[2016] JMCA App 7

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 93/2014

APPLICATION NOS 126 & 197/2015

BEFORE: THE HON MISS JUSTICE PHILLIPS JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MISS JUSTICE P WILLIAMS JA (AG)

BETWEEN	**BARTHOLOMEW BROWN**	**1ST APPLICANT**
AND	**BRIDGETTE BROWN**	**2ND APPLICANT**
AND	**JAMAICA NATIONAL BUILDING SOCIETY**	**RESPONDENT**

Bartholomew Brown and Bridgette Brown in person

Mrs Helene Coley-Nicholson and Ms Dian Johnson instructed by Garth McBean & Co for the respondent

Miss Carlene Larmond instructed by the Director of State Proceedings for the Attorney-General

30 November 2015 and 18 March 2016

PHILLIPS JA

[1] The applicants have filed multiple appeals and applications before this court challenging, *inter alia*, multiple decisions of this court and the Supreme Court on the basis that, *inter alia*, they have been deprived of their constitutional right to a fair hearing since most of the judges who heard their matters were biased and corrupt. I may shortly be similarly accused, because I am minded to refuse their applications and to grant orders to protect the court's process from further abuse by the applicants, and

may also ultimately expedite a trial of the applicants' claim filed in the Supreme Court since 6 June 2007.

[2] In the present applications filed before this court, nos 126 and 197/2015, the applicants sought, *inter alia*, the intervention of the Attorney-General in their matters and a review of several previous decisions made in this court and below. They have complained throughout their submissions and at the hearing of the applications before us that the judges who heard their matters had failed to examine all of the evidence and failed to consider all aspects of their matters. They have also submitted voluminous documentations and requested that the court examine and address all of the matters that have been placed before it. The respondent filed preliminary objections to both applications on the basis of *res judicata* and re-litigation as an abuse of the process of the court. In an endeavour to make comprehensive rulings on the applications before us, to address the applicants' complaint, and in deciding the merits of the respondent's preliminary objections, I am constrained to embark upon a journey through some of the relevant applications filed by the applicants before this court and the Supreme Court which impinge on the applications before us.

Claim No 02360 HCV 2007

[3] In 1993, the applicants averred that they had obtained a loan of $800,000.00 from the respondent to complete construction of their dwelling house at 27 Maxfield Place, Runaway Bay in the parish of Saint Ann. The applicants alleged that having made their monthly payments, these payments were not credited to their account in a timely manner which thereby placed their account into arrears; caused it to accrue late

charges; and exposed their home to foreclosure. While they were able to rescue their house from foreclosure, the applicants alleged that their efforts to do so have resulted in severe loss and damages.

[4] On 6 June 2007, the applicants filed a claim against the respondent seeking, *inter alia*, damages under several heads (including exemplary damages) for, *inter alia*, breach of contract and negligence. The respondent's defence was filed out of time, on 2 April 2008, and so it sought an extension of time for filing the same. On 8 May 2008 Master Lindo (as she then was) granted the respondent's application for extension of time to file its defence and ordered that a case management conference be held on 9 June 2008. This claim is still pending due to several aborted trials.

Application No 86/2008

[5] In an application for an extension of time filed 6 June 2008, to appeal against Master Lindo's decision to grant the respondent an extension of time to file its defence, the applicants urged this court to rule in their favour on the basis that, *inter alia*, their delay in filing notice and grounds of appeal was not attributable to them and they had good grounds of appeal since the learned judge was "very biased". The matter was heard by Panton P, Harris JA and G Smith JA (Ag) (as she then was) on 15 October 2008. Panton P, in an oral judgment delivered on 24 October 2008, on the court's behalf, refused the application sought on the basis that it was within Master Lindo's discretion to extend time having regard to the respondent's reasons for its delay in filing a defence. These reasons, as stated in the affidavit of Byron Ward (Legal Counsel and Corporate Secretary for the respondent) filed on 17 April 2008 in support of the

respondent's application for the extension of time to file its defence, included the fact that active steps were being taken to settle the matter and that the applicants had changed attorneys on numerous occasions. This court also found that no evidence had been presented to the court or was disclosed in the copious documents filed before the court which substantiated the applicants' claim that Master Lindo was "very biased". Moreover, the court found that there was no indication that the respondent's defence was a sham and based on the averments contained therein it "may well have a good defence". Consequently, the application for an extension of time to appeal Master Lindo's order filed by the applicants was refused; the substantive claim was ordered to proceed to case management conference in the Supreme Court; and costs were awarded to the respondent.

Supreme Court Civil Appeal No 29/2009

Application Nos 48 and 129/2009

[6] On 4 November 2008, the respondent filed a notice of application which sought orders striking out the applicants' statement of case and the grant of summary judgment in the respondent's favour. The grounds upon which these orders were being sought were that the applicants' claim had no real prospect of success and that the alleged causes of action arose more than six years before the filing of the claim and were therefore statute barred. On 24 November 2008, the matter came before B Morrison J at a case management conference. Having agreed with the respondent that the applicants' claim was statute barred, the learned judge struck out the applicants' claim and granted summary judgment to the respondent.

[7] On 1 December 2008, the applicants filed an application (which was relisted on 19 January 2009) in the Supreme Court for an order setting aside B Morrison J's order on the basis that, *inter alia*, B Morrison J had erred in not conducting a case management conference and that their claim was not statute barred. The application was heard by R Anderson J on 5 February 2009 who dismissed it after hearing a preliminary objection filed by the respondent that there was no jurisdiction of a judge in the Supreme Court to set aside an order made by another judge of that court enjoying equal or concurrent jurisdiction. Notwithstanding Anderson J's order, the applicants renewed this application before Beckford J who heard and dismissed it on 24 February 2009. On 26 February 2009, the applicants again renewed the same application before Brooks J (as he then was) who also upheld a similar preliminary objection made by the respondent; awarded costs to the respondent to be taxed if not agreed; and ordered that no further applications made by the applicants were to be heard until costs were paid to the respondent. The applicants nonetheless made the same application before Thompson-James J (Ag) (as she then was) on 6 May 2009 who refused it since it was already dealt with by Brooks J on 26 February 2009.

[8] On 16 March 2009, the applicants lodged SCCA No 29/2009 challenging both the orders of Morrison J and Brooks J on the basis that both judges had ignored the order of this court made on 24 October 2008 that the matter should proceed to a case management conference and that the action was not statute barred. Before this appeal was even heard, the applicants filed at least two interlocutory applications within that appeal as follows:

(1) Application No 48/2009

Filed on 16 March 2009, this application sought to vary the order of this court made on 24 October 2008; revoke the order of Brooks J made on 26 February 2009; obtain an interim payment; and an interlocutory injunction. The application was heard on 30 March 2009 by Panton P, Harris JA and Morrison JA (as he then was) and was dismissed on 1 April 2009.

(2) Application No 129/2009

Filed on 1 July 2009, this application sought to re-admit and set aside the same application that had been dismissed on 1 April 2009 or in the alternative, an order for an interlocutory injunction and final judgment.

[9] Application No 129/2009 and the substantive appeal were to be heard in the week of 27 July 2009. However, after the matter was adjourned, Panton P recused himself in light of comments made by the applicants in their written submissions. The appeal was eventually heard on 2 and 3 November 2009 by Harrison JA, Morrison JA and I and both parties made submissions. In a judgment delivered on 4 March 2010, this court found that B Morrison J was entitled and duty bound to exercise his case management powers summarily if he formed the view that the applicants' claim had no prospect of success. However, this court also found that B Morrison J erred in his assessment of the applicants' prospect of success since he seemed to have given no

consideration to the notion that a plea of limitation may be defeated, in the instant case, by either estoppel or an implied agreement, if a judge accepted the applicants' version of events. This court also held that Brooks J was correct to find that he had no jurisdiction to entertain the applicants' application and made the following orders:

> "(i) the appeal against the order made by Morrison J on 24 November 2008 is allowed and the order for costs made in favour of JNBS is set aside;
>
> (ii) the appeal against the order of Brooks J made on 26 February 2009 is dismissed, with no order as to costs;
>
> (iii) the matter is remitted to the Supreme Court for a case management conference to be scheduled, before a judge who has not previously heard any application in this matter;
>
> (iv) the Browns are to have the costs of this appeal, to be agreed or taxed."

A case management conference was held on 27 July 2010 before Lawrence-Beswick J who fixed a trial date for 20-24 June 2011. The trial commenced before E Brown J on 20-23 June 2011 but was aborted due to the 1st applicant's repeated comments questioning the fairness of the trial.

Supreme Court Civil Appeal No 29/2009

Motion No 6/2010

[10] The applicants filed a notice of motion on 17 June 2010, seeking leave to appeal to Her Majesty in Council against the Court of Appeal decision of 4 March 2010. This notice of motion was heard by K Harrison JA, Harris JA and Morrison JA on 28 June 2010 and on 1 July 2010 it was refused with no order made as to costs.

[11] Although the decision of 4 March 2010 was in their favour, the applicants sought permission to appeal it from the Judicial Committee of the Privy Council and that application was also refused.

Application No 167/2011

[12] Despite the Privy Council's refusal to grant the applicants permission to appeal the judgment of 4 March 2010, on 8 September 2011, they filed a notice of application that asked this court to "re-call and set aside" its judgment made on 4 March 2010 and for interim payment of $4,000,000.00. The main arguments advanced in support of this application were that: (i) the judgment was ultra vires, a sham, partial, misleading and unconstitutional; (ii) the judges of the Supreme Court were not independent or impartial; (iii) the decisions of the Court of Appeal conflicted with the rules of equity and the principle of stare decisis; and (iv) the judges, the respondent and Mr Garth McBean QC for the respondent, "are all members of a secret group called the lodge society" and so they had a conflict of interest. This application was heard on 6 October 2011 by K Harrison JA, Dukharan JA and Hibbert JA (Ag) (as he then was) who refused the orders sought and awarded costs to the respondent to be agreed or taxed.

Supreme Court Civil Appeal No 70/2012

Application No 16/2013

[13] On 16 February 2012, the applicants filed a notice of motion in the Supreme Court seeking an order that the judges were biased and sitting in their own cause; they had filed two applications on 3 and 11 May 2011 respectively that the judges refused to hear; and that they were unable to get a fair hearing in the matter. They relied on five

main grounds which were that: (i) the applicants were prejudiced by judges and court staff of the Supreme Court and the Court of Appeal in particular, Panton P, Brooks J, C Daye J, F Williams J, E Brown J, and the registrar of the Supreme Court; (ii) they were not heard by an independent and impartial tribunal; (iii) the judges were biased and failed to disclose their conflicts of interest; and (iv) the judges breached the rules of natural justice. The matter was heard by Pusey J on 26 April 2012 and on 2 May 2012, the learned judge noted that although the applicants ought to have filed a fixed date claim form and not a notice of motion he would nonetheless consider their application. After considering their application the learned judge refused it on the basis that the applicants' complaints of bias were all unsubstantiated and based on "innuendo and suspicion".

[14] On 15 February 2013, the applicants filed an appeal against Pusey J's decision seeking to set it aside on the basis that, *inter alia*, the learned judge himself was also biased and corrupt. They also sought interim payment of $10,000,000.00; an order to strike out the defence; and restitution by the respondent in the sum of $600,000.00 plus 20% interest. The applicants filed 20 grounds of appeal in support of this application which stated, *inter alia*, that: (i) their claim of 6 June 2007 should not proceed to trial because the respondent's liability has been established by the Court of Appeal's judgment delivered 4 March 2010; (ii) Pusey J and the Court of Appeal judges were biased and sitting in their own cause; (iii) the Court of Appeal prejudiced the issues in making the decisions of 24 October 2008 and 4 March 2010; and (iv) Pusey J

was wrong to find that the judges of the Court of Appeal and the Supreme Court were not biased.

[15] This appeal was heard by Harris JA, Dukharan JA and Lawrence-Beswick JA (Ag) (as she then was) on 9 April 2013 and judgment was delivered on 19 April 2013. The court considered Pusey J's finding that the application filed by the applicants on 16 February 2012 should have been made by fixed date claim form and found that the applicants could have commenced proceedings either by a notice of motion or fixed date claim form and therefore the learned judge rightly gave full consideration to the applicants' application.

[16] This court also found that there was no evidence adduced by the applicants to show that: (i) Pusey J or any of the judges in this court had an interest in the instant case or that they were biased; (ii) the judges' decisions were not in keeping with relevant laws or facts; (iii) they had not received a fair hearing; and (iv) any of their constitutional rights had been infringed. Additionally, this court found that liability could not be ascribed to the respondent simply because B Morrison J's judgment was set aside in the decision of 4 March 2010. The additional orders sought were refused on the basis that this court had no jurisdiction to hear such an application since it was not an interlocutory application incidental to the appeal nor did it emanate from a decision of a judge in the court below from which an appeal has been lodged. The appeal against Pusey J's decision was dismissed; the application for court orders were refused; and costs were awarded to the respondent to be taxed if not agreed.

Supreme Court Civil Appeal No 70/2012

Motion No 5/2013

[17] On 29 April 2013, the applicants filed a notice of motion seeking leave to appeal to Her Majesty in Council, against the judgment delivered on 19 April 2013. This application was heard by Harris JA, Dukharan JA and Lawrence-Beswick JA (Ag) on 14 October 2013. It was refused because: (i) the required conditions for granting leave to appeal to Her Majesty in Council under section 110(1)(a) and (2) of the Jamaican Constitution were not satisfied; (ii) the proposed appeal did not emanate from a final decision of the court relating to a matter exceeding $1000.00 in value; and (iii) no question of great public importance had been identified by the applicants.

[18] Having been refused permission to appeal to Her Majesty in Council, the applicants filed an application for permission to appeal the Court of Appeal judgment dated 14 October 2013 before the Privy Council. On 27 May 2014, the Privy Council refused their application for permission to appeal on the basis that:

> "...the application does not raise an arguable point of law of general public importance. Having read all the papers including the further submissions of 26 March, the Panel decided that no arguable point of law arose."

Supreme Court Civil Appeal No 29/2009

Appeal against taxation

[19] In pursuit of costs awarded to them in the judgment of 4 March 2010, as set out in paragraphs [6]-[9] above, the applicants laid a bill of costs totalling $1,107,402.25. These costs were taxed by the registrar in the sum of $216,740.00. The applicants

challenged the registrar's taxation ruling seeking, *inter alia*, costs for court attendance on dates that were not listed in their bill of costs; costs awarded on the indemnity principle; and wasted costs. This appeal was considered on paper by Harris JA, who delivered judgment on 4 February 2014. The learned judge found that the applicants were not entitled to recover costs for items not claimed in their bill of costs; there was no basis to award costs on the indemnity principle; there was no basis for wasted costs; and questions relating to the respondent's conduct were irrelevant. The appeal was allowed in part because, pursuant to the Civil Procedure Rules, 2002, hourly rates are taxed at $6000.00 and not $4500.00 (which was the rate used by the registrar). Costs were therefore taxed at $232,490.00 (an increase of approximately $20,000.00).

Supreme Court Civil Appeal No 14/2014

Application Nos 26 & 99/2014

[20] The applicants thereafter filed two applications and an appeal before this court that were heard together on 2 October 2014 by Morrison JA, Dukharan JA and McDonald-Bishop JA (Ag) (as she then was) and judgment was delivered on 24 October 2014.

[21] In application no 26/2014, filed on 24 February 2014, the applicants sought to vary or set aside the order made by Harris JA in relation to costs made on 4 February 2014 on the basis that, *inter alia*, the judge was wrong in law. Morrison JA, on behalf of the court, accurately analysed the judgment of Harris JA and ultimately found that her conclusions in relation to costs could not be faulted. The application to vary or set aside

the order of Harris JA was therefore refused with costs to the respondent to be taxed if not agreed.

[22] In application no 99/2014, the applicants asked this court to, *inter alia*, review the order made by this court on 24 October 2008 in application no 86/2008 as discussed in paragraph [5] herein; make an order for interim payment of $5,000,000.00; and refer the matter to arbitration. The applicants' main argument in support of this application was that Mr Byron Ward had sworn to an affidavit which had been witnessed by Mr Earl Jarrett, General Manager of the respondent, which, the applicants claimed was itself a conflict of interest and in violation of the Justices of the Peace Jurisdiction Act, the Constitution and the Civil Procedure Rules, 2002 (CPR).

[23] The respondent filed a preliminary objection to this application on the basis that the court had no jurisdiction to hear the matter since there was no appeal pending before this court from which this application had originated. The 1st applicant responded to this objection on behalf of both applicants by stating that this court is a court of equity and that it had the power to review the matter. This preliminary objection was upheld on the basis that this court had no jurisdiction to entertain the application since the applicants had no prospect of succeeding in the application and they did not have an appeal pending before the court from which the application had emanated. The application was therefore refused with costs to the respondent to be taxed if not agreed.

[24] In SCCA No 14/2014 filed 6 March 2014, the applicants sought to challenge orders made by Daye J on 28 February 2014. They filed a notice of application for court orders on 11 February 2014 in the Supreme Court seeking, *inter alia*, orders permitting them to amend their witness statements; an order for specific discovery; an order striking out the respondent's defence; an order for summary assessment of damages; and an order for *ex gratia* payment. Daye J heard the matter in chambers and the applicants asked the judge to recuse himself and for the matter to be adjourned. These requests were denied and the applicants withdrew and failed to participate in the proceedings. Daye J thereafter granted orders to amend the applicants' witness statements as prayed but refused the other orders sought.

[25] In SCCA No 14/2014, the applicants challenged Daye J's orders on the grounds that, *inter alia*, the learned judge was biased and ought to have recused himself at the applicants' request. Morrison JA noted that the law on bias was adequately discussed by Harrison JA in **Bartholomew Brown and Bridgette Brown v Jamaica National Building Society** [2013] JMCA Civ 15 at paragraphs [18]-[20] as follows:

> "[18] The law of bias is well settled. There are a number of cases which speak to the fundamental principle that a man cannot be a judge in his own cause, see ***R v Gough, R v Bow Street Metropolitan Stipendiary Magistrate (No 2), Porter v Magill and Medicaments and Related Classes of Goods (No 2)*** [2001] 1 WLR 700. For years a variety of tests have been enunciated in the law of bias. Over the years, as the law developed, the test has continually been redefined. In ***R v Gough*** the 'real danger' test that a decision maker is biased in the conduct of proceedings before him had been accepted as the true test. This test, however, has been modified to be one, in which, a fair minded, impartial observer, who is cognizant of all the

facts of the case, would find that a decision maker is biased: see ***Porter v Magill***.

[19] There must be evidence of real bias. Therefore, a party who alleges bias must adduce evidence in proof of such allegation. Mere suspicion on the part of an impulsive or irrational person does not amount to bias see: ***Locabail (UK) Ltd v Bayfield Properties Ltd*** [2000] QB 451. The existence of bias must be obvious to a reasonable man, that is, one who has been classified as a fair minded observer. 'The characteristics of the fair minded informed observer are now well understood:- he must adopt a balanced approach and will be taken to be a reasonable member of the public neither unduly complacent nor naïve nor unduly cynical or suspicious,' per Lord Bingham in ***R v Abdroikov*** [2007] 1 WLR 2679.

[20] An examination of the interlocutory proceedings in which the appellants and the respondent were involved, in this court and in the court below, discloses that there is no evidence to show: that Pusey J or any of the judges had an interest in the cause between the appellants and the respondents [sic]; or that they had any financial or proprietary interest in the outcome of the case; or that they had in any way obtained a benefit from the decision in the case; or that they had pre-determined the issues before them. There is no evidence adduced by the appellants to show that, in the applications which came before the learned judge or any of the other judges, they had not made decisions in keeping with the relevant law and the facts before them. The appellants had chosen to embark on a speculative and contumacious exercise to support their baseless allegations against the judges. In all the circumstances, an objective observer, being fully aware of all the facts would not form any reasonable apprehension of bias on the part of the judges. The learned judge rightly found that the appellants' complaints did not reveal any evidence of bias."

Morrison JA, at paragraphs [49]-[50] of **Bartholomew Brown and Bridgette Brown v Jamaica National Building Society** [2013] JMCA Civ 39, said:

> "[49] In our view, the conclusion reached by the court in that appeal is equally applicable to the one now under consideration; there is absolutely no material before the court from which any inference of bias on the part of Daye J can be drawn and on that basis alone the appeal must be dismissed.
>
> [50] In this appeal, the Browns have, as before, represented themselves. As a result, we have been content to approach the matter on the basis that this appeal was properly brought, notwithstanding the clear provisions of section 11(1)(f) of the Judicature (Appellate Jurisdiction) Act, pursuant to which, no appeal lies from interlocutory orders without leave (save in the matters listed, none of which is applicable in this case). The application which was before Daye J having been plainly interlocutory in nature, the Browns ought first to have obtained leave from either the judge or this court as a precondition to filing an appeal. Having not done so, the appeal is not properly before us and therefore falls to be dismissed on that ground as well.

Ultimately, SCCA No 14/2014 was dismissed, and application nos 26 and 99/2014 were refused, with costs to the respondent to be taxed if not agreed.

Supreme Court Civil Appeal No 93/2014

Application No 185/2014

[26] On 26 March 2015, the applicants filed an application seeking permission to appeal on a point of law and that there was new discovery made that Panton P had failed to make disclosure of his conflict of interest when hearing application no 86/2008 and that the said application was to be re-heard. The grounds upon which they relied were that Morrison JA in judgment dated 19 April 2013 failed to disclose his interest in the matter and was sitting in his own cause. Another ground was the new discovery that Mr Earl Jarrett witnessed the affidavit of Byron Ward which thereby revealed a conflict of interest and breaches of the Justices of the Peace Jurisdiction Act, the

Constitution and the CPR. They further argued that Morrison JA had instructed them that they did not have an appeal and so the fact that they have now filed an appeal they ought to be heard. On 13 April 2015, this application was also heard by Morrison JA, Dukharan JA and McDonald-Bishop JA who refused it and awarded costs to the respondent to be agreed or taxed.

The present appeal: Supreme Court Civil Appeal No 93/2014

Application Nos 126 & 197/2015

[27] In the instant case, the applicants had filed two applications with nine grounds in support of application no 126/2015 and 11 in support of application no 197/2015. They had filed extensive written submissions and had made oral submissions in support of these applications. They also emailed and delivered voluminous documents to this court for its consideration, most of which I consider to be irrelevant to the issues in the instant applications before this court. The applications themselves and most of their arguments in support of these applications overlap and are duplicated, repetitive and unintelligible. I will therefore endeavour to summarise the orders sought in these applications, the arguments posited by the applicants in support and the submissions in response.

[28] In application no 126/2015 filed on 2 July 2015, the applicants sought, *inter alia*, the intervention of the Attorney-General to protect their constitutional right to a fair hearing. In application no 197/2015, the applicants sought, *inter alia*, the following:

1. a review of the orders of the court made on 13 April 2015 (SCCA No 93/2014 and application no 185/2014 as discussed in paragraph [26] herein);
2. an alternative order to determine the "real question in issue between the parties to the appeal" and to give any judgment which ought to have been given in the court below;
3. further, in the alternative, that application nos 185/2014 and 126/2015 be consolidated with the present application (no 197/2015) in order to review the orders made on 13 April 2015;
4. that the notice of motion filed on 16 February 2012 by the applicants in the court below is to be stayed until the aforementioned applications are heard on their merits;
5. further, in the alternative, if the said applications are successful, that SCCA No 93/2014 should be re-heard and the bundles filed in support of that appeal be permitted to stand;
6. that all the decisions of all the courts be set aside;
7. that the respondent's defence is struck out; and

8. that costs be awarded to the applicants here and below on the indemnity principle.

[29] Both applications were set for hearing during the week of 23 November 2015 before Morrison P (Ag), Phillips JA and McDonald-Bishop JA. The applicants, Mrs Coley-Nicholson and Ms Dian Johnson (counsel for the respondent) were all in attendance. Morrison P (Ag) informed the applicants that since they were applying to review and set aside an order made by a panel on which he and McDonald-Bishop JA participated, he did not think it was appropriate for either McDonald-Bishop JA or himself, to review their own decision and so the panel as then presently constituted would not hear the application. The matter was therefore set for hearing on 30 November 2015 before Sinclair-Haynes JA, P Williams JA (Ag) and myself. On that date, we heard submissions from the 1st applicant on behalf of both applicants, Mrs Coley-Nicholson on the respondent's behalf and Miss Larmond on behalf of the Director of State Proceedings.

Submissions on the intervention of the Attorney-General (Application No 126/2015)

[30] The applicants sought the intervention of the Attorney-General on the basis that: (i) they had not received a fair hearing contrary to section 16(2) of the Charter of Fundamental Rights and Freedoms; (ii) all the judges who had heard their matters were biased, sitting in their own causes and had not disclosed their interest in the matter; and (iii) the proceedings that had been conducted lacked transparency in breach of their constitutional rights.

[31] Miss Larmond, accepted that section 16(2) of the Charter of Fundamental Rights and Freedoms, guarantees the applicants' right to a fair hearing. In reliance on **The Attorney General of the Cayman Islands v James Cleaver and Co (as liquidators of Liberty Capital Ltd and Sun Holding Ltd) and Another** [2006] UKPC 28 and **The Hon Gordon Stewart OJ v Senator Noel Sloley and Others** [2013] JMCA App 4, counsel stated that the intervention of the Attorney-General was justified only if there was an issue of general public importance going to the jurisdiction of the lower courts and their consequent ability to do justice. She therefore contended that there was no novel question being decided by the courts that was of general public importance going to the jurisdiction of the lower courts. As a consequence, the Attorney-General must respectfully decline the applicants' invitation to intervene in their matters.

Submissions with respect to all other orders sought

[32] The applicants argued that consolidating their matters would be just and "necessary to trace the history of these culpable acts of injustices" they claimed to have endured. They also contended that they had not been given a fair hearing pursuant to section 16(2) of the Charter of Fundamental Rights and Freedoms because their appeal had never been heard and the fact that they had filed a written objection to the panel that heard their matter on 2 October 2014 and yet on 13 April 2015, the matter was heard despite this objection. Consequently, the judgment delivered on 13 April 2015 was erroneous and must be set aside.

[33] The applicants further submitted that this court should revisit and set aside the decisions of Master Lindo, Panton P and the full court in application no 29/2009, as they had all erred since there has been a new discovery in relation to the affidavit of Byron Ward filed 17 April 2008 and relied on by the respondent. They contended, as they did in SCCA No 99/2014 and application no 185/2014, that the said affidavit was fraudulent since it had been witnessed by Mr Earl Jarrett which shows a conflict of interest and a breach of natural justice.

[34] The applicants also posited that based on their investigations, all the judges who heard their matters in the Court of Appeal were biased and sitting in their own causes since they failed to disclose their respective interests in the matters. They further argued that they were being prevented from obtaining a final determination of the matter by this court because it was refusing to hear their appeals to set aside the orders made by Master Lindo and Panton P. Consequently, all the decisions of this court and the court below were tainted with deceit and are contradictory, unfair and corrupt and should be set aside.

[35] On 16 November 2015, Mrs Coley-Nicholson, filed preliminary objections to both application nos 126 and 197/2015 summarised as follows:

1. the applications are asking this court to review and re-hear matters that it had already determined and based on the principle of *res judicata*, ought to be dismissed;

2. the applicants are seeking to re-litigate previous orders that were already determined which is an abuse of the process of the court;
3. there was no change in the circumstances of the case to justify leave to appeal; and
4. the court has no jurisdiction to hear application 185/2014 pursuant to section 11(b) of the Judicature (Appellate Jurisdiction) Act which states that no appeal shall lie from an order granting unconditional leave to defend a claim.

[36] Counsel for the respondent informed this court that after several aborted trial dates, the trial date for hearing the substantive matter had been fixed for 16-19 May 2016 and these matters, counsel submitted, should therefore be dismissed so that the claim can finally be determined. She also asked for an order that the applicants be prohibited from filing further applications or appeals until all the costs awarded to the respondent, in all the applications here and below, were all taxed, if not agreed, and paid.

Discussion and analysis

Attorney General's intervention (Application No 126/2015)

[37] The applicants are desirous of having the intervention of the Attorney-General to protect their interests and the Attorney-General saw no basis upon which its intervention in the applicants' cases can be justified. The issue as to when it is

appropriate to allow the Attorney-General to intervene in a matter, was canvassed by the Judicial Committee of the Privy Council in a case from the Cayman Islands, **Attorney General of the Cayman Islands v James Cleaver**. In that case, upon an application made by liquidators for orders with respect to their remuneration, the Grand Court set guidelines as to fees, rates, costs and time chargeable by liquidators and further ordered that these fees were to be calculated in accordance with the stipulated guidelines, submitted to creditors' committees and thereafter to the Grand Court for approval. The liquidators appealed that decision to the Court of Appeal which allowed the appeal and set aside the judgment of the Grand Court on the basis that, *inter alia*, the procedure for remuneration was governed by the English Insolvency Rules 1986 and so no requirement existed for liquidators to apply to the court to sanction fees approved by a creditors' committee unless that liquidator so desires.

[38] The Attorney-General of the Cayman Islands sought the Court of Appeal's leave to intervene and to appeal to the Privy Council, but this application was refused on the basis that it was out of time and that the court had no jurisdiction to entertain an application to extend time for the same. The Attorney-General thereafter sought the Board's leave to intervene and challenged the Court of Appeal's decision on the basis that it was "wrong and is likely to have been based on an incomplete understanding of the relevant legislative history" and that the matter to be determined was "one of particular public importance in the Cayman Islands". Special leave was granted by the Board to the Attorney-General to enter, pursue and prosecute an appeal. In considering

the circumstances in which the Attorney-General's intervention is required, Lord Mance, on behalf of the Board at paragraph [27] said:

> "...the Board accepts that one set of circumstances in which it may be appropriate to grant to the Attorney General, as guardian of the public interest, leave to intervene is where there is an issue of general public importance going to the jurisdiction of lower courts and their consequent ability to do justice according to the law."

[39] The instant case relates to the applicants' claim filed against the respondent for breach of contract and trust; damages under several heads; negligence; and intimidation arising from a loan the applicants obtained from the respondent which the applicants allege was improperly computed. On the face of it, in my view, there is no novel issue that is to be determined in the applicants' claim against the respondent, and there is no issue being decided that is of "general public importance going to the jurisdiction of lower courts and their consequent ability to do justice according to the law". Accordingly, the application seeking the intervention of the Attorney-General must be refused.

The proper route to challenge a decision of this court

[40] The Jamaican Constitution provides that appeals from a decision of this court shall lie to Her Majesty in Council. Section 110 of the Constitution explicitly stipulates that:

> "110 (1) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases:
>
> a where the matter in dispute on the appeal to Her Majesty in Council is of the value of one thousand dollars or upwards or where the appeal involves

directly or indirectly a claim to or question respecting property or a right of the value of one thousand dollars or upwards, final decisions in any civil proceedings;

b final decisions in proceedings for dissolution or nullity of marriage;

c final decisions in any civil, criminal or other proceedings on questions as to the interpretation of this Constitution; and

d such other cases as may be prescribed by Parliament.

(2) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases-

a where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council, decisions in any civil proceedings; and

b such other cases as may be prescribed by Parliament.

(3) Nothing in this section shall affect any right of Her Majesty to grant special leave to appeal from decisions of the Court of Appeal to Her Majesty in Council in any civil or criminal matter.

(4) The provisions of this section shall be subject to the provisions of subsection (1) of section 44 of this Constitution.

(5) A decision of the Court of Appeal such as is referred to in this section means a decision of that Court on appeal from a Court of Jamaica."

[41] Consequently, this court has no jurisdiction to entertain any applications such as those made in the instant case which were essentially endeavouring to appeal previous decisions of this court made on 24 October 2008, 4 March 2010, 19 April 2013, 24 October 2014 and 13 April 2015, contrary to the above provisions of the Constitution.

Additionally, this court has no jurisdiction to hear and determine these applications as they do not emanate from an order or judgment of the Supreme Court as is required by section 10 of the Judicature (Appellate Jurisdiction) Act. The respondent's preliminary objections on those applications must therefore be upheld and the applicants' applications for the same must therefore all be refused.

Res judicata **and re-litigation**

Res judicata

[42] The respondent has urged this court to dismiss these applications based on the principles of *res judicata* and re-litigation as an abuse of the process of the court. The principle of *res judicata* describes a number of different legal principles that bar parties from re-opening matters that were already determined by a competent court save on appeal. The learned authors of Halsbury's Laws of England, 2015, Volume 12A, paragraph 1603 have said that the purpose of this principle is to:

> "...support the good administration of justice in the interests of the public and the parties by preventing abusive and duplicative litigation, and its twin principles are often expressed as being the public interest that the courts should not be clogged by re-determinations of the same disputes; and the private interest that it is unjust for a man to be vexed twice with litigation on the same subject matter..."

Three of the main legal principles embraced by this doctrine are: (i) cause of action estoppel which prevents a cause of action from being raised on the basis that the legal rights and obligations of the parties were already concluded by an earlier judgment; (ii) issue estoppel which prevents a party from contending the contrary to any precise point which having been put in issue, had been determined against him; and (iii) the rule in

Henderson v Henderson (1843) 3 Hare 100 which prevents a party from raising in subsequent proceedings matters which were not, but could and should have been raised in earlier proceedings. The doctrine of *res judicata* is applicable to issues, defences, applications and/or causes of actions which have been heard and determined on the merits. Although several issues have been determined on their merits in the numerous applications, the claim is yet to be decided on its merits. Consequently, bearing in mind the basis upon which I propose to make orders resolving these applications, it is unnecessary to make a detailed analysis of these principles.

Re-litigation

[43] The fact that the respondent has claimed that the applicants' extensive re-litigation is an abuse of the process of the court must now be considered. It is a fundamental doctrine of all courts that there must be an end to litigation. The learned authors of Halsbury's Laws of England, Volume 12A, 2015, paragraph 1651 have said:

> "The law discourages re-litigation of the same issues except by means of an appeal. It is not in the interests of justice that there should be re-trial of a case which has already been decided by another court, leading to the possibility of conflicting judicial decisions, or that there should be collateral challenges to judicial decisions; there is a danger, not only of unfairness to the parties concerned, but also of bringing the administration of justice into disrepute."

[44] The respondent urged this court to dismiss the appeal and the applications since, on the face of it, they have attempted to re-litigate issues already determined by the court. It is indeed an abuse of the process of the court to re-litigate issues already determined and the court has jurisdiction to refuse applications which purport to do so.

This principle has been confirmed in a number of cases such as **Hunter v Chief Constable of West Midlands and another** [1981] 3 All ER 727 where six men claimed they were beaten by police to confess a bombing. The confessions were admitted into evidence following a voir dire in which the trial judge found that the prosecution had proved beyond a reasonable doubt that the men were not beaten. Leave to appeal was refused and thereafter the men commenced proceedings against the police officers for assault, alleging the same beatings as had been alleged in the criminal trial. The House of Lords held that it was an abuse of the process of the court to attempt to re-litigate the same issue and the actions were struck out. Lord Diplock at page 729 of the judgment said the court has an inherent power to "prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to a litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people".

[45] This principle was also endorsed by the House of Lords in **Arthur J S Hall & Co (a firm) v Simons et al** [2000] 3 All ER 673 wherein clients brought claims for negligence against their former solicitors in three separate cases and these claims were struck out based on the solicitors reliance on the immunity of advocates from suits for negligence. The Court of Appeal in allowing the three appeals, held that these claims fell outside of the scope of the immunity and should not have been stuck out. On appeal to the House of Lords, their Lordships had to determine, *inter alia*, whether to abolish the immunity from actions in negligence enjoyed by advocates. One argument

in support of the retention of this immunity was that it was still justified in the public interest to prevent collateral attacks on decisions of the court where litigants blamed their attorneys for the outcome of their cases increasing the possibility of conflicting judgments. The House of Lords, by a majority, dismissed the appeals and abolished the immunity. Lord Hoffmann at page 703 of the judgment, acknowledged that there is a public policy against re-litigating a decision of a court of competent jurisdiction where he said:

> "The law discourages relitigation of the same issues except by means of an appeal. The Latin maxims often quoted are *nemo debet bis vexari pro una et eadem causa* and interest *rei publicae ut finis sit litium*. They are usually mentioned in tandem but it is important to notice that the policies they state are not quite the same. The first is concerned with the interests of the defendant: a person should not be troubled twice for the same reason. This policy has generated the rules which prevent relitigation when the parties are the same: *autrefois acquit*, *res judicata* and issue estoppel. The second policy is wider: it is concerned with the interests of the state. There is a general public interest in the same issue not being litigated over again."

He nonetheless stated at page 703 that the possibility of re-litigation is not a sound basis for giving attorney's immunity from actions for negligence since:

> "...not all relitigation of the same issue will be manifestly unfair to a party or bring the administration of justice into disrepute, and secondly, that when relitigation is for one or other of these reasons an abuse, the court has power to strike it out."

[46] The fact that re-litigation is an abuse of the process of the court was recognised by Panton P in **Lilieth Turnquest v Henlin Gibson Henlin (A Firm) and Calvin Green** [2014] JMCA Civ 38 where D O McIntosh J heard a claim and two attachment of

debt orders filed with respect to a professional undertakings given by Ms Turnquest that were not honoured. After considering the facts and submissions, McIntosh J ordered the provisional debt attachment orders to be made final. Ms Turnquest made an application which was heard by P Williams J (as she then was) for summary judgment or to strike out the orders against her. However, P Williams J found that she had breached her professional undertaking and dismissed the application. She filed an appeal against that decision and the appeal was allowed on the basis that, *inter alia*, the order of McIntosh J had effectively put an end to the instant suit and so the claim filed against Ms Turnquest ought to have been dismissed. Panton P at paragraph [26] of the judgment said:

> "It has long been recognized that there ought to be finality to legal proceedings. Re-litigation of matters is an abuse of the process of the court – except of course, where there has been a judicial order for a re-hearing, or in a case such as ***In re H A Grey*** where disciplinary powers were exercised over an attorney-at-law in a matter where a client had already successfully sued the attorney-at-law for monies held on behalf of the client. However, the court will always be anxious to ensure that the doctrine is only applied "when the facts are such as to amount to an abuse, otherwise there is a danger of a party being shut out from bringing forward a genuine subject of litigation" - ***Brisbane City Council and another v Attorney General for Queensland*** [1978] 3 All ER 30 at 36."

[47] In applying these principles to the instant case, it is evident that the present appeal and applications, save and except the application seeking the Attorney-General's intervention, were all made before and were all disposed of as follows:

1. In application no 86/2008, the applicants sought before this court permission to challenge Master

Lindo's decision to grant the respondent's request for an extension of time to file its defence. This application was refused by Panton P on 24 October 2008. The applicants sought to vary Master Lindo's and Panton P's decision in SCCA No 29/2009 which was refused on 4 March 2010. They again renewed their application to set it aside in SCCA No 70/2012 which was refused on 19 April 2013. They also sought to challenge Master Lindo and Panton P's decisions in SCCA No 93/2014, application no 185/214 which was refused on 13 April 2015. These said applications have been renewed before this court in application nos 126 and 197/2015.

2. The applicants sought to appeal the judgment delivered on 4 March 2010 in SCCA No 29/2009, even though it was in their favour, to the Privy Council in motion no 6/2010 and that application was also refused. They again sought to challenge that decision in application no 167/2011 delivered on 6 October 2011 which was also refused. These said applications have been renewed before this court in application nos 126 and 197/2015.

3. The applicants have made an application to strike out the respondent's defence in SCCA No 70/2012, application no 16/2012 which was refused. These said applications have been renewed before this court.

4. The applicants have sought interim payment in multiple applications before this court and below. They sought it in SCCA No 29/2009 but did not specify an amount; interim payment of $10,000,000.00 was sought in SCCA No 70/2012 and application no 16/2012 which was refused; interim payment of $4,000,000.00 was sought in application no 167/2011 which was refused.

5. The applicants sought to challenge the decision of the court delivered on 13 April 2013 by way of an appeal to the Privy Council in motion no 5/2013, which was refused. They again challenged this decision in application no 185/2014 which was also refused. These said applications have been renewed before this court in the instant appeal.

6. In the present applications, the applicants are also seeking to stay the notice of motion which was already dismissed by Pusey J, whose decision to

> refuse the same was already upheld by this court in SCCA No 14/2014. They are asking for these orders on the same basis, namely that they claim that the affidavit of Byron Ward is fraudulent and also that all the judges who heard their matters were biased.

[48] As indicated earlier, the applicants have complained that their matters were not being fully reviewed, assessed and analysed by the courts. Consequently, upon reviewing the applications before this court, it became clear how many of the applications filed in this court and in the court below overlapped, were repeated and impinged on the applications being heard by this court. They have filed in excess of 15 such applications examples of which are as follows:

1. In the notice of application for court orders filed 26 June 2008 and re-issued on 11 August 2008, the applicants sought, *inter alia*, summary judgment; interim payment of US$250,000.00; and an order for an investigator to assist on the grounds that, *inter alia*, the respondent admitted liability; that the applicants have suffered severe loss over the years; and that the respondent had failed to make full disclosure to the applicants. This application was refused.
2. In the notice of application for court orders filed 25 August 2008, the applicants sought, *inter alia*,

sanctions against the respondent and default judgment against the respondent, on the grounds that, *inter alia*, the respondent failed to acknowledge the supplemental claim form filed by the applicants and the respondent's claim that they had not received the documents was a blatant lie. This was refused.

3. In the notice of application for court orders filed 9 October 2008 and re-filed 22 January 2009 the applicants again sought, *inter alia*, interim payment on the grounds that, *inter alia*, the respondent admitted liability.

4. In the notice of application for court orders filed 29 December 2008 the applicants sought, *inter alia*, an order to strike out the respondent's defence for non-compliance with an 'unless order' and interim payment on the grounds that, *inter alia*, the respondent admitted liability; and the actions taken by attorneys for the respondent and the judges were unconstitutional.

5. In the notice of application for court orders filed on 26 February 2009 by the applicants they once again sought, *inter alia*, dismissal of the defence and summary judgment on the grounds that, *inter alia*, the

respondent and its attorneys deceived the court by lying on sworn affidavits and in their submissions.

6. The notice of application for court orders filed by the applicants on 8 July 2010 sought, *inter alia*, summary judgment once more and alternatively an order staying the proceedings in the interim so that the matter could be resolved at a case management conference. The grounds of this application were that judges hearing their applications were not independent and of the highest character. This application was dismissed by Lawrence-Beswick J on 27 July 2010 and the next trial date was set for 20-24 June 2011. However, when the matter came up for trial on 20, 21, 22 and 23 June 2011 before E Brown J (Ag) (as he then was) the trial was aborted because of the 1st applicant's repeated comments questioning the fairness of the trial and the matter was adjourned to 7-11 May 2012 for five days with costs to the respondent.

7. In the notice of application for court orders filed 17 August 2010, the applicants sought orders that, *inter alia*, judges should be independent and impartial and an order that the applicants' rights were being

infringed. This was also filed on the basis that Lawrence-Beswick J had predetermined the matter in the respondent's favour, seemed confused and made unconstitutional remarks about the applicants; the courts have failed to administer fair justice in the matter; the decision to refuse the application for summary judgment was wrong; and that the other judges were biased and a fair hearing by an impartial tribunal is unattainable. This application was heard on 12 October 2010 by Mangatal J and was dismissed with costs to the respondent to be taxed if not agreed because there was no merit in the grounds set out in the application.

8. In the notice of application for court orders filed 3 May 2011, the applicants sought, *inter alia*, to have the respondent's statement of case and defence struck out and summary judgment on the basis that, *inter alia*, the courts infringed on the applicant's rights to a fair hearing and the Court of Appeal decision on 4 March 2010 was a breach of the principles of natural justice. They also filed a summary assessment and statement of costs for US$700,600.00. When the application came

up for hearing before Daye J on 26 May 2011, the learned judge recused himself because the 1st applicant alleged that he was "hijacking him in the presentation of his application."

9. In the notice of application for leave to apply for judicial review filed 4 July 2011 the applicants sought orders that judges should be independent and impartial; and that the order of E Brown J (Ag) was null and void; on the grounds that, *inter alia*, Lawrence-Beswick J was asked to recuse herself because she was biased; the matter was transferred to Daye J who made inappropriate comments and was also biased; all the judges were not independent or impartial; and all the judges are unwilling to hear the applicants' matters. This application was heard by Campbell J on 3 November 2011 and was dismissed.

10. In the notice of application for court orders filed 24 January 2013, the applicants sought for an interim payment of $4,000,000.00 on the basis that they were enduring hardship as a result of the respondent's fraud and the lack of a fair hearing by an independent and impartial tribunal.

11. They filed notices of application on 18 September 2013 and 14 October 2013 seeking an interlocutory injunction, full disclosure and payment of monies they claimed to be owed. Both applications were heard by Hibbert J on 7 January 2014 and were refused.

12. The notice of application for court orders filed 11 February 2014, sought, *inter alia*, an amendment of the applicants' witness statements and an order striking out the respondent's defence which was refused by Daye J on 28 February 2014.

[49] Based on the review I have conducted of the applicants' applications in this court and below, it is evident that the applicants had constantly repeated the same applications, and in the process are abusing judges and staff of this court and of the court below, by deeming them to be corrupt, unfair and biased. This is done even where decisions are made in their favour and is worsened when decisions are awarded against them. Since this court is empowered to proceed under rule 1.7(2)(g) of the Court of Appeal Rules 2002 (CAR) to dismiss or give judgment on an appeal after a decision on a preliminary issue, I would therefore uphold the preliminary objection on the basis that the present appeal and applications are plainly a re-litigation of issues already determined and were indeed a flagrant abuse of the process of the court. Accordingly these applications are to be refused.

Civil restraint order

[50] Lord Bingham CJ in **Attorney General v Barker** (2000) Times 7 March judgment delivered on 16 February 2000 has described a vexatious civil proceeding as one in which:

> "...the claimant sued the same party repeatedly in reliance on essentially the same cause of action, perhaps with minor variations, after it had been ruled on, thereby imposing on defendants the burden of resisting claim after claim; that similarly he relied on essentially the same cause of action after it had been ruled on in actions against successive parties who, if sued at all should have been joined in the same action; and that he automatically challenged every adverse decision on appeal and refused to take any notice of or give any effect to court orders."

[51] This definition appropriately categorizes the plethora of applications filed by the applicants against the respondent in the same claim in this court and below. When these applications were dismissed and even where in the one instant (SCCA No 29/2009) it was decided in their favour, they have challenged the decisions in the Supreme Court and this court and they accused the judges and staff of both courts of being biased, corrupt and unfair. They have lodged appeals to the Privy Council that have also been refused. Since this matter was adjourned *cur ad vult*, they have filed and emailed voluminous additional documents for consideration by the court which bear no relevance to the issues to be determined in this appeal and have made a number of telephone calls trying to urge the court's dealing with the current appeal and applications to consider cases and documents they deem to be relevant. Based on these activities, I again reiterate that I am indeed satisfied that the applicants have habitually and persistently made multiple unmeritorious and repetitive applications and appeals

before this court and the Supreme Court which are an abuse of the process of the court.

[52] Having satisfied myself that their actions are an abuse of the process of the court, this court must, in my view, take steps to protect itself from further abuse by the applicants. The English Court in the 19th century Court of Appeal case of **J S Grepe v Loam** (1887) 37 Ch D 168 authoritatively decided that the court has an inherent jurisdiction to make orders to protect itself from abuse. In that case, repeated frivolous applications were made by the same parties with respect to the same property for the purpose of impeaching a judgment of the court. Lindley LJ therefore made orders preventing the applicants from making any further applications to that Court of Appeal and the court below without leave of the Court of Appeal having been first obtained and where notice of such application was given without first obtaining leave, the respondent was not required to appear in the application and the said application would be dismissed without being heard.

[53] This power was also confirmed by the House of Lords in **Attorney-General v Vernazza** [1960] AC 965 where the sole issue was whether the Court of Appeal, on an application made by Her Majesty's Attorney-General, could vary the order of the High Court declaring Mr Vernazza a vexatious litigant so that he was prevented from continuing his existing proceedings without the leave of the court or a judge. It was held that the Court of Appeal did have jurisdiction to grant such an order. Lord Denning at page 977 said:

> "The courts of this country have an inherent power to 'prevent the abuse of legal machinery which would occur, if for no possible benefit the defendants are to be dragged through litigation which must be long and expensive,' see *Willis v. Earl Beauchamps* by Bowen L.J.: and when the courts of this country exercise this power, they are not depriving a man of a vested right. They are only exercising a control over their own procedure. No man, let alone a vexatious litigant, has a vested right to bring or continue proceedings which are an abuse of the process of the court."

[54] In **Ebert v Venvil and Another; Ebert v Biren and Another** [2000] Ch 484, at 497 Lord Woolf MR stated that courts under its inherent power may stay or strike out vexatious proceedings when they are commenced and may also extend these orders to all proceedings in all courts. Lord Woolf also noted that where such orders are made, the presence of the Attorney-General is not normally required.

[55] The principles extrapolated from these cases were adopted and summarised by the English Court of Appeal in **Bhamjee v Forsdick and others (No 2)** [2003] EWCA Civ 1113. In that case, Mr Bhamjee made nine applications before the Court of Appeal, seven of which were dismissed as having been devoid of merit. The respondents therefore sought extended civil restraint orders against him because he kept bombarding the court with unmeritorious applications. In relation to the jurisdiction of the court to make such orders the English Court of Appeal at paragraph [15] of the judgment said:

> "The court, therefore, has power to take appropriate action whenever it sees that its functions as a court of justice are being abused. The advent of the Civil Procedure Rules makes the nature of those functions more transparent. A court's overriding objective is to deal with cases justly. This means, among other things, dealing with cases expeditiously

> and allotting to them an appropriate share of its resources (while taking into account the need to allot resources to other cases). This objective is thwarted and the process of the court abused if litigants bombard the court with hopeless applications. They thereby divert the court's resources from dealing with meritorious disputes, delay the handling of those disputes, and waste skilled and scarce resources on matters totally devoid of any merit. In Ch 9 of the report of the Review of the Court of Appeal (Civil Division) (September 1997), in a passage referring to the activities of litigants in person, the authors of the report say:
>
> > 'Groundless appeals should not be brought or should be eliminated from the system at the earliest possible stage. Such appeals build up unrealistic expectations on the part of the appellant, are unfair to the respondent, cost all the parties money, and waste the time of the Court of Appeal.'"

In deciding the appropriate measure to use to protect itself, the English Court of Appeal examined statute (section 42 of the English Supreme Court Act 1981) and cases relating to the same. Our jurisdiction has no legislation covering civil restraint orders and so I will adopt the guidance given under the common law. The court examined the type of orders that were made in **Grepe v Loam** and **Ebert v Venvil** and granted an order that, *inter alia*, prohibited Mr Bhamjee from making applications in any court against the defendants without first obtaining leave of the court.

[56] In applying the principles gleaned from these cases to this jurisdiction, in my view, the following orders should be made:

1. The applicants (whether personally or through any servant, agent or legal representative) are hereby prohibited from making any further applications or

taking any steps (including the issuing of new proceedings in whatever form) in the Court of Appeal or the Supreme Court, relating to, involving or touching upon claim no 02360 HCV 2007 without first obtaining permission from this court or a judge in the Supreme Court save and except participating in the trial of claim no 02360 HCV 2007.

2. If the applicants wish to apply for permission to make any further applications arising out of or touching and concerning claim no 02360 HCV 2007 in this court such permission must be made in writing to the court and will be dealt with on paper.

3. If any form of claim form, statement of case, notice of application or notice of appeal or any other form of document which is within the scope of this order is served on or given to the respondent and/or their legal representatives without the said permission having been first obtained (which acts or any of them, for the avoidance of doubt, will constitute a breach of this order and a contempt of court on the part of the claimant) that person shall not be required to appear and respond and the purported

application/proceedings shall stand dismissed and struck out without having been heard.

4. This order shall remain in place until the final determination of the claim no 2360 HCV 2007.

[57] There have been several cases in which the court has ordered that the applicants in similar circumstances ought not to be permitted to take any further steps in the litigation, or to make any other applications to the court until all orders for costs made against them previously have been paid. However, in my view, it is really in the applicants' best interest that they proceed with dispatch to have their substantive claim tried. As a consequence, I will refrain from recommending such an order which may have the effect of preventing an early resolution of their long outstanding claim.

Vexatious litigant

[58] If the applicants continue to habitually and persistently institute frivolous, unmeritorious and vexatious civil proceedings, I would urge the Attorney-General to make an application to the Supreme Court to declare them vexatious litigants pursuant to the Vexatious Actions Act and prohibit them from making further applications without the leave of the court. It will be for the court to determine, after hearing the applicants, what orders to make on their application. It is also for the court to consider whether such orders, if made, should remain in force for a specific period or indefinitely.

Conclusion

[59] In the light of the foregoing discussion and analysis, the applications before this court must fail on three bases. The first is that this court has no power to review its own decisions. Secondly, the respondent's preliminary objections on points of *res judicata* and re-litigation ought to be upheld since the applicants have habitually and persistently filed at least 15 frivolous, unmeritorious, repetitive and vexatious applications in the Supreme Court and at least 13 such applications in this court. They have even filed unmeritorious applications at the Privy Council. Their persistent re-litigation is undoubtedly a flagrant abuse of the process of all courts and so, in my view, this court ought to institute the orders outlined in paragraph [54] herein to protect itself and the process of the court from further abuse by the applicants. Furthermore, in all the circumstances of this case, I believe that costs ought to be awarded to the respondent to be taxed if not agreed. It is my sincere hope that these orders will prevent the applicants from constantly filing hopeless applications and expedite the trial of the substantive claim that has been in abeyance since 2007.

SINCLAIR-HAYNES JA

[60] I have read in draft the judgment of my sister Phillips JA. I agree with her reasoning and conclusion and have nothing further to add.

P WILLIAMS JA (AG)

[61] I too have read the draft judgment of my sister Phillips JA and agree with her reasoning and conclusion.

PHILLIPS JA

ORDER

1. Application Nos 126/2015 and 197/2015 are refused.
2. The applicants (whether personally or through any servant, agent or legal representative) are hereby prohibited from making any further applications or taking any steps (including the issuing of new proceedings in whatever form) in the Court of Appeal or the Supreme Court, relating to, involving or touching upon claim no 02360 HCV 2007 without first obtaining permission from this court or a judge in the Supreme Court save and except participating in the trial of claim no 02360 HCV 2007.
3. If the applicants wish to apply for permission to make any further applications arising out of or touching and concerning claim no 02360 HCV 2007 in this court such permission must be made in writing to the court and will be dealt with on paper.
4. If any form of claim form, statement of case, notice of application or notice of appeal or any other form of document which is within the scope of this order is served on or given to the respondent and/or their legal representatives without the said permission having been

first obtained (which acts or any of them, for the avoidance of doubt, will constitute a breach of this order and a contempt of court on the part of the claimant) that person shall not be required to appear and respond and the purported application/proceedings shall stand dismissed and struck out without having been heard.

5. This order shall remain in place until the final determination of claim no 2360 HCV 2007.
6. Costs of both applications are awarded to the respondent to be agreed or taxed.