

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO COA2025CV00038

APPLICATION NO COA2025APP00130

BETWEEN	CHARLENE ASHLEY	APPLICANT
AND	JAJ DEVELOPMENT AND HOLDINGS LIMITED	RESPONDENT

Ms Jacqueline Cummings instructed by Archer Cummings & Co for the applicant

Mrs Rose Bennett-Cooper and Sidia Smith instructed by Bennett Cooper Smith for the respondent

11, 15 and 16 September and 21 October 2025

Civil law – Land law – Application for stay of execution – Agreement for sale of land – Subdivision of land – Compliance with unless order to deliver up the certificate of title – Interpretation of agreement for sale – Specific performance – Evidentiary assessment and factual determination – Title conformity – Judicial discretion – Enforcement of contractual obligations – Principles considered on an application for a stay of execution – Prospect of success – Interests of justice and risk of irremediable harm to the parties

IN CHAMBERS

FOSTER-PUSEY JA

[1] On 11 and 15 September 2025, I heard an application for a stay of execution by the applicant, Charlene Ashley. I refused the application on 16 September 2025 and awarded costs to the respondent to be agreed or taxed. At that time, I promised to provide the reasons for my decision. These are the short reasons.

The background

[2] The parties entered into an agreement for the sale of land ('the sale agreement') in October 2012. The applicant is selling the respondent part of the land where her home is located. This required dividing the land through a subdivision. The sale agreement described the land to be sold as:

"All that parcel of land identified as Lot 2 on the subdivision drawing annexed hereto, part of Lot 21A on the plan of Forest Hills in the parish of SAINT ANDREW and being the part of the land comprised in Certificate of Title registered at Volume 1262 Folio 705 in the Register Book of titles and on the surveyor's plan dated September 2009 done by Noel Shirley and which plan is appended hereto and labelled Appendix 1." (Emphasis supplied)

[3] Although the sale agreement was signed in 2012, discussions began in 2008, and the respondent made a non-refundable deposit that year. At one point, the parties considered a joint venture agreement, but the applicant chose not to pursue that option, favouring the sale of the property instead. Before the signing of the agreement, the Kingston and Saint Andrew Corporation had granted the applicant subdivision approval in January 2012.

[4] The applicant's home would remain on Lot 1. The applicant was aware that the respondent intended to build a housing development on the property purchased (ie, Lot 2). In August 2020, after some years had passed, the respondent filed a fixed date claim form, alleging a breach of the sale agreement and seeking specific performance by way of an order for the applicant to deliver up a Certificate of Title for Lot 2. The fixed date claim form, by order of the court, was later continued as if it had commenced by claim form.

[5] At a pre-trial review hearing of the claim, on 14 November 2022, Barnaby J made an unless order in the following terms:

"8. Unless the [applicant] delivers up to the [respondent] the Certificate of Title for lot 2 being part of the land registered

of [sic]. Volume 1262 Folio 705 of the Register Book of Titles **as required by the Agreement for Sale** by 13th December 2022 at 4:00 pm the Defence shall stand struck out save that the Counterclaim will remain.” (Emphasis supplied)

[6] In December 2022, the attorneys for the respondent received a Certificate of Title registered at Volume 1469 Folio 503 for Lot 2, from the applicant. On reviewing the title, the attorneys were of the view that it did not accord with the sale agreement as it indicated an access road of 3 metres. The respondent’s representative then examined the title that had been issued for Lot 1 at Volume 1566 Folio 197 and saw that it also indicated a reserved road/access road 3 metres wide. This was in contrast with the subdivision plan attached to the sale agreement. That plan reflected an access road of 8 metres. The respondent’s attorneys informed the applicant of their view that the title provided to their client was in breach of the unless order.

[7] The matter came up for trial in May 2023 before Batts J (‘the learned judge’), who, despite the submissions of the respondent’s attorneys, refused to enter judgment on the claim. The learned judge instead ruled that the question as to whether the delivered title complied with the unless order would require a consideration of evidence to determine what the applicant’s obligations were under the sale agreement. See **JAJ Development and Holdings Limited v Charlene Ashley** [2025] JMCC Comm 13 for the full details of the judgment.

[8] After over 12 days of trial, the learned judge handed down judgment on 11 April 2025 on the claim and counterclaim.

[9] The orders that the learned judge made, which are relevant to the application, are as follows:

“1. The [applicant] is ordered to, within 90 days, deliver up to the [respondent] a registered title for All That Parcel of Land identified as Lot 2 on the subdivision drawing part of Lot 21A on the plan of Forest Hills in the parish of Saint Andrew and being the part of the land comprised in Certificate of Title registered at Volume 1262 Folio 705 in

the Register Book of Titles **and on the surveyor's plan dated September 2009 done by Noel Shirley attached to the agreement for sale entered into between the [respondent] and the [applicant].**

2. The Registrar of Titles is directed to call in the duplicate Certificates of Title registered at Volume 1469 Folio 503 and Volume 1566 Folio 197 of the Register Book of Titles.
3. The Registrar of Titles is further directed to consider whether the said Title or Titles is or are to be cancelled and replaced." (Emphasis supplied)

The appeal

[10] On 22 May 2025, the applicant filed a notice and grounds of appeal. The primary matters challenged by the various grounds were the learned judge's findings of fact that the title that the applicant had delivered to the respondent had not complied with Barnaby J's unless order.

The application for the stay of execution

[11] On 10 July 2025, the applicant filed the notice of application for stay of execution of the learned judge's orders relating to the title. The applicant stated in the application that without a stay of execution, she would be liable to orders for contempt of court and would face irreparable damage to her title and home. She urged that her appeal had prospects of success, while the respondent would not suffer any prejudice if the application for a stay were granted.

[12] On 18 August 2025, a single judge of this court considered the application and granted an interim stay of execution for 28 days from that date. The single judge also directed that the application be scheduled for an *inter partes* hearing before the expiry of the interim stay, and that both parties file written submissions in advance of the hearing date.

The affidavit evidence

[13] The applicant submitted two affidavits to support the application. One was sworn by Percival Braham, an attorney-at-law. That affidavit generally outlined the grounds mentioned by the applicant in the notice of application.

[14] On 12 September 2025, the applicant swore to an affidavit to which were attached new documents, such as a Potential Structural Impact Assessment Report dated May 2025, and two Surveyor's Identification Reports dated 5 and 14 May 2025, respectively. As these documents were not before the learned judge who handed down judgment on 11 April 2025, I did not take them into account in my consideration of the application. It will be a matter for the applicant to determine whether an application to adduce fresh evidence ought to be made at the hearing of the appeal.

[15] The respondent's representative, Mrs Juliet Holness, filed an affidavit opposing the application on 9 September 2025. It had numerous exhibits attached. These exhibits had been entered into evidence at the trial and were considered by the learned judge. The affidavit primarily outlined the history of the matter, supported by various exhibits, and addressed the hardship the respondent would face if a stay of execution is granted.

[16] As these reasons are short, I will highlight aspects of the submissions made by the attorneys-at-law for the parties. They may rest assured, however, that I read and considered all the material that was before me.

Submissions of the applicant

[17] Ms Cummings, on behalf of the applicant, submitted that the main issue arising from the learned judge's judgment was whether the respondent is entitled to an 8 metre access road under the sale agreement.

[18] Counsel submitted that the 3-metre access included in the relevant title was what the respondent had paid for. She criticised the learned judge for not determining whether what the respondent was entitled to was a road or an easement. Counsel highlighted that

the subdivision approval from the Parish Council did not include an 8-metre road; instead, the Parish Council approved a 6-metre road. Counsel argued that for the respondent to be given an 8-metre road, concrete structures on the applicant's lot would have to be knocked down, which was not intended under the sale agreement.

[19] Ms Cummings submitted that the learned judge erred when he relied on the evidence of Mr Gordon Langford, a valuator, instead of relying on the evidence of a land surveyor.

[20] Counsel contended that there was no need for the applicant to surrender her title. She argued that the respondent would not suffer any detriment if a stay were granted, as the sale agreement prevents the respondent from using the title to acquire a loan for the development she is undertaking. On the other hand, the applicant's appeal would be nugatory if the stay is not granted. Furthermore, the applicant's constitutional right will be breached if she is required to surrender the title to her home.

Submissions of the respondent

[21] Mrs Bennett Cooper, on behalf of the respondent, highlighted that the applicant's attorneys-at-law, in the submissions filed, referred to many matters that were either inaccurate or were not before the court below.

[22] Counsel emphasised that the respondent was seeking access in accordance with the sale agreement between the parties and referred to the subdivision plan attached to the agreement.

[23] Counsel referred to **Riva Ridge Ltd and another v The Kingston & St Andrew Corporation and another**, (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 96/2001, judgment delivered 26 February 2004, in which the court ruled that a sale of land involving a subdivision must comply with the subdivision plan approved by the Parish Council. Relying on the Local Improvements Act and the Registration of Titles Act, Mrs Bennett Cooper submitted that the contract between the parties was a subdivision contract. Counsel then referred to the plan attached to the sale agreement

and contrasted it with the plan submitted to the Office of Titles for the title for Lot 1 which reflected a 3-metre access road. She highlighted that the diagram submitted in support of the application for subdivision, the same as the one attached to the sale agreement included an 8 metre road. Counsel stated that the point made by the applicant's attorney-at-law that the learned judge failed to rule whether the access was a road or an easement was not of substance, as a road is an easement.

[24] Counsel drew the attention of the court to the fact that the Registrar of Titles lodged a caveat against the title delivered to the respondent (registered at Volume 1469 Folio 503), as well as that issued for Lot 1 (registered at Volume 1566 Folio 197), on the basis that the pre-checked plan ultimately utilised for the surrender application was not in accordance with the subdivision approval. In a letter, dated 24 May 2023, and addressed to the respondent's attorneys-at-law, the Registrar of Titles noted that the subdivision approval stated the area of Lot 1 as 990.36 square metres. However, the pre-checked plan that superseded the original plan, showed the area for Lot 1 as 1242.125 square metres. The Registrar wrote:

"It therefore appears that a portion of the land **designated in the subdivision approval as road** is currently comprised in Volume 1566 Folio 197. A Registrar's Caveat will be lodged against Certificate of Title registered at Volume 1469 Folio 503 and Volume 1566 Folio 197 pending the issuance of amended conditions of approval or direction from the court." (Emphasis supplied)

[25] Counsel explained that the respondent was not aiming to use the title to borrow money; however, the respondent needed to convince investors that the development is viable and cannot do so if the title provided breaches the subdivision approval on the essential issue of the access road. Counsel argued that the delay in resolving this issue has negatively affected, and continues to affect, the respondent's ability to complete the development that began many years ago, and on which it has already spent nearly \$700,000,000.00 as of October 2022.

[26] In conclusion, Mrs Bennett Cooper submitted that the learned judge's decision accorded with the evidence, and the applicant did not have an appeal with prospects of success.

The principles considered on an application for a stay of execution

[27] The principles considered in such an application are well established. Phillips JA in the case of **Kenneth Boswell v Selnor Developments Limited** [2017] JMCA App 30, at para. [48], noted that the primary consideration for the court is:

"...whether there is some merit in the applicant's appeal and whether the granting of a stay is the order that is likely to produce less injustice between the parties."

Is there some merit in the applicant's appeal?

[28] The applicant is challenging findings of fact made by the learned judge. In **Beacon Insurance Company Limited v Maharaj Bookstore Limited** [2014] UKPC 21, it was stated, in part, at para. 12:

"... It has often been said that the appeal court must be satisfied that the judge at first instance has gone '**plainly wrong**'. See, for example, Lord Macmillan in *Thomas v Thomas* [[1947] AC 484] at p 491 and Lord Hope of Craighead in *Thomson v Kvaerner Govan Ltd* 2004 SC (HL) 1, paras 16-19. This phrase does not address the degree of certainty of the appellate judges that they would have reached a different conclusion on the facts: *Piggott Brothers & Co Ltd v Jackson* [1992] ICR 85, Lord Donaldson at p 92. **Rather it directs the appellate court to consider whether it was permissible for the judge at first instance to make the findings of fact which he did in the face of the evidence as a whole.** That is a judgment that the appellate court has to make in the knowledge that it has only the printed record of the evidence. The court is required to identify a mistake in the judge's evaluation of the evidence that is sufficiently material to undermine his conclusions. Occasions meriting appellate intervention would include when a trial judge failed to analyse properly the entirety of the evidence: *Choo*

KokBeng v Choo Kok Hoe [1984] 2 MLJ 165, PC, Lord Roskill at pp 168-169." (Emphasis added)

[29] At the hearing of the appeal, the applicant will be required to convince this court that the learned judge was plainly wrong when he concluded that the title that the applicant delivered to the respondent did not comply with Barnaby J's unless order. The learned judge noted that in order for the title to comply with Barnaby J's unless order, the title had to satisfy what the parties had agreed to under the sale agreement.

[30] At para. [24] of his judgment, the learned judge wrote:

"[24] The evidence establishes that both parties agree that the diagram attached to, and referenced in, the agreement for sale has an 8 metre road reservation. There is no plea that the contract was varied. The [applicant] in evidence admitted there was no variation. The letters to which the [applicant] refers in her evidence, exhibits 14 and 15, do not change the reality of that which had already been agreed. The other letter, exhibit 3 page 758, she clearly misconstrues. **On a true construction of the agreement for sale the [applicant] was to provide an 8 metre road reservation, or easement, for access. The title delivered to the [respondent] by the [applicant] had only a 3 metre wide road reservation. It therefore is not in conformity with the contract and materially different to that which was promised by the agreement. I find therefore that the order of the Hon. Miss Justice Barnaby, referenced in paragraph 15 above, has not been complied with. It follows that the unless order will be given effect."**

[31] At para. [25] of the judgment, the learned judge observed that the applicant was upset that the planning authorities required her to abandon her gateway and use a shared entranceway on the access road as a condition of the grant of subdivision.

[32] The learned judge indicated, at para. [26] of the judgment, that since specific performance is an equitable remedy, he would consider whether it was still possible for the applicant to perform the relevant term of the agreement and whether it was just in all the circumstances to order her to do so. He proceeded to do so.

[33] On the issue of hardship, the learned judge determined, in light of all the evidence before him, that the roadway contemplated by the agreement was workable. He nevertheless stated that the Registrar of Titles should consider the matter and determine whether to cancel the title and what title to issue in its place. At para. [30], the learned judge stated, in part:

“[30] On the matter of hardship, and impossibility to perform, the evidence about the title, how it was obtained and whether it ought to be referred to the Registrar for cancellation, must be considered. The [respondent’s] application, referenced in paragraph 13 above, to have the title impounded by the Registrar of Titles is therefore relevant. Each party made submissions and having carefully considered the arguments, and the relevant law, I agree that the application is improperly grounded in section 29 of the Evidence Act. No Duplicate Certificate of Title is in evidence before me. **This is however an appropriate case to direct the Registrar of Titles to call in the title and consider whether it should be cancelled. The evidence, which I accept, is that there is no approval of the plan which provides for a three metre wide road reservation as appears on the title registered at Volume 1566 Folio 197 of the Register Book of Titles, see exhibit 13. Exhibit 13 contains drawings by Jerome Lofters which depict a 3 metre wide roadway. However, the Parish Council notes of approval, in exhibit 13, reference a 6.2 metre roadway, see exhibit 13 (the meeting of the 6th June 2012) and exhibit 2 page 643 dated 5th January 2012. The title Vol 1566 Folio 197 on its face refers to the Parish Council approval dated 7th December 2011 which approves a reserved road of 6.2 metres, see exhibit 3 pages 765 and 788.** There is also in exhibit 13 a declaration by Mr Lofters but, as he was not called as a witness before me and therefore unable to defend himself, I will make no adverse remarks in that regard. **Save to say it is a matter the Registrar of Titles should consider because the approvals, put in evidence before me, provide for either an 8 metre road, as per Mr Shirley’s plan or, a 6.2 metre road, see minutes dated 7th December 2011 exhibit 2 page 686 and, letter dated 6th June 2019 from the Kingston & St Andrew Municipal Corporation, exhibit 3 page 796.**”

[34] The learned judge's ruling that the title provided by the applicant did not comply with Barnaby J's order appeared to be supported by the evidence. After hearing and reviewing evidence at the trial, the learned judge found that the parties had never agreed for the applicant to provide a 3-metre access road. It will be very challenging for the applicant to successfully argue that a title with that access provision complied with Barnaby J's unless order. Furthermore, there was no genuine issue whether the learned judge ought to have referred to an easement or a road. The Parish Council subdivision approval specifically referred to an "access road" or a "roadway". It was also interesting to note, on the issue as to whether the applicant would need to demolish concrete structures in order to comply with the subdivision approval or the sale agreement, that the Parish Council in its conditions of approval, dated 5 January 2012, indicated:

"That the concrete wall within the 6.2 wide road illustrated on plan be demolished."

[35] On the issue as to whether the learned judge ought to have accepted the evidence of Gordon Langford, I noted that at para. [31] of his judgment, the learned judge stated that Mr Langford was not cross-examined. In such circumstances, it would be difficult for the applicant to demonstrate that the learned judge erred in relying on Mr Langford's evidence.

[36] As to whether the applicant ought to be asked to surrender the title for Lot 1, the Registrar of Titles has, herself, identified challenges with the title issued to the applicant. The Registrar noted that the diagram for Lot 1 appears to have included a portion of the land designated as road in the subdivision approval.

[37] I concluded that the applicant's appeal on the main issue that she has identified in the learned judge's ruling did not have any prospects of success, as she is unlikely to be able to show that the learned judge was plainly wrong.

[38] Having arrived at that conclusion, it was not necessary for me to consider the question of the interests of justice. Nevertheless, it seemed to me that the respondent would suffer greater detriment if the judgment is stayed, having waited so many years

for a title to be delivered in accordance with the sale agreement, and with the development being undertaken on Lot 2 of the subdivision, stymied after hundreds of millions of dollars, nearly \$700,000.000.00 as at October 2022, had been expended. The applicant is only being required to deliver a title that accords with either the diagram attached to the sale agreement or the access approved by the Parish Council in the subdivision approval. The diagram that was attached to the sale agreement was prepared by a surveyor at the instance of the applicant.

[39] It was for these reasons that I refused the application for a stay and awarded costs to the respondent.