

**JAMAICA**

**IN THE COURT OF APPEAL**

**APPLICATION NUMBER COA2019APP00225**

**BEFORE: THE HON MR JUSTICE MORRISON P  
THE HON MISS JUSTICE P WILLIAMS JA  
THE HON MISS JUSTICE SIMMONS JA (AG)**

<b>BETWEEN</b>	<b>NICHOLAS PHILLIPS</b>	<b>1<sup>ST</sup> APPLICANT</b>
<b>AND</b>	<b>KAREN PHILLIPS</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>AND</b>	<b>DARLINGTON WALTERS</b>	<b>RESPONDENT</b>

**Richard Hemmings instructed by Sylvester Hemmings and Associates for the applicants**

**Mikhail Williams and Ms Tavia Barnes instructed by Taylor Deacon and James for the respondent**

**14 January 2020**

**SIMMONS JA (AG)**

[1] The application being considered this morning is for an extension of time within which to file a notice of appeal. The applicable principles are well known and have been frequently restated in this court. The reason for the delay is one of the factors to be considered. It must also be established that there is some merit in the appeal.

[2] The respondent has not taken issue with the delay, that being only two days. However, when it comes to the merit of the appeal itself, having perused the pleadings,

the notes of evidence and the judge's reasons, this court is of the view that there is no likelihood of success.

[3] A registered title can only be defeated by fraud. That fraud must be committed by the person who has obtained registration as the owner of the property. In this matter, there is no evidence of fraud on the part of the title holder, and it was actually acknowledged by counsel for the applicants that they did not have any such evidence against the respondent.

[4] The learned judge was therefore correct in finding that the evidence presented by the applicants at first instance, was insufficient to prove fraud.

[5] With respect to the claim for adverse possession, it was established before the learned trial judge, that the applicants had the permission of the original title holders to occupy the property. She treated with that claim and found that there was no evidence of the termination of that licence and sufficient time would not have elapsed after the death of the original title holders, for possessory title to vest in the applicants.

[6] In those circumstances, the application is refused with costs to the respondent, such costs to be agreed or taxed.