



[2019] JMSC Civ 188

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

**CIVIL DIVISION**

**CLAIM NO. 2018HCV00517**

<b>BETWEEN</b>	<b>ANTHEA HYNES HENDERSON</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>HERNAL LINTON HAMILTON</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

**Miss Joan Thomas instructed by Walter G Melbourne & Associates for the Claimant**

**Mr. Jeffrey Mordecai for the Defendant**

**Heard: May 16 and July 11, 2019**

**Civil Procedure – Claim Form expired before service upon the Defendant – Life of the Claim Form not extended pursuant to CPR Part 8 – Whether the Court can extend the validity of the Claim Form pursuant to rule 26 1(2)(c) of the Civil Procedure Rule (CPR) – Does rule 3.5(1) of the CPR as amended in 2011 apply to the service and filing of a Claim Form and Particulars of Claim during the long vacation period.**

**MASTER P. MASON**

### **Background Facts**

**[1]** On February 10, 2012 Anthea Hynes Henderson the Claimant met in an accident which resulted in her sustaining injuries. The Claimant filed a Claim Form and Particulars of Claim on February 8 2018, a mere 2 days prior to the expiration of the cause of action for a claim of damages for negligence.

- [2] The Claim Form wrongly stated the lifetime of the claim to be 12 months instead of 6 months, contrary to the rule 8.14 of the CPR 2002 as amended, which states that:

*“A Claim Form must be served within six (6) months after the date the claim was issued or the Claim Form ceases to be valid”.*

- [3] The Claimant admitted to erroneously stating the lifetime of the Claim Form and submits in her Skeleton Submissions dated June 4, 2019 that the Court should extend the validity of the Claim Form pursuant to rule 26.1(2)(c) of the CPR which empowers the Court to extend the time to comply with any rule, even where the application is made after the time for compliance has passed.
- [4] The Defendant, on the other hand, in his skeleton argument dated May 10, 2019 stated that the Claim Form served on the Defendant on August 27, 2018 is invalid because it had already expired on August 8, 2018 without the Claimant requesting and obtaining an order from the Court to extend the validity of the Claim Form.

### **The Legal Issues**

- (1) Whether the Claim Form and Particulars of Claim filed on February 8, 2018 and served on August 27, 2018 were validly served pursuant to rule 8.14 of the CPR.
- (2) Whether time had continued to run in the long vacation in respect to the Claim Form and Particulars of Claim served on August 27, 2018.
- (3) Whether the Court could properly extend the time in relation to the filing of the Claim Form.

## **Law and Analysis**

### **Issue 1**

- [5]** Was the Claim Form filed on February 8, 2018 and served on August 27, 2018 validly served on the Defendant?

Pursuant to rule 8.14(1) of the CPR:

*“The general rule is that a Claim Form must be served within 6 months after the date when the claim was issued or the Claim Form ceases to be valid.”*

Rule 8.15(1) of the CPR provides that:

*“The Claimant may apply for an Order extending the period within which the Claim Form may be served.”*

Rule 8.15(3) of the CPR provides that:

*An application under paragraph (1)*

- (a) *Must be made within the period*
- (i) For serving the Claim Form specified by rule 8.14; or
  - (ii) Of any subsequent extension permitted by the Court.

- [6]** The language of rules 8.14 and 8.15 of the CPR is clear and unambiguous. The Claim Form in the instant case should have been served on the Defendant within the 6 month period as provided in rule 8.15(1) above or during the time within which it was extended by the Court as provided in rule 8.15(3)(a)i and ii. However, the Claim Form in the instant case was not served within the prescribed time frame, nor was it extended by the Court for a period of 6 months before service on the Defendant on August 27, 2018 and this resulted in the service being invalid and of no legal effect.

### **Issue 2**

- [7] Did time continue to run in the long vacation in respect of service of the Claim Form and Particulars of Claim?

Rule 3.5(1) of the CPR as amended in 2011 provides as follows:

*“During the long vacation, the time prescribed for filing and serving any statement of case other than the Claim Form or The Particulars of Claim contained in or served with the Claim Form does not run.”*

- [8] It is clear, that a Claim Form and Particulars of Claim are excluded from the application of rule 3.5(1) accordingly, time for serving a Claim Form and Particulars of Claim as prescribed by rule 8.14 of the CPR is 6 months from the date of filing and hence time would continue to run during the long vacation.

- [9] In the instant case the Claimant served the Claim Form and Particulars of Claim during the long vacation on August 27, 2018. She contends that the Claim Form was not invalid when served on the Defendant because time does not run during the long vacation.

- [10] The case of **Bailey-Latibeaudiere v Minister of Finance and Planning and the Public Service et al** [2015] JMCA App 7 is instructive on that point. Phillips JA in agreement with Morrison JA (as he then was) stated that:

*“the rule is very clear and it is necessary to give it its natural and ordinary meaning in that time runs in the long vacation for filing a Fixed Date Claim Form, which to my mind, also applies to a Claim Form and Particulars of Claim”.*

- [11] The Claimant therefore is incorrect in failing to acknowledge the 2011 Amendment of rule 3.5(1) of the CPR which specifically states that time continues to run during the long vacation for filing and serving a Claim Form and Particulars of Claim.

### Issue 3

- [12] Can the Court extend the validity of the Claim Form pursuant to rule 26.1(2)(c) of the CPR?

Rule 26.1(2)(c) of the CPR states as follows:

*“The Court may shorten the time for compliance with any rule, practice direction, order or direction of the Court even if the application for an extension is made after the time for compliance has passed.”*

- [13] The Claimant did not make an application pursuant to rule 8.15 of the CPR to extend the life of the Claim Form, she however, argues that the court should exercise its power under rule 26.1(2) (c) of the CPR to extend the time despite the application for the extension being made after the time for compliance has passed.

- [14] The case of **DPP v Leaford Washington Norman** [2017] JMCA Civ 15 dealt with a similar issue as in the instant case. Hence the DPP (Appellant) sought to challenge Sykes J’s (as he then was) refusal to order that service effected on Leaford Washington Norman (the Respondent) was good service despite not being published in accordance with a court order. The DPP argued that Sykes J should have exercised his power under rule 26.9 of the CPR and correct the procedural irregularity in service.

- [15] Straw J A (Ag.) in the case of **Director of Public Prosecutions v Leaford Washington Norman [Supra]** relied on the case of **Peters (Winston v The Attorney General and another** [2001] 63 WIR 244 which provide factors that may be used as a guide to Judges when deciding whether to exercise these powers conferred by the C.P.R.

*“Certainly Sykes J had a discretion as to whether to correct an irregularity in service in accordance with rule 26.9 of the CPR. In the exercise of that discretion, he directed himself having regard to the factors to be considered when the court formulates its own criteria for determining procedural rules, in the absence of rules and regulations governing a particular enactment, as stated at pages 306-307;*

- (a) *the significance of the enactment as a protection of individual rights;*

- (b) *the relative value that is attached to the rights that may be adversely affected by the decision;*
- (c) *the importance of the procedural requirement in the overall administrative scheme established by the statute;*
- (d) *the particular circumstances of the case in hand; and*
- (e) *whether the breach of the terms of the Act is trivial in nature, or if no substantial prejudice has been suffered by those for whose benefit the requirements were introduced, or if serious public inconvenience would be caused by holding them to be mandatory, or if the court is for any reason disinclined to interfere with the act or decision that is impugned.”*

This case also highlighted that it was indeed permissible for courts to formulate their own criteria for determining whether procedural rules are to be regarded as mandatory, disobedience of which would render void or voidable what has been done, or as directory, disobedience of which will be treated as an irregularity not affecting validity.

**[16]** Straw JA (Ag.) went on to state that Sykes J’s decision to refuse to grant the orders sought by the Appellant was not demonstrably wrong. He clearly did not consider the breach to be of such a trivial nature, so as to utilise the powers granted by virtue of rule 26.9 of the C.P.R. to correct that error.

**[17]** Accordingly, in applying the aforementioned reasoning to this case, I am of the view that the powers conferred upon a judge under rule 26.1(2)(c) are not mandatory. The court has a duty to extend the life of a Claim Form pursuant to rules 8.14 and 8.15 of the CPR making compliance in this case mandatory and not a discretionary act.

**[18]** Therefore, the Claimant’s request for an extension of time is refused as the Claimant’s breach of rule 8.14 and 8.15 of the CPR renders the claim invalid.

**[19]** I therefore make the following orders:

- (1) The Claim Form filed on February 8, 2018 and served on the Defendant on August 27, 2018 is invalid.
- (2) The Claim form expired on August 8, 2018 and had not been served on the Defendant prior to its expiration.
- (3) The Court has no jurisdiction to hear this matter as the Claim Form had not been served on the Defendant prior to its expiration.
- (4) There is no need to file a Defence.
- (5) Costs to the Defendant to be agreed if not taxed.
- (6) The Applicant/Defendant's attorney-at-law to prepare, file and serve the Formal Order.