

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MISS JUSTICE EDWARDS JA
THE HON MRS JUSTICE V HARRIS JA
THE HON MRS JUSTICE G FRASER JA (AG)**

SUPREME COURT CIVIL APPEAL NO COA2023CV00024

**IN THE MATTER of the Intestates'
Estates and Property Charges Act,
Section 2**

AND

IN THE MATTER of an application for a Declaration of a Common Law Spouse that the relationship of Husband and Wife existed between the Applicant **JULIANA DAWKINS** and **DALPHYNE JACKSON** (now deceased)

AND

IN THE ESTATE OF DALPHYNE JACKSON late of 6D Rockhampton Drive, Kingston 8 in the parish of Saint Andrew, deceased, intestate

AND

IN THE MATTER of an application by **JULIANA DAWKINS** for a **Grant Ad Colligenda Bona** pursuant to Part 68.46 of the Civil Procedure Rules 2002 (as amended 2006)

BETWEEN	JACQUELINE ONEIDIA JACKSON	1ST APPELLANT
AND	MATTROSS EGBERT JACKSON	2ND APPELLANT
AND	ALISON CHANTEL JACKSON	3RD APPELLANT
AND	JULIANA DAWKINS	RESPONDENT

Written submissions filed by Pauline Brown Rose for the appellant

Written submissions filed by Neco Pagon for the respondent

31 July 2026

Civil Procedure – Notice of application for extension of time to file and rely on affidavit – Affidavit filed after time limited by order of the court – Considerations to be applied – Reasons for delay filed after – Whether learned Master hearing the application erred in refusing to permit reliance on late affidavit evidence – Power to vary order of court – Material change of circumstance

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 G Fraser JA (Ag). I agree with her reasoning and conclusion and have nothing to add.

V HARRIS JA

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

G FRASER JA (AG)

Introduction

[3] This is a procedural appeal by Ms Jacqueline Oneidia Jackson ('Jacqueline'), Mr Mattross Egbert Jackson ('Mattross') and Ms Alison Chantel Jackson ('Alison'), the applicants in the court below ('the appellants'), from the decision of Master C Thomas ('the learned Master'). Given that several of the appellants bear the same surname, we have referred to them by their given names for ease of identification and to promote clarity in the discussion that follows. This is done purely as a matter of convenience, and no discourtesy or disrespect is intended.

[4] On 12 May 2022, the appellants filed a notice of application seeking an extension of time to file additional affidavits in response to the affidavits of Hermin Dixon and Peter Russell. The application also sought to have the affidavits of Mattross, filed on 9 May 2022, and Alison, filed on 10 May 2022 ('the late affidavits'), deemed properly filed. By her order, the learned Master refused both aspects of the appellants' application.

[5] Separately, on 16 September 2022, Juliana Dawkins ('the respondent') filed an application seeking to vary the order previously made by Nembhard J, which had limited the respondent to three ordinary witnesses. The respondent also sought leave to file an additional affidavit in support of her claim. The learned Master granted the respondent's application.

[6] The orders made by the learned Master were as follows:

"(1) The 3rd affidavit of Julianna [sic] Dawkins sworn to and filed on 6 May 2022 with audio of recording of telephone conversation between Juliana Dawkins and Jacqueline Jackson is struck out as inadmissible under section 31G of the Evidence (Amendment) Act.

(2) The application for an extension of time for the objectors to file their affidavits in response to the Affidavit of Peter Russell and Hermin Dixon and for the affidavits of Mattross Egbert Jackson filed on 9 May 2022 and the affidavit of Alison Chantal [sic] Jackson filed on 10 May 2022 to stand is refused.

(3) Order numbered 6 of the order of A Nembhard J made on April 6, 2022 is varied to permit the claimant to be limited to 4 ordinary witnesses.

(4) The claimant is permitted to file and serve an additional affidavit being the Affidavit of Letine Allen, the Director of Compliance and Enforcement at the Firearm Licensing Authority without the contents of the report of Mr Errol Brown dated 30 October 2020 being referred to or the report being exhibited. Also, the evidence contained in the affidavit shall be confined to information within Ms Allen's personal knowledge as well as information not within her personal knowledge which are [sic] not being relied on for the truth of their contents.

(5) Costs are to be costs in the claim.

(6) Leave to appeal is granted.”

Background

[7] The factual background giving rise to this appeal is not substantially in dispute between the parties. It has been comprehensively and accurately traversed in the judgment of the learned Master, and there is no useful purpose to be served by rehearsing it in its entirety in this judgment. To avoid unnecessary duplication, I gratefully adopt the learned Master's account of the relevant background as my own. What follows is, accordingly, confined to a narration of those facts which are either directly engaged by the grounds of appeal or otherwise necessary to an understanding of the issues falling for determination in this court, and I shall refer to additional matters only to the extent that they bear upon the specific questions raised by this appeal.

[8] On 20 November 2020, the respondent filed a fixed date claim form seeking:

(a) An order appointing her as Administrator *Ad Colligenda Bona* of the estate of the deceased, Mr Dalphyne Jackson; and

(b) Declaratory relief, specifically a declaration that she was the spouse of the deceased at the time of his death, pursuant to section 2 of the Intestates' Estates and Property Charges Act.

[9] In her supporting affidavit, the respondent asserted that she and the deceased had lived together in a common-law union as husband and wife for over 20 years prior to his death. She stated that they shared five children, Richard Rodney, Douran Williams, and the three appellants, though she acknowledged that two of these children are not biologically related to the deceased, and Jacqueline is not her own biological child.

[10] The respondent further deposed that the deceased had accumulated various assets, including properties and businesses, and that she had jointly operated those businesses with him.

[11] Affidavits in opposition were filed by Jacqueline, Mattross, and Alison, three of the deceased's children, as well as by Juliet Veronica Fields (the deceased's sister) and Neville Anthony Parry (a friend of the deceased). These affidavits contested the respondent's assertion that she and the deceased lived together as husband and wife until the date of his death. In particular, Jacqueline alleged that the intimate relationship between her father and the respondent ended around 2012. She stated that following the deceased's funeral, she informed her siblings of her intention to handle the administration of their father's estate. According to her, there were no objections, and she proceeded to obtain legal representation for that purpose.

Procedural history and relevant orders

[12] Several judges of the Supreme Court considered this matter on three separate occasions, the most recent being a case management conference conducted by Nembhard J on 6 April 2022. The orders made at that conference included directions concerning the filing and amendment of documents, together with timelines for the filing of affidavits. Orders 3 to 6 are of particular relevance:

"3. The claimant's attorney-at-law was to serve, no later than 7 April 2022:

a. The claimant's List of Documents filed on 6 April 2022;

b. The affidavits of Hermin Dixon and Peter Russell, both filed on 20 December 2021.

4. The objectors were granted liberty to file and serve affidavits in response to the affidavits of Hermin Dixon and Peter Russell. Such affidavits were to be filed and served no later than 29 April 2022.

5. No further or additional affidavits were to be filed or served after 6 May 2022 without the prior permission of the court.

6. The number of ordinary witnesses was limited to 3 for the claimant and 5 for the objectors."

Relief sought below

[13] In their notice of application, the appellants sought, among other things, orders that the third affidavit of Juliana Dawkins be struck out as inadmissible under section 31G(1)(a) and (b) of the Evidence (Amendment) Act, that the recording device be produced for expert inspection, and that the affidavits of Mattross and Alison be permitted to stand as properly filed and deemed filed on time.

[14] The appellants filed their application after the deadline set by Nembhard J's order for the filing of affidavits had passed, and after a subsequent order expressly prohibiting further affidavits without the court's prior permission. Although both parties had filed affidavits both within and beyond the stipulated timeframe, the respondent maintained that the affidavit of Ms Letine Allen, Director of Compliance and Enforcement at the Firearm Licensing Authority ('the FLA'), was relevant to the issues for determination and had only become available after the filing deadline had passed.

The appeal

[15] By notice and grounds of appeal filed on 6 April 2023, and an amended notice and grounds of appeal filed on 20 April 2023, the appellants seek orders setting aside the learned Master's refusal to permit the late affidavits to stand as properly filed, setting aside her decision to vary the order of Nembhard J, and setting aside her decision permitting the respondent to file the additional affidavit of Ms Allen. The 11 grounds of appeal advanced are as follows:

- i. The Learned Master erred in fact and in law that she wrongly rejected the Appellants' affidavits filed in support of the Application for Extension of Time to File their respective affidavits out of time.
- ii. The Learned Master erred in fact and in law when she concluded that there was no evidence before the court as to the reasons for the delay in the filing of the affidavits.

- iii. The learned Master erred in fact and in law when she found that it was unfair to the Respondent to allow the Appellants to rely on the affidavits in support of their application to extend time to file their affidavits.
- iv. The Learned Master erred in fact and in law that she failed to consider all the factors to be taken into account when considering an application for extension of time.
- v. The Learned Master erred in fact and in law in exercising her discretion in that she failed to give sufficient consideration to the length of the delay in the filing of the affidavits and whether such delay in the filing of the affidavits would have resulted in prejudice to the Respondent.
- vi. The Learned Master erred in fact and in law in exercising her discretion by failing to give sufficient weight to the overriding objective that justice has to be done.
- vii. The Learned Master erred in fact and in law in that in exercising her discretion she failed to give sufficient consideration to unique circumstances of the factual matrix before her.
- viii. The Learned Master erred in fact and in law in exercising her discretion in that she failed to give sufficient consideration to the fact that a trial date was not yet scheduled in the matter and that the Respondent was still seeking to file an additional affidavit after the period given for the filing of such affidavits had passed.
- ix. The Learned Master erred in fact and in law when she concluded that there was a material change in the circumstances that existed at the time Nembhard J's order was made.
- x. The Learned Master erred in fact and in law in granting the Respondent's application to vary order numbered 6 of Nembhard J. made on the 6th April, 2022 to permit the Respondent to be limited to four ordinary witnesses whilst at the same time refusing the Appellants' Application for extension of time to file Affidavits filed out of time. (the affidavits were already filed and were before the court)

- xi. The Learned Master erred in fact and in law when she failed to give the Appellants an opportunity to respond to the additional affidavit being the Affidavit of Letine Allen, Director of Compliance and Enforcement at the Firearm Licensing Authority (FLA)."

A procedural observation

[16] Before turning to the issues, this court records a procedural matter arising in the conduct of the appeal itself. The appellants, upon whom the obligation rests to place before this court full, cogent and relevant material in support of their appeal, failed to adduce the affidavit evidence that had been before the learned Master when she considered the application for an extension of time. This omission was significant: the appellants' written submissions, much like the analysis undertaken by the learned Master below, were confined to the question of delay and its causes, without engaging the evidential foundation upon which the exercise of discretion fell to be assessed.

[17] In those circumstances, this court considered it necessary to canvass the parties with a view to obtaining copies of the relevant affidavit or affidavits and to invite further written submissions thereon. In response to that invitation, the appellants complied and submitted the relevant affidavits and, by filing dated 13 February 2026, placed before this court what were styled "Supplemental Skeleton Submissions". The respondent, however, has not seen fit to file any response to those submissions, notwithstanding the opportunity afforded to do so.

[18] In the absence of any such rejoinder from the respondent, this court will proceed to determine the matter in such manner as it considers appropriate upon the material now before it.

Issues

[19] In the notice and grounds of appeal, the appellants advance numerous grounds challenging the learned Master's refusal to permit reliance on their late-filed affidavits and her decision to grant procedural relief to the respondent. Many of these grounds traverse the same factual matrix and discretionary considerations. To avoid traversing

matters already canvassed and to focus the analysis on the issues dispositive of the appeal, it is therefore convenient to distil them into a limited number of overarching issues that capture their substance without duplication. The appeal accordingly turns on the following questions: (i) whether the learned Master wrongly refused to consider the appellants' affidavits; (ii) whether she misapplied the governing principles for an extension of time; (iii) whether her discretionary treatment of the parties was inconsistent or unfair; and (iv) whether procedural fairness was observed.

[20] The issues formulated below, therefore, encapsulate the collective substance of the grounds without duplication and identify the true questions for determination by this court. The issues arising from the grounds of appeal are as follows:

Issue 1 – Whether the learned Master erred in law and/or fact in declining to consider the appellants' affidavit evidence and in concluding that there was no evidence explaining the delay in filing the late affidavits (grounds i and ii).

Issue 2 – Whether the learned Master misdirected herself in principle, and thereby wrongly exercised her discretion in refusing the extension of time, by failing properly to apply the relevant criteria governing such applications (grounds iii to viii).

Issue 3 – Whether the learned Master erred in varying the prior order of Nembhard J on the basis of an alleged material change in circumstances, and whether her exercise of case management discretion was inconsistent or unfair as between the parties (grounds ix and x).

Issue 4 – Whether the learned Master breached the requirements of procedural fairness by permitting the respondent to rely on the additional affidavit of Ms Allen without affording the appellants an opportunity to respond (ground xi).

Appellants' submissions

[21] Counsel for the appellants, Mrs Pauline Brown Rose, submitted that the learned Master erred in refusing to consider the late affidavits which, although filed after the

commencement of the hearing, were submitted before its conclusion and explained the short delay in complying with Nembhard J's orders. Reliance was placed on **Hasheba Development Company Limited v Petroleum Corporation of Jamaica Limited et al** [2020] JMCC Comm 17 and **Peter Haddad v Donald Silvera** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 31/2003, judgment delivered 31 July 2007, for the propositions that procedural errors should not automatically invalidate steps taken, and that an inadequate explanation for delay does not necessarily bar an extension of time.

[22] It was submitted that the learned Master misdirected herself by narrowly focusing on the absence of a timely explanation, rather than weighing all relevant factors identified in **Leymon Strachan v The Gleaner Co Ltd and Dudley Stokes** (unreported), Court of Appeal, Jamaica, Motion No 12/1999, judgment delivered 6 December 1999 ('**Leymon Strachan**') and **Fiesta Jamaica Limited v National Water Commission** [2010] JMCA Civ 4: the length of and reasons for the delay, prejudice to the other party, the merits, and the overriding interests of justice. Treating the reasons for delay as determinative was said to be a flawed exercise of discretion.

[23] Counsel argued that the affidavits were filed not to tailor the appellants' case but to provide necessary explanation, and that the learned Master erred in characterising their admission as a 'second bite of the proverbial cherry'. It was open to her to exercise her general powers under rule 26.9 of the Civil Procedure Rules ('the CPR') to regularise the affidavits and consider them, particularly where no trial date had been fixed, and the respondent had shown no cogent evidence of prejudice.

[24] By supplemental skeleton submissions filed on 13 February 2026, Mrs Brown Rose further developed these submissions by reference to the affidavits of Egbert Jackson and Alison Chantel Jackson filed on 11 January 2023. It was contended that, having found the delay neither inordinate nor substantial, the learned Master erred in refusing the application solely on the footing that there was no evidence explaining the delay, treating as determinative what was properly only one relevant consideration. The discretion under

rule 26.1(2)(c) of the CPR is broad, intended to facilitate substantive justice, and expressly contemplates extension after expiry. The refusal, it was said, elevated procedural non-compliance above the interests of substantive justice.

Respondent submissions

[25] Counsel for the respondent, Mr Neco Pagon, submitted that the question for this court's determination is whether the learned Master properly exercised her discretion, which may only be disturbed for error of law or fact, or where the decision is one no judicial officer could reasonably have reached, as enunciated in **Hadmor Productions Ltd and others v Hamilton and others** [1982] 1 All ER 1042 ('**Hadmor**') and **The Attorney General of Jamaica v John Mackay** [2012] JMCA App 1. While the absence of a strong reason for delay does not automatically preclude an extension, some explanation must be provided, and here none was furnished. The distinction between an insufficient reason and a complete absence of one was emphasised, relying on **Peter Haddad v Donald Silvera** and **Clifton Williams v Anthony Brown and Anor** [2023] JMCA App 28.

[26] On the variation issue, counsel submitted that the learned Master properly exercised her discretion under rule 26.1(7) of the CPR upon identifying a material change in circumstances, namely the FLA's provision of Ms Allen's affidavit containing evidence that the deceased recognised the respondent as his common-law spouse. The affidavit complied with statutory admissibility requirements under section 31E of the Evidence Act, and a refusal to admit it would have prejudiced the respondent. Accordingly, it was submitted that the appeal is without merit and should be dismissed with costs.

Law and discussion

[27] It is necessary to assess this appeal within the established limits governing this court's review of the learned Master's decision in the court below. The applicable standard, articulated in **Hadmor**, has been consistently applied by this court in several cases. Two such instances are **The Attorney General of Jamaica v John Mackay**, at

para. [20] and **National Solid Waste Management Authority v Johnson Louie et al** [2018] JMCA App 22, where Edwards JA at paras. [29] to [30] articulated that:

“[29] The appellate court’s review of the exercise of discretion by a judge, in an interlocutory application (for striking out or otherwise), has to be guided by the admonition of Lord Diplock in **Hadmor Productions Ltd and others v Hamilton and others** [1982] 1 All ER 1042. In that regard, I am mindful that this court:

‘...must defer to the judge's exercise of his discretion and must not interfere with it merely on the ground that the members of the appellate court would have exercised the discretion differently. The function of the appellate court is initially one of review only. It may set aside the judge's exercise of his discretion on the ground that it was based on a misunderstanding of the law or of the evidence before him or on an inference that particular facts existed or did not exist, which, although it was one that might legitimately have been drawn on the evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal, or on the ground that there has been a change of circumstances after the judge made his order that would have justified his acceding to an application to vary it.’

[30] On the basis of the foregoing, this applicant, on the hearing of any substantive appeal, would be tasked with demonstrating that the learned judge misunderstood the law or evidence, wrongly treated with the facts of the case or that there has been some change of circumstances subsequent to the making of her orders which would justify this court varying the orders that she made...”

Issue 1 – Whether the learned Master erred in law and/or fact in declining to consider the appellants’ affidavit evidence and in concluding that there was no evidence explaining the delay in filing the late affidavits (grounds i and ii).

[28] Essentially, this issue concerns whether the learned Master erred in declining to consider the affidavits filed by the appellants after the commencement of the hearing but

before its conclusion, and in determining that there was no evidence before her explaining the delay.

[29] In **Rose Marie Walsh v Clive Morgan (Administrator of Estate of Yvonne Iona Robinson, deceased)** [2023] JMCA Civ 27, this court affirmed that **Leymon Strachan** sets out principles of general relevance to extension of time applications, which include those concerning the delayed filing of affidavits. Consequently, to assess whether the learned Master wrongly exercised her discretion in declining to extend the time for the appellant to file the late affidavits, this court must consider the applicable standard governing applications for extensions of time to file documents. That standard is derived from the widely recognised and frequently applied decision in **Leymon Strachan**. Panton JA (as he then was) distilled the key factors on page 20 of the judgment and expressed them 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.”

[30] Following the approach outlined in **Leymon Strachan**, the learned Master is required to apply the principles relevant to applications seeking permission to file documents out of time.

The length of and reason for the delay

[31] In determining the length of the delay, the court must consider the date on which Nembhard J's order took effect. Those orders required affidavits in response to be filed and served no later than 29 April 2022, with no further affidavits to be filed after 6 May 2022 without the court's prior permission. The learned Master correctly found that the appellants' affidavits were filed on 9 and 10 May 2022, some 10 days after the primary deadline, with the application for an extension following on 12 May 2022, approximately 13 days after the deadline. She concluded that the delay was not inordinate and that the application was made very soon after the deadline had passed. This court agrees with that finding.

[32] While the delay cannot be properly characterised as inordinate, whether it was unreasonable is fact-sensitive and cannot be assessed in isolation from the reasons advanced for the delay. It is to those reasons, and the manner in which the learned Master dealt with them, that I now turn.

[33] The hearing of the application did not commence until 30 October 2022. The appellants' explanatory affidavits, sworn by Mattross and Alison, respectively, were filed after the hearing commenced but before its conclusion, and were therefore physically and procedurally before the court when the learned Master exercised her discretion. Counsel for the respondent objected to their consideration, contending that the appellants had had sufficient time to file supporting evidence and that the affidavits were filed merely to answer the claimant's arguments on the extension application.

[34] The learned Master acceded to that objection. At para. [52] she held:

"It seems to me that to allow the objectors to rely on the affidavits which were filed to address a shortcoming in their

application after the application had been heard would be akin to allowing the objectors to tailor their application to meet the objection of the claimant and would be in a sense giving them a second bite at the proverbial cherry. This, I think, in the absence of special circumstances, would be a bad precedent to set. I therefore will not consider these affidavits, the effect of which is that there is no evidence before this court as to the reasons for the delay in filing the affidavits.”

[35] On the strength of that finding, at para. [53], the learned Master concluded that the absence of any reason for the delay was, without more, sufficient to dispose of the application:

“There are authorities to the effect that though the reason for the delay need not be good, there must be some explanation which provides some material on which this court can exercise its discretion. In **Peter Haddad v Donald Silvera** SCCA No 31/2003 (delivered 31 July 2007), Smith JA stated that ‘the absence of a good reason for delay is not in itself sufficient to justify the court in refusing to exercise its discretion to grant an extension. But some reason must be proffered’. In this case, as a result of my decision not to consider the affidavits, there are no reasons for the delay, with the consequence that the objectors have failed to satisfy one of the requirements for the grant of the extension of time and accordingly, this is sufficient basis to refuse the application without considering the merits of the objectors’ case.”

[36] This court is unable to accept the correctness of that approach, for two related reasons.

[37] First, the finding that there was “no evidence” explaining the delay does not withstand scrutiny on the record as it stood. The explanatory affidavits were not deployed tactically to reshape the appellants’ substantive case, nor did they seek to cure a defect in the merits of the underlying objection; their sole purpose was to explain the delay in filing the appellants’ response to the affidavits of Mr Russell and Ms Dixon. Once such affidavits were filed and before the court, the live question was no longer whether evidence of the reasons for delay existed at all, but whether that evidence should be admitted or regularised. To treat the position as one of a complete absence of evidence

was, with respect, a mischaracterisation of the record then before the learned Master, and a misapprehension of that kind is a recognised basis for appellate interference with the exercise of a discretion as enunciated in **Hadmor**.

[38] Second, and flowing from the first, the wholesale refusal to consider the affidavits reflected an unduly technical approach inconsistent with rule 26.9 of the CPR and the modern philosophy of case management. Rule 26.9 makes clear that a failure to comply with a rule or order does not automatically invalidate a step taken in proceedings and confers on the court a broad discretion to regularise non-compliance in furtherance of the overriding objective. This court has repeatedly emphasised that procedural rules exist to facilitate, rather than obstruct, the just resolution of disputes, and that case management powers are properly directed at regularisation rather than punishment, save where non-compliance is deliberate or amounts to an abuse of process (see paras. [20], [27] and [33] of **Petroleum Company of Jamaica Limited v Hasheba Development Company Limited and others** [2024] JMCA Civ 19).

[39] A proper construction of order 5 made by Nembhard J reinforces this conclusion. The qualifying words “without the prior permission of the court” preserved the court’s continuing discretion to permit further filings where the justice of the case required it. The timeline was thus regulatory rather than immutable, conditioning further filing upon the court’s approval rather than excluding it absolutely. That construction accords with the flexible and supervisory character of case management under the CPR: see also **Joan Allen and Louise Johnson v Rowan Mullings** [2013] JMCA App 22, in which Phillips JA endorsed the approach taken in **Nottinghamshire and City of Nottingham Fire Authority v Gladman Commercial Properties Ltd and Another** [2011] EWHC 1918 (Ch), where Peter Smith J observed that the mere fact of lateness should not be treated as decisive, and that late evidence should ordinarily be admitted where it can fairly be dealt with by the opposing party, even on terms as to costs or adjournment.

[40] It follows that the learned Master plainly possessed both the jurisdiction and the discretion under rule 26.9 of the CPR to regularise the late-filed explanatory affidavits

and to consider them. Her refusal to do so, founded on a mischaracterisation of the affidavits as constituting “no evidence”, had the effect of elevating form over substance, and conflated what the authorities treat as two distinct concepts: an insufficient explanation for delay, and a complete absence of one. As this court observed in **Peter Haddad v Donald Silvera**, and as Panton JA recognised in **Leymon Strachan** by reference to **Finnegan v Parkside Health Authority** [1998] 1 All ER 595, the absence of a good reason for delay is not, of itself, sufficient to justify refusal of an extension; the overriding principle remains that justice must be done. That principle has since been consistently applied: **George Sims v Paul Reid** [2023] JMCA App 8 at para. [7]; **Jamaica Public Service Company Limited v Rose Marie Samuels** [2010] JMCA App 23 at paras. [28]–[29]; **The Commissioner of Lands v Homeway Foods Limited and Stephanie Muir** [2016] JMCA Civ 21 (**‘Homeway Foods’**) at para. [44]; and **Joyce Florence Facey v Comala Diane Remogene aka Comala Vassell (Executrix of the Estate of Dehon George Facey, deceased)** [2025] JMCA App 4. In **Homeway Foods**, at para. [84], McDonald-Bishop JA (as she then was) put the point thus, notwithstanding her own finding that the explanation offered was unsatisfactory:

“I must point out, however, that even though the excuse for the lengthy delay is not a good one, the authorities have said that the court is not bound to refuse the application. It is but one of the factors to be taken into account in weighing what the interests of justice require. Therefore, my finding that there is no good explanation for the delay is not treated as being conclusive of the issues for determination, albeit that it is, indeed, a weighty one.”

[41] By proceeding on the footing that no explanation existed at all, and declining on that footing to undertake any further evaluation, the learned Master adopted an unduly rigid approach inconsistent with both rule 26.9 of the CPR and the modern ethos of case management.

[42] In deciding to bring the appellants’ application to an end without considering its merits, the learned Master never reached the remaining components of the **Leymon Strachan** test: whether the appellants had an arguable case, and the degree of

prejudice, if any, to the respondent. The consideration of an application for an extension of time, being a multifactorial exercise, requires a holistic assessment of all relevant factors.

[43] In those circumstances, I am satisfied that the learned Master's refusal to consider the appellants' explanatory affidavits proceeded upon a misapprehension of the evidence before her and an unduly rigid application of principle, constituting an error warranting appellate intervention.

Issue 2 – Whether the learned Master misdirected herself in principle, and thereby wrongly exercised her discretion in refusing the extension of time, by failing properly to apply the relevant criteria governing such applications (grounds iii to viii)

[44] Having identified the error in the learned Master's approach, the question arises as to the appropriate course for this court to take. It is well established that where a discretion has been wrongly exercised at first instance, an appellate court is not confined to remitting the matter for fresh determination; it may, in an appropriate case, substitute its own exercise of the discretion for that of the court below. The jurisdiction to do so was affirmed by this court in **Hadmor**, and more recently in **The Attorney General of Jamaica v John Mackay**, where it was recognised that an appellate court may properly proceed to determine a matter itself where it is in possession of the material necessary to do so, and where the interests of justice favour a final resolution of the question rather than a further round of litigation. The preconditions for the exercise of that jurisdiction are, in this court's judgment, satisfied here.

[45] In that regard, I reiterate that, at this court's invitation, the appellants filed supplemental skeleton submissions on 13 February 2026, placing before this court the relevant affidavit evidence together with submissions addressing the delay, the reasons for it, the absence of prejudice, and the interests of justice. The respondent, despite being afforded the opportunity, has not responded. This court is, therefore, in possession of the full evidential and submissions record necessary to undertake the multifactorial assessment that the **Leymon Strachan** principles require, and it is both appropriate and

in the interests of finality that this court now proceed to that exercise rather than remit the matter to be determined afresh.

[46] I will, therefore, proceed to apply the **Leymon Strachan** criteria, including the reasons for the delay, the existence of an arguable case, the degree of prejudice to the respondent, and the overriding objective, untrammelled by the erroneous “no evidence” finding addressed above.

[47] The issue of delay has already been examined. The period of non-compliance extended from 29 April 2022, when the affidavits became due, until 9 May 2022, when they were filed, a delay of approximately 10 days. The application for an extension of time was filed on 12 May 2022, approximately 13 days after the prescribed deadline. The learned Master correctly observed that neither the delay nor the timing of the application could properly be regarded as inordinate, as the application was made shortly after the expiry of the relevant time limit. That finding is unassailable and is entitled to appropriate weight in the exercise of the court's discretion, although it is not, standing alone, determinative.

[48] As to the reasons for the delay, the supplemental affidavits of Mattross and Alison, now properly before this court, explain that the failure to file within the prescribed time arose from difficulties encountered in obtaining and marshalling the relevant material in response to the affidavits of Mr Russell and Ms Dixon within the timeframe allowed by Nembhard J's order. The affidavits were filed within days of the deadline, and the application for an extension was promptly made thereafter. There is nothing on this record to suggest that the appellants' default was deliberate, contumelious, or intended to gain a tactical advantage. The explanation is neither elaborate nor inherently improbable; it amounts, in substance, to a short administrative failure which was promptly remedied.

[49] The appellants' supplemental submissions also addressed the question of prejudice. No trial date has been fixed in these proceedings. The respondent was herself,

at the time of the hearing before the learned Master, seeking to adduce additional affidavit evidence outside the prescribed timelines. No evidence has been placed before this court, either at first instance or on appeal, establishing that the respondent suffered any specific or demonstrable prejudice from the short delay in filing the late affidavits or from their admission. The respondent has not responded to the supplemental submissions, which this court takes as an acceptance that no cogent case of prejudice is advanced. In those circumstances, the respondent's position on this limb of the analysis rests on the bare fact of lateness, which, as the authorities make clear, is insufficient of itself to justify refusal.

[50] The existence of an arguable case on the substantive issues in the underlying proceedings is also a relevant consideration. The affidavits of Mattross and Alison go directly to the question of whether the respondent and the deceased lived together as husband and wife until his death, which is the central issue to be resolved at trial. They were filed expressly in response to the affidavits of Mr Russell and Ms Dixon, upon which the respondent relies in support of her claim, and they contain evidence material to the determination of that issue. It cannot, in those circumstances, be said that there is no arguable basis for the position the appellants seek to advance through that evidence.

[51] Finally, and overarchingly, in the circumstances of this case, the interests of justice plainly favour the admission of this evidence. The proceedings concern the status of the respondent as the deceased's spouse and the consequential administration of his estate. They are, by their nature, matters of considerable importance to all parties. To determine those questions without the benefit of material evidence going to the very heart of the dispute, on account of a 10-day administrative delay (which was adequately explained), would be to allow procedural regularity to defeat substantive justice. That is precisely the outcome the overriding objective and the fourth principle in **Leymon Strachan** are designed to prevent.

[52] Applying all the **Leymon Strachan** criteria holistically: the delay was short and not inordinate; the explanation, while not elaborate, is credible and discloses no

deliberate default; there is no demonstrated prejudice to the respondent; the evidence is directly material to the central issue for trial; and the interests of justice favour its admission. I am, therefore, satisfied that the application for an extension of time to file the late affidavits ought to be granted, and that those affidavits should be permitted to stand as properly filed.

Issue 3 – Whether the learned Master erred in varying the prior order of Nembhard J on the basis of an alleged material change in circumstances, and whether her exercise of case management discretion was inconsistent or unfair as between the parties (grounds ix and x).

[53] This next issue concerns, first, whether the learned Master correctly found a material change in circumstances justifying variation of Nembhard J's order under rule 26.1(7) of the CPR, and second, whether her exercise of that discretion was inconsistent or unfair having regard to her contemporaneous refusal of the appellants' application.

Whether there was a material change in circumstances

[54] The powers conferred on the court by the CPR are not exhausted upon the making of an order. Rule 26.1(7) of the CPR preserves a continuing supervisory jurisdiction, enabling the court to vary or revoke its own orders where the justice of the case so demands. The purpose of this provision is to ensure that case management remains responsive and flexible, permitting the court to address material changes in circumstances when they arise, or to correct or refine earlier directions which, with the benefit of subsequent developments, require adjustment. The exercise of that discretion is, however, not at large, but is guided by established principles developed in the authorities.

[55] Those governing principles were comprehensively examined by Edwards JA in **SL v KS** [2024] JMCA Civ 4, where, at para. [58], it was explained that the court's enquiry is structured. It must first determine whether there has been a material change in circumstances since the making of the order and, if so, whether the evidence sought to be introduced is relevant to the issues in dispute. If the proposed evidence lacks relevance, the application necessarily fails. Where relevance is established, the court must

then consider whether, notwithstanding that relevance, its admission would occasion such unfair prejudice to the opposing party as to warrant its exclusion. The exercise, therefore, entails a careful balancing of utility against fairness, undertaken in furtherance of the overriding objective.

[56] Adopting what she described as the preferred “variation of order” approach, Edwards JA further emphasised that the court’s discretion must be informed by a number of practical and justice-centred considerations. These include, among other matters, the nature and significance of the change in circumstances, the probative value and relevance of the proposed evidence, and the degree of prejudice or procedural disadvantage that its admission might occasion to the opposing party.

[57] In her assessment of the respondent's application, the learned Master recognised, correctly so, that she had jurisdiction under rule 26.1(7) of the CPR to vary the existing order. In doing so, she properly directed herself by reference to **Norman Harley v Doreen Harley** [2010] JMCA Civ 11, which confines the power to vary to cases involving a material change in circumstances or a prior order founded on a mistaken or incomplete factual basis.

[58] She then turned to an assessment of the context in which Nembhard J made the order of 6 April 2022, together with the respondent's purported change of circumstances. Her reasoning on these matters is set out at paras. [61] to [63], where she expressed that:

“[61] The order of Nembhard J was made on 6 April 2022. Based on the dates of the documents that the claimant is seeking to rely on, they existed at the time of the order. The evidence in support of the application is that requests were made of the FLA from 16 September 2021 for ‘copies of application form completed by the deceased during his lifetime to obtain a licence’ and that the request was renewed by letter dated 5 May 2022. There is no indication what efforts were made to follow up on the request prior to the order of Nembhard J, but the evidence is that ‘despite reasonable efforts, the claimant’s attorneys were not able to procure the

said affidavit and or information from the FLA' prior to the orders of Nembhard J on 6 April 2022 and that the affidavit was received under cover of the FLA's letter dated 16 June 2022.

[63] [sic] **I am of the view that the above evidence shows that there has been a material change of the circumstances that existed at the time Nembhard J's order was made in that the claimant did not have the documents from the NLA [sic] at that time.** It is not necessary for me to determine whether sufficient efforts were made to obtain this information at the time of the first hearing before Nembhard J as this is not an application for fresh evidence where it must be shown that by reasonable diligence the information could not have been unearthed at the time of the hearing. I therefore find that in these circumstances, Nembhard J's order limiting the claimant's witnesses to 3 witnesses may be varied for the claimant to rely on an additional affidavit containing information received from the FLA subsequent to Nembhard J's order." (Emphasis added)

[59] On the evidence, the respondent had sought the relevant FLA documentation from September 2021, well before Nembhard J's order of 6 April 2022, but had not received Ms Allen's affidavit and the accompanying material until after that order was made, under cover of the FLA's letter of 16 June 2022. The learned Master treated this supervening receipt of previously unavailable material as constituting the requisite material change and held that it was unnecessary to apply the more exacting test governing the admission of fresh evidence on appeal, given that the application before her was one to vary a case management order rather than to admit fresh evidence on appeal. That articulation accurately reflects the limited and supervisory nature of the jurisdiction to revisit prior case management orders.

[60] The learned Master then addressed the admissibility and probative value of the proposed affidavit evidence. On reviewing the admissibility of two documents attached to the affidavit of Letine Allen, concluded that the objection raised went to the quality of and reliability of the evidence, which affects the weight to be given to it, rather than to its admissibility. She examined whether the affiant's statements demonstrated personal

knowledge of the facts asserted and determined that the appellants' primary challenge was directed at the exhibited documents themselves, not at the substance of the affidavit. She found that the FLA application form, purportedly completed by the deceased, was relevant and admissible under the Evidence Act, on the footing that the deceased, had he been alive, could have given direct evidence from personal knowledge as to the identity of his common-law spouse. She excluded, by contrast, those portions of the investigator's report that amounted to double hearsay and fell outside any recognised exception, including the statement attributed to a third party regarding the identity of 'Mrs Jackson', which was not within the investigator's personal knowledge and was tendered for its truth.

[61] Having undertaken that analysis, the learned Master was satisfied that the admissible portions of the new material were relevant to the issues for determination, that it became available only after the deadline for filing affidavits had passed, and that its admission would occasion no unfair prejudice to the appellants, who would retain the opportunity to challenge the evidence by cross-examination or by adducing contrary evidence. She further found that exclusion would substantially prejudice the respondent and risk depriving the court of potentially decisive information bearing on the central question in dispute, namely the respondent's status as the deceased's spouse. That evaluative exercise reflects the balancing approach contemplated in **SL v KS**, and this court finds no proper basis to disturb it. The decision to permit the additional affidavit, limited as it was by the terms of the order made, was one properly open to the learned Master in the exercise of her discretion.

[62] Viewed through the lens of the principles governing the variation of orders, the learned Master cannot be criticised for concluding that the threshold of material change had been met and that the interests of justice favoured the admission of the relevant evidence. The decision to permit the additional affidavit was, therefore, one properly open to her in the exercise of her discretion.

Consistency and proportionality between the parties

[63] Beyond the specific factors relevant to the extension of time application, there is a further matter that warrants consideration. The propriety of the learned Master's exercise of discretion must also be assessed against the overarching principles of fairness and procedural equality embodied in the CPR. Rule 26.1(7) of the CPR is not to be applied in isolation but within the framework of the overriding objective, which requires the court to exercise its case management powers proportionately, consistently, and in a manner that places the parties on an equal footing. A discretionary decision that produces a procedural imbalance or confers an unjustified advantage upon one party is unlikely to accord with those principles. It is against that standard that the appellants' complaint of inconsistency, addressed below, must be assessed.

[64] Against that background, the appellants argue that the learned Master's exercise of discretion lacked the requisite consistency. They contend that it was unfair to grant the respondent's application to vary the timetable while refusing the appellants comparable relief in respect of the late filing of their affidavits. The essence of their complaint is that the parties were treated differently in materially similar circumstances, thereby undermining the principle of procedural fairness that lies at the heart of the overriding objective.

[65] While that submission merits careful consideration, I am ultimately unable to accept it. The two applications, although arising in the same proceedings and considered together, and although both applications concerned compliance with procedural timelines, were not analogous in either their legal basis or their factual context, and each fell to be determined on its own merits. The respondent's application concerned material that did not exist in the respondent's possession at the time of Nembhard J's order and was obtained from a third-party statutory body only after that order was made, despite documented efforts predating the order; no fault on the respondent's part in the timing of its production was identified or alleged. The appellants' application, by contrast, concerned material within their own knowledge and control, filed out of time as a result

of their own default, however excusable that default might ultimately be found to be on a proper application of the **Leymon Strachan** criteria. Consequently, the mere fact that one application succeeded and the other did not, without more, does not establish inconsistency or demonstrate that the learned Master exercised her discretion unfairly.

[66] A court may properly extend differing degrees of procedural latitude according to the nature of the change relied upon and the source of the delay, without thereby treating the parties unequally in principle. The apparent disparity in outcome is accordingly explained by a material difference in the underlying circumstances, and does not itself betray an inconsistent or unprincipled exercise of discretion.

[67] It follows that the appeal fails on issue 3 in its entirety; the learned Master neither erred in finding a material change in circumstances, nor exercised her discretion inconsistently or unfairly in granting the respondent's application while declining, for the reasons since found to be erroneous, the appellants' own application.

Issue 4 – Whether the learned Master breached the requirements of procedural fairness by permitting the respondent to rely on the additional affidavit of Ms Allen without affording the appellants an opportunity to respond (ground xi).

[68] The final issue concerns whether the procedure adopted by the learned Master accorded with the requirements of procedural fairness. More particularly, it is necessary to determine whether the appellants were afforded a reasonable opportunity to answer the affidavit evidence of Letine Allen before it was considered in determining the substantive application. This issue engages the fundamental principle of natural justice that each party must be given a fair opportunity to know, challenge, and respond to the evidence relied upon by the opposing party.

[69] By ground (xi) of the appeal, the appellants contend that this principle was not observed. They argue that having granted the respondent permission to rely on Ms Allen's additional affidavit, the learned Master ought, as a matter of procedural fairness, to have afforded them a corresponding opportunity to file evidence in reply. It is submitted that the failure to do so deprived the appellants of the opportunity to address evidence that

was material to the issues before the court and, in consequence, resulted in an uneven procedural footing between the parties. The complaint, therefore, is not directed at the admissibility of Ms Allen's affidavit per se, but at the fairness of the procedure adopted after it was admitted into evidence.

[70] The right to be heard, and specifically the right of a party to respond to evidence relied upon against it, is a fundamental and non-derogable incident of natural justice. A decision reached in reliance on evidence to which the affected party had no opportunity to respond is liable to be vitiated for unfairness, irrespective of the underlying merits.

[71] The order permitting the filing of Ms Allen's affidavit was itself substantially circumscribed. By order (4) of her order made on 30 March 2023, the learned Master permitted the respondent to file and serve the affidavit on strict terms: the contents of the report of Mr Errol Brown dated 30 October 2020 were not to be referred to or exhibited, and the evidence contained in the affidavit was confined to matters within Ms Allen's personal knowledge, together with such other information as was not being relied upon for the truth of its contents. Those restrictions were plainly designed to soften the effect of admitting evidence which the timetable fixed by Nembhard J's order would otherwise have excluded, and no doubt was intended to materially limit the scope of any prejudice capable of arising from the affidavit's admission in advance of trial. In addition, and independently of those restrictions, the appellants remain at liberty to test the affidavit by cross-examination at trial and to adduce their own evidence in answer to it; indeed, it was that very opportunity which informed the learned Master's conclusion that admission of the affidavit occasioned no unfair prejudice.

[72] While such measures go a considerable distance toward answering the appellants' complaint, in my view, they do not go far enough. Restricting the content of what the respondent could put in and preserving the appellants' right to test that content at trial addresses the quality of the evidence admitted; but it does nothing to address the appellants' present inability to meet it. The order under appeal was a case management order governing what evidence might be filed and relied upon, on carefully limited terms;

it was not a final adjudication on the substantive issue of the respondent's status. But precisely because it operated at the case management stage, fairness required that both sides be placed on an equal footing at that same stage, not only eventually at trial. The learned Master recognised, in confining the terms of the respondent's affidavit, that some accommodation was owed to the appellants in permitting evidence outside the timetable Nembhard J had fixed. Having gone that far, however, she stopped short of the further and, in my view, necessary step: making express provision, of her own motion, for the appellants to file an affidavit in response, rather than leaving them to seek that liberty by a fresh application in circumstances where the filing of further affidavits had already been closed off by the very order she was varying. The restrictions imposed on the respondent's affidavit tempered the unfairness of the appellants' having no order permitting a response; they did not eliminate it. On this record, therefore, the premise of the appellants' complaint, that they were afforded no corresponding opportunity to respond, is made out, notwithstanding the care that the learned Master otherwise took to limit the scope of what was admitted.

[73] I would accordingly grant the appellants liberty, pursuant to the order of this court, to file and serve an affidavit in response to that of Ms Allen, confined to the matters properly raised in her affidavit and subject to the same restrictions as apply to it, within the period specified in the order below. That remedy completes what the learned Master's own restrictions had already begun, and addresses the substance of the appellants' complaint without requiring that the admission of Ms Allen's affidavit itself, which was not shown to be wrong in principle, be disturbed.

[74] Ground xi accordingly succeeds to the extent reflected in the order of this court, granting the appellants liberty to respond, though the underlying decision to admit Ms Allen's affidavit, on the terms already imposed by the learned Master, is affirmed.

Conclusion

[75] Grounds i and ii challenge the learned Master's treatment of the affidavits filed by the appellants in support of their application for an extension of time, that is, the evidence

explaining the reasons for the delay in filing their substantive affidavits. Ground i contends that the learned Master wrongly rejected that supporting evidence; ground ii contends that she erred in concluding there was no evidence before the court explaining the delay. Grounds iii to viii challenge the broader exercise of the learned Master's discretion in refusing the extension application itself, including her related refusal to permit the substantive affidavits of Mattross, filed on 9 May 2022, and Alison, filed on 10 May 2022, to stand as properly filed.

[76] The foregoing analysis leads inexorably to the conclusion that the learned Master misdirected herself in finding no evidence before the court to explain the delay in filing the appellants' affidavits. That misdirection lay at the heart of both grounds i and ii: the supporting affidavits were not, on a proper reading of the record, absent or properly rejected, and the conclusion that no such evidence existed cannot stand. Since that finding formed the principal basis for the application's refusal, the resulting exercise of discretion, the subject of grounds iii to viii, was fundamentally flawed. That conclusion rested on a misapprehension of the record and an unduly rigid application of principle, inconsistent with rule 26.9 of the CPR, and led her to refuse the application without undertaking the multifactorial analysis required by the authorities. Having now undertaken that assessment on the full material before this court, including the appellants' supplemental skeleton submissions, filed on 13 February 2026, and the relevant affidavit evidence, and in the absence of any response from the respondent, I am satisfied, upon a holistic assessment of the **Leymon Strachan** criteria and having regard to the overriding objective, that the balance favours the grant of the extension sought by the appellant. Grounds i to viii accordingly succeed. In my view, the learned Master's refusal of the appellants' application for an extension of time, and her refusal to permit the late affidavits to stand as properly filed, ought to be set aside. It is also my view that the extension of time ought to be granted, and the late affidavits, of Mattross and Alison, be permitted to stand as if filed within time.

[77] Grounds ix and x challenge the learned Master's decision to vary order numbered 6 of Nembhard J's order, permitting the respondent to be limited to four rather than three ordinary witnesses, on the footing, first, that she erred in finding a material change in circumstances (ground ix), and second, that it was inconsistent and unfair to grant that variation while at the same time refusing the appellants' own application concerning affidavits already filed and before the court (ground x). For the reasons given at paragraphs [63] to [67] above, I am satisfied that the two applications were not analogous in either their legal basis or their factual context, that the learned Master did not err in finding a material change in circumstances sufficient to justify the variation, and that her exercise of discretion was neither inconsistent nor unfair as between the parties. Grounds ix and x accordingly fail.

[78] Ground xi challenges the learned Master's decision to permit the respondent to file the additional affidavit of Ms Allen without affording the appellants a corresponding opportunity to respond. For the reasons given at paragraphs [71] and [72] above, the decision to admit Ms Allen's affidavit, on the limited terms set out in order (4) of the learned Master's order, discloses no error of law, no misapprehension of the evidence, and no inconsistency in the exercise of discretion warranting appellate interference, and that aspect of the decision is affirmed. I am satisfied, however, that the learned Master ought to have made corresponding provision for the appellants to respond to that affidavit, and that her failure to do so is properly remedied by an order of this court granting the appellants liberty to file a response. Ground xi accordingly succeeds in part.

[79] Order (1) of the learned Master's order, striking out the third affidavit of Juliana Dawkins as inadmissible under section 31G of the Evidence (Amendment) Act, was not the subject of any of the eleven grounds of appeal. That order accordingly remains undisturbed.

[80] In consequence, the appeal ought to be allowed in part: grounds i to viii succeed; ground xi succeeds in part, to the extent set out at paragraphs [72] and [73] above; grounds ix and x fail.

[81] Given the extent to which the evidential position in the court below has now changed as a result of this judgment, the admission of the previously late affidavits of Mattross and Alison, and the grant of liberty to the appellants to file a further affidavit in response to that of Ms Allen, it is appropriate that the matter be returned to the Supreme Court for a case management conference, so that a revised timetable and any further directions necessary to bring the matter to trial may be fixed in light of the evidence as it now stands. I would so order that another case management conference be convened as soon as is reasonably practicable.

[82] In consequence, the appeal ought to be allowed in part.

EDWARDS JA

ORDER

1. The appeal is allowed, in part.
2. The decision of Master C Thomas, made on 30 March 2023, refusing the appellants' application for an extension of time to file affidavits in response to the affidavits of Mr Peter Russell and Ms Hermin Dixon, is set aside.
3. The decision of Master C Thomas, made on 30 March 2023, refusing the appellants' application to have the affidavit of Mr Mattross Egbert Jackson, filed on 9 May 2022, and the affidavit of Ms Alison Chantel Jackson, filed on 10 May 2022, stand as properly filed, is set aside.
4. The application for an extension of time to file the affidavit of Mr Mattross Egbert Jackson and the affidavit of Ms Alison Chantel Jackson out of time is granted. The said affidavits, filed on 9 May 2022 and 10 May 2022 respectively, are permitted to stand as properly filed.
5. The decision of Master C Thomas, made on 30 March 2023, granting the respondent's application to vary the order previously made by Nembhard J, and permitting the respondent to file and serve the additional affidavit of Ms Letine

Allen, on the terms set out in that order, is affirmed, on the following terms as set out in order (4) of the learned Master's order: (a) the contents of the report of Mr Errol Brown dated 30 October 2020 shall not be referred to, nor shall the report be exhibited; and (b) the evidence contained in the affidavit shall be confined to information within Ms Allen's personal knowledge, together with such other information as is not being relied upon for the truth of its contents.

6. The appellants are granted liberty to file and serve an affidavit in response to the affidavit of Ms Letine Allen, confined to the matters raised therein and subject to the same restrictions as set out in order 5 above, within 21 days of the date of this order.

7. The matter is remitted to the Supreme Court for a further case management conference, to be fixed as soon as is reasonably practicable, at which a revised timetable and any further directions necessary to bring the matter to trial shall be considered in light of the affidavit evidence admitted or permitted to be filed by this order.

8. No order as to costs.