

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 39/2000

MOTION

**BEFORE: THE HON. MR. JUSTICE FORTE, P
THE HON. MR. JUSTICE WALKER, J.A.
THE HON. MR. JUSTICE COOKE, J.A. (Ag.)**

**BETWEEN LILIA NEUMAN APPELLANT/
DEFENDANT**

**AND DELROY SALMON RESPONDENT/
PLAINTIFF**

Veronica Warren for Appellant

Patrick Foster & Kamina Johnson instructed by
Clinton Hart & Co., for Respondent

11th December, 2000

FORTE, P:

This is an application by way of Motion in which the applicant asked for the following orders:

1. The Writ of Possession filed by the Plaintiff's lawyers on May 16, 2000 and executed on May 20 was executed in breach of the Rules of Practice and Procedure of the Supreme Court and therefore was unlawfully executed.
2. By virtue of Order (1) herein the executed Writ of Possession is set aside as Null and Void.

The application arises out of the order of the trial judge (clarified in the judgment) that the defendant deliver up to the plaintiff possession of property at 14 Churchill Avenue Coral Gardens in the parish of Saint James.

Regarding the submission by the appellant's counsel that if the Court makes a direct order on the defendant to do an act then Rule 452 of the Civil Procedure Code applies, we rule that that submission is irrelevant to the type of order made in this case. The Writ of Possession was properly issued and lawfully executed.

Regarding the application for stay of execution of possession, this is too late as the property has already been returned to the plaintiff.

Regarding the application for stay of the monetary part of the order, stay of execution is refused as on the face of the grounds of appeal filed the appeal has no chance of success.

Application dismissed. Costs to the respondent to be taxed if not agreed.