[2025] JMCA App 22

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP P
THE HON MISS JUSTICE P WILLIAMS JA
THE HON MRS JUSTICE G FRASER JA

APPLICATION NO COA2025APP00233

BETWEEN	**SKYROCK CAPITAL LIMITED**	**APPLICANT**
AND	**MINETT LAWRENCE**	**1st RESPONDENT**
AND	**LOWELL LAWRENCE**	**2ND RESPONDENT**

APPLICATION NO COA2025APP00240

BETWEEN	**MINETT LAWRENCE**	**1ST APPLICANT**
AND	**LOWELL LAWRENCE**	**2ND APPLICANT**
AND	**SKYROCK CAPITAL LIMITED**	**RESPONDENT**

Mrs Terri-Ann Guyah Tolan and Ms Aisha Thomas instructed by Guyah Tolan and Associates for Skyrock Capital Limited

Dr Mario Anderson instructed by Barbican Law Clinic for Minett Lawrence and Lowell Lawrence

9 and 19 December 2025

Civil practice and procedure – Application to strike out appeal for non-compliance with rules – Application to extend time to serve submissions and chronology – Application for relief from sanctions – Considerations for striking out and grant of extension of time – Court of Appeal Rules, rules 1.13, 1.7, 2.6, 2.7 and 2.14

MCDONALD-BISHOP P

[1] I have read, in draft, the judgment of G Fraser JA. I agree with her reasoning and conclusion and have nothing to add.

P WILLIAMS JA

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

G FRASER JA

Introduction and background

[3] Before the court are two applications: first, Skyrock Capital limited, ('the applicant') requested to have the appeal, which was filed 19 November 2025, struck out pursuant to rule 1.13(1) and 2.14(a) of the Court of Appeal Rules, 2002 ('CAR'); and second, Mr Lowell Lawrence and Mrs Minnett Lawrence ('the respondents') by application filed on 1 December 2025, are seeking an extension of time to file and serve submissions and a chronology of events. The respondents also seek, in their application, relief from sanctions for their non-compliance with the filing of the submissions and chronology within the stipulated time. At the time of the hearing of the applications, the appeal to which they relate was also listed before the court for hearing.

[4] The appeal arises from a judgment entered on 20 July 2023. In that decision, Jackson-Haisley J ('the learned judge') ruled in favour of the applicant in its claim against the respondents.

[5] The applicant claimed breach of an agreement supported by an unstamped promissory note and sought an equitable mortgage over the respondent's property. The respondents denied any loan arrangement, arguing the funds were part of a deposit for a planned share purchase.

[6] In determining the claim in the applicant's favour, the learned judge found that Ms Marcellas James, a director of the applicant, was a credible witness whose evidence aligned with the documentary record. In contrast, the respondents, she found, were less frank and she rejected their evidence where it conflicted with the applicant's evidence. The learned judge determined that, although the parties contemplated a share purchase agreement, the funds advanced were primarily a loan that might later have been

converted into a deposit pursuant to the proposed share purchase agreement; however, this did not occur because the proposed share purchase agreement was never executed. The learned judge held that the promissory note was admissible as evidence and was enforceable despite the late stamping, as no valid defence, such as fraud or illegality, was raised. She concluded that the respondents breached their obligations and remained indebted to the applicant in the amount of $55,001,418.48 plus accruing interest, totalling $60,832,376.53. The learned judge further found that the parties intended the respondents' property to serve as security for the loan, creating an equitable mortgage. She, therefore, granted the applicant an order for the sale of the property to recover the outstanding debt. The respondents, dissatisfied with the learned judge's decision, filed their appeal on 31 August 2023.

The chronology of events before this court

[7] What follows is a detailed chronology of the material procedural events in this matter, tracing the course of the appeal and the applications that subsequently arose up to the date of hearing fixed for the week commencing 8 December 2025. The chronology is set out at some length, not as a matter of form, but because it is integral to the court's evaluation of the appellants' conduct and the exercise of its discretionary powers. Particular emphasis is placed on the filing of the notice of appeal, the case management directions issued by the court, and the repeated procedural defaults in meeting timelines prescribed by the CAR. These matters collectively informed and ultimately shaped the decision that the court has reached.

1. On 31 August 2023, the respondents filed a notice of appeal challenging several orders of the learned judge. The notice of appeal was not served on the applicant until 5 December 2025.

2. On 28 November 2023, a stay of execution was granted.

3. On 13 February 2024, a case management conference ('CMC') was held before Sinclair-Haynes JA. The court's directives were:

a. Appeal set for week commencing 2 December 2024.

b. One hour for oral submissions per side; the applicant allotted 30 minutes for reply.

c. Record of appeal to be filed and served by 4 October 2024.

d. Written chronology to be filed by 6 September 2024.

e. The respondents' submissions and authorities to be filed and served by 6 November 2024.

f. The respondents' submissions and authorities to be filed and served by 15 November 2024.

g. The respondents to file a formal order by 1 March 2024.

4. On 4 October 2024, the record of appeal was filed without consultation and served on the respondent on 2 December 2025. The record of appeal does not contain a filed notice of appeal, final judgment, the exhibits admitted at the trial and the record of proceedings.

5. On 11 November 2024, the applicant's attorney-at-law informed the respondent's attorneys-at-law that they had not received the record of appeal, chronology, or submissions.

6. On 15 November 2024, the registrar issued a notice to the parties informing them that the record of proceedings had been lodged with the court.

7. With the notice issued by the registrar on 15 November, the respondents were required under rule 2.6(1) of the CAR to file a skeleton argument and chronology by 6 December 2024.

8. With the notice issued by the registrar on 15 November, the respondents were required under rule 2.7(3) of CAR to file four sets of records of appeal by 13 December 2024.

9. In December 2024, due to short notice, the parties agreed that the appeal could not proceed on 2 December 2024, and following consultation with the court, the hearing was adjourned.

10. On 6 March 2025, the applicant filed a notice of change of address for proper service.

11. On 7 March 2025, the Court of Appeal issued a notice of hearing of the appeal for the week commencing 8 December 2025.

12. As at the date of the hearing of the application, 9 December 2025, the respondents had not been served with a compliant record of appeal. Although a document described as a record of appeal was filed on 4 October 2024, it was materially deficient, as it contained an unfiled copy of the notice of appeal and a draft judgment, and omitted the certified and essential documents required for the proper constitution of the record. In particular, it did not include the filed notice of appeal, the final judgment of the court below, the exhibits admitted at trial, or the notes of proceedings.

13. On 26 September 2025, the applicant filed and served its submissions and bundle of authorities for the hearing of the appeal.

14. On 19 November 2025, the applicant filed its notice of application to strike out the appeal.

15. On 1 December 2025, the respondents filed their notice of application for an extension of time and relief from sanctions, supported by the affidavit of Minett Lawrence as well as submissions addressing the applications.

16. On 1 December 2025, the respondents filed their submissions regarding the appeal and, on 2 December 2025, they served the applicant with the same.

17. On 5 December 2025, the respondents filed an index to a supplemental record of appeal (no permission to file was granted, nor was there an application before the court for extension of time for these documents). This bundle is not properly before the court, but was served on the applicant on 9 December 2025 (the morning of the hearing of the appeal and the respondent's application to strike out the appeal).

[8] On 9 December 2025, at the hearing of the application to strike out the appeal, which had to precede the hearing of the appeal, the court exercised its discretion to permit the respondents to proceed with their application for extension of time and relief from sanctions, notwithstanding that the application had not been listed for hearing due to their failure to comply with the requirements of the rules governing the filing of applications in the court. Despite the breach and the registrar's refusal to list the matter for hearing which was rightly made, we permitted the application to be heard in order to avoid a multiplicity of proceedings and to further the interests of justice. This approach was particularly justified given that the issue of extension of time was inextricably linked to, and effectively the converse of, the strike-out application. We acted in accordance with the overriding objective of dealing with the case justly.

Applicant's submissions

[9] Mrs Terri-Ann Guyah Tolan, counsel for the applicant, submitted that the appeal should be struck out for non-compliance with the CAR. The application was supported by the affidavit of Marcellus James filed on the same date. The applicant subsequently filed its written submissions and authorities on 1 December 2025. Counsel noted that although an affidavit in response was filed by the 1st respondent, Minett Lawrence, on 1 December 2025 and served on 2 December 2025, it did not form part of the application bundle before the court, as the bundle had been filed earlier on 1 December 2025. That affidavit appeared instead in a separate bundle filed on 5 December 2025, together with an application for an extension of time.

[10] Counsel emphasised that the appeal was beset by extensive procedural non-compliance. Judgment in the Supreme Court was delivered on 20 July 2023, and the notice of appeal was filed on 31 August 2023. The respondents applied for and obtained a stay of execution of the judgment on 28 November 2023. A CMC was held on 13 February 2024, when the court fixed the hearing date for the appeal for December 2024. Despite this, there was no subsequent compliance with the CMC orders, and the respondents took no steps to advance the appeal.

[11] Counsel referred in substance to the chronology of events as enumerated at para. [7] above, and then catalogued several additional defaults, namely: (i) the notice of appeal was never served; (ii) no skeleton arguments have ever been filed; (iii) written submissions were only served on 2 December 2025, after the applicant filed its strike-out application; (iv) no compliant chronology has been filed and the version provided in the supplemental record was unstamped and served only on the morning of the hearing; and (v) the judges' bundles and submissions were never filed in accordance with the practice directions. These failures, counsel argued, amounted to wholesale non-compliance with rules 2.6(1), 2.7(3), 1.13(1) and 2.14(a) of the CAR, any of which empowers the court to strike out an appeal for failure to comply with time limits or court orders.

[12] Counsel further submitted that the respondents had received several clear procedural "triggers" signalling their obligations. These were attendance at the CMC on 13 February 2024; service of the applicants' skeleton submissions on 12 February 2024; correspondence between counsel on 11 November 2024 concerning the respondents' failure to serve the record; the registrar's notice to parties pursuant to rule 2.5(1)(b)(ii) issued on 15 November 2024; the applicants' notice of change of address served on 6 March 2025; the notice of hearing of the appeal issued on 7 March 2025; and service of the applicants' submissions and authorities on 2 October 2025. Despite these repeated prompts, the respondents took no steps until they were confronted with the application to strike out in November 2025.

[13] Counsel addressed the respondent's explanation for the delay, noting that the 1st respondent's affidavit referred to financial difficulties, bail conditions, settling legal representation, and problems accessing files. However, counsel argued that these assertions were unsupported by evidence and largely irrelevant to the appellate defaults. Counsel highlighted that the 1st respondent is a former attorney-at-law and was legally represented at the CMC in February 2024. The difficulties itemised in the affidavit predated the trial, which itself occurred in April to May 2023, and did not prevent her from filing the appeal or obtaining a stay in 2023. Counsel argued that the 1st respondent had provided no adequate explanation for the failure to comply with any of the appellate deadlines in 2024 or 2025, and no steps had been taken to obtain extensions of time until after the strike-out application was filed. All this is against the background that the 1st respondent has acknowledged that she was the one who prepared documents for filing in court, even though she had counsel on the record.

[14] Mrs Guyah Tolan submitted that the respondents' conduct demonstrated a "material dereliction of duty" and a pattern of persistent disregard for the rules, falling squarely within the principles articulated in **The Commissioner of Lands v Homeway Foods Ltd and Anor** [2016] JMCA Civ 21 ('**Homeway Foods Ltd**') and **Caribbean Cement Company Ltd v Tarawali** [2025] JMCA App 2 ('**Tarawali**'). Reliance was

placed on **Homeway Foods Ltd**, especially para. [52](v), which emphasises that previous conduct showing a pattern of non-compliance is a material consideration, and para. [52] (vi), which distinguishes between partial and complete non-compliance. In this case, counsel argued, the non-compliance was complete and continuing.

[15] Although acknowledging that the appeal might meet the low threshold of arguability, evidenced by the grant of a stay of execution, counsel submitted that this factor is secondary to the length of delay, the inadequacy of the reasons for the delay, and the prejudice suffered by the applicant. The applicant has been deprived of the fruits of its judgment for over two years. The claim itself was filed seven years ago. Approximately $38,500,000.00 was advanced to the respondents, including $36,000,000.00 used to discharge their mortgage and $2,500,000.00 deposited into their personal accounts. The applicant has recovered nothing. Meanwhile, the respondents remain in possession of their home, protected by the stay of execution. Any prejudice they would suffer from the striking out of the appeal, counsel submitted, is "self-created", as they "voluntarily encumbered their property and then failed to prosecute their appeal diligently".

[16] Counsel contended that granting the respondents further indulgence would impose additional expense on the applicant, necessitating review of new documents and participation in yet another hearing. It would also be manifestly unfair to other litigants awaiting the court's limited resources, a concern highlighted at para. [117] of **Homeway Foods Ltd**. Counsel, therefore, invited the court to strike out the appeal, submitting that it would be "manifestly unjust" to afford the respondents another opportunity to prosecute an appeal they had shown no intention of advancing until faced with the application to strike it out.

Respondents' submissions

[17] Dr Mario Anderson, on behalf of the respondents, opposed the application to strike out the appeal and advanced the respondents' application for extension of time and relief from sanctions. Counsel contended that, while there had been delays, there had not been

total non-compliance with the CAR, and that in all the circumstances, including the arguable merits of the appeal and the nature of the prejudice, the "balance of justice" favoured permitting the appeal to proceed.

[18] The respondents relied principally on the 1st respondent's affidavit, filed on 1 December 2025, which sets out the explanations for the delays and the procedural steps taken to advance the appeal.

[19] Counsel initially disputed the applicant's assertion that the notice of appeal was never served and maintained that, during the stay of execution proceedings in December 2023, an email was sent attaching the notice of appeal. Counsel, however, expressed uncertainty as to whether the notice was a stamped copy. Ultimately, his position is that the applicant was aware of the appeal from an early stage even if a stamped copy was not served.

[20] Dr Anderson, though accepting that service occurred late (2 December 2025), nonetheless submitted that the record itself had been filed since 4 October 2024, and that counsel for the applicant had a duty to indicate the documents and other items they wished to have included in the record. He argued that the procedural difficulties surrounding the appointment of a hearing date before the receipt of the record of proceedings from the Supreme Court created confusion, which contributed to delays.

[21] Dr Anderson accepted that skeleton arguments or written submissions were not filed by the required date but explained that this resulted from his honest misinterpretation of the rules. He believed that written submissions, rather than skeleton arguments, were required and that the rules did not strictly govern such submissions. Counsel argued that this was inadvertence on his part rather than deliberate non-compliance. The court pointed out to Dr Anderson that there was no affidavit evidencing his explanation.

[22] It was noted that a supplemental record was filed on 5 December 2025, triggered by the strike-out application and following the realisation that certain documents were

outstanding, including the notes of evidence and chronology of events. Counsel submitted that the rules do not set a fixed timeline for filing a supplemental record and that the omission to do so was corrected promptly upon discovery.

[23] The respondents relied on the 1st respondent's affidavit, which explained that: (i) she was on bail during parts of the relevant period; (ii) she experienced significant financial and health difficulties; and (iii) these issues impaired her ability to secure counsel, access her records and to settle the appeal documents promptly.

[24] Dr Anderson emphasised that the 1st respondent is a former attorney-at-law, acting effectively in the matter as a litigant in person, with limited resources and substantial personal strain. While acknowledging that some periods of her difficulty pre-dated the appeal, it was argued that the cumulative stress and her responsibility for the family home materially affected her capacity to comply. Again, there was no affidavit supporting these latter assertions.

[25] Counsel further contended that the CMC in February 2024 took place prematurely, before receipt of the official record from the Supreme Court. This created uncertainty regarding applicable timelines. Counsel noted that the court itself (registrar's notice of 15 November 2024) subsequently accepted that the original hearing date was no longer practicable.

[26] Counsel on the respondents' behalf reiterated that they had not deliberately flouted the CAR or the court's authority. Rather, the steps taken, such as filing the record, participating in the CMC, engaging with the stay of execution application, and filing the supplemental record, demonstrated ongoing, albeit imperfect, efforts to advance the appeal.

[27] The respondents disputed the applicant's characterisation of the breaches as "complete non-compliance". Relying on **Homeway Foods Ltd**, they argued that the court must consider whether the default is total or partial, and that, in this case, there was substantial though imperfect compliance.

[28] The respondents accepted that the applicant had been deprived of the fruits of its judgment. Still, they argued that this is ordinary prejudice in the context of a granted stay of execution. Counsel emphasised that the court previously granted a stay of execution, which necessarily required the appeal to be considered arguable, and submitted that this arguability remained relevant in the exercise of the court's discretion, though not decisive.

[29] The respondents contended that any prejudice to the applicant was limited and garnered support from the decision of **Garbage Disposal & Sanitations Systems Ltd v Noel Green et al** [2017] JMCA App 2, asserting that: (i) financial prejudice can generally be compensated by costs or interest and that, in any event, if the appeal was unsuccessful the applicant would retain the fruits of its judgment; and (iii) the delay has not rendered the appeal untriable nor placed the respondents at a forensic disadvantage.

[30] The respondents also argued that their application for extension of time, filed on 1 December 2025, demonstrated a *bona fide* effort to regularise the appeal. They submitted that there is now movement toward compliance, and the outstanding documents (chronology, submissions, supplemental record) had been filed, albeit late.

[31] The respondents relied heavily on **Auburn Court Limited v The Town and Country Planning Appeal Tribunal & Ors Supreme Court Civil Appeal** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 70/2004, judgment delivered 28 March 2006 ('**Auburn Court Ltd**'), contending that in applications to strike out an appeal for procedural breaches, the court must apply a broad balance-of-justice test. They maintained that striking out is a remedy of last resort and should not be imposed where the justice of the case favours allowing the matter to proceed. Counsel submitted that strict adherence to procedural requirements should give way to the overarching objective of disposing of cases justly, particularly given that the appeal concerned the respondents' family home, potentially implicating constitutional property rights.

Analysis

Striking out and extension of time: Rules 1.13, 2.6, 2.7 and 2.14 of the CAR and 26.3(1) of the CPR

[32] The respondents' application invokes the court's powers under rules 1.13(1) and 2.14(a) of the CAR. Rule 26.3(1)(a) of the Supreme Court Civil Procedure Rules, 2002 ('CPR'), imported into this court's jurisdiction through rule 2.14(a) of the CAR, is also engaged. That provision vests the court with a broad discretion to strike out an appeal, or any part of it, where there has been a failure to comply with the rules, practice directions, or orders of the court.

[33] The obligations placed on an appellant under rules 2.6 and 2.7 of the CAR are sequential, mandatory and fundamental to the prosecution of an appeal. These include timely service of the notice of appeal, preparation and filing of the record of appeal, service of the record, filing of the chronology, and filing of skeleton arguments within the strict timelines prescribed by the rules. The failure to comply with these rules strikes at the very heart of the appellate timetable and the precious resource of time.

[34] In addition, the filing of the application for extension of time after the applicant's strike-out application, and the respondents' failure to address all the outstanding defects in the application to regularise the late supplemental record, raise the question whether the respondents have demonstrated a genuine intention to comply with the court's processes prior to being prompted by the threat of sanction.

[35] I now turn to the relevant principles governing (1) an application to strike out for procedural default, and (2) an application for extension of time/relief from sanctions in light of the authorities.

[36] **Homeway Foods Ltd** remains a leading decision on how the court should assess non-compliance with the CAR and how it should approach applications for extension of time/relief from sanctions. There, McDonald-Bishop JA (as she then was) referred to the United Kingdom decision in **Biguzzi v Rank Leisure Plc** [1999] 1 WLR 1926, where

Lord Woolf MR underscored the importance of adhering to, and complying with the timelines stipulated in the CPR and, at paras. [49] and [50], enunciated that:

> "[49] …The overriding purpose of the rules, he said, is to impress upon litigants the importance of observing time limits in order to reduce the incidence of delay in proceedings.
>
> [50] The authorities have equally made it clear that striking out or dismissing a party's case is a draconian or extreme measure and so it should be regarded as a sanction of last resort. As Lord Woolf explained in Biguzzi, there may be alternatives to striking out, which may be more appropriate to make it clear that the court will not tolerate delay but which, at the same time, would enable the case to be dealt with justly, in accordance with the overriding objective. The court in considering what is just, he said, is not confined to considering the effects on the parties but is also required to consider the effect on the court's resources, other litigants and the administration of justice."

[37] The court also explained that: (i) length of delay, (ii) reasons for the delay, (iii) merits of the appeal (secondary), (iv) prejudice, and (v) previous conduct and pattern of default are all relevant considerations.

[38] Importantly, the court emphasised at para. 52(v):

> "The previous conduct of the defaulting party is a material consideration, particularly where it reveals a pattern of defiance or persistent disregard for the rules of the Court."

[39] And at para. 52(vi):

> "The court must consider whether the non-compliance has been partial or complete. Complete or continuing default will weigh heavily against the grant of relief."

These principles are directly engaged here.

[40] **Tarawali** reaffirms that delays exceeding the mandatory timelines and failure to prosecute an appeal after the grant of a stay are powerful indicators of abuse, or at least

serious inefficiency, warranting the court's intervention. It also restates that the merits of an appeal are not determinative where there has been sustained non-compliance.

[41] The authority of **Auburn Court Ltd** is frequently cited for the "balance of justice" approach. However, the court has repeatedly held that the balance of justice must be assessed within the structure of the CAR and cannot override serious procedural default without good reason. It is also well settled that adherence to procedural timelines assumes heightened importance at the appellate level, as the Court of Appeal emphasised in **Homeway Foods Ltd** at para. [53]. The appellate process is governed by stricter procedural discipline than proceedings at first instance, reflecting the need for finality, efficiency, and the orderly use of limited judicial resources. The court there observed that indulgence in cases of non-compliance must be more sparingly granted on appeal, as litigants who invoke the appellate jurisdiction are expected to prosecute their appeals with diligence and expedition. In the present case, the respondents' persistent failure must, therefore, be assessed against this more exacting standard, and it weighs heavily against the grant of any further indulgence.

Application of the principles to the facts

Length and seriousness of the delay

[42] The delay in this matter is both lengthy and grave, striking at the very heart of the appellate process. The judgment that the respondent sought to appeal was delivered on 20 July 2023. The notice of appeal was filed in August 2023, yet from that point forward, the appellants, who are the respondents in this application, took no meaningful steps to advance the appeal for more than a year after receiving a stay of execution from this court. The mandatory timelines stipulated by the CAR, including the filing of the record of appeal, the filing of skeleton arguments, the filing of a chronology of events, and the service of the documents, were repeatedly and comprehensively breached. The delay is prolonged and multifaceted, and the procedural steps taken to date includes significant defects as itemised below:

i. The inexplicable failure to serve the notice of appeal until December 2025, over two years after filing and after an aborted hearing date one year ago.

ii. The record of appeal although filed in October 2024 was not served until December 2025, more than 14 months later and only after the applicant filed its application to strike out the appeal.

iii. Skeleton arguments were due in December 2024, one year ago, but none were filed.

iv. An index to supplemental record of appeal, comprising key mandatory documents; the chronology of events, notes of evidence and the exhibits tendered and admitted in the trial, which were required since December 2024, were filed on 5 December 2025, being one working day between the filing of the document and the date fixed for the application to strike out and the appeal to be heard. Moreover, the documents were filed out of time without any permission being granted by the court as required by rule 1.7(2)(b) of the CAR. Even more crucially, it is to be noted that these documents were belatedly served on the applicant on 9 December 2025, the morning of the hearing of the application and the date fixed for the appeal to proceed

v. There was no application for an extension of time supporting the unauthorised filing of the supplemental record of appeal, nor the final judgment. The application for an extension of time and relief from sanctions filed on 1 December 2025, which the court allowed the respondents to argue (despite procedural breaches in relation to it) was limited only to the chronology of events and submissions.

[43] All of the above, in my view, constitute a continuing and complete default with respect to multiple mandatory steps. Applying **Homeway Foods Ltd**, this weighs strongly against relief.

[44] The seriousness of the delay is amplified by the fact that it spans not merely weeks or months, but a period approaching two years from the date of judgment, and well over a year from the issuance of the registrar's notice under CAR rule 2.5(1)(b). That notice, dated 15 November 2024, expressly triggered the running of the appellate timetable. From that point, the respondents were required to file and serve the record of appeal, skeleton arguments, and chronology of events within the strict statutory timeframes. None of these obligations was met. Indeed, the supplemental record, containing documents essential to the hearing of the appeal, such as the trial notes of evidence, was not filed until 5 December 2025 and was served only on the morning of the hearing of the striking-out application and appeal. This document, purporting to be a supplemental record, was deficient and not in keeping with the requirements of the rule. In any event, no explanation was proffered for the filing of it without the requisite documents and doing so one working day before the date fixed for the hearing of the application to strike out and the appeal. To make matters worse, there was no application for an extension of time to file any supplemental record. Accordingly, the supplemental record that is filed cannot be permitted to stand for all the foregoing reasons.

[45] The egregious nature of the delay is underscored by its duration and by the respondents' failure to take any procedural steps to regularise their non-compliance. The judgment under appeal was delivered on 20 July 2023. Although the case management directions were issued, fixing 4 October 2024 as the date by which the record of appeal was to be filed, the record of proceedings from the Supreme Court had not yet been received. Notwithstanding that fact, the respondents did not draw this difficulty to the attention of the judge who made the case management orders, nor did they seek a variation of those directions and timetable. Failing that, they did not subsequently apply for an extension of time or request a further case management conference to obtain

further directions, as the timetable set at the previous case management conference was frustrated.

[46] Despite the inability of the parties to comply with some of the case management orders, there was the subsequent issuance of the registrar's notice on 15 November 2024 pursuant to rule 2.5(1)(b). This notice operated to engage the appellate timetable. It would have triggered new timelines under the CAR for the prosecution of the appeal, which would have been separate from the case management orders previously made. Against this background, the respondents' default would have been compounded following the issuance of the registrar's notice. Despite the apparent triggering effect of that crucial notice, the respondents failed to comply with the prescribed steps necessary to advance the appeal. Documents essential to the hearing of the appeal, including the notes of evidence, were not filed until 5 December 2025 and were served on the applicants only on the morning of the hearing of the application to strike out and the day fixed for the hearing of the appeal. That late filing was not accompanied by any application for an extension of time or for directions permitting its inclusion in the record. In those circumstances, the court is constrained to treat the filing of that material as irregular, with the result that there remains no properly constituted record before the court upon which any meaningful assessment of the merits of the appeal can be undertaken.

[47] This is, therefore, not a situation of partial or technical non-compliance by the respondents. It is a case of sustained, wholesale default. As the court emphasised in **Homeway Foods Ltd**, at para. 52(vi), the extent of non-compliance is a material factor; complete and continuing default weighs heavily against any indulgence. Further, where the delay is "prolonged, unexplained, and repeated", the court is entitled to regard it as an abuse of the appellate process (see also **Tarawali**). That description aptly characterises the present case.

[48] In these circumstances, the length and seriousness of the delay weigh decisively against the grant of any further indulgence. The pattern of default is neither isolated nor

excusable; it reveals a sustained disregard for the CAR and for the efficient administration of justice.

Reasons for the delay

[49] The reasons advanced were the 1st respondent's alleged difficulties with health, finances and bail; difficulty retaining legal representation; and misinterpretation of the CAR.

[50] In assessing the reasons advanced for the extensive delay, the court is constrained to observe that the explanations proffered are, at best, vague and unsupported, and at worst, internally inconsistent. The 1st respondent's affidavit asserts that her prolonged delay in complying with the mandatory appellate timelines was attributable to financial hardship, medical challenges, and the fact that she was "on bail". However, no corroborative material was produced to substantiate those assertions. More fundamentally, the reliance on her bail status as an impediment to prosecuting the appeal is wholly unpersuasive.

[51] Being on bail does not, without more, curtail a person's access to counsel, their ability to retrieve case files, or their freedom of movement. Indeed, the purpose of bail is to secure a defendant's liberty pending trial, expressly to enable them to consult counsel, organise their affairs, and prepare their defence or appeal. There is nothing in the material before the court to suggest that the terms of the 1st respondent's bail (or the 2nd respondent's) imposed any restriction, geographical or otherwise, that could reasonably explain the respondents' inability to communicate with their attorneys, obtain copies of relevant documents from the registry, or comply with the appellate timetable.

[52] To the extent the respondents suggested that the bail circumstances impeded timely action, this is inconsistent with the factual reality. Being on bail did not hinder them in any way; if anything, the relative freedom associated with bail should have facilitated, rather than obstructed, compliance with procedural timelines. More significantly, nothing in the affidavit material links the bail status to the extensive delay.

[53] Moreover, the chronology of events undermines the credibility of the explanation. The circumstances described by the 1st respondent substantially predated the filing of the appeal. Yet, she was able to actively participate in the Supreme Court trial in April and May 2023, instruct counsel, file a notice of appeal in August 2023, and file documents for a stay of execution, which was obtained in November 2023. It is noted that Dr Anderson represented the respondents at the stay of execution application and again at the CMC in February 2024, and had received, on their behalf, multiple notices and correspondence, including from the applicant's counsel, alerting them to their obligations. Their failure to comply, therefore, cannot be attributed to sudden or unforeseeable events.

[54] In light of this demonstrable ability to engage with the litigation, when necessary, the explanation that bail, health issues, or financial circumstances subsequently rendered the respondents incapable of complying with the appellate regime is untenable. As this court observed in **Homeway Foods Ltd** and **Tarawali**, persistent non-compliance requires a cogent and compelling explanation, supported where necessary by evidence, and the absence of such evidence weighs heavily against the grant of indulgence. Here, no adequate explanation has been furnished for the near-total failure to meet the explicit and sequential obligations imposed by the CAR. I, therefore, accept the applicant's argument that the explanations are vague, unparticularised and legally insufficient.

Previous conduct and pattern of default

[55] Apart from the individual instances of non-compliance already identified, the respondents' conduct throughout the life of this appeal demonstrates a persistent and systemic disregard for the appellate rules and the directions of this court. The defaults were neither isolated nor inadvertent; rather, they occurred at every critical procedural juncture and continued even after the respondents were expressly alerted by correspondence from the applicant, by the registrar's notice, and by the making of case management directions to the steps required to advance the appeal. Notably, meaningful compliance was only attempted after the filing of the respondents' application to strike out, a circumstance which strongly suggests that the respondents had no settled intention

of prosecuting the appeal in accordance with the CAR until faced with the prospect of its dismissal. As the court observed in **Homeway Foods Ltd**, previous conduct is a material consideration where it discloses "a pattern of default or a continuing failure to comply with the rules of court" (para. 52(v)).

[56] In the present case, the respondents' repeated omissions, taken cumulatively, demonstrate precisely such a pattern and weigh heavily against the grant of any further indulgence. There is evidence of at least seven triggers - notices, CMC orders, correspondence from the registrar, and correspondence from the applicant's counsel - that should have alerted the respondents to their obligations. Despite this, the respondents took no steps until the real possibility of losing the opportunity to appeal was staring them in the face, after the strike-out application was filed in November 2025. Even then, the respondents did not act with the alacrity expected in the circumstances, and their dilatory conduct continued until 9 December, when the striking-out application and the appeal itself were scheduled for hearing. This accords with the pattern described in **Homeway Foods Ltd**: "persistent disregard for the rules of the Court".

[57] Accordingly, I find that the respondents have shown a consistent and prolonged pattern of non-compliance and their belated attempts to obtain relief from sanctions, together with the proffered explanations for the delays, smack of insincerity.

Degree of prejudice

[58] A further central consideration under the CAR and the guiding jurisprudence is the degree of prejudice that would be occasioned to the applicant if the court were to grant relief from the procedural default. The courts have repeatedly underscored that where delay has been significant, the potential prejudice to the opposing party, both evidential and procedural, must be carefully weighed. In the present case, the prejudice to the applicant is not speculative or trivial, but substantial and multi-layered. The respondent had secured a judgment after a significant time and expense. Disregarding the consequences of the applicant's prolonged delay without compelling justification would not only prolong litigation but would erode the applicant's entitlement to finality. As the

authorities repeatedly stress, finality is a substantive legal interest in itself, particularly where a party has already endured protracted proceedings.

[59] In addition, the applicant has pointed to concrete prejudice and has complained that the seriousness of the delay is further underscored by the prejudice created by the respondents' inaction. The applicant has been deprived of the fruits of a judgment for more than two years while incurring ongoing costs associated with attempting to respond to a stalled appeal. Moreover, the appeal concerns financial transactions dating back some seven to eight years. The continued passage of time inevitably risks impairing the fairness of any eventual hearing. The jurisprudence recognises that even where prejudice is not expressed in strict evidential terms, the uncertainty and continuing burden of unresolved litigation may amount to real prejudice. In a decision from this court, **MSB Limited v FINSAC Limited and Joycelyn Thomas** 2020 JMCA Civ 4 at para. [73], the court adumbrated that:

> "The authorities from this court are clear that actual prejudice need not be shown in order for the court to exercise its discretion to dismiss for want of prosecution. Certainly the court may dismiss the claim if it is satisfied that there is prejudice, but similarly, the court may move to dismiss the claim if there is a likelihood that the appellant would be caused serious prejudice should the matter go to trial. This is a separate and independent consideration from the question of whether there is a substantial risk that a fair trial would not be possible consequent on the delay."

Although that case concerned claims and trials in the court below, the principle is relevant to appeals. I must, therefore, weigh not only the respondent's legal position but also the practical realities of imposing further delays.

[60] Given the lengthy and inadequately explained delays, the respondents' failure to act promptly upon becoming aware of the default, and the absence of any reasonable basis to justify the period of inactivity, the prejudice to the applicant is manifest. Granting relief to the respondents in such a context would undermine the overriding objective, which requires the court to ensure fairness, efficiency, and the timely disposal of

proceedings. This weighs heavily against the grant of relief. This approach is patently reflected in **The Attorney General v Keron Matthews** [2011] UKPC 38 ('**Keron Matthews**'), where the Privy Council emphasised that the court must avoid outcomes that impede the efficient and fair administration of justice.

[61] The applicant has been deprived of the fruits of their judgment for over two years, during which a stay has been in place. The underlying claim is now almost eight years old and arises from conduct, nine years ago. The court accepts that prejudice from continued delay is real and significant, particularly where the applicant succeeded at trial and has not recovered any of the multimillion-dollar sums found due.

[62] The respondents' argument that any prejudice can be cured by costs is unrealistic in circumstances where the stay remains in effect, the delay is substantial, and the applicant has already incurred additional costs responding to late filings. They must now prepare anew for an appeal that has still not been properly constituted. Prejudice, therefore, weighs against further indulgence.

Arguability of the appeal

[63] Finally, the merits factor, though not determinative, plays a recognised role in assessing whether the court should excuse the procedural default. Both **Keron Matthews** and **Universal Projects** confirm that while a strong merits case cannot eclipse a significant, unexplained delay, the court may have regard to whether the underlying appeal demonstrates a realistic, not fanciful, prospect of success. The threshold is not high, but it must be grounded in the record and not in broad assertion.

[64] While it is accepted that the respondents previously obtained a stay of proceedings on the basis that the appeal was arguable at that interlocutory stage, that consideration cannot be determinative of the present application. In the context of these proceedings, and for reasons already discussed, the court has not been placed in a position to evaluate the asserted merits of the appeal in any objective or meaningful way to properly determine whether it is more than arguable but one with a realistic prospect of success.

Therefore, in my view, this court should treat the appeal as no more than one that is arguable, as evidenced by the grant of the stay of execution.

[65] Therefore, even if the court treats the appeal as arguable or with some merit, the jurisprudence is clear that the merits cannot rescue a case where delay has been substantial, inordinate, and unexplained. As was adumbrated in **Universal Projects**, "Strong merits do not neutralise procedural indiscipline nor displace the obligation to comply with rules of court". Furthermore, the contention that the respondents were not deliberate in flouting the CAR and other court orders is expressed only in general terms.

[66] In this context, while this court accepts that the appeal is arguable, as indicated implicitly at the stay of execution stage, it is, however, reaffirmed in **Homeway Foods Ltd** at paras. [94], [95] and [126] and in **Tarawali**, arguability is secondary to the length of delay and adequacy of reasons. It cannot outweigh persistent non-compliance unless the delay is short or satisfactorily explained. Here it is neither.

[67] When weighed against the prolonged and inadequately explained delay and the real prejudice to the applicant, the merits factor offers no basis for the exercise of the court's discretion in the respondents' favour. The composite evaluation required by the authorities, therefore, decisively supports the refusal of an extension of time for compliance and the striking out of the appeal.

Conclusion

[68] In the result, having carefully considered the length and seriousness of the delay, the inadequacy and internal inconsistencies within the explanations advanced, and the prejudice already occasioned to the applicant, I am satisfied that the respondents have fallen well short of the threshold required to justify the exercise of this court's discretion in their favour. The delay was not only prolonged but largely unexplained in any coherent or credible manner. Indeed, several of the reasons proffered, particularly the reliance on bail conditions, bear no rational connection to the failure to comply with clearly prescribed procedural timelines.

[69] Moreover, the applicant has been subjected to continuing uncertainty arising solely from the respondents' lack of diligence. To grant relief in these circumstances would risk undermining the integrity, predictability, and orderly operation of the appellate process. Finality in litigation is an essential component of justice, and the court cannot disregard the prejudice that prolonged, unjustified delay imposes on a successful litigant.

[70] The balance of justice, assessed within the structure of the CAR, weighs decisively in favour of enforcing compliance. In these circumstances and bearing firmly in mind the need to uphold the discipline of the rules and the overarching interests of justice, I am driven to conclude that no sufficient ground has been demonstrated for the grant of an extension of time. Conversely, the application to strike out the appeal is plainly justified. I am, therefore, satisfied that this is a proper case in which the sanction of striking out, though draconian, ought to be imposed to vindicate the integrity of the appellate process and the timely enforcement of the rules of court.

[71] I would accordingly recommend that the application for the appeal to be struck out be granted and the respondents' application for extension of time and relief from sanctions be refused with costs to the applicants on both applications and the appeal to be agreed or taxed.

MCDONALD-BISHOP P

ORDER

1. The application of the applicant for an order striking out the appeal for non-compliance, filed on 19 November 2025, is granted.

2. The respondents' application for an extension of time to serve submissions and chronology, and relief from sanctions, filed on 1 December 2025, is refused.

3. The appeal is struck out.

4. Costs of both applications and costs of the appeal (being the costs thrown away in the appeal) to the applicant to be agreed or taxed.