

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 76/2018

APPLICATION NO COA2020APP00199

**BEFORE: THE HON MISS JUSTICE PHILLIPS JA
THE HON MISS JUSTICE STRAW JA
THE HON MISS JUSTICE EDWARDS JA**

BETWEEN	JAMAICA PUBLIC SERVICE COMPANY LIMITED	APPLICANT
AND	JENNIFER MAMBY-ALEXANDER	1st RESPONDENT
AND	ALFRED THOMAS (ON BEHALF OF THEMSELVES AND 92 OTHER RESIDENTS IN THE COMMUNITY OF HOPE PASTURES IN THE PARISH OF SAINT ANDREW)	2ND RESPONDENT

Patrick Foster QC and Mrs Symone Mayhew QC instructed by Symone M Mayhew for the applicant

Lord Anthony Gifford QC and Mrs Emily Shields instructed by Gifford, Thompson & Shields for the respondents

2 December 2020

PHILLIPS JA

[1] This is an application filed 4 November 2020, with supporting affidavit to vary orders made by this court on 23 October 2020. The application was duly considered by

the court and I agree with the reasoning and decision set out by my learned sister Straw JA.

STRAW JA

[2] In accordance with the principles set out in **Dalfel Weir v Beverly Tree** [2016] JMCA App 6, if this court has made an accidental error or omission, it is to be corrected as soon as it becomes evident and additionally, where there is no prejudice to third parties (even where there is delay), the court would not be prevented from correcting obvious errors which have been omitted. Further, in **Dalfel Weir**, this court recognised at paragraph [60]:

“In this court we endorsed the above principles in **American Jewellery Company Limited et al v Commercial Corporation Jamaica Limited et al** [2014] JMCA App 16, Morrison JA (as he then was) in paragraph [2] of the judgment referred to rule 42.10(1) of the Civil Procedure Rules 2002, (CPR) which he indicated ‘provides that the court may at any time (without an appeal) correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission’. This, he reminded, was the well-known slip rule but which was not one of the rules of the CPR which had been explicitly incorporated into the rules of this court by rule 1.1(10) of the Court of Appeal Rules. He stated however that it is common ground that the court can by virtue of its inherent jurisdiction to control its process ‘correct a clerical error arising from an accidental slip or omission’.”

[3] In the case at bar, the orders previously made in relation to injunctive relief pending appeal restrained JPS from disconnecting the supply of electricity provided by way of underground cables to the premises of the appellants except in accordance with JPS’ Standard Terms & Conditions of Service, paragraphs (a) to (f).

[4] When making final orders at the end of the appeal, it was not the intention of this court to prevent JPS from exercising its undisputed right of re-entry under and by virtue of its Standard Terms and Conditions of Service. Such right, though implicit in the orders should have been expressly stated. This court, therefore, should now exercise its inherent power to correct that omission to give effect to its intention and grant the application for variation as set out below (variations underlined):

4. The injunctive relief is granted in the following terms:

- i.** Pending the trial in the Supreme Court and the determination of the issues relevant to the adequacy, safety and efficiency of the underground connection, an injunction is granted restraining Jamaica Public Service **Company Limited** whether by itself or any person duly appointed by Jamaica Public Service **Company Limited** and acting as its servant or agent, from disconnecting the supply of electricity provided by way of underground cables to the premises of the appellants **except in accordance with the circumstances stated at paragraphs (a) to (f) of the "JPS Standard Terms & Conditions of Service" as set out below:**

- (a) For non-payment on due date of bills for electric service. In this case, if the consumer has a deposit with the Company as a guarantee of payment of bills, the amount of the deposit may be applied to the payment of bills for service then due and the remainder, if any, returned to the consumer. The application of such deposit to the payment of unpaid bills shall not affect the Company's legal right to collect unpaid balances by available legal methods;
- (b) For refusal or failure to make a deposit or increase a deposit, when requested, to assure payment of bills;
- (c) When the Company has reasonable evidence that the consumer has been previously disconnected for non-payment at his present or any other location and is receiving service for his own use under a different name in order to avoid past payments due to the Company;

- (d) **Because of a dangerous condition on the consumer's premises in wiring or energy consuming devices;**
- (e) **Because of a fraudulent use of the service or tampering with the Company's equipment; and**
- (f) **For any other violation of its Terms and Conditions which the consumer refuses or neglects to correct within 10 days of the date of a notice in writing from the Company specifying such violation and requiring such correction."**

ii. Pending the trial in the Supreme Court, an injunction is granted restraining Jamaica Public Service **Company Limited** whether by itself or any person duly appointed by Jamaica Public Service **Company Limited** and acting as its servant or agent, from entering upon the premises of the appellants other than in accordance with the right of the easement granted on 24 April 1962 for the maintenance and repair of the installations for

the supply of electricity by underground cables
**and other than in accordance with the "JPS
Standard Terms and Conditions of Service"
as set out set out at paragraph 4 i. (a) to (f)
above.**

EDWARDS JA

[5] I too agree with the decision to vary the orders made by the court on 23 October 2020 in the manner proposed by Straw JA.

PHILLIPS JA

[6] The judgment of 23 October 2020 is therefore varied in terms of the injunctive relief granted in paragraphs 4 a. and 4 b. (hereinafter renumbered as 4 i. and 4 ii.). The orders of the court have been reproduced below with the variations as underlined:

1. The appeal is allowed.
2. The decision and orders of Sykes J (as he then was) made on 10 May 2018 are set aside and substituted therefore are the following declarations and orders.
3. The declarations (now renumbered 3 i. ii. and iii.) are granted in the following terms:
 - i.** The respondent is under a statutory obligation to provide a supply of electricity by underground cables to the premises

of the appellants in Hope Pastures, pursuant to the provisions of the Hope Housing Scheme incorporated into the Housing Law.

ii. The respondent is under a statutory obligation by virtue of the Electric Lighting Act, the 2011 Licence and in conjunction with the contracts entered into with the appellants to maintain such an underground connection, pending the determination at trial as to whether such a supply is adequate, safe and efficient based on modern standards as required under the relevant legislation.

iii. The provision of electricity by the respondent by overhead wires to any part of the Hope Housing Scheme is a breach of the provisions of the statutory scheme of the Hope Housing Scheme as it exists at this time.

4. The injunctive relief is granted in the following terms:

i. Pending the trial in the Supreme Court and the determination of the issues relevant to the adequacy, safety and efficiency of the underground connection, an injunction is granted restraining Jamaica Public Service **Company Limited** whether by itself or any person duly appointed by

Jamaica Public Service **Company Limited** and acting as its servant or agent, from disconnecting the supply of electricity provided by way of underground cables to the premises of the appellants **except in accordance with the circumstances stated at paragraphs (a) to (f) of the "JPS Standard Terms & Conditions of Service" as set out below:**

(a) **For non-payment on due date of bills for electric service. In this case, if the consumer has a deposit with the Company as a guarantee of payment of bills, the amount of the deposit may be applied to the payment of bills for service then due and the remainder, if any, returned to the consumer. The application of such deposit to the payment of unpaid bills shall not affect the Company's legal right to collect unpaid balances by available legal methods;**

- (b) For refusal or failure to make a deposit or increase a deposit, when requested, to assure payment of bills;
- (c) When the Company has reasonable evidence that the consumer has been previously disconnected for non-payment at his present or any other location and is receiving service for his own use under a different name in order to avoid past payments due to the Company;
- (d) Because of a dangerous condition on the consumer's premises in wiring or energy consuming devices;
- (e) Because of a fraudulent use of the service or tampering with the Company's equipment; and
- (f) For any other violation of its Terms and Conditions which the consumer refuses or neglects to correct within 10 days of the date of a notice in writing from the

**Company specifying such violation and
requiring such correction.”**

- ii.** Pending the trial in the Supreme Court, an injunction is granted restraining Jamaica Public Service **Company Limited** whether by itself or any person duly appointed by Jamaica Public Service **Company Limited** and acting as its servant or agent, from entering upon the premises of the appellants other than in accordance with the right of the easement granted on 24 April 1962 for the maintenance and repair of the installations for the supply of electricity by underground cables **and other than in accordance with the “JPS Standard Terms and Conditions of Service” as set out set out at paragraph 4 i. (a) to (f) above.**

5. The matter is to be set by the Registrar of the Supreme Court for a case management conference hearing and for a subsequent trial date to be set before a different judge, as expeditiously as possible; and

6. Two-third costs of the appeal and two-third costs in the court below to the appellants to be agreed or taxed.