

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MRS JUSTICE STRAW JA
THE HON MRS JUSTICE FOSTER-PUSEY JA
THE HON MR JUSTICE D FRASER JA**

PARISH COURT CIVIL APPEAL NO COA2020PCCV00025

BETWEEN	ALTHEA HIGGINS	APPELLANT
AND	DUJON CONSTRUCTION LTD	RESPONDENT

Ms Debby-Ann Samuels for the appellant

Respondent not appearing or being represented

24, 25 May 2023 and 6 March 2026

Civil Procedure – Default judgment – Amending a defendant’s name – Whether the Parish Court has jurisdiction under order 13 rule 5 of the Judicature (Parish Court) Rules to amend the name of a defendant on the application of the plaintiff where judgment had already been entered – Whether there is any other basis to grant the amendment (Section 190 of the Judicature (Parish Court) Act (formerly Judicature (Resident Magistrates) Act considered) – Whether the default judgment may properly be enforced without amendment

STRAW, FOSTER-PUSEY AND D FRASER JJA

[1] This is a judgment of the court. We heard this matter on 24 and 25 May 2023 and wish to apologise to the appellant for the delay in handing down this judgment.

[2] The respondent has not appeared in this court. On 5 March 2019, Thomas Law & Co applied in the Parish Court, on behalf of the respondent, for a default judgment obtained by the appellant to be set aside. Thomas Law & Co indicated to this court on 9 June 2022 that it did not represent the respondent in the appeal. Efforts were made on numerous occasions by personnel from the registry of this court to contact Mr Deon Dujohn of Dujon Construction Ltd by telephone calls. These went without a response. A member of the registry was eventually able to speak via telephone, on one occasion, to an office attendant at the respondent advising that the matter was set for hearing

in the week of 20 June 2022 in this court. The office attendant advised that an email should be sent to "dujonconstruction@yahoo.com". A notice of hearing was served on the respondent by email to that address on 9 June 2022. The email was reported as sent. There was no indication that it was undelivered.

[3] On 21 June 2022, the respondent being absent and unrepresented, the matter was taken out of the week's list and adjourned for a date to be fixed by the registrar. Proof of service on the respondent was not provided.

[4] A notice of hearing dated 22 September 2022, for the hearing date of 22 May 2023, was delivered to the post office on or about 8 June 2022 for service to be effected by registered mail. It was sent to the registered address of the respondent at Farm Pen, Llandilo, Westmoreland (per rules 6.2 and 5.7 of the Supreme Court Civil Procedure Rules (2002) ('CPR')). It was, however, returned unclaimed.

[5] On 16 May 2023, a member of the registry wrote to counsel for the appellant, indicating that the notice of hearing for the scheduled hearing date of 22 May 2023 that was dispatched by mail to the respondent, was returned unclaimed. It was queried of counsel for the appellant whether the respondent was aware of the hearing date, or if she had other contact information for the respondent. Counsel supplied the same telephone number previously obtained by the registry for the respondent.

[6] On 16 May 2023, a member of the registry sent an email to the email address supplied by the respondent's office attendant, advising of the approaching hearing date of 22 May 2023. It also advised that the notice of hearing had been dispatched to the respondent by registered mail but was returned unclaimed. A copy of the returned and unclaimed notice of hearing was attached. There was no indication that this email was undelivered. Despite these notifications, the respondent remained absent and unrepresented during the proceedings.

Background

[7] The appellant, Ms Althea Higgins, suffered personal injuries while in the employment of the respondent, Dujon Construction Ltd. She filed a claim for negligence against the respondent in the Parish Court for Trelawny in plaint #861/17,

in which she alleges that the respondent failed, among other averments, to provide a safe working environment.

[8] Having satisfied the court that the respondent had been properly served with the relevant documents, she obtained a default judgment on 22 November 2018. Subsequently, the respondent, through its lawyers, Thomas Law and Co, applied for that judgment to be set aside on 5 March 2019. The application was supported by an affidavit of Deon Dujohn, who identified himself as the "defendant". However, the application was struck out on 2 April 2019, when there was no appearance for the respondent.

[9] By an application dated 12 May 2020, which was received by the court on 14 May 2020, Ms Samuels, the attorney on behalf of the appellant, in pursuit of enforcement of the orders granted in the judgment, applied to the court to have the name of the respondent as it appeared on the plaint, amended, indicating that there was an error in it. She wished to have the [respondent's] name read as "Dujon Construction Company Limited" instead of "Dujon Construction Ltd" as it was in the court documents filed by her. There is no indication that this application was served on the respondent. It is of note that the appellant placed no evidence before the Parish Court Judge or this court regarding any documents filed with the Registrar of Companies. It would for example have been helpful if there was confirmation that there is a company registered as "Dujon Construction Company Limited" with registered address at Farm Pen, Llandilo Westmoreland, and whether there was any company registered in the name in which the claim was filed.

[10] Ms Samuels argued before the learned Parish Court Judge that the amendment could be done and, further, that pursuant to order 13 rule 8 of the Judicature Parish Court Rules ('the Parish Court Rules'), a verbal application in that regard could be made. She contended that justice is to be done in the court of law and procedural irregularities should not preclude this.

[11] The learned Parish Court Judge found that the issue to be determined was "whether an amendment can be made to the name of a defendant on the application

of the plaintiff where judgment had already been entered or in what circumstances such an amendment, if any can be properly made”.

[12] Having considered both order 13, rule 5 as well as rule 8, he found (as seen in his notes of evidence that “[T]he rule [rule 8] only states that any application under that order can be made to the judge whether before or at the trial”. He stated further that order 13 rule 5 of the Parish Court Rules addresses the description of a defendant and the procedure for making any amendment thereto.

[13] Having examined rule 5, he determined that it presupposes the amendment is to be made before judgment. He noted that in the case before him, no application had been made prior to judgment, and the judgment had already been obtained. He found the case of **Ralford Gordon v Angene Russell** [2012] JMCA App 6, cited by the appellant, to be inapplicable. He further found that the case of **Glasford Perrin v Donald Cover** [2019] JMCA Civ 28, also cited by the appellant, was distinguishable. He recognised that (on the authority of that appeal from the Supreme Court) a court can correct errors that are obvious and accidental slips, by applying rule 42.10 of the CPR which gives the court the power to correct errors in judgment or orders. He added, however, that there was no error or clerical mistake or the like in the case before him; the judgment was clear and in accord with the description of the company as provided by the appellant. He concluded that there was nothing to be corrected and so denied the application.

Submissions

The appellant

[14] On appeal, Ms Samuels restated her position taken in the court below. She highlighted that there was no dispute regarding the injuries suffered by the appellant as medical evidence in support was provided. She also pointed out that the respondent had been properly served, had made one appearance and there was no question as to its identity. She relied on several cases dealing with amendments. These included **Clarapede & Co v Commercial Union Association** (1883) 32 WR 262, **Glasford Perrin v Donald Cover** [2019] JMCA Civ 28, **Gladston Watson v Rosedale Fernandez** [2007] CCJ 1 (AJ); **Dalfel Weir v Beverly Tree** [2016] JMCA App 6,

The Attorney General v Abigail Brown [2021] JMCA Civ 50, **Brickfield Properties Ltd. v Newton** [1971] 3 All ER 328; **The Attorney General of Jamaica v Cleveland Vassell** [2015] JMCA Civ 47; and **Texan Management Limited and others v Pacific Electric Wire and Cable Company Limited** [2009] UKPC 46 among others. Considering these authorities, she stated that in the instant case, there was no prejudice to the respondent, which had put in an appearance in the matter and, particularly, since what was sought would not go to the gravamen of any issue, the amendment was allowable.

[15] This court has repeatedly taken the position that it will not interfere with the exercise of the discretion of a lower court unless the exercise was based on an error of fact or law or both (see **AG v John MacKay** [2012] JMCA App1). We had to determine, therefore, whether any error had been made by the learned Parish Court Judge.

The issues

[16] Arising from this matter are the following issues:

1. Was the learned Parish Court Judge correct in his determination that he had no jurisdiction under order 13 rule 5 of the Judicature (Parish Court) Rules to grant the amendment sought.
2. If the answer to 1 is yes, is there any other basis on which the learned Parish Court Judge could have granted the amendment.
3. Irrespective of the answer to paras. 1 and 2, based on order 13 rule 5, may the default judgment obtained by the appellant be properly enforced in its current form.

Analysis

Issue No. 1- Whether the learned Parish Court Judge was correct in his determination that he had no jurisdiction under Order 13 Rule 5 of the Judicature (Parish Court) Rules to grant the amendment sought.

[17] The cases based strictly on the CPR, such as **Glasford Perrin v Donald Cover** and other authorities relied on by counsel, (despite dealing with issues related to

correction of errors) do not apply to this matter as they originated from the jurisdiction of the Supreme Court. The CPR which are applicable there, are inapplicable to the Parish Courts (formerly Resident Magistrates Courts).

[18] Rule 2.2(1) of CPR states:

“Application of these Rules

2.2 (1) Subject to paragraph (3), these Rules apply to all civil proceedings in the court.”

[19] Further, rule 2.4 states: “court” means the Supreme Court.

[20] The Parish Court, unlike the Supreme Court which has inherent jurisdiction to deal with cases, is a creature of statute. It exercises jurisdiction by section 3 of the Judicature (Parish Court) Act.

[21] Section 3 of the Judicature (Parish Court) Act states:

“3. In each of the fourteen parishes of the Island there shall be a Court, to be styled the [Parish Court] for the parish of, with so many stations as may from time to time be fixed by the Minister, **which shall have and exercise the jurisdiction by this Act assigned to and conferred upon such Court.**” (Emphasis added)

[22] The short title of the Parish Court Rules, provide:

“1. Short title.

1. The following Orders and Rules may be cited as "The [Parish Court] Rules, 1933," and shall apply so far as may be practicable (unless otherwise expressly provided) to all proceedings in the [Parish Court].” (Emphasis added)

The Parish Court is, therefore, governed by the Judicature (Parish Court) Act and its attendant Rules.

[23] In contemplating the issue at hand, it is useful to note, as set out in the short title of the Parish Court Rules (see above) that “the Orders and Rules shall apply so far as may be practicable (unless otherwise expressly provided) to all proceedings...”.

[24] Order 13 rule 5 of the Parish Court Rules states:

“Where the name or description of a defendant in a summons is insufficient or incorrect, it may be amended at the instance of either party by order of the Judge, or by the Judge in the exercise of his own discretion on such terms as he shall think fit, and thereupon the action shall proceed in all respects, as if the name or description had been originally such as it appears after the amendment has been made; but if no objection is taken to the name or description, the action may proceed, and in the Judgment, and all subsequent proceedings founded thereon, the defendant may be named and described in the same manner.”

[25] Order 13 rule 8 of those Rules makes it clear that:

“Any application under any of the Rules of this Order may be made to the Judge **before or at** the trial.” (Emphasis added)

[26] In considering both rules, it is our view that the Parish Court Judge could, therefore, make an amendment relevant to the name or description of a defendant, as the matter is proceeding and before it ends. This is indicated by the wording in rule 5 (in conjunction with rule 8) which provides that after the amendment is made, “the action shall proceed”. Further, rule 5 continues,

“[I]f no objection is taken to the name or description, the action may proceed, and in the Judgment, and all subsequent proceedings founded thereon, the defendant may be named and described in the same manner.”

[27] However, when the default judgment was granted in the case at bar, the trial or proceedings ended. Section 186 of the Judicature Parish Court Act makes this clear. It states:

“186. If on the day so named in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant shall not appear or sufficiently excuse his absence, or shall neglect to answer when called in Court, the [Parish Court Judge], upon due proof of the service of the summons, **may proceed to the hearing or trial of the cause on the part of the plaintiff only; and the judgment**

thereupon shall be as valid as if both parties had attended: Provided always, that the [Parish Court Judge] in any such cause, at the same or any subsequent Court, may set aside any judgment so given in the absence of the defendant and the execution thereupon, and may grant a **new trial** of the cause, upon such terms as to costs or otherwise as he may think fit, on sufficient cause shown to him for that purpose." (Emphasis supplied).

[28] Therefore, the learned Parish Court Judge was correct that he could not grant or make the amendment under the provisions of rule 5, as the proceeding had ended without such an application to amend being made "before or at the trial".

Issue No 2

Whether there is any other basis on which the learned Parish Court Judge could have granted the amendment.

[29] As stated above, the learned Parish Court Judge is a creature of statute. However, counsel below did not ask that the learned Parish Court Judge consider whether the amendment could be made pursuant to section 190 of the Judicature (Parish Court) Act. It was also not raised before us by counsel. We, however, observe that section 190 of that Act allows for the amendment of defects and errors and for making necessary amendments.

[30] Section 190 states:

"The [Parish Court Judge] **may at all times amend all defects and errors in any proceeding**, civil or criminal, in his Court, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made, with or without costs, and upon such terms as to the [Parish Court Judge] may seem fit; and **all such amendments as may be necessary for the purpose of determining the real question in controversy between the parties shall be so made.**" (Emphasis added)

[31] The issue is whether section 190 would apply to the particular set of circumstances before us. This would only arise if the section could be said to apply to the amendment of the name of the respondent.

[32] The applicability of section 190 of the Judicature (Parish Court) Act was considered by the Board of the Privy Council in the case of **Powell (Appellant) v Spence (Respondent) (Jamaica)** [2021] UKPC 5 (**Powell**). In that case, an amendment was sought in relation to a form that was used to commence an application for an order for forfeiture of cash pursuant to section 79 of the Proceeds of Crime Act (POCA).

[33] Section 143 of the Judicature (Parish Court) Act requires that in forfeiture matters, proceedings begin with the lodging of a "plaint". The appellant had however, used a "Notice", and supporting affidavit to commence the proceedings. The learned Parish Court Judge took the view that this document did not satisfy section 143 and was not a plaint. That being the case, there were no proceedings commenced before the court and section 190 of the Judicature (Parish Court) Act, which allows for errors and defects made during proceedings to be corrected, could not be applied. The learned Parish Court Judge ultimately dismissed the forfeiture application, and this decision, which was also upheld by the Court of Appeal, was appealed to the Privy Council.

[34] The Board considered section 190 of the Judicature (Parish Court) Act and stated:

"27. The Board differs from the [Parish Court Judge] and the Court of Appeal. In its view, Sgt Powell's application was effectively commenced by the filing of the Notice, notwithstanding discrepancies between the paperwork used and the conventional form of a plaint. **In so far as amendment was thought to be required to bring the documentation into line with the procedural requirements, there was power in the court to amend under section 190 of the [Parish Court] Act.**

28. The Board accepts the appellant's submission that it is apparent from the legal framework set out earlier that proceedings in a [Parish] Court are intended to accommodate a degree of informality. As **section 190 of the [Parish Court] Act clearly shows, the intention is that the court's ability to determine the real question in controversy between the parties should not be frustrated by defects and errors in the**

proceedings, whether or not they are the fault of a party.” (Emphasis added)

[35] Further, in **Mark Archer v DPP & Clerk of Court** [2024] JMCA App 14, P Williams JA noted:

“[30]In **Powell v Spence**, the Board identified the power in the Act which permitted the [Parish Court Judge] to cure the defects in the proceedings **that had occurred.**” (Emphasis added)

[36] The wording of section 190 suggests that even after proceedings have ended, an amendment that falls within the category of defects and errors in the proceedings can be made.

[37] In **Powell v Spence** the Board said at para. 13:

“This power [to amend] applies to defects or errors in form, but not to defects which are matters of substance.”

[38] In **Metalee Thomas v Assets Recovery Agency** (2010) 78 WIR 397, Harrison JA, concerning section 190, stated:

“38. It is therefore clear from the above provision, that the [Parish Court Judge] may at all times amend all defects and errors in any proceeding before him or her. However, it is plain from the authority of *Rowe v Levy* RMCA 31/00 delivered 16 May 2002 that **s 190 (supra) is of relevance when there are defects or errors in form rather than substance.** In the instant situation, the learned [Parish Court Judge] was of the view that the application before her ought to have been brought under s 56 of the Act and she made the amendment accordingly. We are of the view that this amendment was not a mere matter of form; it was a matter of substance which amounted to an entirely new claim. The respondent had brought the proceedings for forfeiture under s 79 of the Act which undoubtedly could not be ordered since the initial order for detention of the cash had expired and no order had been sought for further detention as specified by s 76(2) of the Act.

39. It is further our view that even if the learned Parish Court Judge] was empowered to make an amendment

pursuant to s 190 she was obliged to continue dealing with the matter in a summary way.” (Emphasis added)

[39] The amendment to the name of a registered company could be considered a substantial defect in certain circumstances, for example where the names refer to separate legal entities. The amendment could also reflect a change in status from a non-existing legal entity to an existing legal entity.

[40] However, in this case there is no dispute that the correct respondent was the company identified by the appellant in her plaint. Mr Dujohn, in his affidavit filed in the Parish Court on 25 February 2019, in support of the application to set aside the default judgment, referred to the respondent as his company and himself as the “defendant”. The identity of the respondent was never challenged. Further, at paras. 1 and 2 of the particulars of claim, the appellant avers that the “Defendant’s Company has registered offices at Farmpen, Llandilo, Westmoreland...” and “that the [appellant] was at all material times employee **at Dujon Construction Company Ltd** [sic]”.

[41] Mr Dujohn took no issue with these averments or at any time disputed the name of the respondent as set out in the plaint. In his affidavit mentioned above, he stated at para. 11 “[t]hat the [appellant’s] claim is without merit and I intend to challenge the validity of the medical certificate submitted by the [appellant]”.

[42] In **Tikal Limited T/A Super Plus Food Stores Limited v Jeneffer Dawson** [2025] JMCA Civ 26 (**‘Tikal’**) this court had to determine whether an amendment could be granted to the name of the respondent company pursuant to rule 20.6(2) of the CPR. Rule 20.6(2) states:

“Amendments to statements of case after end of 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.”

[43] The circumstances in **Tikal** as well as the application of this rule would not apply to the case at bar. However, we observe and find useful that the court in **Tikal** considered that a distinction could be made when considering an amendment based on correcting instances of misnaming compared to instances of misidentification. Paras. [33] and [34] of that judgment are instructive and it is expedient to set them out:

[33] In **Tikal Limited and Wayne Chen v Everley Walker**, rule 20.6 of the CPR was also discussed. That discussion was conducted at paras. [27] to [34] of the judgment. In that discussion, this court accepted the conclusion of Sykes J (Ag) in *Caribbean Development Consultants v Lloyd Gibson*, with respect to rule 20.6 as dealing with cases of misnaming. A summary of the cases that were considered in which amendments pursuant to rule 20.6 were permitted to correct instances of misnaming will be helpful to this discussion. It shows the name in which each defendant was sued and the actual name of the defendant.

<u>Case</u>	<u>Name in which defendant sued</u>	<u>Actual name of defendant</u>
Gregson v Channel Four Television Corporation [2000] EWCA Civ 214	'Channel Four Television Corporation Limited'	'Channel Four Television Corporation'
Elita Flickinger v David Preble and Xtabi Resort Club & Cottages Limited (Unreported), Supreme Court, Jamaica, Suit No CL F 013/1997, judgment delivered 31 January 2005	'Xtabi Resort Club & Cottages Limited'	"Xtabi Resort Limited'

Grace Turner v University of Technology [2014] JMCA Civ 24	"University of Technology"	"University of Technology Jamaica"
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[34] It will be observed that the nature of the error in the first case in the table was simply the erroneous addition of the word 'Limited' to the name of the correct defendant. In the second case the error that was made was to include the unnecessary words 'Club & Cottages' to the otherwise correct name of the defendant. In the third case, the error was that the word 'Jamaica' had been omitted from the name of the defendant, about which name there could have been no reasonable doubt. Having conducted that review, Morrison P, in *Tikal Limited and Wayne Chen v Everley Walker*, concluded thus:

[33] The common thread that runs through these decisions, as it seems to me, is a clear and, if I may say so, relatively harmless error as to the identity of a party. Applying Sykes J's, as always, insightful classification, they were plainly cases of misnaming rather than misidentification.

[34] On the facts of this case, I accept that the respondent clearly intended to sue the owners, occupiers and/or operators of the Super Plus supermarket in Clock Tower Plaza. However, by her order, the Master did not sanction any correction in the name of Super Plus Foods Limited as a means of giving proper effect to that intention. Instead, by the clear terms of the order, what the Master did was to allow an amendment to include 'Tikal Ltd t/a Super Plus Food Stores Ltd' and 'Wayne Chen t/a Super Plus Food Stores Ltd', as additional defendants to the action. So this was not, as the respondent contended, the mere correction of a name, as in the other cases. Rather, it was the addition of defendants after the expiry of the limitation period, in breach of the well-known general rule. At the end of the day, therefore, rule

20.6 did not come into play at all in this case.” (Emphasis added).

[44] In this case, the nature of the error is that the word “company” has been omitted. Based on the circumstances as set out above, we are of the view that this can be determined to be a procedural error due to misnaming rather than misidentification of the respondent. We consider that this is not a defect of substance and that section 190 does provide a route through which to grant the amendment sought by the appellant. While the learned Parish Court Judge was correct in declining to grant the amendment under order 13, rule 5, he should have considered section 190. As a result, he failed to take into account relevant law. His reason was grounded on the rules of the court but he ignored the statute which is superior. Although he stated that the trial had ended, the proceedings were continuing in the form of enforcement proceedings. Section 190 was therefore applicable. An error of law was committed by this failure, as it was open to him to utilise his wide powers of amendment under section 190.

[45] We find, therefore, that there is merit in the submissions of Ms Samuels that the amendment ought to have been granted.

Issue No 3

Irrespective of the answer to Issues 1 and 2, based on Order 13 Rule 5, whether the default judgment obtained by the appellant may be properly enforced in its current form.

[46] In any event, it is the view of this court that the order in its current form is enforceable. Having regard to the entire wording of order 13, rule 5, it could be determined that there is no need to amend the name of the respondent to enforce the orders of the court. There was sufficient evidence in the court proceedings to properly identify the respondent as the company against which the complaint had been filed.

[47] As stated previously, Mr Dujohn had confirmed this identity when he filed his affidavit and retained counsel to have the default judgment set aside. The application to set aside the default judgment was never pursued and no objection was taken to the name and/or description of the respondent at any point in the proceedings. The

latter portion of order 13 rule 5 could resolve this issue for the appellant. Although this rule has been set out above, the relevant portion is repeated for the sake of expediency:

“... but if **no objection is taken to the name or description, the action may proceed**, and in the Judgment, and **all subsequent proceedings** founded thereon, the defendant may be named and described in the same manner.” (Emphasis added)

[48] There being no prior objection taken to the name or description it may be used in the enforcement proceedings, which would be determined to be “subsequent proceedings founded thereon”.

[49] It is our view, however, that this route, without the amendment, may cause some difficulty to the appellant in pursuing the enforcement proceedings. We will, therefore, allow the appeal and grant the application to amend the name of the respondent.

Order

- i. The appeal is allowed.
- ii. The judgment of the learned Parish Court Judge, made on 22 November 2018, is set aside.
- iii. The application of 12 May 2020, for the amendment of the name of the respondent to read “Dujon Construction Company Ltd”, is granted.
- iv. The appellant may commence or proceed with enforcement proceedings against Dujon Construction Company Ltd, the amended name of the respondent in plaint #861/17 with registered address at Farm Pen, Llandilo, in the parish of Westmoreland.