

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO COA2026APP00078

BETWEEN	WILLIAM PHILLIPS	APPLICANT
AND	HAROLD JONES	RESPONDENT

Mark Paul Cowan and Ms Houston Thompson instructed by Nunes Scholefield Deleon & Company for the applicant

Miss Stacey Knight instructed by Knight Junor & Samuels for the respondent

9, 24 June 2026 and 9 July 2026

Civil procedure – Application for stay of execution – Recovery of possession – Consent order entered – Refusal to set aside – Whether requirements for stay of execution satisfied.

ORAL JUDGMENT

IN CHAMBERS

P WILLIAMS JA

[1] This is an application for a stay of execution filed by Mr William Phillips ('the applicant') pending the outcome of his appeal against a decision by His Honour Mr Steve Walters, the Senior Judge of the Parish Court of Saint Elizabeth ('the judge of the Parish Court') on 28 January 2026 refusing to set aside a consent judgment which had been entered on 11 February 2025. By that consent judgment, the applicant was to quit and deliver up possession of the property located at Lot 49 West Street, Black River in the parish of Saint Elizabeth and described in the duplicate certificate of title as part of Lower Works Lot 35 in the parish of Saint Elizabeth registered at Volume 1583 Folio 858 in the Register Book of Titles with parent title registered at Volume 846 Folio 1 in the Register Book of Titles ('the property') to Harold Jones ('the respondent'). The judge of the Parish Court ordered that the applicant was to do so by 30 June 2026.

[2] This matter commenced in Saint Elizabeth Parish Court on 17 October 2024 with the filing of a plaint by the respondent. In the amended particulars of claim filed on 11 February 2025, the respondent claimed recovery of possession having served notice on the applicant on 27 August 2024 to vacate the said property. The respondent indicated an intention to rely on the notice to quit, which was served on 27 August 2024 and a copy of the duplicate certificate of title. In the notice to quit, the applicant was described as an informal occupier, and it was stated that the property was required for the purposes of major improvement and for the personal use of the owner. The certificate of title had the respondent identified as the registered owner and was issued on 28 December 2023.

[3] The matter was first before the court on 3 December 2024, when the applicant failed to attend, and the matter was set for default judgment on 6 January 2025. The applicant attended on that date, and the matter was adjourned to 21 January 2025, when the applicant again failed to attend, and the matter was set for default judgment on 11 February 2025. On that date, the applicant was in attendance, and following enquiries, the consent order was entered, and the applicant was given four and one half months to vacate the property by 30 June 2025.

[4] The applicant filed an application to set aside the judgment and for stay execution of further process on 29 May 2025. The hearing of the application commenced on 25 June 2025, and on 28 January 2026, the application was refused, and a further extension was granted for the applicant to quit and deliver up possession on or before 30 June 2026. On 2 April 2026, the applicant filed in this court an emergency notice of application for stay of execution, accompanied by an affidavit from Ms Gabrielle McCormack, one of the attorneys-at-law for the applicant. On 13 April 2026, an affidavit in support of stay application (service and verification of index) was filed by Ms Houston Thompson, another attorney-at-law for the applicant.

[5] When the matter came on for hearing before me on 9 June 2026, it was recognised that there is currently no appeal in this court since the record of proceedings from the Parish Court had not yet been received. However, in her affidavit, Ms McCormack

exhibited a copy of the notice of appeal which was filed in the Parish Court on 3 February 2026. Also in her affidavit, Ms McCormack set out what she described as a summary of reasons of the judge of the Parish Court. It was admitted that this had not been shared with either opposing counsel for agreement or with the judge of the Parish Court for his comments. It was considered best to obtain the reasons directly from the judge of the Parish Court. The matter was adjourned for the request to be made of the judge of the Parish Court, and the matter was set for 24 June 2026.

[6] A response from the judge of the Parish Court was received on 23 June 2026. The material before the court consisted of his notes setting out the background to the proceedings, the circumstances in which the consent judgment was entered, and the subsequent application to have it set aside. The notes also captured the submissions made by counsel and contained what may properly be characterised as the judge of the Parish Court's reasons for refusing to set aside the consent judgment. On 24 June 2026, after hearing the submissions on behalf of the parties, I reserved my decision for 30 June 2026. On 25 June 2026, the applicant filed his first affidavit in the matter with the caption "hardship and response to judge's reason". In the circumstances, I felt it appropriate to permit the respondent an opportunity to respond. I subsequently ordered an interim stay of execution until 9 July 2026.

[7] The judge of the Parish Court, in setting out the background to the matter, stated that when the applicant attended on 6 January 2025, he indicated that he had a certificate of title for the property and an attorney-at-law. The matter was adjourned to 21 January 2025 for the applicant to have his attorney-at-law in court and to produce the certificate of title. Upon the applicant's failure to attend on that date, the matter was set for default judgment on 11 February 2025. On that date, the applicant attended, and the judge of the Parish Court said enquiries were made of the applicant for the certificate of title, and was advised that there was none. He further noted that the applicant also advised that he had no attorney-at-law and that the court should proceed with the matter but stated he would need time to leave the premises.

[8] On the account of the judge of the Parish Court, the applicant was shown the certificate of title of the respondent and, when asked if he had any issues with it, responded "No". He then stated that he was willing to vacate the property and needed time to do so. On the account of the judge of the Parish Court, when the respondent's attorney-at-law suggested four months, the applicant accepted and consented to four months to vacate. The parties were then informed that a consent order would be entered for the respondent against the applicant for the applicant to quit and deliver up possession on or before 30 June 2025. Both parties consented and signed the judgment.

[9] In setting out the reason for the consent judgment, the judge of the Parish Court recorded that he accepted the respondent's registered title and was satisfied on a balance of probabilities that the respondent was the legal owner of the property, and that there was no challenge made by the applicant to the respondent's title, nor did the applicant produce any documents to substantiate ownership. Further, the judge of the Parish Court noted that the applicant made it clear that he was willing to vacate the property and instructed the court to proceed with the matter and was only requesting time to vacate. At no time during the proceedings did the applicant assert that he did not understand the proceedings or that he was unaware of the nature of the documents he was signing or the consent he was giving.

[10] It must be noted that in his affidavit filed on 25 June 2026, subsequent to the receipt of the reasons for judgment from the judge of the Parish Court, the applicant asserted that the reasons he did "not mention fully" everything that happened in court. He maintained that he told the judge he was challenging the respondent's title because he lived there for over 30 years and the property had been given to him by a relative. He asserted that at no point did he tell the judge of the Parish Court that he had a lawyer, and the judge of the Parish Court did not recommend that he get one. He further asserted that no one in the area would take his case, as most lawyers were familiar with the respondent and did not want to get mixed up in the case.

[11] The applicant said he remembers going to court with a copy of the certificate of title with his uncle's name on it. Further, he stated the judge of the Parish Court told him the property was the respondent's because the respondent had a title and tax receipts. He told the judge of the Parish Court he would not come off the land because it was his, and he cleaned it up and fixed it up. He also told the judge of the Parish Court that the uncle gave him a photocopy of the title so he could "take further steps down the road." The applicant maintained that the land totally belonged to him. The judge of the Parish Court told him he had to come off the land, and the discussion then was about how much time he needed.

[12] The applicant said he was given another date to return to court, at which time he was again told he had to "come off the land because the next man has a title". He continued to maintain he was not coming off because it was his land. The judge of the Parish Court told him, "you have to come off and you have to sign this". The applicant said he was not told it was a consent order but was told "sign this, this is my court. Sign this or else". Upon enquiring of a police officer what "or else" meant, the applicant said he was told the judge of the Parish Court would hold him in contempt of court. He then signed "a folded up piece of paper", but he did not know it was a judgment he was signing in favour of the respondent. The applicant said the judge of the Parish Court gave them another date and thought that was when there was to be another hearing.

[13] The applicant said that after he signed the document, that was when the judge of the Parish Court asked him how much time he wanted, and he responded that it was for the judge of the Parish Court to make this decision. The applicant explained that at this point, he did not know what was going on. He did not tell the judge of the Parish Court that he was agreeing to come off the property in four months' time.

[14] In his affidavit dated 23 May 2025, in support of his application to set aside the consent order, the applicant said he attended court without legal representation, having sought legal representation but being unable to secure the services of an attorney-at-law on the day in question. He, however, was assured that he would be able to represent

himself, as he genuinely believed that the claim being brought by the respondent “was either frivolous or wrongly advised, [or was an] improperly filed suit”.

[15] The applicant stated that he carried with him a copy of the original title for the property on which he had resided for over 30 years. The applicant went on to state that the court took the preliminary “opinion” that the respondent had a right of ownership of the property, and despite his attempts to represent himself, the court indicated that the respondent was entitled to the orders sought. The applicant said he proceeded to sign the court order without properly understanding what he was doing and what remedies were available to him at the time.

[16] It was not until after the court date that the applicant sought further advice and was made to understand what he had signed and was advised of the nature of a consent judgment. He maintained that if he “was not mistaken and knew he had other options or recourse and had fully understood the effect of signing, he would not have signed the consent order”.

[17] In the affidavit, the applicant also set out how he came to be in possession of the property, which had been owned by Vera Burton and Albert George Burton, his uncle, who he said was still endorsed as the registered owner. He stated that it was in 1979 that his uncle told him that the property was his and also gave him the title. The applicant said he thought this meant he was the title owner. He fixed up the property and moved unto the property in 1985, and since then has been in sole, undisturbed occupation, care and control of the property. The applicant exhibited a copy of the original title, an initial and a recent property tax receipt in respect of the property, maintenance receipts, utility bills, letters from a Justice of the Peace and one other person speaking about their knowledge of the applicant’s association with the property.

[18] The applicant further stated that it was when he was served with the notice to quit that he made checks, which revealed that the respondent obtained a registered title for a portion of the property. The applicant asserted that any title obtained by the respondent

was as a result of misrepresentation. He had instructed his attorneys-at-law to pursue a claim in the Supreme Court for the whole legal interest in the property.

[19] In his affidavit, filed on 11 July 2025, in response to the affidavit in support of application to set aside the consent order, the respondent stated that he had purchased the property in 1992 from Mary Martin, who is described in the exhibited sales agreement as the executor for Vera Burton. He visited the property prior to the purchase and saw a for sale sign posted thereon. He maintained that subsequently, the applicant asked for and was given his permission to occupy a concrete dwelling that was on the property. He was at the time living in England, but returned to Jamaica at least once every year and would visit the property and speak with the applicant. He asserted that no fraud was perpetuated in acquiring the certificate of title, as he was the *bona fide* purchaser for value who was put in possession of the property, took possession, and permitted the applicant to occupy the property. He explained the circumstances that led to a delay in the transfer of the certificate of title to his name. The respondent exhibited photocopies of the death certificates for Albert George Burton and Vera Burton, as well as for Mary Martin; the agreement for sale; the transfer tax certificate, a caveat and caveat index, the surveyor's report, the survey diagram and appraisal for the property, and property tax payment receipts.

[20] Thus the respondent denied the affidavit of the applicant, in particular, the circumstances under which he came to occupy the property, when he avers that he started occupying it and a misunderstanding of the consent order he signed.

[21] The judge of the Parish Court heard and noted the submissions from Mr Paul Mark Cowan ('Mr Cowan') on behalf of the applicant and Miss Sheryl-Ann Robinson, attorney-at-law then appearing for the respondent.

[22] In considering the application, the judge of the Parish Court identified the law applicable for an application of this nature as sections 186 and 201 of the Judicature (Parish Court) Act ('the Act') before setting out the provisions of section 201. He referred

to the decisions of **Leeman Vincent v Fitzroy Bailey** ('**Vincent v Bailey**') [2015] JMCA Civ 24, **Evans v Bartlam** [1937] 2 All ER 646 and **Siebe Gorman and Co Ltd v Pneupac** ('**Gorman v Pneupac**') [1982] 1 WLR 185.

[23] The judge of the Parish Court identified the issue for determination as whether the applicant had truly consented to the judgment or whether he was mistaken when he signed the consent judgment.

[24] In arriving at his decision, the judge of the Parish Court referred to various sections of the affidavits. He then concluded as follows:

"20. The court having considered all the affidavit evidence and submissions put forward by counsel for the [respondent] and the [applicant] respectively and has considered the issues and apply [sic] the relevant law. I found on the balance of probabilities that it was within the [applicant's] knowledge at all times, that the claim was for recovery of possession of the said premises he occupies. That he was fully aware of the court proceedings although he was unrepresented the fact that he told the court that he had a title to the premises and was given time to produce same which he failed to do.

21. That the [applicant] on 11th day February 2025, before the judgment was entered, was told by the court that a consent judgment would be entered against him. Further that the [applicant] was the one who told the court to proceed and that he would be representing himself. The [applicant] was the one who also asked for time to leave the premises and subsequently agreed to four months to vacate.

22. The court rejects the defendant's assertion that he was not consenting and that he had made a mistake.

22. [sic] The court accepts the respondent as the registered owner of the said property."

[25] I acknowledge that as a single judge I am empowered to grant a stay of execution pending an appeal pursuant to rule 2.10(1)(b) of the Court of Appeal Rules, 2002. The

principles applicable to the consideration of applications of this nature are well settled and have been addressed by several decisions of this court. The threshold test for a stay of execution, as articulated in **Coast to Coast Quarries Limited and others v Caliston Graham** [2025] JMCA App 12, requires the court to consider whether the underlying appeal has some merit and whether granting the stay produces less injustice. At para. [6] of that judgment, McDonald-Bishop P, stated:

“The case law requires the court to consider two subsidiary questions in order to determine whether granting a stay best accords with the interests of justice: (i) whether the underlying appeal has some merit; and (ii) whether the grant of a stay is the order that is likely to produce less injustice between the parties...”

[26] I will first consider whether the underlying appeal has some merit. As already indicated, the record of proceedings from the parish court has not yet been received, but the notice of appeal was filed on 3 February 2026 in that court. The following are the proposed grounds:

“(a) The learned Judge erred in principle and or misapplied the law governing the setting aside of consent judgments by treating the Appellant’s application as turning narrowly on ‘mistake’ and/or failure to particularise ‘mistake’ and failed to properly determine whether the consent judgment reflected a genuine compromise or merely non-objection, and whether the Appellant’s evidence disclosed absence of genuine consent and/or vitiating circumstances.

(b) The learned Judge failed to properly consider and/or adequately explain his rejection of the Appellant’s sworn evidence that he did not truly consent to the Consent Judgment and was intimidated and/or acted under misapprehension while unrepresented.

(c) The learned Judge erred in approach by effectively determining issues suited for trial and/or applying an unduly stringent evidential threshold at the set-aside stage, including by placing undue weight on perceived deficiencies in documentary corroboration and perceived

inconsistencies, rather than determining whether the Appellant had shown a sufficient basis to set aside the consent judgment in the interests of justice.

(d) The learned Judge failed to treat with or gave inadequate weight to, the question of fraud and the affidavit evidence of Rhynie Daley that:

- i. he did not sign any declaration relied on to support the Respondent's title application; and
- ii. he would not have signed any such declaration because the relevant assertions would have been false.

(e) The learned Judge further failed to treat with, or gave inadequate weight to the Appellant's evidence (including supporting correspondence/letters and other documents) pointing to:

- i. long occupation and control of the land;
- ii. the absence of genuine occupation by the Respondent at the time of alleged statutory declarations; and
- iii. the Appellant's consistent assertion of possessory/title rights.

(f) The learned Judge erred in law and/or principle by failing to ensure the fairness of the process leading to the consent judgment in circumstances where:

- i. the Applicant was unrepresented.
- ii. the Applicant sought to provide the court with evidence of his possession and interest before agreeing to any order; and
- iii. the Applicant was not appropriately advised or guided by the court to seek legal representation before entering a consent judgment that had dispositive consequences.

(g) The learned Judge failed to consider and/or gave inadequate weight to material context and evidence

demonstrating serious triable issues as to title and alleged impropriety in the Respondent's acquisition of registration, and failed to consider whether maintaining the consent possession judgment would work injustice pending determination of the parallel Supreme Court proceedings (SU2025CV2530-William Phillips v Harold Jones)."

[27] I will now summarise the submissions made by Mr Cowan on behalf of the applicant and Miss Stacey Knight ('Miss Knight') on behalf of the respondent. I have read and carefully considered all the submissions of counsel but will not be rehearsing them in their entirety. I will refer, as required, to those that most assisted in my analysis and ultimate resolution of this application.

[28] The main thrust of the applicant's submissions as advanced by Mr Cowan was that the judge of the Parish Court failed to appreciate that when a court is considering setting aside a consent judgment, the court must determine whether the order reflects a true compromise as in a contract or whether there was a capitulation by one party in circumstances that suggest that the consent may have been merely non-objection or submission. In the latter instance, Mr Cowan submits that there is a broader discretion to set aside in the interests of justice. Counsel acknowledged that a consent order is ordinarily treated as reflecting an agreement or compromise and will not ordinarily be set aside absent recognised vitiating factors such as fraud, misrepresentation, mistake, duress or absence of genuine consent. Counsel referred to **Vincent v Bailey** and **Beverley Simms and Donovan Simms v Lionel Johnson** ('**Simms and Simms v Johnson**') [2019] JMCA Civ 19.

[29] It was submitted that the applicant's evidence was that he attended court unrepresented, attempted to place material before the court evidencing his occupation and interest and signed the consent order without proper understanding or legal advice. In those circumstances, it is entirely plausible, and on this evidence more likely, that what occurred on 11 February 2025 was not a consensual compromise but the procedural

crystallisation of an order following the court's preliminary view of the respondent's apparent title.

[30] Counsel accepted that the applicant himself had referred to making a mistake in the affidavit in support of setting aside the consent judgment and submitted that this ought not to have prevented the judge of the Parish Court from first considering whether there had been a true bargain resulting in the consent, or if there had been capitulation. Thus, the judge of the Parish Court did not sufficiently consider whether the consent was genuinely informed and whether the circumstances disclosed a vitiating factor or absence of genuine consensus.

[31] Mr Cowan contended that in the circumstances where the applicant had been unrepresented and where the matter concerned his home and livelihood, the judge of the Parish Court ought to have satisfied himself that the applicant understood the nature of the action against him and ought to have made more enquiries. The judge of the Parish Court ought to have been alerted to the need to consider whether the issue of adverse possession arose. In written submissions, it was pointed out that the Parish Court claim was pleaded as a title based recovery against an "informal occupier" and did not plead permissive occupation. On the applicant's case, the dispute later evolved, based on the evidence, into whether occupation was permissive or adverse, a distinction which is legally dispositive for prescription. This evolution was not properly confronted in the refusal to set aside.

[32] In concluding on this issue, it was submitted that the refusal to set aside is properly arguable as wrong in principle and/or unjust in result, given (a) the nature of the dispute involving possession and claimed rights arising from longstanding occupation and (b) the consent - order framework and (c) the existence of active Supreme Court proceedings listed for trial in March 2027.

[33] In response, on behalf of the respondent, Miss Knight began her written submissions by asserting that the court's task in applications of this nature is to balance

the applicant's right to pursue an appeal against the respondent's right to enjoy the fruits of his judgment. Further, a successful litigant should not lightly be deprived of the benefit of a judgment obtained in his favour.

[34] Counsel contended that the applicant had failed to satisfy any of the requirements for a stay of execution. Reliance was placed on the same authorities cited by the applicant in support of the proposition that consent orders are not lightly disturbed and that cogent evidence is required before a court will intervene.

[35] Miss Knight argued that there was no basis for the conclusion that the applicant had capitulated in signing the consent judgment. He had attended court on several occasions and had decided to proceed without legal representation. He had expressly stated that he was satisfied that he could represent himself. Counsel maintained that the applicant was well aware that he did not hold the title for the property, and pointed out that he had stated that, when his uncle gave him the title, he felt that he was the owner. From his affidavit, he appeared to be asserting that his uncle had given him the property. Counsel contended that, in all the circumstances, there was no basis for a claim of adverse possession and that no such claim could properly arise.

[36] Miss Knight stressed that the applicant had been permitted by the paper owner to reside on the property rent-free and had no legal right to be there. She contended that a bargain had been reached when the consent judgment was entered, as the applicant had been granted, at his request, additional time to vacate the property.

[37] The judge of the Parish Court correctly identified section 201 of the Act as the provision conferring jurisdiction on him to determine an application of this nature. The section provides:

"The Judge of a Court shall, in every civil proceeding, have power to set aside any verdict or judgment, and order a new trial upon such terms as he shall think reasonable."

[38] The judge of the Parish Court further demonstrated a proper appreciation of the applicable principles governing the setting aside of a consent judgment by referring to **Vincent v Bailey**, where this court cited the following observations of Lord Atkin at page 650, in **Evans v Bartlam**:

“The principle obviously is that, unless and until the court has pronounced a judgment upon the merits or by consent, it is to have the power to revoke the expression of its coercive power where that has been obtained only by a failure to follow any rules of procedure.”

[39] The judge of the Parish Court also referred to another statement adopted by this court. In **Gorman and Co v Pnuepac**, Lord Denning stated, at page 189:

“It should be clearly understood by the profession that when an order is expressed to be made ‘by consent’ it is ambiguous...one meaning is this: the words ‘by consent’ may evidence a real contract between the parties. In such a case the court will only interfere with such an order on the same grounds as it would with any other contract. The other meaning is this: the words ‘by consent’ may mean ‘the parties hereto not objecting’. In such a case there is no real contract between the parties. The order can be altered or varied by the court in the same circumstances as any other order that is made by the court without the consent of the parties.”

[40] It is indisputable that the law distinguishes between real consent and mere submission, the latter being exemplified by a failure or refusal to object to an order (see **Simms and Simms v Johnson**). On the judge of the Parish Court’s account of the circumstances in which the consent judgment was entered, the applicant demonstrated an awareness of the proceedings against him, having neither challenged the respondent’s title nor produced any documents in support of such a challenge. The applicant also made it clear that he was willing to vacate the property and requested time within which to do so. In those circumstances, the judge of the Parish Court could not have been faulted for entering the consent judgment.

[41] It is necessary to recognise the basis on which the applicant sought to have the consent judgment set aside. In his affidavit in support of the application, which was before the judge of the Parish Court, the applicant asserted that he had been unable to secure legal representation but had been assured that he would be able to represent himself. He stated that he genuinely believed the claim was frivolous, wrongly advised or an improperly filed suit. He described circumstances in which, despite his efforts to represent himself, and after the court indicated that the respondent was entitled to the orders sought, he signed the consent judgment without properly understanding what he was signing or what remedies were available to him. The applicant further asserted that, upon subsequently being advised that the order was a consent judgment, he would not have signed it had he not been mistaken, and had he known that other options or avenues of recourse were available to him and fully understood the effect of signing it.

[42] I acknowledge that, in the affidavit filed after receiving the notes of evidence and reasons for judgment, the applicant sought to challenge the accuracy of the account of the judge of the Parish Court. It is noteworthy, however, that much of what he now asserts were not included in the affidavit he relied upon in support of his application before the judge of the Parish Court. Moreover, his explanation for choosing to be unrepresented appears to be somewhat inconsistent. In that affidavit, he made it clear that he chose to represent himself, being that he was satisfied that the respondent's claim for recovery of possession would fail.

[43] Significantly, he now advances that he told the judge of the Parish Court that he was challenging the respondent's title and that he refused to "come off" the land because it was his. Further, he now alleges that the comments made by the judge of the Parish Court led him to believe that he would be held in contempt of court if he did not sign the document, and that he ultimately signed a folded piece of paper. None of this information was detailed in, or even alluded to, in his earlier affidavit, which was intended to provide the basis on which the consent judgment should be set aside. Some of these assertions

may well have raised the question of whether he felt compelled to sign the document, which, if established, could vitiate the purported consent.

[44] In the absence of comments from the judge of the Parish Court addressing these allegations, I am prepared to give credence to his account. Much of this account is consistent with what the applicant asserted occurred, in his affidavit in support of the application to set aside the consent judgment. I find that the judge of the Parish Court cannot be faulted for concluding that there was insufficient material to support the applicant's contention that he had not given his true consent but had merely capitulated to the consent judgment.

[45] I am cognisant that, at this stage in evaluating the merits of the appeal, I need only be satisfied that there is an arguable appeal with some merit or that the appeal is not completely unarguable or wholly unlikely to succeed. For the reasons discussed above, I am not so satisfied. In my view, this is not an arguable appeal with any merit. Although this threshold test, which the applicant has failed to satisfy, may well be dispositive of the application, I will nonetheless consider whether there is a real risk of injustice if the stay is not granted.

[46] At the hearing of the application, neither party provided any evidence of any possible prejudice or hardship. In the written submissions on behalf of the applicant, it was contended that the prejudice to the applicant if interim relief is refused is severe and immediate, as he is required to deliver up possession by 30 June 2026 and faces displacement from his home together with his spouse, before appellate determination. By contrast, the prejudice to the respondent by maintaining the status quo pending appeal is materially lower and can be addressed by appropriate conditions.

[47] It was further submitted that the central point concerning relative prejudice is that the property dispute is already before the Supreme Court in a claim filed by the applicant seeking relief in relation to (i) the competing claims to the property (ii) the alleged fraud/misrepresentation in the respondent's paper title, and (iii) the

limitation/prescriptive consequences arising from longstanding occupation. It was contended that this claim was not a collateral afterthought. Thus, it was concluded that, against that procedural background, the prejudice of refusing a stay is not merely personal in nature. It is a structural prejudice: the court would permit an eviction-based outcome to take effect before the Supreme Court determines the very issues that go to whether the respondent is entitled in law and equity to dispossess the applicant at all.

[48] Mr Cowan submitted that the mere fact that it was the home of the applicant was sufficient for an inference of the greater hardship he would face. Counsel also encouraged me to consider some of the assertions made by the applicant in his application to set aside the consent judgment, which would support the negative impact on the applicant if the stay was not granted.

[49] In her response, Miss Knight highlighted that the applicant had in effect, lived rent-free on the respondent's property for 30 years, and the respondent should not now be denied the fruit of his judgment. The fact that he is the registered owner and has been paying taxes without the possession that comes from ownership was a sufficient demonstration of the injustice. In the written submissions, it was also contended that the applicant had failed to demonstrate that the refusal of a stay would render the appeal nugatory. The subject matter of the dispute is land, and there is no evidence that it will disappear or be destroyed or be transferred beyond the reach of the court. Further, there is no evidence that any future order of this court concerning the land would be incapable of implementation, and this court retains ample power to make restorative orders should the applicant succeed in the appeal.

[50] In his affidavit filed after the hearing, the applicant sought to address this issue. I will refrain from commenting on the appropriateness of this approach and will note some of his assertions that have contributed to my decision. The applicant stated that his only source of income is the car wash business that he operates from the property. According to the applicant, the business is inconsistent, servicing an average of one to two cars per day, at a charge of between \$1,000.00 and \$1,200.00 per wash. He further stated that

the house on the property, which he shares with his wife and children, was significantly damaged by Hurricane Melissa and is now covered with tarpaulin. He explained that many of his possessions, papers and furniture were damaged and had to be discarded. As a result of the damage, he has secured alternative accommodation for his children but has been unable to do so for himself and his wife. The applicant also stated that he has been carrying out repairs to the property “bit by bit”.

[51] I have no doubt that Hurricane Melissa caused significant damage and, indeed, the extent of the destruction is such that the court could almost take judicial notice of it. Despite the considerable damage which the applicant describes, he has undertaken repairs to the house that he was ordered to vacate in an effort to remain in occupation and now relies upon those circumstances as demonstrating the hardship he would face if compelled to leave. To my mind, that is a somewhat curious position to adopt.

[52] In **Coast to Coast**, this court reaffirmed the relevance of the question of whether an appeal will be rendered nugatory to the issue of the risk of injustice. McDonald Bishop P stated at para. [17]:

“A primary consideration in this regard is whether the appeal will be rendered nugatory (see **Channus Block and Marl Quarry Limited v Curlon Orlando Lawrence** [2013] JMCA App 16 at para. [10]). Also important is the fact that the purpose of a stay of execution pending appeal is to aid the appellate process by making it more effective and avoiding the unnecessary waste of time, costs, and resources. In **Cable & Wireless Jamaica Limited v Eric Jason Abrahams** [2021] JMCA App 19 at para. [76], I observed:

‘The underlying rationale for a stay pending appeal is that it would aid the appellate process and make it more effective. It would ensure, as far as possible, that if the appealing party, is ultimately, successful in its challenge, it will not be denied the full benefit of its success (see **R (H) v Ashworth Special Hospital Authority** [2002] EWCA Civ 923, (albeit, that the primary principles were stated in the context

of judicial review proceedings). So, the whole aim was to prevent the appeal being rendered nugatory as well as to avoid an unnecessary waste of time, costs and resources. This would be the result if the hearing below were to proceed to completion and was then adjudged to be a nullity for want of jurisdiction.”

[53] There is a paucity of compelling evidence in support of the parties’ competing assertions of prejudice, which hampers my ability to properly undertake the required balancing exercise to determine where the greater risk of injustice lies should the application be granted or refused. I am mindful that ultimately, I must resolve this issue by making the order which best accords with the interests of justice.

[54] The fact that if the stay is refused, the applicant will be required to find alternative accommodation to that which he currently occupies must be balanced against the need for the respondent’s right to enjoy the fruits of the judgment and to recover possession of property for which he holds a certificate of title. The fact that the applicant has sought to pursue a claim after the consent judgment was entered will not overly detain me in spite of the confidence he has that the outcome will be in his favour. I am satisfied, for the reasons submitted by Miss Knight, that refusing the stay would not render the appeal nugatory, nor should it affect the claim.

[55] Ultimately, it is my view that the interests of justice lie in the refusal of the application for the stay of the orders of the judge of the Parish Court initially made on 11 February 2025 and extended on 28 January 2026. The interim stay, which was in effect until today to facilitate the delivery of my decision, is no longer extant. However, the time within which the applicant was required to quit and deliver up the property has passed, and it is therefore necessary for a new timeline for compliance.

[56] Accordingly, I make the following orders:

1. The application for stay of execution, filed on 2 April 2026, is refused.

2. The applicant is ordered to quit and deliver up possession of the property by 9 August 2026.

3. The applicant's attorneys-at-law to prepare, file and serve the orders contained herein.