[2026] JMSC Civ 27

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMERCIAL DIVISION

CLAIM NO. SU 2022 CD 00309

BETWEEN	**FITZ JACKSON**	**CLAIMANT**
AND	**THE BANK OF NOVA SCOTIA JAMAICA LIMITED**	**DEFENDANT**

Mr. Douglas Leys KC Mr. Anthony A. Williams, Ms. Annette Henry and Ms. Anique Falconer instructed by Usim Williams & Company for the Claimant

Mr. Maurice Manning, KC, and Ms. Allyandra Thompson, instructed by Nunes, Scholefield, Deleon & Company, for the Defendant.

Heard: October 10, 2026 & March 06, 2026

Civil Procedure – Application for extension of time to file Application for Leave to Appeal - Application for Leave to Appeal – Whether Court had jurisdiction to grant summary judgment to party without application – Whether Court improperly exercised jurisdiction to award costs against unsuccessful litigant in matter having a public interest – Application for stay of proceedings – Court of Appeal Rules [2002] (the CAR) – The Court of Appeal Amendment Rules [2025] Rule 1.8 (2) – The Court of Appeal Rules [2002], Rule 1.8(1), Rule 1.8 (7) – Bills of Exchange Act (BEA), S. 45 - The Judicature (Appellate Jurisdiction) Act, S. 11 (f) – The Judicature Rules of Court Act – Civil Procedure Rules (CPR), Part 15, Part 11 and CPR 26.1(2)(v).

BROWN BECKFORD J

INTRODUCTION

[1] The Application for leave to appeal is consequent on the decision of this Court given on 15 November 2024 as follows:

1. Summary Judgment is entered in favour of the Defendant against the Claimant.

2. 80% of the Costs of this Application is awarded to the Defendant to be taxed if not sooner agreed.

3. No Order as to Costs for the Bank of Jamaica and The Attorney General of Jamaica.

[2] The Claimant/Applicant seeks leave to appeal this judgment and, on 2 October 2025, filed an Amended Notice of Application for Court orders seeking the following orders:

"1. Extension of Time: An extension of time to apply for leave to appeal the Judgment and Orders of the Honourable Mrs. Justice Crescencia Brown-Beckford delivered on 25 November 2024.

2. Leave to Appeal: Leave to appeal the following Orders made on 25 November 2024: (a) Summary Judgment entered in favour of the Defendant against the Claimant (b) Order that 80% of the costs of the application be awarded to the Defendant to be taxed if not sooner agreed

3. Stay of Execution: A stay of execution of the costs order pending the determination of the appeal.

4. Costs: That the costs of this application be costs in the appeal.

5. Further Relief: Such further and other relief as this Honourable Court may deem just, fit and expedient."

[3] A claim was brought by Mr. Fitz Jackson, who was then, and remains, the Member of Parliament for the St. Catherine Southern Division, against the Bank of Nova Scotia Jamaica Limited (BNS). In issue was the matter of fees charged by the Defendant for the encashment of a cheque, with the Claimant asserting that charging these fees amounted to a breach of the **Bills of Exchange Act (BEA)**.

[4] I wish to thank the parties and Counsel for their indulgence given the delays in giving this decision. I also wish to thank Counsel for their submissions, which I have made full use of. I will address the grounds in turn.

EXTENSION OF TIME TO APPEAL

[5] The Applicant relies on Rule 1.8(1) of the Court of Appeal Rules [2002] (the CAR), as amended, for the starting point for determining the time period within which he ought to have applied for permission to appeal. This rule provides that;

> *(1) Where an appeal may be made only with the permission of the court below or the court, a party wishing to appeal must, first, apply for permission to the court below within 14 days of the order against which permission to appeal is sought.*

[6] The Claimant acknowledges that he is requesting permission outside this time, which is some 56 days after the order, a 42-day (6-week) delay. The Affidavit of Fitz Jackson in support of the Application indicates that this delay was due to the complex nature of the issues, the need to seek expert legal opinion given the novelty of the claim, and the public importance of the claim. He also posited that an extension of time to appeal would not prejudice the Defendant.

[7] Guided by the dicta of Brooks P in **Airports Authority of Jamaica and Another v Keith Nethersole** [2023] JMCA App 29, this issue will be considered only if the Claimant has a reasonable prospect of success on appeal. At paragraph 8 Brooks P stated;

> *[8] Since some of the issues in these applications overlap, it is more convenient to consider the application for permission to appeal before the application for the extension of time. That was the approach taken in Evanscourt* ***Estate Company Limited (by Original action) v National Commercial Bank Jamaica Limited*** *(unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 109/2007, judgment delivered*

26 September 2008, where the circumstances were similar. Smith JA, on page 9 of that case, noted that the parties agreed that if leave to appeal is refused, there would be no point in extending the time to appeal. He said:

> *"The parties are at one that if permission to appeal ought not properly to be given, it would be futile to enlarge the time within which to apply for leave… I will therefore first turn to the question of whether or not leave should be granted…"*

That guidance will be adopted below.

PERMISSION TO APPEAL

[8] The Applicant, in his Amended Notice of Application for Court Orders filed 2 October 2025, submitted that leave to appeal should be granted based on the following six (6) grounds, which have a reasonable chance of success;

- Ground 1: Jurisdictional Error - Improper Grant of Summary Judgment
- Ground 2: Breach of Natural Justice - Unpleaded Presentment Issue
- Ground 3: Factual Error - Unsupported Finding on Place of Payment
- Ground 4: Legal Error - Misinterpretation of Defendant's Acknowledgment
- Ground 5: Procedural Error - Inappropriate Summary Judgment
- Ground 6: Discretionary Error - Excessive Costs Award

[9] The Claimant argued three additional grounds listed as grounds 6 to 8 in his submissions, as follows;

- Ground 6: Misapplication of interbank clearing principles
- Ground 7: Erroneous interpretation of presentment requirements
- Ground 8: Inadequate analysis of conditionality

LAW

[10] The Court wishes to note that the rules relevant to this application were amended in 2020 and in 2025. The amended rules will be referred to. This

application for leave to appeal is made by virtue of Section 11 (f) of The Judicature (Appellate Jurisdiction) Act (The Act) and The Judicature Rules of Court Act, The Court of Appeal Amendment Rules [2025] Rule 1.8 (2) and The Court of Appeal Rules [2002], Rule 1.8 (7), as amended, all of which are reproduced below;

Section 11 (1) (f)

(1) No appeal shall lie

(f) without the leave of the Judge or of the Court of Appeal from any interlocutory judgment or any interlocutory order given or made by a Judge except-

(i) where the liberty of the subject or the custody of infants is concerned;

(ii) where an injunction or the appointment of a receiver is granted or refused;

(iii) in the case of a decree nisi in a matrimonial cause or a judgment or order in an admiralty action determining liability;

(iv) in the case of an order on a special case stated under the Arbitration Act;

(v) in the case of a decision determining the claim of any creditor or the liability of any contributory, or the liability of any director or other officer under the Companies Act in respect of misfeasance such other cases, to be prescribed, as are in the opinion of the authority having power to make rules of court of the nature of final decisions.

Rules 1.8 (2) and (7)

(2) Where the application for permission to appeal is refused by the court below, the party wishing to appeal may, then, make an application to the court within 14 days of the refusal.".

…

"(7) The general rule is that permission to appeal in civil cases will only be given if the court or the court below considers that an appeal will have a real chance of success."

[11] It is now well accepted that 'a real chance of success' means a real and not a fanciful prospect of success in the appeal sought (see **Royal Cruises Ltd et al v Access to Information Appeal Tribunal et al** [2016] JMCA App 19).

[12] With this relevant law in consideration, I will address each ground.

GROUNDS

Grounds 1 and 5

[13] Grounds 1 and 5 may be conveniently considered together. King's Counsel for the Claimant's submission is that the Court improperly granted Summary Judgment in favour of the Defendant, when only the Claimant had made such an application. He therefore posits that the decision was a nullity, as the Court lacked jurisdiction to make such an order. It was also submitted that the Court was in error in determining issues that were novel and complex by way of summary judgment when there were triable issues of fact and law requiring full consideration in a trial.

[14] Summary judgments are provided for under Part 15 of the Civil Procedure Rules (CPR). Applications are governed by Part 11, which requires applications to be made in writing unless an oral application is permitted by a rule or the court. Rule 15.5 (1) requires an applicant to file evidence in support of the application. The Claimant is correct that the Defendant made neither a written nor an oral application for summary judgment. The Claimant's arguments, however, do not take account of Rule 15.6 (1) (e), which provides that;

"15.6 (1) On hearing an application for summary judgment the court may-

…

(e) make any order as may seem fit."

[15] There is no constraint on the court's power in the rule. This section, therefore, falls to be interpreted in line with the court's case management powers and the overriding objective of the Civil Procedure Rules. CPR 26.1(2)(v) provides that the court may make any order for the purpose of managing the case and furthering the overriding objective. The overriding objective is, of course, to deal with cases justly. This includes ensuring that a case is dealt with expeditiously and fairly and has allotted to it an appropriate share of the court's resources. The court is required to give effect to the overriding objective when interpreting the rules or exercising any powers under the rules.

[16] I adopt the reasoning of my brother Pusey J in **Maxine Marsh v Pan Caribbean Merchant Bank Limited** [2024] JMSC Civ. 89 relied on by the Defendant. In this instance, however, it is this Court's view that no further submissions would have been required. Counsel for all the parties agreed from the outset of the hearing of the application for summary judgment that the claim raised a purely legal issue that would be resolved fully by the hearing of the application and fully ventilated their positions on the issue. There were no issues, complex or otherwise, that would remain for a determination. The Claimant's own application for summary judgment was premised on this fact.

[17] The Claimant also has not considered the court's inherent jurisdiction under the Judicature (Supreme Court) Act and at Common Law. Section 48(g) of the Judicature (Supreme Court) Act preserves the inherent jurisdiction of the court. It states: -

> *"48. With respect to the concurrent administration of law and equity in civil causes and matters in the Supreme Court, the following provisions shall apply –*
>
> *(a) …*
>
> *….*
>
> *(g) The Supreme Court in the exercise of the jurisdiction vested in it by this Act in every cause or matter pending before it shall grant either absolutely or on such reasonable terms and conditions as to it seems just, all such remedies as any of the*

parties thereto appear to be entitled to in respect of any legal or equitable claim properly brought forward by them respectively in such cause or matter; so that as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and multiplicity of proceedings avoided."

[18] The Court was therefore empowered to grant remedies that a party appeared to be entitled to. The absence of a formal application is not a barrier to the Court resolving disputes between the parties.

[19] In view of the foregoing, Grounds 1 and 5 relating to the improper summary judgment to the Defendant, do not have a real chance of success.

Ground 2

[20] Here, it was submitted for the Applicant that the Court erred in law and breached the principles of natural justice, in that the case was determined primarily on the presentment issue, which the Defendant did not plead.

[21] The Claimant had raised as a preliminary point that the Defendant, in its Amended Defence, raised new defences of presentment, waiver, and dishonoured cheque, and submitted that the Defendant should not be allowed to argue these new averments. The basis of the submissions was that Mr Jackson would be prejudiced if the Defendant was allowed to argue what was not pleaded, as the Defendant did not have the opportunity to counter-plead, and especially having regard to the evidential challenges.

[22] Mr Manning, on behalf of the Defendant, had responded that the issue was whether or not the Claimant was entitled to a judgment on his statement of case. He contended also, that it was open to the Defendant to speak to issues that arose on the Claimant's statement of case. He continued that to the extent that the Claimant was relying on the legislation, the issue of presentment arose, or the Claimant's own statement of case.

[23] The Defendant's position was supported by Counsel for the Bank of Jamaica and the Attorney General, who indicated that, as the Claimant was asking for purely legal pronouncements on purely legal arguments, not requiring additional evidence, the court would be required to consider the act as a whole.

[24] All parties agreed on inquiry from the Court that the application for summary judgment rested on a purely legal ground, which would be determinative of the issues raised in the case. The Court ruled that as the issue of presentment arose on the Claimant's case, as the Court was being required to construe the requirements of the Bills of Exchange Act. The Court indicated it would set out its reasons in the judgment to follow the application.

[25] This was done under the heading "CLAIMANT'S PRELIMINARY POINTS" and at paragraphs 76-77, it states;

> *"[76] Mr. Jackson's claim, impliedly, is that he was in full compliance with the **Bills of Exchange Act** and entitled to the benefit/protection of the Act. Presentation is a requirement for the cheque to be paid. The onus is on Mr. Jackson to prove his case on a balance of probabilities. Mr. Jackson contended, albeit by implication, that the cheque was duly presented at the Portmore Branch. In examining Mr. Jackson's case, it was definitely in order for the Court to examine whether the cheque had been presented in keeping with the **Bills of Exchange Act**, so as to determine whether he is entitled to judgment on his pleaded case. BNS, in the Court's view, was entitled to point out this, as it turns out, fatal flaw in Mr. Jackson's case. There were sufficient facts pleaded to support BNS' submissions on this issue.*
>
> *[77] Further, to contend with the issue whether BNS had breached the Bills of Exchange Act, the law has to be interpreted. This, as seen, requires the Court to consider the meaning of 'presentation' as used in the Act."*

[26] Neither the written nor the oral submissions explained why this position was incorrect; instead, Counsel repeated the previously made arguments.

[27] The Claimant's contention was that the bank breached its obligation as a banker and drawee of the cheque in contravention of the Bills of Exchange Act. The Claimant, at paragraph 20 of his written submissions in support of his application for summary judgment (page 9 of the Judge's Bundle filed February 27, 2024), dealt with the Defendant bank's duty, in reply to the Defendant's submissions, and stated there that;

> *"A banker is under a duty to his customer to pay* ***on presentation*** *a cheque in proper form drawn on him by customer subject to the following conditions:…" (Emphasis mine).*

[28] Authorities supported this proposition. The argument was consistent with Section 45 of the Bills of Exchange Act, which requires the cheque to be duly presented at the proper place. All the required facts to establish presentment at the proper place, that is, where the cheque was presented for encashment, were before the Court.

[29] This ground is without a reasonable chance of success

Grounds 3 and 7 (additional ground)

[30] The Applicant argues that the Court made a factual and legal error in determining that the place of payment on the cheque was specified as Half Way Tree when there was no evidence before the Court to support this.

[31] This ground has no chance of success. The location was stated by the Applicant himself in his Particulars of Claim. Paragraph 3 of the Applicant/ Claimant's Amended Particulars of Claim states the following;

> *3. On or about the 3rd day of May 2019, Ms. Delaine Morgan (who was at all material times a joint customer with Earl Morgan of the Defendant Bank) [BNS]* ***drew a cheque bearing No. 001426 for Two Thousand Five Hundred Dollars ($2,500.00) dated 3rd May 2019 on Current Account # 396214 upon the Defendant's Bank (Half-Way Tree Branch in respect of which the said chequing account was held) and payable to the Claimant."***

[32] Section 45 of the Bills of Exchange Act indicates that a bill is presented at the proper place where no place of payment is specified, at the address of the drawee or acceptor given in the bill, and where no place of payment is specified, and no address is given, the bill is to be presented at the drawee's place of business. The cheque was exhibited on the Affidavit of Allyandra Thompson filed January 31, 2024, indicating on the face of it "The Bank of Nova Scotia Jamaica Limited Half Way Tree Branch". The pleadings were before the Court for its consideration of the application. The Court was entitled to take that information into account to determine the proper place for presentment. This information can only be the name of the bank, in which case the place of business is at the Half Way Tree Branch, or the name and address of the drawee. Either way, Half Way Tree Branch would be the proper place.

[33] The Claimant's reliance on modern banking practices and circumstances as the basis to interpret the law is flawed. It was not submitted or suggested by what rule of interpretation or presumption the Court was empowered so to do. The Claimant's argument has not been supported by any law or authority as to a contrary interpretation. These grounds are without any reasonable chance of success.

Ground 4

[34] Mr Jackson submits that there was a misinterpretation of the Defendant's acknowledgement in paragraph 3 of their amended defence. It is the Applicant's submission that this was an admission that supported Mr. Jackson's application for summary judgment.

[35] The paragraph in question states that the Defendant admits paragraphs 2 and 3 of the Particulars of Claim, which outline the following;

> *"2. The Defendant is a Bank/Financial Institution, duly registered under and carrying on business pursuant to and in accordance with the Companies Act and Banking Act of Jamaica with its registered office situate at Scotia Bank Centre, the Corner at Duke & Port Royal Streets*

in the parish of Kingston and is engaged in the business of banking and providing a wide variety of financial services to its customers and the general public.

3. On or about the 3rd day of May 2019, Ms. Delaine Morgan (who was at all material times a joint customer with Earl Morgan of the Defendant Bank) [BNS] drew a cheque bearing No. 001426 for Two Thousand Five Hundred Dollars ($2,500.00) dated 3rd May 2019 on Current Account # 396214 upon the Defendant's Bank (Half-Way Tree Branch in respect of which the said chequing account was held) and payable to the Claimant."

[36] The point made in this ground remains unclear. This is because paragraphs 2-3 are statements of fact that were not in dispute. What was in dispute was whether, in these factual circumstances, the Defendant was in breach of the Bills of Exchange Act. The Defendant made no admission on this point. This ground is also without a real chance of success.

Ground 6 (additional ground)

[37] The Claimant argues that the Court misapplied the interbank clearing principles by their application to an intra-bank transaction and that the authorities relied on by the Court were distinguishable in that they dealt with different banks and not different branches of the same bank. Further, the Banking Services Act treats a bank as a single entity operating through multiple branches.

[38] It is immaterial whether Counsel is correct that the cases, **Woodland v Fear** (1857) and **Barclays Bank v Bank of England** [1985] 1 All ER 385**,** dealt with different banks and not different branches of the same bank. Both cases expressly make the point that the obligation to honour the customer's cheque arose only if it was presented at the specific branch/drawee branch where the account was held. Other cases relied on for the same point related to different branches of the same bank.

[39] Historically, bank branches were not connected in the way technology today affords, and as such, branches were largely ignorant of information held at other branches. This Claimant's argument supposes that the Court was to give effect

to modern banking practices by its interpretation of the law. The Court expressly found that while banking practices had changed, the law had not; and any changes to be made were to be within the purview of the legislature.

[40] The submissions made on behalf of the Claimant repeat the arguments made in the application for summary judgment. Beyond expressed views, there was no support for the arguments made, either through the rules of interpretation or through decided cases for the position adopted, save for a single licensing regime and modern banking practices. There is no reasonable chance of success that the law was misapplied to the wrong factual scenario.

Ground 8

[41] The contention was that the Court inadequately analysed the issue of conditionality, and that the analysis of whether the fee made the payment conditional was superficial. It was also contended that the Court failed to consider the payee's rights.

[42] The Court did not rely on **Roberts & Co v Marsh** [1915] 1 KB 42**,** an authority presented by the Claimant. The Court said this;

> *"The Court understands this authority to be saying that where a condition is imposed, and that condition is between the drawer (the person writing the cheque) and the payee (the person receiving the money), then it shall not bind the drawee (the bank), and upon presentation of the cheque, it remains an unconditional order to pay."*

The Court therefore accepted that the case concerned the conditions between the drawer and the payee.

[43] The Court made the point that the Claimant's claim was not grounded in any breach by the bank of its statutory duties. The Court also treated with the duty of the bank, addressing the obligations of a drawee bank to the payee, the statutory duty of the bank to pay a cheque on demand upon presentation, and whether the

payee had any remedy against the drawee bank if it failed to pay. This ground too has no reasonable chance of success.

Ground 6 (original ground)

AWARD OF COSTS

[44] In the Applicant's final ground, he contended that awarding 80% costs to the Defendant was excessive, given the public interest raised by the claim. His Counsel submitted that adequate consideration was not given to the nature of the issues raised, as well as the public interest nature of the litigation.

[45] The matter of costs is one of discretion. Lately, P Williams JA in the case of **Joy Patricia Harrison v Council of the Caribbean Maritime University** [2024] JMCA App 27, reiterated the instances where the Court of Appeal will interfere with a Judge's exercise of her discretion. She stated the following in paragraph 3:

> *[3] This is a matter in which the challenge is in relation to the learned judge's exercise of her discretion, and as such, this court is mindful of its function when reviewing this exercise.* ***The basis on which this court will interfere with the exercise of a judge's discretion is well settled. An appeal against a judge's exercise of discretion will generally only succeed if it can be shown that it was based on a misunderstanding of law or evidence, or based on an inference that particular facts existed or did not exist, which can be shown to be demonstrably wrong or the decision is so aberrant that no judge, mindful of her duty to act judicially, could have reached it*** *(see* ***Hadmor Productions Ltd and others v Hamilton and others*** *[1982] 1 All ER 1042 and* ***The Attorney General of Jamaica v John Mackay*** *[2012] JMCA App 1)."*

[46] The Court heard full submissions on costs. It has not been demonstrated that there was an error of law or fact, or that the order was so egregious or out of sensibilities that it would warrant disruption. There is no reasonable chance of success on this ground.

PUBLIC INTEREST /NOVEL POINT OF LAW

[47] Throughout the submissions on behalf of the Claimant, it has been a common thread that leave to appeal should be granted, having regard to the novel area of law and issues raised by this claim, as well as the public interest considerations. This was addressed by the Court of Appeal in the case of **Contractor General v Cenitech** [2015] JMCA App 47**.** Paragraphs 42-47 address the issue. They are reproduced in full for a complete appreciation of the point.

> *"[42] The question of the appropriate criteria for the grant of leave to appeal was raised as an issue by Mrs Samuels-Brown in her submissions when she argued that the criteria for the grant of permission to appeal should be expanded. Mrs Samuels-Brown asked this court to consider the cases of* ***Smith v Cosworth*** *and* ***The Iran Nabuvat*** *which both held that in deciding whether to grant permission to appeal, an assessment as to whether the appeal had a realistic prospect of success was not the only criterion.* ***Smith v Cosworth*** *involved an application to set aside an order granting leave to appeal. Lord Woolf MR in deciding whether to grant leave to appeal said in part: "1. The court will only refuse leave if satisfied that the applicant has no realistic prospect of succeeding on the appeal. This test is not meant to be any different from that which is sometimes used, which is that the applicant has no arguable case. Why however this court has decided to adopt the former phrase is because the use of the word "realistic" makes it clear that a fanciful prospect or an unrealistic argument is not sufficient.* ***2. The court can grant the application even if it is not so satisfied. There can be many reasons for granting leave even if the court is not satisfied that the appeal has any prospect of success. For example, the issue may be one which the court considers should in the public interest be examined by this court or, to be more specific, this court may take the view that the case raises an issue where the law requires clarifying. ..." The Iran Nabuvat*** *concerns an application for review of an ex parte order granting leave to appeal. Lord Donaldson of Lymington MR in rejecting the notion that the only appropriate test was probability*

or reasonable likelihood of success stated that "no one should be turned away from the Court of Appeal if he has an arguable case if the appeal involved a novel point."

[43] Smith JA ***in Evanscourt Estate Company Limited v National Commercial Bank Jamaica Limited*** *and* ***National Commercial Bank Jamaica Limited v Evanscourt Estate Company Limited and Design Matrix Ltd*** *SCCA No 109/2007 App No 166/2007 judgment delivered 26 September 2008 seemed to have accepted the argument that the criteria for the granting of permission to appeal could be extended. At pages 9-10 of his judgment he said:* ***"The use of the word "general" to describe "rule" suggests that this rule applies barring special exceptions. Thus leave may also be granted in exceptional circumstances even though the case has no real prospect of success if there is an issue which, in the public interest, should be examined by the Court of Appeal.*** *…*

[44] The argument that by virtue of ***The Iran Nabuvat*** *the criteria for the grant of permission to appeal could be extended had been advanced by counsel in* ***Donovan Foote v Capital and Credit Merchant Bank Limited and Anor****. However, at paragraph [41] of the judgment,* ***this court ruled that the test in this case could not override the clear language of rule 1.8(9) of the CAR.***

[45] ***Smith v Cosworth****,* ***The Iran Nabuvat*** *and the ensuing practice directions, including Lord Woolfe's practice direction cited by Smith JA in* ***Evanscourt Estate Company Limited v National Commercial Bank Jamaica Limited and National Commercial Bank v Evanscourt Estate Company Limited*** *and* ***Design Matrix Ltd****,* ***were based on the English Civil Procedure Rules. Rule 52.3(6) of the English Civil Procedure Rules provides that: "Permission to appeal will only be given where- (a) the court considers that the appeal would have a real chance of success; or (b) there is some other compelling reason why the appeal should be heard..." There is no indication***

that in Evanscourt Estate Company Limited v National Commercial Bank Jamaica Limited and National Commercial Bank v Evanscourt Estate Company Limited and Design Matrix Ltd the specific provisions of the English Civil Procedure Rules had been considered by Smith JA against the provisions of the Jamaican CAR in order to recognise the distinction between both rules. Smith JA seems to have interpreted the word 'general' describing 'rule' to mean that there could be some other basis on which permission to appeal may be given. However, the rule states that permission to appeal in civil cases "will only be given" if the court considers that the appeal will have a real chance of success. That clearly indicates a stringent and limited application. It could not in my view also embrace exceptional circumstances, or issues in the public interest.

[46] When comparison is made between the English Civil Procedure Rules with respect to the criteria for permission to appeal and the CAR from this jurisdiction (stated in paragraph [41] herein), it is evident ***that the rules in the CAR do not contain any provision that permission to appeal may be granted based on 'compelling reasons' but only addressed permission being given if the appeal had a 'real chance of success'****. The fact that there are glaring differences between the English Civil Procedure Rules and the CAR means that dicta in cases which generally extend the criteria for the grant of permission to appeal cannot apply in this jurisdiction. While it is true that this application may have raised novel issues and invited public interest, it is my view that the arguments upon which these considerations have been based are more suitable for the judicial review application in the Supreme Court and should be canvassed there.*

*[47****] In light of the foregoing, there is no legal basis upon which this court can extend the criteria for an application for permission to appeal and consequently, in my view, the success of an application***

for permission to appeal is still based on whether the appeal has a real chance of success. *(Emphasis mine)"*

[48] The Claimant's entreaty to the Court that permission to appeal should be given on the basis that the claim had public interest consideration or raised novel legal issues cannot be entertained.

EXTENSION OF TIME REVISITED

[49] Having determined that the Claimant does not have a reasonable chance of succeeding in an appeal on any of the grounds argued, it is not necessary to rule on the issue of extension of time, otherwise than to say, I would have been minded to grant the extension based on the explanation that the matter raised a novel point of law, requiring the Claimant's Attorney to take time for research and consideration, and to engage King's Counsel and further, that the prejudice to the other party was likely to be minimal.

STAY OF EXECUTION

[50] The Claimant seeks that the order being appealed be stayed pending the determination of the appeal. He submits that this merely postpones the Defendant's right to recover costs and states that the Claimant, on the other hand, would be financially impaired if the stay is not granted.

[51] I do agree that the Defendant's rights would merely be postponed and that comparatively, the Applicant would face financial burden if a stay were not granted. In the circumstance where leave to appeal is being refused as having no prospect of success, this would militate against the grant of a stay. However, as the Applicant has a period of 14 days to renew his application for leave to appeal to the Court of Appeal as per the **CAR**, I am minded to grant a stay for a period of 30 days for him to exercise that option if he so wishes.

ORDER

The Court therefore orders as follows;

1. Leave to appeal refused.

2. The order made on 15 November 2024 that *80% of the Costs of this Application is awarded to the Defendant to be taxed if not sooner agreed* is stayed for a period of thirty (30) days.
3. Costs (For Submission)