

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 27/06

**BEFORE: THE HON. MR. JUSTICE PANTON, J.A.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MR. JUSTICE K. HARRISON, J.A.**

BETWEEN CARDINAL GLENNIE APPELLANT

**AND THE ATTORNEY GENERAL DEFENDANT
 OF JAMAICA**

**Mr. Errol Gentles and Ms. Ingrid Lee Clarke-Bennett, instructed by
Gentles & Willis for the Appellant.**

**Mrs. Julie Thompson-James, instructed by the Director of State
Proceedings for the Respondent.**

November 13 and 17, 2006

PANTON, J.A. (ORAL JUDGMENT)

1. This is the judgment of the Court in this matter. For many years, the Civil Courts in Jamaica have been plagued with lengthy delays, substantially caused by litigants themselves who have not been vigilant and keen to have justice delivered speedily. After a significant period of gestation, the Civil Procedure Rules, made by the Rules Committee of the Supreme Court, came into operation on January 1, 2003. The overriding objective of these Rules is to enable the Court to deal with cases justly. This process includes:

1. ensuring as far as practicable that parties are not prejudiced by their financial position;
2. saving expense;
3. dealing expeditiously and fairly with the matter; and
4. allotting an appropriate share of the Court's resources, bearing in mind the need for the allotment of resources to other cases;

and, of course, the resources here include time.

2. In interpreting the Civil Procedure Rules, the Court must seek to give effect to the overriding objective. Now in the instant case, the claim was filed prior to January 1, 2003 and, according to Part 73 of the Civil Procedure Rules, this claim was classified as "old proceedings". Part 73.3 was amended in several respects on February 17, 2003, including the renumbering and addition of paragraphs. Part 73.3 (4) states:

"Where in any old proceedings a trial date has not been fixed to take place within the first term after the commencement date, it is the duty of the claimant to apply for a case management conference to be fixed".

Part 73.3 (6) (renumbered in 2003) directs that:

"Upon receipt of such an application the Registry must fix a date, time and place for a case management conference".

Part 73.3 (7) (also renumbered) provides:

"These Rules apply to old proceedings from the date that notice of the case management conference is given."

Part 73.3 (8) which is crucial to this appeal provides:

"Where no application for a case management conference to be fixed is made by 31st December, 2003, the proceedings ... are struck out without the need for an application by any party."

3. Now, in the instant case, no application was made for a case management conference. Part 73.4 provides for the restoration of proceedings which have been struck out, provided that application is made by April 1, 2004. There was no such application in this case. The appellant herein ignored these provisions in Part 73. Instead on the 8th December, 2003 he applied for Court Orders to amend the Writ of Summons and to enlarge time to file and serve Particulars of Claims. On June 8, 2004 the acting Master granted permission to enlarge time as requested. The particulars of claim were served on June 11, 2004. The respondent filed no defence because the respondent has maintained that the matter has been struck out due to the failure to apply for a case management conference.

4. The next step was that the appellant applied for leave to enter default judgment, there having been no defence filed, and that application came before Mrs. Justice Sinclair-Haynes who was then acting as a judge of the Supreme

Court. She refused the application. The order that she made on November 18, 2005 states:

- "1. Matter struck out pursuant to 73.3 (7) of the Civil Procedure Rules 2002.
2. Leave to appeal granted."

5. Now strictly speaking, the tenor of her judgment was that she was refusing the application for leave to enter the default judgment. She herself was not doing the striking out as the order purports to have done, because the matter was indeed already struck out. Now she ruled that the matter had been struck out by virtue of the provisions of Part 73, and we having considered the matter here are in full agreement with the learned judge's decision. The application that the appellant made for Court Orders is not equivalent to an application for Case Management Conference and, further more, there is no discretion in us to restore the proceedings.

6. The Civil Procedure Rules, having been given much publicity, when they were to be implemented and indeed when they were implemented — when they came into operation — it was necessary for all litigants and their representatives who had matters pending to ensure that the Rules were studied carefully to ensure that the appropriate steps were taken. In this case, there having not been a fixed court date, it was required that the appellant should have filed an

application for a case management conference and this was not done, as said earlier — and there is no discretion in us to do anything about it.

7. Dilatoriness is regarded by the new Rules, as a thing of the past. In relation to proceedings that are filed in the Civil Courts, dilatoriness has very serious consequences according to the Rules and in this case, the consequences are terminal.

PANTON, J.A.:

ORDER

The appeal is dismissed. The order of the Court below is affirmed. Costs to the respondent, to be agreed or taxed.