

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO COA2026APP00072

BETWEEN	UC RUSAL ALUMINA JAMAICA LIMITED	APPLICANT
AND	ANDREW STEELE	RESPONDENT

Matthew Royal and Miss Meghan Falconer instructed by Myers Fletcher & Gordon for the applicant

Isat Buchanan and Miss Alessandra LaBeach for the respondent

13 and 15 April 2026

Civil Law – Stay of execution – Application for stay pending appeal – Principles governing grant or refusal – Whether appeal would be rendered nugatory without grant of stay of execution – Appeal with merit – Risk of injustice – Lessor and lessee – Expiration of fixed-term lease – Holding over – Notices to quit – Recovery of possession – Re-entry by landlord – Interim injunction – Adequacy of damages as a remedy in application for injunction – Court of Appeal Rules, rules 2.10 and 2.14

IN CHAMBERS

ORAL JUDGMENT

F WILLIAMS JA

Background

[1] This matter has come before the court as an application for a stay of execution. The notice of application was filed on 27 March 2026. The applicant is seeking an order staying the first order made on 20 March 2026 by a judge of the Supreme Court (‘the learned judge’), granting the respondent an interim injunction. The order which the applicant requests to be stayed reads as follows:

“The Defendant and/or its servants and/or agents are restrained from interfering, breaching or abrogating the quiet enjoyment of the Claimant’s use of premises known as all that parcel of land part of Pleasant Farm in the parish of St Catherine until the claim is resolved at the trial.”

[2] Other orders were also made setting a timeline for the filing of affidavits and disclosure, with the first hearing of the fixed date claim set for 19 May 2026, and with the further order that it be treated as the pre-trial review.

[3] The main orders sought in the fixed date claim form are that the notice to quit and deliver up the premises given by the applicant on 17 September 2025 is invalid; and that, in entering on the property to re-take possession by the use of armed and unarmed security guards, the applicant committed a trespass and interfered with the respondent’s right to quiet enjoyment.

[4] The genesis of this matter is the execution of a lease agreement between the applicant, on the one hand, and the respondent and another person, on the other. That lease was in respect of property (‘the property’) described in the lease as:

“All that parcel of land part of Pleasant Farm in the parish of Saint Catherine, part of that Registered [sic] at Volume 359 Folio 22, comprising 33 acres more or less, and delineated on the attached sketch map.”

[5] With respect to the duration of the lease, clause 2 thereof states as follows:

“That this agreement unless otherwise lawfully terminated hereunder shall be for a term of five (5) years commencing on January 1, 2019.”

[6] In other words, the lease was for a fixed duration of five years, expiring on 31 December 2023.

[7] As to the termination of the agreement prior to the expiry of the fixed term, clause 8(c) thereof reads thus:

“c) Either party may determine this agreement by serving [sic] ninety (90) days’ notice on the other party.”

[8] On the expiration of the agreement on 31 December 2023, the respondent proceeded to hold over on the property. There is no indication that his co-lessee is still involved in the matter, as the correspondence seen in the bundle relates solely or mainly to him. At the time of the hearing of this application, the respondent has been on the property for some two years and three months or so after the expiration of the lease. On the expiration of the said lease, the applicant did not consent or dissent to the respondent’s holding over. Exhibits AS 3 and AS 6, exhibits to the affidavits of the respondent, show two payments of \$1,050,000.00 made by way of bank transfer by him to the applicant, one on 31 August 2025 (for 2025) and the other on 31 December 2025. The latter, the respondent contends, is for the payment of one year’s rent for 2026. These sums have not been returned by the applicant.

[9] Two notices to quit were served on the respondent: one dated 25 July 2024, that is, some seven months after the lease expired, giving the respondent and his co-lessee until 31 August 2024 to vacate the premises; and the other, dated 17 September 2025, giving the lessees until 31 December 2025 to vacate the premises. A letter bearing the same date as the later notice was also sent to counsel for the respondent, Miss LaBeach, said to be addressing points raised by her in a letter dated 18 March 2025 (which was not before the court) and asserting the applicant’s position that the lease was not being renewed and that possession of the property was required by the applicant.

[10] As is almost always the case in matters of this nature, there are contrasting factual allegations made by either side. For example, in the affidavit of Richard Masters, sworn on the applicant’s behalf, it is contended that in or about December 2025 (when the second notice was about to expire) the respondent planted approximately one acre of papayas and in January 2026 (that is, after the second notice had expired), he ploughed some 10 acres preparatory to planting. He further avers that in February 2026, only about one quarter of an acre was planted. On the other hand, the respondent asserts that there has been consistent failure on the part of the applicant to permit him and his agents

access to the property to tend to the crops and animals, in breach (he asserts) of one of the orders of the learned judge and that he continues to suffer losses as a result of the actions of the respondent. In one instance, he has had to seek the assistance of the police in order to gain entry to the property, he contends.

The learned judge's findings

[11] The following is a summary of the learned judge's findings, as indicated in her written note:

- (i) The respondent, in holding over, was a tenant at sufferance.
- (ii) There is a serious issue to be tried, namely, what is the respondent's status after the expiration of the lease, given that payments made were accepted. In this regard it would be useful to know whether the sums were paid over before or after the notice to quit was issued. A mini trial should not be held at that stage.
- (iii) A consideration of the balance of convenience is required. In doing so, the question of damages should be considered. Damages would be an adequate remedy for the respondent. He has not indicated any real claim to the land to show that damages would not be adequate. It was not demonstrated that he could honour his undertaking as to damages. Although the applicant is a company associated with bauxite and alumina, it has not shown that it could honour its undertaking as to damages. It also has not given an estimate of the damages it would suffer if restrained by the injunction.
- (iv) In the circumstances, it is best to maintain the *status quo* (which, in keeping with the orders, was to have the respondent remain in or re-take possession). (The applicant contends that the order is unclear.)

This court's remit

[12] Happily, there is not much difference between the applicant and the respondent on the law that is applicable to an application for a stay of execution. There is no dispute, for example, that the filing of an appeal does not operate as a stay of execution or proceedings of orders of a lower court, as is provided in rule 2.14 of the Court of Appeal Rules ('CAR'). Similarly, rule 2.10(1)(b) of the CAR empowers a single judge of this court to grant a stay, pending an appeal.

[13] A notice and grounds of appeal was in fact filed by the applicant on 26 March 2026 (six days after the learned judge's orders), seeking the discharging of the interim injunction granted by the learned judge on the basis of six grounds stated in the said notice.

[14] With respect to the case law, both sides relied on the case of **Cable & Wireless Jamaica Limited v Eric Jason Abrahams** [2021] JMCA App 19, dealing with the principles applicable to the grant or refusal of an application for a stay of execution. The applicant also cited the case of **Anika Brown v Marlon Pennicooke et al** [2022] JMCA App 1. The respondent referred to **Gregory Duncan & anor v Yulande Christopher** [2023] JMCA Civ 43; and **Hammond Suddard Solicitors v Agrichem International Holdings Ltd** [2001] EWCA Civ 2065.

Summary of submissions

For the applicant

[15] The applicant's overarching submission, in seeking to establish that it not only has an arguable case, but a real prospect of success on its appeal, is that the learned judge erred in the application of the principles outlined in the case of **American Cyanamid Company v Ethicon Ltd** [1975] AC 396. Thus, Mr Royal argued, the learned judge made the following errors:

- (i) The learned judge erred in finding that there was a serious issue to be tried, when there was no such issue (citing **Sagicor Bank Jamaica Ltd**

- v Taylor Wright** [2018] UKPC 12). Whether the respondent was a tenant at sufferance, or a tenant at will, he would not be entitled to notice. The point of the validity of the notice is rendered otiose on the learned judge's finding of the existence of a tenancy at sufferance. However, notwithstanding this, the applicant gave the respondent the notice stipulated in the lease agreement from which he held over.
- (ii) Although making the correct finding that damages would be an adequate remedy, the learned judge erred in doubting the applicant's ability to honour its undertaking as to damages in light of the applicant being the beneficial owner of the property in question, comprising 33 acres, and being engaged in the trading of bauxite and alumina. The finding of adequacy of damages as a remedy ought to have resulted in a refusal of the application for the injunction.
 - (iii) The Rent Restriction Act does not apply to the facts of this case, the property in question being agricultural land.
 - (iv) The payment of rent does not invalidate the notices to quit given in the instant case (citing **Clarke v Grant** [1950] KBD 140).
 - (v) The issue of the applicant's ability to pay damages was not raised and the applicant allowed to submit thereon, as fairness requires (relying on **San Souci Limited v VRL Services Limited** [2012] UKPC 6).
 - (vi) In relation to the balance of convenience, the analysis called for by the authorities was not followed, resulting in an erroneous conclusion that the factors on each side were evenly balanced.
 - (vii) The court's appreciation of the *status quo* was incorrect, as all the evidence pointed to the applicant being in possession at the date of the hearing.

(viii) The appeal will be rendered nugatory, if the stay is not granted, as it is unlikely that an early trial date can be obtained.

(ix) The applicant will suffer irremediable prejudice if the injunction continues, including facing proceedings for contempt, an application for which has already been filed.

For the respondent

[16] On the respondent's behalf, Mr Buchanan relied on the filed written submissions and buttressed them with oral submissions, both summarized as follows: (i) If the stay is granted, the appeal would be rendered nugatory. If the stay is granted the respondent would suffer greatly from its effects and would be robbed of the benefit of his success in the court below, ultimately determining the appeal before it is even heard. (ii) While the issues below await determination, the applicant will suffer no loss, prejudice or hardship. If the order below is obeyed, the applicant would be spared the cost of employing security personnel to secure the property. Further, it has already received this year's rent and will not suffer from the respondent's use of the premises. The applicant is not in the business of agriculture and has not asserted any need for the use of the land, unlike the respondent. (iii) There are in fact serious issues to be tried – in particular the manner in which possession was taken and the validity of the notice to quit, along with the applicant's retention of the rent. (iv) There is no real prospect of success in the appeal, and there is no evidence of the applicant's ability to pay any damages. (v) There will be no prejudice to the applicant if the stay is refused. (vi) The order being challenged does not interfere with the applicant's right to control access to the property. (vii) The grant of a stay would go against the mitigation of economic loss envisaged by the access order granted by the learned judge.

Discussion

[17] In approaching an analysis of the issues that have been joined in this application, it is worthy of note that, like the court below, it is not open to this court to conduct a mini

trial and to make definitive findings of fact. The requirement at this stage is to come to a view as to whether, *prima facie*, the appeal has merit and which side the balance of injustice, as it were, favours. The considerations are conveniently set out in the case of **Hammond Suddard Solicitors v Agrichem**, in which, at para. 22, Clarke LJ opined as follows:

“22. It follows that the court has a discretion whether or not to grant a stay. Whether the court should exercise its discretion to grant a stay will depend upon all the circumstances of the case, but the essential question is whether there is a risk of injustice to one or other or both parties if it grants or refuses a stay. In particular, if a stay is refused what are the risks of the appeal being stifled? If a stay is granted and the appeal fails, what are the risks that the respondent will be unable to enforce the judgment? On the other hand, if a stay is refused and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks of the appellant being able to recover any monies paid from the respondent?”

[18] Similarly, in the earlier case of **Combi (Singapore) Pte Limited v Ramnath Sriram and Another** [1997] EWCA J0723-9, Phillips LJ, at para. 12, stated the following as the proper approach:

“In my judgment the proper approach must be to make that order which best accords with the interest of justice. If there is a risk that irremediable harm may be caused to the plaintiff if a stay is ordered but no similar detriment to the defendant if it is not, then a stay should not normally be ordered. Equally, if there is a risk that irremediable harm may be caused to the defendant if a stay is not ordered but no similar detriment to the plaintiff if a stay is ordered, then a stay should normally be ordered. This assumes of course that the court concludes that there may be some merit in the appeal. If it does not then no stay of execution should be ordered. But where there is a risk of harm to one party or another, whichever order is made, the court has to balance the alternatives in order to decide which of them is less likely to produce injustice.”

[19] Apart from those English authorities, also of relevance is a decision of this court – that is the case of **Paymaster (Jamaica) Limited v Grace Kennedy Remittance Service Limited and Another** [2011] JMCA App 1. In that case, Harris JA, at para.

[21], opined that, in applications of this nature, the court's approach now is to "seek to impose the interests of justice as an essential factor in ordering or refusing a stay", and, at para. [23], that: "the interests of justice is an essential element in a decision to grant or refuse a stay".

[20] So then, the principles to be distilled from these and other cases are that, in an application for a stay of execution, the court should consider: a) whether the appeal has merit; and b) where the greater risk of injustice lies, should the application be granted or refused. In the end, it is the justice of the case that matters.

[21] That being said, it is important to bear in mind the main issues that are in contention in the claim. They are whether the notice to quit of September 2025 is valid, and whether the applicant's action in taking possession is lawful or amounts to a trespass. There is no contention that the respondent has any proprietary or other similar interest in the property. Nothing in the papers in the bundle provided suggests that. In his affidavit of urgency and delay sworn to on 28 January 2026, the respondent asserts his real concern – that is that he "...is also at liberty [sic] of losing millions of dollars due to the inoperation [sic] of my business". At para. 19 of his affidavit in support of the fixed date claim form, the respondent also asserts that he is unable to meet his obligations to his customers for orders and has continued to pay his staff. In sum, he is concerned about a monetary loss and possibly a reputational loss to his business.

[22] On the other hand, it is not without significance that what the papers in the bundle reveal are, on the part of the applicant, several clear and unambiguous assertions that the lease would not be renewed and that the respondent should vacate the property (though the validity of the notices is being challenged); and, on the other hand, what appears to be a determination on the part of the respondent to remain on the property. This, for example, can be seen in para. 16 of the affidavit of Maksym Losyev in which he depones that the respondent, through a letter from his attorney-at-law dated 13 January 2026, indicated to the applicant the respondent's desire to "facilitate a smooth transition into the continuation of the lease". That is, after efforts to evict him since July

2024. A consideration of the main issues in the case lends support to the learned judge's finding that, in this case, damages would be an adequate remedy. The expired lease apart, it is apparent that there is no special connection between the respondent and the property.

[23] That takes us to a consideration of the learned judge's treatment of the question of the parties' ability to honour an undertaking as to damages. The affidavit evidence filed by the respondent (that is, the party seeking the injunction) in the court below does not reveal that any written undertaking as to damages was given. Perhaps that was done orally through counsel. If that is how it was done, there is nothing to show that it amounted to anything more than a bald assertion. On the other hand, there is some weight to the contention that, in contrast, there is the fact that the applicant is the beneficial owner of the entire 33 acres of the subject property, thus speaking to some evidence of means on the part of the applicant, for the learned judge's consideration.

[24] At the end of the day, it appears that the applicant is on good ground and has demonstrated that it has an arguable case, and that there is merit in its appeal, at the very least where the issue of the adequacy of damages as a remedy is concerned. Additionally, it is clear that, although the court recognizes that the respondent has a right to seek the court's determination of the main questions raised in the fixed date claim form, the resolution of these questions does not require that the respondent retain or re-take possession of the property. The matters can be explored and, if proven, addressed by the payment of damages, perhaps even exemplary or aggravated damages, if the evidence supports the respondent's case at the end of the day. If, at trial, the respondent succeeds, then any denial of access to his crops and animals, which he contends is occurring, will only serve to increase any award of damages.

[25] A further consideration which weighs in the applicant's favour is that it is arguable with a realistic prospect of success that the learned judge might have erred in her understanding of what the *status quo* was at the time of the making of the orders, in

that, at that time, the applicant (and not the respondent) was in possession of the property.

[26] With respect to prejudice and the respective risks of injustice, if a stay is not granted, the practical result is likely to be that the respondent would end up being allowed to stay on the property indefinitely, where dates for the hearing of the fixed date claim form and the appeal may not be available within the current year. The result could very well be that the respondent could achieve his goal of being in possession of the land until the end of what he argues is his yearly lease, thus rendering the claim and the appeal nugatory. He would have achieved, through the injunction, one of the very remedies he seeks in his fixed date claim form by seeking a declaration that the notice to quit of September 2025 is invalid. On the other hand, if the stay is not granted, the applicant would be kept out or forced out of possession of its property, which it has been trying to recover from the respondent since July 2024 with the service of the first notice, with the result outlined by Maksym Losysev at para. 13 of his affidavit as follows:

“13. UC Rusal made numerous calls, emails, and visits to the Leased Premises to secure the Former Tenants’ amicable compliance with the First Notice, notwithstanding this, the Former Tenants persisted in their refusal to quit and deliver up possession of the Leased Premises.”

[27] This evidence has not been challenged.

[28] On 26 March 2026, contempt proceedings were also filed by the respondent against the directors of the applicant for alleged breach of the learned judge’s order. It may be useful to mention in passing that the authorities do not disclose a requirement for a landowner seeking possession to state a reason for its need for possession of its own land.

[29] These considerations are enough to dispose of the application in the applicant’s favour and so the other contentions need not be explored. In the court’s view, the

applicant has demonstrated that there is merit in the appeal, and the justice of the case rests with it.

[30] In the result, the court orders as follows:

1. The applicant is granted a stay of the first order of the learned judge made on 20 March 2026, pending the determination of the appeal filed in this court on 26 March 2026, or the determination of the proceedings in the court below (whichever occurs first) or further order.
2. The costs of this application are to be costs in the appeal.