

and 37.5% of the rent paid by the respondent over the previous five months, amounting to US\$6,562.50, and the rent for the remaining lease period as it falls due. These orders arose during ongoing proceedings concerning the maintenance of the parties' children. The court had previously made an interim maintenance order, which the applicant sought to vary; however, the variation was deferred pending a means report.

[3] The applicant is dissatisfied with the orders and attempted to appeal. Due to a procedural error, he missed the deadline to file his notice of appeal, resulting in the present application. He asserts that his application to extend time was filed promptly after the failure to lodge his appeal within the required period; that the delay was unintentional; and that he has valid reasons for his non-compliance. He contends that there is a strong case on appeal with a realistic prospect of success, and that he will suffer prejudice and irreparable harm if the extension of time and stay of execution are not granted. He argues that granting the application would best serve the interests of justice.

[4] To justify the extension of time, the applicant relies on relevant statutory provisions, including sections of the Judicature (Family Court) Act ('the Family Court Act'), Judicature (Parish Court) Act (sections 256 and 266) ('JPCA'), and Judicature (Appellate Jurisdiction) Act (section 12(2)). He also references rules 2.13 and 2.10(1)(b) of the Court of Appeal Rules, 2002 ('CAR'), which speak to the court's power to grant a stay of execution.

[5] The supporting authorities on which the applicant relies include **Jamaica Public Service Company Limited v Rose Marie Samuels** [2010] JMCA App 23 ('**JPS v Samuels**'); **Leymon Strachan v The Gleaner Co Ltd and another** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal Motion 12/1999, judgment delivered 6 December 1999, and **Jennifer Clarke v Icolyn Anderson** [2020] JMCA App 43, confirming the court's power to extend time and grant a stay of execution.

[6] The respondent opposes the application, arguing that the learned judge's findings were reasonable and based on material evidence. She contends that the applicant's applications for extension of time and stay of execution are out of time, lack good reasons for the court to exercise its discretion in favour of the applicant, do not demonstrate prejudice to the applicant, and the proposed grounds of appeal lack serious arguable points and a realistic prospect of success. She submits that the application should be refused.

The application for extension of time

[7] In assessing the application for extension of time, the court reviewed statutory provisions empowering it to grant such orders, as well as relevant authorities confirming these powers. Section 266 of the JPCA, read in conjunction with section 4(4) of the Family Court Act, confers power on this court to permit the applicant to challenge the learned judge's orders despite non-compliance with any of the formalities prescribed by the JPCA, provided that the justice demands it. The section also grants the court the authority to liberally interpret the right to appeal in civil matters, taking inadvertence, ignorance, or necessity into account.

[8] The court considers the circumstances of the application against the background of the applicable statutory provision. It is accepted that the applicant failed to comply with the formal requirements stipulated in the JPCA for filing a notice of appeal due to ignorance or inadvertence, compounded by his subsequent filing of an application for extension of time in the wrong court. This triggers section 266 of the JPCA, enabling the court to consider the application. The section, however, does not specify when justice requires granting an extension of time to appeal despite non-compliance with the statutory formalities, so guidance is sought from relevant case law.

[9] In **Ralford Gordon v Angene Russell** [2012] JMCA App 6, this court relied on **JPS v Samuels** to illustrate the factors to be considered in the exercise of discretion to extend the time for the filing and settling of appeals from the Parish Court. The factors include the length and reason for the delay, merits of the proposed appeal, and the

potential prejudice to be suffered as a result of the grant or refusal of an extension of time.

[10] The court has considered the length of the delay. In this case, the delay in approaching this court for an extension of time was just over a month, which may be said to be relatively lengthy, but not excessive or inordinate.

[11] Although the applicant waited until the last possible day to file his appeal without providing any explanation for doing so, the court finds that the failure to file within the prescribed time at the proper court was mainly due to inadvertence or ignorance, thus meeting the statutory grounds for considering the application for extension of time.

[12] The central issue is whether the intended appeal has merit, which is vital to determining what is required in the interests of justice. The applicant advances five proposed grounds of appeal challenging the learned judge's jurisdiction to make the orders she did, the procedure she adopted, and her substantive findings of fact and/or law. The proposed grounds raise at least two issues which are deemed arguable with realistic prospects of success:

- i) whether the learned judge improperly exercised jurisdiction over furniture and other movable property, which may not fall within maintenance matters under the Family Court Act and the Maintenance Act; and
- ii) whether the learned judge erred in law by making findings without conducting a hearing and taking *viva voce* evidence, in keeping with the principles stated in **Gary Morgan v Natalie Williamson-Morgan** [2016] JMCA Civ 53.

[13] The court finds the proposed grounds giving rise to these two issues to be sufficiently arguable with a realistic prospect of success. A ruling in either party's favour would be determinative of the appeal, thus making the application for an extension of time meritorious.

[14] The court has also considered the issue of prejudice. Affidavits support the applicant's assertions of hardship likely to be caused by the orders, while no similar or comparable evidence was provided by the respondent. The court notes, however, that the orders favouring the respondent mean she would not bear the full costs of furniture and rental if the orders stand. That is a benefit to her that could be lost if the appeal proceeds. However, for the applicant, non-compliance could ultimately result in contempt proceedings, which would carry with them serious implications for his liberty and finances. Weighing the parties' interests in the light of the issues raised by the proposed grounds of appeal, the risk of prejudice is greater for the applicant.

[15] The court finds that the applicant would be prejudiced more than the respondent if the extension of time is refused.

[16] Accordingly, the application for extension of time is granted.

The application for stay of execution

[17] The court considers the authorities regarding the grant of a stay pending appeal in appeals from the Parish Court, notably **Jennifer Clarke v Icolyn Anderson** [2020] JMCA App 43 and **Christopher Robinson v Rodney Garvey** [2018] JMCA App 34.

[18] Upon reviewing the applicant's evidence and counsel's submissions against the background of the applicable law pertaining to the grant of a stay of execution, the court finds a stay appropriate, conditional upon the filing of the appeal.

[19] The applicant, therefore, succeeds in his applications for an extension of time and a stay of execution.

Orders

[20] The court, accordingly, makes the following orders:

1. The applications for extension of time to file notice and grounds of appeal and for stay of execution are granted.

2. The applicant, Benson Oguaka, is to file and serve notice and grounds of appeal against orders made in the Family Court for the Corporate Area Region ('the Family Court') on 19 December 2025, within 14 days of the date of this order. At the time of the filing of the notice and grounds of appeal, the applicant shall make all payments required for the prosecution of the appeal and security for costs pursuant to section 256 of the Judicature (Parish Court) Act.
3. Upon the filing of the notice of appeal and payment of all relevant sums in accordance with para. 2 of this order, there shall be a stay of execution of the Family Court order appealed against until the determination of the appeal.
4. There shall be no order as to costs.