[2021] JMSC Civ. 64

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO.2017HCV01103

BETWEEN	**SILVERA ADJUDAH**	**APPLICANT**
AND	**ATTORNEY GENERAL OF JAMAICA**	**RESPONDENT**

IN CHAMBERS

Silvera Adjudah for Applicant.

Carson Hamilton instructed by Director of State Proceedings for the Respondent

Heard: January 20th, 2021 and April 9, 2021

Application for leave to appeal – real chance of success – limitations of actions act – fraudulent concealment – jurisdiction of the Master – striking out of claim – date on which judgment takes effect – considerations on application for leave to appeal

CORAM: HUTCHINSON J

Introduction

[1] The matter before me is entitled an 'Application for stay of execution of Court orders and for permission to appeal'. It was filed by a self-representing litigant, Mr Silvera Adjudah, on the 23rd of July 2019 and it was supported by a brief affidavit sworn to by him. In his application Mr Adjudah outlined a total of 9 grounds on which leave is being sought and these are as follows;

1. My Application for extension of time for my claim filed on April 19, 2017 was never heard. However, a summary judgment application filed by the Attorney General on May 4, 2018 after Default Request Court date

was heard and used to strike out my Claim Form and Particulars of Claim.

2. The Master who heard my case had no authority to hear a summary judgment application as it is outside of her duties of hearing interlocutory matters.

3. The judgment document issued to me is not signed and not sealed or stamped from the Supreme Court which makes it an invalid document.

4. The Master made reference to my employment contract which is totally irrelevant to what was before the Court, that of a fraudulent Performance Appraisal Report and a fraudulent Memorandum of Complaint that was used to terminate my employment to which there was no defense for any of them. See Exhibit 6 and Doc.4

5. The interpretation of statute of limitation used by the Master is totally incorrect. It is that of statute of repose and not statute of limitation as was submitted to the court in legal advice document, Exhibit 2 and Exhibit 1.

6. The Master failed to speak to the motive for the termination of my employment as was submitted to the court in doc-#7

7. The Master failed to speak to the abuse of power of the person who terminated my employment, who had no authority to terminate my employment without a recommendation from my Chief Executive Officer, who on the contrary recommended my appointment not my termination of employment

8. The Master failed to speak to the breaches of my rights during hearing of the Application by allowing the Attorney General — first Defendant who;
   (a) Took my time to give to the defendant to make submission on a further affidavit before it was served on me and
   (b) Took my time to give to the defendant to make a second submission after seeing my written submission see Exhibit. SS.

9. The order of denying me the right to appeal was malicious by the Master. In that after she completed her orders I simply indicate to the Court I that I will be appealing the ruling, then she added the order of, leave to Appeal is denied without me making an application to her.

Background

[2] The matter was heard on the 20th of January 2021, at the start of the hearing Mr. Hamilton informed the Court that he would be making oral submissions in response to the documents filed by the Applicant as no written submissions had been filed by his department. Mr Adjudah indicated that he wished to have the matter proceed and he was invited to commence his submissions, which took the form of him reading the grounds outlined above with some amplification.

[3] In response to these submissions, Mr. Hamilton reviewed extracts from the Court of Appeal Rules, the Civil Procedure Rules and the Judicature (Appellate Jurisdiction) Act. He also relied on the Court of Appeal decision ***Garbage Disposal & Sanitations Systems Limited v Noel Green and Others [2017] JMCA App 2***. Copies of these rules, legislation and the authority cited were provided to the Applicant and the Court.

[4] The Court was then informed by Mr Adjudah that he would not be in a position to provide a response to the authorities and rules cited by Mr Hamilton, given the stage at which he received them. In an effort to 'balance the scales', Counsel was asked to reduce his oral submissions to writing and to have same served on the Applicant who would be permitted to make further submissions on any point of law arising. These submissions were filed on the 5th of February 2021 and provided to the Applicant. I have reviewed them and I note that nothing additional has been included. The Applicant filed his submissions on the 3rd of March 2021.

Applicant's submissions

[5] It was acknowledged by Mr Adjudah that there had been a delay in the filing of this application. He argued however that this was as a direct result of the Respondent's delay in serving him with a copy of the formal order of the proceedings before Master Mason. He complained that his efforts to file the application were also impeded by the fact that he was without a copy of the written Judgment until July 17th 2019.

[6] He took issue with the conduct of the proceedings before the Master and argued that she had ignored his application for an extension of time to bring his claim outside the limitation period and opted instead to hear a summary judgment application brought by the Attorney General's office (hereafter AG's office). He also insisted that the wrong procedure was adopted during the course of the hearing as the representative from the AG's office was permitted to submit twice whereas he submitted only once.

[7] Mr Adjudah argued that by hearing the application to strike out his claim the Master was guilty of a procedural irregularity as Masters have no jurisdiction to hear such matters. He maintained that although he could not produce an authority in support of this position, it was the considered view of several attorneys with whom he consulted. He submitted that the copy of the written judgment which was provided to him was irregular as it was not sealed, stamped or signed. He also complained that the reference by the Master, in her judgment, to his employment contract was irrelevant to his claim.

[8] Mr Adjudah argued that the Master's interpretation that the limitation period operated against his claim was incorrect, as although he was terminated in 2010 and his action was brought in 2017, he actually discovered the fraud underlying his termination in 2016. He also asserted that the Master failed to consider the abuse of power by the person who terminated him as that individual had no such jurisdiction. He insisted that she acted maliciously towards him as upon his

indication that he intended to appeal the Master made an order that leave to appeal was denied.

Respondent's submissions

[9] Mr Hamilton commenced his submissions by acknowledging that the Court's power to grant an application for leave to appeal is to be found at Rule 1.8 of the Court of Appeal Rules 2002. He also made reference to Section 11(1) (f) of the Judicature (Appellate Jurisdiction) Act which provides that no appeal shall lie without the leave of the Judge or of the Court of Appeal from any interlocutory judgment or any interlocutory order given or made by a Judge except where the circumstances outlined from s. (i) — (vi) are applicable.

[10] He commended to the Court, the ***Garbage Disposal*** case which he submitted outlined the relevant factors which should be considered and he asked that special note be taken of paragraphs 16 and 17 which provide as follows;

> [*16] The court now has before it two issues to consider: (i) whether it should grant permission to appeal; and (ii) whether it should extend time to apply for permission to appeal.*
>
> *[17] In relation to addressing the question of what approach the court should adopt when hearing both these types of applications together, I am not without guidance. As recognised by Smith JA in the case of Evanscourt Estate Company Limited v National Commercial Bank SCCA No 109/2007, judgment delivered on 26 September 2008, <u>if permission to appeal ought not to be given, it would be futile to enlarge the time within which to apply for permission. This, then, will be the primary rule that will guide the resolution of the application for the orders. The application for permission to appeal will be addressed first</u>.*

[11] Mr Hamilton submitted that the Applicant's application for permission to appeal should be denied for the following reasons;

(i) Leave to appeal has already been denied by this court.

(ii) The appeal does not have a real chance of success.

(iii)There was undue delay in the filing of this application

Leave to appeal has already been denied by this court

[12] In submissions under this heading, Counsel stated that the Court has already denied the Applicant leave to appeal in this matter and this is reflected in the perfected order of Master Mason which was filed on May 31, 2019 and signed by her. He also highlighted the same endorsement which appears in the written judgment of the Master at [2019] JMSC Civ 142. He argued that this application is improper and an abuse of the process of the court as the applicant is seeking to have his application heard twice and should not be entertained.

The appeal does not have a real chance of success

[13] In support of his submissions on this point, Mr Hamilton highlighted the guidance provided at paragraphs 27 and 28 of ***Garbage Disposal & Sanitations Systems Limited v Noel Green and Others*** where the court noted:

> [27] *Rule 1.8(9) of the Court of Appeal Rules (CAR) is also relevant, as it sets out the considerations for the court in determining whether it should grant an application for permission to appeal. The rule provides that:*
>
> > *"The general rule is that permission to appeal in civil cases will only be given if the court or the court below considers that an appeal will have a real chance of success. " (Emphasis added)*
>
> [28] *The terms 'real' and 'realistic' were defined in Swain v Hillman and another [2001] 1 All ER 91, per Lord Woolf at page 92 where he addressed the meaning of the phrase 'no real prospect' in the context of an application for a summary judgement. He opined that:*
>
> > *"The words 'no real prospect of succeeding' do not need any amplification, they speak for themselves. The word 'real' distinguishes fanciful prospects of success...they direct the court to the need to see whether there is a 'realistic' as opposed to a 'fanciful' prospect of success. '.*

[14] He submitted that based on these principles of law, even if this application was to be considered, permission to appeal should only be given if the court finds that the appeal will have a realistic chance of success. Counsel acknowledged that in order to come to such a determination careful consideration would have to be given to the nine (9) grounds on which the Applicant seeks leave to appeal.

[15] In relation to grounds 1 and 2, Counsel submitted that the application which was heard by Master Mason was not an application for summary judgment, but an application to strike out the Applicant's statement of case. He argued that contrary to Mr Adjudah's assertions, the Master was empowered to make an order striking out his statement of case pursuant to case management powers of the court under Part 26 of the Civil Procedure Rules 2002 (the "CPR"), specifically, Rule 26.3 of the CPR.

[16] He submitted that in relation to ground 3, a perfected order was filed on May 31, 2019 and signed by the Master. He also noted that a written judgment was provided which outlined the orders made by her. In relation to ground 4, Mr Hamilton asserted that the Applicant's contention that the Master highlighted or made any reference his employment contract or performance appraisal was incorrect.

[17] He submitted that the reasons for the learned Master's decision to strike out the Applicant's statement of case were clearly captured in paragraph 20 of her written judgment where it was stated that she found no basis for prolonging a claim that was statute barred, neither were there any reasonable grounds disclosed in the Applicant's statement of case to defend the claim. Mr Hamilton asserted that in those circumstances it is clear that the learned Master was of the view that the claim by the Applicant was an exercise in futility and must be struck out.

[18] In respect of ground 5, Mr Hamilton argued that the learned Master was correct in her consideration and application of the law as it relates to the Statute of Limitations. He reviewed paragraphs 2, 9 — 14, and 19 — 20 of her written

judgment and submitted that she had adequately and thoroughly considered the law and the submissions by the Applicant and rightly concluded that the Applicant had filed his claim after the expiration of the limitation period of six (6) years.

[19] Counsel submitted that in relation to grounds 6 through to 8 of his application, the Applicant was seeking to argue that the learned Master should have conducted a mini trial in order to assess the reasons for his termination. He asserted that this did not arise for determination on an application to strike out the Claimant's statement of case and no fault could be found in the Master's approach. He asked the Court to note that no legal arguments had been presented by the Applicant in support of this point.

[20] In terms of ground 9 of this application, Mr Hamilton submitted that this ground also had no merit as on the day when the judgment was delivered against him, the Applicant informed the Master that he wished to appeal her decision and it was after this indication that she ruled that leave to appeal was denied. He argued that nothing about this ruling revealed any malice on the part of the Master or a deliberate attempt to deny the Applicant' his rights. Counsel submitted that all the grounds relied on by the Applicant are baseless and the Court should find that an appeal on these grounds has no real chance of success.

Time to apply for permission to appeal

[21] In submissions on this issue, Mr Hamilton highlighted the provisions of Section 11(1) (f) of the Judicature (Appellate Jurisdiction) Act. He also made reference to the dicta of the Court at paragraph 18 to 21 of ***Garbage Disposal & Sanitations Systems Limited v Noel Green etal,*** where F Williams JA examined what would constitute an interlocutory order and stated as follows:

> *"[18] It is worthwhile to remember that the application for permission to appeal pertains to Campbell J's order refusing to grant the applicant relief from sanctions and striking out its statement of case. It is useful to begin the discussion of this issue concerning permission to appeal by reference*

to section 11(1)(f) of the JAJA and to consider whether it applies to this case.

[19] Section 11 (l)(f) of the JAJA provides that:

"11-(1) No appeal shall lie

(a)…

(b)…

(c)…

(d)…

(e)…

(f) without the leave of the Judge or of the Court of Appeal from any interlocutory judgment or any interlocutory order given or made by a Judge except...' .(Emphasis added)

[20] *The question that therefore arises is this: was the relevant order in this case a final, or an interlocutory one?*

[21] *In John Ledgister and Others v Bank of Nova Scotia Jamaica Limited [2014] JMCA App 1, for example, Brooks JA considered what would constitute an interlocutory order as distinct from a final one. In so doing, at paragraph [9] of the judgment, he quoted the dictum of Lord Esher MR, in Salaman v Warner and Others [1891] 1 QB 734, at page 735, where Lord Esher expounded on the 'application test' which has been accepted as the proper test to be used to distinguish between interlocutory and final orders:*

> *"The question must depend on what would be the result of the decision of the Divisional Court, assuming it to be given in favour of either of the parties. If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision is given in one way will eventually dispose of the matter in dispute, but, if given in the*

> *other, will allow the action to go on, then I think **it is not final but interlocutory**" (Per Lord Esher MR)" (My Emphasis)*

[22] Mr Hamilton argued that applying the foregoing principles to the instant case, it is clear that the order made by the court to strike out Mr. Adjudah's statement of case, is an interlocutory order and accordingly, no appeal shall lie in relation to such an order without the leave of the Judge of the Supreme Court or a Judge of the Court of Appeal.

[23] He highlighted Rule 1.8(1) of the Court of Appeal Rules 2002 (the "CAR") which provides:

> *"Where an appeal may be made only with the permission of the Supreme Court or the Court of Appeal, a party wishing to appeal must apply for permission within 14 days of the order against which permission to appeal is sought. '*;

Counsel also made reference to Rule 42.8 of the Civil Procedure Rules 2002 (the "CPR") which specifies that:

> "*A judgment or order takes effect from the day it is given or made unless the court specifies that it is to take effect on a different date. '* ,

[24] Mr Hamilton argued that applying this rule to the instant case, the order of the court to strike out the Applicant's statement of case which was made on 22 May 2019 took effect from that day. He submitted that the Applicant's Notice of Application for Permission to Appeal was filed on 23 July 2019, which is over two months from the date of the court order and as such is not in compliance with Rule 1.8(1) of the CAR and should be rejected.

Applicant's Additional Submissions

[25] Mr Adjudah took issue with the order of the Court for the Respondent to file written submissions as well as with the submissions themselves. He disputed the relevance of the authorities cited and argued that Judges may view cases

differently. He also insisted that the Court should not be bound by other decisions. He sought to distinguish the ***Garbage Disposal*** decision on the basis that it was arrived at in relation to a motor vehicle collision whereas his matter was an employment matter based on legitimate expectation. He insisted that he was not to be blamed for the delay and raised additional questions about the approach of the Master. He also maintained that his appeal has a real chance of success.

[26] Mr Adjudah took issue with Mr Hamilton's submissions on Rule 26.3 and argued that the rule did not provide that a Master has the right to end a case. He submitted that the word "Master" is not mentioned at Rule 26.3 which he said refers to a Court and not a Master. He also argued that Mr Hamilton's submission on this point was speculative and lacked understanding of the rule.

[27] He insisted on the accuracy of his submissions and denied that he had expected the Master to conduct a mini trial. He acknowledged however that he had expected her to examine the 'gross unlawful evidences' in the case; to include the 'fraudulent performance evaluation' and the 'fraudulent memorandum of complaint' and to see that they were unchallenged by any of the defendants and not merely to deal with the AG's application in isolation.

[28] He submitted that the reasoning in ***Garbage Disposal and Sanitation Systems Limited vs Noel Green etal*** does not apply as the application in the instant case was not an interlocutory judgment application but a summary judgment application. He also contended that Rule 42.8 does not state whether an order takes effect from it is given orally or from it is filed and served. He maintained that in light of his submissions the Court should grant the following orders.

1. Application for extension of time for filing late claim dated April 19, 201 7 was never heard.
2. The claim is not statute barred as the reason for striking out my claim as the interpretation of Statue of Limitation is wrong, and is that of Statute of Repose as used by the Judge.

3. Serious irregularities in the handling of the case by the Judge and in the Judgment document.

Discussion/Analysis

[29] It is settled law that Rule 1.8 of the Court of Appeal Rules 2002 allows the court to grant leave to apply for notice of appeal. At Rule 1.8(1) it is made clear that the application for leave to appeal must be filed within 14 days of the order made by the Court and 1.8(2) provides that this application must first be made to the lower Court. Rule 1.11(2) of the Court of Appeal Rules 2002, provides that the court may grant an extension of time within which to apply for leave to appeal.

[30] When considering whether to extend time, the authorities show that the Court should take into account all the circumstances of the particular matter in order to determine what the overall justice of the case requires.

[31] In my examination of this application, I reviewed the well-known case of ***The Commissioners of Customs and Excise v Eastwood Care Homes (2001) EWHC Ch 456***, where, while addressing an application for the extension of time to appeal, Lightman J. provided the following guidance;

> *The position today is that* ***each application must be viewed by reference to the criterion of justice*** *(my emphasis) and in applying that criterion there are a number of other factors ... which must be taken into account. In particular, regard must be given, firstly, to the length of the delay; secondly, the explanation for the delay; thirdly, the prejudice occasioned by the delay to the other party; fourthly, the merits of the appeal; fifthly, the effects of the delay on public administration; sixthly, the importance of compliance with time limits, bearing in mind that they are there to be observed; seventhly, (in particular when prejudice is alleged) the resources of the parties."*

[32] These principles along with those extracted from the ***Garbage Disposal*** case have been carefully considered in order to arrive at my decision. For ease of reference I have elected to address the issues raised under the relevant grounds.

Grounds 1 and 2 – Length of delay, reason for the delay and jurisdiction of the Master

[33] It was the contention of Mr Adjudah that the delay in making the application for leave was as a result of the failings of opposing Counsel and the Court. He also raised questions as to the jurisdiction of the Master to deal with what he said was a summary judgment application. In order to properly address this ground, I considered it prudent to determine what matters were before the Master on the relevant date. A careful review of the history of this matter reveals as follows;

- On the 31st of March 2017 the Claimant/Applicant filed a Claim Form and Particulars of Claim against the Attorney General, South East Regional Health Authority (SERHA) and Donald Farquharson in which he sought damages for the termination of his employment with the 2nd Defendant.
- On the 19th of April 2017, he filed an application for an extension of the statute of limitations in which he sought an extension of time to bring this claim.
- On the 26th of April 2017, the Defendants/Respondents filed an acknowledgment of service.
- On the 21st of June 2017, the Applicant filed an application for default judgment.
- On the 7th of September 2017 the Defendants filed an affidavit sworn to by Faith Hall in support of an application for an extension of time to file defence. The notice of application for same was filed on the 19th of February 2018 along with an affidavit which explained the reason for the late filing of the notice.
- On the 9th of March 2018, the Applicant filed a further application for default judgment.

- On the 4th of May 2018, an application to strike out the claim form and particulars of claim was filed by the Defendants.
- On the 13th of June 2018, the Defendants filed a notice of discontinuance in which they withdrew their application for an extension of time to file a defence.
- On the same date, at a hearing before Master Harris, the notice of discontinuance was placed before the Court. The applications for default judgment and for the striking out of the claim were adjourned for hearing on the 26th of September 2018.
- On the 19th of September 2018 a further affidavit in support of the application to strike out the claim was filed by the Defendants.
- On the 27th of November 2018 and 28th of March 2019, affidavits in response were filed by the Applicant.
- The Applications for default judgment and for the striking out of the claim were heard on diverse dates between September 26th 2018 and May 2019. On the 22nd of May 2019 the Court delivered its judgment in which the order striking out the Applicant's Claim was made. The minute of order on the file reflects that the Applicant was present on this day.

[34] The history of this matter makes it clear, that contrary to the Applicant's assertions, there were two applications heard by the Master at the relevant time, one of which was his application for default judgment. The chronology also reveals that the defendant's application which was before the Master was not for summary judgment but for the striking out of the Applicant's case.

[35] It is noted that Rule 42.2 of the CPR provides;

> *A party who is present whether in person or by attorney-at-law when the judgment given or order was made is bound by the terms of a judgment or order whether or not the judgment or order is served.*

Rule 42.8 is also relevant and states;

> *A judgment or order takes effect from the day it is given or made unless the court specifies that it is to take effect on a different date.*

[36] The contents of minute of order reveal that on the date on which the Master gave her decision the Applicant was physically present in Court and would have heard her decision striking out his statement of case. He would also have been immediately bound by the decision pending an appeal. The judgment would have taken effect on that same date as no order to the contrary was made by the Master. In those circumstances, time would have begun to run and Mr Adjudah would have been bound to file his application for appeal within 14 days.

[37] Although he took no issue with the Respondent's submission that his application was over 2 months late, Mr Adjudah strongly contends that he could do nothing until he was in receipt of the formal order or the judgment. It is clear from the rules outlined above that he would not have been prevented from acting until he was formally served with these documents. The fact that he was physically present meant that he would have been fully aware of this decision. As such, it is my considered opinion that the application was unnecessarily delayed and the explanation provided lacks merit.

[38] The Applicant also raised questions as to the jurisdiction of the Master in dealing with the Respondent's application. Section 8 (1) of the Judicature (Supreme Court) Acts sets out the jurisdiction of a Master in Chambers as follows;

> "*each Master shall exercise such authority and jurisdiction of a Judge in Chambers as shall be assigned to him by rules of court."*

[39] The ***Master in Chambers Rules 1966*** prescribing the duties of the Master are set out in the Jamaica Gazette Supplement Proclamations, Rules and Regulations dated Friday December 16, 1966[1]. **Rule 2** provides:

> "*Jurisdiction:*
> *The Master in Chambers may transact all such business and exercise all such authority and jurisdiction in respect of the same as may be transacted or exercised by a Judge in Chambers, except in respect of the following proceedings and matters, that is to say;*
>
> *(a) Applications to determine the steps to be taken in fulfilment of an offer of amends under section 6 of the Defamation Law 1961 (33 of 1961)*
> *(b) Appeals from the Petty Sessions Courts.*
> *(c) All proceedings in respect of which jurisdiction is given by any Act specifically to a Judge in Chambers and in which the decision of the Judge is final.*
> *(d) Application for an order of Mandamus or an order of Prohibition or an order of Certiorari or an application for a Writ of Habeas Corpus,*
> *(e) Proceedings for attachment for contempt of Court against members of the legal profession acting in a professional capacity.* (f) *Reviewing Taxation of Costs.*"

[40] Additional guidance as to the role and powers of the Master is also to be found at **Section 9(1)** of the Judicature (Supreme Court) Act which provides:

> "*Where under this Act a Master has jurisdiction in relation to any matter, then, subject to this Act, he shall have and may exercise in relation to the matter all the powers of the Court or a Judge, including the power of making an order in such matter, which order may include provision for costs, certificate for counsel or other consequential matters; and any such order so made by a Master shall, subject to this Act, have the same effect as if it had been made by the Court or a Judge.*"

[41] Rule 2.5 (1) of the Civil Procedure Rules is also relevant and provides

> *Except where any enactment, rule or practice direction provides otherwise the functions of the court may be exercised in accordance*

with these Rules and any direction made by the Chief Justice by -
(a) a single judge of the court;
(b) a master; or
(c) a registrar

[42] On an application of these provisions to the current matter, it is evident that the Learned Master would have had the same powers of a Judge in Chambers to address all matters with the exceptions outlined above. In respect of Part 26, specifically Rule 26.3(1) of the CPR, which states the powers which can be exercised by the Court, rule 2.5(1) makes it clear that this Court would include a Master as there are no rules, enactments or practice direction prohibiting same.

[43] In light of the foregoing, it is clear that this ground is also without merit.

Ground 3 – The judgment is invalid as it wasn't signed, sealed or stamped

[44] Although the Applicant cited this ground in support of the strength of his appeal it was noted that he provided no authority in support of this argument. In examining this ground, I noted that Rule 42.4(2) provides;

Every judgment or order must -
(a) be signed by the registrar or by the judge or master who made it;
(b) be sealed by the court; and
(c) bear the date on which it was given or made

[45] While it appears that the Applicant's argument may have been posited on this rule, it is clear from the language of the provision that there is no requirement for all additional copies of a written judgment to bear these markings. Additionally, I found no rule or authority which provides that the failure to place these markings/endorsements on all copies of a judgment would have the effect of rendering same invalid. In light of this conclusion, I found that this complaint was also without merit.

Grounds 4 and 5 – Master's reference to the employment contract and misinterpretation of the Statute of Limitation

[46] On a careful review of the judgment which was handed down in this matter, I noted that after she arrived at her decision that the matter should be struck out on the basis that it had been brought after the limitation period; between paragraphs 16 and 18 of her judgment, the Master went on to consider the provisions of the Applicant's employment contract.

[47] At paragraph 17, she noted that the terms which governed the termination of the Applicant's employment were outlined at paragraph 3 of his employment contract. She also noted that the employment period was clearly specified as being for a temporary period with termination on a month's notice being provided by either side or a month's salary in lieu of same. At paragraph 18 she observed that these terms had been accepted by the Applicant as well as the 2nd Defendant and that the former would have faced a challenge to succeed on his claim on this basis, even if he had acted within time. These observations by the Master were made in circumstances where she was not seized with the trial of this matter and as such could not be viewed as anything more than a recognition of the challenges the Applicant could have faced at trial.

[48] In respect of Mr Adjudah's contention that the Master had misunderstood or misinterpreted the application of the statute of limitation, he sought to rely on an extract from a legal opinion written by Aaron Lawson, an attorney at law, which discussed among other things the difference between a statute of limitations and a statute of repose. He also commended to the Court an extract from a legal opinion produced by Oliver Cain, Danielle Carr and William Russell in which the UK Limitations Act was reviewed and discussed.

[49] In examining this submission and the material provided for consideration, I observed that between paragraphs 9 to 15 of her judgment, Master Mason conducted an in-depth examination and discussion of the relevant law. At

paragraph 9 she observed that Section 32 of the UK Limitations Act 1980 provided that time would not begin to run until after the fraud, concealment or mistake was discovered by the Plaintiff. She also noted that Section 46 of the local legislation stipulates that the UK Statute is received as one of the applicable statutes in Jamaica. She also examined Section 41 of the Interpretation Act of Jamaica which preserved the law which existed in England prior to the commencement of 1 George 11 Cap1, save and except where it has been amended or repealed.

[50] At paragraph 10 she stated that the limitation period outlined in the UK Statute 21 James 1 Cap 16 1623, which is applicable in Jamaica, stipulates a 6 year period for all actions for breach of contract. At paragraph 11, she made reference to the authority of ***Ferguson v Air Jamaica Ltd [2017] JMSC Civ 27*** where the Claimant in filing an action for breach of contract also sought to rely on the application of Section 32 of the UK legislation in order to bring the claim out of time. She highlighted the reasoning of the Court and noted that no like provision existed in the Jamaican legislation as actions which can be brought outside of the 6 year period for fraudulent concealment were specific to matters involving rent or land.

[51] At paragraph 14 she applied the legal principles extracted to the facts of this case and found that this UK provision was not applicable. She also made reference to the Court of Appeal decision of ***Muir v Morris [1979] 16 JLR 398*** in which Rowe JA confirmed that fraudulent concealment in the context of the Jamaican statute was specific to actions for recovery of land and rent.

[52] It is my opinion that the approach of the learned Master in examining this subject was impeccable and her conclusion was well grounded in law. The position of the Applicant was greatly undermined by these established principles of law all of which militates against the success of any appeal which would be brought by him.

Grounds 6 and 8 – The Master's failure to address specifics of the Applicant's case and the Respondent being permitted to submit twice

[53] Mr Adjudah also complained that the Master failed to examine the specifics of his claim before arriving at her decision to strike out his claim and by doing so she had adopted an incorrect procedure. In ***Ronex Properties Ltd v John Laing Construction Ltd [1983] QB 398*** the Court found that a claim issued after the expiry of limitation may be struck out as an abuse of process but cannot be struck out on the ground of there being no reasonable cause of action. In the instant claim, the Master had concluded that the action was to be struck out as an abuse of process having been brought after the limitation period. In those circumstances, there was no need for her to then go on to examine the substantive issues of the claim.

[54] Additionally, the Master would have been acting outside the parameters of the applications before her as she was not required, at this stage, to engage in the in-depth examination of any issues which would properly be resolved at a trial. In respect of the complaint that the Respondent was permitted to submit twice, Mr Adjudah has failed to provide any evidence that this in fact happened. He also failed to prove that even if it did, this was outside the usual practice where an applicant can respond to a point of law raised. In light of the foregoing, it is my conclusion that these grounds are also without merit and fail to meet the requisite standard.

Ground 9 – The Master acted maliciously in refusing leave to appeal upon the Applicant's indication of an intention to appeal

[55] An examination of this complaint revealed that there was no evidence provided by the Applicant in support of same. By his own account, the Master's ruling was given after he informed her of his intention to appeal. Procedurally, the approach of the Master was entirely in keeping with established practice and I was not persuaded that malice towards the Applicant had influenced same.

Conclusion

[56] In light of the foregoing discussion, I am unable to agree with the contention of the Applicant that his appeal has a real prospect of success. In those circumstances, it would be futile for leave to appeal to be granted. As such, the application of Mr Adjudah is denied. The costs of this application are awarded to the Respondent to be taxed if not agreed.