

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 53/2006

BETWEEN	SAMUEL OLIVER SADDLER	APPELLANT
A N D	ANGELLA SADDLER	RESPONDENT

PROCEDURAL APPEAL

Written submissions by Sharon A. Usim & Company for appellant

August 30, 2006

HARRISON, P.

This procedural appeal concerns the order of James, J. that the originating summons filed on 2nd November 1995 but not served until 8th March, 2006, is valid and properly served and not deemed struck out under the provisions of Rule 73 of the Civil Procedure Rules, 2002.

Rule 8(4)(f) equates the fixed date claim form to the former originating summons.

Rule 27.2 requires that fixed dated claim forms be subject to a case management conference, on filing.

Rule 73.3(4) which applies to old proceedings in which a trial date has not been fixed, applies therefore to these proceedings. The respondent not having applied for a case management conference prior to 30th December 2003,... "the proceedings are struck out without the need for an application by any party".

(See Rule 73.3(8), as amended by Jamaica Gazette Supplement dated 17th February, 2003).

The Rules do not apply to "matrimonial proceedings", (Rule 2.2(4), which are defined in Rule 2.4 as "proceedings for dissolution of marriage and ... nullity".

The originating summons was not renewed, not having been served within twelve (12) months of its issue, as required by Order 7/1-13 of the Supreme Court Practice 1976 (U.K.), pursuant to section 686 of the Civil Procedure Code (repealed). It is deemed to have expired.

I agree with counsel for the appellant.

To allow the proceedings to be pursued after eleven (11) years would indeed be an abuse of the process of the court.

This procedural appeal is allowed.