28] Having regard to the forgoing these are my Orders:

(1) The Notice of Application for Relief from Sanctions dated and filed the 17th day of April, 2025 is refused.

(2) The Claimant's statement of case in 2016HCV04356 is struck out.

(3) Costs to the Defendant, Mr. Peter Thompson, to be taxed if not agreed.

(4) Defendant's/Respondent's Attorneys-at-Law is to prepare, file and serve Orders made herein.