



[2025] JMSC Civ 88

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2022CV03358**

<b>BETWEEN</b>	<b>DONOVAN CARTER</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>JANEIL BLIDGEN</b>	<b>FIRST DEFENDANT</b>
<b>AND</b>	<b>OSHA NE SULPH</b>	<b>SECOND DEFENDANT</b>
<b>AND</b>	<b>THE ATTORNEY GENERAL OF JAMAICA</b>	<b>THIRD DEFENDANT</b>

**IN CHAMBERS**

Mr Nyron Wright instructed by Kinghorn and Kinghorn for the claimant

Mr Romario Miller instructed by the Director of State Proceedings for the first and third defendants

**Application to strike out amended acknowledgement of service – Application for matter against defendant to be struck out – Crown Proceedings Act – Estoppel by Representation**

Heard: July 2, and July 8, 2025

**PETTIGREW-COLLINS, J**

**THE APPLICATIONS**

[1] The Court is concerned with two (2) applications. The first is an order sought in a Notice of Application for Court Orders filed by the third defendant on June 23, 2023. Based on a previous court order, the application to be heard is in respect of order

number 4 sought in that Notice of Application. By way of order number 4, the defendant seeks an order that the claim against the third defendant be struck out. The other application is that filed by the claimant on March 18, 2024, seeking to strike out an amended acknowledgment of service filed by the third defendant. The applications are supported by affidavits.

## **BACKGROUND**

[2] A brief background is necessary to an understanding of these applications. The claimant filed a claim and Particulars of claim on November 9, 2022. The claimant averred that on November 11, 2016, the first defendant was driving a motor vehicle registered 4124 HD which is registered to the second defendant. That motor vehicle collided into the motor vehicle that was being driven by the claimant in circumstances amounting to negligent conduct on the part of the first defendant.

[3] The claimant also averred that the first defendant was at all material times a member of the Jamaica Defence Force who acted/purported to act in the execution of his duties. The third defendant was joined as a party to the claim by virtue of the Crown Proceedings Act.

[4] On November 23, 2022, the third defendant filed an acknowledgment of service. It was specifically stated in that document that:

*“The third defendant, having been sued in a representative capacity pursuant to the Crown Proceedings Act, accepts service on behalf of the first defendant.”*

The first defendant was never personally or otherwise served.

[5] On June 23, 2023, the third defendant filed an amended acknowledgement of service. In that document, it was stated that:

*“the third defendant having been sued in a representative capacity pursuant to the Crown Proceedings Act and having received complete instructions in this matter, accepts service on behalf of the third defendant only”.*

- [6] The effect of filing that amended acknowledgement of service is that the third defendant reneged on the position that service was accepted on behalf of the first defendant.
- [7] A defence was filed on behalf of the third defendant on that same day, June 23, 2023. The gravamen of that defence being that the motor vehicle being driven by the first defendant, an ex-private of the Jamaica Defence Force, was being operated by the first defendant in his private capacity and not as the servant and/or agent of the Jamaica Defence Force. Consequently, the third defendant filed its application seeking, inter alia, that the matter be struck out against the third defendant.

## **SUBMISSIONS RE APPLICATION TO STRIKE OUT ACKNOWLEDGEMENT OF SERVICE -**

### **Claimant/Applicant**

- [8] Mr Nyron Wright on behalf of the claimant, whose application to strike out the acknowledgment of service was heard first, submitted that the defendant is seeking to circumvent Rule 63.6 of the Civil Procedure Rules which sets out the procedure for effecting a change of attorney. He further submitted that, in effect, what the third defendant is seeking to do, cannot be done without full compliance with Rule 63.6.
- [9] He also placed heavy reliance on the principle of estoppel by representation. He submitted that this principle prevents a person from asserting a right or fact that is inconsistent with a previous representation made by another party, if it is that that party relied on the representation and acted to his detriment. The key elements of that doctrine, he observed, are representation, reliance and detriment. He relied on the Judicial Committee of the Privy Council decision of **Kelly and Others v Fraser** JCPC [2011] 0032. He made specific reference to paragraph 17 of that judgment. He urged the court to find that all the elements of estoppel have been

made out in this case. He asked the court to have regard specifically to paragraphs 11 to 16 of the claimant's affidavit in support of the application.

- [10]** Counsel insisted that the conduct of the third defendant represents an attempt to resile from his earlier representation. He further submitted that the claimant having been served with the acknowledgement of service, has acted to his detriment in that he was of the view that the first defendant was being represented by the third defendant pursuant to the Crown Proceedings Act and had not sought to effect service on the first defendant personally as a consequence of that belief. He further highlighted the fact that if the third defendant were to be removed, and the amended acknowledgement of service allowed to stand, he would have permanently lost the opportunity to bring the claim against the first defendant as well.

### **Third Defendant/Respondent**

- [11]** In response to Mr Wright's submissions, Mr Miller, on behalf of the third defendant, asked the court to have regard to the provisions of rule 8.1 of the Civil Procedure Rules, which he stated, requires that each named party must be served with the claim form and particulars of claim. He said that considerable weight should be placed on the fact that the third defendant acted in a representative capacity. He asked the court to have regard to the specific wording in the acknowledgment of service. He posited that the necessary implication from the wording is that service was being accepted on the condition that the first defendant is found to be a Crown servant. He asked the court to find that the claimant is mistaken when the claimant asserts that there is no provision in law for the filing of an amended acknowledgement of service. He contends that by virtue of the provision of Rule 9.4 of the CPR, an amended acknowledgment of service can be filed.
- [12]** With regard to the claimant's submission that the third defendant is utilising an impermissible method to remove the Attorney General from the records as the attorney for the first defendant, Mr Wright asked the court to note that by accepting

service on behalf of the first defendant, the Attorney General was not advancing a position that he was the legal representative of the first defendant. Service was merely accepted on the basis that the Attorney General was acting in a representative capacity and therefore those are two very different notions.

[13] He further observed that pursuant to section 3 of the Crown Proceedings Act, the first defendant should not have been added as a party to the claim in circumstances where he was acting in the course of his employment. Counsel says therefore that the implication from joining the first defendant is that the claimant intended to sue the first defendant jointly and/or severally with the Attorney General.

[14] He further submitted that the Attorney General only sought to rescind its acceptance of service on behalf of the first defendant in his capacity as a Crown servant and so the claim still lies against the first defendant. He said the fact that, as a practical matter, the claim cannot now be pursued against the first defendant should not be the basis of a decision to strike out the amended acknowledgment of service because it was open to the claimant to pursue the claim against the second defendant, the alleged owner of the motor vehicle, but the claimant did not. The election to not pursue the claim against the second defendant was made to the claimant's own detriment, he urged.

## **SUBMISSIONS RE APPLICATION TO STRIKE OUT THE CLAIM AGAINST THE THIRD DEFENDANT**

### **Third defendant/Applicant**

[15] Counsel submitted that the claim should be struck out because the first defendant was not acting in the course of his employment. He relies on affidavit evidence of Ms Nicola Richards and stated that it is a necessary ingredient for adding the Attorney General to a claim to show a nexus between the Attorney General and the first defendant acting in the course of his employment as the time of the commission of the tort. He observed that even on the claimant's own pleadings,

the first defendant was driving a private motor vehicle. The affidavit of Ms Richards indicates that the instructions received was that the first defendant was not on duty on the occasion of the accident.

- [16] According to Counsel, that is an indication that the claimant had no reasonable grounds for bringing the claim against the Attorney General.

### **Claimant/Respondent**

- [17] In responding, Mr Wright asked the court to have regard to the affidavit evidence of the claimant which provides the basis for him saying that the first defendant was acting in the course of his employment. He further observed that that is an issue of fact which the court will have to determine.
- [18] He also advanced that if the third defendant were to be removed as a party to the proceedings, the claim would be statute barred and the claimant would have no means of protecting his interest with regard to the claim.

## **DISCUSSION**

### **APPLICATION TO STRIKE OUT AMENDED ACKNOWLEDGEMENT OF SERVICE**

- [19] Rule 8.1 of the **Civil Procedure Rules** provides that:

*(1) A claimant who wishes to start proceedings must file in the registry of the court at The Supreme Court, King Street, Kingston (or at such other place as the Rules Committee may determine) the original and not less than one copy for each defendant (for sealing) of-*

*(a) The claim form; and*

*(b) Unless either rule 8.2(1)(b) or 8.2(2) applies-*

*(i) The particulars of claim; or*

*(ii) Where any rule or practice direction so requires or allows, an affidavit or other document giving details of the claim required under this Part.*

- [20]** While the rule does not specifically state that each party is to be served, that is clearly the implication from the rule. One question which arises is whether in circumstances where one party specifically says that he accepts service on behalf of another party, that is good service in respect of that other party. The answer ought to be yes, where there is authority to accept service expressly or impliedly. The second issue is whether that acceptance of service may be regarded as conditional especially in circumstances where it was not so expressly stated. I do not accept the submission of Mr Miller that the implication from the wording of the acknowledgement of service is that service was being accepted on the condition that the first defendant is found to be a Crown servant. The third defendant had the option of declining to accept service on behalf of the first defendant but did not do so.
- [21]** I accept the submission of Mr Miller that the first defendant need not have been added as a party to the claim in circumstances where the averment was that he was acting in the course of his employment. If a claimant however chooses not to join the actual tortfeasor who is a crown servant/agent, there exists the possibility of a court making a finding that the actual tortfeasor acting in the course of his employment was acting on a frolic of his own. If that were to be the outcome and the actual tortfeasor were to be omitted as a party to the claim, the claimant would be left without a claim against the tortfeasor in his personality capacity. So even if I accept the submission that the implication of joining the first defendant is that the claimant intended to sue the first defendant jointly and/or severally with the Attorney General, it still does not negate the fact that the third defendant unequivocally accepted service.
- [22]** The acceptance of service on behalf of the first defendant by the third defendant obviated any need on the part of the claimant to attempt to effect personal service on the first defendant.

- [23] I turn to the question of whether the Attorney General's conduct amounts to an attempt to circumvent the provisions of Rule 63.6 which sets out the procedure for removing an attorney's name from the record. As a practical matter, the Attorney General in these matters would not ordinarily engage external counsel to represent defendants acting in their capacity as servants and/or agents of the Crown. These defendants are usually represented by Counsel from the Chambers of the Attorney General. Thus while as a practical matter, the conduct of the third defendant would have the effect of removing counsel from the Attorney General's Chambers as the legal representative of the first defendant, I am not persuaded by the argument that the attempt at withdrawal of the acceptance of service of the claim form was an attempt to circumvent the provisions in the Civil Procedure Rules for the removal of the attorney's name from record.
- [24] The claimant's attorney at law contends that the claimant is entitled to rely on the principle of estoppel by representation. In **Kelly and others v Fraser** [2012] UKPC 25, the respondent, Michael Fraser, chief executive officer of Island Life Insurance Company, was a member of a pension staff plan at that company. The staff pension plan operated under the terms of a trust deed, which vested the management and administration of the Plan in the trustees. Their duty was to exercise discretion vested in them by deed personally but the day-to-day administration of the Plan was delegated to the Employee Benefits Division of the company.
- [25] Mr Fraser had previously been employed by Life of Jamaica Limited, another insurance company. A letter dated December 1, 2000, was sent to the trustees of Life of Jamaica, requesting a transfer of the accrued value of his entitlement under the Life of Jamaica scheme to the Island Life Plan. The letter was signed by two trustees of the pension plan, and a cheque was sent from Life of Jamaica to the trustees of Island Life Pension Plan, representing Mr Fraser's accrued contributions under his previous employer's pension scheme and the money was credited to the trustees of the Island Life Plan. Mr Fraser received a letter from a representative in the Employee Benefits Division confirming that this was done and



he received periodical statements from the Employee Benefits Division recording the accumulated current value of units in the pension fund, which included the portion which was transferred from the pension plan of his previous employer, Life of Jamaica.

- [26] Three years later, Island Life merged with Life of Jamaica Ltd and the pension plan was discontinued and wound up. It was decided by a firm of actuaries that because the transfer from Life of Jamaica had not been approved by the trustees, Mr Fraser's share of a fund surplus should be J\$866,688.43, instead of J\$6,809,571.00 had the whole of his entitlement been taken into account. The sole issue before the Board was whether the trustees were estopped from relying on the fact that they did not approve the transfer, by virtue of the letter to Mr Fraser of December 1, 2000, and the subsequent benefit statements sent to Mr Fraser.
- [27] It was held that in the circumstances of the case, Mr Fraser would have acted differently had he not been told that his transfer fund had been duly received and invested on the terms of the pension plan. The Board found that where a person has been led to assume that no issue arises as to the regularity of his transaction, he is unlikely at the time to apply his mind to alternative possibilities.
- [28] The Judicial Committee of the Privy Council expounded the doctrine of estoppel by representation. The relevant portion of the judgment relied upon by Mr Wright states that:

*"[17] The relevance of detrimental reliance in the law of estoppel by representation is that it is generally what makes it unjust for the representor to resile from his previously stated position. However, for this purpose, the ordinary rule is that the detriment is not the measure of the representee's relief, and need not be commensurate with the loss that he would suffer if the representor did resile: see Avon County Council v Howlett [1983] 1 All ER 1073, [1983] 1 WLR 605, 81 LGR 555, where the authorities are reviewed by Slade LJ at pp 620-625. Indeed, the detriment need not be financially quantifiable, let alone quantified, provided that it is substantial and such as to make it unjust for the representor to resile. A common form of detriment, possibly the commonest of all, is that as a result of his reliance on the representation, the representee has lost an opportunity to protect his interests by taking some alternative course of action. It is well established that the loss of*

*such an opportunity may be a sufficient detriment if there were alternative courses available which offered a real prospect of benefit, notwithstanding that the prospect was contingent and uncertain: Greenwood v Martins Bank Ltd [1933] AC 51, 101 LJKB 623, 38 Com Cas 54 and Ogilvie v West Australian Mortgage and Agency Corporation Ltd [1896] AC 257, 268, 65 LJPC 46, 74 LT 201, 12 TLR 281, as explained in Fung Kai Sun v Chan Fui Hing [1951] AC 489, 505-6, [1951] 2 TLR 47.”*

- [29]** I believe the principle is applicable in this instance. I agree with the claimant’s submission that the claimant placed reliance on the fact that the Attorney General accepted service on behalf of the first defendant and that he acted to his detriment in so doing.
- [30]** In paragraphs 11 to 16 of his affidavit, the claimant highlighted the timeline in terms of the filing of the acknowledgement of service and the amended acknowledgment of service and highlighted the extreme prejudice which would accrue to him if the third defendant’s amended acknowledgement of service were to be allowed to stand. He highlighted that the limitation has now run on his claim.
- [31]** This court accepts that the claimant will suffer irremediable prejudice if the third defendant is permitted to withdraw the acceptance of service on behalf of the first defendant. The incident giving rise to the filing of the claim is said to have occurred on November 11, 2016. That claim is now statute-barred. The claim in question was issued on the 9<sup>th</sup> of November 2022. At the time of the filing of the first acknowledgement of service on November 23, 2022, it was still open to the claimant to make an application for an extension of the life of the claim form. By the time of the filing of the amended acknowledgement of service on June 23, 2023, it was no longer open to him to do so.
- [32]** Since the life of the claim form is 6 months pursuant to Rule 8.14(1), the claim ceased to be valid six months after it was issued. Rule 8.15 (2) allows for a maximum period of extension of six months. Although there can be two extensions, the Rules do not facilitate any intervening period between those two extensions. Therefore, the time within which the life of that claim could be extended has long

expired. The claim cannot be refiled since limitation has run. The claimant would not now be able to serve the first defendant.

[33] It is noted that the claim was brought against a second defendant, the alleged owner of the motor vehicle, who was not served. The defendant urged the court to say that the claimant chose to not pursue the claim against the second defendant, and he did so to his detriment and that the claimant's failure in this regard should not be a basis on which the court determines that the case should proceed against the attorney General. This court cannot say why the second defendant was not served, as there is no evidence explaining why. Suffice it to say that that fact is clearly not a basis for this court to say that the case against the third defendant should proceed.

[34] Mr Miller's contention is also that by virtue of the provisions of rule 9.3(4) of the Civil Procedure Rules, it is permissible to file an amended acknowledgement of service. This rule provides that "*a defendant may file an acknowledgement of service at any time before a request for default judgment is received at the registry out of which the claim form was issued.*" Even if I were to agree with that submission, that does not mean that one should be allowed in the circumstances of this case. I am of the view that in an appropriate case, an amended acknowledgement of service can be filed, although I make no determination whether it is so by virtue of the specific provision.

### **STRIKING OUT OF CLAIM AGAINST THE THIRD DEFENDANT**

[35] Counsel for the third defendant placed reliance on the fact that the third defendant is now in receipt of instructions that the first defendant at the time of the alleged accident giving rise to this claim was not acting in the course of his employment. The evidence in the supplemental affidavit of Miss Nicola Richards filed June 27, 2023, is to the effect that the Attorney General sought instructions via letter from the JDF. The JDF thereafter carried out investigations consequent on the request

for instructions. It was Miss Richards' evidence that she was informed by Major CT Weise and Lance Cpl Clarke that the first defendant was using motor vehicle registered 4142 HD, driven by the first defendant to carry out the first defendant's personal errands. On that basis she says, and Mr Miller contends that the Attorney General is not a proper party to the claim.

**[36]** On the other hand, the claimant deponed to an affidavit wherein he stated that after the collision took place, the first defendant emerged from the vehicle registered 5124 HD. The court notes the discrepancy with the registration plate but has no reason to believe that that is anything other than an error on the part of the claimant in his affidavit, in citing the registration plate of the vehicle that was being driven by the first defendant. The claimant deponed that the first defendant was attired in military uniform with the JDF logo. He stated that he is familiar with the JDF uniform. He said the first defendant showed him identification which indicated that he was a member of the JDF. The first defendant apologized and indicated that he was on JDF business, and that the duty was confidential. The claimant also deponed that he attended at the JDF headquarters at the invitation of the first defendant and that he spoke to a Major whom he named, as well as the first defendant. He said the first defendant had indicated that the JDF would repair his vehicle.

**[37]** The claimant further deponed that it was never at any time indicated to him that the first defendant was not acting on behalf of the JDF at the time of the accident. He went on to say that the major advised him to secure an estimate of the cost for the repairs to the vehicle. He stated that upon his subsequent visits he was not able to speak to the major nor to the first defendant hence out of frustration, he filed his claim. It was not unreasonable on this evidence for the claimant to have formed the view that the first defendant was acting in the course of his employment at the material time.

**[38]** Given those irreconcilable versions, the Attorney General's contention that the first defendant was not acting in the course of his employment would be a question of

fact to be resolved at trial. If a court were to act on the instructions conveyed to the Attorney General Department by Major Weise, which information has been put before this court through a third party Miss Richards, that would amount to the acceptance as a fact of a version conveyed to the court by way of second-hand hearsay, without those assertions being tested at a trial. This is a sufficient basis for dismissing that application.

**[39]** Further, this court can readily accept the third defendant's position that the basis on which service was accepted on behalf of the first defendant and the only reason for so doing, was the averment that the first defendant was acting in the course of his employment as a crown servant. Notwithstanding, as indicated before, it was not stated at the time of filing the first acknowledgment of service that the acceptance of service was conditional so that the claimant would have understood that service of the first defendant was conditional on he being a Crown servant. I am doubtful that that would have been an acceptable position. Even if I am wrong in this regard, it could not conceivably be anticipated that the third defendant would be asking that a determination of whether the first defendant was acting as a crown servant or not would be made in interlocutory proceedings and without the benefit of the powerful adversarial tool of cross examination in the face of competing contentions.

## **DISPOSITION AND ORDERS**

**[40]** In the result, the claimant's application that the amended acknowledgement of service be struck out is granted. The third defendant's application that the claim against him be struck out is refused. Costs are granted to the claimant against the third defendant in respect of both applications. Costs are to be taxed if not sooner agreed. Case management conference is fixed for November 25, 2025 at 10:00 am for 30 minutes. Notice of Adjourned Hearing is to be prepared, filed and served on the first and third defendant.

## **ADDEMDUM**

**[41]** The judgment was delivered at 9:55 am, and Mr. Nyron Wright exited the platform. At 9:59 am, Mr. Romario Miller appeared on the platform. The order that Notice of Adjourned Hearing be prepared, filed, and served on the first and third defendants became otiose.

.....  
**Pettigrew-Collins, J**  
**Puisne Judge**