NMLS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 48/06

BEFORE: THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MISS JUSTICE G. SMITH, J.A (Ag)

BETWEEN	RAHUL SINGH	1st APPELLANT
A N D	COMMONWEALTH COMMUNICATIONS LTD.	2nd APPELLANT
A N D	OCEAN PETROLEUM U.S.A INC.	3RD PARTY INTERVENOR/ 3rd APPELLANT
A N D	KINGSTON TELECOM LIMITED	1st RESPONDENT
A N D	CABLE & WIRELESS JA. LIMITED	2ND RESPONDENT 4TH PARTY INTERVENOR

A N D

SCCA NO 25/2005

A N D	OCEAN PETROLEUM U.S.A INC.	APPELLANT
A N D	KINGSTON TELECOM LIMITED	1st RESPONDENT
A N D	RAHUL SINGH	2ND RESPONDENT
A N D	COMMONWEALTH COMMUNICATIONS LIMITED	3RD RESPONDENT

W. Spaulding Q.C. and Mrs. Jeanne Barnes instructed by Jeanne Barnes for the Appellants.
Gordon Robinson and Harold Brady instructed by Messrs Brady & Co. for 1st Respondent.
Miss Hilary Philips, Q.C. and Kevin Williams instructed by Yolande Christopher of Grant, Stewart, Phillips & Co. for 2nd Respondent/4th Party Intervener.

June 30, and July 1, 2, 2008 and July 10, 2009

SMITH, J.A.:

1. This is an appeal against the judgment of Campbell J delivered on the 17th May, 2006 whereby he made the following orders:

> "1. The 2nd and 3rd Defendants' (now appellants) application
>
> (a) The application to set aside judgment in default entered on the 17th day of February 2005 is refused.
>
> (b) The application for a Stay of Execution of any process arising from the Default Judgment is refused.
>
> (c) Application for stay pending further order is refused.
>
> (d) Application for discharge of freezing order and striking out of claim refused.
>
> 2. Application by Cable and Wireless Limited
>
> (i) Cable and Wireless be joined as a 4th party/intervener to this suit.
>
> (ii) That the defendants, heirs, servants and/or agents be restrained from dealing with any assets whether located within the jurisdiction or not.
>
> 3. Application by Ocean Petroleum
>
> (1) That the application for a Stay of Execution of any process to execute any judgment of the Court which could access the money is refused.
>
> (2) That the Order of the Court of the 27th July 2004, freezing the sum of $630,000.00 in the account of Rahul Singh and Rohit Singh 'until trial' has been determined by the default judgment."

As the orders indicate there were three (3) applications before Campbell J. I will return to this later.

2. The 1st Appellant, Mr. Rahul Singh is an American and was a shareholder and the managing director of the 2nd Appellant, Commonwealth Communications Ltd (CCL) which is a company incorporated in Florida, U.S.A. The 3rd Appellant/3rd Party Intervener, Ocean Petroleum Inc. (OPI) is incorporated in the U.S.A. Mr. Singh is a shareholder of OPI. The 1st Respondent (in both appeals) Kingston Telecom Ltd. (KTL) is a licensed telecommunications carrier incorporated under the laws of Jamaica. Mr. Singh is also a director of KTL. The 2nd Respondent (4th Party Intervener in appeal No. 48/2006), Cable & Wireless Jamaica Ltd. (C&WJ) is a company incorporated under the laws of Jamaica.

3. **Background**

On December 15, 2003 KTL filed a Claim Form and Particulars of Claim against Mr. Singh and CCL claiming a sum of US $1.8M being the estimated amount due and owing to KTL pursuant to a contract and damages for breach of fiduciary duties and breach of contract. The claim will be set out fully later in this judgment. On December 17, 2003, Marsh J granted a Freezing Order on the ex parte application of KTL restraining Mr. Singh, CCL and one Mr. Dahari (not a party in this appeal) from disposing of assets up to a limit of $1.8M for 28 days. The appellants (Singh & CCL) were served with the Claim Form and Particulars of Claim on December 20, 2003. On January 9, 2004 they filed an acknowledgment of service. They did not file a defence. On January 14, 2004 James J, varied the Freezing Order to add KTL's undertaking as to damages

and to permit Singh, CCL and Dahari, to use such sums as would be required for normal living expenses as well as legal fees. The application for a Freezing Order pending the trial of the Claim was adjourned to February 2, 2004, when it first went before Rattray J. On July 27, 2004, Rattray J granted the application thereby freezing funds in the National Commercial Bank (NCB) in the joint names of Mr. Singh and his brother Robit (who is not a party to the suit) until the trial of the action. In October, 2004 OPI sought to discharge the freezing order on the ground that the money which the Freezing Order affects is not the property of either Mr. Singh or CCL but is being held in trust for OPI. On January 16, 2005 Norma McIntosh J refused the application to discharge the Freezing Order. There is an appeal against this Order.

4. On February 17, 2005 a judgment in default of defence was entered against Mr. Singh and CCL in the sum of $2,033,166.32. with interest at the rate of 12% per annum from the date of judgment, together with court fees and attorney's fees of $26,000.00. On April 13, 2005 the following applications went before Campbell J.:

> (a) An application by Mr. Singh and CCL to set aside the default judgment, to stay execution of any process arising from the said default judgment, to stay proceedings pending further order of the court and that the appellants be granted such further and other reliefs which the Court considers just and appropriate including leave to file a defence if the court deems it necessary.

At the hearing the applicants sought two further orders, namely, that the freezing order be discharged and that the claim be struck out.

(b) An application by CWJ for orders that the applicant be joined as 4th Party Interveners, that Mr. Singh, CCL and Mr. Dahari be restrained from dealing with any assets and that the costs of the application be paid by Mr. Singh and or by OPI.

(c) An application by OPI for a stay of execution of the order of Norma McIntosh J made January 16, 2005 pending the appeal of that order.

On May 17, 2006 Campbell J made the order to which I referred at the outset. He granted leave to appeal and a stay of execution for 3 weeks.

5. **On Appeal**

Some eight (8) grounds of appeal were filed. Grounds 1 to 7 relate to the 1st Respondent/Claimant KTL. Only ground 8 applies to the 2nd Respondent/ 4th Party Intervener, CWJ. For economy of presentation, the grounds were argued in groups based on the issues to which they relate.

6. **Grounds 1 (ii) and (v), 3 (i) and (iii) and 4**

The complaint is that the learned judge erred in refusing to set aside the default judgment. The issue raised by these grounds is whether the default judgment was wrongly and/or irregularly entered. Mr. Spaulding Q.C. for the appellants contends that the default judgment is irregular and or defective in that:

(a) The money claimed, US$1.8M, was clearly subject to being reduced by an amount for equipment, the value of which has not been ascertained. Thus, he says, the claim is for an unspecified sum and is

subject to assessment in accordance with rules 12. 10 (1) (b) and 16.2 of the Civil Procedure Rules 2002 (C.P.R).

(b) The Claim Form is in conflict with the Particulars of Claim and the claim is without basis in fact and in law.

7. Mr. Robinson for the respondent, KTL, submits that the default judgment was entered pursuant to Rule 12.5 of the CPR and satisfied all the conditions set out therein. Campbell J, he says, was not obliged to set it aside unless the appellants comply with the provisions of Rule 13.3 of the CPR. Campbell J's decision not to set aside the default judgment, he says, is supported by decisions in ***Wood v H.G. Liquors Ltd. and Another*** (1995) 48 W.I.R. 240,256; ***Port Services Ltd. v. Montego Bay Tours Ltd. and Fireman Fund Insurance Co.*** SCCA No. 18/2001 delivered March 11, 2002 and ***James Robertson v Maxine Henry Wilson and CVM Television Ltd.*** C.L. 2001/R034 November 9 & 11, 2004.

8. Where a default judgment has been wrongly or irregularly obtained, a defendant is entitled to have it set aside **ex. debito justitiae.** Rule 13.2 (1) which is relevant, states:

> "The Court must set aside a judgment entered under Part 12 if judgment was wrongly entered because –
>
> > (a) in the case of a failure to file an acknowledgment of service, any of the conditions in rule 12.4 was not satisfied;
> >
> > (b) in the case of judgment for failure to defend, any of the conditions in rule 12.5 was not satisfied; or

(c) the whole of the claim was satisfied before the judgment was entered."

In the instant case the relevant subsection is (1)(b). Rule 12.5 to which this subsection refers, provides:

"The registry must enter judgment at the request of the claimant against a defendant for failure to defend if—

(a) the claimant proves service of the claim form and particulars of claim on that defendant; or

(b) an acknowledgement of service has been filed by the defendant against whom judgment is sought; and

(c) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired;

(d) that defendant has not—

(i) filed a defence within time to the claim or any part of it (or such defence has been struck out or is deemed to have been struck out under rule 22.2 (6);

(ii) where the only claim is for a specified sum of money, filed or served on the claimant an admission of liability to pay all of the money claimed, together with a request for time to pay it; or

(iii) satisfied the claim on which the claimant seeks judgment; and

(e) there is no pending application for an extension of time to file the defence."

9. The learned trial judge examined the affidavit evidence placed before him as well as the record of the court. He found that all the appellants (then defendants) were duly served and that "all of the conditions referred to in 13.2(1) having been satisfactorily complied with, the defendant is therefore not entitled to have the default judgment set aside on the basis that it was wrongly or irregularly entered." The learned judge's decision, in this regard, cannot in my opinion, be faulted. The submissions of Mr. Spaulding that the default judgment should be set aside for the reasons he has given cannot be accepted. These grounds should fail. I will consider later the provisions of Rule 13.3 which deal with setting aside or varying a regularly obtained default judgment.

Grounds 1 (iii) and 5

10. The essential complaints in these grounds are that the award of interest is in breach of rules 8.7 (3) and 12.11 (1) and that the unspecified sum claimed was wrongly increased by the addition of interest. In the circumstances, counsel for the appellant contends that the learned judge erred in refusing to set aside the default judgment for US$2,033,161.32.

We have seen that the rule 12.5 sets out the conditions of which a claimant must satisfy the registry in order to obtain a judgment against a defendant for failure to defend. We have also seen that the court must set aside a judgment entered for failure to defend if any of the conditions in rule 12.5 was not satisfied.

The question is whether or not the default judgment entered in the circumstances referred to in these grounds ought to be set aside by the court as wrongly or irregularly entered.

11. It is necessary to refer to the Claim Form which states:

> "The Claimant Kingston Telecom Ltd. of (3) Harbour Street in the parish of Kingston claims against the Defendants, Zion Dahari of... and Rahul Singh and Commonwealth Communications LLC ... the sum of US$1.8M, being the estimated amount due and owing to the Claimant pursuant to a contract for the supply of telecommunications services by the Applicant to the Defendants, and damages arising from the 1st Defendant's breach of fiduciary duties, and the 2nd Respondent's breach of a contract for the supply of equipment under which the Defendants conspired to, and did wrongfully remove the Claimant's equipment from its premises despite having withheld monies received for and on behalf of the Claimant as consideration for the supply of the said equipment".

Amount Claimed	**US$1,800,000.00**
Court Fees	**2,000.00**
Attorney's Fixed Costs on issue	**10,000.00**
Total Amount Claimed	**US$1,800,000.00 and JA$12,000**

The claim in the Particulars of Claim is for:

> "(1) The sum of U.S. $1.8M in respect of the operation of the network for 4 months less the purchase price of the equipment provided by the 2nd Defendant.
>
> (2) The return of the equipment and office furniture, or its value in the sum of US$898,591.75
> ..."

The Claim Form and Particulars of Claim were signed and filed on December 15, 2003.

12. The judgment for failure to defend was entered on February 17, 2005 thus:

> "The 2nd and 3rd Defendants, Rahul Singh and Communications LLC having entered an Appearance but filed no Defence to the action therein, IT IS THIS DAY ADJUDGED that the Plaintiff recovers from the 2nd and 3rd Defendants the sum of US$2,033,161.32 together with interest thereon at the rate of 12% from the date of Judgment plus Court fees and Attorney's fixed costs on issues in the amount of JA$25,000.00".

The Default judgment was entered for a specified sum of money, but this is only permissible where the claim itself was for a specified sum of money – See Rule 12.10 (1) (a). If the claim is for an unspecified sum of money, as Mr. Spaulding contends, then the judgment should be "for the payment of an amount to be decided by the court" – See Rule 12: 10 (1) (b). Now in rule 2.4 "a claim for a specified sum of money" is defined as:

> "(a) a claim for a sum of money that is ascertained or capable of being ascertained as a matter of arithmetic and is recoverable under a contract;
> ...

In my judgment, it is clear that Kingston Telecom Limited's claim against the appellants is not for an ascertained sum of money or for a sum capable of being ascertained as a matter of arithmetic. The mere device of inserting in the claim a specific sum when in fact the claim is really for an unspecified sum of money does not entitle the claimant to enter judgment for the payment of that

amount. This principle may be extracted from ***Birbari Ltd. v Freda Birbari and Another*** 23 W.I.R 98- a pre CPR decision.

The alleged breaches by the appellants consist of (i) breach of contract to supply telecommunication services; (ii) breach of fiduciary duties; (iii) breach of contract for the supply of equipment; and (iv) wrongful removal of the claimant's equipment. The ascertainment of the total amount to which the claimant would be entitled would, I think, clearly depend upon an examination of the extent to which the appellants have failed to supply the telecommunication services, the nature of the breach of fiduciary duties and the consequent loss, the extent to which they have failed to supply the equipment and of the financial loss suffered by the unlawful removal of the claimant's equipment. I would venture to say that it cannot be seriously argued that Kingston Telecom Limited's claim is for a specified sum of money as defined by rule 2.4. Accordingly the default judgment entered should have been "for the payment of an amount to be decided by the Court" pursuant to rule 12.10 (1) (b). This would of course require an assessment of damages.

13. The default judgment is entered for US$2,033,161.32 together with interest at 12% from the date of judgment. It is not stated how the sum of $2,033,161.32 was arrived at. Does it include a sum for interest which accrued prior to the date of judgment? If it does, such inclusion of interest would be contrary to rule 12.11 (1). If there was no compliance with rule 12.11 (1) the claimant would not

be entitled to include interest in the request for judgment. See ***Long Yong PTE Ltd. v Forbes*** (1986) 23 JLR 29. Although a pre CPR case its decision as regards the effect of the non-inclusion of interest in the claim remains the same. Rule 12.11 (1) reads:

> "A default judgment shall include judgment for interest for the period claimed where –
>
> (a) the claim form includes a claim for interest;
>
> (b) the claim form or particulars of claim includes the details required by rule 8.7 (3); and
>
> (c) the request for default judgment states the amount of interest to the date it was filed".

Rule 8.7 (3) provides:

> "A claimant who is seeking interest must
>
> (a) say so in the claim form, and
>
> (b) include in the claim form or particulars of claim details of –
>
> (i) the basis of entitlement;
> (ii) the rate;
> (iii) the date from which it is claimed;
> (iv) the date to which it is claimed; and
> (v) where the claim is for a specified sum of money,
>
> - the total amount of interest claimed to the date of the claim; and
>
> - the daily rate at which interest will accrue

after the date of the claim".

The language of these rules indicates that they were intended to address a claim for interests which accrue up to the date of the default judgment and not interest on the default judgment itself. Rule 12.11 does not, in my view, entitle a claimant to request a final judgment for accrued interest to be entered unless such interest is claimed in the claim form. However, interest on the judgment is a completely different matter. This is provided for by S.51 of the Judicature (Supreme Court) Act. This section provides that every judgment debt shall in the Supreme Court carry interest at the rate of six percent per annum from the time the judgment was entered to the time of its satisfaction. Such interest, of course, need not to be claimed and the Court does not have to make an order for such interest to be paid. S.51 states that such interest may be levied under a Writ of Execution on such judgment. Accordingly, nothing is amiss in stating that judgment is entered for a particular sum together with interest on the judgment at the statutory rate from the date of judgment.

14. Notwithstanding the above, it seems to me that it cannot be gainsaid that the judgment was entered for too large a sum. There is no mention of accrued interest in the claim form, thus the sum of money claimed may not include such interest. Further, the sum of money specified in the claim form is US$1.8M being the estimated amount due. In the Particulars of Claim the sum specified is US$1.8M in respect of the operation of the network for four (4) months less the

purchase price of the equipment provided by the Defendant (Mr. Rahul Singh). I can see no justification for the claimant requesting that judgment be entered for US$2,033,161.32. Also, the amounts claimed for court fees and attorney's fixed costs in the claim form total $12,000, whereas the amount entered in the default judgment for the said items is $25,000.00. The claimant has without doubt requested the registry to enter a judgment for a sum not claimed in the claim form or statement of claim.

15. One critical question is: what is the effect of entering final judgment for a specified sum when in fact and in law the claim is really for an unspecified sum? Another such question concerns the effect of entering judgment for too large a sum. These conditions do not fall within the purview of rule 12.5. Thus in those circumstances, the court is not empowered by rule 13.2 (1) to set aside the judgment as wrongly entered. For the reasons given in paras 6-9 (supra) the appellant's contention that Campbell J. erred in not setting aside the default judgment ex debito justitiae is not tenable. The pre-CPR decisions relied on by Mr. Spaulding, Q.C. are not helpful in this regard as they were decided under a different regime.

16. All the other grounds which relate to Kingston Telecom Limited, that is, the 1st respondent/claimant, must suffer the same fate as those I have already examined. Grounds 1 (iii) and 1 (iv) concern the complaint that the learned trial judge failed to address his mind to the "undisputed and indisputable" evidence

that there was no basis for Kingston Telecom Limited's claim. Grounds 2, 3 (ii) and 6 concern the complaints of deceit and abuse of the court's process on the part of the claimant. In ground 7 the appellants complain that the learned judge misinterpreted the affidavit evidence of Mrs. Jeanne Barnes. But, as we have seen, rule 12.5 sets out the conditions of which a claimant is obliged to satisfy the registry in order to obtain a judgment in default of defence. The claimant's request for default judgment satisfies the requirements of rule 12.5. The learned judge in the court below found that all three (3) appellants were duly served. He found that the conditions referred to in rule 13.2 (1) (b) were satisfactorily complied with. He accordingly concluded "the defendant(s) is (are) therefore not entitled to have the default judgment set aside on the basis that it was wrongly entered". I am certainly inclined to the view that the learned judge is right.

Setting Aside or Varying a Judgment "Regularly" Entered.

17. Having concluded that the default judgment could not be set aside pursuant to rule 13.2, the learned judge proceeded to consider the provisions of rule 13.3. Rule 13.3 as it then was (it was amended in September, 2006) reads:

> "13.3 (1) Where rule 13.2 does not apply the court may set aside a judgment entered under Part 12 only if the defendant –
>
> (a) applies to the court as soon as reasonably practicable after finding out that the judgment had been entered;

> (b) gives a good explanation for the failure to file an acknowledgement of service or a defence as the case may be; and
>
> (c) has a real prospect of successfully defending the claim;
>
> (2) Where this rule gives the court power to set aside a judgment, the court may instead vary it".

The learned trial judge found that there was no good explanation given by the appellants for their failure to file a defence. In this regard the learned judge said, "The defendants have filed several affidavits in support of their application to set aside the default judgment. None of these condescend to specify an explanation for a failure to file a defence" (p 11 of judgment). After referring to the affidavit of Rahul Singh, the learned judge at p 12 continued:

> "Jean Barnes' affidavit did not condescend to detail any explanation for the delay; she testifies that the defendant's were estopped from pursuing the Claim due to the Arbitral proceedings in Florida. According to her, those hearings also produced evidence from the mouth of the defendant's witnesses that would contradict the pleadings in the Claim. She further stated that another source of the irregularity was that the sum pleaded was unliquidated and there were contradictions in the amount claimed on the face of the Particulars of Claim."
>
> There was no claim for interest. Paragraph 24 of Jean Barnes' affidavit states:
>
> > 'The defendants should not be required to enter a defence unless the irregularities in and bad faith associated with the claim

> are cured, and the claimant has established that there has been no deceit or abuse of process of the court.'
>
> This clearly negatives any intention on the part of the defendants to file a defence..."

18. Having concluded that there was no good explanation for the failure to file a defence, the learned trial judge applied the decision in the procedural appeal of ***Caribbean Depot Ltd. v International Seasoning and Spice Ltd*** SCCA 48/2004 delivered June 7, 2004 and dismissed the application to set aside the judgment under rule 13.3 (1) as it then was. As I have indicated above, this rule was amended in September, 2006. It should be noted that the decision in the ***Caribbean Depot Ltd.*** case is not applicable to the amended rule.

19. In my view the reasoning of Campbell, J. in holding that the application of the appellants to set aside the default judgment under the then rule 13.3 (1) cannot be faulted. However, I think that he should have gone on to consider whether the default judgment should be varied by virtue of rule 13.3 (2) which, incidentally, has not been affected by the 2006 amendment. This subsection of rule 13.3 gives the court power to vary a default judgment on an application to set it aside. It seems to me that rule 13.3 (2) enables the court, pursuant to the overriding objective of the Rules, to ensure that a default judgment does not offend any rule and does not result in injustice.

20. In the instant case it is demonstrably clear that the sum of $2,033,161.32 specified in the judgment includes accrued interest and thus offends rules 8.7 (3)

and 12.11. It is also clear to me that default judgment was entered for the payment of a specified sum of money on a claim which was in fact for an unspecified sum and accordingly not in accordance with rule 12.10 (1) (b). Further the sum of money entered in the default judgment for court fees and attorney's fixed costs exceeds the total amount claimed for these items in the Claim Form.

In the circumstances I would vary the default judgment to ensure compliance with the rules and fairness.

21. **Ground 8**.

This ground only concerns CWJ. The complaint in this ground is that the learned trial judge erred in granting the application of CWJ Ltd. to be joined as a 4th Party Intervener/Respondent to the suit filed on July 25,2005 without hearing from CWJ and the other parties concerning the procedural or substantive issues on the application. The narrow point here is that the learned judge did not hear the parties before granting CWJ's application to be joined. Rule 19.2 (3) provides:

> "The Court may add a new party to proceedings without an application, if –
>
> (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
>
> (b) there is an issue involving the new party which is connected to the matters in dispute, in the proceedings and it is

> desirable to add the new party so that the court can resolve that issue."

Mr. Spaulding Q.C. submits that this rule is not applicable for the following reasons:

> "(i) There was an application before the Court; Rule 19.2 (3) contemplates a situation where there is no application.
>
> (ii) The judge had ruled that the CWJ's application would be deferred and heard by him after the hearing of the prior applications which were before the Court.
>
> (iii) In this context counsel for the appellants gave an undertaking not to deal with in anyway a sum of US $200,000.00 of the amount frozen which sum represents the amount of the alleged entitlement being claimed by CWJ.
>
> (iv) The relevant rules where there is an application before the court, is rule 11.14 which provides:
>
> 'The court may deal with an application without a hearing if –
>
> (a) no notice of the application is required;
>
> (b) the parties agree;
>
> (c) the court considers that the application can be dealt with over the telephone or by other means of communication.
>
> (d) the parties have agreed to the terms of an order or;
>
> (e) the court does not consider that a hearing would be appropriate."

Miss Philips Q.C. for CWJ contends that there is nothing in rules 19.2, 11.14 or 1.1 which prohibits the learned judge from exercising his discretion in the manner in which he did. She submits that the fact that the learned judge had indicated earlier that he would hear CWJ's application to Intervene subsequent to the hearing of the Application to Set Aside the Default Judgment does not negate the judge's exercise of his discretion in accordance with 19.2(3) without calling upon CWJ or any other party.

In my judgment Miss Philips is right. The learned trial judge examined the affidavit evidence which is relevant to CWJ's application. He concluded that "Adding Cable and Wireless should allow the court to better examine the operation of those closely aligned companies" – page 16 of judgment.

The appellants are not saying that the learned judge is wrong in so concluding. Indeed the appellants are not contending that it was not desirable to add CWJ so that the court can resolve all the matters in dispute in the proceedings. They have not shown that the judge has wrongly exercised his discretion in ordering that CWJ be added as a party without hearing from the applicant or anyone else. This ground must fail.

22. **Conclusion**

(i) In my view the respondent had satisfied the conditions set out in rule 12.5 and accordingly Campbell J was right in holding that the appellants were not entitled to have the default judgment set aside under rule 13.2.

(ii) Campbell J was also right in refusing to set aside the default judgment under rule 13.3 in that the appellants had failed to give a good explanation for not filing a defence.

(iii) The default judgment entered at the request of the respondent claimant by the registry in carrying out its administrative functions offends rules 8.7(3) and 12.11(1) and is not in accordance with rule 12. 10 (1) (b). Additionally the judgment is for the payment of sums of money larger than amounts stated in the Claim Form and the Particulars of Claim.

(iv) Pursuant to rule 13.3(2), I would vary the default judgment to read:

> "The 2nd and 3rd Defendants Rahul Singh and Commonwealth Communications Ltd (LLC) having acknowledged service but filed no defence to the claim herein,
>
> IT IS HEREBY ADJUDGED that there be judgment for the Claimant against the 2nd and 3rd Defendants for the payment of an amount to be decided by the court plus Court fees and Attorneys' fixed costs in the amounts of $2,000 and $10,000 respectively".

(v) The learned judge properly exercised his discretion in granting CWJ's application to be joined as a party without hearing from CWJ and the other parties.

Accordingly, I would dismiss the appeal, save for the variation of the default judgment as indicated at (iv) above. The appellants must pay one half the respondents' costs.

HARRISON, J.A:

I agree.

G. SMITH, J.A. (Ag.)

I agree.

SMITH J.A.

ORDER:

The appeal is dismissed. Default judgment varied to read:

> "The 2nd and 3rd Defendants Rahul Singh and Commonwealth Communications Ltd (LLC) having acknowledged service but filed no defence to the claim herein,
>
> IT IS HEREBY ADJUDGED that there be judgment for the Claimant against the 2nd and 3rd Defendants for the payment of an amount to be decided by the court plus Court fees and Attorneys' fixed costs in the amounts of $2,000 and $10,000 respectively."

The appellants must pay one half the respondents' costs.