[2025] JMCA Civ 26

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MRS JUSTICE FOSTER-PUSEY JA
THE HON MR JUSTICE LAING JA

SUPREME COURT CIVIL APPEAL NO COA2024CV00098

BETWEEN	**TIKAL LIMITED T/A SUPER PLUS FOOD STORES LIMITED**	**APPELLANT**
AND	**JENEFFER DAWSON**	**RESPONDENT**

Written submissions filed by Chen, Green & Co for the appellant

Written submissions filed by Kinghorn & Kinghorn for the respondent

26 September 2025

Civil procedure – Substitution of Party – Amendment of pleadings after limitation period – Civil Procedure Rules, Parts 19 and 20

Limitation of actions – Whether learned judge erred in application of principles – Limitation of Actions Act, section 46

PROCEDURAL APPEAL

(Considered on paper pursuant to rule 2.4(3) of the Court of Appeal Rules 2002)

F WILLIAMS JA

Background

[1] By notice and grounds of appeal, filed on 31 July 2024, the appellant appeals against a decision of a judge of the Supreme Court ('the learned judge') made on 15 March 2024. The orders made when the said decision was given are reflected in a formal order filed 25 March 2024 and were as follows:

> "**IT IS HEREBY ORDERED AS FOLLOWS THAT:**
>
> 1. The Defendant's Notice of Application for Court Orders filed May 02, 2023 is refused;

> 2. The Amended Claim Form and Amended Particulars of Claim filed July 29, 2019 is [sic] to be served on TIKAL Limited within 7 days of this hearing;
>
> 3. The Acknowledgment of Service is to be filed and served, within 14 days of receipt of the amended pleadings, on the Claimant;
>
> 4. The Defendant is at liberty, if necessary, to file and serve an Amended Defence within 28 days of the receipt of the amended pleadings;
>
> 5. Case Management Conference as agreed by the parties is fixed for hearing on June 26, 2024 at 11:00 am for half hour;
>
> 6. Costs of the application to the Defendant to be agreed or taxed;
>
> 7. Claimant's attorneys-at-law shall prepare, file and serve this order;
>
> 8. Leave to appeal is refused."

[2] The origins of the claim lie in the filing of a claim form and particulars of claim on 6 March 2013, in which the respondent claimed damages in negligence against an entity described as "Super Plus Food Stores". That claim arose from the respondent's allegation that on 4 July 2010, she was walking in Super Plus Supermarket in the Portmore Pines Plaza, Portmore, in the parish of Saint Catherine, when she slipped and fell, injuring herself, because of a slippery substance on the floor. At paras. 2 and 3 of the particulars of claim, the respondent averred that:

> "2. The Defendant is and was at all material times the owner of the supermarket.
>
> 3. The Defendant is and was at all times the person who was responsible for the safe operation of the supermarket."

[3] In response to the claim, a defence dated 24 May 2013 was filed, with the following being asserted in paras. 2 and 3:

> "2. Paragraph 2 of the Particulars of Claim is denied. The Defendant says that the supermarket business was at all material times owned by Tikal Limited. Further the

> Defendant was at the material time and is not the owner of the premises on which the business is located.
>
> 3. Paragraph 3 is denied. The Supermarket business was at the material time operated by Tikal Limited."

[4] In addition, the defence averred that there was a system in place at the supermarket at the time requiring that a written record be made of any such incident and that there was no record of any report of any such incident as the respondent alleged.

[5] After the filing of that defence in 2013, the next step taken by the respondent was the filing of an amended claim form and particulars of claim on 29 July 2019 (that is, more than six years after the filing of the defence, and more than nine years after the incident alleged by the respondent). The main amendments introduced by those documents were: (i) to reflect the name of the defendant as "Tikal Limited T/A Super Plus Food Stores Limited"; and (ii) to add, "further or in the alternative", to the original claim in negligence, a claim for breach of the Occupier's Liability Act.

[6] In response to this amendment, the appellant, on 2 May 2023, filed a notice of application for court orders, requesting that the amended statement of case be struck out; and that summary judgment be entered against the respondent. Ground f of that notice of application sets out the applicant's main contention and reads thus:

> "f. The Claimant filed an Amended Claim Form and Particulars of Claim on July 29, 2019 in which Tikal Limited was named for the first time as a defendant. At the time when the Particulars of Claim was [sic] amended the limitation period had already expired. Additional [sic] at no point was Tikal Limited served with any originating documents and or the Amended Claim Form and Particulars of Claim."

[7] The appellant's application was supported by the affidavit of Vincent Chen, attorney-at-law, filed 2 May 2023. The main paragraphs of that affidavit that are relevant to this appeal are those numbered 6 and 7, which read as follows:

> "6. Having named Tikal Limited as a Defendant for the first time some 9 years after the alleged incident giving rise to the claim and having amended the Claim Form and

> Particulars of Claim some three (3) years after the limitation period had expired, the Claimant has disclosed no reasonable prospect of succeeding on the claim as on its [face] it is statute barred.
>
> 7. To the best of my information, knowledge, and belief, at no point was Tikal Limited served with the Amended Claim Form and Amended Particulars of Claim or any other documents in this case. The Amended Claim Form and Particulars were served on Merrs. [sic] Carol Davis, attorney-at-law, who was on record as counsel for Super Plus Food Stores."

[8] Support for this last contention as to non-service came from the other affidavit filed in support of the application, sworn and filed on 2 May 2023, and deponed to by Wayne Chen, who states that he is a director of the "Defendant company" (Tikal Limited T/A Super Plus Food Stores Limited). At para. 3 of that affidavit, Mr Chen states as follows:

> "3. That sometime in July 2019, it came to my knowledge that Tikal Limited was named as a Defendant in the subject case before court [sic]. To the best of my knowledge, information and belief, at no point was Tikal Limited ever served with any documents in this matter."

[9] Being dissatisfied with the orders of the learned judge, set out at para. [1] of this judgment, the appellant filed a notice and grounds of appeal on 31 July 2024, seeking to have the learned judge's orders set aside and the respondent's statement of case struck out. The learned judge having refused leave to appeal, the filing of the notice and grounds of appeal was permitted by the granting of leave by this court on 18 July 2024. The following were the grounds of appeal:

> "**Grounds of Appeal:**
>
> a.) The learned Judge below erred in law when she made an order to refuse the application of the Appellant to strike out the Respondent's statement of case in circumstances where the Appellant was added as a party to the claim three (3) years after the limitation period had expired thereby denying the Appellant of its Limitation Defence.

> b.) The learned Judge below erred in law when she permitted the Claimant to add the Appellant as a defendant to the proceedings when no such application or evidence in support of an application was before her as was required by the Rule 20.1 of the Civil Procedure Rules 2002.
>
> c.) The learned Judge below erred in law when she found that the Defendant Super Plus Food Store which was originally named as a party in the claim was a legal entity and therefore the claim was not a nullity.
>
> d.) The learned Judge below erred in law when she ordered that the Amended Claim Form and Particulars of claim filed on July 29, 2019, could now be served on the Appellant in circumstances where the validity of a claim form is six (6) months."

Summary of submissions

For the appellant

[10] On the appellant's behalf, it was submitted that the learned judge erred in making the orders that she did because of the fact that the defendant that was originally sued was not a legal person. Therefore, the action as originally filed was a nullity. In support of that submission, the appellant cited the case of **Caribbean Development Consultants v Lloyd Gibson** (unreported), Supreme Court, Jamaica, Suit Number CL 323 of 1996, judgment delivered 25 May 2004, per Sykes J (acting, and as he then was). The appellant further contended that Sykes J (Ag) ruled in that case that rule 19.4 of the Civil Procedure Rules ('the CPR'), pursuant to which the amendment in that case was sought, related to cases of misidentification. On the other hand, the appellant's argument continued, rule 20.6 of the CPR is directed to cases of misspelling. In other words, the two rules deal with two different and distinct situations. They further argued that Sykes J (Ag), at page 11 of the judgment, having considered several cases dealing with the issues before him, concluded thus:

> "My conclusion is that there cannot be a substitution of parties, under rule 19.4, after the expiration of a limitation period where the original proceeding is a nullity. One of the ways in which a nullity arises is where one party to the suit is not a legal entity. CDC is not a legal entity. The original proceeding was therefore a nullity. If this

> amendment were allowed it would bring into existence what never existed in law."

[11] Also cited were the cases of **Tikal Limited and Wayne Chen v Everley Walker** [2020] JMCA Civ 33 (which also considered rule 19.4 of the CPR), **Lance Melbourne v Christina Wan** (1985) 22 JLR 131, in which Rowe P asserted a period of six years as the statutory limit within which to bring actions in tort), and **Silvera Adjudah v The Attorney General of Jamaica** [2022] JMCA App 24 (also relating to a striking out of a claim for being statute barred after the expiration of six years from the cause of action arose).

[12] The appellant also submitted that, by the time the application to strike out had come on for hearing and the court below had made its orders, the time for the validity of the claim form had already expired, and so the documents were no longer valid, pursuant to rule 8.14 of the CPR. The learned judge was, therefore, plainly wrong in every respect in making the orders that were made, it was further submitted.

For the respondent

[13] On the respondent's behalf, reference was made to rule 19.2(1) of the CPR, which permits a claimant to add a new defendant without permission at any time before a case management conference in a claim. The respondent also referred to rule 19.3, which allows a party to add a new party to a claim at or after the case management conference, without an application to do so. Further, reference was made to rule 19.4 and the case of **Elita Flickinger v David Preble and Xtabi Resort Club & Cottages Limited** (unreported), Supreme Court, Jamaica, Suit No CL F 013 of 1997, judgment delivered on 31 January 2005, in submitting that the correct approach was to look at all the circumstances of the case. The respondent also attempted to distinguish the case of **Caribbean Development Consultants v Lloyd Gibson**, submitting that, in that case, Sykes J (Ag) "contemplated certain realities which simply are not aligned with the circumstances in the case at hand."

[14] For the respondent, the case of **Grace Turner v University of Technology** [2014] JMCA Civ 24, was also cited. This was done to support the argument that the

amendments that were made in the instant case arose out of a need to correct an error, that is a misnomer of the defendant in the original claim.

[15] Further, the respondent argued that any cases which speak to the issue of claims being "brought" after the expiration of the limitation period should be ignored as being inapplicable to the circumstances of this case. Striking out the claim below would have given rise to irremediable prejudice for the respondent, it was submitted.

[16] At para. 29 of the written submissions, the respondent contended as follows:

> "29. What is clear is that the Judge of the Court below not only had the discretion, but that the discretion would be correctly applied in either allowing for a substitution if necessary, or the addition of Tikal Limited to the matter, even after the expiry of the limitation period."

[17] At para. 34 of the submissions, the respondent further likened the circumstances of this case to one in which "… there has been an error in the naming of a party which existed at the time of commencement".

[18] It was also submitted that an order for striking out the respondent's claim that was sought in the court below would not have been an appropriate order, the claim brought having been neither an abuse of the process of the court, nor one which would hinder the administration of justice.

The issue

[19] The central issue arising from the circumstances and the submissions in this appeal is whether the learned judge erred in making the orders that she did. In giving consideration to this issue, it will be convenient to address grounds a and c together, and, thereafter, the other grounds.

<u>The general approach</u>

[20] Guidance on the approach that we ought to take in dealing with an appeal of this nature may be found in the case of **The Attorney General of Jamaica v John**

Mackay [2012] JMCA App 1, in which Morrison JA (as he then was), at paras. [19] and [20] stated as follows:

> "[19] It is common ground that the proposed appeal in this case will be an appeal from Anderson J's exercise of the discretion given to him by rule 13.3(1) of the CPR to set aside a default judgment in the circumstances set out in the rule. It follows from this that the proposed appeal will naturally attract Lord Diplock's well-known caution in **Hadmor Productions Ltd v Hamilton** [1982] 1 All ER 1042, 1046 (which, although originally given in the context of an appeal from the grant of an interlocutory injunction, has since been taken to be of general application):
>
> > '[The appellate court] must defer to the judge's exercise of his discretion and must not interfere with it merely on the ground that the members of the appellate court would have exercised the discretion differently.'
>
> [20] This court will therefore only set aside the exercise of a discretion by a judge on an interlocutory application on the ground that it was based on a misunderstanding by the judge of the law or of the evidence before him, or on an inference - that particular facts existed or did not exist - which can be shown to be demonstrably wrong, or where the judge's decision 'is so aberrant that it must be set aside on the ground that no judge regardful of his duty to act judicially could have reached it'."

Grounds a and c

"a.) The learned Judge below erred in law when she made an order to refuse the application of the Appellant to strike out the Respondent's statement of case in circumstances where the Appellant was added as a party to the claim three (3) years after the limitation period had expired thereby denying the Appellant of its Limitation Defence.

c.) The learned Judge below erred in law when she found that the Defendant Super Plus Food Store which was originally named as a party in the claim was a legal entity and therefore the claim was not a nullity."

[21] In approaching the analysis of these grounds of appeal, I also adopt the approach taken by this court in the case of **Bengal Development Company**

Limited v Wendy Lee et al [2025] JMCA Civ 9. In that case at para. [49] McDonald-Bishop P observed that:

> "[49] … for the appeal to succeed on the ground [contended and] for the reasons contended, it must be shown by the application of the applicable law to the relevant facts that were before the learned judge that she took into account immaterial factors, omitted to take account of material factors, erred in principle, or come to a conclusion that was impermissible or not open to her."

[22] It is important to note at the beginning of the discussion that we have not had the benefit of the learned judge's reasons for the orders made, and so we do not know what considerations informed the making of the orders. I will, therefore, have to approach my analysis along the lines of general principles and the particular facts and circumstances of this case. It is also important to note that a perusal of the record of appeal reveals that the respondent placed no evidence before the learned judge at the hearing in the court below. The only evidence in the court below came from the appellant in the form of the two affidavits already referenced.

[23] It is best at this juncture to address the legal status of the named defendant in the original pleadings. That entity was named as: "Super Plus Food Stores". Was there, in fact, such a legal entity? Though perhaps bordering on trite, a brief review of some elementary company law principles will aid the discussion. The most important provisions of the Companies Act ('the Act') are sections 3, 6 and 15. Section 3(1)(a) deals with basic company formation and states thus:

> "3. -(1) One or more persons may form a company by-
>
> (a) signing and sending to the Registrar-
>
> (i) articles of incorporation;
>
> (ii) an application in the form set out as Form BRF 1 in the Sixteenth Schedule; and
>
> (b) otherwise complying with the requirements of this Act in respect of registration."

[24] There are certain requirements with respect to the articles of incorporation. These are set out in section 8 of the Act, of which section 8(1)(a) is the most relevant. It reads as follows:

> "8. --(1) Articles of incorporation of a company shall be in the prescribed form and shall set out in respect of the company-
>
> > (a) the name of the company with "limited" as the last word of the name in the case of a company limited by shares or by guarantee…"

[25] The main exception to this general rule is to be found in section 16 of the Act, section 16(1) thereof reading as follows:

> "16.-(1) Where it is proved to the satisfaction of the Minister that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Minister may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "limited" to its name…"

[26] Based on this brief review of the law, a consideration of the affidavit evidence and the submissions, it is safe to conclude that "Super Plus Food Stores" was not a legal entity at the time of the filing of the original documents and did not become one subsequently, up to the time of the orders of the learned judge.

[27] As the parties have referred to rule 19.4 of the CPR, it is useful to set out its terms. It reads thus:

> "**Special provisions about adding or substituting parties after end of relevant limitation period**
>
> 19.4 (1) This rule applies to a change of parties after the end of a relevant limitation period.
>
> (2) The court may add or substitute a party only if –
>
> > (a) the relevant limitation period was current when the proceedings were started; and

(b) the addition or substitution is necessary.

(3) The addition or substitution of a party is necessary only if the court is satisfied that –

(a) the new party is to be substituted for a party who was named in the claim form in mistake for the new party;

(b) the interest or liability of the former party has passed to the new party; or

(c) the claim cannot properly be carried on by or against an existing party unless the new party is added or substituted as claimant or defendant."

[28] I agree with the conclusion of Sykes J (Ag) in **Caribbean Development Consultants v Lloyd Gibson,** that rule 19.4 does not permit the amendment of pleadings after the expiration of the limitation period where the original proceedings were (as they are in this case) a nullity. That conclusion is, by itself, a sufficient basis for the dismissal of this ground of appeal. However, there is another perspective from which this rule may be viewed in the circumstances of this case.

[29] A discussion of this rule and of a party's ability to use it to amend pleadings subsequent to the expiration of a limitation period can be found in the case of **Tikal Limited and Wayne Chen v Everley Walker**. In that case, this court considered and accepted a previous ruling by this court on the limitation period for actions in tort being six years. That ruling was made in the case of **Lance Melbourne v Christina Wan,** in which Rattray P, writing on behalf of the court in 1985, at page 135, opined that:

"As the law now stands there is for Jamaica a rigid rule that actions for negligence must be brought within a period of six years from the time the cause of action arose and any failure to do so will render the action statute barred."

[30] In **Tikal Limited and Wayne Chen v Everley Walker,** Morrison P (with whom the other members of the court agreed) explored the interaction between subsidiary legislation (which procedural rules such as the CPR are) and statute (such as the Limitation of Actions Act) and arrived at the following conclusions at paras. [22] and [24]:

> "[22] By its clear terms, rule 19.4 pre-supposes an existing power to add or substitute a party to an action which is already in train after the expiry of the relevant limitation period. But, as Sykes J (as he then was) explained in **Peter Salmon v Master Blend Feeds Limited**, this is problematic:
>
> > '19. These submissions highlight an important issue. It appears that the CPR is conferring a power to override an Act of Parliament. The Limitation Act has not been amended to provide for this power to add parties after the end of a limitation period. It does seem remarkable that subsidiary legislation such as the CPR can override an Act of Parliament which provides a defence for a defendant not sued within the limitation period…'
>
> …
>
> [24] …It is a jurisprudential commonplace that subsidiary legislation is entirely derivative of primary legislation and, as such, cannot override it. As Lord Scott of Foscote stated in **Beverley Levy v Ken Sales & Marketing Ltd**, in which the issue was whether provisions of the CPR relating to the making of charging orders had any efficacy in the absence of enabling legislation, 'while Rules can regulate the exercise of an existing jurisdiction they cannot by themselves confer jurisdiction'. <u>It is therefore not possible for rule 19.4, whether expressly or by implication, to confer jurisdiction on the court to extend a limitation period in the absence of any statutory warrant for such a course</u>." (Emphasis added).

[31] Based on these dicta, any reliance by the learned judge on rule 19.4 of the CPR as a basis for making the orders that were made, would be erroneous.

[32] I now proceed to a consideration of rule 20.6(2) of the CPR, which reads as follows:

> "**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."

[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.

Case	**Name in which defendant sued**	**Actual name of defendant**
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'

[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).

[35] It would be a gross mischaracterisation to describe the error that has been made in the instant case as a mere 'misnaming rather than misidentification' as Morrison P found to be the main feature of the just-reviewed cases. There is obviously a chasm of a difference between 'Super Plus Food Stores' on the one hand, and 'Tikal Limited T/A Super Plus Food Stores Limited'. They are two separate and distinct entities. In fact, in keeping with my earlier finding, one of them (Super Plus Food Stores) appears not to be a legal entity at all. In the absence of evidence, I am unable to see even whether "Super Plus Food Stores Limited" actually exists. The effect of the orders of the learned judge, therefore, was to have sanctioned the bringing of an action against a defendant more than 14 years after the incident and more than eight years after the expiration of the limitation period. Unfortunately, in this regard, the learned judge misunderstood the law. These grounds of appeal, therefore, succeed.

Ground b.) The learned Judge below erred in law when she permitted the Claimant to add the Appellant as a defendant to the proceedings when no such application or evidence in support of an application was before her as was required by Rule 20.1 of the Civil Procedure Rules 2002.

[36] Rule 20.1 of the CPR reads as follows:

> "**Amendments to statements of case without permission**
>
> 20.1 A party may amend a statement of case at any time before the case management conference without the court's permission unless the amendment is one to which either –
>
> (a) rule 19.4 (special provisions about changing parties after the end of a relevant limitation period); or
>
> (b) rule 20.6 (amendments to statements of case after the end of a relevant limitation period), applies."

[37] The appellant's position, based on this rule, is that, rather than making the orders on the appellant's application for striking out and summary judgment, the learned judge ought to have made the orders that were made, only on the respondent's application (meaning a written application).

[38] The respondent's position is that the learned judge was entitled to make the orders that were made.

Discussion

[39] Rule 20.1 of the CPR gives a general liberty to amend a statement of case without the court's permission at any time before the case management conference. However, it expressly excludes from that general liberty, amendments coming after the end of a limitation period. It is not without significance that it does so. The reason for this will be explored after I set out another rule that is best read in conjunction with rule 20.1. That rule is rule 11.6, which reads as follows:

> "**Application to be in writing**

> 11.6 (1) The general rule is that an application must be in writing.
>
> (2) An application may be made orally if –
>
> > (a) this is permitted by a rule or practice direction; or
> >
> > (b) the court dispenses with the requirement for the application to be made in writing."

[40] The impugned orders were made at a hearing of the appellant's application for striking out and summary judgment. However, reading these two rules together, it appears that the learned judge, based on the orders eventually made, was required to also hear an application by the respondent to amend the statement of case after the limitation period and possibly also for an extension of time to serve the amended documents. It seems reasonable to conclude that the reason for excluding matters relating to amendments after the expiration of a limitation period from the general liberty to amend without permission of the court, is that special care and scrutiny might be necessary in dealing with these applications as their result could be to deprive litigants of either a claim or a statutory defence.

[41] It appears to me that, on the hearing of these particular applications, factual issues could arise based on different contentions advanced by the opposing parties. In such applications, there would, I expect, normally be some explanation of the circumstances leading to the misnaming or misidentification: enough material to help the judge hearing the matter to determine whether it is properly to be characterised as one or the other. I would also expect that there would usually be an explanation provided for the delay. Another important consideration that would naturally arise on the hearing of the application in the court below was the correctness or otherwise of the appellant's contention that the amended statement of case, (although amended in 2019) was never served on it – even at the time of the hearing in 2024.

[42] I recognise that rule 11.6 of the CPR grants permission for applications to be made orally in two circumstances: (i) where doing so is permitted by a rule or practice direction; and (ii) where a judge dispenses with the requirement for the application to be in writing. No rule or practice direction permitting the making of oral applications

in these particular types of matters has been brought to or has come to our attention. In the absence of reasons, I am uncertain whether the orders might have been made as a result of the learned judge's dispensing with the requirement for a written application; or because of the learned judge's having not considered the requirement for an application of some sort by the respondent at all. I would not wish to fetter the discretion of a judge to dispense with the requirement for a written application that is given by rule 11.6(2)(b) and 11.9 (rule 11.9 deals with evidence in support of applications). I am, of course, also aware of a judge's power to question any party or witness pursuant to rule 11.12. However, given the likely contentious nature of these applications and the possible end result of either depriving defendants of their statutory defences, or claimants of their claims, it would appear to me to be, at the very least, a counsel of prudence for judges hearing such applications to have written material before them to consider in arriving at the decision and orders to be made. The appellant, therefore, also succeeds on this ground of appeal, as, in the facts and circumstances of this case, evidence was clearly required from the respondent.

[43] In the light of how the foregoing grounds of appeal have been determined, it is unnecessary to consider the remaining ground d – that is, relating to the validity of the claim form.

Conclusion

[44] The circumstances of this case and the authorities indicate that the matter before the learned judge involved a misidentification, rather than a misnomer. The learned judge's error lay in perceiving it in the opposite way. The original claim was filed against a party who was, from all indications, not a legal entity. The purported amendments, which were done some nine years after, amounted in effect to the commencement of a new claim some three years after the expiration of the limitation period, thus depriving the appellant of a legitimate defence available to it. Apart from the insurmountable legal hurdles faced by the respondent, the allowing of the amendments would not have been in keeping with good administration – especially in light of the fact that there was an indication within the limitation period that the correct defendant had not been named. In all the circumstances, the respondent's case, at the time of the hearing, disclosed no reasonable cause of action, thus entitling the

appellant to have the respondent's statement of case struck out and summary judgment entered against her pursuant to rules 26.3. and 15.2 of the CPR, respectively. I, therefore, propose that the appeal be allowed, the orders of the learned judge be set aside, that the respondent's claim be struck out. Additionally, that the costs of the appeal and of the application in the court below be awarded to the appellant, to be agreed or taxed.

FOSTER-PUSEY JA

[45] I have read, in draft, the judgment of F Williams JA. I agree with his reasoning and conclusion and have nothing further to add.

LAING JA

[46] I too have read the draft judgment of F Williams JA and agree with his reasoning and conclusion.

F WILLIAMS JA

ORDER

i. The appeal is allowed.

ii. The orders made by Mason J (Ag), on 15 March 2024, are set aside.

iii. The appellant's notice of application dated 2 May 2023 is granted.

iv. The respondent's claim stands struck out.

v. Costs of the appeal and of the application in the court below to the appellant, to be agreed or taxed.