[2025] JMCA Civ 30

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MR JUSTICE BROWN JA
THE HON MR JUSTICE LAING JA

SUPREME COURT CIVIL APPEAL COA2021CV00064

BETWEEN	**VANESSA ROSE-CHRISTIE**	**APPELLANT**
AND	**L & L TRADING**	**RESPONDENT**

Mrs Khadine Dixon instructed by Dixon & Associates for the appellant

Ms Kadidia Hyman for the respondent

5, 8 May and 17 October 2025

Civil Procedure and Practice – Setting aside default judgment – Whether default judgment irregularly entered – Whether statements of case properly served – Civil Procedure Rules, rules 12.4, 13.2 (1), 22.3 (1)

Civil Procedure and Practice – Amendment to statements of case to change name of defendant – Whether correction a mere misnomer – Whether leave to correct name of party should be given – Civil Procedure Rules, rule 20.6

F WILLIAMS JA

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

BROWN JA

[2] I, too, have read the draft judgment of Laing JA and agree with his reasoning and conclusion.

LAING JA

[3] In this appeal, the appellant challenges the following order of a master of the Supreme Court ('the learned master') made on 23 June 2021:

"i) Judgment in default of the Defence entered on the 12th day of April, 2017 is set aside as it was entered against L&L Trading and not the named Defendant, L&L Trading Limited."

[4] This order, as framed, highlights the issue at the centre of the appeal, which is whether the correct defendant was served with the claim, and requires an outline of the background leading to the learned master's order.

Background

[5] By a claim form and particulars of claim filed on 5 August 2014, in the name of "Vanessa Rose-Christie" as claimant, the appellant named "L & L Trading Limited" as the Defendant. She stated in the claim form that on 4 June 2013, she was purchasing braids at "L & L TRADING", a store which is owned and/or managed by the Defendant, when she "stumbled and fell over some boxes that were negligently and carelessly left in the walking area".

[6] It was expressly pleaded by the appellant in para. 3 of the particulars of claim that "The Defendant L & L TRADING LIMITED is and was at all times the owner, occupier and/or controller of the store". The appellant identified back pain in her particulars of injury but did not attach a medical report, indicating that the report from Dr Clement Williams was pending. The appellant claimed damages and other relief.

[7] The appellant filed an affidavit of service of Michael Bennett, on 27 February 2015, in which "Vanessa Christie" was named as the claimant and "L & L Trading" was named as the defendant. Mr Bennett averred that, on 11 August 2014, he served the defendant "L & L Trading" with the claim form and particulars of claim and a list of documents, at shop 4 C3, Portmore Mall in the parish of Saint Catherine. He averred that personal service was effected on the defendant at that address, it being the registered office of the company. He confirmed that the company's supervisor, Ms Clarke, was served and she "admitted that the company L & L Trading was the Defendant in the matter and accepted service herein".

[8] On 8 March 2015, the appellant requested judgment in default of acknowledgment of service against the defendant "L & L Trading", whereas the claim was brought against "L & L Trading Limited". Interlocutory judgment was granted against "L & L Trading" on 18 February 2016 by a registrar of the Supreme Court ('the interlocutory judgment') on the basis that the defendant had "… failed to file an Acknowledgment of Service to the Claim Form and Particulars of Claim ...".

[9] A notice of assessment of damages, dated 17 January 2020, was issued by the court advising the parties that the hearing of the assessment of damages was scheduled for 25 May 2021 at 10:00 am.

[10] On 2 October 2020, an acknowledgment of service of claim form was filed with the name "L and L Trading" stated as the defendant in the header. Below the title, it was expressly stated to be "For the Purpose of Disputing Service on the Defendant and the Court's jurisdiction". The defendant asserted in the acknowledgment of service that he did not receive the claim form. It was further stated that:

> "The Claim Form was never served on the Defendant; a copy was acquired from the Supreme Court on August 10, 2020. This was consequent on the service of the Interlocutory Judgment and Notice of Assessment of Damages on the Defendant on or about the 27th day of July 2020."

The defendant asserted that he also did not receive the particulars of claim and acquired a copy from the Supreme Court on 10 August 2020.

[11] In response to the questions, "Are your names properly stated on the Claim Form?" and "If not, what are your names?" The defendant responded "NO" and "**GLENFORD CLARKE Trading as L L Trading**" respectively. It was asserted in the acknowledgement of service that the defendant intended to defend the claim and did not admit the whole or any part of the claim.

[12] For purposes of this appeal, I will treat Glenford Clarke as the respondent, and as the person who participated in the proceedings in the court below.

[13] On 2 October 2020, the respondent filed a notice of application seeking the following relief ('the respondent's notice of application'):

> "1. An order that the service of the Claim Form and Particulars of Claim filed on the 5th day of August 2014 (hereinafter collectively referred to as **'the Claim'**) be set aside.
>
> 2. An order that the date for Default Judgment and Assessment of Damages entered on the 4th day of December 2017 and scheduled for Assessment on the 25th day of May 2021 at 10:00 am be vacated and/or set aside.
>
> 3. An order that the Claim Form and Particulars of Claim filed on the 5th day of August 2014 be struck out.
>
> 4. An Order that the Claimant's Statement of Case is defective and irregular.
>
> 5. Or alternatively, an Order that the time for filing the [respondent's] Defence be abridged and the [respondent] be allowed an extension of time within which to file a Defence;
>
> 6. That the [Respondent] be granted relief from sanction;
>
> 7. Costs; and
>
> 8. An Order that the Honourable Court grant such further or other relief substantively or procedurally which the Court may deem just and appropriate in the circumstances of this case to achieve the ends of justice." (Emphasis as in the original)

[14] In the skeleton submissions in support of the respondent's notice of application, the following was asserted:

> "12) It is also well settled law that, where the party to be sued is a separate legal entity/company, then service is satisfied by serving the documents on the company's registered address. That action would render service satisfied. On the other hand, where the party to be served is a person or sole proprietor trading as a particular name, then service is only satisfied where it is

personally executed on the proprietor. That is, Civil Procedure Rules 5.3:-

- The Claim Form is served personally on an individual by handing it to or leaving it with the person to be served."

[15] On 1 December 2020, the appellant filed a notice of application ('the appellant's notice of application') seeking the following orders:

"1. That the Claimant be allowed to amend her Particulars of Claim to include the medical report from Island Health Care Centre dated the 23rd day of October, 2020 and the receipt for the medical report.

2. That the Claimant be allowed to amend her statement of case after the end of the limitation period.

3. That the Claimant/Applicant be granted relief from sanctions.

4. Costs of this application to the Claimant.

5. Such further and other relief as this Honourable Court deems just in the circumstances for the purpose of managing the case and furthering the overriding objective."

[16] Having heard the respondent's notice of application and the appellant's notice of application, the learned master set aside the interlocutory judgment and refused to permit the appellant to amend her statement of case. Being aggrieved by this decision, the appellant has appealed to this court.

The appeal

[17] The appellant filed 11 grounds of appeal, which were distilled into five issues in the appellant's written submissions, filed on 27 February 2024, as follows:

"1. Whether the learned Master erred in fact and in law in finding that the Judgment in Default was irregular and setting it aside on her own volition and initiative?

2. Whether the learned Master erred in the use of her discretion in deciding on an issue which was not before her or made by way of Notice of Application for court orders and supporting affidavit by the Respondent?

3. Whether the learned Master erred in fact and in law in her refusal to allow the Appellant to amend the pleadings to correct the name of the Respondent since the Respondent was not disputing it was the correct party to the claim?

4. Whether the learned Master failed to apply the overriding objective?

5. Whether the learned Master erred in fact and in law when she failed or properly and adequately failed to exercise her case management powers leaving an injudicious and inequitable result for the Appellant?"

These were expanded formulations of the five issues identified in the appellant's submissions in support of the notice of appeal filed on 2 September 2021.

[18] However, I am of the view that the appeal can be disposed of by the resolution of the following two issues:

1) Whether the learned master erred in setting aside the interlocutory judgment on the basis that service of the claim form and particulars of claim was irregular.

2) Whether the learned master erred in her refusal to allow the appellant to amend the pleadings to correct the name of the defendant to the claim.

The appellant's submissions

[19] The essence of the appellant's submissions was that there was proper service of the claim form, particulars of claim and other documents and that the interlocutory judgment was properly entered against "L & L Trading". Counsel stridently asserted that there is no evidence that the learned master considered the issue of service. It was advanced that there was no proper basis for the learned master to set aside the

interlocutory judgment under rule 13.3 (1) of the Civil Procedure Rules ('CPR') on the ground that service was not effected on "L & L Trading". Counsel submitted, in para. 18 of her written submissions, that the learned master, by finding that the judgment was irregularly entered against the wrong party, and, by setting it aside, denied the appellant the opportunity to have her case heard and decided on its merits.

[20] It was argued that, insofar as the learned master purported to set aside the judgment on her own initiative exercising her powers under rule 26.2 (1) of the CPR and not on the basis advanced by the respondent, the master did not allow the appellant a reasonable opportunity to make representation, as she raised the issue of the interlocutory judgment being entered in the wrong name at the same sitting in which she gave the decision and made the order which is being appealed.

[21] The appellant also complained that the learned master erred in not permitting her to amend her statement of case to change the name of the defendant. The position was advanced, in para. 28 of the appellant's submissions, that:

> "… Moreover, the Judgment in Default was entered in the name of the Defendant business, L & L Trading and **not in the name of a limited liability company,** therefore, it would have been simple and judicious for the learned Master to allow the amendment to the Appellant's Statement of Case, in keeping with the perfected Interlocutory Judgment." (Emphasis supplied)

[22] Counsel relied on the case of **Ketteman and others v Hansel Properties Ltd** [1988] 1 All ER 38 in support of her argument that the learned master ought to have allowed her to correct the mistake as to the name of the respondent. It was argued that by not permitting the amendment, the learned master did not allow justice to be done according to the merits of the case.

The respondent's submissions

[23] Ms Hyman, counsel for the respondent, submitted that the issue of service is the crux of the appeal and is crucial in understanding the learned master's decision. Counsel

asserted that the issue of whether there was service on the proper party was raised and considered by the master in the court below, although this is not reflected in the orders of the court.

[24] Ms Hyman argued that the learned master found that the service by the applicant was irregular because the appellant did not prove proper service of the claim form and particulars of claim on the correct defendant and therefore did not satisfy the requirement of rule 12.4 of the CPR. Accordingly, counsel submitted that the learned master was correct to have set aside the judgment as required by rule 13.2(1)(a) of the CPR, because the interlocutory judgment was irregularly obtained.

The learned master's judgment

[25] It was common ground between counsel for the parties that at the hearing of the appellant's notice of application and the respondent's notice of application, the learned master heard evidence in respect of the issue of service, and the submissions of counsel. Counsel diverged on whether the learned master properly considered this issue in arriving at the reasons for her decision, with counsel for the appellant asserting that she did not and counsel for the respondent advancing the contrary position.

[26] Both counsel advanced their respective positions without exhibiting the learned master's notes of evidence, and the oral judgment that had been reduced to writing. The court advised the parties at the end of their submissions on 5 May 2025 that a decision would be given on 8 May 2025. On 8 May 2025, the court advised the parties that our further enquiries had revealed the learned master's notes of evidence and judgment were available. The parties were advised that, based on our preliminary reading of them, together they potentially might have an impact on aspects of the appellant's submissions, including whether the learned master had considered the issue of service. Consequently, we made the following orders:

> "1. The appellant is required to file and serve on or before 22 May 2025 further written submissions and a bundle of authorities addressing the notes of evidence and the

Master's reasons for decision that the court has brought to the parties' attention.

2. The Respondent is to file and serve his reply with a bundle of authorities on or before 5 June 2025."

[27] The appellant did not comply with these orders, and the respondent indicated in writing to the registrar that she would rely on her original submissions, having not received the appellant's further submissions.

Analysis

1) Whether the learned master erred in setting aside the interlocutory judgment on the basis that service of the claim form and particulars of claim was irregular

[28] The material portions of rule 12.4 of the CPR are as follows:

"12.4 The registry at the request of the claimant must enter judgment against a defendant for failure to file an acknowledgment of service, if –
(a) the claimant proves service of the claim form and particulars of claim on that defendant;
(b) the period for filing an acknowledgment of service under rule 9.3 has expired;
(c) that defendant has not filed –
(i) an acknowledgment of service; or
(ii) a defence to the claim or any part of it;"

By operation of rule 12.4, in order to obtain a judgment against a defendant for failure to file an acknowledgement of service, the appellant was required to prove service of the claim form and particulars of claim on that defendant.

[29] Rule 13.2(1) cross references rule 12.4 and identifies the cases where the court must set aside a default judgment and in so far as is material, provides that:

"13.2 (1) The court must set aside a judgment entered under Part 12 if judgment was wrongly entered because –

> (a) in the case of a failure to file an acknowledgment of service, any of the conditions in rule 12.4 was not satisfied;
>
> (b) in the case of judgment for failure to defend, any of the conditions in rule 12.5 was not satisfied; or …"

[30] The directive that a judgment entered under Part 12 must be set aside if any of the conditions in rule 12.4 were not satisfied requires as a first step that the appellant prove service on the defendant. This created an insurmountable hurdle for the appellant, who required that the interlocutory judgment against "L & L Trading Limited" be set aside.

[31] In para. [36] of her judgment, the learned master provides the following insight into her decision:

> "[36] Foremost in my mind in considering the peculiar facts of this case, is the fact that the judgment entered by the Registrar was entered against L & L Trading a sole proprietorship but the sole proprietor Glen Clarke was never served. Another anomaly, is that the claim was commenced against L & L Trading Limited, but interlocutory judgment was entered against 'L & L Trading' with no prior amendment to the pleadings. Further 'L & L Trading' has no legal capacity. The claim had to have been commenced against the sole proprietor Glen Clarke, trading as L & L Trading."

[32] To the extent that the learned master stated without qualification that "[t]he claim had to have been commenced against the sole proprietor Glen Clarke, trading as L & L Trading", this suggests that the learned master did not adequately consider rule 22.3 of the CPR, the effect of which is that the claim could also have been made against "L L Trading (a trading name)", "L L Trading" being the name Glenford Clarke asserted in his acknowledgment of service was his trading name.

[33] However, this error by the learned master may be deemed to be mere surplusage and of academic relevance only. It is not capable of affecting the result of this appeal. The fundamental error is that the interlocutory judgment was entered against "L & L Trading" which was not the defendant.

[34] The learned master appreciated that Glenford Clarke was not properly sued as a sole trader carrying on business using a trading name. Glenford Clarke asserted in acknowledgment of service filed 2 October 2020, that the correct name of the defendant is "**GLENFORD CLARKE Trading as L L Trading**". Implicit in this assertion is that he is a sole trader and the proper defendant.

[35] If the appellant intended to sue Glenford Clarke personally, "L & L Trading" was not a permitted manner of describing him as the defendant. Rule 22.3 (1) dictates how a claim may be initiated against a person carrying on business and provides as follows:

> "22.3 (1) A claim may be made by or against a person –
>
> (i) carrying on business within the jurisdiction; or
>
> (ii) who was carrying on business within the jurisdiction when the right to claim arose –
> (a) in that person's own name;
> (b) in that person's own name, followed by the words 'trading as X.Y.';
> **(c) as 'X.Y.' followed by the words '(a trading name)'**; or
> (d) as 'X.Y.' followed by the words 'a firm'."
> (Emphasis supplied)

[36] As demonstrated above, a sole trader may be sued in his name where the cause of action arises in relation to the business he is operating, since the trading name is merely descriptive and does not create a separate legal identity. The learned master acknowledged the difference in substance between a claim against an individual carrying on business in a particular business name and a claim against a registered company with a separate legal personality.

[37] The learned master's notes of evidence disclose that Mr Bennett, the appellant's process server and witness, in his evidence given remotely via Zoom, stated that he was instructed to serve a summons on the owner of "L & L Trading". The master observed that he did not state this in his affidavit. The learned master concluded in para. [9] of her judgment that it was clear from Mr Bennett's affidavit that when he went to effect service

of the claim form, he was of the belief that he was serving a registered company. The master was satisfied with the evidence that the claim form was left with Miss Clarke, a store clerk.

Conclusion

[38] The appellant was granted an interlocutory judgment by the registrar in accordance with rule 12.4 of the CPR against "L & L Trading" on the basis that that party did not file an acknowledgement of service or a defence to the claim within the requisite period. Accordingly, the learned master was required to consider whether this judgment was wrongly entered.

[39] The learned master correctly found that it was wrongly entered on two bases. Firstly, and fundamentally, L & L Trading was not the named defendant against which the claim was brought.

[40] Secondly, even if the judgment against L & L Trading could be deemed to be a judgment against Glenford Clarke trading as L L Trading, the judgment in order to be valid would have required, as a precondition that the claim had been personally served on Glenford Clarke in accordance with rule 5.1, and such personal service was not done. Consequently, the condition for service imposed by rule 12.4 was not satisfied, and the judgment was irregular.

[41] Therefore, these reasons being valid, the learned master did not err in setting aside the interlocutory judgment.

<u>2) Whether the learned master erred in her refusal to allow the appellant to amend the pleadings to correct the name of the defendant to the claim.</u>

[42] The appellant complains that it would have been simple and judicious for the learned master to allow the amendment to the appellant's statement of case, in keeping with the perfected interlocutory judgment.

[43] The learned master correctly identified that the documents, filed on behalf of the appellant, used the names "L & L Trading Limited" and "L & L Trading" loosely. She stated that she pointed out this error, outlined the evidence, and referenced the pleadings that were considered in arriving at her decision. It was while she was in the process of delivering her oral judgment that counsel for the appellant sought an adjournment to amend the claim to substitute "Glen Clarke t/a L & L Trading" as the defendant. The learned master explained in her judgment that she refused the application based on its timing and the stage of the hearing at which it was raised, which was while the judgment was being delivered and when she had almost concluded.

[44] Part 11 of the CPR provides general rules about applications for court orders. Rule 11.6 provides:

> "11.6 (1) The general rule is that an application must be in writing.
>
> (2) An application may be made orally if –
>
> (a) this is permitted by a rule or practice direction; or
>
> (b) the court dispenses with the requirement for the application to be made in writing."

Rule 11.7 (1) requires that an application must state what order the applicant is seeking and briefly state the grounds on which the order is being sought.

[45] It appears from the notes of the learned master provided to us that the appellant became desirous of having a new defendant to the claim because counsel, having heard portions of the learned master's oral judgment, formed the view that L & L Trading Limited was not the proper defendant. What the judgment of the learned master indicates is that the appellant was seeking an adjournment to make an application for an amendment, which suggests that counsel appreciated that a formal application was necessary for the reasons referred to above.

[46] Having regard to the timing of the appellant's application for an adjournment, it cannot be said that the learned master erred in exercising her discretion by refusing to

allow an adjournment of the hearing to allow the appellant to amend the pleadings to correct the name of the respondent.

[47] In any event, an amendment changing the defendant from "L & L Trading Limited", a company with a separate legal personality, to "Glen Clarke t/a L & L Trading", an individual carrying on a business, was not permitted. Based on the appellant's statement of case, the cause of action in tort arose on 4 June 2013. The application for the amendment of the name of the defendant was made on the day the master was delivering her judgment which was 23 June 2021, and was accordingly statute barred, because a litigant has a period of six years within which to bring actions in tort (see Rowe P in **Lance Melbourne v Christina Wan** (1985) 22 JLR 131).

[48] In the case of **Tikal Limited and Wayne Chen v Everley Walker** [2020] JMCA Civ 33 ('**Tikal v Walker**') the respondent claimed against Super Plus Food Stores Limited ('Super Plus') for damages for negligence and breach of the Occupiers Liability Act arising from a fall allegedly suffered in a supermarket. The respondent claimed that Super Plus owned the supermarket, which was denied by Super Plus. After the limitation period had expired, the respondent, relying on rules 19.4 and 20.6 of the CPR, sought to amend the claim form and particulars of claim to add Tikal Limited as the Defendant or second defendant or add Tikal Limited T/A Super Plus Food Stores Limited as the Defendant. The learned master permitted the respondent to the claim to add "Tikal Limited T/A Super Plus Food Stores Ltd" and "Wayne Chen t/a Super Plus Food Stores Ltd" as the first and second defendants.

[49] Rule 19.4 of the CPR provides as follows:

> "(1) This rule applies to a change of parties after the end of a relevant limitation period.
>
> (2) The court may add or substitute a party only if –
>
> (a) the relevant limitation period was current when the proceedings were started; and

(b) the addition or substitution is necessary.

(3) The addition or substitution of a party is necessary only if the court is satisfied that –

(a) the new party is to be substituted for a party who was named in the claim form in mistake for the new party;

(b) the interest or liability of the former party has passed to the new party; or

(c) the claim cannot properly be carried on by or against an existing party unless the new party is added or substituted as claimant or defendant."

[50] Rule 20.6 of the CPR, under the heading "Amendments to statement of case after end of the limitation period", provides as follows:

"20.6 (1) This rule applies to an amendment in a statement of case after the end of a relevant limitation period.

(2) The court may allow an amendment to correct a mistake as to the name of a party but only where the mistake was –
(a) genuine; and
(b) not one which would in all the circumstances cause reasonable doubt as to the identity of the party in question."

[51] Morrison P, agreed with the following observations of Sykes J (as he then was), in **Peter Salmon v Master Blend Feeds Limited** (unreported), Supreme Court, Jamaica, Suit No CL 1991/S 163, judgment delivered 26 October 2007, paras 19-20

"19. These submissions highlight an important issue. It appears that the CPR is conferring a power to override an Act of Parliament. The Limitation Act has not been amended to provide for this power to add parties after the end of a limitation period. It does seem remarkable that subsidiary legislation such as the CPR can override an Act of Parliament which provides a defence for a defendant not sued within the limitation period. The usual way of dealing with claims after a limitation period is by conferring a discretionary power on the court by an Act of Parliament to extend the time within which

> the claim can be brought (see section 4(2) of the Fatal Accidents Act; section 13(2) of the Property (Rights of Spouses) Act). …"

[52] Accordingly, this court concluded that the power of the court to add or substitute a party that was at long established common law remained, which is that "the court will not allow a person to be added as a defendant to an existing action if the claim sought to be made against him is already statute-barred and he desires to rely on that circumstance as a defence to the claim".

[53] The authorities indicate that the courts usually distinguish between "misnomers", which refers to an incorrect name being used for a correct party, and a "misjoinder", which is the naming of the wrong party altogether. In **Tikal v Walker** Morrison P approved the analysis of Sykes J (as he then was) in **Elita Flickinger (Widow of the deceased Robert Flickinger) v David Preble (t/a Xtabi Resort Club & Cottages) and Xtabi Resort Club & Cottages Limited** (unreported), Supreme Court, Jamaica, Suit No CL F 013/1997, judgment delivered 31 January 2005, that rule 19.4 related to cases of misidentification while rule 20.6 covered cases of misnaming.

[54] In **Auburn Court Limited v Jamaica Citizens Bank Limited** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 69/1990, judgment delivered 20 December 1990 ('**Auburn Court**'), a writ was filed by the respondent against four defendants, including Auburn Limited as the first defendant. An appearance (the precursor to the current acknowledgement of service) was filed on behalf of the defendants, but no defence was filed. Judgment was entered against the four defendants in default of defence, and subsequently, the master ordered the writ to be amended by deleting the name "Auburn Limited" and substituting therefor "Auburn Court Limited". A motion to set aside the default judgment was refused by Walker J (as he then was), and on appeal, it was argued on behalf of Auburn Court Limited that the writ was issued against a non-existent entity and was therefore null and void.

[55] Rowe P, with whom the other members of the panel agreed, referred to the case of **Davies v Elsby Brothers Ltd** [1960] 3 All ER 672 in which a claim was brought

against a firm. It was later discovered, after the statute of limitations had expired, that the partnership had been converted to a limited liability company. Rowe P stated that this case supported the principle that if the description of the party was "a mere misnomer, it could be corrected, but if it amounted to the addition of a new party, the Court would not be prepared to make the amendment which would deprive the defendant of a good defence under the limitation statute". He agreed with Walker J that persons in the position of the officers of the appellant company would have had no doubt that the writ was intended for the appellant company, but that there was an error in stating the appellant's name.

[56] In **Grace Turner v University of Technology** [2014] JMCA Civ 24 ('**Turner**'), this court reaffirmed the principle that where an action is brought against the party in an incorrect name, leave would be granted to correct the wrong name and substitute the correct name. Rule 20.6 of the CPR provides for this amendment of the incorrect name, subject to certain conditions being met. In para. [25] this court made the following observation:

> "… In deciding on an amendment where a party has been wrongly named, authoritative guidance from the case of ***Sardinia Sulcis v Al Tawwab*** [1991] 1 Lloyd's Rep 201, enunciates the test to be whether the intending plaintiff or defendant can 'be identified by reference to a description which is specific to the particular case. If the answer is yes, then an amendment can be allowed...'" (Emphasis as in the original)

[57] In **Turner**, the claimant was described in the claim form as "The University of Technology". The name of the claimant on the claim form was subsequently amended to read "The University of Technology, Jamaica". The amendment was challenged as an abuse of the court process. There were also issues raised in that case regarding the expiry of the limitation period, which are not relevant to our analysis. It was submitted by counsel for Turner that the suit was not initiated in the claimant's correct corporate name, and the claimant, as originally named in the claim form, was not a legal person.

Furthermore, since only a legal entity may institute proceedings, an amendment cannot be made to a claim to substitute a legal entity where none was named before.

[58] The court placed much weight on the fact that the claimant was a body corporate and observed, at paras. [26] and [27], as follows.

> "[26] The issue, in this case, is not whether the correction relates to a mere misnomer but whether the error is genuine and the correction would not raise any reasonable doubt as to the identity of the party. Is there evidence, in this case, to show a genuine mistake as to the name of the respondent and that there is no doubt as to its identification? In an affidavit, sworn by Shauna Kaye-Hanson on 13 April 2011, in which she speaks to the error in naming the respondent, she said at paragraph 5:
>
> > 'After the filing of the Court documents, it came to the firm's attention that there was an error in the name of the Claimant in the version of the Court documents which were filed. The Claimant, which is a legal entity, was misdescribed in the Court documents. In particular, the Court documents described the Claimant as the *University of Technology* instead of the '*University of Technology, Jamaica'*. The mistake in the name of the Claimant was a genuine one.'
>
> [27] The amendment made by the respondent relates to the correction of a misnomer. The claim contained a reference to the identity of an actual entity, that entity being the respondent, but the full name of the entity was not set out. The correction did not go beyond the realm of fixing a simple misdescription of the respondent and did not seek to adjust its identity. It is clear that the error in not including the word 'Jamaica' as part of the respondent's name was an innocent omission, or a mere accidental slip." (Italics as in the original)

[59] What **Auburn Court** and **Turner** clearly illustrate is that the considerations in deciding whether to grant an amendment to a party's name or to substitute a party where the limitation period has expired are numerous.

[60] In the instant case, the appellant made the considered decision to name "L & L Trading Limited" as the defendant in the claim and then obtained an interlocutory judgment not against that named defendant, but instead against "L & L Trading". It is my opinion that the appellant was not seeking an adjournment to correct "a mere misnomer". The intended change, which the appellant wished to have done, was to change the defendant from "L & L Trading Limited", a company with a separate legal personality, to "Glen Clarke t/a L & L Trading", an individual carrying on a business. This amounted to the addition of a new party to the claim at the expiry of the limitation period, which is impermissible as explained in the earlier discussion of rule 19.4 of the CPR.

Conclusion and disposition

[61] The general principles guiding the court in considering whether to set aside the exercise of the discretion of a judge are contained in the principles enunciated by Lord Diplock in the case of **Hadmor Productions Limited and others v Hamilton and others** [1982] 1 All ER 1042, 1046 ('**Hadmo**r'). These principles have been adopted by Morrison JA (as he then was) in the case of **The Attorney General of Jamaica v John MacKay** [2012] JMCA App 1 at paras. [19]- [20] that:

> "[19] … It follows from this that the proposed appeal will naturally attract Lord Diplock's well-known caution in Hadmor Productions Ltd v Hamilton [1982] 1 All ER 1042, 1046 (which, although originally given in the context of an appeal from the grant of an interlocutory injunction, has since been taken to be of general application):
>
> > '[The appellate court] must defer to the judge's exercise of his discretion and must not interfere with it merely on the ground that the members of the appellate court would have exercised the discretion differently.'
>
> [20] This court will therefore only set aside the exercise of a discretion by a judge on an interlocutory application on the ground that it was based on a misunderstanding by the judge of the law or of the evidence before him, or on an inference - that particular facts existed or did not exist - 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'."

[62] In **Bengal Development Ltd v Lee (Wendy) et al** [2025] JMCA Civ 9 ('**Bengal**') McDonald Bishop JA (as she then was) referred to **Aldi Stores Ltd v WSP Group PLC and others** [2007] EWCA Civ 1260 in recognition of the principle that the **Hadmor** standard of review might not be appropriate in cases involving an application for striking out for abuse of process, because this was a decision involving the assessment of a large number of factors to which there can only be one correct answer ad was not an exercise of discretion. McDonald Bishop JA concluded that, in such a case, the appellate court will nevertheless be reluctant to interfere with the learned judge's decision reached on a balancing of the factors. She concluded that the appellate court will generally only interfere where the judge has taken into account immaterial factors, omitted to take account of material factors, erred in principle, or come to a conclusion that was impermissible or not open to him.

[63] The instant case is also one which is a question of law as to whether the leaned master was correct in setting aside the judgment in default entered against L&L Trading on the basis that it was not the correct defendant. Accordingly, I will adopt the **Bengal** approach and determine whether the learned Master was right or wrong, there being no discretionary component of the leaned master's decision nor did the leaned master need to weigh a number of elements in determining the issue of fact.

[64] For the reasons I have stated, the learned master was required to set aside the interlocutory judgment because there was no personal service on Glenroy Clarke, as has been discussed earlier. The oral application for an adjournment to allow the appellant to substitute Glenroy Clarke as a party was reasonably refused by the learned master, given the timing of the request and what ultimately would have been a pointless exercise since the claim against him would be statute-barred. I have concluded that the learned master did not take into account immaterial factors, or omitted to take account of material

factors, and did not err in principle. Accordingly, I am of the view that this appeal fails, and I would recommend the following orders:

1. The appeal is dismissed.

2. Costs of the appeal are awarded to the respondent to be taxed if not agreed.

F WILLIAMS JA

ORDER

1. The appeal is dismissed.

2. Costs of the appeal are awarded to the respondent to be taxed if not agreed.