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

SUPREME COURT CIVIL APPEAL NO 54/2018

APPLICATION NO COA2025APP00253

BETWEEN	CLARENDON MUNICIPAL CORPORATION (FORMERLY CLARENDON PARISH COUNCIL)	APPLICANT
AND	FELIX DOWNER	RESPONDENT

TAKE NOTICE that this matter was heard by the Hon Mrs Justice McDonald-Bishop P, the Hon Miss Justice Shelly-Williams JA (Ag) and the Hon Mrs Justice Tie Powell JA (Ag) on 5 October 2026, with Ms Sidia Smith instructed by Bennett Cooper Smith Attorneys-at-law for the applicant, and the respondent appearing in person.

TAKE FURTHER NOTICE that the court's memorandum of reasons for the decision, delivered on 5 October 2026 in open court by McDonald-Bishop P, is as follows:

[1] This is a relisted notice of application for court orders, filed on 28 July 2023, by the applicant, the Clarendon Municipal Corporation (formerly the Clarendon Parish Council), against the respondent, Mr Felix Downer, who is the appellant in the appeal. Mr Downer filed a notice of appeal on 30 May 2018 against the judgment of Pettigrew-Collins J (Ag), as she then was ('the learned judge'), delivered on 30 April 2018. On that date, the learned judge also granted a stay of execution of the judgment. By this relisted application, the applicant seeks an order striking out the notice of appeal for want of prosecution and an order discharging the stay of execution, with costs.

[2] This court has traditionally referred to the power to terminate an appeal for want of prosecution as the power to “dismiss” the appeal, consistent with the terminology used in authorities such as **Birkett v James** [1977] 3 WLR 38. The applicant’s request for an order to “strike out” the appeal does not alter the substance of the relief sought, as the two expressions have been treated as alternatives in this context (see **Conticorp SA and others v Central Bank of Ecuador and others** [2007] UKPC 40 and **Wycliffe Baird v David Goldgar and others** [2026] UKPC 23).

[3] The instant application is made on several grounds, chief among which are that Mr Downer, after filing his notice of appeal, has failed, neglected, or refused to comply with the Court of Appeal Rules 2002 (‘CAR’); that he has failed, neglected, or refused to respond to the requisition issued by the Court of Appeal on 1 June 2018 regarding certain matters set out in the notice of application; and that four years had passed between the filing of the notice of appeal and the filing of the application to strike it out, with no further steps taken by Mr Downer to advance the appeal in accordance with the CAR.

[4] The applicant further asserts that the delay in taking any action to prosecute the appeal is inordinate and inexcusable; that, if the appeal is not struck out, the applicant will suffer grave prejudice in the performance of its duties under law; that the failure, neglect or refusal to prosecute the appeal in accordance with the CAR is an abuse of the court’s process; and that the appeal has no real prospect of success.

[5] The relisted application is supported by the affidavit of Nickala Thompson, filed on 2 December 2022, in support of the original notice of application.

[6] Mr Downer has filed no affidavit in response. Accordingly, the applicant's affidavit stands unchallenged. He has also filed no written arguments, despite the fact that the notice of application was served on him years ago.

[7] The learned judge's judgment details the circumstances giving rise to the claim (**Clarendon Parish Council v Felix Downer** [2018] JMSC Civ 67). In summary, the claim concerned Mr Downer’s construction and operation of a two-storey building as a

sports bar in Aenon Town, Clarendon, without obtaining the requisite planning permission or building approval under the Town and Country Planning Act, the Town and Country Planning (Clarendon Parish) Confirmed Development Order 1982, and the Parish Council Building (Clarendon) By-Laws. The applicant alleged that, notwithstanding the service of a stop notice and an enforcement notice, Mr Downer continued the unauthorised development and use of the premises. It therefore sought declarations that the development was unlawful and injunctive relief requiring, among other things, the cessation of the unauthorised development, demolition of the building and restoration of the land to its original condition prior to the unauthorised development.

[8] Having heard the evidence and submissions of the parties, the learned judge made the orders that form the subject matter of the appeal. She declared that Mr Downer and his agents and/or servants had developed the land without obtaining planning permission and/or building approval from the applicant, and that he had engaged in certain operations contrary to the aforementioned laws. The learned judge also granted consequential injunctive relief requiring Mr Downer to refrain from any further development of the land and to restore the land to its original condition, to the applicant's satisfaction, within 60 days.

[9] Mr Downer, dissatisfied with the learned judge's orders, filed his notice of appeal. As the applicant asserts, Mr Downer has not taken any steps to progress the appeal towards hearing.

[10] In her written submissions, Ms Sidia Smith, counsel for the applicant, outlined the court's power to strike out an appeal for want of prosecution under the court's inherent jurisdiction, and submitted that the appellant's conduct demonstrates a lack of interest in pursuing his appeal. In support of her submissions, she cites several authorities, including the well-known decision of **Birkett v James**.

[11] On the issue of delay, Ms Smith relies on the case of **Tabata v Hetherington and others** (1983) Times, 15 December, in which Cumming-Bruce LJ defined "inordinate

delay” as “a period of time which has elapsed which is materially longer than the time which is usually regarded by the court and the profession as an acceptable period of time”. The court accepts that the period of over eight years since the filing of this appeal cannot be described as anything other than “inordinate”.

[12] In relation to the excuse for the delay, Ms Smith highlights that Mr Downer’s attorney was struck off the roll in 2019, but that he has not secured the services of any other attorney to date. Accordingly, his failure to progress the appeal, and the resulting delay, are inexcusable. The court accepts Ms Smith’s submission and finds the delay to be inexcusable.

[13] The court also accepts Ms Smith’s submission that the delay has been prejudicial to the applicant. Not only has the appeal loomed for several years, but it has prevented the applicant from carrying out its statutory duties under the legislation cited. The current state of affairs gravely affects the applicant’s ability to carry out its functions under the planning and building laws because the learned judge’s orders have been held in abeyance for several years and may remain so indefinitely unless the court strikes out the appeal.

[14] Having assessed all the circumstances, the court is satisfied that the requirements applicable when determining applications to strike out an appeal for want of prosecution have been met. This is, therefore, an appropriate case in which to strike out the appeal for want of prosecution.

[15] Upon further consideration of the notice of appeal, the learned judge’s judgment, and Mr Downer’s oral representations at the hearing of this application, the court is also satisfied that there is an additional, distinct and equally compelling reason to strike out the appeal. The learned judge’s judgment records Mr Downer’s acceptance that he developed the land without the planning and building approvals required by law (see para. [21]). Before this court, Mr Downer maintains that he still lacks the requisite approvals to this day. This is the state of affairs which led the learned judge to declare

that Mr Downer unlawfully developed the land without obtaining planning permission and building approval, in contravention of the applicable law. Those declarations formed the basis of the consequential injunctive relief granted in the applicant's favour, requiring Mr Downer to cease any further development and to restore the land to the applicant's satisfaction. It follows that, for the appeal to succeed, Mr Downer would have to displace the basis for those declarations by establishing that the learned judge erred in finding that the development was undertaken without the requisite approvals. Given his acceptance of the very state of affairs on which that finding was based, such a challenge has no real prospect of success, even if the appeal were permitted to proceed despite his failure to take steps to prosecute it in accordance with the CAR.

[16] The court therefore, of its own motion, finds that this appeal is hopeless, that its continuation would be an obvious waste of the court's time and resources, and that, in the interests of the administration of justice, it should not be permitted to proceed.

[17] In the premises, the court is unanimous that it should grant the application to strike out the appeal for want of prosecution and discharge the stay of execution of the learned judge's judgment. Accordingly, the court makes the following orders:

1. The notice of appeal filed on 30 May 2018 is struck out for want of prosecution and because it has no real prospect of success.
2. The stay of execution of the judgment of Pettigrew-Collins J (Ag), as she then was, granted on 30 April 2018, is discharged.
3. The costs of the appeal and the application are awarded to the applicant, the Clarendon Municipal Corporation, to be agreed or taxed.