

[2025] JMSC Civ 161

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2022CV00482

BETWEEN	**EDGELA LUCILDA EDWARDS-SILENT**	**1st CLAIMANT**
AND	**TRECIA SILENT**	**2nd CLAIMANT**
AND	**EX SHIPPING PLUS LIMITED**	**DEFENDANT**

IN CHAMBERS

Mr Maurice Smith, instructed by SmithLaw, for the applicant

Miss Ashley Clarke for the respondents

Heard: October 3, 2025

Civil Procedure Rules: Rules 29.5 (2)- Striking out Applications- Discretion of the Court.

JACKSON J

Introduction

[1] On 20 November 2024, the applicant filed an interlocutory application to strike out parts of the 1st respondent's witness statement. The Orders sought in the application are set out below:

a. Paragraphs 10, 14 and 29 of the Witness Statement of Trecia Silent, filed on 25th October 2024, be struck out for containing inadmissible evidence, namely hearsay;
b. Paragraph 30 of the Witness Statement of Trecia Silent, filed on 25th October 2024, be struck out as containing inadmissible evidence, to wit, hearsay and opinion/estimation evidence, for which she is not qualified to give as an expert;

c. Paragraphs 25 and 32 of the Witness Statement of Trecia Silent, filed on 25 October 2024, be struck out for containing irrelevant material.

[2] The grounds relied on were set out as follows:

a. Part 29.5 (2)
b. of the Civil Procedure Rules provides that the Court may order that any inadmissible, scandalous, irrelevant, or otherwise oppressive matter be struck out of any witness statement;

c. Paragraphs 10, 14 and 29 contain hearsay to the extent that the witness recites alleged facts communicated to her by third parties;

d. Paragraph 30 is inadmissible because the facts it recites are from third-party sources and would therefore constitute hearsay, and insofar as she gives an "estimate", she is performing a function reserved for experts in this Court;

e. Paragraphs 25 and 32 address matters outside the scope of this claim and are therefore irrelevant.

[3] In the final determination, after hearing the respective submissions, I made the following orders on October 3, 2025:

1. The Notice of Application filed on 29.11.to strike out paragraphs 10, 25, 29, 30, and 32 of Trecia Silent's witness statement is refused.

2. The Notice of Application filed on 29.11.2024 to strike out paragraph 14 of Trecia Silent's witness statement is allowed in part, with the sentence commencing "My mother confided that she has... to... irreplaceable property" struck out.

3. The Assessment of Damages is fixed for 20 July at 10 a.m.

4. The Written Submissions and the list of Authorities are to be filed and exchanged on 16 June 2025.

5. The respondent is to file a Judge's Bundle by 6 July 2025 and to serve an index to that Bundle on the applicant.

6. Costs to be Costs in the claim.

7. No order as to costs on this application.

8. The respondent's attorney at law to prepare, file and serve this order.

The Permission to Appeal

[4] On 20 July 2026, when the Assessment of Damages was scheduled to commence, the applicant's notice of application for court orders, filed on 17 October 2025, was also set down for hearing.

[5] The respondent was prepared to concede parts of paragraph 10; however, the applicant did not regard paragraph 10 as the sole issue, given the notice to appeal.

The Factual Background to the filing of the claim

[6] The claim arises from an agreement between the parties pursuant to which the applicant was to ship the respondents' property from the United States to Jamaica.

[7] The 2nd respondent engaged the applicant in or about May 2021. The property comprised the respondents' furniture, canned and dry goods, clothing, personal-care items such as nappies, televisions, books, cooking and baking equipment, electronics, including a deep freezer, a small refrigerator, and tools used in the 2nd respondent's concierge and catering business.

[8] The applicant provided the 2nd respondent with a quotation of $450,000.00 to 600,000.00 Jamaican Dollars in total to ship and "clear" the goods upon arrival in Jamaica. This included $2000.00 United States Dollars for shipping alone. In addition, there was a separate charge of $700 United States Dollars for transporting the goods from the addresses in Florida to the applicant's warehouse in Miami.

[9] On or about 19 September 2021, the respondents' property arrived at the Port of Kingston in Jamaica and was "cleared" by the applicant on or about 8 October 2021. Upon the 2nd respondent's request for the property, the applicant's agent advised that the goods were in the applicant's possession at its Mandeville facility and that the total cost was actually $1,358,471.30.

[10] The increased cost was attributed to charges previously unknown to the applicant's agent. The agent further demanded that the respondents pay at least one million Jamaican dollars before releasing some of the goods totalling that amount.

[11] On or about November 18, 2021, the respondents demanded release of their goods through a letter delivered by their attorneys-at-law. Enclosed with the letter were two cheques - one for 600,000.00 Jamaican Dollars in full payment of the maximum charge agreed on for the shipment, and one in the sum of $700 US dollars, being the cost of transportation of the goods from the Florida addresses.

[12] In the absence of a response, a further demand was made via WhatsApp for release of the goods on November 26, 2021, and the applicant's agent repeated

the refusal. 5. On the 2nd of February 2022, the applicant's agent contacted the 2nd respondent via WhatsApp stating that the items would have to be moved soon, and asking how much of the balance the respondents were willing to pay.

[13] When the respondents indicated they would not pay any further sums, the applicant's agent stated he would "do the next best". He further stated that at the end of February, he would no longer be responsible for the respondents' goods.

[14] The Claim was filed on 16 February 2022 seeking an order for delivery of the respondents' property to the respondents, as well as damages for detinue.

[15] The applicant did not acknowledge service or file a defence.

[16] On 9 April 2022, the applicant's Agent contacted the 2nd respondent to collect the goods. Consequently, despite the respondents' agreement with the applicant to transport their property to their residence, the respondents incurred an additional $25,000 to hire a delivery service to collect the property from the applicant's storage facility.

[17] Upon arrival at the storage facility, the 2nd respondent discovered that 40% of the food items were damaged or infested with vermin, that most of the property, including furniture, was severely water-damaged, and that other personal items, such as jewellery, appliances, and clothing, were missing.

[18] A claim was initially filed and amended on April 18, 2023, seeking damages not only for detinue but also for conversion and, alternatively, negligence.

[19] On August 22, 2023, the applicant filed an application for an extension of time to file its Defence. Subsequently, on September 14, 2023, the applicant filed its Acknowledgement of Service.

[20] On 31 May 2024, the application was refused, and judgment in default of defence was entered against the applicant.

The Relevant Portions of the Witness Statement of Trecia Silent to which the application is made are:

> *[10] Having examined the invoices, I was of the view that the charges were not justified. I subsequently conducted my own investigations and found several discrepancies. My agent, Anderson-Cole, stated that the freight charge was $2000 United States Dollars. Mr Anderson-Cole did not advise me of this fee before shipping, nor did he provide any breakdown of the fees beforehand. To my recollection, he always stated the total was $450,000 to $600,000. Using the applicant's exchange rate at the time of $155 JMD to $1 USD, as stated on the invoice referred to above, this amounts to $310,000 JMD. The charge is however stated on the invoice in Jamaican dollars as $453,375, which indicates the applicant had actually charged us $2925 USD. The difference results in an extra charge of $143,375 JMD. Likewise, the applicant listed the cost of 'Transportation and Chassis Rental' as $62,000. When I contacted ANI Cargo Services Limited, their representative informed me that the 'Chassis Rental' fee was $28,000. This leaves an unaccounted-for balance of $34,000 for Transportation, which was curiously paired with the 'Chassis Rental Fee' to comprise the total $62,000. Further, the invoice listed 'ARL Charges' as $109,205. I contacted Assessment Recoveries Limited ("ARL") and was informed that the applicant was charged $103,200 of which $60,450 was refundable. I don't know if that refund was ever collected, but I did not see it applied to our invoice. Given the overstated figure and the refund, the total ARL Charges should have been approximately $42,750, resulting in an overcharge of $66,455. The applicant therefore provided us with an invoice of unexplained fees amounting to approximately $488,830 and I am*

still unable to decipher how the initial quote more than doubled to $1,358,471.30.

[14] The goods withheld included items of unquantifiable sentimental value to both my mother and me. This included the only pictures I have of my father who passed away in 2007, gifts from my late father and aunt, clothes I wore as a baby that my mother gave me along with other items from my childhood, family heirlooms from my late grandparents, memorabilia from our last family reunion in 2006, and my naturalisation papers from the United States. My mother confided that she has been traumatised by the applicant's actions, as she has travelled for years and never encountered any difficulties like this. The thought of losing property we had for years was extremely painful and all we wanted was the return of our irreplaceable property.

[25] I was also missing some personal, invaluable items. My baby blanket, my family reunion memorabilia t-shirt, the outfit I wore to my graduation and the suit I wore to my grandfather's funeral were gone. There were also items my mother and grandmother crotched or cross stitched for me, like my table runner and decorative pillowcases. Those precious pieces were permeated with black fungus which caused them to stick together. When I tried to separate them, the material fell apart. I was deeply saddened to have to throw them away. It was a good thing we were wearing masks, because I don't know how that black fungus would have affected us. Even more frightening, I was unable to find my naturalisation papers, which confirmed my US citizenship.

[29] I promptly engaged a licenced valuator, Mr Traceroy Dixon, to assist in my recovery of damages in this claim. I paid him $25,000 for his services, but I have not received his invoice. He visited our

home on May 1, 2022 and examined all the things we recovered from the applicant. Whereas the applicant initially demanded the sum of $1,358,471.30 for the release of the goods, Mr Dixon has estimated our losses from the damaged and some of the missing goods at $5,913.99 USD. Mr Dixon later provided me with his valuation report dated May 2, 2022, outlining these losses.

[30] I did my own research online to try to find the same or similar items that were lost or are missing. I listed the items along with their present cost and a link to where they can be purchased online, and compiled this in an Excel spreadsheet. My estimated total for these missing items is $29,262.18 USD.

[32] Although I have now resettled in our Mandeville home, this experience soured what was to be a peaceful experience. Certainly, the furniture and clothing can be replaced, but the missing rare, antique or homemade items have left a hole in my heart. It was my desire to be in Jamaica with the comfort of all the belongings I had accumulated and carefully preserved over the years. My mother was also very excited to have her items and to donate the medical supplies to her church during the Christmas season. Instead, the last memories of our things are tarnished with sights of black fungus, ants, rat droppings and water damage from being strewn across an unkempt warehouse. We had spent hundreds of thousands of dollars to ship our things here, and lost so much more.

The Ruling of the Court

1. The applicant seeks to strike out portions of the respondent's witness evidence. Rule 29.5(2) provides that the Court may strike out inadmissible, scandalous, irrelevant or otherwise oppressive matter from

a witness statement. The word ‘may’ indicates a discretionary power, rather than an automatic requirement to strike out every challenged passage.

2. These proceedings concern an assessment of damages. The Court must determine the nature, extent and monetary value of the loss suffered. The assessment judge can distinguish relevant evidence from irrelevant or argumentative material while retaining the context necessary to understand the injury or financial loss. This task remains subject to the applicable rules of admissibility. Whether evidence may be received and relied upon is distinct from the weight given to it if admitted.

3. In exercising that discretion, I consider whether an objection requires determination before the assessment or can fairly be resolved during it. Where the alleged breach of Rule 29.5 is not fundamental and the objection can be addressed without severe or actual prejudice to the applicant, I consider pre-trial striking out disproportionate in the circumstances of this case. The applicant remains able to cross-examine, contest quantum and present counter-evidence. For those passages, the assessment provides an appropriate opportunity to test the evidence and determine its weight if admitted. Retaining the text does not prevent the Court from excluding or disregarding it as appropriate.

4. Having reviewed paragraph 10, I agree that it contains hearsay accounts, referring, in two contexts, to third parties who are not witnesses in the proceedings and whom the respondent intends to rely on to support the truth of those assertions in mounting her claim. However, I did not find that the entire statement fell foul of the hearsay rule. The court was of the view that it was given in the orders set out at

paragraph 3 of the Introduction, and that it could only be presumed to have been an oversight when those orders were made.

5. The court strikes out a portion of paragraph 14, as stated above, which impugns the hearsay rule. The relevant portion was:

> "*My mother confided that she has been traumatised by the applicant's actions, as she has travelled for years and never encountered any difficulties like this. The thought of losing property we had for years was extremely painful, and all we wanted was the return of our irreplaceable".*

6. With respect to paragraphs 25 and 32, I formed the view that some of the words went directly to sentimental value and emotional distress, with some speculation, and that they may be perceived as irrelevant to the assessment of damages. However, I formed the view that there is a significant factual finding regarding the condition of the goods, based on observation, and that it may attract some consideration in assessing damages. I do not see the issues raised in the application as detrimental to the applicant, as the court can manage the trial on the assessment of damages without regard to sentimental or emotional considerations. Ultimately, the respondent must prove the monetary value of the losses claimed. I therefore formed the view that the court could disregard the sentimental attachment and focus on whether the damages were proved, since its main concern was assessing the value lost or claimed.

7. I do not find paragraph 29 to conflict with the hearsay rule. A substantial part of the paragraph concerns actions taken and observations made by the respondent after she engaged a valuator. She later indicated that she obtained a valuation report. The report was served on the applicant by way of a notice of intention, in compliance with Section **31 E of the Evidence Act,** as a notice to adduce the document as a hearsay

document. No counter notice of objection was filed until the day of the hearing.

8. The Court finds that the respondent complied with the statutory guideline regarding the document. The only issue to be determined is whether the Court will accept the evidence at trial, subject to relevance and the timing of the objection, and whether, in the interests of justice, the valuator should be called to give evidence in person, which is not even stated in the notice of objection. In addition to the Notice of Intention, the respondent served a list of documents, filed on 17 September 2024, which included, among other things, the Excel sheet showing lost items and estimated values and the valuation report.

9. The applicant was served with documents by way of notice of intention on April 18, 2023, when the amended claim form and amended particulars of claim were filed, and the list of documents was further served on September 13, 2024; no counter-objection was filed.

10. I also do not believe that paragraph 30 violates the hearsay rules. Rather, it reflects direct action taken by the respondent herself, not by a third party. She also relied on a spreadsheet she prepared to prove her losses. Again, this is relevant and goes to the heart of assessing and proving her damages. I also formed the view that this could be addressed at hearing, since the burden of proof rests with the respondent. I therefore held that it was not a matter for the interlocutory application. The document was served on the applicant and forms part of the means by which the respondent seeks to prove her damages. The evidence, whether admitted or not, is for the trial court to determine whether damages have been proven.