



COURT OF APPEAL
Public Building West,
King Street, Kingston
Telephone# (876) 633-7201
Email registry@courtofappeal.gov.jm
Website www.courtofappeal.gov.jm

**NOTICE TO PARTIES OF THE COURT'S
MEMORANDUM OF REASONS FOR JUDGMENT**

APPLICATION NO COA2025APP00103

BETWEEN	KENNETH O'CONNOR	APPLICANT
AND	ROCHELLE JOHNSON	1st RESPONDENT
AND	FRANK JOHNSON	2nd RESPONDENT

TAKE NOTICE that this matter was heard by the Hon Mrs Justice McDonald-Bishop P, the Hon Miss Justice Straw JA and the Hon Mrs Justice V Harris JA on 13 October 2025, with Ms Khadine Nurse instructed by Dixon and Associates for the applicant and Mr Anthony Armstrong (holding for Ms Jamila Maitland) instructed by Campbell McDermott for the respondents.

TAKE FURTHER NOTICE that the court's memorandum of reasons for its decision, delivered orally on 13 October 2025 by the Hon Mrs Justice McDonald-Bishop P, is as follows:

[1] This is an application brought by the applicant, Kenneth O'Connor, against the respondents, Rochelle Johnson and Frank Johnson, seeking permission to appeal "orders a-d" (numbered 1 – 4 in the unperfected order) of the decision made by Carr J on 9 May 2025. By those orders, the learned judge declared the applicant's claim form, filed on 16 February 2018, to be invalid and refused to grant a request for judgment in default filed on 13 November 2019. The learned judge also ordered costs of the application to the respondents to be agreed or taxed, and refused the applicant's application for permission

to appeal. The applicant, being aggrieved by the orders, filed his application to this court for permission to appeal within the required time.

[2] On the record, the application is not explicitly contested by the respondents, as no documents in opposition were submitted on their behalf. However, Mr Anthony Armstrong, acting for the respondents, stated that he was not in a position to consent to the granting of permission to appeal or to present any substantive arguments before the court, as he lacked full instructions. He accordingly expressed the respondents' objection to the application for permission to appeal orally.

[3] The question for the court on this application is whether the proposed appeal has a real and not fanciful chance of success (see rule 1.8(7) of the Court of Appeal Rules, 2002 and **Duke St John-Paul Foote v University of Technology Jamaica (UTECH) and another** [2015] JMCA App 27A at para. [21]).

[4] The applicant seeks permission to appeal on 12 proposed grounds of appeal, which give rise to two broad issues. The first issue pertains to orders made by Master Mott Tulloch-Reid (as she then was), by which she twice extended the validity of the claim form. Ms Khadine Nurse submitted, on behalf of the applicant, that the learned judge's decision to declare the claim form invalid, in the face of the master's orders extending its validity, raises a question for determination by this court with a real chance of success.

[5] Having considered the authorities Ms Nurse relied on, including **Grafton Isaacs v Emery Robertson** [1985] AC 97 and **Leymon Strachan v Gleaner Company Ltd and another** [2005] UKPC 33, the court is satisfied that the grounds of appeal on this issue raise a question with a real chance of success. The question is whether the learned judge was correct to order as she did that the claim was invalid, in the face of the master's order, which had not been set aside by a court of competent jurisdiction.

[6] The second issue is whether the respondents have waived the irregularity arising from the master's order by failing to comply with rule 9.6 of the Civil Procedure Rules

2002. The court finds that this issue is fit for ventilation on an appeal as the grounds of appeal giving rise to it have a real chance of success.

[7] Finally, the court observes that the applicant seeks permission to appeal the learned judge's refusal to grant permission to appeal. However, no appeal lies against the order refusing permission to appeal (see **Benbecula Limited and another v Palm Beach Runaway Bay Limited** [2022] JMCA App 37). The applicant has renewed his application for permission to appeal before this court, which he was entitled to do. Accordingly, this aspect of the application must be refused.

[8] For the preceding reasons, the court is satisfied that the threshold test for permission to appeal has been met regarding the two broad issues identified as arising from the proposed grounds of appeal. Accordingly, the application for permission to appeal should be granted in respect of orders 1-3 of the learned judge's orders.

[9] We, therefore, make the following orders:

1. The applicant is granted permission to appeal orders 1 – 3 of the decision of Carr J made on 9 May 2025, in respect of claim no 2018HCV00598.
2. The applicant is to file a notice and grounds of appeal within seven days of the date of this order.
3. Costs of the application to be costs in the appeal.
4. The applicant's attorneys-at-law are to prepare file and serve this order.