



[2026] JMRC 01

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

REVENUE COURT

CLAIM NO. 2024RV00003

BETWEEN	HARDWARE & LUMBER LIMITED	APPELLANT
AND	THE COMMISSIONER OF CUSTOMS	RESPONDENT

IN OPEN COURT

Shadae Byfield, Attorney-at-Law for Appellant

Lisa White and Nicola Richards instructed by the Director of State Proceedings, Attorneys-at-law for the Respondent.

Heard: 12th February and 17th April 2026

Revenue Procedure - Revenue Court Rules 1972 - jurisdiction of the court - Rule 12 - amendment to statement of case - Considerations on applications to amend statements of case - Rule 32 - Considerations on applications to extend time - Application to extend time to file documents giving rise to appeal and submissions - Rule 40 - applicability of CPR 26.7(1) and CPR sanctioning regime

C. BARNABY, J

INTRODUCTION

[1] The Appellant to whom I will refer as “the Taxpayer” filed a Notice of Appeal on 11th October 2024 pursuant to rule 62.3 of the CPR, a default which was

regularised by order made on 12th November 2024. Consequent on that regularisation and as required by the *Revenue Court Rules, 1972 (the RCR)*, the Respondent who I shall call “the Revenue” was ordered to file certified copies of documents giving rise to the appeal, and its Statement of Case on or before 31st January 2025. A case management conference was scheduled for 25th March 2025.

- [2] At the case management conference the hearing of the appeal was scheduled for the 2025 Michaelmas Term and a pre-trial/appeal review fixed for 28th July 2025. Orders were made for the filing and service of affidavit evidence and an agreed bundle of documents.
- [3] At the pre-trial/appeal review, the period for hearing of the appeal was varied to the Hilary Term of 2026 or other period determined by the court on settlement of affidavit evidence. Time for the filing and service of affidavit evidence was also extended to 11th August 2025, and responses by 5th September 2025. Time for the filing and service of an agreed bundle of documents was also extended to 30th September 2025. The parties were ordered to file and exchange their written submissions and authorities on or before 30th October 2025. The pre-trial/appeal review was adjourned in consequence.
- [4] On 30th September 2025, the Revenue filed an *Amended Statement of Case*, to which the Taxpayer filed a *Reply to Amended Statement of Case filed by Respondent in Appeal pursuant to Rule 12(1)(a) of the Revenue Court Rules* on 13th October 2025.
- [5] By the pre-trial/appeal review on 25th November 2025, the Taxpayer was compliant with the orders of the court and was in a position to proceed with the hearing of the appeal. The Revenue was not. Among other things, all the documents giving rise to the appeal had still not been filed and submissions were outstanding. The pre-trial/appeal review was further adjourned to 12th February 2026 in consequence.

- [6] By way of *Summons* filed 28th November 2025, the Revenue sought an extension of the time within which to file submissions and documents giving rise to the appeal; and asked that the *Amended Statement of Case* filed 30th September 2025 and served, be permitted to stand. On 8th December 2025 the Taxpayer filed the *Application to Disallow the Amended Statement of Case of the Respondent and not grant a further extension of time to file and serve documents giving rise to the appeal pursuant to rule 12(3) and rule 30 of the Revenue Court Rules 1972*.
- [7] The applications came on for hearing on 12th February 2026 when decisions on them were reserved. Leave was also given to the Taxpayer to file and serve written responses to authorities referenced by the Revenue in submissions, and to the Revenue to file and serve written reply to any authorities so referenced.
- [8] For the reasons set out below, I find that the application of the Revenue should be allowed and in consequence thereof, the orders sought on the application of the Taxpayer should be refused.

Amendments to Statement of Case

- [9] Pursuant to rule 12 (1) of the *RCR*, “[a] *Statement of Case or Reply may be amended and filed:- (a) without leave, at any time before Notice of Hearing has been given; (b) at any time by leave of the Court or Judge.*”
- [10] A “*Notice of Hearing*” is defined at rule 2 of the *RCR* to mean a notice under rule 14. Rule 14 provides that

subject to Rules 15 and 16 [which are inapplicable in the circumstances of this case] a Notice following as closely as may be Form E appointing the time and place of hearing of the Appeal shall be given by the Registrar to the parties and to their attorneys-at-law, if any, at any time after the expiration of three weeks from the last day allowed for the filing of a Reply under Rule 11.

- [11] While a period for the hearing of the appeal had been fixed by the court, no time and place having been notified, a *Notice of Hearing* as contemplated by the *RCR* was not given. In these circumstances the Revenue was permitted to file and serve an amended statement of case pursuant to rule 12(1)(a), to which the Taxpayer responded. There is therefore no basis upon which I could properly disallow the *Amended Statement of Case* as prayed by the Taxpayer on its application.
- [12] In any event, the application to disallow the *Amended Statement of Case* would have been out of time, and there is no application by the Taxpayer for an extension of the time. Rule 12(3) of the *RCR* requires such an application to be made within fourteen (14) days after the service of an amended statement of case. Further, while power is reserved to me at rule 32 of the *RCR* to depart from the rules “*where required in the interest of Justice*”, the Taxpayer having filed and served a reply to the *Amended Statement of Case*, a departure from rule 12.3 is unjustifiable.
- [13] With the exception of one contention which I consider worthy of preliminary determination ahead of the hearing of the substantive appeal, the Revenue is permitted to defend the appeal on the basis of what is contained in the Amended Statement of Case.

Preliminary Issue

- [14] The Revenue contends that proceedings in this court being by way of rehearing, the Taxpayer should be constrained only to the grounds of appeal which were pursued at the Revenue Appeals Division (the RAD) from which this appeal comes. I do not consider this an appropriate case to restrain the Taxpayer.
- [15] Appeals to this court are not merely by way of rehearing. The court exercises an original *de novo* jurisdiction save that “13. [s]ubject to Rule 12 it shall not be competent for the Appellant or the Respondent to rely upon any facts not set out

in the Notice of Appeal, Statement of Case or Reply as the case may be.” Accordingly, appeals to this court may provide recourse for procedural and other deficiencies in proceedings before the RAD (successor to the Commissioner of Tax Appeals). In these regards, one may see **Chang v the Commissioner of Tax Appeals** [2016] JMCA Civ 16 where the jurisdiction of the court is addressed by reference to a number of earlier authorities.

- [16] Pursuant to section 14(3) of the **Revenue Appeals Division Act**, appeals to this court are limited to the grounds stated in the Notice of Appeal submitted to the RAD. A discretion to permit amendment of those grounds is also given to the court. While no application in that regard has been made by the Taxpayer, having regard to the circumstances of this case, I will exercise the discretion reserved to me to permit it to proceed with the appeal on the grounds set out in the *Notice of Appeal*, with which the Revenue has substantively joined issue. To do otherwise would be inimical to the interests of justice. I arrive at this conclusion on consideration of the fact that the *Notice of Appeal* was filed on 11th October 2024 and served on the Revenue, and ordered to proceed as a notice of appeal under the RCR on 12th November 2024. Issue has been joined with the grounds set out therein and on that basis the exchange of evidence and submissions and authorities were ordered. Evidence has been exchanged and though late, submissions have also been filed and served.
- [17] The enquiry into the applications relative to the *Amended Statement of Case* ends there but to the extent that it is capable to offer some guidance, I wish to briefly address the approach to be taken by the court in exercise of the power given to it by rule 12.1(b) of the *RCR* to permit amendments.
- [18] The matters which the court is to consider in exercise of the discretion to allow amendment are not stated in the *RCR*. Rule 40 nevertheless prescribes that “[e]xcept as otherwise provided in the Act or in these Rules or in any enactment, the practice and procedure of the Supreme Court shall, so far as applicable, be followed.”

[19] Rule 20.4(2) of the *Civil Procedure Rules, 2002* (“*the CPR*”) also confers a discretion to permit amendments to statements of case without any indication of the principles to be applied by the court in its exercise. The court is therefore assisted by the wealth of judicial authorities on the subject from which the following principles may be gleaned.¹

- (a) Regard is to be had to the overriding objective at CPR rule 1.1(2) of dealing with cases justly, which is the overarching consideration.
- (b) In determining the question, the court is required to consider:
 - (i) The stage at which the case has reached at the time the application for permission is being sought;
 - (ii) whether there is arguable factual basis for the proposed amendment;
 - (iii) whether the proposed amendment has a prospect of success where the application to amend is being made late in the day;
 - (iv) whether the amendment is sought in good faith, it being impermissible for a party to raise by amendment allegations which are unsupported by evidence and which constitute backtracking on allegations of fact;
 - (v) that where it would enable the real matters in controversy to be determined, the court should permit an amendment;
 - (vi) the effect of the proposed amendment on the opposing party;
 - (vii) the allocation of court resources; and
 - (viii) the extent to which costs would be an adequate remedy.

¹ See **Mark Epstein v National Housing Trust and Marksman Limited** [2021] JMCA App 12, [33]

[20] I can see no reason that these considerations should not apply to the exercise of the discretion to permit amendments conferred by rule 12.1(1) of the *RCR*.

Extension of Time

[21] The Revenue also asks for an extension of the time within which to file the documents giving rise to the appeal and its submissions.

[22] Rule 32 of the *RCR* empowers the Revenue Court or Judge to grant extensions of time and indeed, departure from the rules where the interest of justice requires. The power is stated thus.

The Court or Judge may on the application of any party by way of summons enlarge or abridge the time for doing any act or taking any proceedings under these rules or under any other rules of procedure governing the exercise of the jurisdiction of the Court or Judge upon such terms as it may think fit; and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed, or the Court or Judge may direct a departure from the rules in any other way, where this is required in the interest of Justice.

Documents giving rise to the appeal

[23] Pursuant to rule 9 of the *RCR*, “[t]he Respondent shall within thirty days of the service upon the Respondent of the Notice of appeal file two certified copies of the documents giving rise to the appeal.” It is my judgment that the use of the word “shall” here is mandatory, and that rule imposes a duty or obligation on a respondent to an appeal, which is to be discharged early in the proceedings, that is, at the same time as the filing of a statement of case. The imposition of a duty is not surprising considering the original *de novo* jurisdiction which the court exercises on appeals to it.

- [24] While the power to enlarge the time for doing any act under the rules is reserved to the court, the matters for consideration have not been prescribed. Rule 40 of the *RCR*, which permits the practice and procedure of the Supreme Court to be followed, as far as applicable, comes in aid.
- [25] There are a wealth of authorities which address the considerations for a court confronted with an application to extend time for compliance even if the time for compliance has passed. In that regard, the Revenue relies on the **Attorney General of Jamaica and Western Regional Health Authority v Rashaka Brooks Jnr (a Minor) by Rashaka Brooks Snr (his father and next friend)** [2013] JMCA Civ 16. In that case it was considered that applicants should be able to secure an extension of time where they are able to satisfy the court that the application is being made within a reasonable time; there are good reasons for the delay, with the dominant principle being that justice has to be done; there is a good reason why the extension should be granted; and there would be no undue prejudice to the other party. Although said in the context of the filing of pleadings via a defence, the considerations apply otherwise and can properly be engaged on an application to abridge time pursuant to rule 32 of the *RCC*. I will address each consideration in turn.
- [26] Consequent on the order regularising the *Notice of Appeal* and consistent with the period allowed under the *RCR*, the Revenue was ordered to file copies of the documents giving rise to the appeal on or before 31st January 2025. The application for extension of time was filed on 28th November 2025, some ten (10) months after the date for compliance with that order. Why it took so long to make the application is unexplained. When this is considered together with the fact that the parties were before the court on three occasions within those many months, the first being 24th March 2025 and the last being 25th November 2025, the application cannot be considered to have been promptly made. However, lack of promptitude in making an application does not generally disentitle an applicant to an extension of time.

[27] As required, the Revenue offers an explanation for the delay in filing the documents. The evidence is that the bundles - which I take to mean the bundles of documents giving rise to the appeal - were assembled but required reassembly due to certain errors, and that it took some time to make needed corrections and/or amendments before they could be filed. There is no indication as to what the errors were, when the bundles were assembled, the date of the discovery of the errors or the commencement and nature of the efforts made to reassemble the documents. I cannot find that there was good reason for the delay in these circumstances. The authorities say that the absence of a good reason for the delay is not fatal to the application however, because although the applicant's conduct has been tardy, the applicant nevertheless seeks the exercise of the court's discretion.

[28] The next consideration for the court is whether there is a good reason for granting the extension. The Revenue's position is that the appeal cannot proceed without the documents giving rise to the appeal being filed. The Taxpayer contends that such a view is contrary to rules 20, 30 and 32 of the *RCR*.

[29] Rule 20 provides that "*if the Respondent fails to appear when the Appeal is called on for hearing, the Court may proceed to hear the Appeal ex parte or may make such order as it thinks just.*" The rule is inapplicable in the circumstances of this case and does not assist the Taxpayer. The concern is duty to file documents giving rise to the appeal and not the absence of the Revenue on the appeal being called upon for hearing. A like conclusion is reached on the invocation of rule 30 which is concerned with the powers exercisable by the court in determining appeals before it. Its terms are that

The Court shall have power to draw inferences of fact and to give any decision and make any order which ought to have been given or made, and to make such further or other order as the case may require, including the power to refer the matter back to the Respondent for consideration.

- [30]** In addition to the discretion to grant extensions or abridgements of time, rule 32 empowers the court to depart from the *RCR* where the interest of justice requires. Having regard to the rationale for the imposition of a duty on a respondent to file copies of the documents giving rise to the appeal, that is, to put the court in a position to exercise its original *de novo* jurisdiction, the Taxpayer is not helped by rule 32. The very rationale provides good reason for granting an extension of the time within which to file the certified copies of the documents.
- [31]** Prejudice to the Taxpayer is also a relevant consideration. It is the Revenue's position that there would be no prejudice which could not be adequately compensated by costs, if the application is granted. On the other hand, the Revenue says that if the application is refused, it would be prejudiced, in that the court would be deprived of the documents giving rise to the appeal.
- [32]** Both parties have filed and exchanged pleadings and evidence on which they intend to rely, as well as submissions relative to their respective cases even in the absence of copies of the documents giving rise to the appeal. In the circumstances the prejudice to self of which the Revenue speaks is not evident. The copy documents must nevertheless be available to the court to enable the proper discharge of its jurisdiction.
- [33]** The Taxpayer disagrees with the Revenue that it would suffer no prejudice which could not be adequately remedied by an appropriate order for costs. In that respect reliance is placed on the fact that:
- (i) the Taxpayer was required to put up a certain amount of money as a bond held by the Revenue as condition of the appeal and while those monies are so held it is out of pocket in relation to potential investment income;

- (ii) the items the subject of appeal are items imported for the Taxpayer's trade and continue to be assessed at a higher rate of duty while the appeal is unresolved, imposing additional costs upon it;
- (iii) the uncertainty in the appropriate treatment of the items in dispute has disrupted the Taxpayer's business and has impacted its ability to plan because the level of the customs duty affects the cost of goods sold, pricing and competitiveness in the market; and
- (iv) the Taxpayer's inability to charge less for its supplies earlier may lead customers to choose alternatives which may result in revenue loss.

[34] On this undisputed evidence I find that there is serious and undue prejudice to the Taxpayer where the hearing of the appeal is delayed on account of the Revenue's failure to timeously comply with the order to file copies of the documents giving rise to the appeal. Prejudice of the kind is not adequately remediated by an order for costs. A hearing and disposition of the appeal which settles the matters in controversy and provides certainty in the shortest possible time is what is demanded.

[35] While I am cognizant that a duty is imposed upon the Revenue pursuant to *RCR* 9 which it should be permitted to discharge, it cannot be that the hearing and determination of appeal should be held hostage by default in performance. The documents to be filed are by their very nature those which the Revenue ought readily to have in possession. Further, when the entire scheme of the *RCR* is considered, it is clear that its framers never contemplated a delay of this kind in filing the documents giving rise to the appeal. While no penalty for breach of the duty is prescribed in the *RCR*, rule 40 which permits the court to follow the practice and procedure of the Supreme Court, so far as applicable, is capable of giving assistance.

- [36] Pursuant to rule 26.7(1) of the CPR, “*where the court makes an order or gives directions the court must whenever practicable also specify the consequences of failure to comply.*” It is my view that this practice and the regime for sanctions under the CPR are capable of being applied in the Revenue Court where appropriate.
- [37] At the time of delivery of this decision some fifteen (15) months would have passed since the Revenue was required to file the documents giving rise to the appeal. Affidavit evidence, including any in reply were due to be filed and served on or before 5th September 2025, and 30th October 2025 was limited for the filing and exchange of written submissions and authorities. The Taxpayer has been compliant and ready to proceed with the prosecution of its appeal since 5th November 2025. In consideration of these matters and the fact that two periods for hearing the appeal have been missed, this would have been an appropriate case to extend the time to file the documents giving rise to the appeal at pain of serious sanction. I had in mind the striking out of the Revenue’s Statement of Case and entering judgment for the Taxpayer on the appeal. However, I was advised during delivery of these reasons for decision that the documents have now been filed and served to enable the hearing of the appeal.

Written Submissions

- [38] Written submissions and authorities should have been filed on 30th October 2025. *Submissions for the Respondent* were filed and served on 25th November 2025. In the grand scheme of things the delay was not inordinate and on that basis I find that the application was made within a reasonable time.
- [39] On enquiry into whether there is good reason for the delay in filing and serving the submissions, I observe that all that is indicated on the evidence presented in support of the *Summons* is that once the “*bundles*” were corrected, the submissions were settled and filed. It accordingly appears to me that the same reason proffered for the failure to comply with the order for filing of documents

giving rise to the appeal are relied upon by the Revenue for the delay in filing and serving submissions. For reasons previously indicated, this is not accepted as a good reason for the delay. The dominant principle being the justice of the case, however, this is not fatal to the application.

[40] The filing and service of written submissions undoubtedly saves time for the parties and the court and is capable of providing meaningful assistance in the timely resolution of disputes. There is accordingly good reason to allow an extension of time. The submissions have been filed and served ahead of the 2026 Hilary Term, to which the Taxpayer has filed a response to authorities. In the circumstances I can see no undue prejudice in allowing the extension of time.

ORDER:

1. The appeal is fixed for two (2) days on 8th and 9th June 2026 before a single judge in open court.
2. The *Amended Statement of Case* filed on 30th September 2025 and *Reply to Amended Statement of Case filed by Respondent in Appeal pursuant to Rule 12(1)(a) of the Revenue Court Rules* filed on 13th October 2025 and served, stand as duly filed and served.
3. The Appellant is permitted to pursue its appeal to conclusion on the grounds stated in the Notice of Appeal filed 11th October 2024.
4. Time is extended for the filing and service of submissions to enable the *Submissions for the Respondent* filed on 25th November 2025 and served, to stand as duly filed and served.
5. The *Appellant's Submission in Response to Authorities* filed on 27th February 2026 and served, stands as duly filed and served.

6. Time is extended for the filing and service of the documents giving rise to the appeal, to enable the documents filed, and served on 9th December 2025, to stand as duly filed and served.
7. If not already done, the parties are to file a bundle of the authorities referenced in their filed submissions on or before 24th April 2026.
8. No order as to costs for the applications.
9. The Attorney-at-law for the Respondent to the appeal is to prepare, file and serve this order.

Carole S. Barnaby

Puisne Judge and

Judge of the Revenue Court