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**NOTICE TO PARTIES OF THE COURT'S  
MEMORANDUM OF REASONS FOR DECISION**

**APPLICATION NO COA2023APP00029**

**BETWEEN                      KENT BROWN                                      APPLICANT**  
**AND                              BOARD OF MANAGEMENT OF THE                      RESPONDENT**  
**FIREARM LICENSING AUTHORITY**

**TAKE NOTICE** that this matter was heard by the Hon Miss Justice P Williams JA, Mr Justice Brown JA, and Mrs Justice G Fraser JA (Ag) on the 26 and 29 January 2024, with Hugh Wildman instructed by Hugh Wildman & Co for the applicant, Neco G Pagon for the respondent.

**TAKE FURTHER NOTICE** that the court's memorandum of reasons, as delivered orally in open court on 29 January 2024 by Hon Miss Justice P Williams JA, is as follows:

[1] This is an application for permission to appeal the decision of the Hon Carr J ('the learned judge') made on 27 January 2023. In the formal order of her decision, she permitted the acknowledgment of service of claim form filed on 16 June 2022 to stand. She also permitted the Board of Management of the Firearm Licensing Authority ('the respondent') to file a defence to the claim by 3 February 2023, and refused Mr Kent Brown's (the applicant's) application for leave to appeal.

[2] In determining whether permission to appeal ought to be granted we are guided by rule 1.8(7) of the Court of Appeal Rules which provides that "the

general rule is that permission to appeal will only be given if the court or the court below considers that an appeal will have a real chance of success”.

[3] It is accepted that the learned judge was exercising her discretion in arriving at a decision in the applications. The basis on which this court will interfere with the exercise of a judge’s discretion is well settled. An appeal against the exercise of a judge’s discretion will generally only succeed if it can be shown that it was based on a misunderstanding of law or evidence, or based on an inference that particular facts existed or did not exist, which can be shown to be demonstrably wrong, or the decision is so aberrant that no judge, mindful of her duty to act judicially, could have reached it (see **Hadmor Productions Ltd and others v Hamilton and others** [1982] 1 All ER 1042 and **The Attorney General of Jamaica v John McKay** [2012] JMCA App 1). There are no written reasons as to why the learned judge exercised her discretion in the manner she did. In the absence of reasons, this court is obliged to assess whether the decision reached demonstrates a proper exercise of the learned judge’s discretion.

[4] On 9 March 2022, the applicant filed a claim for negligence against the respondent in which he sought special damages, aggravated damages, and general damages. On the same day, the claim was served on the respondent at its registered offices and, on 30 March 2022, the applicant filed an affidavit of service. The respondent failed to file an acknowledgment of service. On 4 April 2022, the applicant filed an application for judgment in default of acknowledgment of service. The time for filing a defence had not yet expired.

[5] On 16 June 2022, the respondent filed an acknowledgment of service. It also filed a notice of application for court orders to strike out the applicant’s claim and for an extension of time to file a defence exhibiting a draft defence. It is in response to the learned judge’s order granting the respondent’s applications that the applicant now seeks leave to appeal.

[6] The applicant is a business person who describes himself as a firearms holder, gunsmith, firearms range operator, firearms dealer, and firearms trainer. In May

2021, he sought to renew his various licences namely two dealer licences, his gunsmith licence as well as his firearm user's licence. The applicant paid the requisite fees and submitted the necessary documentation to the Firearm Licensing Authority ('the FLA') and on 7 May 2021, the renewal application forms were stamped "approved for renewal". The applicant did not receive the firearm dealers and the gunsmith licences and made enquiries of the FLA as to when the licences could be collected in a letter dated 17 May 2021 with a follow-up email dated 19 May 2021. There was no response to the queries. In a letter dated 28 October 2021, Mr Hugh Wildman ('Mr Wildman'), counsel for the applicant, wrote to the Chief Executive Officer of the FLA requesting that the applicant be provided with the certificates for the licences "in order to complete the process of renewal of various licences". There was no response, and the applicant commenced this claim on 9 March 2022.

[7] In his particulars of claim, the applicant asserted that this failure by the FLA to issue the licences in a timely manner forced him to close his business and suffer significant losses as a result. He alleged that the respondent was negligent in the failure to issue the certificates, having approved the licences for renewal; in the failure to respond to the various requests for the issuing of the said certificates; and in the failure to inform him of any issue concerning the non-production of the certificates. In addition to his claim for aggravated and general damages, the applicant seeks to recover as special damages sums for Jamaica Public Service, internet service and closed user group, King Alarm (Monitoring and Response), salary/severances, rental payment and maintenance, and company car.

[8] Mr Wildman submitted that the proper approach to be adopted in applications of this nature should be that which obtains when considering an application to set aside a default judgment. He relied on **Christopher Ogunsalu v Keith Gardner** [2022] JMCA Civ 12, **Norda Williams v CMK Bakery Limited** [2020] JMCA Civ 26, and **The Attorney General v Universal Projects Limited**

[2011] UKPC 37. The main thrust of his submissions was that an examination of the exercise of the discretion of learned judge necessarily involves a consideration of the explanation given by the respondent for its failure to file the acknowledgment of service and defence. He submitted that the explanation given amounted to inexcusable negligence and could not be relied on. Further, he contended there was nothing to suggest that the respondent had any real prospect of successfully defending the claim as opposed to an arguable defence.

[7] In response, on behalf of the respondent, Mr Neco Pagon ('Mr Pagon') submitted that the rules in the Civil Procedure Rules ('CPR') which govern an application to extend time to file a defence are silent as to the criteria for the exercise of the court's discretionary power to enlarge time (namely rules 10.3(9) and 26.1(2)(c)). He submitted that, in the absence of specific guidance, reliance is placed on the overriding objective whereby the court must ensure that cases are dealt with justly. He relied on **The Attorney General of Jamaica and Western Regional Health Authority v Rashaka Brooks Jnr (a minor) by Rashaka Brooks Snr (His father and Next Friend)** [2013] JMCA Civ 16. It was his conclusion that the learned judge had in the circumstances correctly dealt with the case justly in permitting the respondent to file its defence so that the matter could proceed to trial.

[8] Having considered the helpful submissions of counsel along with the material provided, we have come to the clear conclusion that the applicant has failed to reach the high threshold required to successfully challenge the learned judge's exercise of her discretion. The principle dealing with applications for extension of time within which to file a defence, pursuant to rule 10.3(9) of the CPR, is that there should not be an inflexible stance and each case is to be decided on its own facts and "must be viewed by reference to the criterion of justice and in applying that criterion there are a number of other factors... which must be taken into account" (see **Commissioners of Customs and Excise v Eastwood Care Homes (Ilkeston) Ltd and Ors** [2000] Lexis Citation 2473). In fixating on the

explanation given for the delay and in asserting that there was no real prospect of successfully defending the claim as distinct from merely assessing the merits, Mr Wildman has failed to establish that the applicant has an appeal with a real chance of success. The application for permission to appeal should accordingly be refused. Considering the extremely late filing of submissions for the respondent and Mr Pagon's candid admissions amounting to there being no proper explanation for this, there will be no order as to costs.