

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MR JUSTICE BROOKS, P
THE HON MRS JUSTICE DUNBAR-GREEN
THE HON MRS JUSTICE G FRASER JA (AG)**

SUPREME COURT CIVIL APPEAL NO COA2020V00018

BETWEEN	ANNETTE MCLEAN	APPELLANT
AND	PRINCESS EDMONDSON	1ST RESPONDENT
AND	CONSTANTINE MILLS	2ND RESPONDENT
AND	THE INSURANCE COMPANY OF THE WEST INDIES	INTERESTED PARTY

Ms Jacqueline Cummings and Matthew Palmer instructed by Archer, Cummings and Company for the appellant

1st and 2nd respondents unrepresented

Miguel C Palmer and Annekia Samms for the interested party

23 September 2021

DUNBAR GREEN JA

Background

[1] This is an appeal brought by the appellant, Annette Mclean, challenging the decision of Master Hart-Hines (as she then was) ('the master') made on 19 February 2020, in which she refused to grant an order to extend the validity and time for service of the claim form in Suit No 2016 HCV 04917.

[2] On 6 August 2012, Annette McLean was walking along the Salem main road in the parish of Saint Ann when, according to her, a motor car owned by the 1st respondent and driven by the 2nd respondent hit her.

[3] On 17 November 2016, approximately four years and four months after the alleged accident, she commenced an action in the Supreme Court against the respondents, for negligence. The claim form issued by the court was valid for 12 months from the date of issue.

[4] On 14 November 2017, three days before the expiration of the time for service of the claim form, Ms Mclean filed an application seeking, among other things, an order for an extension of its validity and time for service, for another six months from the date of the order, and for permission to serve the claim form and other originating documents on the 1st respondent's insurance company and on the 2nd respondent by publication in a local newspaper. The application was supported by the affidavit of Giovanni Gardener, attorney-at-law for Ms Mclean. There was no affidavit from the bailiff of any failed attempts to serve the claim form. Nor was there an affidavit of urgency.

[5] On 19 February 2020, the application was heard by the master, after multiple adjournments (including one for Ms Mclean to file a supplemental affidavit which was not done). This was more than two years after the claim form had expired and about one year and six months after the statute of limitation had run. The master refused the application on two bases: (1) that the validity of the claim form could not be extended from 17 November 2017 to 17 May 2020 as this would require five extensions of the validity of the claim form and it was not possible to grant more than one six-month extension on any one application; and (2) the claim form had become statute barred on 6 August 2018 and, even if it was possible to extend the life of the claim form, it would not be appropriate to do so as it would deprive the respondents of a limitation defence. She granted leave to appeal.

The appeal

[6] On 4 March 2020, the appellant filed her notice and grounds of appeal seeking, among other things, that the master's order be set aside, the validity of the claim form and time for service be extended to six months from the date of the hearing of this application, and that permission be granted to serve the claim form and other originating documents on the 1st respondent's insurance company and on the 2nd respondent by publication in a local newspaper.

[7] The grounds of appeal, in summary, are that the master failed to realize that the application was filed before the original claim form had expired and the delay in hearing the application was the sole fault of the registry. She also erred in holding that the validity of the claim form could not be extended from the date of her order and that the grant of the order after the statute of limitation had run would deprive the respondents of their limitation defence. She had also failed to give effect to the overriding objective.

[8] Counsel's submissions on behalf of Ms Mclean were consistent with the grounds advanced. She also asserted that the statute of limitation having run should not be an issue as the application was filed before the expiration of the limitation period. She complained that the master did not consider the hardship to the applicant when she refused the application. We were urged to consider that there were exceptional factors which favoured the granting of the order. Counsel sought to support her arguments by relying on a number of authorities including **Shaun Baker and Another v Angella Scott-Smith** (unreported), Supreme Court, Jamaica, Claim No 2009 HCV 05631, judgment delivered on 3 May 2010, **Baker v Bowketts Cakes Ltd** [1966] 1 WLR 861, **Glasford Perrin v Donald Cover** [2019] JMCA Civ 28 and **Salter Rex and Company v Ghosh** [1971] 2 ALL ER 865.

[9] For his part, counsel for the interested party, Mr Palmer, in his written submissions (he was not called on to make oral submissions), submitted that the learned master gave adequate regard to the relevant rules and her decision was consistent with that in **Juliette Wright v Alfred Palmer and Jason Salmon** [2021] JMCA Civ 32 (**Juliette**

Wright). On the evidence before her, the master could have found that all reasonable steps were not taken to serve the claim form. Also, given the master's decision in relation to the effect of rules 8.14 and 8.15 of the Civil Procedure Rules ('CPR'), she was not required to consider whether extending the life of the claim form would have impugned the respondents' right to their limitation defence. The master also had no discretion or power to extend the life of the claim form on grounds that the court's registry delayed in assigning a date for the application.

The issue

[10] The primary issue raised in the grounds of appeal is whether the master exercised her discretion correctly when she refused the application to extend the life of the claim form.

Discussion

[11] It is well established that an appeal against a judge's discretion will generally only succeed if it can be shown that there was an error in law or principle or that the decision was plainly wrong (see **Hadmor Productions Ltd v Hamilton and others** [1982] 1 ALL ER 1042 and **Attorney General v John Mackay** [2012] JMCA App 2).

[12] This appeal turns on the construction of rules 8.14 and 8.15 of the CPR. At the time this claim was filed, rule 8.14 of CPR required that a claim form be served within 12 months after the date when it was issued (this has since been reduced to six months) or the claim form ceases to be valid. Rule 8.15 provides for an extension of time but stipulates that it should not be longer than six months on any one application and that the application must be made when the claim form can be served, that is, it must still be valid. Under rule 8.15(4), the court may make an order for the extension of a claim form only if it is satisfied that a claimant has taken all reasonable steps to trace the defendant and to serve the claim form but was unable to do so. Otherwise, there must be some other special reason for extending the period. Also, no more than two extensions are allowed unless the court is satisfied that the defendant is deliberately avoiding service (8.15(6)).

[13] In **Juliette Wright**, which dealt with circumstances that bore some similarity to this case, Edwards JA made the following observation at paragraph [35]:

“From these rules, it is clear that an applicant who wishes to have the life of a claim form...extended, must make an application for extension during the validity of the claim form. The court may grant the extension but can only do so for six months in the first instance, and on any one application...”

[14] And at paragraph [38], she stated:

“Although the application was made before the expiry of the validity of the claim form, the problem which faced the appellant..., was that no single extension of its validity could be made beyond six months. **Also, no court can revive the dead, so that any extension the master, in her discretion, could have possibly given, had to relate back to and take effect from a period before the claim form expired.**” (Emphasis mine)

[15] The master could only have granted one six-month extension on the sole application, filed 14 November 2016, and no more. This would have extended the life of the claim form to 17 May 2017. As the application was heard on 19 February 2020, it would have required several applications for Ms Mclean to have complied with rule 8.15. The master was therefore correct in her finding that “once the claim form has expired and there is no pending application to extend in compliance with Rule 8.15(3), it cannot be resuscitated or resurrected”. Contrary to the appellant’s contention that the order for extension could take effect at the time of the master’s order, that was not possible because the claim form had already expired. On the issue of the effect of the claim being time-barred, see generally **Dr CW Thompson v Administrator General for Jamaica (Administrator for Estate Carol Morrison, deceased)** (1990) 27 JLR 175.

[16] Since Ms Mclean has failed to satisfy the threshold requirements under rules 8.14 and 8.15(1) – (3) for the grant of an extension of the validity of the claim form, there should be no need to go on to determine any matter under 8.15(4). I will only say further that a litigant has a duty to take all reasonable steps to ensure that his or her case

proceeds with expedition (see **Juliette Wright** paragraph [50], **Spurgeon Reid v Corporal Lobban and The Attorney General for Jamaica** (unreported), Supreme Court, Jamaica, Suit No CL 1989/-014, judgment delivered 12 June 2001 and **Sandals Royal Management Limited v Mahoe Bay Company Limited** [2019] JMCA App 12).

[17] Administrative lapse is not a factor that the master could have taken into account in determining whether to exercise her discretion to extend the validity of the claim form. The effect was explained by Brooks P in **Juliette Wright** at paragraph [17]:

“The registry’s oversight was compounded by the errors of Ms Wright’s attorneys-at-law, who, as mentioned...did not file an affidavit of urgency, and filed a defective amended application, instead of a fresh one. The result is that the claim form, having expired, could not have been revived by the learned master and cannot be revived by this court...”

Conclusion

[18] For the reasons indicated, the master was correct in refusing the order to extend the validity of the claim form and her decision should not be set aside.

Order

1. The appeal filed herein on 4 March 2020, from the decision of Master Hart-Hines made on 19 February 2020, is dismissed.
2. The order of Master Hart-Hines, refusing an application to extend the validity and time for service of the claim form herein, is affirmed.
3. Costs in the appeal to the interested party to be agreed or taxed.