



[2024] JMSC Civ. 129

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2022CV00876**

**BETWEEN     PAMELLA ADINA FRANCIS                                  CLAIMANT**

**AND                 PAULINE JANET HAMILTON                                  DEFENDANT**

**IN CHAMBERS**

**Kristina Exell instructed by the Norman Manley Law School Legal Aid Clinic for Claimant.**

**Heard October 11, 2024 and October 25, 2024**

**Civil Procedure-Claimant's Application to Vary Order- Rule 26.1(7)-Slip Rule- Rule 42.10-Extension of the Validity of the Claim Form-Claimant requesting 4<sup>th</sup> and 5<sup>th</sup> Extensions on the Validity of the Claim Form-Rule 8.15-Specified Method of Service-Rule 5.14**

**Master L. Jackson (Ag)**

**Background and Chronology**

[1]     On March 14, 2022, the Claimant filed this claim against the Defendant for the sum of \$1,000,000 dollars being money lent or money paid at the Defendant's request in respect of the Defendant's purchase of property at Lot 120 Block A Caymanas Country Club, in the parish of St. Catherine.

- [2] On May 19, 2022 an application was filed for permission to serve the Defendant outside of the jurisdiction (Georgia, United States of America). This application was granted.
- [3] On August 18, 2022, the Claimant filed an application for extension of the validity of the claim form. The application was not heard until February 27, 2023 when the matter was adjourned for the applicant to file before March 7, 2023, properly executed affidavits in support of the application.
- [4] On March 13, 2023, the Claimant filed an urgent application for court orders for further extension of the validity of the claim form.
- [5] By way of two orders both dated April 18, 2023, the Court granted two extensions on the validity of the claim form. One formal order stated upon application filed August 18, 2022 *“the validity of the claim form filed on 14 March 2022 is extended from 13 September 2022 to 13 March 2023”*. The other formal order stated upon application filed on the 13<sup>th</sup> of March 2023, *“the validity of the claim form filed on 14<sup>th</sup> March 2022 is extended from 13<sup>th</sup> March 2023 to 12<sup>th</sup> September 2023”*.
- [6] On September 7, 2023 the Claimant filed another application “for second further extension of the validity of the claim form”. At this juncture I wish to point out that although the application was entitled second further extension, it was in fact a third extension that was being sought by way of the September 7, 2023 application that was filed.
- [7] That application was set for video conferencing to be heard on November 2, 2023. On November 2, 2023, the 3<sup>rd</sup> extension on the validity of the claim form was granted. The formal order filed November 3, 2024 and signed by the Master read *“the Claimant is granted a second further extension of six (6) months within which the Claim Form dated and filed March 14, 2022 may be served on the Defendant until March 12, 2024”*.
- [8] It is not clear from the file, when the formal orders were signed or returned to Counsel. However, Counsel indicates that she did not receive the formal order until after December 11, 2023. On December 11, 2023, the September 7, 2023

application came back for hearing and the Court indicated that it already granted the orders.

**[9]** On March 7, 2024, the Claimant filed another application for the extension of the validity of the claim form and specified method of service. That application was heard on paper on September 16, 2024, and the orders of this Court were as follows:

- a. *The Claim Form was filed March 14, 2022. The Claimant obtained a number of extensions. The first September 13, 2022 to March 12, 2023, then March 13, 2023 to September 12, 2023.*
- b. *Another extension was granted on November 2, 2023 for 6months until March 12, 2024.*
- c. *The Application filed March 7, 2024, seeks a fourth extension from March 12, 2024 to September 12, 2024. Rule 8.15(6) states that no more than 2 extensions unless the Court is satisfied that the defendant is deliberately avoiding service or there is some compelling reason. The application has not satisfied the Court that either of those two reasons apply. Moreover, the period for which the extension is being sought has expired.*
- d. *The Claim Form is now invalid for service.*

**[10]** Counsel for the Claimant made an oral application for the Court to apply the slip rule and also to vary the above orders made. This is on the basis that there was another application filed August 29, 2024 for the extension of the Claim Form that the Court did not consider before making the orders it did on September 16, 2024. That application of August 29, 2024, was made within the time in which an extension could have been granted and thus the Court erred when it said that the period for which the extension is being sought has expired.

**[11]** In a nutshell, her request seeks to have the Court consider the March 7, 2024 application in light of the Court's inadvertence in not having the August 29, 2024 application before it, before making the orders on September 16, 2024. This would be based on applying the slip rule and the Court's power to vary orders.

## **Submissions by Counsel for the Claimant**

- [12] Counsel's submissions were grounded on rules 42.10, 26.1(7) and 8.15 of the CPR and a number of authorities to include **Perrin v Cover** [2019] JMCA Civ 28, **Weir v Tree** [2016] JMCA App 6 and **Chung et al v Chung & Anor** [2018] JMCA Civ 44.
- [13] In summary, as it concerns the slip rule, she stated that the Court has the power to correct any oversight in respect of the March 7, 2024 application and the matters it was called upon to consider. She relied on rule 42.10 of the CPR which acknowledges the Court's inherent jurisdiction to control its process, to correct any clerical mistake or error in judgment or order arising from an accident slip or omission at any time, without requiring an appeal.
- [14] She cited in support of this argument, **Perrin v Cover** [2019] JMCA Civ 28, where a claim form was issued and later subject to an extension order on an application that sought, "that permission be granted for the Claim Form filed herein on the 12<sup>th</sup> of June 2015 to be renewed for a period of (6) six months from the date hereof". The application was heard by Lindo J (ag) (as she then was) on July 13, 2015 and she granted the orders as prayed. The Defendant applied to have the claim struck out/order set aside on the basis that the claim was invalid as the order made by the learned judge was to take effect on a date after the claim form had expired. The learned judge refused the Defendant's application, and the Defendant's subsequently appeal was dismissed by the Court of Appeal. The court stated:-

*[10]...The learned judge correctly identified the problem before her as being that "the [respondent] made an error in stating that the order being sought should be from 'the date 'hereof'... and that the court in granting the order in the terms as sought, did not make an order which would be valid".*

*[13] The learned judge concluded that, although "clumsily drafted", it was clear from the application and the other orders sought that the respondent was showing an intention to pursue the claim.*

*Further, she observed that “the order made by the court... does not give effect to what was being sought and as stated earlier, is solely based on the manner in which the request was worded”. She conceded that “[t]he order made by the court was therefore of no effect”, as the claim form would have already expired when the order was made. In addition, the order should have been requested for a period of six months “from the 12th day of June 2012”.*

*[14] Having rationalised that this sort of error ought not to prevent the respondent from prosecuting his claim, the learned judge concluded that “[t]he administration of justice would be advanced by the court seeking to cure the defect in the drafting of the application by the attorneys for the [respondent] to rectify the subsequent order made on July 13, 2015”. She held that the formal defect amounted to a mere “procedural inadequacy which should not be fatal as the court should in the circumstances be able to exercise its discretionary powers to put things right in order to give effect to the overriding objective”.*

- [15] Counsel also relied on **Weir v Tree** where in addressing the issue of when to apply the slip rule, the Court stated that the real issue for the Court’s consideration is whether there is anything to suggest that the actual language of the original order is open to question. It is not limited to the question of whether any ambiguity exists. In light of that authority, she stated that while the September 16, 2024 order may not appear ambiguous on its face, ambiguity was not a prerequisite for invoking the slip rule. The true question is whether the language of the order could be subject to question and this Court is empowered to give effect to its true intention, having regard to all the circumstances existing at the time of the order, as well as the matters the Court was required to resolve.
- [16] She went on further to state that the September 16, 2024 order does not fully address the March 7, 2024 application as it only dealt with the extension of the validity of the claim form and not the request for service by specified method.

The Court, while refusing to extend the claim form's validity, which was required to enable personal service, did not address permitting service by specified method. The order appears to focus on whether an extension of validity for personal service, could, and should be granted. Consequently, the September 16, 2024 order did not dispose of all the issues raised in the March 7, 2024 application.

- [17] A significant aspect of the context in which the September 16, 2024 order was made Counsel further argued, is that any extension granted on the March 7, 2024 application would have expired September 12, 2024. In refusing the extension, the Court noted that the claim was invalid for service. However, the Court was not apprised of the August 29, 2024 application seeking to further extend the validity of the claim form (from September 12, 2024 to March 12, 2025). As such the September 16, 2024 order was made in respect of a claim that appeared dead, although the August 29, 2024 application kept the claim alive from a jurisdictional standpoint until it could be considered by the Court.
- [18] She ended her submissions by noting that there was an error which ought to be corrected under the slip rule as the Court's true intention was not accurately expressed. The Court should clarify the September 16, 2024 order to deal with the omission regarding the application for service for specified method as well as the fact that the claim was not yet irreversibly invalid for service. This would require the Court to address the August 29, 2024 application.
- [19] In the alternative, she argued that the Court could and should utilize its powers pursuant to rule 26.1(7) of the CPR and vary the order of September 16, 2024 and cited **Chung et al v Chung & Anor** in support of those submissions.
- [20] This power to vary is supported by the fact that when the Court made the orders on September 16, 2024, it did so without a full appreciation of the fact that another application was filed August 29, 2024. She cited six factors that applies in this instant matter why the Court ought to revisit the orders made September 16, 2024.

a. There is a material change in circumstances

- b. The Court was misled, whether innocently or otherwise, as to the correct factual situation
- c. A plain mistake was made by the Court
- d. Relevant facts were not brought to the Court's attention
- e. The applicant was taken by surprise by an adverse ruling without the opportunity for proper consideration
- f. The Court has since carefully reconsidered the matter

**[21]** In light of the above, she argued that whether due to error or other compelling reasons, the Court should vary its September 16, 2024 order by considering both the March 7, 2024 and August 29, 2024 applications in light of all the facts that existed at the time the order was made and which the Court did not have proper opportunity to consider, and without which the Court could not properly advance the administration of justice.

**[22]** Furthermore, the wording of the September 16, 2024 order suggests that the Court did not have the opportunity to appreciate that the extensions granted from September 13, 2022 to March 12, 2023 and from March 13, 2023 to September 2023 were done simultaneously.

**[23]** In the absence of consideration of the full chronology of events and in light of the several extensions that were granted to the Claimant, the Court is left with a further application for extension that is only deceptively gratuitous. She then went on to outline the chronology of events and noted that the need for the formal order, the need to serve the Claimant overseas and permission of specified method of service are issues that heightened the compelling nature of the circumstances necessitating the need for further extensions in addition, the difficulties with personal service as outlined in the Claimant's affidavits.

**[24]** For these reasons she requested the following orders:

- a. Apply the slip rule to correct the September 16, 2024 order;
- b. Vary the order to allow the March 7, 2024 and August 29, 2024 applications to be considered on their merits, including consideration of the relevant background circumstances and procedural issues and

- c. Grant further extension of the validity of the claim and permission to serve by one or more methods as may be specified by the Court.

### **Issue(s)**

- a. *When does the slip rule apply? Is it applicable in this instant case?*
- b. *Can the court vary the orders made on September 16, 2024?*
- c. *When can a Claimant obtain more than two extensions on the validity of the claim form?*

### **Discussion and Analysis**

*When does the slip rule apply? Is it applicable in this instant case?*

[25] Rule 42.10 of the CPR states:

*(1) that the court may at any time (without an appeal) correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission.*

*(2) A party may apply for a correction without notice.*

[26] The learned author Stuart Sime, in a **Practical Approach to Civil Procedure 18<sup>th</sup> edition** stated *“that subject to the slip rule, once the judgment has been drawn up the judge is functus officio, which operates as a bar to further alterations by the judge (Earl of Malmesbury v Strutt and Parker (2007) 42 EG 295(CS). The slip rule gives the court power to correct any accident slip or omission in any judgment. While the slip rule cannot be used to correct matters of substance, it can be used for the purpose of giving effect to the intention of the court. It cannot be used for the court to have second or additional thoughts (Bristol-Myers Squibb v Baker Norton Pharmaceuticals Inc No 2 (2010) RPC 913)”*.

[27] Although Counsel relied on the decision of **Weir v Tree**, to support her argument on the application of the slip rule to instant matter, it is important to point out that Morrison P (Ag) (as he then was), also made the following pronouncements in the same authority: *“...This court has the power to correct*



*errors in an order previously made by it arising from accidental slips or omissions, so as to bring the order as drawn into conformity with that which the court meant to pronounce. In considering whether to exercise this power, the court will be guided by what appears to be the intention of the court which made the original order..."*

- [28] In **American Jewellery Company Limited et al v Commercial Corporation Jamaica Limited et al** [2014] JMCA App 16, Morrison JA (as he then was) in paragraph [2] of the judgment referred to rule 42.10(1) of the Civil Procedure Rules 2002, (CPR) which he indicated *'provides that the court may at any time (without an appeal) correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission'*.
- [29] What can be gleaned from a reading of the authorities therefore, is that the slip rule is limited to genuine slips and cannot be used to enable the Court to have second thoughts or add to its original order. It usually arises where there is a clerical mistake, arising from an accidental slip or omission, which runs counter to the true intention of the Court.
- [30] Counsel for the Claimant argued that in applying the slip rule it was not necessary that the language of the order was ambiguous. The question is whether the meaning of the order is uncertain, having regard to the context, background, circumstances and the true intention of the Court.
- [31] What is helpful in this matter, is that it is the Court as is currently constituted that made the order for which Counsel is asking to apply the slip rule. Therefore, it is not difficult to ascertain the true intention of the Court. The orders made September 16, 2024, addressed only one application filed March 7, 2024, for a fourth extension of validity of claim form and specified method of service that was before the Court at the time the order was made. The Court was not aware that a subsequent application was filed August 29, 2024 for a fifth extension at the time the orders dated September 16, 2024 were made.
- [32] I do not agree with Counsel that the orders of September 16, 2024 do not address all the issues presented in the application filed March 7, 2024 and I

also not agree that the meaning of the order is called into question or that it does not reflect the true intention of the Court.

[33] The application filed March 7, 2024 asked for a fourth extension and also service by a specified method of service. The order of the court was clear and well intentioned in how it disposed of the application in the refusal of the fourth extension for the validity of the claim form. Brief reasons for the refusal are also contained in the order itself.

[34] In not granting the fourth extension on the validity of the claim form being sought, the order ended by stating that the claim form is now invalid for service. I do not agree with Counsel that the issue of the specified method of service was not addressed in the order. It stands to reason, that if the Court ruled that the claim form is invalid for service, there would be no need for the Court to go further and address whether an order for specified method of service should be granted. Once the claim form is invalid for service the orders being sought for specified method of service would be moot. **(See Juliette Wright v Alfred Palmer &Anor [2021] JMCA Civ 32 paragraph 79.)**

[35] Counsel argues that there is an omission on the part of the Court in the order of September 16, 2024 as it did not have the benefit of August 29, 2024 application when it made the order. As such, when the Court pronounced that the claim form is invalid for service, it was incorrect as the application of August 29, 2024 kept the claim alive from a jurisdictional point of view until it could be considered by the Court. It is from that standpoint that there was an omission on the court's part hence the applicability of the slip rule to the instant case.

[36] I also disagree with this argument by Counsel as each application for an extension of the validity of the claim form has to be considered on its own merit. The application to further extend the claim form filed August 29, 2024 is just that, an application, and until the Court grants the order to extend the validity of the claim form, it is not correct to say that the August 29, 2024 application kept the claim form alive. In addition, although the order of the Court dated September 16, 2024 did not address the application of August 29, 2024 or its existence, as it was inadvertently not before the Court, I do not agree with

Counsel that the correct approach in addressing this application is through the slip rule.

- [37] What Counsel for the Claimant is essentially asking the Court to do, is to make a pronouncement on a substantive issue, which is the application filed August 29, 2024 and to also revisit the orders dated September 16, 2024 in light of the Court's inadvertence to address the said application filed August 29, 2024. What this Court is prepared to agree on though and will address below, is that if an application was filed which was not before the Court at the time the orders of September 16, 2024 were made, that could possibly affect the orders made previously by the Court, then the proper approach would be for the Court to consider its powers to vary or revoke an order under Rule 26.1(7) of the CPR. This is because, the slip rule only applies to clerical errors in a judgment or order and not for "fundamental changes of mind".

*Can the court vary the orders made on September 16, 2024?*

- [38] Rule 26.1(7) of the CPR states that a power of the Court under the CPR to make an order *"includes a power to vary or revoke that order"*. Hart-Hines J in **Belgravia Development Company Limited v Jaleel Handal and Another** [2023] JMSC Civ 33 in examining this rule stated that *"it is accepted that a court is not functus officio once the order is not sealed. A court has the jurisdiction under CPR Rule 26.1(7) to exercise its discretion to reopen a hearing or revoke an order in such circumstances once there has been a change of circumstances or where the judge had been misled as regards some fact. However, the power is to be exercised with caution in light of the public interest in the finality of proceedings. The guidance from case law suggests that it ought not to be invoked simply to give litigants "a second bite of the cherry"*.

- [39] In **Chung et al v Chung & Anor** relied on by Counsel for the Claimant it was stated by Rattray J, that

*"gleaned from these Authorities, that before the coming into effect of the CPR, it was well settled that until an Order of the Court was perfected, the Judge could at any time vary or revoke his Order. This principle has not been lost with the advent of the CPR, as Rule 26.1(7) confers such*

*powers on the Court. However, Rule 26.1 (7) is not specific as to whether the power can be invoked after the Order has been perfected, or whether it can only be invoked before the Order is perfected by the Court.*

*In my view, Rule 26.1 (7) does not limit the varying of an Order made by the Court in its wide ranging case management powers, such as an Order for Specific - 22 - Disclosure, even after it has been perfected, as was the situation in the present case. I am of the opinion, that in appropriate circumstances the Court could vary the Order, bearing in mind the overriding objective to deal with cases justly”*

**[40]** In **re L and another (Children) (Preliminary Finding: Power to Reverse)** [2013] UKSC 8, cited by Rattray J in **Chung et al v Chung & Anor**, Baroness Hale stated *“Both the Civil Procedure Rules and the Family Procedure Rules make it clear that the court’s wide case management powers include the power to vary or revoke their previous case management orders: see CPR r 3.1(7) and FPR r 4.1(6). This may be done either on application or of the court’s own motion: CPR r 3.3(1), FPR r 4.3(1). It was the absence of any power in the judge to vary his own (or anyone else’s) orders which led to the decisions in In re St Nazaire Co 12 Ch D 88 and In re Suffield and Watts; Ex p Brown 20 QBD 693. Where there is a power to vary or revoke, there is no magic in the sealing of the order being varied or revoked. The question becomes whether or not it is proper to vary the order. Clearly, that power does not enable a free-for-all in which previous orders may be revisited at will. It must be exercised “judicially and not capriciously”. It must be exercised in accordance with the overriding objective.”*

**[41]** Bearing in mind the principles from the authorities as it concerns when the Court should vary an order, this Court believes that paramount in its consideration in this instant case, is whether there was any change in circumstances since the order dated September 16, 2024 was made, which could have impacted how the Court would proceed in its determination of the matter on that date. It is evident that the change in this matter, is the fact that the Court did not have the benefit of the August 29, 2024 application before it, when it disposed of the

application filed March 7, 2024 and made the orders it did on September 16, 2024.

- [42]** In those circumstances, the Court agrees that it should consider the issue of whether there should be a variation of the orders made September 16, 2024. However, the crucial question is, in light of this unfortunate inadvertence, whether or not the application filed August 29, 2024 would result in the variation of the orders of the Court dated September 16, 2024. To answer this question, the Court will have to examine and address the applications for the extension of the validity of the claim form filed on both March 7, 2024 and August 29, 2024.

*When can a Claimant obtain more than two extensions on the validity of the claim form?*

- [43]** The application filed March 7, 2024 requested a fourth extension of the validity of the claim form filed March 14, 2022, effective March 12, 2024 to September 12, 2024. I wish to point out at this juncture that the effective date requested ought to have been March 14, 2024 to September 13, 2024 in light of when the claim form was filed.
- [44]** The application also asked for several orders as it relates to specified method of service. That is, service by registered post, or by courier at the Defendant's address outside of the jurisdiction 4126 West Flat Rock Drive Lithonia Georgia 30058, USA, in the alternative service by registered post, or courier addressed to the Defendant's daughter at the same address cited above outside of the jurisdiction. In the alternative service by registered post or courier to the address of the property in Caymans Estate St. Catherine Jamaica, the subject matter of the claim or service by publication of a legal notice in a daily newspaper at such intervals at such periods as the Court deems fit.
- [45]** The application filed August 29, 2024 seeks a fifth extension on the validity of the claim form. Which would be effective from September 14, 2024 to March 13, 2025. The application is supported by two affidavits sworn to by Ms. Exell, one in support of the application itself, the other an affidavit of urgency. The first

application essentially outlines a chronology and background to the matter and why the extension being sought in that order is necessary.

[46] For the purpose of these applications, rule 8.15 of the CPR is relevant. That rule states:

*“(1) The claimant may apply for an order extending the period within which the claim form may be served.*

*(2) The period by which the time for serving the claim form is extended may not be longer than 6 months on any one application.*

*(3) An application under paragraph (1) (a) must be made within the period (i) for serving the claim form specified by rule 8.14; or (ii) of any subsequent extension permitted by the court, and (b) may be made without notice but must be supported by evidence on affidavit.”*

*(4) The court may make an order for extension of validity of the claim form only if it is satisfied that (a) the claimant has taken all reasonable steps (i) to trace the defendant; and (ii) to serve the claim form, but has been unable to do so; or (b) there is some other special reason for extending the period*

*.....(6) No more than two extensions may be allowed unless the court is satisfied that – (a) the defendant is deliberately avoiding service; or (b) **there is some other compelling reason for so doing.** (emphasis mine)*

[47] The application filed March 7, 2024 was accompanied by two affidavits from the Claimant, one in support of the application and another an affidavit of urgency. From the onset I can declare that the application of March 7, 2024 for a fourth extension, would not fall within the first limb of rule 8.15(6), that is, that the Defendant is “deliberately avoiding service”. The affidavit in support of the application filed March 7, 2024 sworn to by the Claimant, details the history of the need to file her claim against the Defendant and her various applications prior to March 7, 2024 for extension that were granted by the Court. At paragraph 11 of her affidavit of March 7, 2024, in relation to the Defendant’s

whereabouts she states *“I know she used to work at Piedmont Hospital and St. Joseph Hospital in Georgia because of when I used to visit her, but that she stopped working there because of her age. She is younger than me, she is in her 60s. I verily believe that this is why she is not being found personally at her house at 4126 W Flat Rock but why there is still a presence there”*. This clearly does not point to a situation where the Defendant is “deliberately avoiding service”.

[48] Moreover, there is no affidavit of service accompanying this application filed March 7, 2024 detailing any efforts by a process server as to his/her efforts to trace, locate and serve the Defendant, that would enable the Court to determine that the Defendant is “deliberately avoiding service”. In **Ricketts v Ewers** (2004) Supreme Court, Jamaica no CL2001/R216 (unreported), Sinclair-Haynes J (as she then was), held that in an affidavit in support of an application for an order of extension of a claim form it was not sufficient for the applicant to make a ‘bald statement’ that attempts to serve that Defendant had been futile. Rather, it was necessary to present to the Court an outline of the efforts to serve, including dates, times and an affidavit from the process server himself. As a result of the foregoing, the second limb of rule 8.15(6) that is, there is “some compelling reason for so doing”, is what the Claimant has to satisfy the Court in relation to the granting of the fourth extension.

[49] The Claimant’s affidavit in support of her March 7, 2024 application, outlines that the Defendant lives in the United States of America and that she obtained an order from the Court to serve her at her address at 5848 Cedar Croft Lane, Lithonia Georgia 30058 or at her address at 4216 West Flat Rock Drive, Lithonia Georgia or other places where she may be found. She further stated that because of the difficulties she experienced in obtaining the funds to hire a process server, delays in obtaining a date for her previous applications to be heard and then to obtain the formal orders after the applications were granted she has had to ask for an extension on the validity of the claim form.

[50] At paragraph 6 of her affidavit she stated that in December 2023 she obtained an order for a second further extension. This Court observes that from the minute of order, this extension was a third extension on the validity of the claim

form and was granted from November 2, 2023. She stated that from the date that she obtained the order, she has tried many contacts and ways to get better information about the Defendant to assist her in serving the Defendant personally. She went further to state that she has not spoken to the Defendant in a few years and that she does not speak to her. She does not speak to the Claimant's daughter and her two granddaughters. The Defendant does not get along with many family members. Moreover, those she spoke with were not willing to come forward or get involved in the matter.

- [51]** She learned from a family member that the Defendant is doing hospice care work for about a year now in another state, New Hampshire, but still lives with her daughter at West Flat but is not working at the same place she used to. The Claimant then utilized google searches and confirmed the West Flat address as where the Defendant resides with her daughter and Cedar Croft is rented out.
- [52]** She called the Defendant via WhatsApp on a number she has for the Defendant in her Attorney's presence but that was not successful as the voice she recognised as Pauline's hung up. She called the number for the Defendant's daughter and she was told that she had the wrong number.
- [53]** She also stated that she knows that the property at Caymanas that she gave her the money for the deposit, is rented and that the rent is paid towards the mortgage the Defendant has with National Commercial Bank. It is as a result of this, that she seeks the orders for an extension of the claim form and for service by publishing a legal notice. She ended by noting that if the claim form was not extended, there would be injustice as she would not be able to continue the claim against the Defendant.
- [54]** In urging the Court to vary the orders dated September 16, 2024, and granting the fourth extension from the application filed March 7, 2024 and a fifth extension from the August 29, 2024 application, Counsel argued that the first two extensions were done to compensate for the delays in the consideration of earlier applications. In addition, there were issues with obtaining the signed formal order from the Court.



- [55] Rule 8.15(6) is silent as to what constitutes “some other compelling reason for so doing” and from the authorities, there is no one size fits all approach as to what this means. Each application praying in aid this provision, will have to be determined on the facts or reasons, as presented by the applicant in affidavit(s), to enable the Court to determine whether the applicant has established that there is some other compelling reason for granting more than two extensions or not. Master Hart-Hines (as she then was) in **Annette Mclean v Princess Edmonson & Anor** [2020] JMSC Civ 30 stated that *“I do not find that the delay by the Civil Registry in fixing the hearing date would amount to a compelling reason for extending the validity of the claim form by more than two years. Attorneys should be mindful of the Court’s resources and the fact that many files and applications are filed daily. Having regard to the fact that the Applicant’s Attorneys knew when the claim would become time-barred and knew when the claim form would expire, the onus would be on them to seek to have the application heard much earlier.”*
- [56] Master Mott Tulloch-Reid (as she then was) in **Izeth Roberts v Devon Harmon & Anor** [2019] JMSC Civ 119 observed that it is not a compelling reason to seek a further extension simply on the basis that the Claimant has not been able to serve the claim form and particulars of claim by publishing a Notice of Proceedings in the newspaper because the Formal Order of the Master was not perfected from as far back as 2017 and so the Notice of Proceedings has not been settled by the Registrar.
- [57] Edwards JA in **Juliette Wright v Alfred Palmer & Anor** [2021] JMCA Civ 32 noted that a Claimant that waited until limitation was about to run to file a claim had to move with due expedition. If such a Claimant waited that long and did not move with alacrity, then this will be done at his peril and must stand the consequences of that decision with fortitude. The Court also examined cases where the Claimant sought to lay blame on the feet of the Registry for obtaining orders or setting dates for the hearing of applications. The Court noted that Claimants have a duty to prosecute their matters expeditiously and to ensure that it is so done.

[58] None of the reasons provided by the Claimant in her affidavit filed March 7, 2024 amount to some other compelling reason given the background and history of the matter as stated by her in the said affidavit in support of her application. I will start by noting that May 19, 2022 a few months after filing the claim form, the Claimant filed an application to serve the Defendant outside of the jurisdiction at the two addresses she mentioned in her affidavit in support of her March 7, 2024 application. These two addresses also appear in the claim form. Therefore, these addresses provided by the Claimant in her March 7, 2024 affidavit, is not new information to the Claimant that the Defendant is ordinarily resident at either of these two addresses. So to put it in perspective from as far back as March 14, 2022, the Claimant knew where the Defendant resided or could be located outside of the jurisdiction. In addition, despite this knowledge, the application for service outside of the jurisdiction was not filed until two months after the claim form was filed.

[59] Moreover, the order of the Court granted May 30, 2022, with respect to that application for service outside of the jurisdiction, states that the Claimant is permitted to serve the Defendant personally **or “in accordance with the law of the United States of America”** (*emphasis mine*). Therefore, her contention in her affidavit filed March 7, 2024, that she had difficulties with getting assistance and information to enable her to personally serve the documents overseas and the funds to serve the documents and is now seeking specified method of service is not warranted in light of that order.

[60] I will now examine the previous extensions on the validity of the claim form that were granted to also show in relation to the March 7, 2024 application, why the Claimant has failed to satisfy this Court that there is some compelling reason to grant any more extensions on the validity of the claim form. The application for the first extension of the validity of the claim form was not filed until August 18, 2022, less than a month before the claim form was set to expire. The application was not in order and as a result, the Court ordered the Claimant to file before March 7, 2023, a duly executed affidavit in support of her application. This does not demonstrate a Claimant who is acting with alacrity.

- [61]** Another application was filed March 13, 2023 as the application of August 18, 2022 was not yet addressed and by the time it would be, the claim form would expire. To ensure this would not occur, the application of March 13, 2023 was filed to be further considered by the Court. On April 18, 2023, two extensions were granted by the Court, with respect to these two separate applications. Even though they were granted on the same day, this does not negate the fact that two separate extensions were granted. It doesn't matter that they were granted simultaneously, as, to obtain any further extensions subsequent to this, the Claimant would need to satisfy the Court that either of the two limbs of rule 8.15(6) of the CPR applies.
- [62]** The Claimant still did not serve the claim form and cites difficulties in obtaining the formal order subsequent to these two extensions being granted and serving the Defendant personally. A third extension was granted by the Court on November 3, 2023 and according to her the formal order was obtained after December 11, 2023. Whilst this extension was slated to expire March 13, 2024, the Claimant's affidavit is silent as to exactly when the formal order was obtained and what her efforts were in serving the Defendant. As stated before, there is no affidavit from a process server accompanying her application. The other reasons cited for non-service is information within her knowledge long ago.
- [63]** This is critical in light of the fact that the Claimant had already obtained three previous extensions and permission to serve the Defendant outside of the jurisdiction personally from as far back as May 2022, and by any other method in accordance with the laws of the United States. As observed earlier, the wording of this latter aspect of the order is very wide and would include the various options being sought in the March 7, 2024 application.
- [64]** So in a nutshell, from May 30, 2022 up to the last extension on the validity of the claim form which was slated to expire March 13, 2024, the Claimant had many options at her disposal to serve the Defendant outside of the jurisdiction, she has failed to do so, yet is requesting two more extensions to do what she could and should have done long ago.

- [65] The Claimant also sought to lay blame at the feet of the Registry and outlined the number of times her Attorney Ms. Exell had to make contact to obtain dates or track down formal orders in relation to the extension of the validity of claim form applications. The Claimant in her affidavit indicated that the two April 18, 2023 orders for extension were granted simultaneously to make up for the delays in the hearing of the applications. This is irrelevant and would not amount to a compelling reason especially where the first application for extension was filed less than a month before the claim form expired and the affidavit in support was deficient. In addition, it is observed that even in one instance Counsel was informed June 9, 2023 that the formal orders were signed. In another instance she obtained one formal order after December 11, 2023, these dates are way in advance of the extensions expiring.
- [66] Moreover, in light of the three previous extensions for the validity of the claim form, the Claimant could have utilized rule 5.13 of the CPR in relation to affixing the document at the Caymanas Estate premises which is being sought in her March 7, 2024 application. As the court in **Juliette Wright v Alfred Palmer & Anor** stated a Claimant need not wait to make an application for specified method of service under rule 5.14. Rule 5.13 is also at their disposal.
- [67] In relation to the issue of injustice, the claim form stated that the Claimant loaned money to the Defendant March 15, 2016 for which the Defendant never repaid, the subject matter of the claim. Yet, the claim was filed March 14, 2022. The Claimant waited until the 11<sup>th</sup> hour to file her claim and now seeks to raise the issue of limitation as being an injustice if she does not obtain the extension on her claim form.
- [68] The basis on which the fourth extension is being sought is simply that the Claimant has not been able to serve the claim form and particulars of claim because of not being able to get hearing dates for previous applications, not obtaining formal orders for extensions previously granted on time and not getting assistance or having the funds to serve the Defendant personally. However, in light of the foregoing, the Claimant has not satisfied the Court that these are compelling reasons to grant a fourth extension.

**[69]** As a result of the foregoing, if the Court does not accede to the Claimant's application for a fourth extension, it stands to reason that there would be no need to examine whether a fifth extension (which is being sought as per the application filed August 29, 2024), ought to be granted. This is because, without a fourth extension being granted, the claim form is now invalid and cannot be revived by any subsequent applications for an extension on the validity of the claim form. Therefore, even with the application filed August 29, 2024 inadvertently not placed and considered by the Court, in light of the foregoing, the Court will not vary the orders previously granted.

Order

**[70]** Application to apply the slip rule and variation of order denied

**[71]** Applications for extension of time of the validity of the claim form filed March 7, 2024 and August 29, 2024 denied

**[72]** No order as to cost

**[73]** Leave to appeal refused

**[74]** Counsel for the Claimant to prepare and file order

**Luciana Jackson**  
**Master in Chambers (Ag)**