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

APPLICATION NO COA2023APP00141

CLAIM NO. HCV 0144/2003

BETWEEN	VIOLET MCFARLANE	1ST APPLICANT
AND	IGOL CAMPBELL	2ND APPLICANT
AND	HOMESE LIMMOTH	3RD APPLICANT
AND	ROBERT VALENTINE	4TH APPLICANT
AND	JAMES DRUMMOND	5TH APPLICANT
AND	BASIL CLAYTON	6TH APPLICANT
AND	TENLLOYD REID	7TH APPLICANT
AND	ESMERELA CLAYTON	8TH APPLICANT
AND	JAMES ANDERSON	9TH APPLICANT
AND	COSMOND BREMMER	10TH APPLICANT
AND	LUCILLE ARTHURS	11TH APPLICANT
AND	OLIVER REID	12TH APPLICANT
AND	JOHN EUGSTER	1ST RESPONDENT
AND	KATHLEEN EUGSTER	2ND RESPONDENT

**CONSOLIDATED
WITH CLAIM HCV NO.1470 OF 2003**

BETWEEN	TIMOTHY CLARKE	1ST APPLICANT
AND	ASHLEY YONKER & DOUGLAS MCLEOD	2ND APPLICANT
AND	LINDSAY PALMER	3RD APPLICANT
AND	ROSEMARIE MYRIE	4TH APPLICANT
AND	TREVOR MCKENZIE	5TH APPLICANT
AND	WILLIBALD GOLDNAGL	6TH APPLICANT
AND	WILLIAM STEWART	7TH APPLICANT
AND	WESLEY SLOWELY	8TH APPLICANT
AND	BEVERLEY WILSON	9TH APPLICANT
AND	THERESA MESSNER	10TH APPLICANT
AND	JESS BEACH	11TH APPLICANT
AND	AUDLEY WALLACE	12TH APPLICANT
AND	KENNETH PLUMMER	13TH APPLICANT
AND	WILTON BREMMER	14TH APPLICANT
AND	GEORGE BREMMER	15TH APPLICANT
AND	PAULINE WALKER	16TH APPLICANT
AND	MAURICE PARKINSON	17TH APPLICANT
AND	JOHN EUGSTER	1ST RESPONDENT
AND	KATHLEEN EUGSTER	2ND RESPONDENT

CONSOLIDATED

WITH CLAIM NO. HCV 2864 OF 2006

BETWEEN	ROSEMARIE CHUNG	1ST APPLICANT
AND	GRACE SMITH	2ND APPLICANT
AND	DWAYNE MCKENZIE	3RD APPLICANT
AND	KARIBE MCKENZIE	4TH APPLICANT
AND	JOHN EUGSTER	1ST RESPONDENT
AND	KATHLEEN EUGSTER	2ND RESPONDENT

CONSOLIDATED

WITH CLAIM NO. HCV 00039 OF 2006

BETWEEN	LOUISE BROWN	APPLICANT
AND	JOHN EUGSTER	1ST RESPONDENT
AND	KATHLEEN EUGSTER	2ND RESPONDENT

TAKE NOTICE that this matter was heard by the Hon Mrs Justice McDonald-Bishop JA, the Hon Miss Justice P Williams JA, and the Hon Mr Justice Fraser JA on 24 July 2023, with Joseph Willis instructed by Daly Thwaites & Co for the applicants and Alimi Banjoko instructed by Banjoko Law for the 2nd respondent.

TAKE FURTHER NOTICE that the court's memorandum of reasons, as delivered orally in open court by the Hon Mrs Justice McDonald-Bishop JA, is as follows:

[1] This is an application brought by Ms Jess Beach (on behalf of the other named applicants) for an extension of time to appeal the orders of Mangatal J made in the

Supreme Court on 28 January 2011 with respect to several consolidated claims (Nos. HCV 0144 of 2003, HCV 1470 of 2003, HCV 2864 of 2006 and HCV 00039 of 2006) and for a stay of execution of those orders. Ms Beach was the 11th claimant in claim 1470 of 2003.

[2] The notice of application for the extension of time and stay of execution (dated 29 June 2023) was filed on 30 June 2023, over 12 years after the judgment was delivered and the orders made.

[3] Ms Beach claims to be the “president of the Violet Citizens’ Association and the *de facto* representative of the communities of Little Bay and Brighton in the parish of Westmoreland, which are the communities of residence of all the applicants”. She relies on an affidavit sworn to on 29 June 2023 in which she sets out her reasons for approaching the court for an extension of time to appeal.

[4] The court notes, in particular, paras. 7 and 8 of Ms Beach’s affidavit. There, she indicated that no sooner after the judgment was delivered, the applicants' attorney-at-law, Mrs Antoinette Haughton-Cardenas, in whom they placed their trust and confidence, ceased communication with the applicants and could not be contacted or located. Despite their best efforts, they were unsuccessful in contacting and locating Mrs Haughton-Cardenas. Having been left without the necessary representation and legal advice, they believed there was no further recourse through the court in assessing the merits of the judgment. The applicants then engaged the active representation of Mr Ronald Thwaites of Daley Thwaites & Co, attorneys-at-law, to seek the assistance of the government to get the parties to agree to an amicable resolution of the matter. Ms Beach explained the attempts at negotiations with the respondents through the Ministry of Housing, across successive political administrations, but stated that those attempts bore no success.

[5] Ms Beach deposed that her attorneys-at-law have advised her that, in the light of sections 68, 70, 71 and 85 of the Registration of Titles Act, Mangatal J’s legal analysis was wrong as she “misinterpreted and/or misapplied the law”. Ms Beach also expressed that she has been advised that since the decision of the Privy Council in **Recreational Holdings 1 (Jamaica) Ltd v Lazarus** [2016] UKPC 22, it has been revealed that

Mangatal J's decision is erroneous, and if the court should allow Mangatal J's decision to stand, it would lead to a miscarriage of justice for the applicants.

[6] The main thrust of the application is that the applicants "have suffered a wrong at the hands of justice and that it is in the interest of justice that the wrong be made right as equity does not suffer a wrong without a remedy".

[7] Counsel for the applicants filed no submissions supporting the application as required by this court's rules, practice and procedure. In any event, the court makes several crucial observations, which it finds to be fatal to the application:

- (i) The application includes persons named as applicants whose claims were struck out by Mangatal J before judgment was delivered. Therefore, those applicants would have no standing at the Court of Appeal. Some of the named applicants had died before and after the judgment was delivered, and no representatives are named for them for the purpose of this application or proposed appeal.
- (ii) The court also notes that the 1st respondent, John Eugster, died before the judgment was delivered in the court below, and his wife, Kathleen Eugster, the 2nd respondent, was substituted as a representative for him even while she stood in her personal capacity as the 2nd defendant in the claims. In any event, despite all those changes and orders made by the court below, Mr Eugster still appears as a party to this application.
- (iii) Ms Beach purports to be the president of the Violet Citizens' Association and the *de facto* representative of the communities of Little Bay and Brighton in the parish of Westmoreland. However, there is no evidence that any of the other persons named as applicants consented to Ms Beach making representation on their behalf before this court. There is also no evidence of the existence of this association that she named and her authority to act on its behalf.

(iv) The evidence put forward in explaining the reasons for the delay, particularly regarding the representation of the applicants by Mrs Haughton-Cardenas, is wholly discredited by the learned judge's judgment. The record of appearance in the judgment shows that Mr Ballantyne assumed conduct of the matter for the applicants, except for Ms Ashley Yonker, on 14 December 2009. It is unrefuted that Mr Ballantyne was the attorney-at-law who made submissions on behalf of the applicants, except one, and remained in the matter as the relevant applicants' attorney-at-law up to the delivery of the judgment. Nothing has been put before this court to the contrary. Therefore, we cannot accept the reason put forward by Ms Beach that the delay resulted from the abandonment of the applicants by Mrs Haughton-Cardenas. There is no good explanation for the delay.

[8] Having considered the application against the background of the applicable substantive law and the procedural rules and requirements of this court, we find there is no proper basis on which this court could legitimately exercise its discretion to grant the application for an extension of time and stay of execution of the judgment of Mangatal J that was delivered over a decade ago. In the circumstances, the application fails for these reasons: (a) the applicants' delay in seeking an extension of time to appeal is inordinate; (b) there is no good explanation for the delay; (c) the standing of Ms Beach on behalf of all the persons named as applicants is not properly established; (d) the legal standing of all the persons named as applicants to bring the application is highly questionable as the judgment does not relate to some of the named applicants; (e) some of those to whom the judgment relates had died since the delivery of the judgment, and no one is named as their representative for the purposes of the application or proposed appeal; and (f) the Violet Citizens' Association and the communities of Little Bay and Brighton, which Ms Beach purportedly represents as applicants, were not parties to the proceedings in the Supreme Court.

[9] In all the circumstances, the interests of justice militate against the grant of this application. Consequently, the court would order that the application be refused with no order as to costs.

[10] Accordingly, the orders of the court are as follows:

1. The notice of application dated 29 June 2023 is refused.
2. No order as to costs.