

[2026] JMCA Civ 22

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MISS JUSTICE EDWARDS JA
THE HON MR JUSTICE D FRASER JA**

PARISH COURT CIVIL APPEAL NO COA2021PCCV00001

BETWEEN	ISLAND WOODS & DEVELOPMENT LTD	APPELLANT
AND	BRYAN BLAKE	RESPONDENT

Garth O Taylor for the appellant

Ms Stephanie Stone instructed by JNW Taylor & Associates for the respondent

24 March 2023 and 31 July 2026

Civil Appeal – Breach of oral contract – Contract based on agreed scope of work and measurements – Credibility – Whether expert evidence necessary to prove claim

F WILLIAMS, EDWARDS, AND D FRASER JJA

[1] The following is the judgment of the court.

Background

[2] On 26 January 2015, Mr Bryan Blake ('the respondent'), made an oral agreement with Island Woods & Development Limited, ('the appellant'), through, a director, Mr Michael Ranger ('Mr Ranger'), who was the 1st defendant in the court below. The agreement was for the respondent to carry out carpentry work (specifically, to build a wooden bridge connecting two buildings) on the premises of a hotel in Ocho Rios, Saint Ann.

[3] There is no dispute that, upon completion of the carpentry work, the respondent was paid the sum of \$370,000.00 for work done. The issue joined between the parties, however, is whether that payment was the total payment agreed for the entirety of the work done (as the appellant contends) or, on the other hand, whether the total sum owed for completing the work was \$724,840.00 (as the respondent contends) with a balance outstanding in the amount of \$354,840.00.

The decision of the court below

[4] The respondent having brought the claim for what he contends is the balance due of \$354,840 for the work that he did, the matter was tried by Her Honour Mrs Sasha-Marie Ashley ('the learned Parish Court Judge'), in the Corporate Area Parish Court (Civil Division), on 10, 18 and 29 July 2019. The learned Parish Court Judge, after considering the terms of the oral agreement and whether that agreement was breached by the appellant, found in favour of the respondent and ordered, on 5 September 2019, as follows:

"1. The Defendant is to pay the Plaintiff the sum of **Three Hundred and Fifty-Four Thousand, Eight Hundred and Forty Dollars (\$354,840.00)** representing damages for breach of contract.

2. Attorney's costs in the sum of **Thirty Thousand Dollars (\$30,000.00)**.

3. Interest at the rate of **6%** per annum until the debt is satisfied."
(Bold as in the original)

[5] In a nutshell, the learned Parish Court Judge, on a balance of probabilities, found the respondent to be a credible witness, rejected the evidence of Mr Ranger given on behalf of the appellant, and accepted that there was an agreed rate between the appellant and the respondent of \$140.00 per square foot for the work. She further found that the contract was in fact breached by the appellant.

The appeal

[6] The appellant, by notice of appeal filed on 18 September 2019, initially challenged the learned Parish Court Judge's judgment on the following grounds of appeal:

“(i) The learned parish judge erred in law/ or misdirected herself by ignoring fundamental facts and principles of law hence arriving at a flawed decision.

(ii) Insufficiency of facts found to support of [sic] the judgment.”

[7] In an “amended notice of appeal”, filed on 13 November 2020, the grounds were expanded to read:

“(i) The learned parish judge erred in law/or misdirected herself by ignoring fundamental facts and principles of law hence arriving at a flawed decision.

(ii) Insufficiency of facts found in support of the judgment.

(iii) The learned parish judge erred in law in failing to recognize that the disputed construction costs in issue at the trial stemmed from disputed contract terms which formed part of a construction contract and thereby failed to recognize that industry expert assistance was necessary to interpret those construction costs.

(iv) The learned parish judge erred in law in applying interpretations to certain disputed construction costs that were not consistent with industry interpretations and practices.

(v) The learned parish judge erred in law in rejecting the quantity surveyor report advanced on behalf of the appellants [sic] at the trial.

(vi) The learned parish judge erred in law in coming to her decision by embarking on a cost quantification exercise at the trial which she did not have the expert knowledge and qualification to do in relation to the construction industry.”

Further amended grounds of appeal

[8] In a “further amended notice of appeal”, filed on 23 November 2022, the appellant did away with those grounds and, in their stead, put forward the following grounds:

"i. The Learned Parish Judge erred in law in admitting and treating the Respondent's calculations as factual evidence, which is at most opinion evidence, when she failed to recognize that, because the Respondent's quantification of the work done is based on his interpretation of the blueprint plans and on skills beyond that of the lay person, that quantification and calculations is opinion evidence.

ii. The Learned parish Judge erred in law and in fact when she accepted the Respondent's measurements and calculations as truth and failed to recognize that the Respondent being truthful does not mean that his measurements and calculations can be accepted as accurate without first establishing the requisite expertise."

[9] The appellant also filed an "amended notice of appeal" on 18 January 2023 in which they put forward the following grounds:

"i. The Learned Parish Judge erred in law in admitting and treating the Respondent's calculations as factual evidence, which is at most opinion evidence, when she failed to recognize that, because the Respondent's quantification of the work done is based on his interpretation of the blueprint plans and on skills beyond that of the lay person, that quantification and calculations is opinion evidence.

ii. The Learned parish Judge erred in law and in fact when she accepted the Respondent's measurements and calculations as truth and failed to recognize that the Respondent being truthful does not mean that his measurements and calculations can be accepted as accurate without first establishing the requisite expertise.

iii. The Learned parish Judge erred in fact when she found that there was agreement between the parties at the rate of \$140.00 per square feet [sic] in failing to recognize that it is not possible to agree such a uniform rate since the evidence suggests that different aspects of the work utilized different rates."

[10] The appeal was advanced on this last amended notice of appeal, but it is important to note that only grounds i and ii were argued in the written and oral submissions.

Proceedings at the trial

Summary of the respective cases

[11] The respondent contended that he was at first only contracted to build the bridge, but that there was a variation or further agreement for additional work, including putting up two beams, and he explained how the additional work came about.

[12] Although agreeing that there was some additional work that was required, the appellant contended, however, that that additional work was valued at no more than some \$20,000.00. The appellant further denied that there was any oral agreement for the respondent to do the said carpentry work at the rate of \$140.00 per sq. ft. The agreement, the appellant contended, was for the payment of \$370,000.00 in full and final settlement for all the work done, in addition to subsidies on rent and utilities for the duration of the respondent's work period.

[13] Both parties agreed that the initial agreement was based on five sheets of blueprint drawings presented by Mr Ranger to the respondent on 26 January 2015.

[14] The respondent, however, contended that, based on the agreed rate of \$140.00 per square foot and the measurements contained in the blueprint drawings, the total square footage of work was such that he presented the initial figure of \$642,000.00 to the foreman on 27 January 2015, as the initial projected costing for all the work.

[15] The respondent contended that the total money value of the work carried out inclusive of the additional work is \$724,840.00.

[16] The parties, therefore, disagreed on the extent of the additional work and the payment due.

Central issue

[17] The central issue arising from the grounds of appeal and the submissions made in the case is simply whether the learned Parish Court Judge erred in accepting the evidence of the respondent in relation to the calculation of the total amount that he said was due

to him; or whether her acceptance of his case had to be based on expert opinion evidence, which was absent from the trial.

Submissions

For the appellant

[18] Both supplemental grounds of appeal were argued together by the appellant's counsel. He argued that the evidence from the respondent that was accepted by the court was, in fact, inadmissible opinion evidence. In making this submission, he relied on the authority of **Rowan Mullings v Joan Allen & Anor** [2012] JMSC Civ 167 ('**Mullings v Allen**') a judgment of K Anderson J. He contended that, in that case, it was held that a letter from a commissioned land surveyor, indicating that a wall was inches from the registered boundary line, was opinion evidence. Counsel concluded by reference to a part of para. [11] of that judgment that:

"a. Evidence of measurements is opinion evidence when skills experience and training beyond those expected of a lay person is required to perform such measurements."

"b. A Court can and should only admit opinion evidence if such is expert evidence..."

[19] He also cited the case of **Juliet Campbell & Anor v Donnette Prendergast & Anor** (unreported), Supreme Court, Jamaica, Claim No 2008 HCV 01157, judgment delivered 30 April 2010 ('**Juliet Campbell**'). He submitted that, in that case, Brown J (Ag) (as he then was) acknowledged that a quantity surveyor is the construction industry expert on construction materials costs. He argued that it was also demonstrated in **Juliet Campbell** that even an experienced builder's quantification of construction costs should be verified by a quantity surveyor.

[20] Regarding what he submitted was the unreliability of the respondent's evidence, counsel pointed to page 59, para. 2 of the reasons for judgment where, he argued, the learned Parish Court Judge acknowledged that the respondent's quantifications and calculations before the variations, amounted to \$636,800.00; however, the respondent's

oral evidence was that the figure he presented to the foreman on 27 January 2015, before the variations, was \$642,000.00. According to counsel, that inconsistency must be due to an error on the respondent's part. He contended that the court could not, therefore, properly rely on his measurements or calculations and should instead have relied on the measurements and calculations of an expert. Regarding what he argued was the respondent's failure to discharge the burden of proof, counsel cited the case of **Rainford v Rainford** [2017] JMSC Civ 102.

[21] Counsel submitted that the respondent's memorandum of the work that he did pursuant to the agreement, amounts to inadmissible opinion evidence which should not have been accepted to prove the respondent's case. He complained that the information is unreliable because there is the risk of inaccuracy which does not depend on the respondent's honesty. It was his contention that the respondent needed to have adduced evidence from a quantity surveyor or some other industry expert to support and prove his claim. His failure to do so, counsel maintained, meant that he did not discharge the burden of proof required to prove that the contract was breached.

For the respondent

[22] On behalf of the respondent, Ms Stone argued that the appellant's grounds of appeal must fail because they fall outside the actual factual and legal issues that arose for determination during the course of the trial. It was further submitted that there was no need for the testimony of an expert and the respondent's testimony as to the measurements and what he was owed did not run afoul of any rules governing expert testimony, as the central issue in the case was that of credibility.

[23] Counsel for the respondent cited the case of **Dennis v Barnes & Barnes** [2021] JMCA App 21 (which itself cited the case of **Watt (or Thomas) v Thomas** [1947] AC 484), where, at para. [21] of the former case, this court (per D Fraser JA) observed that:

“[21] The governing principle is that an appellate court will not lightly disturb a trial judge's findings of fact, unless it is satisfied that the judge is plainly wrong.”

[24] It was also submitted that the cases cited by the appellant were all distinguishable, owing to the specific circumstances of this case.

Discussion

[25] There can be no denying the basic general principle that was applied in the case of **Rainford v Rainford** cited on behalf of the appellant. “He who alleges must prove” is a well-worn phrase embodying the seminal principle that, as a general rule, the burden of proof rests on the claimant in a civil action to prove the claim brought against the respondent in accordance with the civil standard: on a balance of probabilities.

[26] Similarly, with respect to civil appeals, there also can be no disputing that a judgment from a lower court cannot properly be reversed simply on the basis that the appellate court hearing the matter would have given a different judgment. In this regard, the guidance given in the case of **Watt (or Thomas) v Thomas**, by Viscount Simon, at page 486, is apposite and reads thus:

“[A]n appellate court has, of course, jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached on that evidence should stand, but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this is really a question of law), the appellate court will not hesitate so to decide, but if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial judge as to where credibility lies is entitled to great weight.”

[27] This quotation provides a convenient point of departure for a consideration of what might be said to have been the central issue for the resolution of the learned Parish Court Judge. That issue, as the learned Parish Court Judge found, was credibility. She reviewed the evidence of the parties, along with the exhibits, and rejected the evidence of the witness for the appellant, finding several instances in which his inconsistent evidence undermined his credibility. Four of them may be summarised as follows: (i) Inconsistent

suggestions were made to the respondent as to the amount of money he had requested – the witness at one stage suggesting that it was \$430,000.00, and, in another instance, asserting that it was \$450,000.00. Yet, further in explaining his payments to the court, the witness indicated that the sum to be paid with accommodation amounted to \$480,000.00. (ii) At one point he said that the \$370,000.00 for payment included the additional work; yet, at another point, he said that it did not. (iii) Although at first contending that he had agreed to paying a lump sum of \$370,000.00, he later said that he had used the rate of \$140.00 per square foot, and at another point said that he should have used the 2015 rate and not the rate that he used. (iv) Mr Ranger at first denied ever having worked with the respondent before the job that led to the filing of the claim in the instant appeal, yet, in cross-examination, he admitted having worked with him before, although, on his evidence, he was not “pleased with the work”. Yet, he employed him again on the project at the hotel. The learned Parish Court Judge found Mr Ranger’s evidence to be “fraught with contradictions and impossibilities” (see page 62 of the record of proceedings).

[28] Of importance as well in this discussion is the defence stated by Mr Ranger on the appellant’s behalf, to be found at page 11 of the record of proceedings as follows:

“My defence is the agreement was verbal in the amount that we discussed including accommodation which I paid, well half, well $\frac{3}{4}$ including water, light, facility, bed, fridge, stove that sort of thing for the workers. I paid him \$370,000 based on the agreement. I do not owe him anything.”

[29] That was the sum total of his defence. Questions as to the approved rates of calculation and other similar technical matters were only raised towards the end of his case – almost as an afterthought.

[30] On the other hand, the learned Parish Court Judge found the respondent, whom she heard and saw, and of whom she asked questions in clarification, to be a credible witness, ultimately accepting his testimony on a balance of probabilities. At page 59 of the transcript of proceedings, the learned Parish Court Judge found one inconsistency in

the evidence of the respondent as to the amount of the original estimate. In oral testimony he said that it was \$642,000.00; yet exhibit 1, which he tendered into evidence, shows, when the calculations are done, a total of \$636,800.00. Thus, there was a relatively minor variation of some \$5,200.00, which could possibly be attributed simply to error. The respondent's documentary evidence was also consistent with his oral testimony for the most part.

[31] Those considerations apart, it is difficult, if not impossible, to accept and apply the cases cited by the appellant in the manner that it would wish. There appear to be significant factual differences between the cases cited and the instant appeal. In the case of **Mullings v Allen**, for example, the nature of the claim was a boundary dispute – that is, an alleged encroachment by the defendants on the claimant's property and vice versa. The issue to be resolved was whether certain evidence from a commissioned land surveyor (Mr Isa Angulu) should be admitted, when the defendants, who had called him to give evidence, had not submitted an expert report prepared by him. The quotation relied on by the appellant in para. [11] of that judgment should not be read in isolation. Other paras. in particular, paras. [8], [9], [10] and all of [11] help to provide useful, clarifying context. They read as follows:

“[8] The defence counsel has, in the first instance, contended that Mr. Angulu can properly be permitted by this Court to give that which senior counsel, Mr. Nelson, has on the Defendant's behalf, described as 'first- hand evidence' of what he saw when he visited the scene of the dispute between the parties, which pertains to the alleged encroachment by the Defendants on the Claimant's property and vice versa. The parties' properties are each adjoining the other and are located on East Mountain Pride Avenue located in Long Mountain Country Club, Beverly Hills, St. Andrew. As set out in the text – **A practical approach to Civil Procedure, authored by Stuart Sime (12th edition) (2009), at paragraph 31.04 – 'Experts, like other witnesses, may give evidence of primary facts within their own knowledge.'** Further on, at paragraph 31.07 in the same text, the learned author states – **'It is also possible that an expert may be called to give factual evidence about facts known to the expert. In such a case the individual is called as a factual witness, not an expert.'**

(Kirkman v Euro Exide Corporation (CMP Batteries Ltd.) (2007) ALL E.R. (D) 209).

[9] What is clear to this Court, is that survey drawings cannot be taken as constituting evidence of facts. A survey drawing is, of necessity, a drawing based on the expert opinion of a surveyor as derived from years of academic training and practical experience in the field of land surveying and the preparation of survey drawings. Thus, to this Court's mind, the proposed evidence of surveyor's reports prepared by Mr. Isa Angulu, cannot be admitted as evidence of fact, or as perhaps more properly termed, evidence of primary facts.

[10] The letter under the hand of Mr. Angulu and dated January 24, 2012 is also, insofar as the most important portion thereof is concerned, that being what has been set out in the second paragraph of that two paragraph letter, evidence of opinion. Solely for the benefit of those who may hereafter read this judgment and wonder as to exactly what is the wording of that short letter, the same is reproduced here- 'On the 19th of January, 2012, I carried out a survey of the premises in caption from which the attached plan was prepared. The survey was done in accordance with the Land Surveyor's Act and Regulations.' (1st paragraph) 'To the rear of the townhouse on the lot, there is a concrete wall separating the subject of my survey and adjoining premises number 117 East Mountain Pride Avenue. The said concrete wall is within number 115 East Mountain Pride Avenue, a few inches from the registered boundary line'.

[11] It is abundantly clear that what is purportedly set out by Mr. Angulu in the second paragraph of that letter, is a matter of opinion in respect of an issue which is at least one of the central issues in the case at and is not an opinion in respect of a matter which would, at all, be within a lay person's expected knowledge. To the contrary, it is an opinion on a matter in respect of which expertise in the field of land surveying is required. Thus, this Court is not at all persuaded to decide on the Defendant's oral application, in the Defendant's favour, on that ground as postulated [sic], this being that what Mr. Angulu is referring to in the various documents which it is sought to have be tendered as hearsay evidence from him, is proposed evidence of primary facts, or in any event, that the same would in any useful or important respect, be anything other than opinion evidence, in which event, it is a well-hallowed rule of common law, insofar as the law of evidence is concerned, that opinion evidence can only properly be permitted by a Court to be given in proceedings

before that Court, if such is expert evidence.” (Emphasis as in the judgment).

[32] Based on the foregoing, it is apparent that the quoted words cited by the appellant, standing by themselves, do not give a full picture of the issues in that case, and they should be viewed in their proper context. When that is done, it will be seen that the case is not directly applicable to the facts and circumstances of this case, and so is distinguishable from it. In **Mullings v Allen** it was clear that there was opinion evidence sought to be adduced. In the instant case the main issue concerned the terms of the contract agreed between the parties.

[33] Similarly, the case of **Juliet Campbell** can also be distinguished, or ought to be considered with particular regard to its context. The appellant cited this authority solely for the acknowledgement made in that case that a quantity surveyor is the construction industry expert on construction materials costs. In that case, the trial judge accepted the evidence of an experienced builder as to the cost of replacing a building but discounted the estimated cost by 5% on the basis that the estimate had not been reviewed by a quantity surveyor. That adjustment was a matter that fell within that judge’s discretion in trying to arrive at a fair estimate. There is no law or rule mandating him to do so.

[34] That adjustment was made in a case relating to an estimate of the cost of replacing a building. In the instant case, what the learned Parish Court Judge had to contend with was evidence about a sum that, if the respondent’s evidence was accepted, was an amount agreed for a job to be done. A contrary position was asserted by the appellant that was rejected and, after analysis, and on a balance of probabilities, the learned Parish Court Judge rejected the evidence of the appellant and accepted that of the respondent. Credibility (as the learned Parish Court Judge found) was at the centre of the issues in the trial. We find that the learned Parish Court Judge dealt with that issue adequately and we can discern no error on her part in the conduct of the case to lead us to the conclusion that she was palpably wrong.

[35] The requirements for proof of a claim will vary from case to case, and where, as here, credibility was the main issue and a judge's analysis and general treatment of a case disclosed no error, there is no basis for us to intervene. The appeal must, therefore, be dismissed.

[36] In disposing of the appeal, we also see no reason to depart from the general rule that costs follow the event.

[37] In the result, we make the following orders:

1. The appeal is dismissed, and the orders of the learned Parish Court Judge, made on 5 September 2019 are affirmed.
2. Costs both here (in the sum of \$50,000.00) and below (in the sum of \$30,000.00) to the respondent.