

**JAMAICA**

**IN THE COURT OF APPEAL**

**BEFORE: THE HON MISS JUSTICE SIMMONS JA  
THE HON MRS JUSTICE V HARRIS JA  
THE HON MR JUSTICE LAING JA**

**SUPREME COURT CIVIL APPEAL NO COA2025CV00115**

**APPLICATION NO COA2026APP00041**

<b>BETWEEN</b>	<b>KIMBERLEY TYNDALL</b>	<b>APPLICANT</b>
<b>AND</b>	<b>MORGAN'S HARBOUR LIMITED (IN RECEIVERSHIP)</b>	<b>RESPONDENT</b>

**Lemar Neale and Miss Danielle Gordon instructed by Nea | Lex for the applicant**

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

**11 and 26 March 2026**

**Civil procedure – Application to discharge single judge's ruling – Whether full court may interfere with single judge's exercise of discretion refusing stay of execution – Whether single judge erred in refusing stay of execution – Applicable principles governing discharging single judge's order**

**Civil procedure – Applicable test for granting a stay of execution – Whether the underlying appeal has some merit and whether the grant of a stay is likely to produce less injustice between the parties**

**SIMMONS JA**

[1] This is an application brought by Mr Kimberley Tyndall ('the applicant'), seeking the discharge of the following orders made by a single judge of this court in chambers ('the single judge') on 19 February 2026:

- "1. The application for stay of execution filed on 23 January 2026 is refused.

2. The applicant is ordered to quit and deliver up possession of the lands within 21 days of today's date.
3. Cost [sic] to be costs in the appeal."

## **Background**

[2] Briefly, Morgan's Harbour Limited (in Receivership) ('the respondent') is the lessee of five unregistered parcels of Crown land located in Port Royal in the parish of Kingston. The applicant has been occupying two of those parcels ('the disputed lands') for several years prior to the commencement of the respondent's lease on 4 December 2004 and has established a business, Kimmi's Marina, thereon.

[3] There is no dispute that the applicant has been requested, on more than one occasion, to vacate the disputed lands. This culminated in a letter dated 14 October 2016, which requested that the applicant do so by 21 October 2016. In response to that request, the applicant's then attorneys-at-law, Messrs Clough Long & Co, indicated by letter dated 14 October 2016 ('the letter') that the applicant was willing to lease the disputed lands from the respondent for the sum of \$70,000.00 per month. The offer was not accepted, and the applicant was invited to participate in the bidding process being undertaken by the respondent. The applicant was also reminded that he was being asked to vacate the disputed lands by 21 October 2016.

[4] The applicant failed to vacate the disputed lands, and the respondent filed a claim in the Corporate Area Parish Court (Civil Division) for recovery of possession of the disputed lands. The matter was subsequently transferred to the Supreme Court, and the respondent filed a claim for recovery of possession on 20 December 2022. At para. 8 of the particulars of claim, it was stated:

"On October 14, 2016, the [applicant] through his then Attorneys-at-Law, Clough, Long and Co., responded to the [respondent]'s letter. The [applicant] did not contest the leasehold interest of the [respondent] in the [disputed property]."

A copy of the letter was annexed to the particulars of claim.

[5] The applicant, in his defence, stated:

“In answer to paragraph eight of the Particulars of Claim, the [applicant] **admits the content of [the letter]**. The [applicant] will say, however, that the letter was without prejudice to the interest that he had already acquired in the property by virtue of adverse possession of the [respondent]’s leasehold interest. Further, the letter would not be relevant given the passage of time since the [respondent] did not take any steps to remove the [applicant] from the disputed land during the first 12 years of its lease.” (Emphasis supplied)

[6] A counterclaim was also filed in which the applicant asserted that he had been in sole possession of the disputed lands with the intention of possessing same to the exclusion of all third parties. He also asserted that his possession was “continuous, peaceful and undisturbed” and that he was entitled to remain in possession of the disputed lands. The respondent, in its reply to the defence and counterclaim, asserted that its leasehold interest commenced in 2004, as it had been a tenant at will of the disputed lands between 1978 and 4 December 2004, when it entered into a lease agreement with the Commissioner of Lands.

[7] On 22 July 2025, the respondent filed an application for summary judgment on the basis that the letter was “an express acknowledgement by the [applicant] of the [respondent’s] superior interest in the [disputed lands]” and therefore interrupted “the period of alleged adverse possession relied on by the [applicant].” At the commencement of the hearing before Brown Beckford J (‘the learned judge’), in the Commercial Division of the Supreme Court, the applicant objected to the utilisation of the letter as it was stated to be ‘without prejudice’. The learned judge ruled that the letter was admissible. The applicant was unsuccessful in his quest to obtain leave to appeal that ruling.

[8] On 27 November 2025, the learned judge granted summary judgment and ordered that the respondent recover possession of the disputed lands from the applicant. In addition, she ordered that the applicant quit and deliver up possession of the disputed lands on or before 31 January 2026.

[9] Aggrieved, the applicant filed a notice of appeal on 11 December 2025 against the learned judge's decision. The grounds of appeal are as follows:

- 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.
- b. The learned judge erred in law in wrongly construing section 16 of the Limitation of Actions Act, 1881 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.
- c. The learned judge erred in erroneously concluding that the cases of **Wills v Wills** [2003] UKPC 84 and **International Hotel [sic] (Jamaica) Limited v Proprietors, Strata Plan No. 461** [2013] JMCA Civ 45 determined or confirmed that an attorney-at-law can give an acknowledgement of title on behalf of a person in possession of land, pursuant to section 16 of [the Act].
- 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." (Bold as in the original)

[10] On 23 January 2026, the applicant filed a notice of application for a stay of execution of the learned judge's orders and a stay of the proceedings in the Supreme Court, pending the determination of the appeal. On 19 February 2026, the single judge heard and made the orders detailed in para. [1] above.

[11] In a nutshell, the argument before the single judge was that, based on section 16 of the Limitation of Actions Act ('the Act'), the letter, having been signed by the applicant's attorneys-at-law and not the applicant himself, did not constitute an acknowledgment of the respondent's superior title by the applicant. The single judge, in her determination of

the matter, adopted the approach of the Privy Council in **Sagicor Bank Jamaica Limited v Taylor-Wright** [2018] UKPC 12 (**'Sagicor v Taylor-Wright'**). Having considered the circumstances and the pleadings in the matter, the single judge found that even if there is an arguable appeal in relation to the interpretation of section 16 of the Act, the applicant had failed to demonstrate that the learned judge's "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". In the circumstances, the appeal was not an arguable one with any merit.

[12] Although the single judge was of the view that the above finding was dispositive of the application she nevertheless considered the risk of injustice. She ultimately found that:

"[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..."

[13] On 20 February 2026, the applicant filed a notice of application seeking the discharge of the single judge's orders and a stay of execution of the learned judge's decision. In the alternative, the applicant sought an injunction restraining the respondent,

whether by itself or its servants and/or agents, from taking any steps to execute the learned judge's orders pending determination of the appeal.

## **Issues**

[14] The main questions for our consideration are whether the single judge erred in refusing to grant the applicant's request for a stay of execution of the learned judge's orders, and whether, in all the circumstances, summary judgment ought not to have been granted in the court below.

## **Standard of review**

[15] The jurisdiction of this court to hear this application is grounded in rule 2.10(3) of the Court of Appeal Rules 2002 ('CAR'), which provides that any order made by a single judge may be varied or discharged by the court on an application made within 14 days of that order.

[16] The approach of the court when considering an application to discharge an order made by a single judge is well established. As noted in **Cable & Wireless Jamaica Limited v Eric Jason Abrahams** [2021] JMCA App 19 (**Cable & Wireless v Eric Abrahams**'), the single judge's decision is always amenable to the review of the court, which provides an important safeguard for oversight. However, this is a review, not a new application. At para. [61], McDonald-Bishop JA (as she then was) stated:

"When rule 2.10(1)(e) of the CAR was construed against the backdrop of the relevant provisions of the Constitution, the JAJA, the JRCA, rule 2.9 of the CAR, the other sub-rules of rule 2.10 of the CAR, and the overriding objective, **I came to the irresistible conclusion that a single judge has the jurisdiction and the power to order a stay of proceedings, pending the determination of an appeal. The decision of a single judge is amenable to review by the court, itself, exercising jurisdiction through at least three judges. This ensures the court's ultimate control over all matters pertaining to and incidental to an appeal.**" (Emphasis supplied)

[17] In **Vinayaka Management Limited v Genesis Distribution Network Limited and ors** [2022] JMCA App 32 (**'Vinayaka'**), this court adopted the principle that it will only disturb the single judge's exercise of discretion if it is shown that the judge erred in principle, misunderstood the law or evidence, or made an order so aberrant or plainly wrong that no judge regardful of their duty to act judicially could have reached it (see paras. [53] and [54]).

## **Submissions**

### Applicant's submissions

[18] Mr Neale stated that the issue in the appeal is whether an agent of the person in possession can give an acknowledgment of the other party's superior title and, in so doing, revise or change the date from which the limitation period to establish possessory title would be computed. Before us, he also submitted that the single judge erred in treating the learned judge's finding that the defence had no real prospect of success as an exercise of her discretion.

[19] Mr Neale submitted that section 16 of the Act requires the acknowledgment to be "signed by the person in possession" and that where it is signed by an attorney-at-law on behalf of the person in possession, it is of no effect. In his quest to persuade the court that his interpretation of section 16 of the Act is correct, counsel compared sections 16 and 19 of the Act, which state that an acknowledgment is to be signed by the person in possession and the mortgagee, respectively, and sections 33, 36, and 46, which state that an agent may sign the acknowledgment. He argued that the natural and ordinary meaning of section 16 is that an agent is not permitted to sign an acknowledgment in the absence of statutory authority. To underscore the point, counsel relied on **Hyde v Johnson** (1836) 2 Bing NC 776 (**'Hyde v Johnson'**) in which the court stated that a letter written by a wife acknowledging her husband's debt was insufficient to satisfy the operation of the United Kingdom Limitation of Actions Act (21 Jac.1, c. 16) which is similar to section 16 of the Act. This was despite the fact that the wife had written the letter at

the husband's request and he had sent it to the plaintiff. Reliance was also placed on the United Kingdom Statute of Frauds Amendment Act, 1828.

[20] Reference was also made to **Luchmee Buksh Boy v Runjeet Ram Panday** (1873) 20 WRPC 375 ('**Luchmee**'), **General Legal Council ex parte Basil Whitter (at the instance of Monica Whitter) v Barrington Earl Frankson** [2006] UKPC 42 ('**GLC v Frankson**'), and **Ley v Peter** (1858) 157 ER 403.

[21] Counsel submitted further that the learned judge erred when she interpreted section 16 of the Act as permitting an agent to give an acknowledgment on behalf of the person in possession. He also argued that the learned judge erred in relying on **Wills v Wills** [2003] UKPC 84 ('**Wills v Wills**') and **International Hotels (Jamaica) Limited v Proprietors Strata Plan No 461** [2013] JMCA Civ 45 ('**International Hotels**') as those cases were not concerned with whether an agent can give an acknowledgment under section 16. Further, the learned judge misapplied, or failed to apply correctly, the principle in **Ley v Peter**.

[22] Counsel contended that the single judge erred in failing to address the issue of the interpretation of section 16 of the Act. Where the issue of prejudice is concerned, counsel argued that it would be more just for the applicant to remain on the disputed lands until the matter is finally determined, as he has an arguable ground of appeal.

#### Respondent's submissions

[23] Miss Ewbank, on behalf of the respondent, submitted that the single judge applied the correct legal principles and properly exercised her discretion in refusing the application for the stay of execution. Counsel argued that the learned judge carefully applied the well-settled principles governing the grant of a stay of execution, including an evaluation of both the merits of the proposed appeal and an assessment of prejudice.

[24] In considering the merits of the appeal, counsel submitted that the single judge correctly examined the basis upon which the applicant sought to challenge the decision of the learned judge to grant summary judgment.

[25] Counsel argued that it could not be properly said that the learned judge applied the wrong principles, misconceived the facts, or was plainly wrong in the sense described in **Vinayaka**. Accordingly, the applicant has failed to demonstrate any basis upon which this court could properly interfere with the single judge's exercise of discretion. While recognising that the appeal raised a question concerning the interpretation of section 16 of the Act, the single judge correctly observed that the mere existence of that question did not, without more, establish an arguable appeal.

[26] Counsel also submitted that the single judge adopted the correct approach in considering whether the applicant had shown a proper basis for appellate interference with the learned judge's exercise of discretion in granting summary judgment. Counsel argued that the learned judge was entitled to treat the applicant's offer to lease the disputed lands as conduct inconsistent with a denial of the respondent's title, and therefore relevant to the question of *animus possidendi* (the intention to possess). Although not expressly relied on by the learned judge, counsel submitted that this was a permissible additional consideration which reinforced the conclusion that the decision could not be regarded as plainly wrong.

[27] Counsel also argued that the learned judge was entitled to conclude that the applicant had not demonstrated an arguable appeal, which, of itself, could have been sufficient to dispose of the application. In any event, the single judge properly considered the issue of prejudice, finding that the applicant's assertions of financial harm were largely unsupported by evidence, while the respondent had demonstrated substantial ongoing prejudice arising from its inability to obtain vacant possession and fulfil its obligations to third parties. It was also correctly found that refusal of a stay would not render the appeal nugatory, thereby supporting the conclusion that the interests of justice favoured refusing the stay.

[28] In addition, counsel submitted that the alternative relief sought, namely an injunction restraining execution of the orders, would in substance have the same effect as a stay of execution by preventing the respondent from enjoying the benefit of its

judgment. In those circumstances, it was argued that, following the refusal of the stay, it would be inappropriate for the court to grant relief producing the same practical result.

#### Supplemental submissions

[29] On 11 March 2026, after hearing submissions from the parties, the court granted the applicant's request to provide further submissions limited to the issue of whether the single judge was correct to consider the pleadings pertaining to the letter as a basis for refusing the application for stay of execution. The respondent also filed submissions in response.

[30] Counsel for the applicant argued that the single judge was not so entitled. Once the 12-year period had expired, the respondent's right to recover possession and its leasehold title were extinguished by sections 3 and 30 of the Act, unless there was a valid statutory acknowledgment within section 16.

[31] The single judge, it was submitted, erred by treating the pleadings and the letter as evidence of acceptance of a superior title or inconsistency with the applicant's intention to possess, as the respondent's title had been extinguished by the time the defence had been filed (see **International Hotels**). Counsel stated that an acknowledgment is a creature of statute and not a common law concept. The defence and counterclaim were filed in 2023, well after the limitation period had expired in December 2016, and were, therefore, incapable, as a matter of law, of reviving an extinguished title or interrupting the limitation period. Counsel also stated that the applicant had been in possession of the disputed lands for over 12 years at the time the claim was filed in 2020. Counsel maintained that the letter, having not been signed by the applicant, did not satisfy the requirements of section 16 of the Act. Any reliance on the pleadings and the letter outside of the ambit of section 16, he submitted, was legally impermissible.

[32] Counsel stated that the single judge conflated the limitation question with issues of possessory title and intention to possess, which are matters reserved for trial and in so doing, took into account irrelevant considerations and misdirected herself on the scope

of the inquiry at the stay stage. The pleadings and the letter, he argued, could only be considered to determine whether they constituted a valid acknowledgment under section 16 of the Act. Counsel contended that, as a consequence of that error, the refusal of the stay cannot stand.

[33] In response, counsel for the respondent submitted that the single judge was entitled to consider the pleadings and the letter when considering the application, and that the applicant's attempt to confine the inquiry strictly to section 16 of the Act is legally misconceived.

[34] Counsel also argued that an application for a stay of execution requires a holistic, evaluative assessment of whether the proposed appeal has a real prospect of success. That assessment is not confined to a single statutory issue identified by the applicant but properly encompasses the pleadings, the letter, and the overall viability of the defence and counterclaim, in accordance with the principles laid down in **Hadmor Productions Ltd and others v Hamilton and others** [1982] 1 All ER 1042.

[35] Further, counsel advanced that the single judge was entitled to consider both the pleadings and the disputed letter as part of the factual and legal matrix. Her consideration was not a determination of new issues, but a legitimate evaluation of whether any arguable error had been demonstrated in the decision below. Reliance was placed on **Sagicor v Taylor-Wright**, which confirms that the court is not confined to statements of case when assessing prospects of success.

[36] Miss Ewbank also rejected the applicant's position that section 16 of the Act should be considered in isolation. She argued that the question of acknowledgment arises only if the applicant first establishes a viable claim to possessory title. Accordingly, the single judge was entitled to examine whether the pleadings and the letter affected the intention to possess.

[37] Counsel for the respondent also contended that the letter was relevant to assessing whether the applicant's conduct was inconsistent with a denial of the

respondent's superior interest. The learned judge, she submitted, was entitled to treat an affirmative offer to lease the disputed lands as materially different from a mere passive willingness to pay rent, and therefore relevant to the prospects of the applicant's case.

[38] Accordingly, the single judge acted within the proper scope of her discretion in considering the pleadings and the letter. The applicant, she said, has identified no error of principle, and there is, therefore, no basis for the court to discharge the single judge's order refusing a stay of execution.

### **Discussion**

[39] Rule 2.10(3) of the CAR states that "[a]ny order made by a single judge may be varied or discharged by the court on an application made within 14 days of that order".

[40] In assessing whether the single judge erred in refusing to grant the stay of execution, this court is guided by the settled principles governing its remit to interfere with the exercise of discretion. As stated in **The Attorney General of Jamaica v John Mackay** [2012] JMCA App 1, at para. [20], in order to accede to the application before us, this court must be satisfied that the single judge's decision:

"...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 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 erred in principle, misunderstood the relevant law or evidence, or arrived at a decision that is plainly wrong".

[41] The applicant's main complaint is that the single judge erred in concluding that the appeal has no real prospect of success. At the centre of this contention is the issue of whether the letter is a valid acknowledgment of the respondent's title capable of interrupting the limitation period needed for the applicant to establish possessory title. Mr Neale submitted that the requirement in section 16 of the Act, that the acknowledgment be "signed by the person in possession", precludes any such

acknowledgment being made by an attorney-at-law on behalf of the client. Miss Ewbank has argued that in the circumstances of this case, the letter, although not signed by the applicant, is a valid acknowledgment of the respondent's superior title.

[42] Section 16 of the Act states:

"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." (Emphasis supplied)

[43] The letter, which was written by the applicant's then attorneys-at-law, was in response to the respondent's request that the applicant vacate the disputed lands on or before 21 October 2016. The attorneys in that letter also indicated that their client (the applicant) was willing to lease the premises for \$70,000.00 per month.

[44] It is evident from the single judge's judgment that she examined whether the learned judge's conclusion that the letter constituted an acknowledgment of the respondent's title was reasonably open to her based on the authorities. In doing so, the single judge relied on the decisions of **Wills v Wills** and **International Hotels**, which were treated as supporting the position that, in appropriate circumstances, an acknowledgment made through an attorney-at-law may be attributable to the client.

[45] In **International Hotels**, Morrison JA (as he then was) stated at para. [104]:

"...I keep in mind Upjohn LJ's caveat in **Edginton v Clark and Another** (para. [98] above) that 'whether a particular

writing amounts to an acknowledgment must depend on the true construction of the document in all the surrounding circumstances’.” (Bold as in original)

The letter in question in that case was not deemed to be an acknowledgment. Morrison JA stated that even if it could be read as an acknowledgment of title, at the time that it was written, the paper owner’s title had already been extinguished. In those circumstances, the letter would have been “completely ineffectual as an acknowledgment of title”. However, the distinguishing feature in the instant case is that the letter was written before the respondent’s title was extinguished by operation of law.

[46] The single judge, at para. [23] of the judgment, examined the learned judge’s analysis of certain aspects of the judgment of Lord Walker of Gestingthorpe in **Wills v Wills** based on which the learned judge concluded that the letter was capable of being an acknowledgment within the meaning of section 16 of the Act. Specific reference was made to para. [28] of the learned judge’s judgment in which she referred to the reasoning of the Board in **Wills v Wills**. It states:

“[28] ...He said this of the letter: ‘Elma did not before the judge contend that George had given a written acknowledgement 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 supplied)

[47] The single judge noted that the learned judge was “content to follow the stance of the court in **International Hotels** and **Wills v Wills**” and arrived at her decision independently of section 16 of the Act. In treating with **International Hotels** the single judge noted that Morrison JA, in his determination of whether a letter from the appellant’s attorneys-at-law was an acknowledgment of title, was guided by Upjohn LJ’s statement

in **Edgington 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”. The single judge noted that although Morrison JA concluded that the letter was not an acknowledgment, the fact that it was written by the appellant’s attorneys-at-law was not mentioned.

[48] The single judge also took into account the fact that the applicant, in his defence, expressly admitted the contents of the letter. That admission, coupled with the offer to lease the disputed lands from the respondent, was in her view capable of being construed as inconsistent with a denial of the respondent’s superior title. That conclusion was open to her and cannot be said to be plainly wrong. The single judge ultimately concluded:

“[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.”

[49] We do, however, bear in mind the decision of the Privy Council in **GLC v Frankson**, where Lord Hoffmann stated at para. 5:

“5. There are statutes which, exceptionally, require a personal signature and exclude performance by an agent. In *Hyde v Johnson* (1836) 2 Bing NC 776 at 779–780 the Court of Common Pleas considered Lord Tenterden’s Act (9 Geo IV, c 14, s1) which required that an acknowledgement of a statute-barred debt should be signed ‘by the party chargeable thereby’. The court was struck by the contrast with the Statute of Frauds, which was enacted for a very similar purpose but said that the necessary memorandum should be signed by the party to be charged ‘or some other person thereunto by him lawfully authorised’. The absence of a similar express provision for agency made the court conclude that a personal signature was required. In that case, a requirement of

personal signature increased the protection which the statute gave to the person to be charged. In the present case, it would simply make it more difficult for him to invoke the statutory procedure.

[6] The exceptional nature of a case like *Hyde v Johnson* (1836) 2 Bing NC 776 was emphasised by the Court of Appeal in *In Re Whitley Partners Ltd* (1886) 32 Ch D 337, in which a contributory in an insolvent company applied to have his name taken off the list on the ground that he had not signed the memorandum of association himself. Section 11 of the Companies Act 1862 provided that the memorandum should be 'signed by each subscriber in the presence of, and attested by, one witness at the least'. But the Court of Appeal said that it was sufficient that someone had signed with his authority. Cotton LJ said, with reference to *Hyde v Johnson* (at 339–340):

'That case I think was decided on the special ground that the enactment which the Court was then considering was one of a series of enactments which made a distinction between a man's signing by himself and signing by an agent, and it was therefore considered that where signature by an agent was not mentioned the Act required signature by the man himself. That may be quite right, but in the present case the enactment we have to construe is not one of a series of enactments some of which refer to signature by an agent, and I think it would be wrong to hold that an enactment simply referring to signature is not satisfied by signature by means of an agent.'

[50] In **Luchmee**, which was cited by the applicant, the Privy Council stated that "Statutes of Limitation, like all others, ought to receive such a construction as the language in its plain meaning imports. Statutes of Limitation are in their nature strict and inflexible enactments".

[51] In **Hyde and another v Johnson**, Tindall CJ stated:

"When therefore, we find in the statute now under consideration that it expressly mentions the signature by the party only, we think it a safer construction to adhere to the

precise words of the statute, and that we should be legislating, not interpreting, if we extended its operation to writings signed, not by the party chargeable thereby, but by his agent.”

[52] In this matter, the single judge invited counsel to make submissions on whether, outside of the provisions of the Act, the letter could not be viewed as an acceptance of the respondent’s title. This approach was in keeping with that taken by the Privy Council in **Sagicor v Taylor-Wright**, albeit not in a case dealing with possessory title.

[53] In **Sagicor v Taylor-Wright**, the issue before the Privy Council was whether the court should, on an application for summary judgment, direct a trial where a defendant denies the claimant’s case but advances facts which, if proved, would still entitle the claimant to the relief sought. The claim in that matter concerned the repayment of a demand loan. The respondent borrower alleged that the promissory note relied on by the bank was a forgery, while at the same time admitting that she had borrowed the money and had only partially repaid it. The bank applied for summary judgment. The trial judge granted summary judgment, holding that the bank’s entitlement to repayment did not depend solely on the disputed promissory note. Rather, it was supported by multiple documents and admissions, including a commitment letter, mortgages containing express covenants to repay, and the respondent’s own pleadings acknowledging the loan and its partial repayment.

[54] This court reversed that decision, holding that the allegation of forgery required a trial. On appeal to the Privy Council, the Board held that even if the respondent’s defence were accepted at its highest, it would still entitle the bank to the relief sought and a trial would, therefore, have been a “serious waste of time and expense”. The Board restored the summary judgment.

[55] On the issue of the limitation defence, Lord Briggs stated at para. 30:

“...Finally, the attempt to raise a limitation defence appears to the Board to be hopeless. If as the Board concludes the Claim Form itself pleaded the loan and its non-payment as a cause

of action, it did so well within six years from the last part payment by Ms Taylor-Wright, on 31 December 2009. Even if not, and the Bank were reliant upon making an amendment more than six years later, **Ms Taylor-Wright acknowledged the loan to her, and its only partial repayment, in all the forms of her Defence**, dated respectively 29 April 2011, 3 April 2012 and 18 May 2012, sufficient to re-start the running of the six-year limitation period.” (Emphasis supplied)

[56] The principles articulated by the Privy Council in **Sagicor v Taylor-Wright** are of direct relevance to the present complaint that the single judge impermissibly relied on the contents of the defence when assessing whether the proposed appeal had a real prospect of success.

[57] The circumstances of the instant case can be distinguished from those in **Ley v Peter**. In that case, the dispute concerned a meadow held by the plaintiff and the defendant's predecessors as tenants in common. The defendant's agent, Newton, a land agent who managed the defendant's property, wrote a letter in 1837 to the plaintiff's agent. This letter proposed a lease for the plaintiff's one-third share of the meadow and suggested the defendant might pay back-rent if a lease agreement was reached. However, the court ultimately held that this letter was insufficient to acknowledge the plaintiff's title and prevent the Statute of Limitations from running. According to Watson B, a key reason for this was that no evidence was given to substantiate that Newton had the authority to write the letter in a manner that would bind the defendant and constitute a formal acknowledgment of title, especially given its conditional nature.

[58] In the instant case, however, the applicant quite clearly, at para. 10 of his defence, admitted to the contents of the letter. That admission goes beyond a mere acknowledgment that the letter was sent on his behalf. Implicit in his seeking a lease of the disputed lands from the respondent is, as found by the single judge, an acknowledgment of the respondent's title.

[59] The single judge was, therefore, not confined to examining the letter in isolation, nor was she precluded from considering the applicant's pleaded position. The single judge was not determining, finally or conclusively, whether the requirements of section 16 of the Act had been satisfied. Rather, she was engaged in the evaluative exercise required on an application for a stay: namely, whether the appeal disclosed a real prospect of success. In that context, it was well within her remit to consider the defence, which contained the applicant's express admission of the contents of the letter and the offer to lease the disputed lands, as material capable of supporting the learned judge's conclusion that there had been an acknowledgment of the respondent's superior title. In the circumstances, the single judge's approach cannot be faulted.

[60] In determining the application, the single judge also considered the risk of injustice if the stay were not granted. Having assessed the evidence presented by both parties, the single judge concluded at paras. [39] and [40]:

[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..."

[61] The single judge carefully weighed the competing risks of injustice. She noted the applicant's assertions of hardship and financial ruin regarding his marina business, but correctly observed, relying on **Key Motors Limited v Hyundai Motor Company** [2021] JMCA App 1 (submitted by counsel for the respondent), that generalised assertions were insufficient to prove hardship. Conversely, the single judge found that the respondent would suffer substantial prejudice, as it is in receivership and remains unable to deliver vacant possession to a third party (Swan Property Group Limited) under a 2017 deed of assignment, thereby exacerbating its financial strain.

### **Conclusion**

[62] In reviewing the single judge's decision, we find no error in principle. The single judge correctly identified the threshold test for a stay of execution, as articulated in **Coast to Coast Quarries Limited and ors v Caliston Graham** [2025] JMCA App 12, which requires the court to consider whether the underlying appeal has some merit and whether granting the stay produces less injustice. At para. [6] of that judgment, McDonald-Bishop P, stated:

“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...”

[63] On an application for a stay of execution, the court is entitled to adopt a broad, evaluative approach in determining whether an appeal has a real prospect of success. That inquiry is not confined to a single statutory provision in isolation but may extend to the pleadings and the surrounding circumstances insofar as they illuminate whether the decision under challenge was reasonably open to the judge below. The single judge was, therefore, entitled to take into account the applicant's pleaded admission of the contents of the letter and the offer to lease the disputed lands as matters capable of supporting the conclusion that the learned judge's decision was not plainly wrong.

[64] The applicant has failed to demonstrate that the single judge erred in principle in refusing the application for a stay of execution. The single judge's reasoning does not reflect a misunderstanding of the law or an impermissible expansion of her remit. Rather, it reflects a careful and principle-based assessment of whether the appeal raised more than a mere disagreement with the conclusion reached by the learned judge. The applicant's further submissions, including the contention that the pleadings and the disputed letter could only be considered within the strict confines of section 16 of the Act, do not disclose any error of principle or misdirection capable of justifying this court's intervention. They, therefore, provide no basis for disturbing the single judge's refusal of the stay.

[65] Further, the single judge carefully weighed the applicant's assertions of hardship against the substantial prejudice to the respondent arising from its continued inability to obtain vacant possession of the disputed lands and to fulfil its obligations to third parties. Her assessment that the refusal of a stay would not render the appeal nugatory, and that the interests of justice lay in permitting the respondent to proceed with the enforcement of its judgment, was well within the proper exercise of her discretion.

[66] Regarding the application for an injunction to restrain the respondent from taking any steps to execute the orders of the learned judge, we agree with counsel for the respondent that this relief would, in substance, achieve the same result as a stay of execution. The application for a stay was soundly rejected by the single judge with whom we agree.

[67] Having regard to all the circumstances, there is no basis upon which this court could properly vary or discharge the order of the single judge.

## **V HARRIS JA**

[68] I have read, in draft, the judgment of my learned sister Simmons JA. I agree with her reasoning and conclusion and have nothing useful to add.

**LAING JA**

[69] I, too, have read my sister's draft and agree with her reasoning and conclusion.

**SIMMONS JA**

**ORDER**

1. The application to vary or discharge the order of the single judge, made on 19 February 2026, is refused.
2. The application for an injunction restraining the respondent or its servants from taking any steps to execute the orders of the learned judge is also refused.
3. The applicant is to quit and deliver up possession of the lands within 21 days of the date of this order.
4. Costs of this application to the respondent, to be taxed if not agreed.