



[2026] JMSC CIV 121

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2017HCV02731

BETWEEN	MARCIA ROWE	CLAIMANT
	(Administratrix of the Estate of Ryan Williams)	
AND	ATTORNEY GENERAL OF JAMAICA	DEFENDANT

IN CHAMBERS

Ms. Jamila Thomas and Ms. Shirley Richards instructed by Richards Edwards Theoc & Associates for and on behalf of the Claimant

Mr. Stephen McCreath instructed by Director of State Proceedings for and on behalf of the Defendant

Dates Heard – June 2, 2026 and September 30, 2026

CIVIL PRACTICE & PROCEDURE – Application for leave to appeal – Whether the proposed appeal has a real chance of success – The effect of non-compliance under Rules 29.4 & 29.5 and the application of Rule 29.11

PALMER HAMILTON J

THE APPLICATION

[1] On the 17th day of July, 2025 the Claimant filed a Without Notice of Application for Leave to Appeal in which they sought to appeal 2 Orders made by Mr. Justice C. Stamp on the 7th day of July, 2025 regarding 2 witness statements filed on behalf of the Claimant. It is the Claimant's position that the Learned Judge erred in law and fact in making the said Orders. The Application was supported by the Affidavit of Shirley Richards filed also on the 17th day of July, 2025.

SUBMISSIONS

- [2] I wish to assure all parties that their submissions and authorities were thoroughly considered, even where not expressly referred to.

ISSUE

- [3] The main issue for my determination is whether the Claimant ought to be granted leave to appeal the Orders of the Learned Judge.

LAW & ANALYSIS

- [4] The Claimant is applying for leave to appeal pursuant to section 11 (1)(e) of the Judicature (Appellate Jurisdiction) Act. The Application is also being made pursuant to Rule 1.8 of the Court of Appeal Rules, 2002 (hereinafter referred to as ‘the CAR’). Rule 1.8 allows the Court to grant leave to apply for notice of appeal. The application for leave to appeal must be filed within fourteen days of the order against which permission to appeal is sought. Rule 1.8(2) provides that this application must first be made to the Court below. Rule 1.8(7) of the CAR sets out the considerations for the Court in determining whether it should grant an application for permission to appeal. Rule 1.8(9) states that, *“The general rule is that permission to appeal in civil cases will only be given if the court or the court below considers that an appeal will have a real chance of success.”*
- [5] The law pertaining to applications for leave to appeal is now settled. A party who is seeking leave to appeal must show that the prospective appeal has a *“realistic prospect of success.”* This means that it is for the applicant to show that they have a realistic rather than a fanciful chance of success. It is therefore for the Court to do an assessment of that party’s case to determine whether there is any merit to the proposed appeal. (see Swain v Hillman and another [2001] 1 All ER 91 **L-3 Communications Corporation v Go Tel Communications Limited** [2021] JMCA App 1; Garbage Disposal and Sanitations Systems Ltd v Green (Noel) et al [2017] JMCA App 2; Duke St John-Paul Foote v University of Technology

Jamaica (UTECH) and Wallace [2015] JMCA App 27A; **Gordon Stewart and Others v Merrick Samuels** (unreported) Court of Appeal, Jamaica, Supreme Court Civil Appeal No. 02 of 2005, judgment delivered on November 18, 2005).

- [6] The crux of the Claimant's contention is that there have been errors in procedure, law and fact which have led to a demonstrably wrong conclusion. The proposed grounds may conveniently be considered together. Learned Counsel for the Claimant submitted that the said witness statements are in compliance with Rule 29.4 of the CPR and the absence of the requirement under Rule 29.5(1)(g) of the CPR is not fatal. On the other hand, Learned Counsel for the Defendant contended that the absence of what is required under Rule 29.5(1)(g) is indeed fatal and that the Learned Judge was correct in finding that the Claimant had failed to file witness statements.
- [7] In **George Bryan v Grossett Harris** (unreported) Supreme Court, Jamaica, CL 2000/B 089, judgment delivered on October 21, 2005, the Court had an illiterate witness and a witness statement which did not comply with the requirements under Rule 29.4(2). Sykes J (as he then was), found that the failure of a claimant to file a witness statement that is fully compliant with Rule 29.4(2) is a breach of the said Rule and the document is therefore defective. It was held that the automatic sanction under Rule 29.11(2) would therefore apply. The claimant was then given the opportunity to apply for relief from sanctions.
- [8] I also considered the case of **Kenrick Layton v The Island Traffic Authority and Others** [2021] JMCA Civ 46. The Court of Appeal recognized that there is a stark contrast between Rules 29.4 and 29.11 of the CPR, as the former imposed no express sanction for the failure to comply with the certification requirement. The Court of Appeal questioned whether the rules which govern the preparation of a witness statement for an illiterate litigant should have the same consequence as a failure to file a witness statement, without that intention being expressed in very clear terms. However, the Court of Appeal saw no need to resolve that issue because no question was raised as to whether the invocation of Rule 29.11 was

correct. The issues before the Court of Appeal in **Kenrick Layton** were confined to whether the Learned Judge had correctly exercised her discretion under Rule 26.8 of the CPR.

- [9] In **Marlan Higgns (Executor of the Estate of Egbert Higgins) v Sherman Christie** [2021] JMSC Civ. 09, Pettigrew-Collins J, permitted the witness statement of the claimant to stand as his evidence-in-chief even though it did not comply with Rule 29.5(1)(g) of the CPR. Pettigrew-Collins J considered the fact that the claimant, who was unrepresented, resided in the United Kingdom and had in fact filed a copy of the Witness Statement.
- [10] In **Marva James and Denese James v Carief Ltd and Anthony Tharpe** [2024] JMCA App 15, Mr. Tharpe filed a document purporting to be his witness statement, however it was not signed by him. He later sought to rely on the document as his witness statement, which was allowed by the Learned Judge. The appellant sought leave to appeal, which the Court of Appeal granted having found that there was a real chance of success on appeal as the Learned Judge may have erred in accepting the document as Mr. Tharpe's witness statement. It is to be noted however that the substantive appeal has not yet been heard.
- [11] The authorities therefore establish that non-compliance with the requirements governing witness statements can, in some circumstances, result in the document being treated as defective. However, the authorities do not conclusively determine the consequence of the particular defect that arises in this matter. In my view, the proposed appeal raises arguable questions as to the legal consequence of the particular defect in the present case, that is whether the absence of the requirement under rule 29.5(1)(g) rendered the documents defective to engage Rule 29.11(2) and/or whether it constituted a non-compliance with Rule 29.4 which could otherwise be addressed by the Court. These are genuine issues arising from the interaction between Rules 29.4, 29.5, and 29.11. Therefore, it is my judgment that the Claimant be granted leave to appeal.

ORDERS & DISPOSITION

[12] Having regard to the forgoing, these are my Orders:

- (1) Order in terms of paragraphs 1 and 2 of the Claimant's Without Notice of Application for Leave to Appeal dated the 14th day of July, 2025 and filed on the 17th day of July, 2025.
- (2) No order as to costs.
- (3) The Claimant's Attorneys-at-Law are to prepare, file and serve Orders made herein.