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

SUPREME COURT CIVIL APPEAL NO COA2022CV00117

APPLICATION NO COA2022APP00281

BETWEEN	CARRINGTON MORGAN	APPLICANT
AND	MADONNA ANASTASIA WAITE	1ST RESPONDENT
AND	WILLIAM HUTCHINSON	2ND RESPONDENT
AND	INSURANCE COMPANY OF THE WEST INDIES LIMITED	3RD RESPONDENT

TAKE NOTICE that this matter was heard by the Hon Mr Justice Brooks P, the Hon Mr Justice D Fraser JA and the Hon Mr Justice Brown JA on the 15th day of May 2023, with Jonathan Morgan and Ms Chantal Bennett instructed by DunnCox for the applicant, Mrs Suzette Burton-Campbell instructed by Burton-Campbell for the 2nd respondent and Miguel Palmer for the 3rd respondent.

TAKE FURTHER NOTICE that the court's memorandum of reasons as delivered orally in open court by Brooks P is as follows:

[1] This is an application by Mr Carrington Morgan ('the applicant') for an extension of the time within which to serve a notice of appeal, where the notice was filed within time, but was delivered four days after the specified date for service.

[2] The learned judge of the Supreme Court, whose ruling is being challenged, decided that the applicant failed to serve a claim form, by way of substituted service on the 3rd respondent in lieu of personal service on the 1st respondent, within the time allowed for service. She set aside the order allowing substituted service of the claim

form. As a result of that ruling, the applicant's claim form was rendered invalid because it had expired by then. The learned judge granted the applicant leave to appeal that ruling.

[3] The relevant background facts, briefly, are that the applicant's claim form was delivered to the Insurance Company of the West Indies Limited ('ICWI') pursuant to an order for substituted service that a Master of the Supreme Court made. The claim form was delivered to ICWI within the time that the learned Master prescribed but was not accompanied by a copy of the formal order which authorised the substituted service. Counsel for the applicant, Mr Jonathan Morgan, informed the court that a letter, which indicated the import of the order for substituted service, accompanied the claim form. The perfected formal order was served approximately four weeks later. However, the time for the service of the claim form had already expired.

[4] The main issue for the proposed appeal, therefore, is whether the delivery of the claim form, without the formal order for substituted service, constituted good service.

[5] Mr Miguel Palmer, on behalf of ICWI, submitted that without the formal order, the service was invalid.

[6] The applicant also contests the learned judge's order for him to be condemned in costs. He contends that the learned judge did not consider that ICWI waited over a year before it sought to challenge the service of the claim form, by which time the relevant claim form had expired.

[7] Having considered the material, the court finds that the applicant has an arguable case for an appeal. Rule 42.8 of the Civil Procedure Rules, 2002 speaks to an order of the court being effective when it is made, unless otherwise specified. It is arguable that the delivery of the claim form did constitute good service in accordance with the learned Master's order. The terms of the order will be important in any consideration of the appeal.

[8] In considering this application, it is also noted that:

- a. the applicant's attorneys-at-law are to be blamed for the delay in serving the notice of appeal, which had been filed within time in this court; and
- b. the delay in delivering the notice of appeal was not long; although
- c. the reason for the default (administrative error or oversight) is not a good one, and
- d. the application for the extension of time to correct the error was filed over a month later;
- e. the respondents will not be prejudiced if the time is extended.

[9] The applicant also seeks the court's leave to amend the notice of appeal (see rule 1.12(2) of the Court of Appeal Rules ('CAR')).

[10] Additionally, as the appeal is a procedural appeal, the attorneys-at-law also failed, in breach of rule 2.4 of the CAR, to file written submissions within 14 days of filing the notice of appeal. The applicant, therefore, seeks an extension of time in which to file and serve the written submissions.

[11] In the round, this court finds that the proposed amendments are necessary to distil the issues between the parties (see **Jamaican Redevelopment Foundation, Inc v Clive Banton & Another** [2019] JMCA Civ 12). The court also does not find the defaults so egregious as to deny the applications.

[12] Accordingly, the applications should be granted.

Order

1. The application for an extension of time in which to serve the notice of appeal on the 3rd respondent is granted.
2. The application for permission to file an amended notice of appeal is granted.

3. The application for an extension of time in which to file and serve written submissions in support of the appeal is granted.
4. The applicant shall file and serve the amended notice of appeal, and the written submissions in support, on or before 26 May 2023.
5. The respondents shall be at liberty to file and serve written submissions or any cross-appeal in accordance with rule 2.4(2) of the Court of Appeal Rules.
6. Costs of the application, on an indemnity basis, to the 2nd and 3rd respondents to be agreed or taxed.