

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP P
THE HON MR JUSTICE D FRASER JA
THE HON MRS JUSTICE V HARRIS JA**

SUPREME COURT CIVIL APPEAL NO COA2024CV00113

APPLICATION NOS COA2024APP00209 & COA2024APP00261

BETWEEN	JOYCE FLORENCE FACEY	APPLICANT
AND	COMALA DIANE REMOGENE aka Comala Vassell (Executrix of the Estate of Dehon George Facey, deceased)	RESPONDENT

**Mrs Ingrid Clarke-Bennett, Ms Renae Robinson and Ms Danielle Graham
instructed by Kingdom Chambers for the applicant**

Respondent not appearing or represented

17, 18 and 20 March 2025

Application for extension of time to serve notice of appeal – Application to approve methods of alternative service of the notice of appeal by email and courier – Application for extension of time to file skeleton arguments and record of appeal – Court of Appeal Rules 2002, rr 1.7(2)(b), 1.11(1)(c) and 1.15(1) – Civil Procedure Rules 2006, rr 5.13, 5.14 and 6.6

ORAL JUDGMENT

MCDONALD-BISHOP P

[1] This is the unanimous decision of the court.

[2] The applicant, Joyce Florence Facey, has filed two applications for the court's consideration. The first is a notice of application filed on 9 October 2024 (COA2024APP00209) for an extension of time and approval of alternative methods of service ('the October application'). The second is a notice of application filed on 19

December 2024 (COA2024APP00261) for an extension of time to serve skeleton arguments (referred to by the applicant as “skeletal arguments”) and the record of appeal (‘the December application’). Both applications are supported by affidavits and were made without notice to the respondent, Comala Diane Remogene.

[3] The circumstances giving rise to the applications are gleaned from a reading of the affidavits filed in support of the applications alongside the relevant procedural rules and are now summarised.

[4] On 11 September 2024, the applicant filed a notice of appeal seeking to challenge the decision of Shelly-Williams J (‘the learned judge’) made in the Supreme Court on 31 July 2024, by which the learned judge struck out the applicant’s statement of case and entered judgment in favour of the respondent.

[5] After the notice of appeal was filed, the applicant was required to personally serve the notice of appeal on the respondent within 42 days of the learned judge’s judgment (see rules 1.11(d) and 1.15 of the Court of Appeal Rules 2002 (‘CAR’) and Part 5 of the Civil Procedure Rules 2006 (‘CPR’)). Therefore, the notice of appeal ought to have been personally served on the respondent on or before 12 September 2024. However, this has not been done, as the respondent reportedly resides in the United States of America.

[6] On 11 September 2024, the day before the time for serving the notice of appeal had expired, the applicant’s attorneys sent an email to the respondent’s attorneys-at-law in the Supreme Court seeking to ascertain whether the attorneys-at-law had instructions to accept service of the notice of appeal. However, no response was forthcoming. On 3 October 2024, the applicant’s attorneys-at-law sent a copy of the notice of appeal by email to the respondent, her brother (who was a witness in the proceedings in the court below) and the respondent’s attorneys-at-law in the court below. The applicant received a response from the respondent’s email address on the same date the email was sent. The applicant’s attorney also sent a copy of the notice of appeal by courier to the respondent to an address in the United States of America on 8 October 2024. The

respondent's and her brother's email addresses and the respondent's United States address were ascertained by the applicant's attorneys-at-law from pleadings and evidence deployed by the respondent in the court below.

[7] On 18 November 2024, the registrar of this court caused notice to be sent to the applicant that the written judgment, record of proceedings, notes of evidence and formal orders from the court below were available. Having received that notice, the applicant was required to file skeleton arguments within 21 days (see rule 2.5(1)(b) and 2.6(1)(a) of the CAR) and the record of appeal within 28 days (see rule 2.5(1)(b) and 2.7(3) of the CAR). The time for filing the skeleton arguments and the record of appeal expired on 10 and 18 December 2024, respectively. To date, the applicant has not filed skeleton arguments and the record of appeal in accordance with the relevant procedural rules.

[8] The October and December applications were filed to regularise the service of the notice of appeal and enlarge the time for filing of skeleton arguments and the record of appeal.

Analysis and disposal of the applications

[9] The three heads of relief sought under the respective applications (ie extension of time to serve the notice of appeal, approval of the methods of service of the notice of appeal, and extension of time to file skeleton arguments and the record of appeal) are now addressed.

A. The October application (COA2024APP00209)

Extension of time to serve the notice of appeal

[10] The court's discretion to extend the time for serving a notice of appeal is embodied in rule 1.7(2)(b) of the CAR, which provides that the court may "extend or shorten the time for compliance with any rule, practice direction, order or direction of the court even if the application for an extension is made after the time for compliance has passed".

[11] In exercising its discretion to extend the time for complying with the timelines set by the rules of court, the court is guided by the well-established principles in **Leymon Strachan v Gleaner Company Ltd and Dudley Stokes** (unreported), Court of Appeal, Jamaica, Motion No 12/1999, judgment delivered on 6 December 1999. Those principles have been adopted and applied in the context of applications for extension of time to serve a notice of appeal (see **The Commissioner of Lands v Homeway Foods Limited and Stephanie Muir** [2016] JMCA Civ 21 (**Homeway Foods**) at para. [44](v)).

[12] We are satisfied that the court should exercise its discretion to extend the time for serving the notice of appeal in the circumstances of this case for the following reasons:

- i) Through her attorneys, the applicant made good-faith efforts (albeit unsuccessfully) to serve the respondent with the notice of appeal through the attorneys-at-law who represented the respondent in the court below before the time for serving the notice of appeal had expired.
- ii) The applicant sent copies of the notice of appeal to the respondent and her brother in an attempt to bring the notice of appeal to the respondent's attention some days after attempting to serve the respondent's attorneys-at-law in the court below.
- iii) The delay in filing the October application for an extension of time was not inordinate.
- iv) The court has not been provided an explanation for the delay in making an effort to serve the notice of appeal before the time limited for service had almost expired. However, the reason given for the subsequent delay in serving it on the respondent is acceptable. However, the law is clear that even in the absence of a good explanation for the delay, the court may nevertheless grant the extension of time as this factor is not determinative of the question. The

ultimate question is what is in the interests of justice (see **Homeway Foods** at para. [44](vi)).

- v) The applicant's grounds of appeal concern the enforcement of a prenuptial agreement and appear to advance a cogent basis and arguable case for review of the learned judge's judgment.
- vi) The grant of an extension of time does not appear to visit any prejudice upon the respondent.
- vii) It is consonant with the overriding objective of the CPR (and, by extension, the CAR by rule 1.1(10)(a) of the CAR) and the overall interests of justice that an extension of time be granted for service of the notice of appeal.

Approval of the alternative methods of service

[13] Having accepted in principle that the time for serving the notice of appeal should be extended, the court must now consider whether to approve the methods utilised by the applicant to serve the notice of appeal.

[14] This court is empowered by rule 1.15 of the CAR in conjunction with rules 5.13 and 5.14 of the CPR to approve an alternative method of serving the notice of appeal. The central requirement under rules 5.13 and 5.14 is that the method of service chosen in fact enabled or is likely to enable the person served to ascertain the contents of the documents served (see **Insurance Company of the West Indies v Shelton Allen (Administrator of the Estate of Harland Allen)** and others [2011] JMCA Civ 33 at paras. [34] and [35]).

[15] We are satisfied that this central requirement has been met based on the evidence put forward by the applicant. In particular, given the source of the information concerning the respondent's email address and residential address in the United States (the respondent's pleadings and evidence in the court below), the response sent to the applicant's attorneys-at-law from the respondent's email address, and the waybill receipt

evidencing delivery by courier to the respondent's residential address, the applicant has satisfied us that the transmission of the notice of appeal by email and courier has brought or is likely to bring the notice of appeal to the respondent's attention.

[16] The court, therefore, deems the transmission of the notice of appeal to the respondent by email and courier to be good service. The court accepts and approves these methods of service of the notice of appeal on the respondent who resides overseas. By operation of rule 6.6 of the CPR (applicable to these proceedings by virtue of rules 1.1(10)(g) and 1.15(1) of the CAR), the deemed date of service of the notice of appeal by courier is 11 October 2024, three business days after the date indicated on the courier receipt (8 October 2024).

[17] Accordingly, the respondent is deemed to have been properly served with the notice of appeal.

[18] Given our conclusion regarding the application for an extension of time to serve the notice of appeal, it follows that the October application should be granted.

B. *The December application (COA2024APP00261)*

Extension of time to file skeleton arguments and the record of appeal

[19] Finally, the court must consider whether to exercise its discretion to extend the time for filing skeleton arguments and the record of appeal, which is the sole focus of the December application. The court notes that an application of this nature ought usually to be made with notice to the respondent, but notice was not given. Counsel for the applicant indicated orally to the court that the application was served on the respondent, through her attorneys-at-law in the court below. Quite apart from the fact that we have no proof of service, it is noted that the application stated definitively that it was intended that it would not have been served on anyone. It was a 'without notice' application for all intents and purposes. Therefore, any purported service on the respondent's attorneys at law who represented her in the proceedings below is not accepted as proper service for the purpose of this application. The service of this application is required to follow the

filing and service of the notice and grounds of appeal. It means any extension of time required for compliance must be brought to the respondent's attention, who has the right to object. The court will, therefore, not consider this application as one without notice. It must be on notice once the service of the notice of appeal is regularised.

[20] The upshot of all this, therefore, is that the application regarding the skeleton arguments and record of appeal cannot be disposed of at this juncture. The application must be served on the respondent and fixed for hearing before a single judge in chambers to be considered, once proof of service of the application and its supporting documents is provided to the court.

Disposal

[21] For all the foregoing reasons, the court is of the view that the time for serving the notice of appeal should be extended, and the service on the notice of appeal by email and courier should be deemed good service. Therefore, the October application should be granted. However, the December application, which concerns the time for filing the applicant's skeleton arguments and the record of appeal should be served on the respondent and set for consideration by a single judge, and consequential orders made for its speedy disposition.

[22] We, accordingly, make the following orders:

1. The application filed on 9 October 2024 for an extension of time to serve the notice of appeal and for approval of alternative methods of service (COA2024APP00209) is granted.
2. The time for serving the notice of appeal is extended to 11 October 2024.
3. Service of the notice of appeal on the respondent by email on 3 October 2024 and by courier on 11 October 2024 are deemed to be good

service. The notice of appeal is, therefore, permitted to stand in good stead as served within time.

4. The applicant shall serve the respondent, by email, with copies of all documents filed in the application for extension of time to serve the notice of appeal within seven days of this order.
5. The applicant shall serve the respondent, by email, with the application filed on 19 December 2024 for an extension of time to file skeleton arguments and the record of appeal (COA2024APP00261) and all documents, including written submissions and a list of authorities, filed in support of the said application, within 14 days of the date of this order and provide proof of service to the court upon service of the said documents.
6. The respondent shall indicate whether she objects to the application for an extension of time to serve skeleton arguments and the record of appeal within 14 days of the date of service of the application on her. If the application is opposed, the respondent is to file and serve a notice of objection to the application with the grounds for the objection stated therein and supported by an affidavit in response (if evidence is being relied on).
7. The application for an extension of time to serve skeleton arguments and the record of appeal is removed from the court's hearing list and shall be set for hearing before a judge in chambers on a date to be fixed by the registrar after the time limited for the respondent to indicate her objection to the application has expired.
8. The applicant shall serve a copy of this order on the respondent by email within five days of this order.

9. Liberty to apply.