



[2022] JMSC Civ. 120

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2021 CV02506

BETWEEN

**THE ADMINISTRATOR-GENERAL FOR
JAMAICA**

CLAIMANT

**(Administrator of the Estate of
Ruunath Nadette Meredith also known
as Ruunath Meredith)**

A N D

**THE ADMINISTRATOR-GENERAL FOR
JAMAICA**

DEFENDANT

**(Administrator of the Estate of Michael
Tomlinson)**

Mr. Jovell Barrett instructed by Nigel Jones and Company for the Claimant.

Mrs. Allia Leith Palmer instructed by the Administrator General for Defendant.

Civil Procedure Rule 26.3(1) (b) – Application to strike out claim as abuse of process.

Fatal Accidents Act Section 3 – Application to extend time to bring claim- meaning of the word action – Law Reform (Miscellaneous Provisions Act) Section 2 - Application to extend time to bring proceedings – meaning of the word proceedings.

Heard: February 24 and May 25, 2022

Wong-Small, J (Ag.)

[1] On the date of the hearing of this matter two applications were listed before the Court for consideration. The first was a Notice of Application for Court Orders filed by the Claimant on June 19, 2019 in which Counsel for the Claimant is seeking the following orders that:

- a. The time within which to file a claim on behalf of the defendants of Ruunath Nadette Meredith also known as Ruunath Meredith under the Fatal Accidents Act be extended;
- b. The time within which to file a claim on behalf of the defendants of Ruunath Nadette Meredith also known as Ruunath Meredith under the Law Reform (Miscellaneous Provisions) Act be extended;
- c. The Claim Form and Particulars of Claim filed in this matter seeking damages pursuant to the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act shall stand as properly filed;
- d. Costs to the Claimant; and
- e. Such further and other relief as this Honourable Court deems fit.

[2] The second was an Amended Notice of Application for Court Orders filed on April 26, 2021 filed by the Defendant seeking the following orders:

- a. That the Claimant/ Respondent's claim set out in the Claim Form and Particulars of Claim filed on the 19th June 2019 be struck out;
- b. That the Claimant/Respondent's Notice of Application for Court Orders dated the 18th June 2019 and filed on 19th June 2019 be dismissed.
- c. Costs to the Defendant/ Applicant.
- d. Any such further or other relief as deemed fit by this Honourable Court.

On the hearing date it was agreed that the Defendant's application should proceed as its resolution would also be determinative of the Claimant's application.

BACKGROUND

- [3] To understand the full import of the applications before the Court, it is necessary to give regard to the context in which they are being made. On June 19, 2019, the Claimant filed a claim against the Defendant to recover damages for negligence and/ or breach of statutory duty on behalf of the estate and dependents of the Deceased Ruunath Meredith. The claim had its genesis in a motor vehicle accident which took place on or about July 1, 2013 along the Davis Town main road in the parish of St. Ann. It is alleged that Mr. Michael Tomlinson who was the driver and owner of a Toyota Camry motor car with registration number 6528 EX, negligently drove and lost control of this motor vehicle in which Ms. Ruunath Nadette Meredith was a lawful passenger causing the vehicle to go over a bridge, overturn and plunge into a river resulting in the death of himself and Ms. Meredith.
- [4] The Administrator General is the Administrator for the Estates of both parties having obtained letters of Administration in the estate of Michael Tomlinson on May 5, 2015 and in the estate of Runnath Meredith, by an Instrument of Administration dated June 16, 2017. The Claimant Administrator General is claiming on behalf of the estate and dependents of the deceased Ms. Meredith for the losses suffered, damage and expenses incurred as a result of the said accident pursuant to the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act.
- [5] In support of this Application the Defendant has argued that the Claimant's right to a cause of action against the Estate of Michael Tomlinson has been extinguished owing to the fact that the claim before the court was filed over four years after a Grant of Representation was obtained in the deceased, Michael Tomlinson's estate. Counsel further contended that the limitation period stipulated under the Law Reform (Miscellaneous Provisions) Act would have expired at the time that the claim was filed; thus, the claim is an abuse of process and should be struck out.

- [6] The Claimant's argument generally is that, the Court in interpreting the applicable provisions of the relevant legislation, should adopt a purposive approach. This would impact the definition of the words "Claim" and "proceedings". Counsel further submitted that there exists a lacuna in the law as there is no definition provided for the word "action" in the Fatal Accidents Act nor a definition of the word "proceedings" in the Law Reform (Miscellaneous Provisions) Act.
- [7] Therefore, it was submitted that the claim before the court is not statute barred as a letter or "claim" was submitted to the Defendant's Insurance Company, Guardian General Insurance Jamaica Limited, on February 14, 2014 in relation to the subject matter. If the Court accepted this approach, this means that a "claim" was submitted or "proceedings" commenced prior to a Grant being obtained in Michael Tomlinson's estate. Accordingly, the letter to the Insurance Company would be sufficient to establish that actions or proceedings were initiated before the respective limitation periods specified in Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act.

ISSUES

A perusal of the applications and the respective submissions reveals the following issues for determination;

1. Whether the time within which to file a claim under the Fatal Accidents Act ought to be extended to allow for the *Claimant's Statement of Case to stand as properly filed?*
2. Whether the time within which to file a claim under the Law Reform (Miscellaneous Provisions) Act can be extended to allow for the *Claimant's Statement of Case to stand as properly filed?*
3. Whether the Claimant's Statement of Case should be struck out as an abuse of process?

ISSUE 1: Whether the time within which to file a claim under the Fatal Accidents Act ought to be extended to allow the Claimant's statement of case to stand as filed?

LAW AND ANALYSIS

- [8] With respect to the actions maintainable against a person whose negligence resulted in death, section 3 of the Fatal Accidents Act, 1845 (hereinafter referred to as the FAA) provides as follows:

"3. Whosoever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action, and recover damages in respect thereof, then and in every such case the person who would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony."

- [9] In the circumstances of this matter where the action is against the estate of a deceased person, the applicable statutory provision is section 4(2) of the FAA. The section states that:

"Any such action shall be commenced within three years after the death of the deceased person or within such longer period as a court may, if satisfied that the interests of justice so require, allow."

- [10] The Defendant's position on this issue is that the claim is statute barred under the Fatal Accidents Act, it having been filed more than three years after the death of Mr. Tomlinson and that in the circumstances of this matter, the court ought not to exercise its discretion as the limitation period under the Law Reform (Miscellaneous Provisions) Act (LRMPA) acts as a final bar against any claim filed outside that period.

- [11] A distinction was made between the limitation period under the FAA which applied to the time within which an estate of a deceased person or near relations are required to take out a claim against a defendant whether alive or deceased and the LRMPA limitation which is the time within which to bring a claim against the

estate of a deceased defendant. The only relevant limitation to a claim against an estate is that outlined in Section 2(3)(b) of the LRMPA which requires an action to be taken out within six months of representation being taken out. The Defendant relied on the authority of **Sean Baker v O'Brian Brown and Angella Scott Smith** Claim No 2009HCV 05631 delivered on May 3, 2010.

- [12] On behalf of the Claimant, it was submitted that the claim under the Fatal Accidents Act is not statute barred. This was despite the fact that in the Notice of Application for Court Orders filed by the Claimant on June 19, 2019 one of the orders being sought by the Claimant is an order that "The time within which to file a claim on behalf of the dependents of **Ruunath Nadette Meredith** also known as **Ruunath Meredith** under the Fatal Accidents Act be extended".
- [13] In, his submission, Counsel for the Claimant averred that the word "action" was not defined in the FAA. Furthermore, that there was nothing in the legislation to say that the word "action" had to mean a claim that was filed in the court. Counsel submitted that their act of sending letters to the Defendant's Insurance Company, Guardian General Insurance Jamaica Limited, for the purpose of discussing settlement, should constitute an „action" in accordance with section 4(2) of the FAA.
- [14] Counsel relied on the dicta of Brooks J.A. (as he then was) in the case of **Jamaica Public Service Company Limited v Dennis Meadows et al** [2015] JMCA Civ 1 to support this submission. Counsel stated that the court was not prohibited from examining the context in which a word was used in order to apply a different meaning to the said word. Counsel stated that the word "action" should not be restricted to a technical term – filing a claim in court.
- [15] It is accepted that the FAA does not contain a definition of the word action and it is not a word defined by the Interpretation Act. However, note must be taken of the context in which the word is used in the legislation to determine its definition. It is clear that section 4 of the FAA speaks to the mode and manner of the commencement of an action and assessment of damages. Additionally, in

examining section 4 of the FAA in its totality, it is noted that section 4(4) of the FAA expressly states that:

"If in any action the court finds for the plaintiff, then, subject to the provisions of subsection (5), the court may award damages to each of the near relations of the deceased person as the court considers appropriate to the actual or reasonably expected pecuniary loss caused to him ..."

In light of the fact that section 4 of the FAA speaks to the court making a finding on an "action" and potentially awarding damages, the word "action" should be interpreted using a legal dictionary.

- [16] **Black's Law Dictionary** (8th edition 2004) defines action as:

*"A civil or criminal judicial proceeding – Also termed **action at law**. [Cases: **Action** 1. C.J.S. **Actions** 2-9, 11, 17, 21, 32-22, 36]*

*"An **action** has been defined to be an ordinary proceeding in a court of justice, by which one party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offence. But in some sense this definition is equally applicable to special proceedings. More accurately, it is defined to be any judicial proceedings, which, if conducted to a determination, will result in a judgment or decree. The action is said to terminate at judgment..."*

- Osborn's Concise Law Dictionary**, 12th edition defined action as:

*"**Action**" generally meant a proceeding in one of the common law courts as opposed to suit in equity..."*

- [17] Based on these definitions, it is clear that the word action in the FAA refers to proceedings in the Court and would not include a "claim" as defined by counsel in the form of a letter to the Insurance Company. Consequently, the Claimant has failed to file a claim within the three years after the death of the deceased, Ruunath Meredith and this has resulted in the claim being statute barred. Notwithstanding, I must consider whether I should exercise my discretion to grant an extension of time within which to file the said claim in the interest of justice pursuant to section 4(2) of the Fatal Accidents Act.
- [18] In **Shaun Baker** (supra), Edwards, J (Ag.) (as she then was) referred to and applied the factors stipulated at section 33 of the English Limitation of Actions Act

to determine whether the court should exercise its discretion to enlarge the time within which an applicant may commence an action under the FAA. The factors applied by the Learned Judge were: a) delay; b) cogency of evidence; c) real prospect of success at trial; d) conduct of the defendants; e) extent to which the claimant acted promptly; and f) prejudice.

- [19] The aforementioned factors considered by Edwards, J (Ag.) (as she then was) in the case of **Shaun Baker** (supra) will be applied to the circumstances of the present case to determine whether the Claimant's application for an order to extend the time within which to file a claim under the FAA should be granted.

Delay/ Extent to Which the Claimant Acted Promptly

- [20] In the Police Report dated July 22, 2013, it is stated that both Ruunath Nadette Meredith and Michael Tomlinson died in a motor vehicle accident on July 1, 2013 in which it is said that Michael Tomlinson lost control of the motor vehicle, went over a bridge and plunged into the river below. It is noted from the Affidavit in Support of Notice of Application for Court Orders filed on July 19, 2019 and sworn to by Mrs. Lona Millicent Brown, Administrator-General for Jamaica, that the Claimant began writing to the Defendant's Insurance Company, Guardian General Insurance Jamaica Limited, in relation to a claim against their Insured, Michael Tomlinson, on or around November 13, 2013.
- [21] The Claimant has stated that the reason for the delay in filing this claim was due to the fact that an Instrument of Administration was not obtained in the Estate of Ruunath Meredith until June 16, 2017. In addition, shortly after the said motor vehicle accident, Counsel for the Claimant had begun communicating with the aforesaid Insurance Company with a view to arriving at a settlement.
- [22] Counsel for the Claimant further submitted that if the reasons given are not seen as good reasons, then they rely on the case of **Garbage Disposal and Sanitations Systems v Noel Green et al** [2017] JMCA App 2. Counsel asserted that in accordance with **Garbage Disposal** (supra), the lack of a good reason

should not be a bar to the court exercising its discretion to grant an application for an extension of time as the overriding principle is that justice must be done.

- [23] The Defendant has however argued that the reasons provided by the Claimant for its delay in filing the present action are inadequate. Counsel for the Defendant pointed out that the Civil Procedure Rules, 2002 allows for the appointment of a representative ad litem for the purposes of initiating a claim. Moreover, an application could have been filed to appoint the Administrator- General of Jamaica to act on behalf of the Claimant until a full grant had been obtained in that estate. Counsel also submitted that even though a grant was obtained in that estate in 2017, this claim was not filed until 2019. As such, even then, the Claimant failed to act promptly upon obtaining the Instrument of Administration.
- [24] It is clear that this claim was not filed until in excess of five years after the motor vehicle accident that claimed the life of the deceased, Ruunath Meredith and in excess of two years after the expiration of the limitation period under the FAA. I agree with Counsel for the Defendant that the Claimant need not have waited until the Instrument of Administration had been obtained in this estate before taking steps to commence this claim. It is also accepted that the Claimant failed to act promptly even after the Instrument of Administration had been obtained.
- [25] However, I am guided by the dicta of F Williams J.A. in **Garbage Disposal** (supra), where a determination was made on an application seeking an extension of time within which to apply for leave to appeal. In examining the length of delay and reason for the delay, the Learned Judge stated that “the court is not bound to refuse the application in the absence of a good reason, since the overriding principle is that justice be done.” Therefore, although I am of the view that the reasons given for the delay in the filing of this claim are not sufficient, this alone will not result in a rejection of the application.

Cogency of the Evidence / Real Prospect of Success at Trial

- [26] This motor vehicle accident occurred in 2013; therefore, it is natural to believe that any potential witnesses to the incident may be affected by lapse in memory. However, it is noted that neither party to the claim has asserted that there were any witnesses to the accident. The only evidence before the court that directly speaks to what took place at the time of the accident is the abovementioned Police Report. As such, it is highly probable that the only individual who may be able to give evidence with respect to the event is Corporal David Galloway, who it is said investigated the accident.
- [27] With respect to the likely prospect of success, the Police Report explicitly states that the deceased, Michael Tomlinson, lost control of the motor vehicle causing the vehicle to go over a bridge, overturn and plunge into a river. In the absence of evidence to prove that the deceased, Michael Tomlinson, encountered mechanical difficulty or some other defence, there would be a claim to answer. It is further noted that the Defendant has not denied liability, but simply sought to rely on the expiration of the respective limitation periods under the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act.

A. *Conduct of the Defendants*

- [28] There is no evidence before the court to suggest that the Defendant has acted in a manner that begets criticism. The Claimant sought to engage in settlement discussions with the Defendant's Insurance Company, but those discussions were halted due to the Claimant's failure to supply the Company with a grant of representation in the estate of Ruunath Meredith prior to the expiration of the aforesaid limitation periods.

B. *Prejudice*

- [29] The Claimant has contended that there would be no prejudice to the Defendant as they would have been aware of the matter due to the communications that were had with their Insurance Company regarding a possible settlement. In response,

Counsel for the Defendant posited that until she had been served with the claim form in this matter, she had no knowledge that a claim would have been filed. It was also argued that discussions with the Insurance Company do not constitute discussions with the Defendant as the Insurance Company has the right to act under their right of subrogation. Counsel for the Defendant further stated that the estate file for Michael Tomlinson has been closed. Thus, there would be no funds to meet any possible award of damages.

- [30] In assessing the degree of prejudice that the Defendant would face in **Donovan v Gwentoy's Ltd** [1990] 1 WLR 472, Lord Griffiths opined that:

"In weighing the degree of prejudice suffered by a defendant it must always be relevant to consider when the defendant first had notification of the claim and thus the opportunity he will have to meet the claim at the trial if he is not to be permitted to rely upon his limitation defence."

- [31] Having considered the submissions of the parties, I am aware that at the time of the accident the Claimant was survived by minor dependents; thus, if the matter does not progress then those dependents would suffer prejudice. On the other hand, if the matter does move forward, then the Defendant would be faced with a stale claim that they were not expecting. Furthermore, although the Defendant has asserted that the estate file for Michael Tomlinson has been closed, the court has not been provided with proof of same. Nonetheless, almost nine years have passed since the cause of action arose and almost six years have passed since the expiration of the limitation period under the FAA.
- [32] Although the delay in filing the claim is excessive and the reason provided for the failure to file within the requisite time is inadequate, it cannot be denied that the claim has a real likelihood of success and that the degree of prejudice would be greater to the Claimant. For these reasons, I am of the view that in the interest of justice the court should extend the time within which to file a claim under the Fatal Accidents

Act. Notwithstanding this position, I am mindful that because the cause of action in tort is against the Estate of Michael Tomlinson, the applicable limitation period

will ultimately be determined by the Law Reform (Miscellaneous Provisions) Act, 1955.

ISSUE 2: Whether the time within which to file a claim under the Law Reform (Miscellaneous Provisions) Act can be extended to allow for the Claimant's Statement of Case to stand as properly filed?

LAW AND ANALYSIS

[33] In this case, the Defendant has asserted that at the time of the filing of this claim the limitation period under the Law Reform (Miscellaneous Provisions) Act, 1955 (hereinafter referred to as the LRMPA) had expired. It was further indicated that the legislation does not empower the court to grant an extension of the time within which to file an application under section 2(3)(b) of the LRMPA. In order to determine whether the court has a discretion to grant the Claimant's application for an extension of time within which to file under the LRMPA, it is necessary to examine the relevant provisions of the LRMPA.

[34] Section 2 of the LRMPA provides as follows:

"2. (1) Subject to the provisions of this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate...

...

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless either-

(a) proceedings against him in respect of that cause of action were pending at the date of his death; or

(b) the cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later

than six months after his personal representative took out representation." (Emphasis mine)

- [35] In **Dianna Harriot v Joy Blake and the Administrator General of Jamaica** suit no. M 87 of 2002 delivered on June 11, 2004, Sykes J (Ag), as he then was, posited that the LRMPA is an "exact replica" of United Kingdom legislation - Law Reform (Miscellaneous Provisions) Act, 1934. In examining the LRMPA, the Learned Judge pronounced at page 5 that:

"This statutory regime is a special regime created by Parliament. This has the effect of ousting the 1623 Limitation Act. The 1623 Act has no application here. Consequently, the action against the estate of Mr. Afflick is not statute barred. Thus even if a personal representative was not appointed for many years, time would not begin to run against the claimant unless and until such an appointment was made provided of course that the cause of action arose six months before the death of the deceased. Once such a person is appointed then the claimant has six months within which to file her claim. If she does not do this within the six months her claim is statute barred. This is the effect of the special regime created by Parliament." (Emphasis mine)

- [36] I also found the English Court of Appeal case of **Airey v Airey** [1958] 2 All ER 571 instructive in the circumstances. In that case, the respondent had suffered injuries as result of a motor accident in which her son was the negligent driver. Her son was killed in the said accident and a grant of representation was subsequently obtained in his estate on March 18, 1957. This was more than six years after the date of the motor vehicle accident. Within six months of the Grant being obtained, the respondent commenced a claim against his estate to recover damages for negligence.
- [37] Jenkins L.J. found that the claim was not statute barred as the only limitation period applicable after the death of a tortfeasor to a surviving cause of action for tort involving personal injuries for which no proceedings were pending at the time of the tortfeasor's death, was the period dictated by s 1 (3)(b) of the Law Reform (Miscellaneous Provisions) Act, 1934 – six months after the representation to the tortfeasor's estate was obtained. Additionally, that this limitation period was exhaustive.

- [38] Counsel for Claimant submitted that this claim is not statute barred as the correspondence which was forwarded to the Defendant's Insurance Company on or about February 14, 2014, was done prior to Letters of Administration being obtained in the Estate of Michael Tomlinson. Counsel further argued that there was a lacuna in the law with respect to section 2(1) and 2(3)(b) of the LRMPA. It is his contention that the word "proceedings" should not be given a technical meaning.
- [39] Counsel advanced a similar submission in relation to the meaning to be given to the word "proceedings", that it should not be limited to the filing of a claim but should include a "claim" by way of a letter to the Defendant's Insurance Company within the time period specified in the LRMPA. In addition, Counsel relied on the case of **Jamaica Public Service Company Limited v Dennis Meadows et al** [2015] JMCA Civ 1 to buttress the submission that the purposive rule of interpretation could be utilized by the court to interpret the word "proceedings" to include a letter being sent to the Defendant's Insurance Company. This, he said, would give effect to the intention of Parliament which was stated at section 2(1) of the LRMPA.
- [40] In response, Counsel for the Defendant submitted that in the context of the legislation the word "proceedings" refers to legal matters. As a consequence, a legal dictionary should be used to determine the meaning of the word "proceedings" rather than the ordinary English dictionary as suggested by the Claimant.
- [41] It is settled law that words in a statute are not to be interpreted in a vacuum but ought to be examined within the context of the legislation as a whole. The Claimant submitted that pursuant to section 2 of the LRMPA, it was Parliament's intention that on the death of a person all causes of action subsisting against or vested in him shall survive against or for the benefit of his estate. However, Counsel neglected to acknowledge that there are exceptions to section 2(1) of the LRMPA within the Act itself. One such exception is section 2(3)(b) of the LRMPA, which

explicitly provides a limitation period within which proceedings must be commenced with respect to a cause of action in tort which by virtue of the legislation has survived against the estate of a deceased person.

- [42] In addition, in examining the legislation as a whole, I accept the Defendant's submission that a legal dictionary is appropriate in the circumstances to interpret the word "proceedings". Pursuant to **Black's Law Dictionary** (9th ed.), proceeding is defined as:

"The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment."

...

"Proceeding" is a word much used to express the business done in courts. A proceeding in court is an act done by the authority or direction of the court, express or implied. It is more comprehensive than the word "action" but it may include in its general sense all the steps taken or measures adopted in the prosecution or defense of an action, including the pleadings and judgment. As applied to actions, the term "proceeding" may include – (1) the institution of

the action ..."

- [43] It is also noteworthy that this particular section, section 2(3)(b) of the LRMPA was interpreted by Sykes J (Ag), as he then was, in **Dianna Harriot v Joy Blake and the Administrator General of Jamaica** (supra) to mean that once the cause of action arose within six months of the death of the tortfeasor, then a Claimant has within six months of a representative being appointed in the appropriate estate to file a claim. If the Claimant fails to file the claim within that time period, then the claim becomes statute barred.

- [44] Against the background of the statute and the authority cited, the Claimant ought to have filed their claim within six months of the Letters of Administration being obtained by the Administrator- General of Jamaica in the Estate of Michael Tomlinson. As the Claimant failed to file their claim within the requisite time period, case law and statute establish that the limitation period stipulated by section 2(3)(b) of the LRMPA cannot be extended. Therefore, the Claimant's application

for an extension of time within which to file a claim under section 2(3)(b) of the LRMPA is refused.

ISSUE 3: Whether the Claimant's Statement of Case should be struck out as an abuse of process?

LAW AND ANALYSIS

- [45] The Defendant submitted that the respective limitation periods under the LRMPA and the FAA within which the Claimant would be permitted to file the present claim have expired. In addition, that it would be prejudicial to extend the time within which to file a claim under the FAA. Counsel for the Defendant further averred that the claim should be struck out as it is tantamount to an abuse of process.
- [46] In assessing whether it is fitting to strike out the case due to abuse of process, Rule 26.3 (1) (b) of the Civil Procedure Rules, 2002 (hereinafter referred to as the CPR) is germane. The Rule provides that:

"26.3 (1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court –

...

(b) that the statement of case or the part to be struck out is an abuse of process of the court or is likely to obstruct the just disposal of the proceedings."

- [47] In **S & T Distributors Limited and S & T Limited v. CIBC Jamaica Limited and Royal & Sun Alliance** S.C.C.A Civ App 112/04, Harris J.A. provided guidance on how the court is to treat with applications to strike out. The Learned Judge postulated that:

"The striking out of a claim is a severe measure. The discretionary power to strike must be exercised with extreme caution. A court when considering an application to strike out, is obliged to take into consideration the probable implication of striking out and balance them carefully against the principles as prescribed by the particular cause of action which sought to

be struck out. Judicial authorities have shown that the striking out of an action should only be done in plain and obvious cases."

- [48] As it relates to the striking out of matters in which the limitation period has expired, Stephenson LJ in **Ronex Properties Ltd v John Laing Construction Ltd and Others** [1983] QB 398, outlined the approach to be adopted. He stated that: -

"There are many cases in which the expiry of the limitation period makes it a waste of time and money to let a plaintiff go on with his action. But in those cases it may be impossible to say that he has no reasonable cause of action. The right course is therefore for a defendant to apply to strike out the plaintiffs' claim as frivolous and vexatious and an abuse of the process of the court, on the ground that it is statute-barred. Then the plaintiff and the court know that the Statute of Limitations will be pleaded; the defendant can, if necessary, file evidence to that effect; the plaintiff can file evidence of an acknowledgment or concealed fraud or any matter which may show the court that his claim is not vexatious or an abuse of process; and the court will be able to do, in I suspect most cases, what was done in Riches v. Director of Public Prosecutions [1973] 1 W.L.R. 1019: strike out the claim and dismiss the action..."

- [49] I take into consideration the pronouncements of Harris J.A. in **S & T Distributors Limited** (supra) that the striking out of a statement of case should only be done in plain and obvious cases. It is clear that this is one such case. The grant of Letters of Administration in the Estate of Michael Tomlinson was obtained on May 5, 2015 and this claim was filed on June 19, 2019. It was therefore filed more than four years after the Grant was obtained in the Estate of Michael Tomlinson. As I have accepted that the limitation period under section 2(3)(b) of the LRMPA cannot be enlarged, I adopt the approach outlined by Stephenson L.J. in **Ronex Properties Ltd v John Laing Construction Ltd and Others** (supra). The provisions of the LRMPA govern causes of action in tort against the estate of the tortfeasor, and as the claim against the Estate of Michael Tomlinson has been rendered statute barred by virtue of section 2(3)(b) of the LRMPA, this matter is therefore struck out as an abuse of process.

Orders

1. *The Claimant/ Respondent's claim set out in the Claim Form and Particulars of Claim filed on the 19th June 2019 is struck out.*

2. *The Claimant/ Respondent's Notice of Application for Court Orders filed on 19th June 2019 is dismissed.*
3. *Costs to the Defendant/ Applicant to be agreed or taxed*