

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 120/2005

BETWEEN	SHAKIRA DIXON (by her next friend Norine Bennett)	APPLICANT
AND	DONALD JACKSON	RESPONDENT

PROCEDURAL APPEAL

IN CHAMBERS

BEFORE: THE HON. MR. JUSTICE HARRISON, P.

**Written submission by Reitzin & Hernandez, Attorneys-at-law for the
appellant**

19th January 2006

HARRISON, P:

This is a procedural appeal pursuant to Rule 2.4 of the Court of Appeal Rules 2002.

On 30th November 2005, leave to appeal from the judgment of Mrs. Justice Beswick on 30th September 2005, was granted by Mrs. Justice Harris, Judge of Appeal (Ag.) with respect to the absence of verification of the defence by way of a certificate of truth.

The relevant facts are that the claimant/appellant was injured by a motor vehicle driven by the respondent, on the 25th day of January 2002. A claim form

was filed on 26th June 2002. An appearance was filed and a statement of claim was filed.

On 3rd March 2003, a defence was filed on behalf of the respondent.

The defence being a statement of case (see rule 1.4 of the Civil Procedure Rules ("the Rules")), was not verified by a certificate of truth, as required by rule 3.12(1). Rule 3.13(1) empowers the court to strike out the statement of case for non-verification by a certificate of truth. This confers a discretion on the judge. It reads:

"3.13.(1) The court may strike out any statement of case which has not been verified by a certificate of truth."

The sanction of striking out for non-compliance is specifically stated and therefore, it seems that rule 26.3 need not be resorted to.

The purpose of the certificate of truth to verify the statement of case is to bind a party to confine himself to facts within his knowledge and to obviate contentions of facts in which a party had no honest belief (see ***Clarke v. Marlborough Fine Art (London) Ltd*** [2002] 1 W.L.R 173).

A court must always give effect to the overriding objective to deal justly with the case-rule 1.1(1). This includes the expeditious disposal and fairness to all parties.

Although striking out of the defence is permissible under rule 13.13(1), in some circumstances it may be too extreme.

In ***Biguzzi v. Rank Leisure PLC*** [1999] 1 WLR 1926, Lord Woolf, M.R. (as he then was) commenting on the “unqualified discretion to strike out a case ... (for) failure to comply with a rule,” under rule 3.4(2)(c) of the Civil Procedure Rules 1998 (U.K.), said:

“In many cases there will be alternatives which enable a case to be dealt with justly without taking the draconian step of striking the case out.”

In the instant case, the respondent is an eyewitness to the incident. He specifically verified his witness statement with a certificate of truth. His defence filed, generally considered, is not inconsistent with his statement of facts as recited. The learned judge below cannot be faulted to hold, in the circumstances, that the “failure to verify the defence was not fatal.”

I agree that this is not a fit case to strike out the defence under rule 3.13(1).

The appeal is dismissed. The respondent must file and serve a defence containing the certificate of truth within fourteen (14) days of receipt of service of this Order.

Costs of this appeal shall be the respondent to be agreed or taxed.