COURT OF APPEAL
Public Building West,
King Street, Kingston
Telephone# (876) 633-7201
Email registry@courtofappeal.gov.jm
Website www.courtofappeal.gov.jm

NOTICE TO PARTIES OF THE COURT'S MEMORANDUM OF REASONS FOR JUDGMENT

SUPREME COURT CIVIL APPEAL NO COA2022CV00131

APPLICATION NO COA2022APP00269

BETWEEN	**GREGORY DUNCAN**	**APPLICANT**
AND	**NADINE MCNEIL**	**1ST RESPONDENT**
AND	**CHRISTOPHER HENRY**	**2ND RESPONDENT**

TAKE NOTICE that this matter was heard by the Hon Mrs Justice McDonald-Bishop P, the Hon Mrs Justice V Harris JA and the Hon Mr Justice Brown JA on 9 June 2025 with Mr Gregory Duncan appearing in person and Ms Keisha Spence instructed by Henlin Gibson Henlin for the respondents.

TAKE FURTHER NOTICE that the court's memorandum of reasons for the decision, delivered orally in open court on 9 June 2025 by the Hon Mrs Justice McDonald-Bishop P, is as follows:

[1] Before the court is application no COA2022APP00269, an amended relisted notice of application for injunction, stay and permission to amend notice and grounds of appeal filed on 4 November 2024 ('the relisted application'). The relisted application has come before this court against the backdrop of a somewhat convoluted procedural history. A summary of the salient aspects of the procedural history is crucial to understanding the disposition of the application and is now provided.

[2] The applicant, Mr Gregory Duncan, filed a claim in the Supreme Court (claim no SU2022CV02301) seeking a range of orders related to his possession and purported ownership of property located at 16 Amethyst Drive in the parish of Saint Andrew ('the

Amethyst Drive Property'). The dispute concerning ownership of the Amethyst Drive Property stemmed from a lease-to-purchase agreement and an agreement for sale between the applicant (as lessee and proposed purchaser) and the 1st respondent, Ms Nadine McNeil (as lessor and proposed vendor). The 2nd respondent, Mr Christopher Henry, represented the 1st respondent in the proposed sale and had carriage of sale for the transaction.

[3] On 9 December 2022, Carr J ('the learned judge') delivered an oral decision striking out the applicant's claim ('the first decision'). On 16 December 2022, the applicant filed a notice and grounds of appeal seeking to challenge the first decision ('the appeal'). The appeal was assigned the appeal number COA2022CV00131. The notice and grounds of appeal were later amended on 21 December 2022. Both the original and amended notice and grounds of appeal state that Jarrett J made the first decision. However, at the hearing of the application, both the applicant and counsel for the respondent, Ms Keisha Spence, indicated that it was, in fact, the learned judge.

[4] On 9 January 2023, the 1st respondent filed fresh proceedings in the Supreme Court by way of a fixed date claim form (claim no SU2023CV0036) seeking, among other things, that the applicant quit and deliver up possession of the Amethyst Drive Property. Coincidentally, the 1st respondent's claim was also heard by the learned judge. On 1 November 2024, the learned judge gave judgment in favour of the 1st respondent and ordered, among other things, that the applicant quit and deliver up possession of the Amethyst Drive Property ('the second decision').

[5] The second decision prompted the applicant to file the relisted application. The relisted application asserts several grounds challenging the second decision. On 21 and 25 November 2024 the applicant filed two additional applications bearing the same application number as the relisted application. The additional applications purported to amend and supplement the relisted application. Critically, however, the relisted application and the two additional applications are all filed as applications within the appeal, despite the fact that they relate to a different claim and decision in the Supreme Court than those which are the subject of the appeal.

[6] In response to the relisted application, the respondents' position is that the first decision, which forms the basis of the appeal, was an interlocutory order. Therefore, by virtue of section 11(1)(f) of the Judicature (Appellate Jurisdiction) Act ('JAJA'), leave to appeal was required. There is no evidence that the applicant obtained permission to appeal. Consequently, there is no valid appeal before the court. In any event, the applicant is unable to satisfy the test for the grant of permission to appeal, as the appeal is hopeless and has no prospect of success. Accordingly, the respondents submit that the application should be dismissed.

[7] We agree with the respondents' contention that the appeal arises from an interlocutory order made in the Supreme Court (see **Jamaica Public Service Company Limited v Rose Marie Samuels** [2010] JMCA App 23 and **JISCO ALPART Jamaica v Garnett Newman and others** [2025] JMCA App 10). Consequently, leave to appeal was required pursuant to section 11(1)(f) of the JAJA. By virtue of rule 1.18 of the Court of Appeal Rules 2002 ('CAR'), leave to appeal (which is referred to as "permission to appeal" in the CAR) ought to have been sought first in the Supreme Court.

[8] The inevitable consequence is that this court has no jurisdiction to entertain the appeal, or any application filed therein (including the relisted application), because leave to appeal was required but not obtained (see **Leymon Strachan v The Gleaner Company Limited and another** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 54/1997, judgment delivered 18 December 1998).

[9] It is noted that the applicant, as a self-represented litigant, acted with alacrity and expended considerable effort in filing his respective attempts to challenge the learned judge's decisions. However, he has been hindered by his limited understanding of the relevant legal and procedural requirements. This is evident not only in his failure to seek leave to appeal before appealing the first decision, but also in his attempt to challenge the second decision by filing the relisted application. It was inappropriate for the applicant to challenge the second decision in that manner because that decision stemmed from separate proceedings in the Supreme Court.

Therefore, the relisted application ought to have constituted a separate appeal altogether.

[10] In the result, the applicant's failure to seek leave to appeal the first decision is fatal. The amended notice and grounds of appeal must, therefore, be struck out for want of jurisdiction. Consequently, the relisted application must also be dismissed due to the absence of a valid appeal.

[11] The court, accordingly, makes the following orders:

1. The amended notice and grounds of appeal filed on 21 December 2022 in appeal no COA2022CV00131 is struck out for want of jurisdiction due to the absence of permission to appeal.

2. The amended relisted notice of application for injunction, stay and permission to amend notice and grounds of appeal filed on 4 November 2024 (application no COA2022APP00269), as amended and supplemented on 21 and 25 November 2024 is dismissed for want of jurisdiction due to the absence of a valid appeal.

3. The applicant is advised to seek an extension of time to apply for permission to appeal the orders of Carr J made on 9 December 2022 and an extension of time to appeal the judgment of Carr J made on 1 November 2024 (pursuant to rule 1.11(2) of the Court of Appeal Rules, 2002).

4. Costs of the application to the respondents to be agreed or taxed.