



[2015] JMSC Civ. 99

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2014 HCV 03200

BETWEEN	RUTH OLGA HARRISON	1ST CLAIMANT
AND	PATRICK HARRISON	2ND CLAIMANT
AND	DEATA ANDREA WILSON	1ST DEFENDANT
AND	ROXANNE HARRISON	2ND DEFENDANT
AND	DENNI WILSON	3RD DEFENDANT
AND	JASHAWN NELSON	4TH DEFENDANT
AND	ROBERE WILSON	5TH DEFENDANT
AND	NORMAN DEAN NELSON	6TH DEFENDANT
AND	DEANNE NELSON	7TH DEFENDANT
AND	JAKEEM NELSON	8TH DEFENDANT
AND	ERRON HARRISON	9TH DEFENDANT
AND	MUNAIR HARRISON	10TH DEFENDANT

IN CHAMBERS

Susan Hill, instructed by Susan Hill & Co., for the Claimants

**Lawrence Philpotts-Brown, instructed by Lawrence Philpotts-Brown & Co., for the
1st & 2nd Defendants**

Heard: April 22 & 23, 2015

APPLICATION FOR INJUNCTIVE RELIEF ORDER TO BE EXTENDED IN TIME – APPLICATION FOR INJUNCTIVE RELIEF ORDER GRANTED EX PARTE, TO BE DISCHARGED – NO POWER TO EXTEND INJUNCTIVE RELIEF WHICH HAS BEEN DISCHARGED DUE TO LAPSE OF TIME – BASIS FOR SEEKING INJUNCTIVE RELIEF, EX PARTE

ANDERSON, K., J

[1] There may be circumstances wherein, if the matter in respect of which injunctive relief is being sought, is sufficiently urgent, it may be justified to seek *ex parte*, to obtain injunctive relief. Such circumstances though, will be rare. One such rare circumstance would be wherein the party against whom the injunctive relief is being sought, is out of the jurisdiction, or where that party's whereabouts are unknown, and the matter is one of extreme urgency.

[2] Simply however, because the opposing party is either out of the jurisdiction, or that party's precise whereabouts at the time when the injunctive relief is being sought, is unknown, would not in and of itself, justify the seeking of, much less, the grant by this court, of an *ex parte* injunction. In the final analysis, the main justification for the seeking and grant of same, must always be evidence of extreme urgency insofar as the applicants are concerned or alternatively, evidence showing that notice would, likely defeat the purpose for which the injunction is being sought. See: **N.C.B. v Olint Corp. Ltd.** – Privy Council Appeal No. 61 of 2008.

[3] In this case, even though the parties against whom the injunctive relief was being sought, are all resident out of the jurisdiction, it is clear that all the time when the claimants were seeking such relief, not only did the 1st and 2nd respondents have an attorney/agent, acting on their behalf within the jurisdiction, that then being: Attorney - Mrs. Joy Bayley-Williams of the law firm – Pickersgill, Dowding & Bayley-Williams, but, in any event, there was no risk whatsoever, that the claimants would be removed from the premises, such as would have, no doubt, caused them irreparable harm, if it had occurred. Instead, what the 1st and 2nd respondents wanted, was access to the relevant premises and for O'Brian Grant, to be removed from that premises. Also, what the 1st and 2nd respondents wanted, was for proper care and attention to be given to the 2nd claimant. The access to the premises which the 1st and 2nd respondents wanted, was for

the purpose of ensuring that said premises was/is properly maintained and for the purpose of periodic visits to their family members – being the claimants.

[4] In any event, it was only the 1st and 2nd respondents who were seeking to interfere with the claimants' use and enjoyment of the relevant property. Why then, was the application sought and obtained *ex parte*, against all of the respondents? At the very least, in this case, prior notice of the application for the injunctive relief, ought to have been provided to then counsel for the 1st and 2nd respondents. – Mrs. Bayley-Williams, before the hearing of that application, was in fact held. Additionally, it was entirely improper, in the particular circumstances of this particular case, for the injunctive relief, which was granted, to have been sought and obtained, *ex parte*, against all of the respondents. The injunction should only in fact, if it was properly to have been granted at all, have been granted against the 1st and 2nd respondents. There was no basis whatsoever, for injunctive relief to have been granted *ex parte* against any of the respondents, even moreso, as against the 3rd – 10th respondents.

[5] As regard the claimants' application for extension of the injunctive relief earlier granted by this court, it is now no longer open to this court to do so. The injunctive relief earlier granted by this court, and on several occasions thereafter extended, was, on the 25th March, 2015, extended until 22nd April, 2015. Today's date is 23rd April, 2015. As such, the injunction has already expired and it is now no longer open to this court, to extend any further, injunctive relief which is now no longer in force or effect. In that regard, see: **Ramkaise Manogeesingh & ors. v Airports Authority of Trinidad & Tobago** [1993] 42 W.I.R. 301, esp. at pp. 323g to 325a, per Persaud, J.A. and **Bolton v London School Board** – [1878] 7 Ch.D. 767, esp. at p. 771, per Malins, V.C.; and **Kaon Northover & anor. v Minett Lawrence** – [2015] JMSC Civ. 35, esp. at paragraphs 1-7, per K. Anderson, J.

[6] In the circumstances, the claimants' application for court orders, filed on 3rd October, 2014, is denied and the 1st and 2nd defendants' application for court orders, filed on 5th November, 2014, is granted. The costs of those applications are awarded to the defendants, with such costs to be taxed, if not sooner agreed. The defendants shall file and serve this order. In addition, it is ordered that the injunctive relief granted

against the 3rd – 10th defendants is discharged – court makes that order on its own motion. Leave to appeal is sought and granted.

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Hon. K. Anderson, J.