



**COURT OF APPEAL**  
Public Building West,  
King Street, Kingston  
Telephone# (876) 633-7201  
Email [registry@courtofappeal.gov.jm](mailto:registry@courtofappeal.gov.jm)  
Website [www.courtofappeal.gov.jm](http://www.courtofappeal.gov.jm)

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

**SUPREME COURT CIVIL APPEAL NO COA2024CV00061**

**BETWEEN BRADLEY MONTAGUE FITZARTHUR EDWARDS APPELLANT**  
**AND RAQUEL MAKEDA REECE EDWARDS RESPONDENT**

**TAKE NOTICE** that this matter was considered on paper by the Hon Miss Justice P Williams JA, the Hon Mrs Justice Foster-Pusey JA and the Hon Mrs Justice V Harris JA on 26 February 2026 with written submissions filed by Henlin Gibson Henlin Attorneys-at-Law for the appellant, and Chambers Bunny & Steer for the respondent.

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

[1] This is an appeal of the decision of Lindo J ('the learned judge'), delivered on 3 May 2024, in which she refused an application to vary a consent order.

[2] On 7 December 2023, the appellant filed a notice of application seeking to vary the terms of a consent order that had been previously entered by the learned judge on 28 September 2022. She considered and upheld a preliminary objection raised by the respondent as reflected in the minute of order, in the following terms:

"Preliminary objection is upheld. The court is not empowered to hear the application to vary as the consent order is a [sic] contractual. Having been drawn up and sealed the court has no power to vary it in the same claim."

[3] The parties agreed that the learned judge granted leave to appeal the decision, and that the appellant subsequently filed this appeal on 15 May 2024, on the grounds that the learned judge had erred in finding that the court had no jurisdiction to vary the consent order and in concluding that once an order has been drawn up and sealed, the court no longer had jurisdiction to vary it.

[4] In their written submissions, both parties rely on **Leslie Dacosta Williams v Teleith Evelyn Williams** (**'Williams v Williams'**) [2022] JMCA Civ 30. Edwards JA, writing on behalf of the court, conducted a comprehensive review of authorities relevant to the varying of a consent order. She set out a summary of the principles from those cases which reflect the position in law. Relevant to this matter, she stated at para. [85] of the judgment:

“vii) Consent orders which embody a real contract between the parties will, generally, not be interfered with but under the ‘liberty to apply’ provisions, terms may be implied in the contract or it may be varied only where it is necessary to provide a mechanism for the proper working out of the consent order: **Causwell v Clacken** [**Causwell v Clacken, Desmond Gregory Mair v Phyllis Mitchell** (unreported) Court of Appeal, Jamaica, Supreme Court Civil Appeal No 123/2008, judgment delivered January 2009].”

viii) Consent orders may be interfered with under the wide powers given to the court under the CPR to extend time, but possibly only where it does not embody a real contract between the parties, or rarely, where there is a real contract between the parties, and it is appropriate to do so. This, however, will only be for the purpose of imposing or extending time where the provisions of the order can accommodate it: [**Ropac Limited v Inntrepreneur Pub Co (CPC) Ltd** [2001] CP Rep 31; [2000] Lexis Citation 1350, and **Chaggar v Chaggar and another** [2002] EWCA Civ 1637; **Pannone LLP v Aardvark Digital Ltd** [2011] EWCA Civ 803 and **Safin (Fursecroft) Ltd v Estate of Dr Said Ahmed Said Badrig** (deceased) [2015] EWCA Civ 739].”

[5] It was on the principles outlined in **Williams v Williams** that the respondent raised the preliminary objection, and it is apparent that the learned judge

had them in mind in upholding the objection. The principle stated at (vii) at para. [85] of **Williams v Williams** does not apply since the variation being sought was not necessary to provide a mechanism for the proper working out of the consent order pursuant to the liberty to apply provision. The principle stated at (viii) at para. [85] is also inapplicable since, in the context of a real contract, which it is accepted, this order represented the applicant could only seek to impose or extend time. He is seeking to make a substantial change to the relevant order.

[6] It is noted that the appellant relies on the principle set out at (x) at para. [85], which is reproduced hereunder as follows:

"x. In the instant case, the question arises as to whether the learned judge, hearing this application under the 'liberty to apply' provision implied in the order, was correct to refuse to vary the consent order, as prayed, bearing in mind those principles. The CPR does not specifically speak to the legal effect of a consent order or to what are the circumstances in which the court may vary or otherwise interfere with it. However, as to the variations of orders generally, rule 42.10(1) permits the court to 'correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission'. Also, pursuant to the court's general case management powers under rule 26.1(7), a judge may revoke or vary an order of the court. The rules provide for no exceptions (that is, it does not provide that consent orders are exempt from the rule), and gives [sic] no basis upon which a judge should vary or revoke an order. The case law does, suggest, however, that the power to revoke and vary an order under the CPR does not unqualifiedly apply to consent orders which embody a contract between the parties. The power to vary such orders is limited to exceptional circumstances occurring within a short time of the order being made or, where it is wholly necessary, to work out the mechanics for the enforcement of the consent order."

It is in reliance on this principle that the appellant contends that the order can be varied, given the exceptional circumstances which occurred within a short time of the consent order being made.

[7] However, it needs to be first recognised that this application was not brought under the liberty to apply provision. While we see no need to determine whether the circumstances relied upon were exceptional, we find it difficult to accept that the period of 13 months between the entering of the consent order and the application to vary it could properly be described as a short time. In any event, we find that the basis on which the appellant was seeking to vary the consent order required him to either file fresh proceedings or file an appeal, as the respondent has submitted (see para. [33] and (v) at para. [85] of **Williams v Williams**).

[8] Accordingly, the learned judge was correct in upholding the preliminary objection. The appeal, therefore, lacks merit and must be dismissed. For these reasons, we make the following orders:

1. The appeal is dismissed.
2. The decision of Lindo J, made in the Supreme Court on 3 May 2024, is affirmed.
3. Costs of the appeal to the respondent to be taxed if not agreed.