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**NOTICE TO PARTIES OF THE COURT'S  
MEMORANDUM OF REASONS FOR DECISION**

**SUPREME COURT CIVIL APPEAL NO COA2022CV00095**

**APPLICATION NO COA2022APP00237**

<b>BETWEEN</b>	<b>JAMAICA PUBLIC SERVICE COMPANY LIMITED</b>	<b>APPLICANT</b>
<b>AND</b>	<b>JENNIFER MAMBY-ALEXANDER</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>AND</b>	<b>ALFRED THOMAS</b>	<b>2<sup>ND</sup> RESPONDENT</b>

**TAKE NOTICE** that this matter was heard in chambers by the Hon Mrs Justice V Harris JA on 25 April and 4 May 2023, with Patrick Foster KC instructed by MayhewLaw for the applicant and Mrs Georgia Gibson Henlin KC instructed by Jerome Spencer for the respondents and **TAKE FURTHER NOTICE** that the court's memorandum of reasons is as follows:

[1] This is an application by the Jamaica Public Service Company Limited ('JPS'), the respondent in the appeal, for an order that the appellants in the appeal, Mrs Jennifer Mamby-Alexander and Mr Alfred Thomas ('the respondents' in this application) pay security for the costs of the appeal in the sum of \$6,000,000.00.

[2] The notice of application for security for costs was filed on 18 November 2022, and the main grounds on which JPS is relying are:

- (a) In accordance with rule 2.12(2) of the Court of Appeal Rules 2002 ('CAR'), a written request for security of costs has been made to the respondents, but they have not given such security.

- (b) The respondents have not settled the amount for costs which was awarded in the court below.
- (c) The respondents are unlikely to be able to pay the costs of the appeal if ordered to do so.
- (d) JPS has a good prospect of successfully defending the appeal.
- (e) The orders sought were necessary for the just, fair and effective disposal of the appeal.

[3] The application is supported by the affidavit of Mr David Fleming, JPS' legal officer, filed on 18 November 2022. The evidence relied on to ground the contention that the respondents are not likely to be able to pay the costs of the appeal if ordered to do so is premised on the assertion, *inter alia*, that the appeal is a representative claim, and many of the appellants represented by the respondents are retirees who are unlikely to be able to afford the costs of the appeal.

[4] In addressing the issue of whether the respondents can meet the costs of the appeal, Mr Fleming, in his affidavit, averred that JPS had filed a bill of costs in the Supreme Court on 30 September 2022 in the amount of \$32,152,717.42 for work done in the claim, which has not been paid. He also averred that, on 28 October 2022, the respondents' attorney-at-law filed points of dispute which purport to reduce the bill of costs to \$14,504,028.00, which also remains outstanding.

[5] Mr Fleming further deposed that when JPS sought to introduce the pilot project for the overhead system in the community of Hope Pastures, many of the residents (including some of those represented by the respondents in the court below) complained that they would not be able to afford the costs of the project, to connect to their homes to receive the overhead supply or the new underground system. He also stated that several parties to the claim below, who may now be represented by the respondents on the appeal, do not reside in

Hope Pastures. For those reasons, Mr Fleming stated that if JPS is successful in the appeal, it may have difficulty enforcing its judgment.

[6] Learned King's Counsel for JPS, Mr Foster, in his submissions, qualified one of the grounds on which the application is made. This was in respect of the payment of costs in the court below. King's Counsel acknowledged that the respondents are not obligated to pay the disputed costs that have not yet been taxed. This was also emphasised, in her submissions, by learned King's Counsel, Mrs Henlin Gibson, for the respondents. I, too, agree. Therefore, this particular factor will not be taken into account in determining whether or not the respondents are unlikely to meet the costs of the appeal. Mr Foster also submitted, in the alternative, that on an assessment of the grounds filed by the appellants, there is no merit in the appeal given that the judgment of the court below was based primarily on findings of fact which are not lightly disturbed by an appellate court.

[7] Mrs Henlin Gibson, on the other hand, submitted that JPS has failed to establish that the respondents are impecunious and unable to pay the costs of the appeal if so required. On the contrary, she contended the respondents have demonstrated that they have the means to pay the costs. King's Counsel referred to the respondents' unchallenged evidence in their respective affidavits filed on 14 February 2023. Mrs Mamby-Alexander, in her affidavit, averred that she had resided in Hope Pastures since 1962 (save and except for a period of eight years when she lived and worked outside Jamaica). She stated that she is a medical doctor by profession, qualified to practice in Jamaica since 1981 and has worked both locally and overseas. Additionally, she is a businesswoman and listed her business interests as the Hair Loss Clinic of Jamaica and Surgipath and Cytology Lab Service. Mrs Mamby-Alexander indicated that she also possesses real estate holdings, for instance, she is one of the joint owners of her home in Hope Pastures, which is unencumbered and estimated to be valued in excess of \$50,000,000.00.

[8] In Mr Thomas' affidavit, he averred that he is a businessman residing in Hope Pastures. He also stated that he is the managing director and majority shareholder of PMD Pioneer Manufacturing Distribution Company Limited, which he described as "a leading distribution company with a significant footprint across the island". In addition to jointly owning his home with his wife, they own several other properties in Jamaica. Mr Thomas also indicated that he has several additional types of investments locally. Mrs Henlin-Gibson also submitted, in relation to the merits of the appeal, that it is not based principally on findings of fact but also on statutory construction as well as a legal interpretation of the word "maintain".

[9] The first issue for me to consider is whether the respondents would be unlikely to satisfy an adverse award in respect of the costs in the appeal (see para. [24] of the judgment of Brooks JA (as he then was) in **Disciplinary Committee of the General Legal Council v Oswald James** [2014] JMCA App 3). I am mindful of the legal principles governing an application of this nature which can be found in the legion of cases emanating from this court, such as **Cablemax Limited and Others v Logic One Limited** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 91/2009, Application No 203/2009, judgment delivered 21 January 2010, **The Shell Company (WI) Ltd v Fun Snax Ltd and Another** [2011] JMCA App 6 and **Elita Flickinger v David Preble and Another** [2012] JMCA App 3.

[10] Having scrutinised the evidence presented by JPS and bearing in mind that this is their application, I note that Mr Flemming's evidence was lacking in particularity and somewhat sweeping. It did not, for example, specifically identify that the respondents (or, for that matter, any of the appellants they represent on the appeal) were among the persons who were retired, lived outside of Hope Pastures or had indicated that they could not pay for, among other things, the project. Contrastingly, the evidence clearly illustrates that the respondents are ordinarily resident in Jamaica (and reside in Hope Pastures), they are self-employed, have real estate holdings and business interests, as well as

investments in Jamaica, and, therefore, are not outside the reach of the court in satisfying any order for costs.

[11] Accordingly, I find that the contention that the respondents would be unable to satisfy an award for costs if their appeal is unsuccessful is unfounded. I have not found any basis on which JPS has shown that the respondents are unable to pay the costs of the appeal if ordered to do so. Having arrived at this conclusion, I find it unnecessary to assess the merits of the appeal (see **Disciplinary Committee of the General Legal Council v Oswald James** at para. [31]). As a result, the order of the court is as follows:

1. The application for security for costs is refused.
2. Costs in the application to the respondents to be taxed if not agreed.