JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE STRAW JA
THE HON MRS JUSTICE DUNBAR-GREEN JA
THE HON MRS JUSTICE G FRASER JA (AG)

APPLICATION NO COA2025APP00112

BETWEEN	**GREGORY DUNCAN (and or Nominees)**	**1ST APPLICANT**
AND	**GLOBAL DESIGNS & BUILDERS LIMITED**	**2ND APPLICANT**
AND	**NADINE ROSE McNEIL**	**RESPONDENT**

The applicant appearing in person and self-represented

Miss Stephanie Williams instructed by Henlin Gibson Henlin for the respondent

7 and 10 July 2025

Civil Procedure – Application for an extension of time to file notice and grounds of appeal – Factors to consider – Length of the delay – The reasons for the delay – Whether there is an arguable case for an appeal – The degree of prejudice to the other party if time is extended – Rules 1.11(2) and 1.11(1)(c) of the Court of Appeal Rules, 2002

ORAL JUDGMENT

G FRASER JA (AG)

Preliminary objection

[1] At the outset, counsel Miss Stephanie Williams ('Miss Williams') invited the court to address an apparent misunderstanding surrounding the scope and parties to the current application. Miss Williams initially announced her appearance on behalf of her colleague, Ms Keisha Spence ('Ms Spence'), who is named as a respondent. Miss Williams noted that the notice of application and accompanying documents bear

multiple claim numbers and list approximately 12 respondents. She explained that while the documents have been served on Ms Spence, it remains unclear whether service is directed to her in a personal capacity or in her representative role for Ms Nadine Rose McNeil ('Ms McNeil') in claim no SU2023CV00036, in which she has previously appeared as counsel. As a result, Miss Williams advised the court that she has no instructions from Ms McNeil at this time.

[2] It is the court's further observation that, aside from Ms Spence (the 2nd named respondent), no other listed respondent filed affidavits or appeared in opposition. Ms Spence, in her affidavit, expressed uncertainty as to why she is named, as she has not been a party to claim no SU2023CV00036. She clarified that the only parties to that claim are Mr Gregory Duncan ('Mr Duncan') and Ms McNeil.

[3] The court is not aware of any formal service having been made upon the remaining respondents. However, it is not unexpected if they have chosen not to participate even if served, given the unclear nature of the application.

[4] Upon reviewing the documents, the court notes that Mr Duncan, in an unorthodox and confusing manner, referenced four separate claim numbers (SU2024CV0317, SU2024CV0528, SU2022CV02301 and SU2023CV00036) in his application. Miss Williams further informed the court that claim no SU2024CV0317, brought by Mr Duncan, in the Supreme Court, involves all 12 respondents and remains extant.

[5] Given the procedural irregularities and the potential for confusion, the court accepts the merits of Miss Williams' objection and permits Mr Duncan to amend the documents. The amendments include the removal of the 1st, 2nd, and 4th through 9th respondents, as well as the three interested parties, and the deletion of all but one claim number, SU2023CV00036. Miss Williams did not object to this course and, upon consulting with Ms McNeil, confirmed that she is instructed to represent her in the matter going forward.

[6] Despite the amendments made to the documents, the court is compelled to comment on the Mr Duncan's notably unconventional approach to party joinder. It is

a well-established principle that a proper respondent is one who is formally named as a party in the proceedings below and whose legal rights or obligations may be directly impacted by the outcome of the application or appeal. This principle, grounded in the doctrine of *locus standi*, ensures that only those with a genuine and substantial interest in the matter are permitted to participate in the litigation process.

[7] As a matter of law, persons who were not parties in the court below, often referred to as strangers to the proceedings, may not be joined as respondents to an appeal unless leave is granted for them to intervene, etc. Likewise, witnesses, agents, and other non-participating third parties cannot properly be made respondents unless the subject matter of the appeal or application directly concerns them (see **JMMB Merchant Bank Limited (now JMMB Bank (Jamaica) Limited) v Universal Leasing & Financial Limited and Others** [2023] JMCA App 19).

[8] It follows that the inclusion of the 4th – 9th respondents, along with the three named "interested parties", is wholly improper, as none of these individuals or entities are parties to the original claim. Notably, four of the individuals named are sitting Supreme Court judges, one is the Honourable Chief Justice, and another is His Excellency the Governor General of Jamaica. The remaining entities include the Judicial Services Commission, the Attorney General, and the Registrar of Titles. Additionally, the 1st and 2nd respondents are attorneys-at-law who, at some stage, acted on behalf of Ms McNeil. Except for Ms McNeil, none of the other persons named bear any procedural or substantive role in the underlying litigation and, therefore, should not be included as respondents in this matter.

[9] Mr Duncan's conduct of naming the other 11 individuals in his application and proposed appeal is not only undesirable but is also an abuse of the court's processes.

Background

[10] For the present purposes, it is not necessary to rehearse the full background leading to this application. However, a summary of the litigation history involving the Mr Duncan is warranted to provide appropriate context. The following account is adapted from the chronology set out by McDonald-Bishop P, in a memorandum of

reasons delivered on 9 June 2025, arising from a related matter involving Mr Duncan in application no COA2022APP00269.

[11] Mr Duncan initiated proceedings in the Supreme Court, by way of claim no SU2022CV02301, seeking multiple orders concerning his alleged possession and asserted ownership of premises located at 16 Amethyst Drive in the parish of Saint Andrew. The dispute arose from a lease-to-own arrangement and a subsequent agreement for sale between Mr Duncan, as lessee and intended purchaser, and Ms McNeil, as lessor and proposed vendor. On 9 December 2022, the learned judge, Carr J, delivered an oral ruling striking out Mr Duncan's claim ('the first decision').

[12] Subsequently, on 9 January 2023, Ms McNeil filed a fixed date claim form under claim no SU2023CV00036, in which she sought, inter alia, a declaration that the agreement for sale was terminated and an order for Mr Duncan to vacate the Amethyst Drive property. That claim was also heard by Carr J, who on 1 November 2024, entered judgment in favour of Ms McNeil and ordered Mr Duncan to quit and deliver up possession of the premises ('the second decision').

[13] Dissatisfied with both decisions, Mr Duncan filed a notice and grounds of appeal on 16 December 2022, challenging the first decision. That appeal was assigned number COA2022CV00131. Rather than filing a separate appeal in respect of the second decision, Mr Duncan instead filed a relisted application that purported to challenge the second decision on various grounds. Further applications, filed on 21 and 25 November 2024, sought to amend and supplement the relisted application. These filings were procedurally defective, as both the appeal and the subsequent applications concerned different Supreme Court claims and decisions but were incorrectly filed under the same appeal number.

[14] The Court of Appeal, in appeal number COA2022CV00131, having considered the procedural missteps, ruled as follows:

> "[7] …the appeal arises from an interlocutory order made in the Supreme Court… Consequently, leave to appeal was required pursuant to section 11(1)(f) of the JAJA. By virtue of rule 1.18 of the Court of Appeal Rules 2002 ('CAR'), leave to

> appeal (which is referred to as 'permission to appeal' in the CAR) ought to have been sought first in the Supreme Court.
>
> [8] The inevitable consequence is that this court has no jurisdiction to entertain the appeal, or any application filed therein (including the relisted application), because leave to appeal was required but not obtained…"

[15] In accordance with those findings, the court, at para. [11], made the following orders:

> 1. The amended notice and grounds of appeal filed on 21 December 2022 in appeal number COA2022CV00131 was struck out for want of jurisdiction.
>
> 2. The amended relisted notice of application for injunction, stay, and amendment (filed 4 November 2024 and supplemented on 21 and 25 November 2024) was dismissed on similar jurisdictional grounds.
>
> 3. The applicant was advised to seek an extension of time to apply for permission to appeal the two Supreme Court rulings.
>
> 4. Costs were awarded to the respondents, to be agreed or taxed.

[16] It is the third of those orders which forms the basis of the current application, brought pursuant to rule 1.11(2) of CAR. This rule confers authority on the court to extend or shorten the time for compliance with any rule. However, it bears repeating that while the CAR grants this discretionary power, litigants are nonetheless expected to comply with prescribed timelines and should not treat such provisions as a licence for procedural laxity.

The application

[17] Pursuant to rule 1.11(1)(c), notice and grounds of appeal are to be filed within 42 days of the date on which the judgment or order being appealed is made. In the instant case, the written judgment was handed down on 1 November 2024. Accordingly, the notice of appeal should have been filed on or before 14 December

2024. To date, no such documents have been filed, resulting in a delay of over six months. This is a considerable lapse of time.

[18] The court observes that applications seeking an extension of time are typically supported by affidavit evidence and accompanied by the proposed notice of appeal and skeleton submissions. However, the documents presented in support of the current application do not distinctly conform to that standard. Although Mr Duncan filed an affidavit of urgency on 10 June 2025, entitled "Affidavit in Support of Injunction and Notice and Grounds of Appeal", para. 3 of that affidavit merely refers to a prior affidavit of urgency, said to have been served and filed on 13 November 2024, in connection with the fixed date claim form in the second decision. In addition, we observed two documents filed as "Amended Notice and Grounds of Appeal" and "Appellant's Skeleton Arguments," dated 30 and 19 June 2025, respectively.

[19] Upon careful review, the court finds that these documents do not adhere to the usual format or standards expected in applications of this nature. Nonetheless, bearing in mind that Mr Duncan appears in person at the time of filing, in the interests of substantive justice, the court exercises its discretion to permit him to present his application. The court is not inclined to elevate procedural technicalities above the right of a litigant to be heard on a matter of substance.

[20] The court now turns to consider the application against the well-established guidance laid down by Panton JA (as he then was) in **Leymon Strachan v The Gleaner Company Ltd and Dudley Stokes** (unreported), Court of Appeal, Jamaica, Motion No 12/1999, judgment delivered 6 December 1999. That decision continues to provide authoritative direction on the exercise of the court's discretion to extend time. At page 20 of the judgment, Panton JA summarised the relevant factors as follows:

> "The legal position may therefore be summarised thus:
>
> (1) Rules of court providing a time-table for the conduct of litigation must, prima facie, be obeyed.
>
> (2) Where there has been a non-compliance with a timetable, the Court has a discretion to extend time.
>
> (3) In exercising its discretion, the Court will consider-

(i) the length of the delay;

(ii) the reasons for the delay;

(iii) whether there is an arguable case for an appeal and;

(iv) the degree of prejudice to the other parties if time is extended.

(4) Notwithstanding the absence of a good reason for delay, the Court is not bound to reject an application for an extension of time, as the overriding principle is that justice has to be done."

[21] The court's scrutiny of the affidavit evidence does not disclose any acknowledgement from Mr Duncan that he is out of time for filing his appeal. Furthermore, there is no explanation for the cause of the delay. While Mr Duncan, files an affidavit of urgency and submits various documents purporting to be amended notices and grounds of appeal, he fails to offer any coherent explanation for the procedural missteps. The record suggests that Mr Duncan, while self-represented, misunderstands the procedural requirements. He could have proffered this explanation. Notwithstanding his ignorance of the rules, that, in and of itself, does not constitute a sufficient reason to excuse the delay. The absence of credible justification weighs against the exercise of the court's discretion. The court, however, bears in mind that even if the inferred reasons do not sufficiently explain the delay, it is not bound to refuse the application on this basis alone.

[22] In determining whether to grant the application for an extension of time, to allow Mr Duncan to file a notice and grounds of appeal, one of the questions to be answered by this court is whether Mr Duncan has an "arguable case for appeal". In essence, what this court is required to consider is whether "it is arguable that the learned judge was in error in a significant way in the decision handed down at first instance" (per Brooks JA (as he then was) in **Rona Thompson v City of Kingston Sodality Co-Operative Credit Union Limited** [2015] JMCA App 12 at para. [15]).

[23] At the application stage, the court is not tasked with adjudicating the appeal on its merits. However, it must undertake a preliminary assessment of the proposed

grounds of appeal and the supporting submissions to determine whether the applicant has disclosed an arguable case with a realistic prospect of success. The court, therefore, makes reference to the learned judge's findings and the evidence she considered in the second claim, so that we can determine whether the application has any merit.

[24] On examining the document titled amended notice and grounds of appeal, this court observes that it refers to "the decision of the Hon. Justice Mr B. Morrison pertaining to the granting of the injunction touching and concerning the November 1, 2024 and December 5, 2024 Orders…". However, the application currently before the court (no COA2025APP00112) appears to pertain only to the decision and orders of the learned judge (Carr J) made on 1 November 2024. Mr Duncan's averment is, therefore, erroneous. Indeed, the learned judge did not consider any application for an injunction. The decision of 1 November 2024 pertains to the claim brought by Ms McNeil, which substantially addresses the termination of the sale agreement, recovery of possession of the property located at 16 Amethyst Drive, breach of contract, and damages.

[25] Nonetheless, careful and extensive consideration is given to the Mr Duncan's affidavit and other documents, which makes the following comment and complaints:

i. Lack of impartiality in the judgment. Apparently, on account of the learned judge presiding in both the claim brought by Mr Duncan and that brought by Ms McNeil;

ii. Unlawful eviction;

iii. Allegations of fraud in relation to an addendum to the agreement of sale for the purchase of 16 Amethyst Drive;

iv. Correction of a restrictive covenant; and

v. Request for information by the fraud squad relating to investigations concerning Ms McNeil and her attorney at law,

who had carriage of sale in relation to the Amethyst Drive property.

[26] In Mr Duncan's proposed skeleton arguments, he retells the epic biblical tale of David and Goliath. He likens himself to David, the Amethyst property as "the stone" and the judiciary as exemplified by "Bryan Sykes", the Honourable Chief Justice, as the giant. He further disparages attorneys-at-law as "dishonest" and lambasts the Chief Justice for knowingly allowing crimes to be committed by judges of the Supreme Court. These averments are blatantly disrespectful and, more importantly, irrelevant to the application at hand.

[27] In addressing the issue of whether there exists an arguable case on appeal, Mr Duncan sought to clarify the basis of his challenge to the learned trial judge's decision and the orders made therein. In para. 3 of his affidavit, filed on 10 June 2025, Mr Duncan referenced Ms McNeil's affidavit - now marked as exhibit "GD1" - which formed the foundation of Ms McNeil's evidence during the trial of claim no SU2023CV00036. The learned judge expressly indicated that she had considered that affidavit in reaching her conclusions.

[28] Mr Duncan contended that the affidavit in question included, as part of its exhibits, an unsigned addendum to the agreement for sale, dated 5 May 2022. He alleged that the learned judge erred in law and in fact by relying on this document, which, according to him, was falsely presented as bearing the signatures of both parties. Mr Duncan asserted that neither he nor Ms McNeil executed the addendum, and that the judge was, therefore, misled into treating it as an operative component of the contractual framework. He maintained that this error materially influenced the judge's finding that he had breached the principal agreement for sale dated 9 September.

[29] A perusal of the learned judge's written reasons (**Nadine Rose McNeil v Gregory Duncan** [2024] JMSC Civ 134) reveals that Mr Duncan's complaint is without merit. While the learned judge acknowledged her consideration of Ms McNeil's affidavit, she expressly addressed the issue of the disputed addendum at para. [7] of the judgment. There, she recorded that Mr Duncan "denied signing an addendum to

the agreement for sale dated May 5, 2022", and further confirmed that the document in question "was never entered into evidence at this trial and was never relied on by the Claimant".

[30] It is, therefore, clear that the impugned addendum did not form part of the evidentiary record before the court and played no role in the learned judge's reasoning. To the contrary, the judgment confirms that the relevant contractual instrument underpinning the dispute was the agreement for sale dated 9 September 2021. The Mr Duncan's assertion that the judge relied on inadmissible or false evidence is accordingly misplaced and unsupported by the record.

[31] The learned judge explicitly demonstrated what evidence influenced her decision, as encapsulated in paras. [16] to [19] of her written judgment, as follows:

> "[16] The Claimant's evidence as to the failure of the Defendant to pay the full purchase price has not been challenged. There is no evidence contained in any documentation presented by the Defendant that suggests that the full purchase price has been paid. In fact, the Defendant's evidence is that irrevocable letters of undertaking were issued in satisfaction of the agreement. Upon an examination of the letters of undertaking they were issued conditional upon other factors.
>
> [17] Further the chains of emails exhibited in the affidavit of the Defendant clearly show that the letters of undertaking were withdrawn, and that the money was never paid to the Claimant. The Claimant exhibited a purchaser's statement of account on cancellation of sale dated December 12, 2022, that shows a total of Thirty-Six Million Five Hundred and Thirteen Thousand Nine Hundred and Fifty-Eight Dollars and Forty-Nine Cents ($36,513,958.49) was paid by the purchaser as at that date. It is also accepted that since the Defendant paid the four months under the lease purchase agreement, he has not paid any more money with respect to what he terms as the deposit.
>
> [18] Based on the evidence therefore I find that the balance of the purchase price remains outstanding, and that the Defendant has failed to pay any further money under the lease to purchase agreement. In the circumstances I find that the agreement for sale has been breached. The terms of the agreement for sale between the parties show that the

> duplicate certificate of title would be exchanged for full payment of the purchase price within Sixty (60) days of the execution of the agreement. This has not been done and to date has not been done.
>
> [19] Further, the Defendant has admitted that he has paid nothing more to the Claimant as per the lease to purchase agreement. The Claimant is therefore entitled to a declaration that the agreement for sale dated September 9, 2021, was terminated due to the failure of the Defendant to complete the purchase of the property."

[32] The court, therefore, rejects the assertion that the learned judge acted on extraneous or fabricated material. To the contrary, her reasoning and conclusions were anchored in the evidence properly before her, namely, the agreement for sale dated 9 September 2021, which she correctly identified as the operative contract. There is no indication that the disputed addendum influenced her findings on liability or the outcome of the case. This complaint, being demonstrably unsubstantiated, cannot ground an arguable point of appeal.

[33] In his application to this court, Mr Duncan did not directly challenge the learned judge's findings of fact or her appreciation of the evidence as set out in the relevant portions of her written reasons. His complaint that the learned judge failed to assign appropriate weight to the letters of undertaking is not borne out by the record. On the contrary, the judgment reflects that the learned judge considered those documents in detail and found that the "irrevocable letters of undertaking", which were intended to constitute a portion of the purchase price, had in fact been withdrawn. She further observed that the undertakings were expressed to be conditional upon the occurrence of other events. This court's own review of the material, as submitted by Mr Duncan in support of this application, aligns with the learned judge's conclusions.

[34] Mr Duncan also vigorously disputed the learned judge's characterisation of his status as a tenant. He maintains that there is no evidence supporting a tenancy relationship. He asserted instead that the arrangement between himself and Ms McNeil was a lease-to-purchase agreement, entered into solely for the purpose of securing early possession. He asserted that he paid rent for the initial four-month term as stipulated in the agreement and claimed that he satisfied all relevant conditions during

that period. He further submitted that possession was taken in December 2021, and that Ms McNeil did not deny at trial that those rental payments were made. He pointed out that the rent ultimately ordered by the court pertained only to the period after 1 May 2022, following the rescission of the contract.

[35] In response, Miss Williams explained that Mr Duncan remained in occupation of the Amethyst Drive property after the agreement was lawfully rescinded. It was in response to that continued occupation that Ms McNeil commenced proceedings, seeking compensation for his use of the premises. The learned judge accepted that Ms McNeil was entitled to compensation for the period of post-rescission occupation and that the appropriate measure was the previously agreed monthly sum of US$2,000.00.

[36] At trial, Ms McNeil relied on the lease-to-purchase agreement to support her claim for compensation. Para. [38] of the learned judge's reasons includes a verbatim citation of Special Condition 3 of the agreement, which stated:

> "In the event that the ongoing sale is forfeited due to no fault of the Lessor, this lease will be deemed determined and the Tenant will be served with a Notice to Quit and deliver up possession immediately."

[37] At para. [39], the learned judge concluded that, although Mr Duncan had breached the terms of the agreement, he was not in unlawful occupation. She found that he had entered into possession pursuant to the agreement on 29 December 2021 and had begun paying rent from 1 January 2022. However, the evidence indicated that, beyond the initial four months, no further rent was paid. The learned judge reasoned that, up until the issuance of a court order for possession, the appellant remained in possession as a tenant at sufferance.

[38] She went on to explain, with reference to the text The Law of Real Property 17th edition by Harpum et al, that:

> "It is my considered view that the Claimant is not entitled to mesne profit as the defendant is not a trespasser… I find therefore that the claimant ought to be compensated for the period that the defendant has been in use and occupation of the property up to the date of recovery of

> possession at the monthly rate previously agreed upon by the parties."

[39] Mr Duncan has not identified any error in the learned judge's treatment of his status following the rescission of the contract, nor in her conclusion that compensation was payable for continued occupation. It is well established that where a purchaser remains in possession after a contract for sale has been terminated, the vendor is entitled to compensation, usually measured by the market rental value of the property, for the benefit derived by the purchaser during the period of occupation. Such compensation reflects the equitable principle that one should not enjoy the use of property without payment where legal entitlement to remain has ended. In the circumstances, Mr Duncan's complaint in this regard does not support an arguable case for an appeal.

[40] It became apparent during Mr Duncan's oral submissions that his principal concern now lies with the recovery of the sum of $36,513,958.49, which he asserted was paid under the rescinded agreement for sale. He expresses grievance that Ms McNeil has not returned these funds. While the court acknowledges the importance of this issue from Mr Duncan's perspective, the court notes that the learned judge made no order concerning the refund of this sum. As such, the matter does not properly arise for consideration on this application.

[41] Miss Williams rightly submitted that, in the absence of any finding or order on this point at first instance, the issue cannot now be raised. The court agrees. Furthermore, the judge plainly acknowledged the contract's internal mechanisms for addressing refunds. At para. [11] of her written reasons, the learned judge reproduced Special Condition 7, which provides:

> "In the event of the Agreement being so rescinded **all moneys paid hereunder by the Purchaser shall be refunded** without interest less sums payable for the preparation of the Agreement for Sale as set out in Special Condition 2 and Special Condition 10." (Emphasis added)

Given this contractual provision, that issue, if pursued, must be the subject of a separate claim or application properly brought before the Supreme Court.

[42] Mr Duncan has also failed to advance any argument regarding the potential prejudice to Ms McNeil if the application for an extension of time were to be granted. Miss Williams, however, submitted that the prejudice would be significant. Ms McNeil, she argued, had been deprived of possession of her property from 1 May 2021 until April 2025, during which period she received no compensation. This court accepts that position. Reopening the proceedings after such a protracted delay, especially where judgment has already been obtained and partially enforced, would place an undue burden on Ms McNeil and violate the principle of finality in litigation.

[43] Although Mr Duncan's notice of application, affidavits and proposed grounds of appeal were disorganised and procedurally deficient, the court nonetheless considered the substance of the complaints to determine whether any arguable basis for appeal exists. Having done so, and giving due regard to the applicable principles governing the exercise of discretion in applications for extension of time, the court is not satisfied that the threshold has been met.

[44] While procedural defects alone should not deprive a litigant of justice, this is not a case where the interests of justice favour the grant of an extension. The delay in pursuing the appeal is excessive and unexplained, and the proposed grounds do not raise any credible or sustainable points of law. To permit the matter to proceed further would compromise judicial efficiency and impose unnecessary strain on Ms McNeil, and the administration of justice.

[45] In the final analysis, Mr Duncan has not identified any demonstrable error of law or procedural irregularity in the learned judge's decision. Accordingly, the court is not minded to grant the application. The following orders are therefore made:

1. The notice of application, filed on 9 June 2025, for an extension of time to file a notice and grounds of appeal against the decision of Carr J, made on 1 November 2024 in claim no SU2023CV00036, is refused.
2. Half of the costs of the application is awarded to the respondent to be agreed or taxed.