[**2026**] **JMSC Civ.69**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2024CV02881

BETWEEN	**KASIE ANN MORRISON**	**CLAIMANT**
AND	**ELEPHANT GROUP JAMAICA LIMITED (t/a CENTERFIELD JAMAICA)**	**1ST DEFENDANT**
AND	**ADV COMMUNICATION LIMITED**	**2ND DEFENDANT**
AND	**A&A SERVICE SOLUTIONS (SSC) LIMITED**	**3RD DEFENDANT**

IN CHAMBERS

Robert Moore attorney-at-law for the claimant

Stuart Stimpson and Sashara Eccleston instructed by Justine Collins of Hart Muirhead Fatta for the 1st defendant

Emile Leiba and Kymberly Hanniford instructed by DunnCox for the 2nd defendant

Jerome Spencer attorney-at-law for the 3rd defendant

Heard: 10 April 2025, 18 June 2025 and 20 March 2026

Civil Procedure – Application to strike out – Non-compliance with court order – Whether statement of case discloses reasonable ground for bringing claim – Whether ruling in earlier interlocutory proceedings for declaratory and injunctive relief is dispositive of substantive case – Whether claim amounts to abuse of court process – Data Protection Act – Definition of data controller – Definition of data processor – Whether Part IV Standards for Processing Personal Data applies to data processor – Date of coming into force of the Act.

Master C McNeil (Ag)

INTRODUCTION

[1] This claim is perhaps one of the first cases in civil litigation in this forum surrounding the Data Protection Act, which came into force in December 2023. The issue at this phase of the litigation, however, is whether the claim should be struck out. The application to strike-out was made by the 1st and 3rd defendants.

[2] While the grounds advanced by each of the applying defendants are worded differently, in substance, they overlap so closely that they are almost identical. Before setting out the grounds of the applications to strike out, it is necessary to provide a background against which the matter unfolded.

THE BACKGROUND

[3] The claimant (hereinafter *Ms Morrison*) was employed by the 1st defendant, trading or doing business as Centerfield Jamaica (hereinafter *Centerfield),* between 13 December 2018 and 24 June 2020. Ms Morrison was eventually separated from Centerfield. That separation was neither amicable nor voluntary. Allegations of misconduct were raised against her, and she was subsequently visited with disciplinary proceedings by Centerfield. Ultimately, Centerfield terminated her employment. In due course, that termination became the subject of a dispute which wound its way to the Industrial Dispute Tribunal (hereinafter *the IDT*).

[4] Shortly after her separation from Centerfield, Ms Morrison became affiliated with the 2nd defendant, ADV Communications Limited (hereinafter *ADV*). That affiliation with ADV was from 06 July 2020 (just days after separation from Centerfield) to 01 May 2024, when that employment was terminated.

[5] At the IDT, a major obstacle to resolution was the denial by Ms Morrison of employment after her separation from Centerfield. The question of employment post-Centerfield would have a direct impact on the quantum of any award made or to be made by the IDT. To counter Ms Morison's denial, Centerfield engaged the services of the 3rd defendant, A&A Service Solutions Consultants (SSC) Limited (hereinafter *ASSL*).

[6] ASSL is a company engaged in the business of loss prevention and risk management. It also does private investigations and surveillance for its clients. Centerfield engaged ASSL to provide evidence of Ms Morrison's employment history after her separation from Centerfield.

[7] For ASSL to investigate Ms Morrison's previous employment, or employment history, Centerfield necessarily had to supply ASSL with information on Ms Morrison. The information includes some of Ms Morrison's personal data, which Centerfield had gathered and retained throughout the life of the employer-employee relationship.

[8] Although Ms Morrison eventually prevailed at the IDT in the challenge to her dismissal by Centerfield, she had sought to block the use of her personal data by moving the court for a declaration and injunction against the defendants. In that motion, she averred that the actions of the defendants in the transmission and use of the information containing her personal data, constituted a violation of her constitutional rights and were in breach of the Data Protection Act.

[9] The motion of Ms Morrison, which she launched via an application for declaratory and injunctive reliefs, was filed *ex parte* on 15 July 2024. However, the application was heard *inter partes* by Palmer J on 13 September 2024. The application was subsequently refused. In a written decision **Morrison v Elephant Group Ja. Ltd** [2024] JMSC Civ. 124, Palmer J found *inter alia* at paragraph [50] as follows:

> *"[50] I find that the scale weighs in favour of the 1st Defendant being permitted to process the data. The 2nd Defendants [sic] and 3rd Defendant would therefore have served a legitimate interest as the class of information processed would be in keeping with Schedule 2(1) of the [Data Protection] Act [sic]".*

And at paragraph [51]:

> *"[51] The original stated ground for the processing of the data was a legitimate and permissible one under the DPA".*

Further:

> *"… I find that there is not a serious issue to be tried".*

[10] Accordingly, Ms Morrison's quest for the declaration and injunction failed. Buoyed by their triumph against Ms Morrison in those interlocutory proceedings and her breaches of the directives issued at the first hearing of the fixed date claim form, Centerfield, the 1st defendant, and ASSL, the 3rd defendant, have mounted a challenge to her substantive claim. They have applied to have her claim struck out. It is this application upon which this court is now engaged.

THE MATTER UNDER CONSIDERATION – THE APPLICATION TO STRIKE OUT

[11] ADV, the 2nd defendant, did not file any application to strike out nor did it actively join any of the other two defendants in their applications. However, counsel for ADV expressed the view that should the applications by the 1st and 3rd defendants be successful and the claim thereby struck out, then ADV should benefit from this decision.

[12] The submissions, both written and oral, by and large tacked the grounds filed in the respective applications. The grounds are not complex; they are, in the main, self-explanatory. I hope I do no disservice to counsel's submissions by summarizing them as I now do.

Submissions of Centerfield, the 1st defendant

[13] Centerfield's application to strike out Ms Morison's claim was filed on 14 March 2025. For that application, Centerfield relied on three affidavits: two from Sharon Brown. The first was one filed on 12 August 2024 (during the interlocutory proceedings instituted by Ms Morrison for the declaratory and injunctive relief) and the other was filed on 05 March 2025. The third affidavit on which Centerfield relied is that of Ms Justine Collins of counsel, filed on 14 March 2025.

[14] Centerfield's application to strike out rested on four grounds, namely:

(a) the failure of Ms Morrison to comply with a directive by the Court and non-compliance with CPR 8.8(2)(a);

(b) the absence of reasonable grounds for bringing the claim and that the assertions contained in the pleadings do not constitute any recognized cause of action;

(c) that the claim discloses no evidence of loss or damage suffered by the claimant; and

(d) that the claim represents an abuse of process.

[15] Although Centerfield filed the four grounds (enumerated above) on which its application to strike out is based, its counsel advanced several other grounds during oral arguments. One such point in counsel's submissions was the argument that the statement of case or part thereof is to be struck out for prolixity or for non-compliance with the requirements of Parts 8 or 10 of the CPR.

[16] In submissions, counsel for Centerfield, Mr Stimpson, laid great score on the judgment of Palmer J in the interlocutory proceedings instituted by Ms Morrison in her quest for declaration and injunction. It would appear as if the thrust of counsel's submissions in the matter now under consideration is that the finding by Palmer J, that there is no issue to be tried, should be determinative of the matter before this court.

[17] Counsel further submitted that the particulars of claim is not a document relevant to Part 8 of the CPR and that there was a breach of the court's directive by the claimant in not filing an affidavit in support of the fixed date claim form. The particulars of claim, argued counsel, should be struck out for such a breach.

[18] Mr Stimpson also argued that, in addition to the breach of the directive by the court, the particulars of claim was irregular and bad for prolixity. He reiterated the principle that the court had a discretion to strike out the claim in full, or parts thereof. Mr Stimpson referred to the reliefs sought by the claimant and submitted that there was no issue of loss, qualified or quantified, and that there was no evidence to support the claim for damages. According to Mr Stimpson, all that the claimant has expressed is a fear of potential action. He argued that there is nothing in the evidence which speaks to any breach of confidence.

[19] With reference to the allegation of breaches of the Data Protection Act, counsel submitted that the Appointed Day Notice did not bring sections 22 and 23 of that Act into operation until 01 December 2023. That, submitted counsel, should negate the claim for breach of that Act, as averred in the claim. He argued that the Data Protection Act was not retrospective and based upon the date the cause of action arose as averred by the claimant, the Data Protection Act was irrelevant to the resolution of the issues.

[20] Further, counsel submitted that there was no reasonable ground for bringing the action and that the claim was an abuse of process. These proceedings, counsel argued, are a waste of the court's time.

Submissions of ASSL, the 3rd defendant

[21] ASSL's application to strike out was filed on 09 April 2025. According to ASSL, the claim is frivolous, vexatious, and an abuse of the court's process.

[22] ASSL outlines its grounds for striking out as:

(a) the non-application of Part IV of the Data Protection Act to it (the third defendant) as an entity;

(b) the processing of the data being in accordance with section 23 of the Data Protection Act; and

(c) its (ASSL's) processing of the data in June 2023 was not actionable.

[23] Mr Spencer, counsel for ASSL, in his submission rehearsed the principles governing the striking out and cited in support thereof the dictum of Millet J in the English case of **Lonrho PLC v Fayed and others No. 2** [1991] 4 All ER 961. He also cited Lord Diplock's statement in the well-known case of **American Cyanamid Co. v Ethicon Ltd**. [1975] 1 All ER 504.

[24] Like Mr Stimpson, Mr Spencer relied heavily on the ruling of Palmer J in the interlocutory matter initiated by the claimant. He, too, held the view that Palmer J's finding that there was no issue to be tried should be dispositive of the matter under consideration; particularly since there was no appeal against that finding.

[25] Mr Spencer emphasised that his client did not rest its case solely on the finding of Palmer J. He submitted that the claimant's allegations of breaches of the Data Protection Act, by virtue of the claimant's own pleadings, should cause this court to concern itself only with the First Standard established by Part IV of the Data Protection Act. Most importantly Mr Spencer strongly held the view that ASSL was not a data controller within the meaning of the Data Protection Act.

[26] Counsel further submitted that even if ASSL was a data controller, the processing of the claimant's data was done in accordance with a condition set out in section 23 of the Data Protection Act. He submitted that when ASSL processed the claimant's data, it was doing so in the context of proceedings before the IDT, wherein the matter of her dismissal was being litigated and the 1st defendant, Centerfield, needed the evidence for its defence before the tribunal.

[27] Of note was Mr Spencer's submission that on the claimant's case, Centerfield and not ASSL was the data controller in respect of her (the claimant's) data. It was Centerfield, the 1st defendant, said Mr Spencer, who, on the claimant's case, owed her the statutory obligation to comply with the data protection standards, and not ASSL.

[28] Mr Spencer echoed Mr Stimpson's submissions with respect to the date of the coming into force of the Data Protection Act, vis-a-vis the date of the cause of action as averred by the claimant.

The Claimant's Response

[29] In response to Centerfield's application, Ms Morrison filed an affidavit on 09 April 2025. The affiant was Mr Robert L Moore of counsel.

[30] It is worthy of note that prior to the commencement of Centerfield's submission, counsel for Ms Morrison took a point *in lemine*. He took the point that the affidavit of Ms Justine Collins filed on 14 March 2025, one of the affidavits on which Centerfield relies to support its application, does not meet the requirements under the CPR. He argued that the jurat did not contain or include the place where the affidavit was sworn. According to counsel for Ms Morrison, the place where the affidavit was sworn, determines the type of certification to be attached to that affidavit. In support of his point, counsel for Ms Morrison relied on **Sandra Moore v Patrick Cawley 2006 HCV 02776** and rule 30.4(1)(c) of the CPR, which requires that the affidavit be signed by the person before whom it was sworn or affirmed. While the point is of some merit, it is to be noted that the affidavit of Justine Collins is not the only affidavit filed by Centerfield in support of its application to strike out.

[31] Mr Moore submitted that the claimant did not consent to her personal data being disclosed by the 1st defendant and was never informed that her personal data would have been shared with any third party**.** The 3rd defendant, he argued, was a data controller under the Data Protection Act, and that by having the data passed to it, by the 1st defendant for the purpose intended, the 3rd defendant had processed the data as a data controller.

[32] Counsel for Ms Morrison also relied on **John Thompson & Ena Thompson v Arnaldo Brown & Beverley Swaby** [2024] JMSC Civ 10, where he said the court in that case declined to consider an affidavit that had been filed because it was irregular.

[33] Mr Moore submitted that at this stage the issue is not whether the claimant suffered damage, but whether there was a breach committed against her. In repose to the assertions of prolixity, Mr Moore urged the court to reject the submission. He argued that contrary to the defendants' submissions, the claimant's case raises triable issues.

[34] Further, Mr Moore submitted that the processing of the claimant's personal data between June 2023 and December 2023 was actionable and urged the court to so find. He declared that the claimant stood by her claim.

DISCUSSION AND ANALYSIS

[35] In arriving at my decision in this matter, I wish to state clearly that I offer no analysis of, nor make any pronouncement upon, the judgment of my brother Palmer J, and I do so for all good and judicially appropriate reasons. Firstly, and most importantly, he was addressing issues that required considerations wholly different from those with which I contend in these proceedings. Secondly, we exercise co-ordinate jurisdiction in our adjudication of the respective issues spawned by this litigation in its various stages so far. Hence, jurisdiction to review his decision is not vested in me.

[36] The power of the court to strike out a statement of case is set out in Part 26. Rule 26.3 of the CPR 2002 states:

> "(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 –*
>
> *(a) that there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings;*
>
> *(b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;*

> *(c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or*
>
> *(d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or 10".*

[37] It is widely recognized and acknowledged that the power vested in the court by rule 26.3 is to be used sparingly. The decision to strike out a statement of case should not be made lightly. A court must be on sure footing before taking such a draconian step. Harris JA, in **S &T Distributors Ltd and S & T Ltd v CIBC Jamaica Ltd and Royal & Sun Alliance** SCCA 112/04 Unrep. judgment dated 31 July 2007, spells out the principle in simple language:

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

[38] In **Attorney General of Jamaica v John Mackay** [2012] JMCA App 1, the Court of Appeal ruled that striking out should only be used where a claim is bound to fail. In an earlier English case, **Swain v Hillman & Another** [2001] 1 All ER 91, the English Court of Appeal, in interpreting a provision in *pari materia* with Rule 26.3, emphasized that striking out is a drastic remedy and should not be used where factual disputes require determination at trial.

[39] In a more recent case McDonald-Bishop JA (as she then was) had to contend with a similar issue of striking out under rule 26.3 of the CPR. That was the case of **Bengal Development Company Limited v Wendy A Lee & Ors** [2025] JMCA Civ 9. I can do no better than to adopt her reasoning at paragraphs 35-39 of her judgment –

> *"[35] The learned editors of Blackstone's Civil Practice 2004, from paras. 33.6 to 33.8 of the text, have provided a helpful guide to the court in interrogating the legal questions that arise for consideration of the*

*learned judge's decision against the background of the provisions of rule 26.3. From this invaluable source and the cases cited therein, it is seen to be well-settled on the authorities that under the CPR, as it was under the old rules, the jurisdiction to strike out must be used sparingly and in the clearest of cases. The reason for this is that the exercise of the jurisdiction deprives a party of its right to a trial and, therefore, its ability to strengthen its case through the process of disclosure and other court procedures, such as requests for further information. Also, the cross-examination of witnesses often changes the complexion of a case. Therefore, the accepted rule was and remains that striking out is limited to plain and obvious cases where there is no point in having a trial (see **Three Rivers District Council and Others v Governor and Company of the Bank of England No (3) ('Three Rivers No (3)'**) [2003] 2 AC 1, 77).*

*[36] Before using the procedure under rule 26.3 of the CPR (striking out) to dispose of a case, just like using the summary judgment procedure to do so under Part 15, care should be taken to ensure that the party is not deprived of the right to a trial on issues essential to its case. Like summary judgment applications, striking out applications are to be kept within their proper limits and are not meant to dispense with the need for a trial, where there are issues which should be considered at trial (see **Swain v Hillman** [2001] 1 All ER 91, 92 per Lord Woolf MR speaking of summary judgment applications).*

*[37] In **Williams and Humbert Ltd v W & H Trade Marks (Jersey)** Ltd [1986] AC 368, the court reaffirmed the principle that striking out is only appropriate in plain and obvious cases. Lord Templeman, in adding his voice to the development of the common law on this point opined that if an application to strike out involves prolonged and serious argument, the judge should, as a general rule, decline to proceed with the argument unless he not only harbours doubt about the soundness of the pleading but is also satisfied that striking out will obviate the necessity for a trial. Generally speaking, it is improper to conduct what is, in effect, a mini-trial involving protracted examination of documents and facts disclosed in the written evidence on a striking out application (see **Wenlock v Maloney** [1965] 1 WLR 1238, 1244).*

*[38] Regarding striking out a claim as an abuse of process, a judge of the Supreme Court possesses the inherent power to strike out a claim (or part of it) in order to guard the court's procedures against misuse. In **Hunter v Chief Constable of the West Midlands Police and others** [1981] UKHL 13, Lord Diplock gave illuminating expression to this fundamental principle of the general law, when he described the case before the court in these terms:*

> *"It concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people."*

> *[39] In **Barrett v Universal Island Records Ltd** [2003] EWHC 625, it was held that the court needed to have a high degree of confidence that the claim would not succeed before striking it out as an abuse of process. In **McDonald's Corporation v Steel** [1995] 3 All ER 615, it was held that it is an abuse of process where the statement of case is incurably incapable of proof. However, it is said that striking out on this basis will "be fairly unusual as there are few cases which are sufficiently, clearly and obviously hopeless that they deserve the draconian step of being struck out" (see Blackstone's Civil Practice 2004 at para. 33.12)".*

[40] Emanating from the dicta of McDonald-Bishop JA are the following principles:

(a) Striking out jurisdiction is to be used sparingly and is to be reserved for the clearest of cases because the striking out of a case deprives a party from the right of a trial.

(b) Striking out is limited to plain and obvious cases where there is no point of having a trial.

(c) If the application involves prolonged and serious argument as a general rule, then the court should decline to proceed with the arguments unless there is doubt about the soundness of the pleadings and there is no need for trial.

(d) The court should avoid conducting a mini trial.

(e) In relation to striking out on the ground of abuse of process, the jurisdiction is exercised where the court forms a high degree of confidence that the claim would not succeed, for example where the pleadings are incurably incapable of proof or otherwise hopeless.

(f) Finally, the court must have regard to the overriding objectives.

Failure to comply with a rule or practice direction given by the court in the proceedings, and non-compliance with CPR 8.8(2)(a)

[41] This was a ground advanced by Centerfield. Its genesis lies in an order granted by this court on 04 February 2025, when the matter was set down for the first hearing of the fixed date claim form. That order directed *inter alia*, that:

> *"The Fixed Date Claim Form filed July 12, 2024 is to be amended to remove 'Particulars of Claim' contained therein. Said Amended Fixed Date Claim Form to be filed on or before February 20, 2025.*
>
> *The claimant is permitted to file and serve a Supplemental Affidavit in Support of Amended Fixed Date Claim Form on or before February 20, 2025."*

[42] Pursuant to that order, Ms Morrison filed an amended fixed date claim form on 25 February 2025, omitting the *"particulars of claim"*. Accompanying the amended fixed date claim form was a particulars of claim filed as a stand-alone document on the said 25 February 2025. She did not file the supplemental affidavit as was ordered.

[43] Centerfield submitted that by virtue of rule 8.8(2) of the CPR 2002, Ms Morrison's failure to heed the order of 04 February 2025 should result in her claim being struck out. For that submission, counsel for Centerfield relied on **Anthony Tharpe *et al* v Alexis Robinson *et al*** [2022] JMSC Civ. 66. In the *Anthony Tharpe* case, the court found that it was fully satisfied that the provisions of rule 26.3(1) CPR 2002 for striking out were met on the facts and circumstances of that particular case, hence it was struck out.

[44] In the instant case, however, Centerfield is correct in its submission that there was a failure to comply with the order of 04 February 2025. As it transpired, the order did not specify any consequences for failure to comply. On this aspect, Ms Morrison's transgression resulted in a procedural error. The CPR 2002 vests the court with a general power of rectification where there are procedural errors. Rule 26.9 provides:

> *"(1) This rule applies only where the consequence of failure to comply with a rule, practice direction or court order has not been specified by any rule, practice direction or court order.*
>
> *(2) An error of procedure or failure to comply with a rule, practice direction or court order does not invalidate any step taken in the proceedings, unless the court so orders.*
>
> *(3) Where there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to put matters right.*
>
> *(4) The court may make such an order on or without an application by a party".*

[45] The import of rule 26.9 is that not all procedural errors are fatal. In this court's view, the procedural error resulting from Ms Morrison's failure to comply with the order was not so fatal as to vitiate the claim. Accordingly, this court finds that that failure does not create a mandate for striking out under rule 8.8(2). The court retains its discretion granted by rule 26.3(1) and on this ground finds against the application to strike out.

[46] With respect to the complaint about prolixity, counsel for the 1st defendant has not cited any particular aspect of the pleadings which he thinks is prolix. He relied on **Desmond Kinlock v Denny McFarlane and Others** [2019] JMSC Civ 20. In that case, specific paragraphs of the pleadings were averred to be prolix. In any event, however, the **Desmond Kinlock** case was decided on its own particular facts. The court, on an examination of the claimant's pleadings, is not persuaded that it is infected by prolixity.

Absence of reasonable grounds for bringing the claim and the assertions contained in the pleadings do not constitute any recognized cause of action.

[47] In **Dotting v Clifford and Spanish Town Funeral Home Ltd.** *Unreported. Judgment dated.* 19 March 2007, McDonald-Bishop J (as she then was) said:

> *"The ultimate question that should be considered in determining whether to strike out the statement of case on the basis that it discloses no reasonable cause for bringing the claim seems to be essentially the same as that in granting summary judgment: that is: the claim against the defendant is one that is not fit for trial at all".*

[48] The pleadings in the claim in the instant case set out a coherent body of allegations against the defendants. The averments contained therein are *ex facie* justiciable by the courts in this jurisdiction. They contain pleadings of the common law breach of confidence and the statutory breaches of the Data Protection Act.

[49] The question of whether the claimant has disclosed reasonable grounds for bringing the claim calls for an examination of the pleadings. Certainly not a mini trial but an examination in order to satisfy the court in the exercise of its discretion under CPR rule 26.3(1)(c).

[50] Counsel, in addition to **Anthony Tharpe,** cited several cases, including **Angela Clarke-Morales v Sunswept Jamaica Co. Ltd** [2021] JMSC Civ 105. According to counsel, on the authority of these cases, the claim of Ms Morrison in the instant matter should be struck out.

[51] The matter of **Anthony Tharpe** was a case in a series of running litigation in which the claimant, a (former) director and 100%-shareholder in an entity called Business Venture & Solutions Inc. (BVS), a company incorporated in the USA, sought to acquire real property in Montego Bay, purportedly owned by BVS. The claimant in that case had voluntarily and successfully placed himself into bankruptcy for the purpose of statutory relief under the laws of Florida. In the wake of the bankruptcy proceedings, the Floridian court granted orders for the sale of the claimant's right, title and interests in BVS. One of the grounds of the application to strike out was that the claimant had no standing. It was a case in which the claimant represented himself. The documents which he said he filed in court in response to the application to strike out his claim could not be found despite extensive enquiries by the Judge and searches by the Registry of the court.

[52] The court invited and then urged the claimant to accept a delay of the hearing of the application to give him time to recover the documents. The claimant however insisted that he wished to proceed and that he could, with his knowledge of the matter, effectively respond to the defendants' application. In addition, the evidence disclosed that the claimant had no standing to bring the matter. All of those factors rendered the claim susceptible to being struck out. Ultimately, the court was constrained to exercise its discretion in favour of the application to strike out. Paragraph [58] of the judgment records the court's finding:

> *"[58] In the result, the Court finds that Mr Tharpe cannot, whether in his personal capacity or on behalf of BVS, proceed in respect of the instant Claim and that he lacks the requisite locus standi to bring the Claim in the name of or on behalf of BVS".*

And with respect to the statement of case, the court found at paragraphs [75] and [76] of the judgment:

> *"[75] Regrettably, the Claimants have not sought to particularize these allegations in their pleadings. The Claimants' Statement of Case, as it currently stands, consists of 'bare' assertions, in respect of the alleged conduct on the part of the Defendants. The allegations made are perfectly general and vague allegations of fraud where no single material fact has been presented which would enable a court to understand what it is that is being alleged to be fraudulent.*
>
> *[76] In the result, the Court is constrained to find that the Claimants have failed to meet the requirements of rule 8.9 of the CPR. The Court also finds that the pleadings, as they currently stand, have not been particularized so as to demarcate of the case to be advanced".*

[53] In **Clarke-Morales**, the claim was for possession and ownership of real property. However, that very same issue had effectively been determined in an earlier case brought by the same claimant for the same property. She had discontinued that earlier case and judgment was entered for the defendant. In the new matter, which was the one under consideration in the case, she advanced no reason for the discontinuation of the earlier case. On an application to strike out her claim, the court found inter alia that the claimant had discontinued the matter in order to avoid the consequences for her non-compliance with a court order. At paragraphs [37] and [50] of the judgment the court said:

> *"[37] I hold that the present claim for an equitable interest is substantially the same as the claim made in… the Further Amended Fixed Date Claim Form filed … in the first claim. A notable exception is that in the first claim it was made jointly whereas now in the present claim it is made solely by the claimant.*
>
> *[50] Further, in all the circumstances of this case and in the absence of any explanation for the discontinuance the only reasonable conclusion to be drawn was that the first claim was discontinued in order to avoid an adverse decision or judgment on the defendant's application to strike out. The bringing of this new claim relying on the same averments, facts and documents also amounts to an abuse of process".*

[54] The upshot of this is that both the case of **Anthony Tharpe** and the case of **Clarke-Morales** differ markedly from the instant case. They are distinguishable in law and facts. Counsel's position on this ground of the application to strike out is not enormously fortified by these two cases.

The claim discloses no evidence of loss or damage suffered by the claimant

[55] Under section 69 of the Data Protection Act, an individual who suffers damage by reason of any contravention by a data controller of any of the requirements of the Act is entitled to compensation from the data controller for that damage. On its plain words, this does not equate to and could not reasonably be construed to mean that a claim must automatically fail if there is no evidence of loss or damage. The entitlement to compensation is logically a separate question from whether or not a claim itself can succeed.

[56] In the fixed date claim form, Ms Morrison, under a section close to the end of the form, and under the heading *"Particulars of Aggravated Damages"*, sought to particularize her damages. Admittedly, this is neither extensively nor elegantly laid out. However, there is contained in that section some semblance of loss and damage she alleged to have suffered, which she asserts as justification for the damages being sought.

[57] It is therefore not accurate to hold that the claim discloses no evidence of loss or damage suffered by the claimant. Though the evidence on this aspect might not be overwhelming, it is not for this court to determine its value at this stage. The efficacy of such evidence is a matter for the trial court. The submission on the point does not find traction with this court.

The claim represents an abuse of process

[58] This is a ground advanced and argued by Centerfield. ASSL joined the argument. Initially, the allegation of abuse of process seemed to have been premised on the fact that the pleadings contain a prayer for a *declaration*. However, in their submissions, it emerged that the allegation is also premised on counsel's view that the pleadings disclosed no reasonable grounds for granting the relief sought. In argument, counsel cited **City Properties Ltd. v New Era Finance Ltd** [2013] JMSC Civ. 23; **Kinlock (Desmond) v McFarlane (Denny)** ***et al*** [2021] JMCA Civ 26; and the judgment of Palmer J. in the interlocutory proceedings earlier in the life of this matter: **Morrison v Elephant Group Ja. Ltd** [2024] JMSC Civ. 124. Since Palmer J had held that the processing of the data was lawful, then for Ms Morrison to maintain that as a part of the claim was an abuse of process, argued counsel.

[59] In determining whether or not to strike out a statement of case under rule 26.3, the court must necessarily consider issues far wider than the balance of convenience, the paramount issue considered by Palmer J. The court must look at the case in full and examine the entire circumstances of the pleadings. The amended fixed date claim form filed on 25 February 2025 set out the raft of reliefs sought by Ms Morrison. The reliefs included declarations. The reliefs can be summarised as follows:

(a) a declaration that the 1st and 2nd defendants have breached her confidentiality;

(b) a declaration that the circumstances of the disclosure of her personal data by all three defendants was in breach of the Data Protection Act;

(c) a declaration that the circumstances surrounding the processing of her information and personal data by all three defendants was in breach of the Data Protection Act;

(d) damages for breach of confidence;

(e) general damages;

(f) aggravated damages; and

(g) costs.

[60] The submission that the inclusion of prayers for declaration amounts to an abuse of process is not easily digested by this court. Assuming *arguendo* that Ms Morrison was wrong in including declarations as one of the reliefs being sought, given the overriding objective set out in Part 1 of the CPR, 2002, this court is not inclined to hold that such an inclusion is fatal to the claim.

[61] In furtherance of the arguments on the point of the abuse of process, there was a submission that a breach of confidentiality is not a cause of action known to the law. For this, counsel relied on **Desmond Kinlock v Danny McFarlane *et al***.

[62] In **Desmond Kinlock**, the claim that the court quite rightly ruled as being unknown to the law of Jamaica was for a breach of *social contract*. In the instant case, the claim is for a breach of *confidentiality*. A breach of confidentiality and a breach of social contract are two entirely different concepts. A breach of confidence is a well-established and long-settled cause of action. At common law, a right of action will lie for breach or infringement of a claimant's rights where a defendant is proved to have used confidential information, directly or indirectly obtained from the claimant, without the consent, expressed or implied, of the claimant. See **Saltman Engineering Co. Ltd v. Campbell Engineering Co. Ltd** [1963] 3 All ER 413; 414H. In fact, the usual forms of relief in an action for breach of confidence include a declaration and an injunction. These, however, have to be properly pleaded and particularized.

[63] That breach of confidence is a cause of action justiciable in this jurisdiction is well beyond argument. **Bob Banjo v SRHA and Attorney General** [2020] JMSC Civ. 200, and **Janet Brown v Joscelyn Campbell *et al*** [2021] JMSC Civ. 4, are instances in Jamaica in which the causes of action adjudicated upon was breach of confidentiality.

[64] Unhappily, the pleadings in the instant case, with respect to the breach of confidence, are not elegantly composed and deployed, thus rendering them susceptible to attack, as is now the situation. The lack of elegance in the setting out of the claim in the particular circumstances of this case does not, in the view of this court, amount to an abuse of process, thereby automatically qualifying the claim as one to be struck out.

Non-application of Part IV of the Data Protection Act to ASSL as an entity

[65] This ground is advanced by the 3rd defendant, ASSL. According to Mr Spencer, ASSL is a *data processor* and not a *data controller,* and therefore Part IV of the Data Protection Act does not apply to ASSL, argued counsel. Understandably, Centerfield did not participate in this aspect of the attack on the claim. This submission by Mr Spencer is based on two premises. Firstly, on the definition of data processor in section 2 of the Data Protection Act and secondly, in section 21(1).

[66] Under section 2 of the Data Protection Act –

> *"a 'data processor', in relation to personal data, means any person, other than an employee of the data controller, who processes the data on behalf of the data controller;"*

And—

> *" 'data controller' means any—*

> *(a) person; or*
>
> *(b) public authority,*
>
> *who, either alone or jointly or in common with other persons determines the purposes for which and the manner in which any personal data are, or are to be, processed, and where personal data are processed only for purposes for which they are required under any enactment to be processed, the person on whom the obligation to process the personal data is imposed by or under that enactment is for the purposes of this Act a data controller".*

Section 21(1) mandates that—

> *"It shall be the duty of a data controller to comply with the data protection standards in relation to all personal data with respect to which that data controller is the data controller".*

[67] These provisions constitute the foundation of Mr Spencer's proposition that ASSL is not a data controller. He is presumably relying on the silence of section 21(1) on *data processor*. On counsel's reading of these provisions, their cumulative effect is to exclude a *data processor* from the application of Part IV of the Data Protection Act.

[68] Attractive though counsel's submission may sound, it flies in the face of the intendment of the statute. The act of ASSL obtaining Ms Morrison's personal data from Centerfield and thereafter using it to conduct the background checks, investigations, survey, or enquiry into Ms Morrison's employment history, consistent with its self-described function, necessarily amounts, in this court's view, to the processing of the data. This has to be so, given the definition of *process* under the said section 2 of the Data Protection Act—

> *"'process' in relation to information or personal data means* ***obtaining****, recording or storing the information or personal data, or carrying out any operation or set of operations (whether or not by automated means) on the information or data …"*

[Emphasis added]

[69] The Data Protection Act dedicates an entire Part consisting of eleven sections (sections 21-31 inclusive) to the standards for processing personal data. It would be rather strange that such an extensive statutory scheme created by Parliament for the protection of people's personal data would exclude the receipt and use of personal data by an entity like ASSL, a self-confessed data processor, as happened in this case.

[70] At paragraph 7 of ASSL's written submissions in opposition to the application for interim injunction (filed on 08 September 2025), this is how ASSL described itself:

> *"A&A SSCL provides consultancy services in the fields of loss prevention and risk management. Its services including [sic] private investigations, cyber-security background checks, compliance audits and corporate investigations. It's [sic] clients are wide ranging, providing services [sic] multiple sectors, including business process outsourcing, dining and leisure, finance and insurance."*

This scope of activities which forms the core of ASSL business, was the orbit into which Ms Morrison's information and personal data was placed by ASSL. It is hard to envisage otherwise.

[71] But even if for one moment Mr Spencer's proposition that Part IV of the Data Protection Act does not apply to ASSL were found to be acceptable, then the effect of section 21(1) would render ASSL an agent of Centerfield in the dealings with and the handling of the information and personal data of Ms Morrison. ASSL's proverbial washing of its hands, *a la* Pontius Pilate, of any responsibility based upon section 21(1) means that ASSL is asserting that Centerfield alone continued to be under the exclusive duty to comply with the data protection standards with respect to Ms Morrison's personal data, while the said personal data is in the possession of ASSL. This court is satisfied that all counsel appearing in the matter are aware of the law of agency and the legal ramifications thereof, and in particular on the issue of liability.

[72] To accept counsel's proposition that the Data Protection Act does not apply to ASSL is a bridge too far. This ground of application does not find favour with this court.

Processing of the data was in accordance with section 23 of the Data Protection Act

[73] The submission is that the personal data of Ms Morrison was processed in accordance with the statute. According to counsel, section 23 of the Data Protection Act permitted the conduct of the defendants in the dealings of the personal data.

[74] Section 23 of the Data Protection Act sets out the conditions for processing personal data in accordance with the First Standard of the Act. One of the conditions which section 23 permits is that enumerated at sub-section (1)(e): —

> *"(e) the processing is necessary –*
>
> *(i) for the administration of justice;*
>
> *(ii) for the exercise of any functions conferred by or under any enactment; or*
>
> *(iii) …"*

[75] By the definition of "process" in section 2 of the Data Protection Act, it cannot be gainsaid that there was processing of Ms Morrison's personal data. And indeed, none of the parties has challenged this as a matter of law or fact.

[76] According to counsel for Centerfield, the disclosing, gathering and processing of the data was necessary for Centerfield's defence in the case against it at the IDT brought by Ms Morrison. It was necessary, counsel argued, to rebut evidence given by Ms Morrison in her testimony about her employment history, particularly after her separation from Centerfield. That, argued counsel, was permissible under section 23(1)(e) of the Data Protection Act.

[77] Sub-section (1) of section 23 prescribes one of the conditions for the processing of personal data as:

> *"(a) The data subject consents to the processing and has not withdrawn that consent."*

Consent is therefore a condition precedent to the processing of the data. In the instant case, the issue of whether or not there is or was consent, expressed or implied, (implied possibly by the terms of the employment contract), or the relevance of section 11(3)(a) and 22(1)(a) of the Data Protection Act, is a matter to be determined by the trial court.

The processing of the data in June 2023 was not actionable

[78] This *ground* was advanced on the premise that the Data Protection Act came into force in December 2023. The date of the coming into force of the Act is not in dispute. The Data Protection Act was passed by both Houses of Parliament in 2020. By the House of Representatives in May 2020 and by the Senate in June 2020. However, some sections of the Act were brought into operation on 01 December 2021. The full legislation did not come into force until the 01 December 2023.

[79] This ground of the application to strike out is deprived of merit by the pleading itself. At various paragraphs of the amended fixed date claim form filed 25 February 2025 there are expressed allegations of the disclosing, collecting and processing of personal data, taking place at times and periods which were after 01 December 2023. Paragraphs 5, 7, 13, 15, and16 aver breaches of the Data Protection Act, the commission of which post-dated the coming into force of the Act. This ground of the application to strike out must also fail.

CONCLUSION

[80] The claim looked at in its entirety raises issues which, in this court's view, require ventilation at trial. Consistent with settled jurisprudence, this court will apply restraint in the exercise of its discretion under Rule 26.3 of CPR 2002. In the circumstances, the following orders are made:

1. The first defendant's notice of application for court orders to strike out claim filed 14 March 2025 is refused.

2. The third defendant's notice of application for court orders to strike out claim filed 09 April 2025 is refused.

3. A further 1st hearing of the Amended Fixed Date Claim Form is fixed for 21 January 2027 at 10 am for 1 hr.

4. Each party is to bear their own costs on the refused applications.

5. The claimant's attorney-at-law to prepare, file and serve orders made herein.