[2024] JMSC Civ 26

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CIVIL DIVISION
CLAIM NO. SU 2022 CV 00187

BETWEEN	**PRISCILLA LEWIS**	**CLAIMANT**
AND	**PATRICK WALLACE**	**1ST DEFENDANT**
AND	**REJIV BABOORAM**	**2ND DEFENDANT**

IN CHAMBERS (by Video Conference)
Sean Kinghorn instructed by Kinghorn and Kinghorn for the claimant
Monique Rowe instructed by Suzette Radlein for 2nd defendant
Geraldine Bradford for the Administrator General for Jamaica

HEARD: 15, 16 November 2023 & 22 February 2024

Civil Procedure Rules – Rule 13.3 – Setting aside default judgment – whether affidavit sworn to by a party's attorney-at-law amounts to an affidavit of merit – Rule 21.7 – Application to appoint representative of estate of deceased defendant – Whether sufficient proof of death in the absence of a death certificate – Whether Administrator General fit and proper person to be appointed as administrator ad litem

MASTER C. THOMAS
Introduction

[1] The 2nd defendant has filed an application seeking the following orders: -

1. An order that the time within which to file the Acknowledgement of Service, Defence and Counterclaim of the 2nd Defendant be abridged;

2. An order that the Acknowledgment of Service filed on February 23, 2023 be allowed to stand as filed;

3. An order granting permission to the 2nd defendant to file defence and counterclaim out of time;

4. An order that the Administrator General of Jamaica be appointed as administrator ad litem for and on behalf of the Estate of Patrick Wallace, deceased pursuant to rule 21.7 of the Civil Procedure Rules;

5. An order setting to aside any default judgment entered herein.

[2] The application was supported by two affidavits: Affidavit of Suzette Radlein filed on 24 March 2023 and Affidavit of Kavaughn Williams filed on 6 October 2023, the contents of which I will consider later in my analysis.

The claim

[3] The claim giving rise to the application has its origins in an accident which occurred on 24 April 2017. The claim form and particulars of claim were filed on 24 January 2022. The particulars of claim averred that the claimant was a lawful passenger in a motor vehicle registered PE 4883; and that the 1st and 2nd defendants were at all material times the driver and owner of motor vehicles with registration numbers 9396 CW and 6406 GF respectively.

[4] Paragraph 5 of the particulars of claim aver that the claimant was lawfully travelling as a passenger in motor vehicle registration number PE 4883, which was proceeding along the Boscobel main road in the parish of St Mary. Upon reaching the vicinity of the Ian Fleming Airport the 1st and 2nd defendants' motor vehicles were travelling in the opposite lane (apparently in the same direction). The 1st defendant started to overtake the 2nd defendant's motor vehicle and in doing so, misjudged the clearance and caused the rear section of his motor vehicle to collide

with the front section of the 2nd defendant's motor vehicle, resulting in the 1st defendant's motor vehicle losing control and colliding with the vehicle in which the claimant was a passenger, which was travelling in the opposite direction.

[5] An affidavit of service filed on 21 September 2022 indicates that service on the 2nd defendant was effected on 4 May 2022. A request for judgment in default of acknowledgment of service was filed on 21 September 2022; however, the records do not disclose that the default judgment was actually entered. On 24 February 2023, an acknowledgment of service was filed and on 24 March 2023, the instant application was filed.

Issues

[6] The application raises two main issues as set out below: -

1. Whether the 2nd defendant should be granted an extension of time to file acknowledgment of service and defence and counterclaim;

2. Whether the Administrator General should be appointed as administrator ad litem for the estate of the 1st defendant.

[7] Written and oral submissions were made on behalf of the claimant and the 2nd defendant and oral submissions made on behalf of the Administrator General. I have read and considered all the submissions and will not outline them here but will make reference to specific submissions in the course of my analysis, where necessary.

Discussion and Analysis

Whether the 2nd defendant should be granted an extension of time to file acknowledgment of service and defence and counterclaim;

[8] Counsel for the 2nd defendant has accepted that though the application is for an extension of time, it having been filed after the request for default judgment had been filed, it should be treated as an application to set aside default judgment.

[9] The provisions of rule 13.3 of the Civil Procedure Rules ("CPR"), which concern the setting aside of a default judgment are well-known, are plain and need no elaboration. The provisions require that the party seeking to set aside a default judgment must show that he has a real prospect of successfully defending the claim; he applied as soon as reasonably practicable after finding out that the judgment had been entered; and he has a good explanation for failure to file an acknowledgment of service or defence.

[10] Much of the submissions on this issue were centred around the question of whether the defendant has demonstrated a defence that has a real prospect of success. Relying on **Russell Holdings Ltd v L & W Enterprises Inc. and ADS Global Ltd** [2016] JMCA Civ 39, Ms Rowe referred to the affidavit of Suzette Radlein in which Ms Radlein stated at paragraph 13 that the 2nd defendant advised her that the collision giving rise to the accident occurred when the 2nd defendant was being overtaken by the 1st defendant and upon seeing the vehicle in which the claimant was travelling coming in the opposite direction, the 1st defendant tried to get back in the line in front of the 2nd defendant but was unable to do so and thus collided into his motor vehicle and thereafter head-on with the motor vehicle in which the claimant was a passenger. It was submitted that this demonstrates that the 2nd defendant has a real prospect of successfully defending the claim.

[11] Ms Rowe relied on **Erldine Henry Brown v Jamcon Engineering Ltd & Rupert Murray** Suit No B323 of 1998 (delivered 16 March 2000) and **Jamaica Record Ltd et al v Western Storage Ltd** SCCA No 37/89 (delivered 5 March 1990) to support the position that even though the affidavit giving details of the defence was not sworn to by the 2nd defendant, it being stated by Mrs Radlein that she received the information from the 2nd defendant, it is a sufficient affidavit of merit.

[12] Relying on the oft-cited case of **Ramkissoon v Old's Discount Co (TCC) Ltd** (1961) 4 WIR 73, Mr Kinghorn for the claimant resists this argument on the basis that there is no affidavit sworn by anyone who can personally speak to the facts and the attaching of a proposed defence to an affidavit sworn to by one who has

no personal knowledge of the matter does not convert the affidavit to an affidavit of merit.

[13] In **Erldine Henry Brown** relied on by the 2nd defendant, a decision at first instance, Courtney Orr J considered section 408 of the Judicature (Civil Procedure Code) Law ("CPC") (the predecessor to the Civil Procedure Rules (CPR)) that provided for affidavit in interlocutory proceedings to "contain statements of information and belief with the sources and grounds thereof" (which is in similar terms to rule 30.3 of our CPR. The learned judge found that insofar as **Ramkissoon v Old's Discount** suggested that personal knowledge is necessary, it was "in the context of our law plainly wrong". He also expressed the view that there is no requirement in the Jamaican law that the 2nd defendant himself ought to have sworn to an affidavit in support of the application.

[14] In **Jamaica Record,** where the affidavit in support of the application to set aside was sworn to by in-house counsel for the defendant, our Court of Appeal did not disapprove of **Ramkissoon v Old's Discount** but distinguished it on the basis that unlike in **Ramkissoon v Old's Discount** where the attorney had no personal knowledge of the facts stated in the defence, in that case, the facts constituting the defence were within the personal knowledge of the deponent who was the "in-house attorney and secretary of the defendant and he was authorised by the defendants to swear to the affidavit".

[15] Later in **D & L Services Ltd Ors v Attorney General of Jamaica & Anor** SCCA No 53/1998 (delivered 26 March 1999) our Court of Appeal also had to consider whether the affidavit being relied on to set aside a default judgment was sufficient in circumstances where the affidavit was sworn to by attorneys employed at the Attorney General's Chambers. In that case, the court relying on **Farden et al v Richter** (1889) 23 QBD 124 and **Ramkissoon v Old's Discount**, stated the principle thus: -

> Where a default judgment is regularly entered, an application to set it aside must be accompanied by an affidavit revealing a defence on its merits sworn to by someone who can swear to the facts.

The Court of Appeal again considered the provisions of section 408 of the CPC and held that proceedings seeking to set aside default judgment are interlocutory and that although the affidavit in support was partly based on evidence of information and belief, it was admissible "on the authorities and the provisions of section 408 of the Code" (see page 11 of judgment).

[16] In the later authority of in **Attorney General v John McKay**, Morrison JA (as he then was) also considered and applied **Ramkissoon v Old's Discount** stating as follow (at paragraph 23):

> As long ago as 1961, in **Ramkissoon v Olds Discount Co (TCC) Ltd** (1961) 4 WIR 73, a decision under rules of court long predating the CPR, the Supreme Court of Trinidad & Tobago (Appellate Jurisdiction) held, on an application to set aside a regularly obtained default judgment, that an affidavit sworn to by the defendant's solicitor, in which there was nothing to suggest that the solicitor had any personal knowledge of the facts of the case, or that what appeared in the draft defence exhibited by him was true, was not a sufficient affidavit of merit for the purposes of setting aside the judgment. Under the rules then applicable, a defendant was only obliged to demonstrate on affidavit that in the main action he had "a prima facie defence" (**Evans v Bartlam** [1937] AC 473, per Lord Atkin at page 480). The language in the CPR is obviously stronger, with the result that, as Mr Stuart Sime puts it in 'A Practical Approach to Civil Procedure' (10th edn, para. 12.35), "the written evidence in support of the application to set aside will have to address [the relevant] factors, and in particular the alleged defence on the merits".

Morrison JA declined to set aside the default judgment in question on the basis that the affidavit sworn to by the defendant's solicitor did not provide a basis for defending the action as the affidavit was "hardly an improvement" on the affidavit in **Ramkissoon v Old's Discount**, "suggesting as it did", no more than that there was "intended evidence", which it was the intention of the Crown to advance at trial. It seems to me that in light of Morrison JA's finding, it was not necessary for Morrison JA to address whether in light of rule 30.3 of the CPR, if the attorney had given detailed evidence of the facts amounting to the defence and had provided the source of her information and belief whether this would have satisfied the requirement for an affidavit of merits.

[17] More recently in **Barrington Green & Anor v Williams & Ors** [2023] JMCA Civ 5, our Court of Appeal in considering whether there was an affidavit of merit demonstrating a defence with a real prospect of success observed that hearsay evidence is admissible in interlocutory proceedings but rejected the affidavit filed by the appellant's attorney-at-law as being "bereft of any evidence dealing with the merits of the defence". The court also found that "it had not been shown that, whether based on personal knowledge or information and belief, she could swear positively to the facts on which the defendant relied." (paragraph 80).

[18] In the instant case, the affidavit in question went far beyond the affidavit of the attorney in **Ramkissoon v Old's Discount**, Mrs Radlein having made clear that her source of information and belief was the 2nd defendant and having set out in detail the facts on which the defence was mounted. Mr Kinghorn has argued that if the court cannot find a reason accounting for the failure of the 2nd defendant who is now available to personally give evidence, the court should decline to exercise its discretion to set aside the default judgment. However, in light of rule 30.3 of the CPR and the authorities which I have canvassed above, I am inclined to agree with Orr J's view in **Erldine Henry Brown** that in Jamaican law, there is no such requirement. I am therefore of the view that the affidavit of Suzette Radlein is sufficient to constitute an affidavit of merits.

[19] The approach of the court in applications to set aside was comprehensively set out by Edwards JA in the **Russell Holdings** case, which was relied on by the 2nd defendant, where she stated (paragraphs [81] – [85]):

> 81. Before beginning the assessment, I will first consider the principles applicable to the exercise of a discretion to set aside a default judgment. The focus of the court in hearing an application to set aside a default judgment regularly obtained under rule 13.3 of the CPR and in considering how to exercise its discretion should be on whether the applicant has a real prospect of successfully defending the claim. The court must also consider the matters set out in rule 13.3(2)(a) and (b) (see the judgment of this court in **Merlene Murray-Brown v Dunstan Harper and Winsome Harper** [2010] JMCA App 1, per Phillips JA). The primary consideration therefore is whether the appellant has a defence on the merits with a real prospect of success.
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> 82. For there to be a real prospect of success the defence must be more than merely arguable and the court, in exercising its discretion, must look at the claim and any draft defence filed. Whilst the court should not and must not embark on a mini-trial, some evaluation of the material placed before it for consideration should be conducted. The application must therefore be accompanied by evidence on affidavit and a draft of the proposed defence.
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> 83. A defendant who has a real prospect of successfully defending the claim may still be shut out of litigation if the factors in rule 13.3(2)(a) and (b) are considered against his favour and if the likely prejudice to the respondent is so great that, in keeping with the overriding objective, the court forms the view that its discretion should not be exercised in the applicant's favour. If a judge in hearing an application to set aside a default judgment regularly obtained

considers that the defence is without merit and has no real prospect of success, then that's the end of the matter. If it is considered that there is a good defence on the merits with a real prospect of success, the judge should then consider the other factors such as any explanation for not filing an acknowledgement of service or defence as the case may be, the time it took the defendant to apply to set the judgment aside, any explanation for that delay, any possible prejudice to the claimant and the overriding objective.

84. The prospect of success must be real and not fanciful and this means something more than a mere arguable case. The test is similar to that which is applicable to summary judgments (see Blackstone's Civil Procedure 2005, paragraphs 20.13 and 20.14 and the case of **International Finance v Utexafrica Sprl** [2001] All ER (D) 101 (May). (See also ED&F Man Liquid Products v Patel & another (2003) Times, judgment delivered on 18 April 2003.)

85. In Blackstone's Civil Procedure 2004 paragraph 34.13 the learned editors in reference to summary judgment applications argued that a defendant could show that the defence had a real prospect of success by:

    a) showing a substantive defence, for example, volenti non fit injuria, frustration, illegality etc.;

    b) stating a point of law which would destroy the claimant's cause of action; c) denying the facts which support the claimant's cause of action; and

    d) setting out further facts which is a total answer to the claimant's cause of action for example an exclusion clause, agency etc.

[20] It is clear from the provisions of rule 13.3 of the CPR as well as the **Russell Holdings** judgment that the primary consideration is whether there is a defence that has merits. The facts on which the defence is mounted as revealed by paragraph 12 of Mrs Radlein's affidavit suggest that the 2nd defendant was not the one who collided with the vehicle in which the claimant was travelling and was not the negligent party. This is also reflected in the draft defence that was exhibited to Mrs Radlein's affidavit. In my view, this is an answer to the claim.

[21] With respect to whether the application was made reasonably practicable after finding out about the judgment, as I observed earlier, it does not appear that any default judgment was entered but based on the evidence of Mrs Radlein, the 2nd defendant did not become aware of the request for default judgment before February 2023. The application to set aside was filed on 24 March 2023. In my view, there was no inordinate delay and these circumstances would satisfy the requirement of applying as soon as reasonably practicable.

[22] Where the reason for failing to file acknowledgment of service and defence are concerned, the reason given to Mrs Radlein by the 2nd defendant is that he was unaware that he should have brought the documents to his insurers. It seems to me that the explanation given is more in relation to the failure to bring the documents to his insurers and not so much for failure to file the acknowledgment of service and defence. But it would appear that the suggestion is that bringing the documents to the insurers would enable a defence to be filed on his behalf and he was not aware that he should have done so. Regardless of how this evidence is to be interpreted, this does not qualify as a good explanation; however, I bear in mind the dictum in **Russell's Holdings** and have come to the view that though there is no good explanation, in light of the proposed defence which appears to be meritorious, had a default judgment been entered, the conditions for setting it aside would have been satisfied.

Whether the Administrator General should be appointed as administrator ad litem for the estate of the 1st defendant

[23] The 2nd defendant is seeking to have the Administrator General appointed as administrator ad litem for the estate of the 1st defendant for the purposes of a counterclaim which he wishes to bring against the 1st defendant. A necessary sub-issue to be determined is whether the death of the 2nd defendant has been satisfactorily proved.

[24] Mr Kinghorn has stridently opposed the application and his submissions were adopted by counsel for the Administrator General who made additional submissions. The principal planks of the opposition to the application being granted are that: (i) There is no proper or acceptable evidence of the death of the 1st defendant, there being no death certificate, burial order or affidavit of someone who witnessed the body being interred. Ms Bradford argued that the funeral programme was not satisfactory and that the hearsay evidence of the investigator should not be accepted as it cannot speak definitively to the death of the 1st defendant. Mr Kinghorn also relied on the Registration of Births and Death Act ("RBDA) submitting that the starting point from a legal perspective is section 36 and that outside of the provisions of the Act, death could only be proved by obtaining a declaration of death. (ii) If the 1st defendant is dead and died before the initiating of these proceedings, as alleged by the 2nd defendant, the claim brought against the 1st defendant would be void null and void and he should be removed as a party. It was submitted that the invalidity could not be cured by a subsequent appointment to continue these proceedings. Reliance was placed on **Danesha Artwell v Advantage General** [2020] JMSC Civ 119 and **Delroy Officer v Corbeck White (representative of the estate of Berthram White), deceased** [2016] JMCA Civ 45.

[25] It seems to me that the positions articulated in opposition to the application are somewhat inconsistent in that on the one hand, it is being contended that there is no proper proof of death, and on the other, that the death of the 1st defendant

before the initiation of the instant proceedings would render it void ab initio. They are inconsistent because the latter argument is premised on the very fact of the death of the 1st defendant which the claimant and the Administrator General are resisting. That being said, I will treat them as being alternative arguments.

[26] The provisions of sections 22-26 of the RBDA comprise the statutory regime that applies in the event of the death of a person. Section 22 provides that the death of every person dying in Jamaica after the coming into operation of the Act shall be registered by the registrar in the manner provided for the Act. Sections 23 and 24 provide for the procedure for registration which is to be adopted in circumstances in which a person dies in a house or in a place which is not a house. Section 26 empowers the registrar in circumstances where a person has died and the information has not been supplied to the registrar to issue a notice to the person who is by the Act required to supply that information. The notice is for the purpose of requiring that person to attend upon the registrar's office to give such information. Section 32 provides that the registrar, upon the registration of a death, shall issue a certificate that he has registered the death. It also provides that in the case where a coroner, justice of the peace, officer or sub-officer orders for a post-mortem examination to be done or investigates a death and determines that no post-mortem is needed, the said coroner, justice of the peace, officer or sub-officer shall issue a burial order and notify the registrar of same. Subsection 3 provides that the certificate of death or burial order must be delivered to the person effecting the burial and that the burial shall not take place before a death certificate or burial order has been delivered to the person effecting burial. So, it is conceivable that under the Act, the registrar may not have registered death even though a burial order may exist for the deceased person.

[27] From the provisions of the RBDA, it may be said that a death certificate or burial order should be in existence before a burial can take place. So, it may be said that the ideal evidence of death would be either of these two documents. The provisions of rule 68.10 of the CPR, to which Ms Bradford made reference require that the death certificate be produced; but they contemplate that there will be

circumstances in which the death certificate is unavailable. The provisions state that evidence of the death may also be proven by an affidavit sworn to by someone who saw the body being interred. However, these very provisions recognise that there will be circumstances in which none of this evidence can be provided. Rule 68.10(c) provides that in those circumstances, the applicant must apply to the registrar for directions as to the form the evidence of death should take.

[28] The question which arises is: in the absence of the sources of evidence mentioned in rule 68.10, what would be sufficient evidence to prove death? In my view, in addressing the issue, it must be borne in mind that this being a civil case, the standard of proof is on a balance of probabilities and each case will depend on the cogency of the evidence. Also, it is my view that this being interlocutory proceedings, hearsay evidence is admissible. Therefore, the fact that the person who swore to the affidavit giving evidence in relation to the death did not witness the facts stated in the affidavit does not automatically mean that the evidence cannot be relied on. Also, this is not limited to first-hand hearsay evidence. Orr J in **Erldine Henry Brown** considered authorities such as **Savings and Investment Bank Ltd v Gasco Investments (Netherlands) BV** [1984] 1 WLR 271 and **Day v RAC Motoring Services Ltd** [1999] 1 All ER 1007 in which it was accepted that second hearsay evidence is also admissible. In my view, it is for the court to determine what weight to give to the evidence.

[29] In this case, Mrs Radlein exhibited an article from the Jamaica Observer Newspaper dated 24 April 2017 in which it was reported that one Patrick Wallace had died in a three-vehicle motor vehicle collision on Boscobel main road in the parish of St Mary. Kavaughn Williams in his affidavit indicates that upon visiting the Registrar General's Department he was told that the death of the 1st defendant had not been registered. Thereafter, Mr Williams' affidavit outlined the following evidence as proof of death of the 1st defendant:

(i) Conversation by way of WhatsApp video call between Mr Williams and the mother of the deceased 1st defendant, Ms Jacqueline Hanson, who resides

in the United States of America, in which she informed Mr Williams that the deceased had died 24 April 2017 in a motor vehicle accident but that the death had not been registered because of some issue with the burial order, which was in the possession of the deceased's wife. Mrs Hanson also informed that the deceased's wife was the one who oversaw the funeral arrangements. Mrs Hanson provided Mr Williams with the first page of the funeral programme for the deceased as well as an estimate from LP Martin Funeral Home for the funeral arrangements.

(ii) First page of funeral programme for Patrick Wallace as well as an estimate for his funeral expenses.

(iii) Conversation on Facebook between the deceased's wife and Mr Williams in which the former informed Mr Williams that that she was in possession of the burial order and would not be providing a copy of same nor registering the death.

(iv) Pages from the social media account of the mother of the deceased's children in which she made several posts about the impact of the deceased's death on the lives of their children.

There was also the following evidence in respect of the children of the deceased:

(i) Mrs Hanson informed Mr Williams that the deceased has three children, ages 8, 10 and 12. Mrs Hanson also informed that the children's mother had refused to supply copies of the children's birth certificate, at the request of Mr Willliams. However, Mrs Hanson provided a photograph of herself, the children's mother and the three children.

(ii) Pages from the deceased's social media account of posts made between November 2011 and 27 September 2015 speaking to the birth of the deceased's three children.

[30] In determining whether this evidence is sufficient I consider that even if a death certificate were produced, it could only prove that an individual whose given name was Patrick Wallace had died. It could not speak to whether the 1st defendant had died. Indeed, no issue was raised as to whether the individual whom Mr Williams is stating had died is the 1st defendant. The sole issue is whether there is sufficient proof of death. The evidence from the social media pages would have the additional burden of satisfying section 31G of the Evidence (Amendment) Act, 2015 in respect of the device which was used to download the information. Also, the report in the Jamaica Observer Newspaper, although compelling, is hearsay evidence and the source of information is not stated. Nonetheless, I am of the view that the other evidence being relied on (set out at paragraph 29 above) is sufficient basis on which I can conclude that it is more likely than not that the 1st defendant has died. I also consider that there is no evidence put forward on behalf of the Administrator General to suggest otherwise.

[31] The next sub-issue is whether the Administrator General should be appointed as administrator ad litem for the estate of the 1st defendant. I agree with Mr Kinghorn's submissions that if it is accepted that the 1st defendant died in 2017, then this claim filed in 2022 would be void as against the 1st defendant, there being no evidence that at the time of the commencement of the claim there was in existence any legally recognisable 2nd defendant. Authorities such as **Delroy Officer, Danesha Artwell** and **Elleta McCrobie Walker (Administratrix Estate Violet McCrobie) v Elaine McCrobie & Ors** [2021] JMSC Civ 175 make this clear. However, I am not of the view that that is the end of the matter.

[32] The 2nd defendant has indicated that he wishes to file a counterclaim against the 1st defendant. However, Ms Rowe in her oral submissions referred to the filing of an ancillary claim. Since the 2nd defendant is not the claimant in the matter, it seems to me that the true position is that which was stated by Mr Rowe in her oral submissions. In my view, it is clear from the provisions of Part 18 of the CPR that an ancillary claim may exist independently of a claim. Even where the main claim has ended, the ancillary claim may continue. Therefore, the ancillary claim to be

brought in this case may not be affected by the proceedings against the 1st defendant being void. In my view, the ancillary claim can stand independently of the main claim and would be treated as an ancillary claim against the estate of the 1st defendant in respect of the main claim which is against the 2nd defendant only. I agree with Ms Bradford that the limitation period for the bringing of an ancillary claim for damages would have expired, the accident having occurred in 2017; however, I also agree with Ms Rowe, that by virtue of the decision in **Mervis Taylor v Lowe & Ors** 1995/T188 (delivered 9 May 2006) an ancillary claim for contribution or indemnity would not suffer the same fate. In that regard, the appointment of the administrator ad litem would have to precede the filing of the ancillary claim.

[33] The next sub-issue is whether the Administrator General is a fit and proper person. There is no evidence put before this court from the Administrator General to suggest that the Administrator General has any interest that is adverse to the estate of the 1st defendant and given that there is evidence from Mrs Hanson that tends to show that there may be minor children involved in the estate of the 1st defendant, and given the public office and role of the Administrator General, I am of the view that the Administrator General is a fit and proper person to be appointed as administrator ad litem for the estate of the 1st defendant. In these circumstances, I disagree with Mr Kinghorn that it would be prejudicial to the estate of the 1st defendant to make the appointment.

Conclusion

[34] In the light of the foregoing, I make the following orders:

1. The Acknowledgment of Service filed on February 23, 2023 is allowed to stand.

2. Permission is granted to the 2nd defendant to file a defence and an ancillary claim for contribution or indemnity on or before 22 March 2024.

3. The Administrator General for Jamaica is appointed as administrator ad litem for and on behalf of the Estate of Patrick Wallace, deceased pursuant to rule 21.7 of the Civil Procedure Rules for the purposes of the ancillary claim to be filed.

4. The request for default judgment and any proceedings flowing therefrom is set aside.

5. A case management conference shall take place on 5 June 2024 at 10:00am for ½ hour.

6. Costs of the application to the 2nd defendant to be paid by the claimant and the Administrator General.