[2026] JMCA Civ 19

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP P
THE HON MR JUSTICE LAING JA
THE HON MRS JUSTICE G FRASER JA

SUPREME COURT CIVIL APPEAL NO COA2023CV00024

BETWEEN	**ERROL TRACEY**	**APPELLANT**
AND	**THE ATTORNEY GENERAL OF JAMAICA**	**RESPONDENT**

Written submissions filed by Nigel Jones & Co for the appellant

Written submissions filed by the Director of State Proceedings for the respondent

10 July 2026

Civil Procedure – Relief from sanctions – Failure to comply with case management orders – Application for extension of time to file and serve list of documents and witness statement – Whether application made promptly – Whether failure to comply was intentional – Whether good explanation for non-compliance established – Whether appellant generally complied with rules, practice directions and orders – Proper interpretation of rule 26.8(2)(c) – The Civil Procedure Rules, 2002, rule 26.8

PROCEDURAL APPEAL

(Considered on paper pursuant to rule 2.4(3) of the Court of Appeal Rules 2002)

MCDONALD-BISHOP P

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

LAING JA

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

G FRASER JA

Introduction

[3] This is a procedural appeal by Mr Errol Tracey ('the appellant'), the claimant in the court below, against the decision of K Anderson J ('the learned judge'), handed down in the Supreme Court on 30 May 2025. On that date and by his order, the learned judge refused the appellant's application for relief from sanctions.

[4] The orders made by the learned judge that are appealed are as follows:

> "1. The orders sought in the claimant's notice of application for court orders, which was filed on January 30, 2025 are refused.
>
> …
>
> 3. The claimant is not permitted to rely on his evidence upon the trial of this claim.
>
> 4. The claimant is not permitted to rely on or produce the documents, which he had not disclosed nor permitted the opposing party to inspect within time, upon the trial of this claim.
>
> …"

Background

[5] On 1 March 2018, the appellant commenced proceedings against the respondent seeking damages for negligence. At the case management conference ('CMC') held on 18 July 2022, Staple J made several case management orders, including directions that the appellant file and serve standard disclosure of documents on or before 31 March 2023, and witness statements on or before 30 June 2023. The appellant failed to comply with those timelines, filing the list of documents approximately five months out of time.

[6] As a result of the non-compliance, the sanctions prescribed under rules 28.14(1) and 29.11(1) of the Civil Procedure Rules, 2002 ('CPR') took effect on 1 April 2023 and 1

July 2023, respectively, thereby preventing the appellant from relying on undisclosed documents or calling witnesses at trial without first obtaining relief from sanctions.

The proceedings before the learned judge

[7] On 30 January 2025, the appellant filed an application, pursuant to rule 26.8 of the CPR, seeking relief from the sanctions arising from the failure to comply with orders 4 and 7 made by Staple J on 18 July 2022. When the application came on for hearing, the learned judge had before him two unopposed applications for relief from sanctions. One was brought by the appellant and the other by the respondent, both arising from repeated non-compliance with earlier case management orders. The appellant sought permission for his late–filed witness statement and list of documents to stand. The respondent similarly sought relief for failures relating to witness statements, disclosure, and related procedural filings.

[8] Both applications were heard on 30 January 2025 and judgment was delivered on 30 May 2025. The appellant's application was supported primarily by the affidavits of Ms Kenisha Gordon, filed on 30 January 2025, and Ms Rykel Chong and Ms Odecsia Ferguson, filed on 6 February 2025. In those affidavits, the appellant contended that the orders had ultimately been complied with, albeit out of time, due largely to difficulties in maintaining contact with the appellant and administrative lapses in the management of the matter, which also accounted for the delay in making the application before the adjourned pre-trial review hearing.

[9] The court record confirmed that the appellant's witness statement was filed on 25 August 2023 and served on 28 August 2023, despite being due by 30 June 2023 under the case management order.

[10] Following the hearing of the applications on 30 January 2025, the court issued procedural directions, including the scheduling of a pre-trial review, granting permission for further affidavit evidence, and directing the filing of written submissions. The hearing of both applications for relief from sanctions was to be heard on paper, with the ruling

reserved. The learned judge also vacated the existing trial date pending the outcome of the applications, making clear that no trial would proceed unless relief from sanctions was granted.

The finding of the learned judge

[11] On 30 May 2025, the learned judge delivered his reserved decision on both applications for relief from sanctions. He found that, in each case, the delay was extensive, ranging from over a year to nearly two years, and concluded that neither party had acted promptly as required by rule 26.8(1)(a) of the CPR. The learned judge emphasised that although the requirement of promptness carries some flexibility, such prolonged delays require a clear and compelling justification, which was not forthcoming from either party.

[12] The learned judge further found that, although both applications were supported by affidavit evidence, neither party had satisfied the substantive requirements for relief under rule 26.8(2). In particular, he rejected the explanations advanced, including administrative oversight, poor communication between lawyers and clients, the loss of contact information, and counsel's illness, as insufficient to account for the non-compliance. He also found insufficient evidence to conclude that the failures were unintentional. Additionally, the learned judge found that neither party had demonstrated general compliance with other procedural obligations under the CPR and the relevant practice directions.

[13] As a result, the learned judge ruled that neither the appellant nor the respondent met the strict cumulative requirements for relief from sanctions under rule 26.8 of the CPR. Consequently, both applications were refused, and neither party was permitted to rely on their witness statements or undisclosed documents at trial. However, the learned judge permitted the respondent’s listing questionnaire to stand, and a further pre-trial review was ordered to consider the case's future conduct. Leave to appeal was granted, with no order made as to costs.

The appeal

[14] On 9 June 2025, the appellant filed a notice and grounds of appeal, which were subsequently amended on 26 June 2025, principally to include ground (ii). The grounds of appeal are as follows:

> "i. The Honourable Judge erred when he found that no circumstances had been outlined from which he could determine that the application had been made promptly.
>
> ii. The Honourable Judge erred in finding that the failure to comply was not intentional.
>
> iii. The Honourable Judge erred when he found that a good explanation for the failure to comply had not been advanced by the Claimant.
>
> iv. The Honourable Judge erred in determining that the Claimant had not established that the failure to comply was unintentional.
>
> v. The Honourable Judge created a higher standard in determining compliance with the [sic] 26.8 (2)(c) insofar as he required the Claimant to have complied with all other relevant rules, practice directions, orders and directions as opposed to the qualified requirement of "generally" compliant.
>
> vi. The Honourable Judge failed to give sufficient weight to matters that must be considered in accordance with rule 26 8(3) including: the effect which the granting of relief or not would have on each party, whether the failure to comply has been or can be remedied within a reasonable time, the interests of the administration of justice." (Underlining as in the original)

Issues

[15] The notice of appeal contains six grounds of appeal. However, notwithstanding the manner in which the grounds have been framed, they raise a number of common and overlapping questions. It is, therefore, both convenient and desirable to consider them under three principal issues, which adequately encapsulate the matters in controversy. This approach avoids unnecessary repetition and facilitates a structured

examination of the appellant's complaints. The issues arising for determination may accordingly be formulated as follows:

1. Whether the learned judge erred in the exercise of his discretion in refusing the appellant relief from sanctions on the grounds that the application was not made promptly, the non-compliance was not shown to be unintentional, and no good explanation was provided for the failure to comply. (Grounds 1-4)

2. Whether the learned judge misdirected himself in law in his interpretation and application of rule 26.8(2)(c), by imposing a higher standard of compliance than that required by the rule. (Ground 5)

3. Whether the learned judge failed to give proper consideration to the factors set out in rule 26.8(3), including the effect of granting or refusing relief to the parties, whether the breach could be remedied within a reasonable time, and the interests of the administration of justice. (Ground 6)

The submissions

The appellant

[16] Counsel on behalf of the appellant submitted that the learned judge erred in principle and in the exercise of his discretion in refusing the application for relief from sanctions pursuant to rule 26.8 of the CPR. It was contended that the learned judge misapprehended both the evidence and the applicable principles, thereby arriving at a decision which was plainly wrong and outside the ambit of a reasonable exercise of discretion. Reliance was placed on **Jamaica Infrastructure Operators Limited and another v Dwayne McGaw** [2018] JMCA Civ 4 ('**Jamaica Infrastructure**'), **The Attorney General of Jamaica v John Mackay** [2012] JMCA App 1, and **Hadmor Productions Ltd v Hamilton** [1982] 1 All ER 1042('**Hadmor Productions**'), which establish that an appellate court may interfere where a judge has misunderstood the law or evidence, made plainly erroneous findings, or exercised discretion improperly.

[17] The appellant further contended that the learned judge adopted an unduly rigid interpretation of rule 26.8, particularly regarding the requirements of promptness, good explanation, intention, and prior compliance. It was submitted that the learned judge failed to assess the application holistically and gave insufficient consideration to the broader discretionary factors under rule 26.8(3), including the interests of justice, the absence of irremediable prejudice, and whether the breach could be remedied within a reasonable time.

[18] In relation to promptness, the appellant argued that the learned judge failed to consider the surrounding circumstances which explained the delay. Reliance was placed on **Victoria Marie Meeks v Jeffrey Williams Meeks** [2018] JMSC Civ 37, **HB Ramsay & Associates Ltd et al v Jamaica Redevelopment Foundation Inc and another** [2013] JMCA Civ 1 ('**HB Ramsay**'), and **Ray Dawkins v Damion Silvera** [2018] JMCA Civ 25, which establish that promptness is assessed not solely by the passage of time but in context. The appellant maintained that the default resulted from oversight during ongoing settlement discussions, compounded by communication difficulties with the appellant and the subsequent transfer of conduct between attorneys-at-law. It was further submitted that successor counsel acted promptly upon discovering the non-compliance. The learned judge, therefore, failed to consider those explanations properly and wrongly concluded that promptness had not been established.

[19] The appellant also challenged the learned judge's findings that the breaches were intentional and that they were unsupported by a good explanation. It was submitted that the evidence demonstrated inadvertence, administrative oversight, and communication difficulties rather than deliberate disregard of the court's orders. The appellant argued that the learned judge imposed an excessively high standard by suggesting that additional attempts at contact were required before the failure could be considered unintentional, and that the absence of in-person or written contact did not transform inadvertence into deliberate non-compliance.

[20] Further, the appellant submitted that the learned judge, in his interpretation of rule 26.8(2)(c), effectively required strict compliance with all prior orders instead of determining whether the appellant had been generally compliant as contemplated by the rule. The appellant maintained that substantial compliance had been achieved and that outstanding matters did not materially impede the progression of the claim.

[21] Finally, it was contended that the learned judge failed to give adequate weight to the prejudice that would result from the refusal of relief. The respondent would suffer no prejudice incapable of compensation, whereas refusal of relief would effectively prevent the appellant from pursuing a claim involving serious injuries allegedly sustained after being shot by police officers. The appellant, therefore, maintained that the interests of justice strongly favoured granting relief.

The respondent

[22] Counsel for the respondent submitted that the circumstances in which an appellate court may interfere with the exercise of a judge's discretion were authoritatively explained in **Jamaica Infrastructure**, referring to the principles in **The Attorney General of Jamaica v John Mackay** and **Hadmor Productions**. In relation to ground 1, the respondent argued that the learned judge correctly found that the application was not made promptly, relying on **HB Ramsay** and **Price Waterhouse (A Firm) v HDX 9000 Inc** [2016] JMCA Civ 18 ('**Price Waterhouse**'), for the principle that, absent promptness, relief should fail. The respondent noted that sanctions took effect in April and July 2023, whereas the application for relief was not filed until 30 January 2025, amounting to delays exceeding one year, and that the explanations of administrative oversight and difficulty locating the file did not demonstrate promptitude, particularly as further delay occurred even after the file had been located. Counsel supported this position with the authority of **Ray Dawkins v Damion Silvera** and **The Attorney General v Universal Projects Limited** [2011] UKPC 37.

[23] As regards grounds 2 and 4, the respondent submitted that the learned judge correctly concluded that the appellant failed to establish that the breaches were

unintentional under rule 26.8(2)(a), relying on **Watersports Enterprises Ltd v Jamaica Grande Limited and Others** (unreported), Jamaica, Court of Appeal, Supreme Court Civil Appeal No 110/2008, Application No 158/2008, judgment delivered 4 February 2009. It was argued that the learned judge was entitled to reject the assertions of inadvertence, particularly given the prolonged delay, the inadequate explanations, and the failure to utilise available procedural mechanisms, including the filing of a witness summary under rule 28.10(3).

[24] In relation to ground 3, the respondent submitted that administrative inefficiency, poor communication, and the inability to locate the file did not constitute a good explanation and had consistently been rejected by the courts. With respect to ground 5, the respondent denied that the learned judge imposed a higher standard than rule 26.8(2)(c) requires, submitting that the finding of general non-compliance was based not only on the late filing of the witness statement and list of documents, but also on the failure to file a judge's bundle in compliance with Practice Direction No 8 of 2020 and the failure to file and serve a pre-trial memorandum. In relation to ground 6, the respondent submitted that rule 26.8(3) only falls to be considered once the mandatory requirements of rule 26.8(1) and (2) have been satisfied, relying on **HB Ramsay**, **Price Waterhouse**, and **Jeffrey William Meeks v Victoria Marie Meeks** [2020] JMCA Civ 7. The respondent accordingly submitted that the appeal should be dismissed with costs.

Applicable appellate principles

[25] The pivotal question arising on this appeal is whether the learned judge properly exercised the discretion conferred by rule 26.8 of the CPR when determining the appellant's application. It is not in dispute that the learned judge possessed the discretion either to grant or to refuse the relief sought.

[26] The applicable standard of appellate review is well settled. In **Hadmor Productions Ltd and others v Hamilton and others** [1982] 1 All ER 1042, Lord Diplock articulated the principles governing appellate interference with the exercise of a judge's discretion, which have been consistently applied by this court. In **The Attorney**

General of Jamaica v John Mackay [2012] JMCA App 1, Morrison P succinctly stated those principles at para. [20]:

> "This court will therefore only set aside the exercise of a discretion by a judge on an interlocutory application on the ground that it was based on a misunderstanding by the judge of the law or of the evidence before him, or on an inference that particular facts existed or did not exist, which can be shown to be so demonstrably wrong, or where the judge's decision is 'so aberrant that it must be set aside on the ground that no judge regardful of his duty to act judicially could have reached it'."

It is against that standard that the grounds of appeal must be assessed.

The regulatory framework

[27] The resolution of this issue necessarily begins with a consideration of the relevant provisions of the CPR governing relief from sanctions. Rule 26.8 constitutes the primary procedural mechanism by which a party who has failed to comply with a rule, practice direction, court order, or direction may seek to be relieved from the consequences of that default. As has repeatedly been emphasised in the authorities, the discretion conferred by the rule is neither automatic nor unfettered, but must be exercised in accordance with the criteria prescribed therein and, in a manner, consistent with the overriding objective. It is therefore apposite at this point to set out the relevant provision in full. Rule 26.8 provides:

> "(1) An application for relief from any sanction imposed for a failure to comply with any rule, order or direction **must** be –
>
> (a) **made promptly**; and
>
> (b) supported by evidence on affidavit.
>
> (2) The court **may** grant relief only if it is satisfied that –
>
> (a) **the failure to comply was not intentional;**
>
> **(b) there is a good explanation for the failure; and**

(c) the party in default has generally complied with all other relevant rules, practice directions orders and directions.

(3) In considering whether to grant relief, the court must have regard to –

(a) the interests of the administration of justice;

(b) whether the failure to comply was due to the party or the party's attorney-at-law;

(c) whether the failure to comply has been or can be remedied within a reasonable time;

(d) whether the trial date or any likely trial date can still be met if relief is granted; and

(e) the effect which the granting of relief or not would have on each party.

(4) The court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown." (Emphasis added)

Issue 1 Whether the learned judge erred in the exercise of his discretion in refusing the appellant relief from sanctions on the grounds that the application was not made promptly, the non-compliance was not shown to be unintentional, and no good explanation was provided for the failure to comply. (Grounds 1-4)

The factual chronology

[28] Given the issues raised on this appeal, particularly those concerning delay, compliance with procedural requirements, and the exercise of the learned judge's discretion, it is necessary to set out the relevant factual and procedural history in some detail. A proper understanding of the sequence of events is essential to evaluating the parties' respective contentions and the correctness of the decision under challenge. Since responsibility for the conduct of the appellant's claim passed through the hands of approximately three attorneys-at-law within the same firm, it is convenient to draw together the evidence contained in the affidavits of Ms Gordon and Ms Chong into a

single, coherent chronology of the material events. Those events may be summarised as follows:

1. **18 July 2022** — At the CMC, Staple J ordered standard disclosure by 31 March 2023 and witness statements by 30 June 2023.

2. **31 March 2023** — The disclosure deadline expired without compliance.

3. **March–August 2023** — Ms Gordon deposed that contact could not be maintained with the appellant because he had lost his telephone, preventing the finalisation of the list of documents and witness statement.

4. **30 June 2023** — The witness statement deadline expired without compliance.

5. **1 April 2023 and 1 July 2023** — The automatic sanctions under rules 28.14(1) and 29.11(1) of the CPR took effect in respect of the list of documents and witness statement, respectively.

6. **23 August 2023** — Contact with the appellant was re-established and instructions finalised.

7. **24 August 2023** — The appellant executed the list of documents and witness statement.

8. **25 August 2023** — The list of documents and the witness statement were filed.

9. **28 August 2023** — Both documents were served on the respondent.

10. **August 2023–April 2024** — Mr Jovell Barrett had conduct of the matter. Although the documents had been filed and served out of time, no application for relief from sanctions was made. Mr Barrett subsequently

attributed this to an administrative oversight, influenced by his focus on pursuing mediation in accordance with the appellant's instructions.

11. **30 April 2024** — Mr Barrett ceased having conduct of the file.

12. **26 May 2024** — Ms Chong assumed conduct of the matter after receiving responsibility for Mr Barrett's files.

13. **May–September 2024** — Ms Chong did not immediately conduct a detailed review of the file as she had inherited Mr Barrett's entire caseload and was initially unable to locate the file.

14. **19 September 2024** — The matter came before the court for a pre-trial review. Ms Chong appeared and informed the court that the file could not be located and that she had recently assumed conduct of the matter. She remained unaware that the appellant's documents had been filed out of time and, therefore, did not appreciate that relief from sanctions was required.

15. **15 January 2025** — Ms Chong located the file and reviewed it in preparation for the pre-trial review fixed for 30 January 2025. She states that, notwithstanding this review, she failed to recognise that no application for relief from sanctions had been filed.

16. **January 2025** — It was only after Ms Chong became aware of the respondent's application that she revisited the file, reviewed the procedural history, and recognised that the documents had been filed out of time and that relief from sanctions was required.

17. **29 January 2025** — Ms Chong prepared the appellant's application but was unable to complete filing and service on that day as the bearer returned to the office without doing so.

18. **30 January 2025** — The appellant's application for relief from sanctions was filed in the morning and served on the respondent in the afternoon.

[29] Viewed in summary, the appellant's list of documents was filed approximately five months after the disclosure deadline; the witness statement was filed approximately two months after the witness statement deadline; and no application for relief from sanctions was filed until 30 January 2025, approximately 22 months after the expiry of the disclosure deadline and approximately 17 months after the late filing of the documents themselves.

[30] Those two phases of the chronology are analytically distinct. The first phase, from March or June 2023 to August 2023, is attributed to counsel's inability to obtain instructions due to the appellant's loss of his telephone. The second phase, from August 2023 to January 2025, is attributed to a series of administrative oversights by successive attorneys-at-law, including a focus on potential mediation, difficulties locating the file, the transfer of conduct between attorneys, and a failure to appreciate that relief from sanctions was required notwithstanding the late filing.

Promptness – Ground 1

[31] The structure of the rule is hierarchical. The requirement of promptness under rule 26.8(1)(a) is a threshold condition which must first be satisfied before the court can proceed to consider the mandatory requirements under rule 26.8(2). Only if those mandatory requirements are met does the court engage with the discretionary factors under rule 26.8(3). This structure has been consistently affirmed by this court in **HB Ramsay**, **Price Waterhouse**, and **Jeffrey William Meeks v Victoria Marie Meeks**, and was correctly applied by the learned judge.

[32] The requirement under rule 26.8(1)(a) that an application for relief from sanctions be made promptly is a condition precedent to the relief being considered at all. In **HB Ramsay**, Brooks JA (as he then was) explained at paras. [9]–[10] that the word "must" in the rule carries a mandatory element and that, if an application has not been made

promptly, the court may decline to hear it at all. His Lordship nonetheless acknowledged that "promptly" has some measure of flexibility in its application and that whether something has been promptly done depends on the circumstances of the particular case.

[33] Having examined the relevant principles and their application to the facts before the court, Brooks JA concluded his analysis with the following observations at para. [31] that:

> "[31] An applicant who seeks relief from a sanction, imposed by his failure to obey an order of the court, must comply with the provisions of rule 26.8(1) in order to have his application considered. If he fails, for example, to make his application promptly the court need not consider the merits of the application. Promptitude does, however, allow some degree of flexibility and thus, if the court agrees to consider the application, the next hurdle that the applicant has to clear is that he must meet all the requirements set out in rule 26.8(2). Should he fail to meet those requirements then the court is precluded from granting him relief. There would, therefore, be no need for a court, which finds that the applicant has failed to cross the threshold created by rule 26.8(2), to consider the provisions of rule 26.8(3) in relation to that applicant."

[34] This court in **Ray Dawkins v Damion Silvera**, at paras. [66]–[67], further explained that the assessment of promptness is not confined to the time elapsed since the breach but must take into account the broader circumstances, including whether there was partial compliance, whether there were negative consequences to the progress of the matter, and the circumstances under which the breach came to the attention of the parties and the court.

[35] In **Oneil Edwards v Jamaica Public Service Company Limited** [2025] JMCA Civ 13 ('**Oneil Edwards**') , Foster-Pusey JA addressed the temporal reference point for assessing promptness, observing that the court must consider the circumstances surrounding the timing of the application and determine whether the applicant acted with all reasonable expedition. In that case, the court held that promptness could be assessed

from the date the oversight was discovered, rather than from the date of the default itself, where counsel was genuinely unaware that a filing had not been made and moved with dispatch once the error came to light.

[36] Counsel for the appellant relied on **Oneil Edwards** for the proposition that the learned judge ought to have assessed promptness by reference to the date upon which the need for relief was discovered rather than the date of the procedural default. The argument is not without superficial merit, but the factual matrix of the present case is materially distinguishable from **Oneil Edwards** in at least three respects.

[37] First, in **Oneil Edwards**, counsel was unaware that the witness statement had not been filed at all and moved within three days of discovering the unfiled document. In the present case, the attorneys-at-law were aware that the documents had been filed and served; the difficulty was not the discovery of an unfiled document, but the prolonged failure to appreciate that late filing required an application for relief from sanctions. That is a different and lesser form of oversight.

[38] Second, even if the court were to assess promptness by reference to the date of discovery, that approach offers the appellant limited assistance. Ms Chong assumed conduct on 26 May 2024, appeared at the pre-trial review on 19 September 2024, and located and reviewed the file on 15 January 2025, yet failed on each occasion to recognise that relief from sanctions was required. It was only after being alerted by the respondent's own application that she revisited the procedural history. While the change in counsel and administrative difficulties may provide some explanation for procedural default, they do not, without more, excuse prolonged non-compliance with court-ordered timelines. These excuses account, at best, for discrete intervals within the overall period of delay but do not explain the failure to seek relief for many months after the default had long crystallised. Practitioners are under a continuing obligation to monitor and comply with court-imposed deadlines. The case, therefore, involves not a single oversight discovered and immediately remedied, but a series of missed opportunities over many months, each

of which represented a further failure to exercise the diligence that practitioners are expected to bring to the management of litigation.

[39] So too, the prospect of mediation did not relieve the appellant of the obligation to seek relief from sanctions once the deadlines had been missed, nor did it prevent an application from being made while settlement discussions remained under consideration. Accordingly, that explanation provides little assistance in overcoming the substantial delay that occurred before the application was eventually filed.

[40] Third, the proposition that promptness is to be assessed from the date of discovery does not relieve the applicant of the obligation to demonstrate that the oversight ought not reasonably to have been discovered much earlier. In the present case, the exercise of ordinary diligence at any point from August 2023, when the documents were knowingly filed out of time, would have revealed that relief from sanctions was necessary. The failure to appreciate that the elementary consequence of late filing over an extended period is not adequately explained by a change in counsel or a heavy inherited caseload.

[41] The sanctions took effect on 1 April 2023 and 1 July 2023, and the application for relief was not filed until 30 January 2025, representing delays of approximately 22 months and 19 months, respectively, from the operative dates of the sanctions. That delay is, on its face, manifestly inordinate and requires a clear and compelling explanation. The explanations advanced, while accounting for discrete intervals within the overall period, do not adequately explain the extent of the delay, particularly the prolonged failure to seek relief after the documents had already been filed out of time in August 2023.

[42] Furthermore, the fact that the application was filed only after the respondent had taken procedural steps is a significant adverse consideration. It indicates a reactive, rather than proactive, approach to compliance and undermines any suggestion of prompt action in the circumstances. Far from supporting a finding that the application was made promptly, the explanation underscores that the delay resulted from inattention to the rules' procedural requirements.

[43] The flexibility inherent in assessing promptness is limited. It does not extend to treating as prompt an application made after an extensive and largely unexplained delay, particularly where the appellant was or ought reasonably to have been aware that relief from sanctions was required. In those circumstances, the explanations offered do not convert what is otherwise an inordinate delay into one that can properly be regarded as prompt.

[44] On the evidence, the learned judge approached the question of promptitude by reference to both the date of non-compliance and the eventual filing of the witness statements, as well as the operation of the sanction. In doing so, the learned judge properly recognised the temporal consequences of the breach and the fact that, absent relief from sanctions, the appellant could not rely upon the late-filed statements. The learned judge addressed the period of delay in its proper context and was entitled to conclude that, notwithstanding the documents having been filed prior to trial, the application for relief was not made promptly. No appellate basis has been shown to disturb that exercise of discretion.

[45] This court is accordingly unable to find that the learned judge erred in concluding that the application was not made promptly. That finding is well-supported by the evidence and properly grounded in the applicable principles. Ground 1 fails.

Intention and good explanation (Grounds 2, 3 and 4)

[46] Although the finding on promptitude is in principle determinative of the appeal, for completeness, I will nonetheless address the remaining mandatory requirements under rule 26.8(2), specifically the requirements that the non-compliance was not intentional under rule 26.8(2)(a) and that there is a good explanation for the failure under rule 26.8(2)(b).

[47] These are distinct requirements, and the evidence bearing on each, while overlapping, calls for separate consideration.

Non-intentional failure — rule 26.8(2)(a)

[48] There is no evidence on the record that the appellant or his attorneys-at-law deliberately chose to disregard the court's orders. The affidavit evidence consistently characterises the failures as products of inadvertence, administrative error, and miscommunication rather than conscious decisions not to comply. Mr Barrett expressly acknowledged that the failure to seek relief from sanctions was an administrative oversight that arose while he focused on pursuing possible mediation in accordance with the appellant's instructions. Ms Chong likewise accepted responsibility for failing to appreciate that relief was required after assuming conduct of the file.

[49] While the learned judge found that there was insufficient evidence to conclude that the failures were unintentional, the evidence before him was, in fact, to the contrary. No witness attributed the defaults to a deliberate decision not to comply, and the successive attorneys-at-law who gave evidence each acknowledged personal error or oversight. This court is satisfied that the evidence pointed, on balance, to inadvertence and administrative failing rather than intentional disregard of the court's orders. To that limited extent, the learned judge's conclusion that the non-compliance was not shown to be unintentional is not fully borne out by the evidence, and grounds 2 and 4 have some merit.

[50] However, it does not follow that this court should interfere with the outcome. The requirements of rule 26.8(2) in addition to being hierarchical are also cumulative. Even accepting that the failures were unintentional, which is the most that can properly be said in the appellant's favour, this finding alone cannot carry the application over the threshold established by rule 26.8. The appellant must satisfy all of the mandatory requirements in rule 26.8(1) and (2). A finding in the appellant's favour on the question of intention does not compensate for the failure to establish promptness or a good explanation and cannot by itself entitle the appellant to relief. Accordingly, grounds 2 and 4 do not assist the appellant in obtaining a different outcome.

Good explanation — rule 26.8(2)(b)

[51] The requirement of a good explanation is distinct from the absence of intentional default. A party may act inadvertently yet still fail to provide an adequate explanation for the default. In **HB Ramsay**, Brooks JA accepted that a bare assertion of inadvertence, unsupported by evidence explaining the circumstances of the default in sufficient particularity, does not constitute a good explanation. His Lordship held that, absent such an explanation, the omission could at its highest amount to an oversight, and that an inexcusable oversight was incapable of constituting a good explanation for non-compliance.

[52] The explanation advanced in the present case essentially comprises three elements: first, an inability to obtain instructions from the appellant between March and August 2023 due to the loss of his telephone; second, an administrative oversight by Mr Barrett, who failed to seek relief from sanctions while focusing on mediation; and third, Ms Chong's inability to locate the file and her failure to recognise the need for relief after inheriting the matter. As recognised in **The Attorney General v Universal Projects Limited** [2011] UKPC 37, at paras. 18 and 23, there is an important distinction between circumstances that genuinely prevent compliance, such as matters outside the control of the party or attorney, and those that reflect a failure to manage litigation efficiently. The inability to contact the appellant does not explain why no application for relief was filed in August 2023 when the documents were knowingly filed out of time. The pursuit of mediation was not a bar to filing such an application. The difficulties in locating the file and the failure to review the procedural history after assuming conduct reflect systemic inattention that falls on the wrong side of that distinction.

[53] The appellant's counsel argued that the learned judge imposed an excessively high standard in rejecting these explanations. That argument is not accepted. The learned judge did not demand perfection; he assessed the explanations against the standard of what a reasonably diligent practitioner would have done in the circumstances and found

them wanting. That assessment was well within the proper exercise of his discretion and is not susceptible to appellate interference.

[54] Accordingly, the learned judge was entitled to conclude that no good explanation had been provided for the non-compliance, having particular regard to the duration of the delay and the failure to take elementary steps to regularise the position once the documents had been filed out of time.

[55] Grounds 2, 3 and 4 therefore fail.

Whether the learned judge misdirected himself in law in his interpretation and application of rule 26.8(2)(c), by imposing a higher standard of compliance than that required by the rule. (Ground 5)

[56] At paras. [27] to [29] of his written judgment, the learned judge rejected the appellant's assertion that he had otherwise complied with all applicable orders, rules, and Practice Directions. Although he acknowledged that the appellant had filed his listing questionnaire within the prescribed time, he found that the appellant had failed to comply with Practice Direction No 8 of 2020 by not filing a judge's bundle in support of the application for relief from sanctions and had also failed to file and serve a pre-trial memorandum as required by the CPR. The learned judge, therefore, concluded that the assertion by the appellant's attorneys-at-law that the appellant had generally complied with all orders, rules and Practice Directions was incorrect, although he expressly stated that he was not suggesting that counsel had intended to mislead the court.

[57] Having regard to those additional procedural defaults, together with the late filing and service of the witness statement and list of documents, the learned judge found that the appellant had demonstrated a pattern of general non-compliance. He further emphasised the well-established principle that, as a general rule, the consequences of an attorney's acts or omissions are visited upon the client, relying on **The Commissioner of Lands v Homeway Foods Limited and Stephanie Muir** [2016] JMCA Civ 21. The learned judge ultimately concluded that the claimant had failed to satisfy the

requirements of rules 26.8(1)(a) and 26.8(2)(a), (b), and (c) of the CPR and, consequently, was not entitled to relief from sanctions.

[58] Counsel for the appellant submitted that the requirement in rule 26.8(1)(a) that the applicant must have "generally complied" with all relevant rules, orders and Practice Directions does not demand strict or perfect compliance in every respect. Rather, it was argued that the word "generally" connotes usual or substantial compliance. Counsel contended that, in the context of an application concerning a party's readiness to proceed to trial, the court ought to focus on whether the applicant has substantially complied with those procedural requirements necessary to facilitate the fair determination of the matter. In that regard, counsel emphasised that the appellant had filed his listing questionnaire within the prescribed time and submitted that failure to provide the INDECOM report, together with the other identified deficiencies, did not materially impede the progress of the matter towards trial. Accordingly, it was argued that the appellant had demonstrated general compliance with the relevant procedural requirements.

[59] Counsel for the appellant, further, submitted that the learned judge, in assessing whether the appellant had generally complied with all other relevant rules, practice directions, orders and directions under rule 26.8(2)(c), imposed a standard of strict or perfect compliance rather than the qualified standard of general compliance expressly prescribed by the rule.

[60] The factual findings underpinning the learned judge's conclusion on this issue are undisputed. In addition to the late filing and service of the witness statement and list of documents, the appellant failed to comply with Practice Direction No 8 of 2020 by failing to file a judge's bundle in support of the application and to file and serve a pre-trial memorandum as required by the CPR.

[61] I agree that the word "generally" in rule 26.8(2)(c) does not require perfection, but it does not, however, permit significant and material departures from procedural obligations to be disregarded. The learned judge was entitled to take into account those

additional procedural defaults, which were neither isolated nor inconsequential, and to conclude that they demonstrated a pattern of non-compliance sufficient to defeat the assertion of general compliance. That was a proper exercise of the evaluative judgment entrusted to the court.

[62] No basis has been established for the proposition that the learned judge applied an erroneous legal standard or required strict compliance in the absolute sense. The complaint in that regard lacks merit, and ground 5 fails.

Whether the learned judge failed to give proper consideration to the factors set out in rule 26.8(3), including the effect of granting or refusing relief on the parties, whether the breach could be remedied within a reasonable time, and the interests of the administration of justice. (Ground 6)

[63] The appellant contended that the learned judge failed to give sufficient weight to the fact that the parties had indicated a willingness to consent to each other's applications and that the outstanding documents had been filed prior to the pre-trial review. It was further argued that inadequate weight was accorded to the factors under rule 26.8(3), including the absence of prejudice to the respondent and that both parties remained desirous of proceeding to trial. Accordingly, the refusal of relief was said to have had the practical effect of preventing the appellant from obtaining a determination of his claim on the merits.

[64] Counsel further submitted that the overriding objective required the court to balance procedural compliance against the broader interests of justice and the efficient resolution of disputes. In those circumstances, it was argued that greater weight ought to have been given to the parties' readiness to proceed and their efforts to regularise the proceedings, rather than imposing a sanction that effectively brought the litigation to an end.

[65] I acknowledge that there is a genuine tension between the strict application of procedural rules and the overriding objective of enabling parties to have their disputes determined on the merits. The present case illustrates that tension acutely. The

appellant's claim concerns serious personal injuries allegedly sustained as a result of being shot by police officers, and the refusal of relief effectively bars him from placing his own evidence before the court.

[66] In applying the overriding objective, the court must seek to achieve justice between the parties and, where possible, facilitate the determination of disputes on their merits rather than by procedural default. Whether a breach may properly be regarded as technical depends on the nature and consequences of the non-compliance, viewed in its factual and procedural context.

[67] In the present case, the appellants' default cannot fairly be characterised as a mere procedural irregularity. The impact of the breach on the efficient administration of justice was therefore a significant factor weighing against the grant of relief from sanctions.

[68] Moreover, the structured approach to rule 26.8 reflects a deliberate policy choice. The requirement that the mandatory preconditions in rule 26.8(1) and (2) be satisfied before the discretionary balancing exercise under rule 26.8(3) is engaged reflects the principle that procedural compliance is not merely a technical requirement but a fundamental obligation that underpins the integrity of the court's case management regime. As this court confirmed in **HB Ramsay** and **Price Waterhouse**, the court is not required to engage in the balancing exercise under rule 26.8(3) where the threshold requirements have not been satisfied.

[69] The parties' mutual willingness to consent to each other's applications, while a relevant consideration in a different procedural context, does not override the rule's mandatory gateway requirements. Courts are not bound to grant relief merely because the opposing party does not actively oppose the application; the requirements of the rule must still be independently satisfied. Were it otherwise, the mandatory conditions in rule 26.8(1) and (2) would effectively become optional wherever the opposing party is itself

seeking relief for similar defaults, a result plainly inconsistent with the language and purpose of the rule.

[70] The learned judge was, therefore, correct in law in declining to undertake a detailed balancing exercise under rule 26.8(3), having concluded that the threshold requirements were not met. Accordingly, the appellant's contention that the learned judge erred by failing to give sufficient weight to the absence of prejudice and the parties' willingness to proceed to trial is unsustainable, and this ground of appeal must fail.

Conclusion

[71] The learned judge correctly identified the applicable legal framework and appropriately applied the mandatory requirements of rule 26.8 of the CPR to the evidence before him. His conclusion that the application was not made promptly was well supported by the chronology and the explanations advanced, and no basis for an appeal has been established to disturb that finding. Similarly, the learned judge's conclusion that no good explanation was provided for the non-compliance was within the proper exercise of his discretion and reflects the established approach of the courts to explanations grounded in administrative oversight and inattention to procedural obligations.

[72] To the extent that the evidence may be said to support a finding that the defaults were unintentional, and this court considers that it does, that finding is insufficient, standing alone, to entitle the appellant to relief. The requirements of rule 26.8 are cumulative, and the failure to satisfy the conditions of promptness and good explanation is independently determinative of the outcome. A finding of inadvertence on the question of intention cannot compensate for those deficiencies.

[73] Having failed to satisfy the threshold requirements of rule 26.8(1) and the mandatory conditions of rule 26.8(2), the learned judge was correct to decline to engage with the discretionary factors under rule 26.8(3) and correct to refuse relief from sanctions.

[74] Accordingly, the grounds of appeal are without merit, and I propose that the appeal be dismissed, with costs to the respondent to be agreed or taxed.

MCDONALD-BISHOP P

ORDER

1. The appeal is dismissed.

2. Costs of the appeal to the respondent to be agreed or taxed.