**[2026] JMCA Civ 15**

**JAMAICA**

**IN THE COURT OF APPEAL**

**BEFORE: THE HON MR JUSTICE F WILLIAMS**
**THE HON MR JUSTICE D FRASER JA**
**THE HON MRS JUSTICE G FRASER JA (AG)**

**SUPREME COURT CIVIL APPEAL NO COA2022CV00028**

| | | |
|---|---|---|
| **BETWEEN** | **BARTHOLOMEW BROWN** | **1st APPELLANT** |
| **AND** | **BRIDGETTE BROWN** | **2nd APPELLANT** |
| **AND** | **JAMAICA NATIONAL BUILDING SOCIETY** | **RESPONDENT** |

**Bartholomew Brown in his personal capacity and for the 2nd appellant**

**Garth McBean KC for the respondent**

**21 November 2023 and 25 June 2026**

**Civil procedure – Striking out – Principles guiding exercise of discretion – Abuse of process – Length of delay – Reasons for delay – Civil Procedure Rules, rule 26.3 (1)(b)**

**F WILLIAMS JA**

[1] I have read in draft the judgment of my brother D Fraser JA and agree with his reasoning and conclusion. There is nothing that I wish to add.

**D FRASER JA**

**Introduction**

[2] This is an appeal by Bartholomew Brown and Bridgette Brown ('the appellants') against the order of Stamp J ('the learned judge'), made on 14 February 2022, striking out their claim against Jamaica National Building Society ('the respondent'), entering

judgment for the respondent, and awarding costs to be taxed if not agreed. The claim was filed in the court below in 2007 and has, over the years, generated several applications and appeals both in this court and in the court below.

[3] The order striking out the claim was made on the date fixed for trial, following the hearing of the appellants' application for an adjournment. The adjournment was sought on two grounds: first, that there was an appeal pending against an order made by Batts J on 16 May 2016; and secondly, that the first appellant, Mr Brown, was not in the best of health and would not be ready for trial that week. No medical report was produced, however, and no proof of any pending appeal was before the court. The learned judge refused the application, struck out the claim, and awarded costs to the respondent.

[4] Mr Brown, representing himself and Mrs Brown, asks this court to reinstate the appellants' claim. They also seek ancillary relief in respect of monies said to have been paid, including $35,000.00 plus 30% interest, and sums alleged to be missing. They contend that there was an abuse of process in the striking out of the matter by the learned judge.

**Background**

[5] The judgment of Phillips JA in **Bartholomew Brown and Bridgette Brown v Jamaica National Building Society** [2016] JMCA App 7 outlines the history of the case as well as some of the issues arising from it. For present purposes, it is sufficient to note that the dispute has its genesis in a loan of $800,000.00 advanced by the respondent to the appellants in 1993 to complete the construction of their dwelling house at 27 Maxfield Place, Runaway Bay, in the parish of Saint Ann.

[6] According to the appellants, their monthly payments were not credited to their account in a timely manner, with the result that the account fell into arrears and the house was almost the subject of foreclosure. They alleged that their efforts to preserve the property resulted in severe loss and damage, and they brought a claim against the

respondent seeking, among other relief, damages, including exemplary damages, for breach of contract and negligence.

**Decision in the court below**

[7] The signed minute of order is all that has been presented to this court. It records as follows:

> "1. The claimants' statement of case is struck out.
>
> 2. Judgment is entered for the defendant with costs to be taxed if not agreed."

**Submissions of the appellants**

[8] The appellants filed written submissions in which they essentially argued that this court has jurisdiction to hear their grounds of appeal and to award judgment in their favour based on authorities to which they referred. They relied on rights under Chapter III of the Constitution and cited several cases concerning fundamental rights and freedoms. They maintained that justice should be done in their case and complained that the striking out of the matter was draconian and constituted an error of law. They further contended that the learned judge failed fully to comprehend the issues before him at the trial. They referred to this court's case of **Ronham & Associates Ltd. v Christopher Gayle and Mark Wright** [2010] JMCA App 17 ('**Ronham**').

[9] Mr Brown accepted that there had been adjournments in the matter. He denied, however, that they were numerous, and said that he had asked for only two or three of them. He stated that any adjournment sought by him was due to problems with his back. He also pointed out that the respondent had itself sought adjournments. He acknowledged that the matter had been filed in the Supreme Court in 2007 and admitted that, on the day the matter was struck out, he had asked the learned judge for an adjournment. He nevertheless reminded the court that everyone is entitled to equal treatment before the law.

[10] Mrs Brown added that she too had been ill. The appellants also stated that they were before the Privy Council in relation to the matter and acknowledged that a number of adjournments had occurred because, in their view, "what happening in Jamaica had to wait on that".

**Submissions of the respondent**

[11] Mr McBean KC, for the respondent, filed written submissions in which he relied on rule 26.3(1) of the Civil Procedure Rules (2002) ('CPR') as well as the cases of **Ronham**, **Clinton Smith v Jamaica Public Service Company Limited** [2021] JMSC Civ 94 and **Ballentyne Beswick & Company (A firm) v Jamaica Public Service Company** [2016] JMSC Civ 13.

[12] King's Counsel submitted that, when the matter came before Stamp J, the history of the previous applications was already before the court. He pointed out that there was no record of any appeal to the Privy Council that was pending, or that had been heard and determined in a way that supported the appellants' position. He also emphasised that approximately 15 years had elapsed since the filing of the claim, and nearly 30 years since the cause of action had arisen in the 1990s.

[13] King's Counsel also referred to the numerous applications and appeals filed over that period and to the order made in **Bartholomew Brown and Bridgette Brown v Jamaica National Building Society**, which prohibited the appellants from making any further applications without permission. He submitted that the learned judge had been correct to strike out the claim.

[14] It was further advanced, on behalf of the respondent, that there was no proper appeal pending before the court. King's Counsel submitted that the permission to appeal granted by Batts J, on 16 May 2016, did not permit the appellants to appeal an order made by Lindo J; rather, it related to Batts J's own order refusing to strike out an affidavit of Byron Ward, on the basis that Lindo J was a judge of coordinate jurisdiction and this court had already dealt with the relevant issue by way of preliminary objection. The

respondent contended that the appellants had misunderstood the permission granted, with the result that there was no proper appeal before the court.

[15] King's Counsel further noted that, in email correspondence from Mr Brown on the day before the trial date of 14 February 2022, he indicated that his application was to appeal the order of Batts J. However, King's Counsel maintained that there was no valid appeal against Batts J's order. He said that the respondent was ready for trial, but the appellants sought an adjournment on the basis that the matter was on appeal.

[16] King's Counsel submitted that the exercise of the learned judge's discretion was not to be lightly disturbed unless it could be shown to have been plainly or palpably wrong. He added that there had been no appeal to the Judicial Committee of the Privy Council to which the respondent had been made a party, and he pointed out that formal notification had been received from the Clerk to the Privy Council, on 15 November 2017, that permission to appeal had been refused.

[17] As regards delay and prejudice, King's Counsel pointed out that the matter had its genesis in about 1995–1996 and that the claim was filed in 2007. He also submitted that there had been no foreclosure on or sale of the property. He emphasised that the most important consideration in the case was the length of the delay, which he said exceeded that found in the authorities cited. He noted that the matter first came up for trial in 2011 and that the next trial date was not until 2022.

[18] King's Counsel also highlighted that, by the admission of the 2nd appellant, the respondent had not contributed to the delay but had been ready to proceed to trial. He submitted that the learned judge was faced with an application for adjournment, that the respondent opposed it, and that when the learned judge asked whether the respondent was applying to strike out the claim considering the history of the matter, the respondent answered in the affirmative.

[19] It was further submitted that the discretion exercised by the learned judge was not plainly or palpably wrong, especially in circumstances where the email from Mr Brown

mentioned nothing about medical problems and no medical report was produced. King's Counsel argued that, if the exercise of the discretion were to be impugned, the evidence would have had to demonstrate that the first appellant was unable to participate in the trial, particularly in circumstances where both appellants were present. He accordingly asked that the appeal be dismissed.

**Reply from the appellants**

[20] In reply, the appellants stated that their application for permission to appeal from Batts J had been made orally. They reminded the court that Phillips JA had said that no more applications should be made, and they therefore proceeded orally with submissions. They added that when they applied to the Privy Council, they sent the papers to Mr McBean, and that they had made several applications to that body. Mr McBean responded that he was aware of applications to the Privy Council, but that the respondent had never been a party to any appeal.

[21] The appellants also submitted that Mr McBean did not initially ask for a strike out, but that the learned judge asked, in effect, what the respondent wanted him to do, and King's Counsel then said that the matter should be struck out. The appellants further stated that they asked Stamp J for permission to bring the medical report the next day, but that he refused and insisted on striking out the matter that same day. They denied knowledge of the email referred to by the respondent.

**Further submissions by the respondent**

[22] Mr McBean reiterated that, while he knew of applications made by the appellants to the Privy Council, the respondent had never been a party to any appeal before that tribunal. The court asked him to address whether the procedure in rule 26.2 of the CPR had been followed, or whether the matter fell outside that provision.

[23] King's Counsel pointed out that rule 26.2 of the CPR concerns the court's power to make orders of its own initiative. He submitted that this was not such a case. He explained that, although there was no formal notice seeking striking out before the court,

the respondent had outlined the background and the reasons why it vigorously opposed any adjournment, and the learned judge then asked what order the respondent was seeking. The respondent answered that it sought to have the matter struck out. King's Counsel submitted that, in circumstances where there was no medical report and no appeal against Batts J's decision, the respondent was entitled to apply for the claim to be struck out under rule 26.3(1)(b) of the CPR, on the basis that the matter had become an abuse of process.

**Further reply by the appellants**

[24] Mr Brown responded that this was not an accurate account of what had occurred. He stated that he was present in court for trial and informed the learned judge that he could not stand all day because he had a herniated disc. He said that he had travelled by bus and that the condition had been aggravated. He stated that he told the court that he could go no further for that day. Although he was asked for a medical report, he had none because his doctor was in the United States and had told him that he "should not push it". He said that he asked for time to present medical evidence, but his request was refused.

**Analysis**

The issue

[25] The question for this court is whether the learned judge was wrong in striking out the appellants' statement of case in all the circumstances. The starting point is rule 26.3(1)(b) of the CPR, which provides:

> "**Sanctions - striking out statement of case**
>
> 26.3 (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) …;

> (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; …"

Applicable principles

*Appellate restraint*

[26] The general principles governing appellate interference with the exercise of a trial judge's discretion are well settled. As stated in **Attorney General v John Mackay** [2012] JMCA App 1 at para. [20], applying **Hadmor Productions Ltd and others v Hamilton and others** [1983] 1 AC 191, an appellate court will not interfere unless the decision is shown to have been based on a misunderstanding of the law or the evidence, on a demonstrably wrong inference of fact, or is so aberrant that no judge properly directing himself could have reached it.

*Striking out*

[27] The specific principles applicable to this case concern the exercise of the discretion to strike out a claim or part of a claim. Both sides relied on the case of **Ronham**. At para. [25] of that case, Morrison JA (as he then was), drawing on the case of **Annodeus Entertainment Ltd and Others v Gibson and Others** (2000) The Times, 3 March, identified the usual considerations relevant to an application to strike out for want of prosecution as follows:

> "(i) the length of the delay; (ii) any excuses for the delay; (iii) the extent to which the claimant had complied with the rules and any orders of the court; (iv) the prejudice to the defendant; (v) the effect on the trial; (vi) the effect on other litigants; (vii) the extent, if any, to which the defendant has contributed to the delay; (viii) the conduct of the claimant and the defendant with regard to the litigation; and (ix) any other relevant factors."

[28] In the present case, three of those considerations are particularly significant: (i) the conduct of the appellants; (ii) the length of the delay; and (iii) the reasons advanced for the delay.

*The conduct of the appellants*

[29] The history of this matter discloses repeated adjournments, multiple applications, and several appeals over a prolonged period. The chronology before the court shows that a four-day trial fixed for 23 June 2011 was aborted and adjourned; that on 7 May 2012 the trial was adjourned because the appellants wished to appeal an order; that on 22 April 2013, 10 March 2014, 4 May 2015, and 16 May 2016 the trial was adjourned on the basis that there was a pending appeal to the Privy Council; that on 28 May 2018 the trial was adjourned because the 1st appellant had reportedly been shot and was recovering; and that on 14 February 2022, the date on which the claim was struck out, the appellants again sought an adjournment on the basis of ill health and a supposed appeal from the order of Batts J. No medical report was produced on this last occasion, neither was there documentary proof of any pending appeal to this court or to the Judicial Committee of the Privy Council.

[30] It is also material that the repeated applications and collateral proceedings relating to this matter prompted this court to make an order in 2016, referred to by the respondent, prohibiting the appellants from making any further applications in the matter without permission. That history underscores the extent to which the litigation had become burdened by satellite proceedings.

[31] In those circumstances, the learned judge was entitled to conclude that the appellants had failed to advance the litigation and that the proceedings had reached a point at which the court's process was being obstructed rather than used for the timely determination of the claim. The rights of all parties need to be protected, not only the appellants' who had challenges in proceeding; but also, those of the respondent who was made to appear in court on numerous occasions only for the matter to be repeatedly adjourned. The appropriate conservation of the resources of the court also has to be afforded prominent consideration.

[32] In **Ronham**, Morrison JA referred, at para. [29], to the observation in **Grovit and Others v Doctor and Others** [1997] 2 All ER 417, 424, that, "[t]o commence and

continue litigation which one has no intention of bringing to a conclusion can amount to an abuse of process". In relation to the facts of **Ronham** he then concluded that the appellant had, "by its conduct, throughout the period since the filing of this appeal...evinced no real intention to bring it to a conclusion" which had in fact "amounted to an abuse of the process of the court". Those observations are apposite here.

[33] The same principle is reflected in the commentary of Stuart Sime, author of the text, A Practical Approach to Civil Procedure, where at page 234 he stated:

> "In *Barton Henderson Rasen v Merrett* [ 1993] 1 Lloyd's Rep 540 Saville J said that it is an abuse of the court's process to issue proceedings with no intention of taking the case any further. In contentious matters the courts exist for the purpose of determining claims. Therefore, starting an action with no intention of pursuing it is not using the court's processes for the purposes for which they were designed."

[34] Viewed in the round, the appellants' conduct was capable of supporting a similar conclusion in this case.

*The length of the delay*

[35] The claim was filed in 2007 and was struck out in 2022, a delay of approximately 15 years. If one considers that the underlying events are said to have arisen in or about 1993, the lapse of time is even more pronounced.

[36] In **Ronham**, Morrison JA stated at para. [28] that nearly 11 years had already elapsed since the accident in that case and observed that, quite apart from any specific evidence of prejudice, there was a substantial risk that it would not be possible for the plaintiff to obtain a fair trial. The court treated the delay itself as highly material to the just disposal of the proceedings.

[37] The case of **Keith Hudson and ors v Vernon Smith and anor** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 35/2005, judgment delivered 20 December 2006, is also instructive. There, approximately 20 years had elapsed

between the filing of the action and the point at which it was dismissed for want of prosecution. K Harrison JA, writing for the court, stated at para. [35] that prolonged inactivity amounted to an abuse of process and justified the striking out of the claim under rule 26.3 of the CPR, even where the defendant could not point to specific prejudice arising from the delay.

[38] The delay in the present matter lies between the periods of inactivity considered in **Ronham** and **Keith Hudson and Others v Vernon Smith and Another**. Indeed, when viewed from the date of the underlying loan transaction in 1993, the lapse of time is even more extensive than that examined in **Keith Hudson and Others v Vernon Smith and Another**. Those decisions affirm that a prolonged failure to prosecute proceedings may, without more, warrant a finding that the action constitutes an abuse of process. They illustrate the court's inherent jurisdiction to prevent the continuation of stale litigation where excessive delay is inconsistent with the efficient administration of justice, compromises the integrity of the judicial process, and renders it unjust to require the opposing party to remain indefinitely exposed to unresolved claims.

*The reasons for the delay*

[39] The chronology of this case shows that the reasons repeatedly advanced for delay were, in substance, twofold: that there was a pending appeal, particularly to the Privy Council, and that one or other of the appellants was ill. The court below repeatedly accommodated requests for adjournments based on those matters and adjourned the case on several occasions. An example is the order made on 10 March 2014 by Harris J, as she then was, recording a pending application for special leave to appeal to the Privy Council, a pending application to appeal to the Court of Appeal, illness on the part of the 2nd appellant, and an adjournment to 4–7 May 2015 with no order as to costs.

[40] Another example is that, on 16 May 2016, Batts J, having considered an oral application by the appellants to strike out an affidavit and noting that this court had already dealt with part of the matter, granted the appellants permission to appeal his

order. He also adjourned the trial to 28 May 2018 for four days, pending the Privy Council process, and made no order as to costs.

[41] Significantly, however, the material in the appellants' own bundle showed that, on 15 November 2017, the Privy Council notified them that permission to appeal had been refused because the proposed appeal did not raise an arguable point of law of general public importance that ought to be considered at that time. Considering that refusal, the repeated invocation of a supposed Privy Council appeal could not indefinitely justify the appellants' failure to proceed with the claim.

[42] On 28 May 2018, the matter was again adjourned, this time to 14 February 2022, on the basis of a medical condition. Yet when the matter came on for trial on that date, no medical report was produced, and no evidence was led to establish that the first appellant was unable to proceed. Nor was there proof that any relevant appeal was then pending. In those circumstances, the learned judge was entitled to conclude that there was no good reason for a further adjournment.

[43] The chronology, therefore, demonstrates that the court had given due consideration to the appellants and to their right to be heard. The reasons advanced for delay had either been repeatedly indulged in the past or were unsupported by evidence when the matter finally came on for trial on 14 February 2022. There was also no indication that the appellants had taken effective steps to move the matter to completion after so many years.

**Conclusion**

[44] Applying the general principles on appellate restraint and the specific principles governing the power to strike out, I am unable to conclude that the learned judge's decision was plainly or palpably wrong. He was confronted with a claim that had remained unresolved for approximately 15 years after filing, a long history of adjournments and collateral proceedings, and an application for adjournment unsupported by either medical evidence or documentary proof of a pending appeal.

[45] The claim had been permitted to drift for many years. The reasons repeatedly advanced for delay had either ceased to exist or were unsupported by evidence. The respondent was entitled to finality. In those circumstances, the appellants have failed to show any basis upon which this court should interfere with the learned judge's decision. The striking out of the claim was well within the ambit of his discretion under rule 26.3(1)(b) of the CPR. The appeal should, therefore, be dismissed.

[46] It remains for the extension of a sincere apology to the parties and King's Counsel for the delay in the delivery of this judgment, and any inconvenience occasioned thereby.

**G FRASER JA (AG)**

[47] I too have read the judgment of my brother D Fraser JA, and I agree with his reasons and conclusion.

**F WILLIAMS JA**

**ORDER**

1. This appeal is dismissed.

2. Costs to the respondent to be agreed or taxed.