[2026] JMCA Civ 17

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE EDWARDS JA
THE HON MISS JUSTICE SIMMONS JA
THE HON MRS JUSTICE SHELLY-WILLIAMS JA (AG)

SUPREME COURT CIVIL APPEAL NO COA2025CV00064

BETWEEN	**DANI GONZALEZ**	**1st APPELLANT**
AND	**SANDRA GONZALEZ**	**2nd APPELLANT**
AND	**WITCLIFFE WILLIAMS**	**RESPONDENT**

Written submissions filed by Nigel Jones and Company for the appellants

Written submissions filed by Oswest Senior-Smith and Company for the respondent

3 March and 3 July 2026

Civil Procedure – Extension of time – Unless order – Relief from sanctions – Applicable principles – Civil Procedure Rules (2002), rules 26.8, 56 and 65

PROCEDURAL APPEAL

(Considered on paper pursuant to rule 2.4(3) of the Court of Appeal Rules, 2002)

EDWARDS JA

[1] I have read, in draft, the judgment of Shelly-Williams JA (Ag) and I agree with the conclusions. I have nothing further to add.

SIMMONS JA

[2] I, too, have read the draft judgment of Shelly-Williams JA (Ag) and agree with her reasoning and conclusion.

SHELLY-WILLIAMS JA (AG)

[3] This is an appeal against the order of Hart-Hines J, made on 18 July 2025, refusing the application of Dani Denise Gonzalez and Sandra Gonzalez ('the appellants') to set aside the order of Orr J striking out their statement of case for non-compliance with case management orders and for relief from sanctions.

Background

[4] The respondent filed a claim form and particulars of claim seeking to recover US$100,000.00, the amount of the loan issued to the appellants under a written agreement dated 10 October 2011. On 3 March 2023, the claim form and particulars of claim were amended to include a claim for interest at 10%. The particulars also noted that new contracts were signed in 2012, 2013, 2015, 2016, and 2017, reaffirming the principal amount and the interest rate.

[5] The appellants filed a defence to the claim and, on 16 June 2013, filed a further amended defence and counterclaim. In the further amended defence, the appellants' position was that the parties had entered into a loan agreement; however, the loan had been repaid in full. The appellants also indicated that they did not have the benefit of legal advice regarding the interest rate, which they described as excessive and contrary to the Moneylending Act. The appellants' position in their further amended defence was that there were payments made by them that were not acknowledged in the particulars.

[6] In the counterclaim filed by the appellants, they stated that the 1st appellant suffered loss and damage by overpaying the loans due to the respondent's breach of the Money Lending Act and that the respondent was unjustly enriched. The 1st appellant claimed restitution or, in the alternative, the return of the excess sums paid pursuant to the Moneylending Act.

[7] The claim was listed for case management before Master Orr (as she then was), on 21 March 2022, who adjourned the scheduled case management conference ('CMC') to 30 May 2022. The second order made by the Master was that:

> "Each party is to prepare and serve a schedule of the loans and the related loan payment exhibiting copies of all payments made or received on or before the 6th May 2022."

[8] On 30 May 2022, the case management conference was adjourned by Master T Dickens to 3 October 2022, and the time was extended to 31 August 2022 to comply with Master Orr's order.

[9] On 3 October 2022, Master Orr made the following orders:

> "1. Adjourned to February 23, 2023 at 10 am for 1 hour, before Orr J (Ag) for both parties to file and serve a schedule of payments and interest calculations by February 3, 2023.
>
> 2. Counsel to consider the law in relation to interest on loans and where possible, come to an agreement on the interest rate at which the loans are to be calculated."

[10] On 23 February 2023, the CMC was further adjourned to 29 March 2023 to enable both counsel to exchange documents and have further discussions. The parties were also to file and serve the calculations prepared by their respective accountants by 3 March 2023.

[11] On 29 March 2023, the CMC was adjourned to allow the appellants to comply with the court's order. Time was also extended until 28 April 2023 for, among other things, the appellants to file and serve their accountants' calculations in relation to the disputed loans. The parties were also ordered to attend the adjourned CMC on 29 May 2023.

[12] On 29 May 2023, the CMC was again adjourned to 3 July 2023, and Orr J (Ag) made the following orders:

> "1. This case management conference is further adjourned to July 3, 2023 at 11 am for 30 minutes and all parties must attend, failing which their statement of case is struck out.
>
> 2. Unless the [respondents file and serve their] accountant's report by June 13, 2023 at 3pm, [their] statement of case is struck out and judgment is entered for the Claimant for the

sum claimed in his amended claim form filed on March 3, 2023.

3. The parties and their counsels [sic] are to meet to discuss [their] respective accountant's reports prior to the further case management conference and by 22nd June, 2023.

4. The time for the [appellants] to file and serve [their] amended defence to the amended particulars of claim filed on 3rd March, 2023 is further extended and same must now be filed and served by 16th June, 2023, failing which [their] statement of case is struck out and judgment is entered for the claimant as outlined in paragraph 2 of this order.

5. The cost of today and of the 29th March, 2023 are to the claimant to be taxed if not agreed and are to be satisfied by the [appellants] within 30 days of being taxed or agreed.

6. Counsel for the [appellants] is to prepare, file and serve this order."

[13] On 3 July 2023, the CMC was listed before Orr J (Ag), who noted that the appellants had failed to comply with orders 2 and 4. Orr J (Ag) then struck out the appellants' statement of case, and entered judgment for the respondent in the sum of US$467,418.99, with interest at the usual judgment rate. Costs were also awarded to the respondent, which were to be taxed if not agreed.

[14] On 16 August 2023, the appellants filed a notice of application which sought the following orders:

"1. That Order 1 of the Formal Order made by the Honourable Ms. Justice Orr on the 3rd day of July 2023 be set aside.

2. That the [appellants]/Applicants be granted relief from sanctions in relation to [order] 1 made by the Honourable Ms. Justice Orr on the 3rd of July 2023.

3. That the cost [sic] be the cost[sic] in the claim.

4. That there be such further or other relief as this Honourable Court deems just."

The application was supported by an affidavit of Shannon Young, filed on 5 December 2024, and a supplemental affidavit of Shannon Young, filed on 17 February 2025.

[15] The respondent filed a notice of application on 22 July 2024 to strike out the application for relief from sanctions. This application was supported by the respondent's affidavit filed on 22 July 2024.

[16] The appellants' notice of application was heard by Hart- Hines J, and on 18 July 2025, the learned judge made the following orders:

> "1. The [appellants'] Notice of Application for Court Orders filed on the 16th of August 2023 is refused.
>
> 2. The [respondent's] Notice of Application filed on July 22, 2024 is withdrawn.
>
> 3. Leave to appeal is granted.
>
> 4. Costs to the [respondent] to be agreed or taxed.
>
> 5. The [appellants'] Attorneys-at-law to prepare[,] file and serve the order herein."

[17] The appellants filed a notice of appeal, which was amended on 8 August 2025, challenging findings of fact and law made by Hart-Hines J. The following findings of facts and law are challenged:

> "Findings of Facts
>
> i. There was insufficient evidence led by the [appellants] setting out the circumstances establishing that the application was made promptly; and
>
> ii. The [appellants have] not provided a good explanation for the failure to comply with the Orders of the Court
>
> Findings of Law
>
> i. That the Honourable Judge erred in raising the threshold in determining compliance with rule 26.8(1) insofar as mandating that the Application and the Affidavit in support,

> be group [sic] together and to be made promptly; giving no consideration to rule 11.4 as to the time the application was made."

[18] The grounds of appeal are:

> "1. The Honourable Judge erred when she found that no circumstances had been outlined from which she could determine that the application had been made promptly.
>
> 2. The Honourable Judge erred when she found that a good explanation for the failure to comply had not been advanced by the [appellants] Claimant.
>
> 3. That the Honourable Judge erred in raising the threshold in determining compliance with rule 26.8(1) insofar as mandating that the Application and the Affidavit in support, be made promptly; giving no consideration to rule 11.4 as to the time the application was made.
>
> 4. The Honourable Judge failed to give sufficient weight to matters that must be considered in accordance with rule 26.8(3) including: the effect which the granting of relief or not would have on each party, whether the failure to comply has been or can be remedied within a reasonable time, the interests of the administration of justice."

Grounds 1 and 4 will be addressed together.

Grounds 1 and 4 - Whether the application was filed promptly and whether it complied with rule 26.8(1).

[19] On the appellants' behalf, it was submitted that their application for court orders was filed within the required timeframe under rules 11.4 and 26.8 of the Civil Procedure Rules ('CPR'). The appellants' position was that, although the supporting affidavits were filed more than a year after the notice of application, they provided valid reasons for granting the orders for relief from sanctions. Relying on the cases of **H B Ramsay and Associates et al v Jamaica Redevelopment Foundation** [2013] JMCA Civ 1 ('**Ramsay'**) and **Ray Dawkins v Damion Silvera** [2018] JMCA Civ 25, counsel for the appellants argued that the learned judge should have granted the orders sought in the appellants' notice of application.

[20] The respondent's counsel, Mr Senior-Smith, argued that the notice of application was not filed promptly and that the appellants' affidavits failed to provide valid explanations for the delay. He referenced **Ramsay and Norda Williams v CMK Bakery Limited** [2020] JMCA Civ 26 (**Norda Williams**) to support this view. Mr Senior Smith also cited rules 26.7 and 26.8 of the CPR.

Analysis

[21] This appeal challenges the exercise of the learned judge's discretion. The cases of **Hadmor Productions Limited and others v Hamilton and others** [1982] 1 All ER 1042, 1046, and **Attorney General of Jamaica v John McKay** [2012] JMCA App 1 establish the role of an appellate court in reviewing a judge's exercise of discretion at first instance. In the case of **Consetta Edwards et al v Joan May Black Valentine et al** [2012] JMCA Civ 61, Phillips JA, at para. [39] of her judgment, summarised the role of this court in reviewing the exercise of discretion in the lower court as:

> "...It is clear therefore that this court will only interfere with the exercise of the [discretion] of the judge sitting in the court below, if he has not considered relevant material or has considered irrelevant material, or has failed to apply the correct principles or his decision was just plainly wrong."

[22] The orders sought in the court below were for relief from sanctions and an extension of time to comply with the case management orders. Rule 26.8 of the CPR provides that applicants may seek such relief and sets out the prerequisites that must be satisfied before these orders can be granted. Rule 26.8 states that:

> "(1) An application for relief from any sanction imposed for a failure to comply with any rule, order or direction must be -
>
> (a) made promptly; and
>
> (b) supported by evidence on affidavit.
>
> (2) The court may grant relief only if it is satisfied that -
>
> (a) the failure to comply was not intentional;

(b) there is a good explanation for the failure; and

(c) the party in default has generally complied with all other relevant rules, practice directions orders and directions.

(3) In considering whether to grant relief, the court must have regard to -

(a) the interests of the administration of justice;

(b) whether the failure to comply was due to the party or that party's attorney-at-law;

(c) whether the failure to comply has been or can be remedied within a reasonable time;

(d) whether the trial date or any likely trial date can still be met if relief is granted; and

(e) the effect which the granting of relief or not would have on each party.

(4) The court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown."

[23] Rule 11.4 addresses the time and procedure for making applications. Rule 11.4 states that:

> "Where an application must be made within a specified period, it is so made if it is received by the registry or made orally to the court within that period."

[24] Promptness is the key element in seeking relief from sanctions. Although the CPR does not define promptness, several cases have helped to clarify it. In **National Irrigation Commission Ltd v Conrad Gray and Marcia Gray** [2010] JMCA Civ 18, Harrison JA gave guidance as to the definition of promptness. Harrison JA stated, at paras. [14] and [16], that:

> "[14] … Promptly is an ordinary English word which we would have thought had a plain and obvious meaning, but if we need to be told a bit more about what it means, we do have the

> authority of **Regency Rolls Limited v Carnall** [2000] EWCA Civ 379 where Arden L.J. pointed out that the dictionary meaning of 'promptly' was 'with alacrity'. Simon Brown L.J. said:
>
>> 'I would accordingly construe "promptly" here to require, not that an applicant has been guilty of no needless delay whatever, but rather that he has acted with all reasonable celerity in the circumstances.'
>
> ...
>
> [16] ... Promptness, in our view, is the controlling factor under 26.8. It is plainly a very important factor, as is evident from the fact that it is singled out in the rule as a matter to which the court must have regard. In our judgment, it is a very important factor, because there is a strong public interest in the finality of litigation. Put simply, people are entitled to know where they stand."

[25] In **Ramsay**, Brooks JA (as he then was) opined that promptness depended on the circumstances of the case. Brooks JA stated at para. [10] of the judgment:

> "In my view, if the application has not been made promptly the court may well, in the absence of an application for extension of time, decide that it will not hear the application for relief. I do accept, however, that the word "promptly", does have some measure of flexibility in its application. Whether something has been promptly done or not, depends on the circumstances of the case."

[26] The case at bar is similar to **Norda Williams**. In **Norda Williams** Foster-Pusey JA, at para. [53] of her decision, clarified that in filing a notice of application for court orders seeking relief from sanctions, the applicant ought to also promptly file an affidavit in support. Foster-Pusey JA stated that:

> "In light of the principles which I outlined earlier, it is my view that while the rule does not require that the notice of application be filed simultaneously with the affidavit evidence in support, the judge was entitled to arrive at the conclusion that the application had not been filed promptly. It is true that the notice of application itself was filed promptly, however, as

> the judge correctly stated, it could not have proceeded to be considered and determined without affidavit evidence. While it is understandable that there may be times when it is not possible to file an affidavit simultaneously with a notice of application, the nature of the application is important. An application for relief from sanctions is to be filed promptly, reflecting the urgency of the circumstances, and it must be supported by affidavit evidence. The filing of affidavits in support four months later, barring special circumstances, did not reflect urgency. There was no explanation as to why it took so long for the supporting affidavits to have been filed. The judge was therefore entitled to find that the application, meaning a complete and regular application, had not been made promptly."

[27] There is a history of delay arising from the parties' failure to comply with court orders in this claim. Orr J (Ag) ordered, on 3 October 2022, that a schedule of payment, amounts, and interest calculations be filed by 23 February 2023. The CMC was adjourned on two occasions to allow the parties to comply. This resulted in an unless order being made on 29 May 2023, which took effect on 3 July 2023.

[28] The notice of application for an extension of time and relief from sanctions was filed on 16 August 2023, just over five weeks after the order striking out the appellants' statement of case for non-compliance. Based on rules 11.4 and 26.6 of the CPR and the circumstances of this case, the notice of application may be considered timely. Rule 26.8(1)(b) requires that a notice of application be supported by an affidavit, but it does not specifically state that the affidavit be filed at the same time as the notice. However, a notice of application for relief from sanctions cannot stand on its own. To support such applications, there must be evidence, without which the court lacks the information necessary for the judge to exercise discretion in granting the relief sought. Two affidavits were filed in support of this application in December 2024 and 17 February 2025. This meant that the affidavits were filed 14 and 16 months after the application. The overall effect of the delay in filing the supporting affidavits is that the application cannot be considered timely.

[29] In my view, the notice of application was not filed promptly due to delays in filing the affidavits. Accordingly, I find that the learned judge did not err in finding that the application was not made promptly. Grounds 1 and 4, therefore, fail.

Ground 2 - Did the learned judge err in concluding that there was no good explanation for the failure to comply?

[30] Counsel for the appellants relied on the affidavit of Ms Shannon Young and submitted that the appellants had complied with the second order made by Orr J, that is:

> "Unless the [appellants] files and serves [their] Accountant's report by June 13, 2023 at 3pm, [their] statement of case is struck out and [j]udgment is entered for the [respondent] for the sum claimed in his amended claim form filed on March 3, 2023."

[31] It was submitted that the appellants had filed their accountant's report on 9 June 2023. Ms Young averred that the said report had been attached to the notice to rely on hearsay evidence. On perusal of the document filed on June 9, 2023, it carried the heading:

> "**Loan Statement Witcliff Williams to Beep Beep Tires, Batteries, and Lubes Ltd, 30/05/23.**" (Emphasis added)

The origin of this loan statement is unclear, and it is uncertain whether the appellants were connected to it, as they are not referred to in the document. I also note that the agreement at issue in the claim was signed on 10 October 2011; however, the document filed on 9 June 2023, references a loan agreement dated 28 January 2011. The claim indicates that the original agreement was renewed annually until 2017, but the respondent's loan statement, filed on 9 June 2023, does not mention any such renewals. Upon review, the document submitted on 9 June 2023, appears to be unsigned and lacks detailed information. The learned judge would have been justified in denying relief from sanctions based on this document.

[32] Counsel for the appellants then argued that there were valid reasons for the order not being complied with. The reasons provided were detailed in the affidavit of Ms

Shannon Young, an associate at the law firm of Nigel Jones and Company. I have summarised the reasons as follows:

> a. The appellants faced severe financial difficulties, which led to the accountant not being paid.
>
> b. The appellants accountant had to undergo major surgery.
>
> c. The accounts could not be settled on time due to the many documents that were needed to properly prepare the report.

[33] Counsel for the respondent argued that the appellants failed to provide any valid reasons for the delay. Mr Senior-Smith stated that the appellants had the opportunity to request an extension of time to comply with the court's orders but failed to do so.

[34] In **The Attorney General v Universal Projects Limited** [2011] UKPC 37, Lord Dyson, writing on behalf of the Board, highlighted the approach in determining whether an explanation is satisfactory. Lord Dyson stated, at para. 23 of the decision, that:

> "…To describe a good explanation as one which 'properly' explains how the breach came about simply begs the question of what is a "proper" explanation. Oversight may be excusable in certain circumstances. But it is difficult to see how inexcusable oversight can ever amount to a good explanation. Similarly if the explanation for the breach is administrative inefficiency."

[35] In para. [56] of **Jamaica Public Service v Charles Vernon Francis and another** [2017] JMCA Civ 2 ('**JPS**'), Edwards JA (Ag) (as she then was) aimed to clarify how explanations should be assessed in applications under rule 26.8. She stated that:

> "Factors (a) and (b) of 26.8 are subjective and the rules does [sic] not indicate how a court is to determine whether an explanation is a good one or not …"

[36] I have considered each reason advanced by the appellants for noncompliance with the court order separately, and I have dismissed them as invalid. The reasons are as follows:

(a) The defendants faced severe financial difficulties, which led to the accountant not being paid

The appellants selected the accountant to prepare the report. It was their responsibility to ensure payments were made to facilitate the report's production. If they did not have the resources to retain that accountant, they could have retained another accountant or applied for an extension of time to submit the report.

(b) *The defendants' accountant had to undergo major surgery*

No medical report was provided to the court to verify this information. Additionally, there was no evidence of the operation date or recovery period.

(c) The accounts could not be settled on time because many documents were needed to properly prepare the report

No details were provided regarding the requested documents that were not given to the accountant, nor about the difficulties involved in locating them.

[37] After reviewing the reasons for the noncompliance, I find that the learned judge did not err in concluding that the request for relief from sanctions lacked good explanations. Therefore, this ground of appeal fails.

Ground 3 - Whether the court should have considered the effect of such an order on the appellants?

[38] The appellants submitted that the learned judge erred in failing to consider the effect of the striking-out order on them. The appellants' position was that the defence, counterclaim, and the accountant's report indicated that the loan amount, along with the interest claimed by the respondent, had been repaid. The appellants highlighted that both parties had already consented to discuss their respective accountant's report and that the

learned judge's order was against the interests of justice. Counsel relied on rule 26.8(1), 26.8(2) and 26.8(3) in support of his submissions.

[39] Counsel for the respondent argued that, given the appellants' general noncompliance with court orders, the failure to promptly seek relief from sanctions, the lack of a satisfactory explanation, and the unresolved conflicts in the appellants' evidence, it would not have been in the interests of justice to grant the application for relief from sanctions.

[40] In the case of **Villa Mora Cottages v Monica Cummngs and another**, (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 49/2006, judgment delivered on 14 December 2007, ('**Villa Mora**'), Harris JA sought to balance non-compliance with the CPR against the right of a litigant to be heard. At page 10 of her decision, Harris JA stated that:

> "It cannot be disputed that orders and rules of the Court must be obeyed. A party's non-compliance with a rule or an order of the Court may preclude him from continuing litigation. This, however, must be balanced against the principle that a litigant is entitled to have his case heard on the merits. As a consequence, a litigant ought not to be deprived of the right to pursue his case.
>
> The function of the Court is to do justice. 'The law is not a game, nor is the Court an arena. It is ... the function and duty of a judge to see that justice is done as far as may be according to the merits' per Wooding, C.J. in **Baptiste v. Supersad** [1967] 12 W.I.R. 140 at 144. In its dispensation of justice, the Court must engage in a balancing exercise and seek to do what is just and reasonable in the circumstances of each case, in accordance with Rule 1 of the C.P.R. A court in the performance of such exercise, may rectify any mischief created by the non-compliance with any of its rules or order."

[41] This approach may be juxtaposed with the position laid down in the case of **Ramsay**, where Brooks JA stated at paras. [28] and [29] of the judgment that:

> "In the instant case, it would have been open to the court assessing the question of relief from sanctions, to consider whether the appellants had demonstrated that they were serious about getting their case back on track and placing themselves in a position where the adverse effects of the default were minimised. The appellants missed that opportunity for making a favourable impression in that regard.
>
> [29] In any event, rule 28.6(2) [sic] requires an applicant to comply with all three of its requirements. It states that the 'court may grant relief only if it is satisfied that' the three requirements have been satisfied …"

[42] In the case of **JPS** Edwards JA (Ag) considered the dicta in **Villa Mora** and **Ramsay** and found at para. [54] of her judgment that:

> "Contrary to the view espoused by counsel for the respondent, there is no discord between the decision in the case of **Villa Mora Cottages** and the case **of H B Ramsay and Associates Ltd and another v Jamaica Redevelopment Foundation Inc** and another. Both cases decided that the factors in rule 26.8(2) are cumulative and are threshold requirements, although using differing language in so stating. The result is that a litigant must pass the cumulative threshold requirements of rule 26.8(2) in order for the court to consider granting relief. Having formed the view that the threshold requirements have been met, the court then determines whether to grant the relief, taking into account the factors in rule 26.8(3)."

[43] Adopting the position in **Ramsay** and **JPS**, I conclude that the appellants have not met the criteria in rule 26.8(1) and (2). These rules require that an application for relief from sanctions be made promptly and with good reasons for the delay. I determine that the appellants failed to satisfy either rule, and, therefore, the learned judge did not err in refusing to grant relief under rule 26.8(3).

Conclusion

[44] I find that the learned judge did not err in finding that the application had not been made promptly. Although the notice of application may be considered to have been filed promptly, that is, five weeks after the learned judge's order, there was an

unexplained gap between the filing of the notice of application seeking relief from sanctions and the filing of the supporting affidavits. The two affidavits filed to assist the court in understanding the basis for granting the relief, were not filed until 14 and 16 months after the notice, respectively. The notice of application for relief from sanctions, therefore, cannot be deemed to have been filed promptly under these circumstances, thereby violating rule 26.8. The delay is compounded by the appellants' failure to offer a satisfactory explanation for their noncompliance with the court order. The learned judge's findings were correct, and I will not disturb them.

[45] In the circumstances, I propose that the appeal be dismissed with costs to the respondent to be agreed or taxed.

EDWARDS JA

ORDER

1. The appeal is dismissed.

2. Costs to the respondent to be agreed or taxed.