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**NOTICE TO PARTIES OF THE COURT'S  
MEMORANDUM OF REASONS FOR DECISION**

**SUPREME COURT CIVIL APPEAL NO COA2021CV00042**

**APPLICATION NO COA2026APP00021**

<b>BETWEEN</b>	<b>NEWTON BARNES</b>	<b>1<sup>ST</sup> APPLICANT</b>
<b>AND</b>	<b>SONIA BARNES</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>AND</b>	<b>GARNETT DENNIS</b>	<b>RESPONDENT</b>

**TAKE NOTICE** that this matter was heard by the Hon Miss Justice P Williams JA on 25 and 26 March 2026, with Mark-Paul Cowan instructed by Nunes Scholefield Deleon & Co for the applicants, and Joseph Jarrett instructed by Joseph Jarrett & Co for the respondent.

**TAKE FURTHER NOTICE** that the court's memorandum of reasons for decision, as delivered orally in chambers by Hon Miss Justice P Williams JA, is as follows:

[1] On 18 May 2021, Pettigrew-Collins J ('the learned judge') delivered judgment in favour of Newton Barnes and Mrs Sonia Barnes ('the applicants') in their counterclaim against Mr Garnett Dennis ('the respondent'). The learned judge declared the applicants to be the legal and beneficial owners of the registered lands situated in Red Hills in the parish of Saint Andrew and granted other reliefs (contained in a written judgment **Garnett Dennis v Newton Barnes and Sonia Barnes** [2021] JMSC Civ 89).

[2] On 21 May 2021, the respondent filed his appeal. He subsequently filed an amended notice of appeal on 21 July 2021 then filed another amended notice of appeal and grounds of appeal on 13 March 2026. On 21 May 2021, the respondent also filed an application for a stay of execution pending the hearing of the appeal. That application was refused by a single judge of this court on 16 July 2021 (see **Garnett Dennis v Newton Barnes and Sonia Barnes** [2021] JMCA App 21). In his application for a stay of execution, the respondent also sought an order for no order for security for costs, which the single judge found to be misconceived. This court considered the request that there be no order for security for costs and concluded that, in light of the applicants' prior written request for payment of the anticipated costs of the appeal, the respondent's application amounted to an anticipatory step that was, at best, premature. An application to vary or discharge the orders of the single judge was subsequently refused on 17 December 2021 (see **Garnett Dennis v Newton Barnes and Sonia Barnes** [2021] JMCA App 32).

[3] The applicants filed the present application for security for costs on 26 January 2026. They seek an order that the respondent provide security for the costs of the appeal in the sum of \$4,000,000.00, along with consequential orders. The application is brought pursuant to rule 2.11 of the Court of Appeal Rules ('CAR'). The grounds on which this application is made are that the respondent is unlikely to have the means to satisfy any order for costs of the appeal and that the appeal is unmeritorious, with a high degree of assurance that it will fail following a substantive hearing. Further, it is contended that it is fair and just, in all the circumstances, for the respondent to be required to give security for the costs occasioned by the appeal.

[4] In his written submissions, the respondent has contended that in the exercise of my discretion I should consider whether the awarding of security for costs would amount to a denial of justice to him. Also to be taken in account is the fact that he is a resident of Jamaica and has assets in Jamaica other than the property which is the subject matter of the appeal.

[5] Rule 2.11(3) of the CAR provides that in deciding whether to order a party to give security for the costs of the appeal, the court must consider (a) the likely ability of that party to pay the costs of the appeal if ordered to do so; and (b) whether, in all the circumstances, it is just to make the order.

[6] The principles governing the jurisdiction of a single judge to order security for costs are well established in a number of decisions of this court. In one of the earlier authorities, **Speedways Jamaica Limited v The Shell Company (WI) Limited and Guy Morris** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 66/2001, judgment delivered 20 December 2004, Harrison JA (as he then was) stated the following at page 6 of the judgment:

“As a general rule an appellate court will grant an order for security for costs of an appeal in circumstances where an appellant is impecunious and it seems likely that if he fails in his appeal the respondent would experience considerable delay and would be put to unnecessary expense to recover his costs of the appeal. The court will exercise its discretion in all the circumstances of the case.”

[7] One of the relevant considerations in an application of this nature is the likelihood of success of the appeal. It is immediately apparent why the applicants are confident that the appeal is unmeritorious. Both the single judge and the Full Court, in considering the application to stay the judgment, were satisfied that this was indeed the case. The single judge identified the respondent’s complaints as being largely fact-based and found that the respondent had failed to demonstrate that the learned judge’s conclusions on the facts, including assessments of the witnesses’ credibility, were plainly wrong (see para. [33]). The Full Court, having reviewed the single judge’s judgment, was satisfied that it was a fair and accurate assessment of the judgment of the learned judge. It was observed that “this assessment foreshadows an uphill task for the [respondent] in seeking to establish the errors which he contends were made by the trial judge. In light of that, it is clear that the learned judge was correct in his assessment and [in the] finding of an absence of merit or a prospect of success in the appeal (see para. [26])”.

[8] I appreciate that I am not bound to accept, without more, the conclusions reached by the single judge and the Full Court. Mr Jarrett, in oral submissions, contended that, having recently received the notes of evidence from the trial, the amended notice of appeal and grounds of appeal filed 13 March 2026 was substantially different. He maintained that the amendments eliminated irrelevant material and introduced matters in a way that impacts the chances of success. Having reviewed this amended notice of appeal and grounds of appeal, it is apparent that the respondent has set out disputed facts (notably less concisely than contemplated by rule 2.2(5) of the CAR), and asserted that the learned judge erred in arriving at the conclusions she did. This is a matter in which it is apparent that the learned judge resolved much of the disputed facts by assessing the credibility of the witnesses and, in so doing, made findings which she was entitled to. The respondent has failed to demonstrate that the learned judge did not take full advantage of having been able to do so. The challenge remains for the respondent to demonstrate that the learned judge was plainly wrong and the basis on which her finding of facts ought to be interfered with (see **Watt (or Thomas) v Thomas** [1947] AC 484). I am not satisfied that there is an arguable appeal.

[9] On the issue of the respondent's ability to pay the costs of the appeal, the affidavit evidence filed by the applicants indicates that the legal costs already incurred in the appeal, together with the estimated additional costs for preparation and hearing, amount to \$4,903,950.00. Mr Cowan submitted that the respondent's assertion that in 2021 he had assets in the land and crops of substantial value "does not answer the present application." It is contended that "disputed, illiquid, or not readily executable assets are not equivalent of a demonstrated ability to satisfy an adverse costs order promptly and effectively". Counsel further noted that, in an affidavit filed in 2021, the respondent stated that all his investments were in the disputed land, subject of the appeal, and, which counsel highlighted the respondent currently has no rights or entitlement to, given the orders made by the learned judge.

[10] Mr Cowan acknowledged the delay of five years in the making of the application, but submitted that it should not create any discretionary bar to the reliefs sought. It was pointed out that the respondent would have had a long-standing notice that the applicants regarded security as necessary, from the letter of request in July 2021. Counsel pointed out that in his response to that letter, the respondent disclosed that he required all available funds to pursue the appeal. Ultimately, it was Mr Cowan's submission that in all the circumstances any delay is plainly outweighed by the continuing risk of prejudice to the applicants. Reliance was placed on **Jamaica Edible Oils and Fats Co Ltd v MSA Tire (Jamaica) Limited and Jeane Lavan** [2018] JMCA App 8.

[11] Mr Jarrett countered that the respondent is not impecunious and has assets in Jamaica. In his oral submissions, he challenged the amount being sought and submitted that it was excessive. He contended that the delay in making the application is a factor that should be taken into account. The respondent would be prejudiced in his ability to prepare for the substantial appeal, as he would now be required to secure additional funds to meet the sums ordered for security for costs. Counsel pointed out that, in his affidavit filed on 19 March 2026, the respondent asserted that he has a substantial slab roof house at the bottom section, part of which is on his parents' land and part on the land in dispute, on which he put a value at over \$30,000,000.00, subject to valuation.

[12] It is noted that, in this affidavit, the respondent stated that his income is derived from farming and from his construction work and that over the years he had acquired additional properties in Guys Hill in the parish of Saint Mary and in Content and Russell Avenue in Spanish Town in the parish of Saint Catherine. Further, he stated that although he may not be as wealthy as Mr Barnes, he possesses assets that could be used to cover any costs awarded should that become necessary. Curiously, in an affidavit filed on 5 March 2026 by Diana Jarrett in "support of application", on behalf of the respondent, it was asserted that "without a stay of execution the [respondent] is faced with financial ruin if the [applicants] are allowed to execute the judgment and orders of the court below". Ultimately, I find that the assertions of the respondent are lacking in credibility

and insufficient to satisfy me as to his ability to pay the costs that would arise in his appeal.

[13] The delay in making the application is a matter of concern. However, I am satisfied that this is a matter where the potential injustice to the respondent by a late order for security for costs is significantly outweighed by the applicants not being able to recover costs in defending an appeal of this nature. The respondent was alerted to the need for security for costs from early after the appeal was filed and certainly after the applications to stay the appeal and for no order for security were refused. Further, the fact is that the date of the hearing of the appeal has not yet been fixed, and it is highly unlikely it will be before 2027. Also, given the nature of the appeal, the possibility of stifling it does not prevent me from considering the appropriateness of making the order.

[14] I am satisfied that, in all the circumstances, it is just to make an order for security for costs and, accordingly, the application is granted. I note that, during submissions, Mr Jarrett's concerns appeared to relate more to the amount sought than to the making of the order itself. In light of this, I am minded to fix the amount at \$3,000,000.00.

[15] Accordingly, the court makes the following orders:

1. The respondent, Mr Garnett Dennis, shall give security for costs of his appeal in the sum of \$3,000,000.00.
2. The sum of \$3,000,000.00 is to be paid as a lump sum payment into an interest bearing account at the Bank of Nova Scotia, Scotia Centre, situated at Duke and Port Royal Street, in the name of the attorneys-at-law for the parties and to be held in escrow as security for the applicants' costs of appeal within 45 days of this order.
3. The appeal is stayed until such time as the sum of \$3,000,000.00 is provided in accordance with the terms of this order.

4. In the event the respondent, Mr Garnett Dennis, fails to pay the sum of \$3,000,000.00 within 45 days of this order, the appeal against the applicants, Newton Barnes and Mrs Sonia Barnes, is dismissed with costs.
5. Costs of this application to the applicants, Mr Newton Barnes and Mrs Sonia Barnes, to be taxed if not agreed.
6. The applicants' attorneys-at-law to prepare, file, and serve the orders made herein.