JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO COA2025CV00115

APPLICATION NO COA2026APP00018

BETWEEN	**KIMBERLEY TYNDALL**	**APPLICANT**
AND	**MORGAN'S HARBOUR LIMITED (In Receivership)**	**RESPONDENT**

Lemar Neale instructed by NEA|LEX for the applicant

Miss Stephanie Ewbank and Ronaldo Richards instructed by Myers Fletcher & Gordon for the respondent

5, 9, 19 February and 2 March 2026

Civil procedure – Application for stay of execution – Recovery of possession of commercial property – Whether requirements for stay of execution satisfied

IN CHAMBERS

P WILLIAMS JA

[1] This is an application for a stay of execution of the judgment of Brown Beckford J ('the learned judge') handed down on 27 November 2025, pending the determination of the appeal. In that judgment, the learned judge granted the application of Morgan's Harbour Limited (In receivership)('the respondent') for summary judgment, and ordered that the respondent recover possession of lands in the possession of Mr Kimberley Tyndall ('the applicant'). The learned judge also ordered that the applicant was to quit and deliver up possession of the lands on or before 31 January 2026. She also granted the applicant leave to apply.

[2] On 23 January 2026, the applicant filed this notice of application for court orders for a stay of execution, accompanied by an affidavit in support and an affidavit of urgency.

The respondent shortly thereafter indicated its intention to oppose the application and filed an affidavit of evidence in response on 29 January 2026. On 30 January 2026, I ordered an interim stay of execution to facilitate an *inter partes* hearing. On 5 and 9 February 2026, the *inter partes* hearing was conducted before me. After hearing the submissions on behalf of the parties, I reserved my decision and made an order extending the interim stay until the delivery of the decision.

[3] On 19 February 2026, I made the following orders:

> "1. The application for stay of execution filed on 23 January 2026 is refused.
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> 2. The applicant is ordered to quit and deliver up possession of the lands within 21 days of today's date.
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> 3. Costs to be costs in the appeal.
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> 4. The applicant's attorneys-at-law to prepare, file and serve the orders contained herein."

I promised to give brief reasons for this decision, and this judgment is a fulfilment of that promise.

[4] A synopsis of the relevant facts sufficient for a background to this matter can be adequately gleaned from the affidavits of the applicant and of Marlon Murdock, who is an agent of the receiver-managers of the respondent. The respondent is the lessee of five unregistered parcels of Crown land located in Port Royal in the parish of Kingston pursuant to a lease agreement dated 19 February 2016, with the Commissioner of Lands, which commenced on 4 December 2004. Two of these parcels had been occupied by the applicant for several years prior to the commencement of the lease, on which he established a business named Kimmi's Marina ('the disputed lands'). The respondent asserted that several attempts were made to have the applicant vacate the disputed lands.

[5] The applicant asserted that he received a letter on 22 September 2016 from the respondent requesting that he vacates the disputed lands no later than 21 October 2016. He brought the letter to the attention of his then attorneys-at-law, Clough Long & Co, who, he said, on his behalf, made an offer to lease the disputed lands for $70,000 per month by way of a letter dated 14 October 2016. By letter dated 25 October 2016, the respondent replied, indicating, among other things, its inability to accept the offer and invited the respondent to participate in a bidding process for the disputed lands for which investors were being sought. The applicant said he did not hear anything further from the respondent until 26 July 2019, when he was served with another notice to vacate the disputed lands by 26 August 2019.

[6] In 2020, the respondent commenced proceedings in the Corporate Area Parish Court for recovery of possession of the disputed lands. The applicant alleged that by that time he had been on the disputed lands for more than 12 years from the commencement of the respondent's lease and was claiming adverse possession. On 3 March 2022, an order was made for the proceedings to be transferred to the Supreme Court. Subsequently, on 20 December 2022, the claim form and particulars of claim were filed in the supreme court and fixed for trial in May 2025.

[7] In his defence, the applicant asserted that he had been in quiet undisturbed possession long before the respondent's lease had commenced. He admitted the contents of the letter of 14 October 2016. He asserted further that the letter was without prejudice to the interest he had acquired by adverse possession of the respondent's leasehold and would not be relevant given the passage of time, and since the respondent had not taken any steps to remove him during the first 12 years of its lease; he had already acquired the disputed lands by virtue of adverse possession of the respondent's leasehold. Finally, he contended that the letter "does not amount to an acknowledgment of the [respondent's] title". The applicant filed a counterclaim seeking declaratory and other reliefs, including declarations that the title of the respondent had been extinguished and

that he was entitled to remain in possession of the disputed lands until the expiration of the lease of the respondent, namely, 3 December 2053.

[8] Significantly, in its reply to the defence and counterclaim, the respondent asserted that the leasehold interest commenced in 2004 and therefore any prior claimed period of adverse possession was without merit in this claim. Thus, to my mind, it must be first noted that the defence and counterclaim contained assertions which were unsustainable.

[9] At the commencement of the trial, the respondent sought to rely on the letter from the applicant of 14 October 2016, in which the respondent asserted that the applicant had acknowledged the respondent's superior leasehold interest, which came within the period of the 12 years required to extinguish the leasehold interest of the respondent, which had commenced in December 2004. The applicant challenges the admissibility of the letter. On 8 May 2025, after hearing submissions, the learned judge rejected the challenge and refused an application to appeal her ruling that the letter was not protected by the "without prejudice" rule. The applicant then sought permission to appeal this ruling, and on 29 July 2025, this court refused leave to appeal.

[10] From the record of appeal filed in this matter, it is noted that, on 22 July 2022, the respondent filed a notice of application for judgment on the claim and counter-claim pursuant to rules 26.1(2)(j) and 39.9 of the Civil Procedure Rules. In effect, the respondent contended that the ruling of the learned judge in relation to the admissibility of the letter substantially disposed of the claim and made a trial unnecessary. Two of the grounds on which the order was sought were that:

> "…
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> d. … letter dated October 14, 2016 (the **'October 2016 Letter**'), which constitutes an express acknowledgement by the [applicant] of the [respondent's] superior interest in the land that is subject of the claim. This acknowledgement interrupted the period of alleged adverse possession relied on by the [applicant] in relation the [respondent's] leasehold interest under the lease...

> e. The Court's ruling on the admissibility of the October 2016 Letter substantially disposes of both the claim and counterclaim. In light of the legal effect of that letter, the [applicant's] case cannot succeed, and a trial is unnecessary."

[11] Upon the continuation of the trial before the learned judge, the respondent's application for summary judgment was heard. The applicant opposed the application on the basis that an agent was not competent to give an acknowledgment of title on behalf of a person in possession of land, and that the acknowledgment was not sufficient. Therefore, it was contended that the letter of 14 October 2016 did not satisfy section 16 of the Limitation of Actions Act ('the Act').

[12] As already noted, the learned judge entered summary judgment for the respondent on 27 November 2025 and delivered her decision in draft.

[13] The principles applicable to the consideration of an application of this nature are well settled and need not be revisited here. I gratefully adopt the succinct statement of McDonald-Bishop P in **Coast to Coast Quarries Limited and Coast to Coast Concrete Company Limited and Ideal S and J Trucking Services Company Limited v Caliston Graham** [2025] JMCA App 12 ('**Coast to Coast'**) in relation to this consideration. At paras. [5] and [6], she stated:

> "[5] …The overarching and fundamental question for the court in assessing the application is whether, in these circumstances, granting a stay best accords with the interests of justice (see **Combi (Singapore) Pte Ltd v Ramnath Sriram and Another** [1997] EWCA 2164 ('**Combi**').
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> [6] The case law requires the court to consider two subsidiary questions in order to determine whether granting a stay best accords with the interests of justice: (i) whether the underlying appeal has some merit; and (ii) whether the grant of a stay is the order that is likely to produce less injustice between the parties (see **Combi**, **Hammond Suddard Solicitors v Argichem International Holdings Ltd** [2001] EWCA 2065 and **Channus Block and Marl Quarry Limited v Curlon Orlando Lawrence** [2013] JMCA App 16 ('**Channus Block**') at para. [10]…"

[14] I have read and considered the extremely helpful submissions of counsel in this matter, along with the authorities relied on. I will, however, not be reproducing them in their entirety and this is not a reflection of disregard for any of these submissions and authorities nor a lack of appreciation of their value. I intend to refer, as required, to those aspects which have most impacted my analysis and ultimate decision.

[15] I will first consider the merits of the appeal. The applicant maintains that he has an appeal against the impugned decision of the learned judge with a real chance of success based on the following proposed grounds:

> "a. The learned judge erred [in] law in granting summary judgment in favour of the Respondent on the claim and the counterclaim in circumstances where the Respondent had no real prospect of succeeding on the claim or successfully defending the counterclaim.
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> b. The learned judge erred in law in wrongly construing section 16 of [the Act] thereby erroneously concluding that an agent can give an acknowledgment of title on behalf of a person in possession of land, to defeat the operations of the Act.
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> c. The learned judge erred in erroneously concluding that the cases of **Wills v Wills** [2003] UKPC 84 and **International Hotel (Jamaica) Limited v Proprietors, Strata Plan No. 461** [2013] JMCA Civ 45 determined or confirmed that an attorney-at-law can give an acknowledgment of title on behalf of a person in possession of land, pursuant to section 16 of [the Act].
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> d. The learned judge erred in law in disregarding the plain meaning of the statute and/or the intention of Parliament when she imported or read into section 16 of the Act 1881 that, owing to the special [fiduciary] relationship between attorneys-at-law and clients, an attorney-at-law can make an admission of title of [sic] a person in possession of land."

[16] In considering the submissions, it is useful to bear in mind the provisions of section 16 of the Act, which is as follows:

> "16. When any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent, in writing signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given shall be deemed to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same; and the right of such last-mentioned person, or any person claiming through him to make an entry or bring an action to recover such land or rent, shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given."

[17] In submissions filed in the appeal by Mr Lemar Neale ('Mr Neale'), on behalf of the applicant, and on which he relied for this application it was submitted that the grounds, while overlapping, are centred around the correct interpretation of section 16 of the Act with the overaching issue being whether an agent can sign an acknowledgment of title on behalf of a person in possession of land. Hence, Mr Neale relied on authorities that deal with the principles of statutory interpretation namely, **Jamaica Public Service Company Limited v Dennis Meadows and others** [2015] JMCA Civ 1, **The Minister of Finance and others v Winsome Bennett** [2018] JMCA Civ 9. He contended that the words "signed by the person in possession" used in section 16 of the Act are clear and to be given their ordinary and grammatical meaning as used in the context of the legislation with no basis for a technical meaning to be applied. Reliance was placed on the authority of **Ley v Peter** (1853) 57 ER 403. Mr Neale concluded his submissions by stating that to be effectual to re-start time for adverse possession an acknowledgment for the purposes of section 16 of the Act must be signed by the person in possession; the fact that the letter of 14 October, 2016 was signed by the attorneys-of-law for the applicant meant that it was ineffectual for the purposes of that provision.

[18] In submissions in response, also with reliance on the skeleton arguments filed in the appeal, Miss Stephanie Ewbank ('Miss Ewbank') was in agreement that the appeal turns on the single narrow issue of statutory construction. She contended that the

applicant's construction of the provision is unsupported by authority, principle or logic and advanced an unduly narrow and formalistic interpretation. She submitted that on a proper construction of the provision, the letter constitutes a valid acknowledgment of the respondent's superior leasehold interest and that the applicant, in his pleaded admission, acknowledged that the acknowledgment was authorised and attributable to him. Further, the provision does not require a personal signature where the acknowledgment is made by an attorney-at-law acting with authority. She also noted that the section is silent as to agency, but this silence does not amount to exclusion. She relied on **Peta Mary Bain and Wharton Lake v Marcelin** TT 2019 CA 5 delivered 19 February 2019, a case from the Court of Appeal of Trinidad and Tobago as persuasive authority supporting a construction that acknowledgments contained in pleadings are capable, in principle of constituting valid acknowledgments under materially similar limitation legislation.

[19] In assessing the merits of the appeal, it was necessary to bear in mind that the court would be asked to set aside the learned judge's exercise of her discretion. It is settled that the grant or refusal of an application for summary judgment is discretionary. As such, this court will only set aside the exercise of a judge's discretion (i) where it was based on a misunderstanding of the law or evidence; or (ii) based on an inference which can be shown to be demonstrably wrong; or (iii) so aberrant that no judge regardful of his duty to act judicially, could have reached it (see **Hadmor Productions and others v Hamilton and others** [1982] 1 All ER 1042,1046 and **The Attorney General of Jamaica v John Mackay** [2012] JMCA App 1 at paras. [19] and [20]).

[20] The Privy Council in **Sagicor Bank Jamaica Limited v Marvalyn Taylor-Wright** [2018] UKPC 12, has offered further guidance to a consideration of when an application for summary judgment, pursuant to Part 15 of the Civil Procedure Rules, may properly be granted. At para. 21, Lord Briggs, writing on behalf of the Board, stated:

> "21. The Board considers it axiomatic that, if a pleaded claim is met with a defence (whether pleaded or deployed in evidence) on a summary judgment application which, if true, would still entitle the claimant to the relief sought, then generally, there

> cannot be a need for a trial. If the pleaded claim justifies granting the relief sought then, if the claimant proves that claim, it will succeed. If the alleged defence also justifies the relief sought, then the claimant will succeed even though the defendant proves the facts alleged in her defence. In either case, the defendant will have no real prospect of successfully defending the claim, within the meaning of Part 15.2(b)."

[21] I am mindful that at this stage in evaluating the merits of the appeal, I need not try to make a detailed finding on the strength of the appeal but need to be satisfied that there is an arguable appeal with some merit or that the appeal is not completely unarguable or wholly unmeritorious or wholly unlikely to succeed (see **Coast to Coast** para. [8]). As such, I appreciated that whether the learned judge was correct in an interpretation of section 16 of the Act would require an analysis in the appeal, which cannot be said could not be determined in the applicant's favour. Once one possible interpretation would favour the applicant, the appeal cannot be said to be entirely without merit.

[22] In the draft judgment of the learned judge which was provided to me upon a request made to the Registrar of the Supreme Court, the learned judge identified the issue for determination as "whether the letter of October 14, 2016 sent by the Attorneys for the [applicant] is capable of being an acknowledgment within the meaning of section 16 of the [the Act]". She went on to note the submissions of counsel before moving on to her analysis. She commenced this analysis with the statement that "[a]n answer to this issue can be deduced from the judgment of Morrison JA (as he then was) in the matter of **International Hotels (Jamaica) Limited v Proprietors Strata Plan [No] 461** 2013 JMCA Civ 45 ('International Hotels')". Her analysis of this case led her to this conclusion:

> "[26] What is important for the determination of the instant case is that Morrison JA did not take the position that the letter was not capable of being an acknowledgement by virtue of the fact that it was written by the Attorneys-at-Law. In fact, Morrison JA, at paragraph 105, considered the position if the letter, in terms of its content could be read as an acknowledgment of title.

> He came to the conclusion that the title of the respondent's predecessor in title would have been extinguished … before the letter was sent."

[23] The learned judge next considered **Wills v Wills** [2003] UKPC 84, which she described as the seminal case from this jurisdiction on prescriptive title/adverse possession, and from which she found that the same stance could be inferred. The learned judge noted and highlighted the observation of Lord Walker of Gestingthorpe delivering the advice of the Board as follows:

> "[28]…He said this of the letter: 'Elma did not before the judge contend that George had given a written acknowledgment within section 16 of the Limitation Act. In the Court of Appeal (and especially in the judgment of Rattray P) this point appears not to have been raised, although without being clearly distinguished from the broader argument that Elma had not abandoned her possession. So far as acknowledgement was a separate issue, the attorney's letter of 20 January 1987 **was not signed by George (nor his attorney)** and it was not a basis for inferring, that there must have been an acknowledgment signed by George." (Emphasis as in the original)

[24] The learned judge acknowledged a contrary view expressed in **Ley v Peters,** where the court had agreed unanimously that a letter written by an estate agent was not capable of amounting to an acknowledgment within section 14 of the English Real Property Act of 1833, which corresponds with section 16 of the Act since it was not signed by the defendant himself. She also noted that some support for this position could be gleaned from an excerpt from Chitty on Contracts, where, in a footnote, "it is noted that the power to act by an agent is expressly recognised in the Limitation Act 1939 and the Limitation Act 1980 (UK)". She also acknowledged that it was pointed out that in several sections of the Act, the power to act by an agent is expressly recognised, which would be a factor that would have to be considered in determining whether the basic rule permitting acts by an agent applies.

[25] The learned judge concluded:

> "[32] This may very well be the opinion of a review court on full reflection of the meaning of section 16 of [the Act]. In the meantime, this court being bound by the principles of stare decisis, most [sic] follow the leaning of the courts up to the highest jurisdiction as expressed earlier in this judgment.
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> [33] It follows that the finding of the court is that the communication sent by the attorneys for and on behalf of the [applicant] constitutes an acknowledgment in writing of the [respondent's] title which had the effect of restarting the clock for adverse possession. As at the date the claim was instituted the [applicant] would not have been in possession for the requisite period of time to have the benefit of Section 3 of the [the Act] and therefore the defence is bound to fail. CPR Rule 15 empowers a court to grant summary judgment where the defence has no prospect of success."

[26] I find it significant that the learned judge did not expressly state her interpretation of section 16, but set out the contending views before seemingly leaving it to the "opinion of a review court on full reflection of the meaning of Section 16 of [the Act]". She was content to follow the stance of the court in **International Hotels** and **Wills v Wills**.

[27] Mr Neale challenged the learned judge's conclusion arrived at from these cases, which he submitted was that they determined or confirmed that an attorney-at-law can give an acknowledgment of title on behalf of a person in possession of land, pursuant to section 16 of the Act.

[28] In response, Miss Ewbank submitted that although the issue did not arise specifically for determination, the courts in **Wills v Wills** and **International Hotels** proceeded on a footing that an attorney-at- law could sign an acknowledgment and this was not a bar to it being treated as such for the purposes of determining whether it impacted on the adverse possession claim. I found merit in this submission.

[29] The case of **International Hotels** primarily concerned a boundary dispute and involved a determination as to whether the respondent was entitled to recover a parcel of land comprised in its title but which the appellant resisted primarily on the ground that it along with its predecessor in title had been in continuous, peaceful possession of the

land is dispute since 1976; and had acquired and was entitled to possession of the land. Relevant to this instant case, one of the submissions in the appeal was that the appellant made two acknowledgments of title of the respondent and its predecessors in title in two letters. One letter was dated 3 September 1992, from the attorneys–at–law for the appellant to the chairman of the statutory corporation, who then owned the lands. Morrison JA was guided by what he described as Upjohn LJ's caveat in **Edington v Clark and another** [1963] 3 All ER 468 that "whether a particular writing amounts to an acknowledgment must depend on the true construction of the document in all the surrounding circumstances". Thus, having considered the contents of the letter, Morrison JA found that it certainly could not be taken to be an acknowledgment. In his consideration of the letter, he did not mention the fact that it was written by the attorneys-at-law for the appellant.

[30] In **Wills v Wills**, the respondent had been married to Mr George Wills ('Mr Wills'), and they had purchased their matrimonial home in 1964, which was transferred into their joint names and a second property as joint tenants. They separated in the 1970's, and by 1973, the appellant took up residence with Mr Wills as a companion. In 1985, Mr Wills and the respondent were divorced. In 1986, he and the appellant got married. Upon the death of Mr Wills in 1992, the appellant claimed entitlement to the properties. Her claim having been dismissed by the lower court and this court, she appealed to the Privy Council, which allowed her appeal, finding that the appellant had not discontinued her possession nor had she been dispossessed more than 12 years before her claim. Two correspondences were found by the lower court to help to establish that the respondent had not abandoned her claim to an interest in the properties. In this court, Rattray P concluded that in one letter, Mr Wills had, through his attorney, given an acknowledgment of the respondent's title. The letter had in fact been written to the respondent advising her that Mr Wills, through his attorney, had offered a sum to satisfy her claims to premises which had been the matrimonial home. Lord Walker of Gestingthorpe in his conclusions, commenced by disposing of points which had not been considered by the judge in the lower court or raised in any of the respondent's notice. He then went on to make the

observations highlighted by the learned judge as set out in para. [23] above. Certainly, the manner in which it was expressed raised the inference that the letter could have been signed by Mr Wills or his attorney-at-law.

[31] Given the concluding statement of the learned judge, I was satisfied that she viewed the cases in the manner posited by Miss Ewbank in her submissions. The learned judge considered the communication sent by the attorneys-at-law for and on behalf of the applicant as being an acknowledgment and came to that conclusion without reference to section 16.

[32] During the hearing of the application, I invited counsel to consider whether outside of the provisions of the Act, the circumstances giving rise to the letter of 14 October 2016, could not be still viewed as the applicant acceptance of the respondent's right to possession of the lease and was therefore inconsistent with his denial of the lease of the respondent and that his assertion that he had acquired possession by virtue of being in quiet undisturbed possession for 12 years. Thus, even if it was not signed by the applicant, he clearly stated that it had been written on his behalf, and this may be a sufficient indication of his acceptance of the superior title of the respondent. This consideration I thought necessary, given the guidance of the Board in **Sagicor v Marvalyn Taylor-Wright**.

[33] Mr Neale maintained that the letter could not be viewed in that manner and was in effect, insufficient to interrupt the running of the relevant period. He relied on **J A Pye (Oxford) Ltd and another v Graham and another** [2003] 1 AC 419 ('**Pye Oxford**'). Counsel also referred to **Arthur McCoy and Marcia McCoy v Fitzroy Glispie** [2012] JMSC Civ 80, where Sykes J (as he then was) in distilling the propositions applicable to the extinction of the right to recover possession of registered land as set out in **Pye Oxford**. Counsel remarked that one proposition is that "the fact that the squatter may be willing to pay if asked by the owner does not indicate an absence of intention to possess".

[34] In response, Miss Ewbank advanced that in this case, the applicant himself, who had received the letter requesting that he vacate the premises, brought it to the attention of his attorneys-at-law, who, on his behalf, made an offer to lease the property. This was distinguishable from cases where the squatter may be willing to pay if asked, since it was the applicant as squatter who was offering to pay, thereby acknowledging the interest of the respondent. I find that there is merit in this submission.

[35] In any event, I am satisfied that even if there is an arguable appeal with some merit, so far as the issue of the interpretation of section 16 is concerned, the applicant has failed to demonstrate that the learned judge exercise of her discretion was based on any misunderstanding of the law or evidence or was based on an inference which can be shown to be demonstrably wrong. Neither was it a decision that no judge regardful of his duty to act judicially, could have reached. Hence, I arrived at the view that this was not an arguable appeal with any merit. Although this is considered the threshold test which the applicant having failed to reach, may well have been dispositive of the application, I still considered the real risk of injustice if the stay is not granted.

[36] The applicant asserted that without the stay, he will be ruined, and the appeal will be rendered nugatory if the stay is not granted. He further asserted that the marina has been the only source of livelihood for himself and his family since 1988. The applicant describes the service provided at the marina as being otherwise non-existent in the area. Some of the docks and storage facilities he established could not be relocated, and others would be too costly to relocate. He further argued that if he is successful in his appeal, his losses would be exponentially increased if he were to replace and reinstate the facilities. The applicant spoke to the immediate negative impact on the local economy and the families of several skilled and semi-skilled labourers and that the disruption to his business is unquantifiable in monetary terms. He maintains that there is minimal to no risk of injustice to the respondent, who he contended went into an assignment agreement when he knew he was claiming an interest in the property and did not seek

to obtain possession where his interest could be determined, before executing the agreement with a third party.

[37] In response, Mr Murdock countered that any asserted hardship by the applicant must be weighed against the continuing and substantial prejudice to the respondent, which remains unable to deliver vacant possession, realise value under a deed of assignment entered into with Swan Property Group ('Swan') Limited under which it entered into a deed of assignment in June 2017. Further, the respondent is unable to meet its obligation to its creditors and Swan, who has been awaiting vacant possession for over five years, to proceed with its development plans. The respondent has been placed under severe financial strain since it has not been able to generate income to manage its overheads. Further, the open and uncontrolled access to the disputed lands under the applicant's occupation constitutes a security risk impacting on Swan's ability to obtain a licence from the Jamaica Tourist Board and also on Swan's ability to attract guests.

[38] In her submissions, Miss Ewbank highlighted the fact that the applicant has made general statements regarding hardship and financial ruin without any supporting evidence. She noted that this court has repeatedly emphasised that bald assertions of hardship or financial ruin are insufficient. She relied on **Key Motors Limited v Hyundai Motor Company** [2021] JMCA App 1 and **Caribbean Cement Company Ltd v Freight Management Limited** [2013] JMCA App 29.

[39] There was indeed a lack of supporting evidence for the competing assertions of possible prejudice. I acknowledge the personal hardships alleged by the applicant could be difficult to document, but the true nature of the affairs of the business could be better established. The applicant, in describing the impact on his business, has made generalised assertions against the respondent, who is faced with the difficulties in their receivership, which existence is indicative of the fact that it is already encumbered with financial challenges. It has satisfactorily been established that it would be greatly prejudiced by being further denied the fruit of the judgment, namely, access to the lands, which will

impact a third party in a significant way. I am not convinced, given the nature of the business operated on the disputed lands by the applicant, that the stay, if not granted, would render the appeal nugatory.

[40] Ultimately, it was my view that the interests of justice lay in the refusal of the application for the stay of execution of the orders made by Brown Beckford J on 27 November 2025. The interim stay, which was in effect until the delivery of my decision on 19 February 2026, did not need to be discharged, but given the fact that the time to quit and deliver up the lands had passed, it was necessary for a new timeline to be imposed. These then are my reasons for the orders made at para. [3].