



[2024] JMSC Civ.132

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

**CIVIL DIVISION**

**CLAIM NO. SU2020CV00530**

<b>BETWEEN</b>	<b>NIGEL JONES &amp; COMPANY (a firm)</b>	<b>1<sup>ST</sup> CLAIMANT</b>
<b>AND</b>	<b>NIGEL W. JONES</b>	<b>2<sup>ND</sup> CLAIMANT</b>
<b>AND</b>	<b>MEKELIA CAMILLE GREEN</b>	<b>DEFENDANT</b>

**OPEN COURT**

**Mr. Jerome Spencer & Ms. Kashima Moore, instructed by Henlin Gibson Henlin,  
Attorneys-at-Law for the Claimants**

**Mrs. Valerie Neita-Robertson K.C. & Mr. John Clarke for the Defendant**

**October 25, 2024**

**Contempt Proceedings– Breach of Injunction- Motion for Committal- Part 53 Civil  
Procedure- Civil Contempt- Standard of Proof- Purpose of injunction**

**SIMONE WOLFE-REECE, J**

**INTRODUCTION**

**[1]** The Law firm of Nigel Jones and Company (1<sup>st</sup> Claimant) and Mr. Nigel Jones (2<sup>nd</sup> Claimant) is the Managing Partner of the law firm, has filed Amended Notice of Application for Contempt Orders against the Defendant Ms Mekelia Green, Attorney at law, who they allege has breached the injunctive orders made by the Honourable Justices Calys Wiltshire and Chester Stamp on diverse days.

## APPLICATION

[2] The Claimant's Amended Notice of Application for Contempt Orders filed on October 1 2022 seeks the following orders:

1. *The Defendant, MEKELIA CAMILLE GREEN be committed to prison for a period of six (6) weeks for breach of:*
  - (a) *her undertaking to the Court and/ or;*
  - (b) *the order of Wiltshire, J;*
  - (c) *The order of Stamp, J*
2. *Costs to the Claimant*
3. *Such further or other relief this Honourable Court deems just*

[3] The main grounds of this application for are that:

*1. The Honourable Wiltshire J on February 18, 2022 made, amongst others the following orders against the Defendant in this matter:*

1. ***`An injunction restraining the Defendant, her servants and/or agent howsoever, from commenting, publishing, disseminating statements on social media or any other medium concerning the 2<sup>nd</sup> Claimant:***
  - a. *Describing him as her former employer; and/or*
  - b. *Commenting on him in any capacity at all;*

*for a period of five (5) days and/or until further ordered by the Court.*
2. ***An injunction restraining the Defendant, her servants and/or agent howsoever, from commenting, publishing, disseminating statements concerning the 1<sup>st</sup> Claimant:***
  - a. *in the conduct of its trade, profession or business;*
  - b. *and its employees;*
  - c. *and its obligation to the Government of Jamaica including the payment of taxes*
  - d. *or commenting on the 1<sup>st</sup> Claimant in any capacity at all;*

*for a period of five (5) days and/or until further ordered by the Court.*

**3. The Defendant, whether by herself, her servants and/or agents or howsoever, is restrained from:**

- a. Commenting, publishing, disseminating statements on social media or any other medium;**
- b. Speaking to, communicating with and/or about this claim and the matters to which it concerns to anyone (except her legal advisors),**

**unless the wording of such statement, comment, publication, communication, is sought and agreed by the Claimants for a period of five (5) days/and or until further ordered by the Court.**

**4. An injunction compelling the Defendant to remove all posts made on social media and an about the Claimants on all social media platforms for five (5) days/and or until further ordered by the Court.**

2. The Defendant was served with Notice of the Order and the Order of Wiltshire J on February 18, 2022 by email.

3. The Defendant failed, refused and/or neglected to immediately remove the posts upon being served with the Formal Order of Wiltshire J;

4. The Defendant on or about February 21, 2021 removed only 7 posts from her social media accounts while the remaining defamatory tweets remained on her social media account;

5. The Defendant continued to make posts on social media without the Claimants approving the statement, comment, publication or communication.

6. The Defendant spoke to the Jamaica Gleaner about this matter and an article in relation to the matter between the parties was posted by the Jamaica Gleaner on February 22, 2022.

7. The Defendant by her conduct breached Orders 3 and 4 of the Order of Wiltshire J.

8. The Defendant at the inter partes hearing of the matter on February 22, 2022 before the **Honourable Stamp J** that the posts were removed on Monday as she was informed by the tax authorities that the taxes were paid on Thursday (being February 17, 2022). She thereafter indicated that she was informed of same by the tax authorities on Monday being February 21, 2022.

9. The Defendant at the inter partes hearing of the matter on February 22, 2022 before the Honourable Stamp J gave an undertaking to the Court to comply with the Orders of Wiltshire J.

10. The Defendant at the time of the hearing had not removed all the posts as Ordered by Wiltshire J.

11. On February 22, Stamp J extended the Orders of Wiltshire and made the following orders:

1. *The hearing of the Amended Notice of Application for Urgent Interim Injunction filed is adjourned until March 17, 2022 for 1 hour.*
2. *The service on the Defendant of the relevant court documents, including the claim form and particulars of claim, may be effected by electronic mail.*
3. ***The injunction granted by Justice Wiltshire is extended until March 17, 2022, to wit:***
  - i) ***An injunction restraining the Defendant, her servants and/or agent howsoever, from commenting, publishing, disseminating statements on social media or any other medium concerning the 2<sup>nd</sup> Claimant:***
    - a. *describing him as her former employer; and/or*
    - b. *commenting on him in any capacity at all.*
  - ii) ***An injunction restraining the Defendant, her servants and/or agent howsoever, from commenting, publishing, disseminating statements concerning the 1<sup>st</sup> Claimant:***
    - a. *in the conduct of its trade, profession or business;*
    - b. *and its employees;*
    - c. *and its obligation to the Government of Jamaica including the payment of taxes;*
    - d. *or commenting on the 1<sup>st</sup> Claimant in any capacity at all.*
  - iii) ***The Defendant whether by herself, her servants and/or agents or howsoever, is restrained from:***
    - a. *commenting, publishing, disseminating statements on social media or any other medium;*
    - b. *speaking to, communicating with and/or about this claim and the matters to which it concerns to anyone (except her legal advisors),*

***unless the wording of such statement, comment, publication, communication, is sought and agreed by the claimants.***

- iv) ***An injunction compelling the Defendant to remove all posts made on social media and an about the Claimants on all***

**social media platforms until March 17, 2022 or until further ordered by the Court.**

4. *It is recorded that the Defendant undertakes to comply with the orders made on February 18, 2022.*

12. *The Defendant in breach of her undertaking to the Court and the Order of Stamp J, specifically order 3 (iii) made a post on her social media in relation to the matter.*

13. *The Defendant has in breach of Stamp J order 3 (iv) and her undertaking to the Court failed to remove all the posts made in relation to this matter.*

14. *The Defendant, on May 19, 2022, at the hearing of the Claimants' Notice of Application for contempt Orders before Justice Tie Powell gave an undertaking to the Court that:*

*The Defendant undertakes not to post or upload on any social media platform on any matter save for Instagram where she will make 6 posts solely in relation to her contractual obligations under which contracts, connected to feminine products, where she is required to post twice per week in relation to each. This will remain in force until the inter partes hearing of the application for injunction scheduled for May 26, 2022 at 2:00 p.m.*

15. *The Defendant through her Attorney, Mrs. Valerie Neita-Robertson KC, extended her the undertaking that was given before Justice Tie Powell at a hearing before Mr. Justice Dale Palmer on May 26, 2022. Mr. Justice Dale Palmer ordered amongst other things that "All undertakings given before Justice Tie-Powell are extended."*

16. *The Defendant has notwithstanding her undertakings to the Court continued to post on twitter concerning the matter and generally.*

[4] The evidence before the Court is contained in affidavits as well as oral evidence where the witnesses were cross-examined. The affidavit evidence considered are as follows:

- (a) Affidavit of Nigel W. Jones filed March 21, 2022
- (b) Further Affidavit of Nigel W. Jones filed on May 18, 2022
- (c) Further Affidavit of Nigel W. Jones filed on May 20, 2022
- (d) Further Affidavit of Nigel W. Jones filed October 11, 2022
- (e) Affidavit of Sean Wenzel file October 13, 2022

(f) Affidavit of Mekelia Camille Green filed May 6, 2022

(g) Affidavit of Mekelia Camille Green filed October 28, 2022

- [5] The Court has been provided with substantial written submissions from the Claimants and the Defendants, I will not reproduce same in full but I have considered all the submissions and will refer to them as I address the relevant issues to be decided.
- [6] It is undisputed that the Claimant filed a claim and obtained an Interim injunction on February 18, 2022 against the Defendant. The injunction specifically addressed the Defendants use of social media to specifically comment, publish, disseminate statements concerning the Claimants and the claim. It further compelled the Defendant to remove posts made on social media about the Claimants.
- [7] The issue of the interim injunction came back before the Court on February 22, 2022, both the 2<sup>nd</sup> Claimant and the Defendant were present and the Court extended the Orders until March 17, 2022. In addition, it was recorded in Order # 4 that the Defendant had given an undertaking to comply with the Orders made on February 18, 2022. There is no dispute that Formal order with the requisite penal notice attached was served on the Defendant.

## **ISSUES**

- (i) Whether the Order of the Court made by Wiltshire J and extended by Stamp, J was clear and unambiguous**
- (ii) Whether Applicant has provided evidence of the Actus Reus & the MensRea to establish that the Defendant breached the order of the Court**
- (iii) Did the Defendant give an undertaking to the Court**
- (iv) If so, Did the Defendant breach the undertaking**

**(v) If so, whether the Defendant should be committed to Prison for six weeks.**

## **The Law**

**[8]** The Civil Procedure Rules Part 53, encapsulates the general principles to guide the Court in contempt proceedings. Section 1 addresses Committal for breach of order. Rule 53.1 specifically states:

*“This Section deals with the power of the court to commit a person to prison or to make an order confiscating assets for failure to comply with-*

*(a) an order requiring that person; or*

*(b) an undertaking by that person,*

*to do an act-*

*(i). within a specified time;*

*(ii). (ii) by a specific date; or not to do an act.”*

**[9]** Section 2 addresses the exercise of the power of the Court to punish for contempt. Rule 53.9 p provides as follows:

*(1) “This Section deals with the exercise of the power of the court to punish for contempt.*

*(2) In addition to the powers set out in rule 53.10, the court may-*

*(a) fine the contemnor;*

*(b) take security for good behaviour;*

*(c) make a confiscation of assets order;*

*(d) issue an injunction.*

*(3) Nothing in this Section affects the power of the Court to make an order of committal of its own initiative against a person guilty of contempt in the face of the court.”*

- [10] The difference between ‘Civil Contempt’ and ‘Criminal Contempt’ has been defined and distinguished in numerous cases in this jurisdiction. Civil Contempt is best described as a medium by which one can seek to enforce orders made by the Court. It is a method of ensuring that Court Orders are complied with and therefore seeks to maintain the integrity of the Court. It is often viewed as a method of compliance rather punishment.
- [11] In relation to Criminal Contempt proceedings which normally manifests in the face the Court, after a hearing where it is deemed that there was disrespect to or an act which undermines the authority of the Court, the Judge may impose punishment such as committal. In **Bonus Car Rental and Services Limited v Ian Dunn**<sup>1</sup> Batts, J saw it fit firstly to identify the purpose of the jurisdiction he was been called upon to exercise. He noted at paragraphs 14 & 15 as follows;

*“[14] It is necessary to remind myself of the purpose of the jurisdiction I am being called upon to exercise. A court has an inherent power to protect its integrity and the integrity of its processes. This may involve corrective action for conduct which impedes or obstructs the course of a trial or proceeding, see R v Eric Frater SCCA 255/77 (unreported judgment dated 12th October 1979) (upheld on appeal at [1981] 1 WLR1468). In that context the court often acts in a summary way. The court is required then to call upon the person accused to “show cause” why he or she ought not to be punished for “contempt of court”. A fair hearing is required, see Maharaj v The Attorney General of Trinidad & Tobago [1977] 1 Aller 412 and Maharaj v The Attorney General of Trinidad & Tobago # 2 [1978] 2 Aller 670. The category of conduct, which may amount to contempt, is not closed as almost anything which obstructs the course of justice can be so punished, see Balogh v Crown Court at St Albans [1974] 3 Aller 283 per Lawton JA at 295c. This is generally referred to as “criminal contempt”. It is punishable as a crime, often summarily and, very often by the judge whose court has been adversely affected.*

*[15] There is another category of contempt of court. It, is usually referred to as **“civil contempt” and, also has its origin in the court’s inherent power to protect its process. It concerns primarily the power of the court to enforce orders it has made and undertakings it has received.** This jurisdiction differs from “criminal contempt” in that the offending act, is not usually in the face of the court and, may not directly impact the conduct*

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<sup>1</sup> [2023] JMCC Comm 1



*of a trial or proceeding. However, in an extended sense, disobedience to an order of the court adversely impacts the court's integrity and represents a challenge to its authority. A system of justice is meaningless if a court's order can be ignored, or an undertaking given to it breached, with impunity. The procedure to obtain redress, in such circumstances, is set out in great detail in Part 53 of the Civil Procedure Rules (2002). The rules distinguish between the breach by the person to whom the order is directed and breach by others who may, although not served with the order, knowingly facilitate that breach, see paragraph 37 of the judgment of Morrison JA (as he then was) in the case of Hon Gordon Stewart OJ v Senator Noel Sloley Sr. et al [2011] JMCA Civ. 28 (unreported judgment dated 29th July 2011). Importantly Rule 53.9 expressly distinguishes the procedure required for civil contempt from, the summary process utilised, where the act of contempt occurs in the face of the court." (Emphasis mine)*

[12] Batts, J also noted that the procedure in proceedings of Civil Contempt was set in Rule 53.9, and that the standard of proof in any contempt proceedings was the higher standard of beyond reasonable doubt. I accept and adopt this as sound statement of the law and I apply it to my determination of this application. I find that this application is in the realm of 'Civil Contempt'.

**Issue #1: Whether the Order of the Court made Wiltshire J and extended by Stamp, J was clear and unambiguous?**

[13] Before the Court can conclude that the evidence reached the requisite standard and conclude that the Defendant has breached the Order of the Court it must be determined that the Order was clear and unambiguous.

[14] Learned Counsel Mr. Spencer on behalf of the Claimant submitted that the Orders were clear and required the Defendant not to comment on the Claimants in any capacity at all or post anything about them on social media. He submitted that the Order limited her communication regarding this claim with her legal advisors without the permission of the Claimants.

[15] Mr. Shawn Wenzel gave evidence that he is an Information Technology Management Consultant and the founder of CaribTek Inc. He stated his services were retained by the 2<sup>nd</sup> Claimant on February 19, 2022. The purpose was to monitor and preserve defamatory posts that were made by the Defendant on

Twitter, Instagram and through any other media on or about February 15, 2022 or in violation of the Court Order of February 18, 2022.

[16] In paragraph 5 of his affidavit he stated as follows:

5. *"In reviewing the Defendant Ms. Green's Twitter account I identified thirty (30) separate tweets either referring directly to the Claimant Mr. Jones and/ or his firm or alluding to the same allegations made against Mr. Jones and his firm. I have attached screen of these tweets to this affidavit which I have numbered "SW1" through "SW30"*
  - a. *The first twenty-nine (Exhibits SW1 through SW29) of these tweets were made on or before February 18, 2022 the date of the Court Order.*
  - b. *As of Sunday, February 20, 2022 all of these aforementioned tweets were still present and publicly available,*
  - c. *As at 9 PM today (February 21, 2022) I observed that seven (7) of these tweets exhibits SW1, SW13, SW15, SW20, SW23, SW28 and SW 29 have been deleted while Exhibit SW30 was posted at 11.38 AM today (February 21, 2022). Meanwhile the rest of the aforementioned tweets remain online and publically available.*
6. *I identified twenty-eight (28) tweets that were made by the Defendant Ms. Green after the date of the Court Order between February 19, 2022 and today (February 21, 2022). Most of these tweets have no relation to the Claimants, but are in apparent violation of paragraph 3(a) of the Court Order and are thus included her."*

[17] In response the Defendant Ms. Green in her affidavit filed on May 6, 2022 gave evidence that the Order of the Court failed to give a timeline within which the material posts should be removed. It is her evidence that she removed the posts within a reasonable time. She challenges the Claimants contention that she has breached the Order and she sought to remove posts that she believed were referenced to the Order. In reference to the posts identified by Mr. Wenzel, she stated that she has taken steps to remove same even though she was of the view that they were not material to the claim.

[18] The Defendant further challenges the Claimants' interpretation of Order 3(a) of Wiltshire, J as a complete and total ban on her use of social media. At para 7 and 8 of the affidavit she stated that on being made aware of the Claimants interpretation she sought legal advice from Counsel Mr. Terrence Williams and Mrs. Valerie Neita-Robertson Q.C.

## ANALYSIS

[19] The complete Orders before the Court for consideration are set out at paragraph 3 above, i.e. the Order of Wiltshire, J and Stamp, J. The emphasis however is being placed on order 3, which states as follows:

***“3. The Defendant whether by herself, her servants and/or agents or howsoever, is restrained from:***

***a. commenting, publishing, disseminating statements on social media or any other medium;***

***b. speaking to, communicating with and/or about this claim and the matters to which it concerns to anyone (except her legal advisors),***

***unless the wording of such statement, comment, publication, communication, is sought and agreed by the claimants.***

[20] The Claim before the Court one of Defamation. The injunction sought by the Claimants was to have posts made by the Defendant in regard to the them removed from all social media platforms and to prevent her from making any comments about them or the issues before the Court before final determination of the issues.

[21] In analysing whether an order is clear and unequivocal the Court must ask itself if the words of the Order straightforward and leave no room for doubt or confusion and is capable of only one interpretation. In my assessment words the language seeks to prevent the Defendant from making public comments or statements regarding the Claimants and the substance of the Claim without the approval of the Claimants until the substantive application is heard and ruled on.

**[22]** I find no ambiguity in terms of the Order. I find the Order was clear, I do not accept the Claimant's submission that the Orders were a complete ban on her posting to reasonable or persuasive. I accept that there is no question the Order 3 prohibits the Defendant or her servants or agents from commenting, publishing and making statements specific to the Claim unless the wording is sought and agreed by the Claimants.

**Issue # 2: Whether Applicant has provided evidence of the Actus Reus to establish that the Defendant breached the order of the Court**

**[23]** The evidence of the 2<sup>nd</sup> Claimant and Mr. Wenzel is that the Defendant failed to remove all posts about the Claimant on social media platforms. It is Mr. Wenzel evidence that he identified some thirty posts and up February 21, 2022 only seven were removed. Mr. Jones in his affidavit filed May 20, 2022 at paragraph 10 sets out in tabular form instances they submitted evidences the breach of the Court Order. I believe it is helpful to the analysis to partially reproduce same:

<b>DATE</b>	<b>DEFENDANTS ACTIONS</b>	<b>CLAIMANTS ACTIONS</b>
February 18, 2022		Claimant files suit and obtains an injunction which was on Notice to the Defendant but the Defendant did not attend
February 22,2022	Defendant gives undertaking to the Court and is present in Court for the extension of the Injunction  - Gives an interview to the Gleaner	Claimants asks for interim orders to be extended

	<ul style="list-style-type: none"><li>- Posts on twitter- after taxes paid up last week</li><li>- ...</li></ul>	
March 9, 2022	<p>Defendant posts on Twitter</p> <p>My mentor: what have you learned from this</p> <p>Me. To always demand what you have worked hard for and if they ignore you for a year loud them up because if you wait for people to do the right thing it will never happen</p>	
March 10, 2022	<p>The Defendant posts on twitter –the words</p> <p>Well well well. Look at that lol for those who didn't know</p> <p>Along with a flyer a tweet from NHT think your employer has not been paying your NHT contribution? Then please contact our compliance Department at <a href="mailto:compliance@nht.gov.jm">compliance@nht.gov.jm</a></p> <p>Everytime I sue someone they offer me a nice settlement and I accept. Then off course sign an NDA so I don't embarrass them by tweeting about it.</p>	<p>Claimants Attorney wrote to the Defendant's Counsel about resolving the matter</p>

	I want a trial for once. I am young fresh and 2026 isn't that far for me lol	
May 13, 2022	Defendant attends inter partes hearing of the matter where the orders re extended  Twitter: - People seem to forget that in Order for a statement to be defamatory it must be an untrue statement.	Claimants attorneys writes to Defendants Attorney to resolve matter

**[24]** In response to averment that she conducted an interview which caused an article published in the Gleaner the Defendant stated that the reporter from the Gleaner approached her after the Court hearing and that she was asked to give her comments. She said that she declined at first but that was advised that the Gleaner would still publish the article with the Claimants version being reported. Ms Green further stated that at the time she spoke to the reporter she did not believe that her stating she was complying with the Court order would be a breach of same.

**[25]** Ms. Green gave evidence that she was of the view that all the relevant tweets had been removed and she opined that the Claimant interprets every comment as being a reference to them. In her affidavit she stated that there was never any wilful or bad faith refusal or failure to comply with the Orders of the Court.

**ANAYSIS**

[26] In the case of **Attorney General v Punch Limited and another**<sup>2</sup> the House of Lords in determining an appeal regarding contempt proceedings, addressed firstly the purpose of the Court Order. At paragraph 39 states;

*“Fundamental to the concept of contempt in this context is the intentional impedance or prejudice of the purpose of the court. The underlying purpose of the Attorney General, as the plaintiff in the proceedings against Mr Shayler, in seeking the order against Mr Shayler is nothing to the point. Lord Oliver of Aylmerton adverted to this distinction in Attorney General v Times Newspapers Ltd [1992] 1 AC 191, 223:*

*"Purpose", in this context, refers, of course, not to the litigant's purpose in obtaining the order or in fighting the action but to the purpose which, in seeking to administer justice between the parties in the particular litigation of which it had become seized, the court was intending to fulfil."*

[27] In my assessment the purpose of the order of Wiltshire, J and the extended orders was to prevent the any further dissemination, publication, communication of information with regards to the Claimant and the details of the claim with regards to the claim for defamation on social media or any media before trial. In the instant case the Defendant has not denied that she has spoken to a reporter from the Gleaner or tweeted since the imposition of the Order. Ms. Green’s contention is that she had no intention to disobey the Order of the Court.

[28] From the evidence given by the Defendant she is of the view that the interim injunction prohibited her from making specific reference to 1<sup>st</sup> and 2<sup>nd</sup> Claimant. I do not agree that with this view. On reading the words of the Order it is patently clear that she was prohibited from speaking to, communicating with or about this claim and the matters to which it concerns to anyone except for her legal advisors, unless the communication was agreed to by the Claimants.

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<sup>2</sup> [2002] UKHL 50

- [29] I therefore find that the actus reus has been established. The continued tweets, the communication with the reporter has disintegrated the purpose of limiting the information or details of the claim in the public domain before trial.
- [30] It was submitted by Counsel Mr. Clarke that the Claimant has not proved that Ms. Green had the mens rea to wilfully breach the Orders of the Court. He further submitted that there was no proof that any such breached caused them such harm. The Defendant is an attorney-at-law since December 2019.
- [31] To establish 'Civil Contempt' it must also be proved beyond a reasonable doubt that the party in breach acted deliberately. It must be established that Ms. Green knew of the Order and deliberately acted.
- [32] In line with the provisions of Rule 53 the Orders of Wiltshire. J and Stamp, J, each carried the penal notice and were duly served on the Defendant. I accept the evidence that since the service of the Order by Wiltshire J that the Defendant has engaged in a most surreptitious way to making posts and communication on social media which clearly reference the claim brought against her for defamation. I find that as an attorney –at- law the Defendant in commenting to the reporter about the matter and tweets after the Order was served on her acted deliberately. I further find that for these proceeding the Claimant does not have to prove that the breach caused them any harm. I am satisfied so that I can feel sure that the Defendant by her actions has committed Civil Contempt.

**Issue #3 & 4: Did the Defendant give an undertaking to the Court; If so, Did the Defendant breach the undertaking**

- [33] In the grounds of the Amended Notice of Application filed on 11<sup>th</sup> October 2022 at paragraph 14-16 the Claimant seeks to extend the contempt proceedings to capture alleged disobedience with respect to undertakings given to the Court on May 19, 2022.



**[34]** In her affidavit filed October 28, 2022, Ms. Green responded to the issue of the undertakings at paragraphs 32-36. She states that there were two undertakings given to the Court. The first undertaking given before Stamp, J was not call the Claimants name. The Defendant does not specifically address the undertaking given on May 19,2022. However, she in paragraph 34 and 35 she summarizes the events that occurred before Tie-Powell, J on that day.

**[35]** The Order of Tie Powell, J on May 19, 2022 is as follows;

1. *Notice of Application for Contempt Orders filed March 21, 20022 is adjourned to June 30, 2022*
2. *The Defendant undertakes not to post or upload on any social media platform or any matter save for Instagram where she will make 6 posts solely in relation to her contractual obligations under which contracts, connected to feminine products where she is required to post twice per week in relation to each. This will remain in force until the inter partes hearing of the application for injunction scheduled for May 26, 2022 at 2 pm*
3. *Costs to the Claimants for today for 2 Counsel to be taxed if not agreed.*

**[36]** With respect to the Hearing on May 26, 2022, the Defendant indicates she was not present that she did not agree to the extension of the undertaking. The assertion has not been challenged that Kings Counsel Mrs. Neita- Robinson who represented her was present and agreed to the extension of the undertaking. The defendant has also has not stated that Kings Counsel did not have the authority to act on her behalf in this regard. I do not accept that Kings Counsel would agree to the extension of the undertaking without clear an unequivocal instruction so to do.

**[37]** The undertaking given by the Defendant on May 19, 2022 was in effect until the inter partes hearing of the application for the injunction on May 26, 2022. On the latter date the Application was adjourned to June 2, 2022, and all undertakings were extended stands to reason that the extension of the undertaking was until June 2, 2022. I am of the view that there is a paucity of evidence before me with regard to tweets made between May 26, 2022 and June 2, 2022 as well as whether the undertaking remained after June 2, 2022. I therefore do not find that the

Claimants have satisfied me beyond a reasonable doubt that there was a breach of the undertakings of May 19, 2022, and May 26, 2022.

**Issue# 6: Whether the Defendant should be committed to Prison for six weeks.**

[38] Rule 53.9 sets out the various options to the Court where it has been determined that there has been contempt of the Court Order. I adopt an approach similarly to that used in sentencing, that is incarceration should not be the option.

[39] It is indeed unfortunate that the Defendant an Attorney at law has found herself in a position of being in contempt of the Orders of the Court. I am of the view that committal to prison is draconian in the circumstances. I however believe that by her actions the Defendant has unjustifiably challenged the authority of the Court.

[40] In determining what the appropriate punishment should be I am guided by the authorities that have concluded that primary purpose of civil contempt proceedings is to protect the Courts process whereas for criminal contempt the primary purpose is punitive. In my assessment I am of the view that a fine is an appropriate sanction in these circumstances as it is the Courts responsibility not allow litigants to flout the Orders made by the Court.

**CONCLUSION**

[41] In light of the evidence before this Court, I am satisfied beyond a reasonable doubt that the Defendant breached the Orders of the Court and is in contempt of Court. I conclude that the continued posting and publishing by the Defendant especially after with court dates are aggravating features of contempt. The Orders were not limited to specific reference to the Claimants but also in reference to the Claim. The punishment must be reflective that each litigant must abide by the Orders of the Court and engage the processes of the Court where one disagrees with such Orders. No litigant should act in a manner to interfere with the administration of justice.

**[42]** Both the 2<sup>nd</sup> Claimant and the Defendant are practicing attorneys at law in Jamaica. There is a reasonable expectation as well that members of the profession are acutely aware of their responsibilities to the Court and need to obey Court Orders. This is acknowledged even in the context of proceedings of a personal nature as opposed to a professional nature.

## **DISPOSAL**

- 1.** The Court has found that the Defendant has committed a civil contempt of court by her disobedience of the order of the Honourable Justice Calys Wiltshire, Justice Chester Stamp made on February 18, 2022 & February 22, 2022 respectively.
- 2.** The Court has found that the Defendant breached her undertaking given to Court Before Stamp, J on February 22, 2022 and is found to have committed Civil contempt of Court.
- 3.** The Claimants have not proved that the Defendant breached the undertakings made to the Court on May 19, 2022 and May 26, 2022.
- 4.** The sanction imposed upon the Defendant for Civil Contempt of Court is a fine in the sum of \$200,000.00 to be paid to the Accountant General within 7 days of this order.
- 5.** If the Defendant fails to comply with Order 4 above a warrant of committal shall be issued for her incarceration for a period of 30 days.
- 6.** Costs of the Application to the Claimants to be agreed or taxed.