[2025] JMSC Civ 130

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2022CV01566

BETWEEN	**ALPHANSO ROWE**	**CLAIMANT**
AND	**SHAMARI PRINCE**	**1ST DEFENDANT**
AND	**KAY-ANN BOOKALL**	**2ND DEFENDANT**

IN CHAMBERS

Mr. Richard Reitzin instructed by Messrs Reitzin & Hernandez, Attorneys-at-Law for the claimant

Ms. Tamiko Smith instructed by Smith, Afflick, Robinson & Partners for the second defendant

Heard: July 22 and September 26, 2025

***Civil Procedure - Application for relief from sanctions for failure to file witness statement and list of documents within the time specified by Case Management Conference orders – Whether the application was filed promptly – Whether the information contained in the affidavits filed in support of the application satisfies the requirement for evidence on affidavit – Whether the failure was unintentional – Whether there is a good explanation for the failure – Whether the second defendant was generally complied with all other relevant rules, Practice Direction, court orders and directions – Civil Procedure Rules, R.* 26.8.**

THOMAS, J

Introduction

[1] The instant claim was filed on the 11th of May 2022. Following the filing of the parties' respective statements of case, a Case Management Conference (CMC) was

scheduled for the 1st of February 2024. On that date, Master McNeil (Ag) made the following orders:

i) The trial date is to take place during the Hillary term 2029 at 10 am for one day before a judge sitting alone in open court.

ii) Standard disclosure is to take place on or before 12th of April 2024.

iii) Inspection of documents is to take place on or before 26th of April 2024.

iv) The claimant is limited to two ordinary witnesses and one ordinary witness for the second defendant.

v) Witness statements are to be filed and exchanged on or before the 15th of May 2024.

vi) Listing questionnaire to be filed and exchanged on or before the 11th of July 2024.

vii) Pre-Trial Memorandum is to be filed and served on or before the 11th of July 2024.

viii) Pre-Trial Review hearing is fixed for the 9th of December 2024 at 11:00 a.m. for one hour.

ix) The issue of expert/s is to be addressed at the Pre-Trial Review Hearing.

(a) Any application for expert witness to be appointed is to be filed and served on or before the 20th of September 2024.

(b) Any objection to the said application is to be filed and served on or before the 23rd of October 2024.

[2] The matter came up for Pre-Trial Review on the 9th of December 2024; however, it was adjourned to the 10th of March 2025 at 2:00 p.m. for one hour. On that date, the second defendant, having not fully complied with the CMC orders specifically orders i, v,

vi, vii, and ix(a) made by Master C. McNeil (Ag.) on the 1st of February 2024 filed two applications for relief from sanctions on the 11th of July 2024 and the 1st of May 2025, respectively. In her Notice for Application filed on the 11th of July 2024, the second defendant seeks the following orders:

a. An extension of time to comply with the orders made at the Case Management Conference held on February 1, 2024, before Master Miss C. McNeil (Ag).

b. Relief from sanctions for the failure to file the witness statement of Kay-Ann Bookall within the time ordered.

c. That the witness statement of Kay-Ann Bookall filed on June 10, 2024 be deemed filed within time.

d. Permission for the 2nd defendant to call Peta-Gaye Bookall as an ordinary witness.

e. That the witness statement of Peta-Gaye Bookall be permitted to stand.

[3] In her Notice of Application filed on the 1st of May 2025, the second defendant seeks, among other reliefs, the following orders:

a) Relief from sanctions for failure to file the List of Documents within the time ordered by the court.

b) That the List of Documents filed on February 28, 2025 be permitted to stand as filed within time.

THE AFFIDAVIT EVIDENCE IN SUPPORT OF THE APPLICATIONS

[4] In her affidavit filed on the 15th of July 2024, in support of the Notice of Application filed on the 11th of July 2024, the applicant, Kay-Ann Bookall states that at the Case Management Conference on the 1st of February 2024, Master McNeil (Ag.) made orders that the parties filed and exchanged witness statement by the 15th of May 2024 and that

Standard Disclosure was to take place by the 12th of April 2024. However, the applicant's witness statement was filed on the 10th of June 2024 and that of Peta-Gaye Davis was filed on the 14th of June 2024. She further states that the lateness in filing the witness statements is regrettable but it was not intentional. She states that she is currently in school, works as a medical doctor and is a single mother of a child with special needs. She indicates that during that period, she had assessments and several papers due which caused her to inadvertently miss the deadline to give her attorneys further information to finalize the witness statement within the time prescribed by the court.

[5] She asserts that as soon as she became aware that the time had passed to file the witness statements, she gave her attorneys the instructions required to finalize her witness statement and put her attorneys in contact with Peta-Gaye Bookall so that her witness statement could also be finalized. She states that the delay is just a little over a month and in the circumstances where the trial is set for 2029, she asks that the court find that the application for relief from sanction was made promptly and that the delay is not inordinate. She further states that there is no prejudice that will be caused to the claimant as she was informed that the claimant's attorney-at-law has notified her attorneys that his witness statements have been filed in a sealed envelope. Therefore, she is not aware of the contents of it, nor has it influenced her own witness statement.

[6] She also states that she has been generally compliant with the orders and as such she is a good candidate for the relief sought and that if the relief is not granted, she will not be able to put forward all the evidence in her case and will be severely prejudiced. She also requests the court's permission to call Peta-Gaye Bookall as an ordinary witness at the trial as she was in the car when the accident occurred and can give evidence in relation to how the accident happened.

[7] In her affidavit filed on the 1st of May 2025, in support of the Notice of Application filed that same day, Mrs. Zoya Edwards-Vassell states that the court made an order on the 1st of February of 2024 by Master Miss C. McNeil (Ag), requiring the respective parties to file their respective Lists of Documents by the 12th of April 2024. Due to the inadvertent administrative oversight, the 2nd Defendant's List of Documents was prepared and

uploaded to the online drive of the firm to be settled but not filed. As soon as the oversight was discovered it was filed on February 28, 2025. She believes that it is in the interest of justice for the 2nd defendant to be permitted to rely on the documents as there has been no prejudice to the claimant.

The ISSUE

[8] Counsel for the claimant is opposing the applications in so far as they relate to relief from sanction. As such, the primary issue for consideration before this court is whether the applicant has satisfied the conditions as set out in **Rule 26.8(1)** and **26.8 (2)** of the Civil Procedure Rules ("CPR") in order for the court to consider whether it should exercise its discretion under **Rule 26.8.3** to grant reliefs being sought by the applicant.

The Law

[9] The relevant provisions of rule 26.8 appear below:

> *"(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 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 the*
>
> *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."

Submissions

On behalf of the second defendant

[10] Counsel for the second defendant, Ms. Tamiko Smith, in addressing the issue of whether the first application filed on July 11, 2024, seeking relief for the failure to file the second defendant's witness statements within the prescribed time, counsel submits that, the application was made 57 days after the deadline for the filing of the witness statements. This she submits was within reasonable time after the default. She asserts that this delay was not inordinate and since the requirement has since been complied with by the filing of the witness statements the court should find that the application was made promptly.

[11] Counsel further submits that the claimant's witness statement was filed in a sealed envelope, and the contents have not been disclosed to the second defendant. So there has been no advantage or disadvantage one way or the other, because the contents of the claimant's witness statement have not yet come to the second defendant. So, she could not have an advantage or benefited one way or the other from receiving that information beforehand and therefore could not craft a witness statement in response to it. She is crafting her witness statement based on her recollection and the events that transpired and so there is no prejudice that the claimant can argue or assert that has been suffered as a result of the late filing. Counsel submits that the delay in filing is excusable and inadvertent particularly in light of the circumstances, that there is a good explanation and that the delay was not intentional and that the 2nd Defendant has generally complied with all other court orders. Counsel contends that, given that the trial is scheduled for the

Hilary Term of 2029, the delay in filing would not cause any undue prejudice to the claimant

[12] Counsel submits that the second application for relief from sanctions was filed on May 1, 2025, seeking relief in respect of the late filing of the List of Documents which was due on or before April 12, 2024, but the documents were not filed until February 28, 2025. Counsel submits that the failure to file within the time specified by the Court was due to an internal administrative oversight within the law firm. She submits that once the oversight was discovered, the List of Documents was settled and filed. Counsel in her oral submissions submits that she puts the delay at the feet of her firm as an inadvertent oversight. She states that the document appeared on their internal system as having been filed, and there was no follow up to verify its filing until February 28, 2025.

[13] She urges the Court to accept that this explanation accounts for the delay and that no fault lies with the second defendant as the second defendant had provided all necessary information in a timely manner. Ms. Smith posits that while the Court is never trying to sanction attorneys and their inadvertence, she urges the Court to appreciate that their internal system was not utilized in the best manner as it ought to have been to ensure compliance with the Court's order.

[14] Counsel reiterates her submission in relation to the second defendant's general compliance with court orders, as previously addressed in relation to the witness statements. On the issue of promptness, she posits that the delay was minimal, less than 24 hours. She points out that," Mrs. Zoya Edwards-Vassell states that the delay occurred because the bearer arrived at the court registry after filing hours, requiring them to be returned and filed the following day. This was simply a logistical challenge". She urges the Court to find that the delay was minuscule, and that the explanation provided is reasonable in the circumstances.

[15] Counsel relies on the authorities of ***Ray Dawkins v Damion Silvera*** [2018] JMCA Civ 25; ***Tingles Distributors Ltd v Liquid Nitro Beverages Inc.*** [2020] JMCA Civ 24 and ***O'Neil Edwards v Jamaica Public Service Company Limited*** [2025] JMCA Civ 13.

The Claimant's submission

[16] Mr. Reitzin, counsel for the claimant submits that the application for relief from sanctions was filed 57 days after the deadline for filing and exchanging witness statements. He submits that based on the authority of ***Norman Washington Burton v The Director of Public Prosecutions [2023] JMCA Civ 30***, such a delay cannot be considered prompt. He also points out that "the rules do not speak to the date the witness statements were filed; they speak only to the date of filing the application for relief itself. Accordingly, and with respect, the date of filing the witness statements without the Court's permission is not relevant to the inquiry concerning promptness".

[17] He also submits that the application for relief from sanction is not supported by evidence. He contends that the affidavit evidence is very weak and raises more questions than it answers. He goes on to say that Dr. Bookall speaks of assignments and papers as a reason for missing the deadline for filing the witness statements, yet no details are provided; the affidavit does not indicate the nature of the assignments, the number of papers, the course she is pursuing or the specific deadlines. He also adds that there is no explanation as to why she was unable, despite her best efforts, to comply with the deadline. He further submits that Dr. Bookall claims she only became aware of the deadline later, however, she was present at the case management conference where the deadline was set, and therefore she had actual knowledge of it.

[18] He submits that the duty of a party seeking relief from sanctions is extremely high because if relief is not granted, the witness statement may not be used at all, which could end the second defendant's case on liability. Further in his submissions, regarding the standard of proof, he states that the evidence must be strong, cogent, credible, and detailed evidence to overcome the problem. It is not to persuade a court to the degree of reasonable satisfaction, which is the test that there was a good explanation for failing to comply with the court order.

[19] Mr. Reitzin submits that the duty of a deponent in an affidavit is to tell the truth and the whole truth. "One's obligation in making an affidavit is the same as one giving evidence in the witness box. It is unacceptable for a solicitor to prepare an affidavit in

which a witness gives half-truths, and it is completely unacceptable for a witness, especially an employee of an officer of the court to only give the court a half truth". Counsel submits that, Dr. Bookall has not given the court the full truth. Her affidavit in support of the application for relief from sanctions concerning the witness statement leaves many questions unanswered.

[20] He asserts that the court must weigh the interests of the administration of justice. Counsel submits the burden rests upon Dr. Bookall, to persuade the court that justice requires extending or treating the rules beyond their express provisions. Counsel relies on the authorities of **Ray Dawkins v Damion Silvera** [2018] JMCA Civ 25, **Tingles Distributors Ltd v Liquid Nitro Beverages Inc.** [2020] JMCA Civ 24 and **O'Neil Edwards v Jamaica Public Service Company Limited** [2025] JMCA Civ 13

Analysis

A thorough examination of the rules and the decided cases reveals that prior to the court deciding whether to exercise its discretion in favour of granting the application, the applicants, must first satisfy the conditions stipulated in **Rule 26.8(1)** and **26.8(2)** of the CPR. The process is sequential, that is, if the applicants fail to meet the requirements of the first step, the applications fails. If, however, she succeeds at the first step, the court will then examine whether she has met the requirements of the second step. Only when both steps are satisfied can the court move forward to determine whether to exercise its discretion in her favour. In making that determination, the court must consider the factors listed in **Rule 26.8(3)**. Consequently, if an applicant fails to satisfy either **Rule 26.8(1)** or **Rule 26.8(2)**, there is no basis for the court to proceed to **Rule 26.8(3).**

Whether the 2nd defendant application for relief from sanctions filed the 11th of June 2024 was made promptly?

[21] In the Court of Appeal case of **HB Ramsay & Associates Ltd and others v Jamaica Redevelopment Foundation Inc and another** [2013] JMCA Civ 11, Brooks JA (as he then was) at paragraph 9 stated that:

> *"if an application for relief from sanctions is not made promptly, the court is unlikely to grant relief"*
>
> *"Whether something has been promptly done or not depends on the circumstances of the case" (see also the case of case **Oneil Edwards v Jamaica Public Service Company Limited** [2025] JMCA Civ 13.)*

[22] He further stated that "upon examining promptitude within the context of the rule 26.8(1) it does suggest a mandatory element".

[23] In the case of **Regency Rolls Limited v Carnall** [2000] EWCA Civ. 379, Simon Brown, L.J. had this to say:

> *"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*

[24] This issue of promptitude within the context of rule 26.8(1) was also discussed in the case **National Irrigation Commission Ltd v Conrad Gray and another** [2010] JMCA Civ 18. In that case Harrison JA in stating that promptly "means acting with alacrity,' embraced the definition stated by Brown L.J in **Regency Rolls Limited v Carnall.** At paragraph 16 of her judgment she stated;

> *"Promptness, …., is the controlling factor under rule 26.8. It is plainly a very important factor, as is evident from the fact that it is singled out in the rule as a matter to which the court must have regard. In our judgment, it is a very important factor because there is a strong public interest in the finality of litigation. Put simply, people are entitled to know where they stand"*

[25] In the present case, the second defendant did not file and serve the witness statement within the time specified by the case management orders issued by Master C. McNeil (Ag.) on the 1st of February 2024. The order required that *"witness statements were to be filed and exchanged on or before 15 May 2024."* The 2nd defendant's witness statement, that of Kay Ann Bookall, was filed on the 10th of June, 2024, while the witness statement of Peta-Gaye Book all was filed on the 14th of June, 2024 both, just nearly a month late. The application for relief from sanction with regards to these witness

statements, having been made on 11th July 2024 was made a few days short of 2 months after the breach.

[26] Mr. Reitzen, in opposing this application, takes the view that the applicant has not satisfied the requirement of promptitude. He contends that the filing of the application 57 days after the deadline for filing and exchanging witness statements cannot be considered prompt.

[27] I will however review a few other authorities that have addressed this issue. In the case of **Deputy Superintendent John Morris and others v Desmond Blair and another** [2023] JMCA Civ 45, the court addressed the issue of the failure to serve witness statements and the consequential need to seek relief from sanctions under **rule 26.8**. Williams JA at paragraph 67, acknowledged that:" what amounts to promptness significantly depends upon the circumstances of the particular case".

[28] She nevertheless found that in that case, "the question of promptness was relative to the time the breach had taken place with the consequential sanction taking effect".

[29] In the case of Norman ***Washington Burton v The Director of Public Prosecutions*** **(Supra)**, Fraser JA while acknowledging the principle that, what may be considered prompt will depend on the circumstances of each case, at paragraph 55 emphasized that;

> *"the natural meaning of the word prompt should not be unreasonably strained or elasticized to bring circumstances within its compass. If the court decides that the application was not made promptly, the application must be refused and there is no discretion to exercise. Thus, if the court decides that the application was not made promptly, the application must be refused and there is no discretion to exercise.*

[30] Edwards JA in the case of **Greaves v Chung** [2019] JMCA Civ 45), at paragraph 39 noted that;

> *"The question whether the application had been made promptly must be considered in the light of the respondent's overall conduct, the order itself, and the circumstances surrounding the failure to comply":*

[31] In **HB Ramsay & Associates Ltd and others v Jamaica Redevelopment Foundation Inc and another**, the Applicants had failed to comply with an unless order. In those circumstances Brooks JA (as he then was) found that the party affected is given notice of both the requirement and the penalty for non-compliance, and as such the deadline for compliance should be uppermost in the party's mind. In those circumstances his Lordship did not accept the view that the assessment of promptitude should be based on the time when the applicant claimed to have discovered the default.

[32] Although the present matter does not concern an unless order, the principle is nonetheless instructive, as the attorney-at-law for the second defendant, as well as the second defendant herself, were both present at the Case Management Conference on the 1st of February 2024 when the orders were made. As such, the compliance date should likewise have been in the forefront of their minds.

[33] The second defendant's application if strictly tied to the date of the breach, having been filed 57 days after the deadline, on the face of it appears to constitute an inordinate delay. This may be particularly so when compared with the case of ***Norman Washington Burton v The Director of Public Prosecutions*****,** where the court refused relief because the application was made several months after the breach.

[34] However, my review of the authorities indicates that they confirm that the determination of the issue of promptitude is equally dependent on the circumstances surrounding the breach, taking into consideration, the time of the discovery of the breach and reasonable opportunity to discover the breach. As such, in view of the foregoing authorities the reason for the delay will assist in determining the issue of promptitude in each particular case. The question to be addressed in the instant case is whether the applicant, having been made aware of the date for the filing and exchange of the witness statements, complacently allowed the deadline to pass or whether there were genuine circumstances militating against her acting in a timely manner.

[35] In her affidavit, the applicant explains that, the difficulty in balancing her time with the pressures of work as a medical doctor, caring for her special needs child and the immediacy of assessment papers, caused her to miss the deadline and that as soon as realized this she provided her attorney with the relevant instructions. In addition, the applicant, in her affidavit seeks permission to call Peta-Gaye Bookall as a witness.

[36] Ms. Smith explains that the reason for the late filing of that witness statement is that at the time the case management orders were made, the information obtained from the second defendant did not include how many people were in the vehicle. It was during the process of finalizing the 2nd defendant's witness statement that counsel became aware there was in fact someone else in the vehicle. So, as a result, only one witness was requested at the time of the case management conference

[37] Arden LJ in **Regency Rolls Limited v Carnall** made the pronouncement that, the requirement of acting "promptly" does not equate to an absence of delay altogether. Rather, it calls for the court to determine whether, in the circumstances, the party acted with reasonable celerity. Here, unlike in the case **Deputy Superintendent John Morris et al. v Desmond Blair and Another**, where the applicants delayed for three months until settlement negotiations failed, the second defendant filed her witness statement less than a month late, and her application for relief followed approximately one month later. Foster-Pusey JA in the case of **Oneil Edwards v Jamaica Public Service Company Limited** at paragraph 42. stated that the court must consider the circumstances surrounding the timing of the application to determine whether it was made promptly.

[38] In the circumstances on the instant case, I find that the delay, though not negligible, was not inordinate. Neither do these circumstances indicate that the delay was due to indifference to the court's order, but rather to genuine and competing obligations of an exceptional nature. I find that in the circumstances the delay of less than 2 months in filing the application was not inordinate but was indeed prompt.

Whether the application for relief from sanctions is supported by evidence on affidavit

[39] **Rule 26.8(1)(b)** expressly provides that an application for relief from sanctions must be supported by evidence on affidavit. In **Tingles Distributors Limited v Liquid Nitro Beverages Inc. and Anor**, Williams JA, at paragraph 85, noted that "*to be supportive of the application, the affidavit ought to address the issues which the court would be obliged to consider in determining whether to grant relief*".

[40] Counsel for the second defendant, Ms. Smith, submits that her client's affidavit provides a clear and detailed explanation for the delay, and therefore complies with the evidential requirements of Rule 26.8(1)(b). By contrast, counsel for the claimant, Mr. Reitzin, argues that although an affidavit accompanied the application, it does not adequately support it. Relying on ***Ratnam v Cumarasamy*** [1964] UKPC 50, he submits that non-compliance must be fully explained, and that where no sufficient excuse is offered, no indulgence should be granted.

[41] While I accept that **Ratnam v Cumarasamy** (supra) underscores the need for a satisfactory explanation, I do not agree with the claimant's contention that the affidavit does not support the application. The supporting affidavit filed on the 15th of July 2024, contains evidence given by the second defendant herself sufficiently outlining the reasons for and circumstances surrounding the delay. Accordingly, I find that the requirement under **Rule 26.8(1)(b)** has been satisfied.

Whether the failure to comply was intentional and whether there are good explanations for the failure

[42] Counsel for the second defendant, Ms. Smith, submits that the explanations, set out in the affidavit demonstrate that the delay was not intentional on the part of Dr. Bookall or her attorneys. Counsel argues that these circumstances are both credible and believable, and that, given Dr. Bookall's obligations as a medical doctor and as a single mother of a child with special needs the criteria for providing a good reason for the delay have been met. In response, counsel for the claimant, Mr. Reitzin, contends that Dr.

Bookall's affidavit reveals that she prioritized her assignments and professional responsibilities over compliance with the court's order. He submits that even if her explanation is accepted, such prioritization demonstrates a decision not to comply and suggests intentionality.

[43] In **HB Ramsay & Associates Ltd and others v Jamaica Redevelopment Foundation Inc and another**, Brooks JA made it clear that "where there is no good explanation for the default, the application for relief from sanctions must fail. **Rule 26.8(2)** stipulates that it is a precondition for granting relief, that the applicant must satisfy all three elements of the paragraph".

[44] The applicant, in her affidavit, acknowledges the lateness in filing the witness statement, stating that it was regrettable but not intentional. Her explanation for the breach as noted earlier is that she is in school, a single mother, of a child with special needs, and works as a medical doctor. She also explains that during the relevant period, she had assessments, papers, and personal obligations, which caused her to inadvertently miss the deadline. Contrary to the submissions of Mr. Reitzen there is nothing before me to indicate the 2nd defendant chose to miss the deadline. Her evidence indicates that her competing obligations caused her to inadvertently missed the deadline. I find that she has provided sufficient evidence from which I can conclude and I so conclude that she has provided a good explanation for her failure to meet the dead line and that the breach was not intentional.

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Whether the second defendant has generally complied with all other orders, rules and directions

[45] With respect to whether the applicant has generally complied with court orders, Ms. Smith submits that the second defendant has, to date, been compliant. She notes that the court file is substantial, and prior interlocutory applications, as well as documents related to those applications and the pleadings, have all been filed in a compliant manner. She submits that with specific regard to the witness statement and the application filed

on July 11, 2024, the requirements under Part 26.8 have been addressed, as previously submitted.

[46] Mr. Reitzin submits that "general compliance" under **Rule 26.8(2)(c)** "includes all relevant rules, orders, and directions, including case management conference orders. The inquiry should not be limited to historical breaches but must consider all concurrent and relevant breaches. Since the second defendant failed to comply with multiple orders including filing her witness statement, disclosure, inspection of documents, pre-trial memorandum, and applications for expert evidence she cannot be regarded as having generally complied. Consequently, her application for relief from sanctions cannot be granted, and a wasted costs order against her attorneys is warranted".

[47] However, assessing whether the second defendant has generally complied with all other orders, rules and directions, it is necessary for me arrive at an interpretation of the term "*generally complied with all other orders, rules and directions*". Applying the natural and ordinary meaning of the words "other" must relate to things distinct from the things currently under consideration. In essence, matters that are subject of these application would not fall in the designation of "others"

[48] This view is supported by Edwards J A in the case of **Greaves v Chung** [2019] JMCA Civ 45, where at paragraph .16 she stated that;

> *"I would take it to mean that apart from the breach which the party is seeking relief, that the party has otherwise been compliant with the orders, directions and rules of the court. Also by applying the ordinary meaning of the word "other" one can appreciate that the word other "refers to a thing different or distinct from the one already mentioned. In this context,* ***Rule 26.8(2)(c)*** *requires general compliance, not absolute or total compliance"*

[49] As such, applying the ordinary meaning of the words the I find that the applicant has been generally compliant with all other orders, rules and directions of the court.

[50] The applicant, having satisfied the requirements under ***Rule 26.8 1.,*** and ***26.8.2,*** I now need to consider whether I find sufficient basis to exercise my discretion under ***Rule 26.8.3***. in favour of the applicant. As was stated in paragraph 26 of the case of ***Morris Astley v The Attorney General of Jamaica and The Board of Management of the***

Thompson Town High School **[2012**] JMCA Civ 64; "*Rule, 26.8(3) sets out the general factors to which the court asked to grant relief from sanctions must have regard*". (See also the cases of **Tingles Distributors Ltd v Liquid Nitro Beverages Inc;** and **University Hospital Board of Management v Hyacinth Matthews [2015] JMCA Civ 49**).

[51] As such, I must now determine., having regard to; (a)the interests of the administration of justice; (b)whether the failure to comply was due to the party or the 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.

[52] In this case the failure to comply was that of the applicant, but having regards to the circumstances the court finds that the failure was not egregious. The failure to comply has already been remedied as the statements have been filed and served. The trial date can still be met as the trial is set for the year 2029. Additionally, I find that the effect of granting the relief will not have any grave prejudice on the claimant as he will still be able to advance his case in court without any delay being occasioned by the failure to comply. As such any prejudice suffered by the claimant can be remedied by a cost award. Consequently, I find that the applicant has satisfied the requirements for relief from sanction on this application.

The Notice of Application for Relief from Sanctions filed on the 1st of May 2025.

Whether he Application was filed promptly

[53] This application is supported by evidence on affidavit. So, the main issue under ***Rule 26.8.1*** is whether the application was filed promptly. Counsel for the second defendant, Ms. Smith, accepts that the list of documents was to be filed on the 12th of April, 2024, but was in fact filed on the 28th of February, 2025. The Notice of Application for relief from sanction was filed on the 1st of May 2025. This would have been over 1 year after the breach. However, in light of the established cases, in determining the issue of promptness I will not confine the calculation of the time strictly to the date of the breach. Instead, I will examine the circumstances of the case to determine whether there were any factors that prevented the applicant from becoming aware of the breach until a later date.

[54] It has not been denied that counsel for the applicant was in fact present at the case management conference and was then made aware of the date for compliance. Counsel Ms. Zoya Edwards-Vassell explains in the affidavit in support of the application that the second defendant's list of documents had been prepared and uploaded to the firm's internal system for final settlement, but the process was not completed in a timely manner, resulting in the failure to file within the time specified by the court. She states further that once the oversight was discovered, the list of documents was settled and filed on February 28, 2025. Counsel, Ms. Smith accepts responsibility for the delay, attributing it to an inadvertent oversight within the firm. She explains that the documents appeared on their internal system as having been filed, and no follow-up was done to verify the submission until February 28, 2025.

[55] Counsel for the claimant, Mr. Reitzin, contends that the delay of 384 days between the deadline for filing the list of documents and the date of the application for relief from sanctions cannot be considered prompt. He argues that the discovery of the error is not the relevant test and that the second defendant's counsel, as a partner in the firm, was in control. He seeks to distinguish the case of **O'Neil *Edwards v Jamaica Public Service Company,*** noting that, that case involved exceptional circumstances where the parties

genuinely believed that service had been effected when in fact it had not. He further submits that discovery is when a party becomes aware that a breach has occurred. However, if a party was present at the case management conference, they cannot say that they only became aware of a breach on a particular day.

[56] While I am cognizant of the requirement to consider the particular circumstances of the case in assessing promptitude, I am equally cognizant of the caution against straining the natural meaning of the word to accommodate circumstances which plainly fall outside its scope. In the instant case I find that the delay was inordinate, spanning over a year between the date of the breach and the filing of the application. I find that there were no exceptional circumstances in this case to have caused such an inordinate delay in making the application, with the attorney for the applicant being well aware of the date for compliance.

[57] The court recognizes that we live in an era where technology has revolutionized the workspace. This has undoubtedly made tasks easier to manage. However, this convenience does not absolve counsel of the fundamental duty to exercise proper case management and to ensure compliance with the orders of the court. This ultimate responsibility rests with counsel herself. This court does not assume the responsibility of dictating how a firm is managed.

[58] However, on the face of it, there appears to have been no adequate system of checks and balances in place to ensure that documents were not only uploaded to the system but also that filing was verified. Considering the fact that a filed document carries the date and seal of the court, the absence of these, if counsel had done her due diligence, would have been sufficient to indicate that the document had not been filed. Consequently, I find that there was nothing preventing counsel from becoming aware of the breach prior to the 28th of February 2025. As such I find that this application was not made promptly and that the explanation of the inadvertent uploading of the document to the firms' internal system, as an indication that it was filed, does not carry much force. This in essence is sufficient to dispose of this application. I will however go on to consider other provisions within ***Rule 26.8.2(a) and (b***) for completeness.

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Whether the failure to comply was intentional

[59] Ms. Smith submits that the failure in filing the list of documents was not intentional. In her affidavit, Ms. Zoya Edwards Vassell advances the reason for the failure as inadvertence, resulting from an administrative oversight. Ms. Smith submits that this error was not attributable to the litigants themselves. Counsel relies on the case of **Marlene Murray-Brown v Dunstan Harper and Winsome Harper** [2010] JMCA App1, where Phillips JA stated that:

> *"The fact is that there are many cases in which the litigants are left exposed and their rights infringed due to attorney's errors made inadvertently, which the court must review. In the interests of justice, and based on the overriding objective, the peculiar facts of a particular case, and depending on the question of possible prejudice or not as the case may be to any party, the court must step in to protect the litigant when those whom he has paid to do so have failed him, although it was not intended".*

[60] However, I must indicate that while **Marlene Murray-Brown v Dunstan Harper and Winsome Harper** demonstrates the court's willingness to shield litigants from their attorneys' inadvertence, the general rule cannot override the specific rule. That is, counsel is not permitted to rely on the overriding objective, where there are specific rules, Rule such as 26.8, addressing the issue under consideration. Nevertheless, there is nothing before me to suggest that the applicant or her attorneys-at-law deliberately sought to disobey the terms of the order.

Whether there is a good explanation for the failure

[61] Mr Reitzen submits that oversight or inadvertence provides no good explanation for the failure to comply. In support, he cites ***Jamaica Public Service Company Limited v Charlesburg Francis*** [2017 JMCA Civ 2], where the court expressly held that administrative errors do not provide good explanations for the purposes of relief from sanctions.

[62] While I acknowledge Counsel's explanation that the oversight arose from her firm's administrative inadvertence, the court's own record, indicates that counsel appeared on

numerous occasions in relation to this matter. Those appearances ought reasonably to have prompted a review of the file in preparation for court, which would either have prevented the oversight or exposed it much earlier. Moreover, I cannot accept as good explanation that an application filed nearly a year after the date of the breach, was due to an administrative oversight which by its very nature demonstrates administrative inefficiency. This in essence, is an inexcusable oversight. As was observed by Lord Dyson in **Attorney General v Universal Projects Limited** [2011] UKPC 37, at paragraph 23:

> *...To describe a good explanation as one which 'properly' explains how the breach came about simply begs the question of what is a 'proper' explanation. Oversight may be excusable in certain circumstances. But it is difficult to see how inexcusable oversight can ever amount to a good explanation. Similarly, if the explanation for the breach is administrative inefficiency." (See also the case of* ***Ingles Distributors Ltd v Liquid Nitro Beverages Inc and anor****)*

Conclusion

[63] In light of the foregoing I find that the Applicant has satisfied the requirements for the grant of relief from sanction in her application filed on the 11th of July 2024. As such this application is granted. The applicant has, however, failed to satisfy the requirements for a grant of relief from sanction with respect to her application filed on the 1st of May 2025. As such this application is denied.

Orders

[64] The court makes the following orders:

i) The 2nd Defendant, having failed to comply with the Case Management Conference orders made by Master C. McNeil (Ag.) on the 1st of February 2024 by failing to file and serve the witness statements of Kay-Ann Bookall and call Peta-Gaye Bookall on or before the 15th of May 2024 is hereby granted relief from the sanction occasioned by this failure.

ii) *The 2nd Defendant is granted ab extension of time for the filing of the witnesses' statement.*

iii) *The witness statement of of Kay-Ann Bookall filed on the 10th of June 2024, is permitted to stand as filed and served in time.*

iv) *The 2nd Defendant is granted permission to call Peta-Gaye Bookall as an additional witness.*

v) *The statement of Peta- Gaye Bookall filed on the 14th of June,2024, is permitted to stand as filed and served in time.*

vi) *The 2nd Defendant's Application for relief from sanction for failing to file and serve list on documents on or before the 12th of April 2024 is refused.*

vii) *Cost to the Claimant to be agreed or taxed.*

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Andrea Thomas
Puisne Judge