

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO COA2019APP00044

**BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MISS JUSTICE STRAW JA
THE HON MISS JUSTICE EDWARDS JA**

BETWEEN	DERRICK MICHAEL THOMPSON	1st APPLICANT
AND	LORI-ANN THOMPSON	2nd APPLICANT
AND	CANUTE SADLER	1st RESPONDENT
AND	MICHELLE SADLER	2nd RESPONDENT

Miss Jacqueline Cummings instructed by Archer Cummings & Co for the applicants

Miss Kathryn Williams instructed by Livingston Alexander & Levy for the respondents

17 and 19 June 2019

MORRISON P

[1] This is the decision of the court.

[2] This an application for leave to appeal against a judgment given by Rattray J on 25 January 2019 ([2019] JMCA Civ 11), in which he refused the applicants' application to

set aside a default costs certificate issued by the Registrar of the Supreme Court in favour of the respondents.

[3] The applicants accept that “[t]he 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” (Court of Appeal Rules, 2002, rule 1.8(7)).

[4] It is also common ground that this court will not usually entertain an appeal against the exercise of a discretion by a judge on an interlocutory application. This court will generally only do so where the judge’s exercise of the discretion can be shown to have been based on a misunderstanding of the law or the evidence, or an inference which can be shown to be demonstrably wrong, or where the judge’s decision “is so aberrant that it must be set aside on the ground that no judge regardful of his duty to act judicially could have reached it” (**Hadmor Productions Ltd v Hamilton** [1982] 1 All ER 1042, 1046; **The Attorney General of Jamaica v John Mackay** [2012] JMCA App 1, para [20]).

[5] The application to set aside the default costs certificate in this case was made under rule 65.22(4) of the Civil Procedure Rules, 2002, which gives the court a discretion to set aside such a certificate “for good reason”. Having heard full argument from counsel on both sides on the question of whether the default costs certificate should be set aside, Rattray J concluded, for the reasons set out in his detailed written judgment, that the applicants had failed to show good reason.

[6] Despite Miss Cummings' valiant efforts to show otherwise on this application, we are satisfied that Rattray J was fully entitled on the basis of the material before him to reach the conclusion which he did. There is therefore no basis upon which this court could properly interfere with his exercise of his discretion to refuse to set aside the respondents' regularly obtained default costs certificate.

[7] It accordingly follows that the applicants have failed to show that they have an appeal with a real chance of success and this application must be refused, with costs to the respondents to be agreed or taxed.