



[2026] JMSC Civ 10

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2018HCV00308

BETWEEN	CRAFTON JENNINGS	CLAIMANT
AND	RUSSELL WELSH	FIRST DEFENDANT
AND	RUPERT WELSH	SECOND DEFENDANT

IN CHAMBERS

Mr Abe Dabdoub and Mr Kevin Page instructed by Page & Haisley for the Claimant

Ms Bobbie-Ann Malcolm for the Defendants

HEARD March 12, 2025 & January 29, 2026

JURISDICTION OF THE COURT – VALIDITY OF CLAIM FORM – EFFECT OF APPLICATION – TWELVE MONTH EXTENSION IN SINGLE APPLICATION – CLAIM FORM DECLARED NULLITY

WINT-BLAIR J

Introduction

[1] This application concerns procedural objections raised by the defendants regarding the validity of the service of the Claim Form resulting from the extension of time granted by Master Mott-Tulloch-Reid (as she then was) on February 11, 2019. The claim arises out of a motor vehicle collision alleged to have occurred on January 31, 2012. The substantive claim is not before this Court. The issues for determination relate solely to compliance with the Civil Procedure Rules (“CPR”),

the validity of the extensions granted, the propriety of service, and whether the defendants are entitled at this stage to dispute the jurisdiction of the Court.

Procedural History

- [2]** On January 25, 2018, the claimant filed the Claim Form and Particulars of Claim, which would have expired on July 24, 2018.

- [3]** On June 22, 2018, the claimant filed an application seeking various procedural orders and relief regarding an extension of time for service of the Claim Form supported by affidavit evidence (“the original application”). The hearing of that application was scheduled for December 17, 2018.

- [4]** On the same day of the hearing, December 17, 2018, the claimant filed an Amended Notice of Application (“the amended application”) seeking, inter alia, orders extending the time for service of the Claim Form; permitting service by advertisement on the first defendant; dispensing with personal service on the second defendant; and permitting service on the second defendant through his insurer, British Caribbean Insurance Company Limited. The hearing was adjourned to February 11, 2019, for the applicant to file amended documents.

- [5]** On February 11, 2019, the amended application filed on December 17, 2018, was heard by the learned Master, who ordered that the validity of the Claim Form filed on January 25, 2018, be extended from July 23, 2019, to January 24, 2019; directed that service of the Claim Form and related documents on the second defendant be effected at the offices of British Caribbean Insurance Company Limited; directed that service on the first defendant be effected by publication in the Daily Gleaner; fixed timelines for the filing of the acknowledgment of service and the filing and service of defences; and ordered that costs be costs in the claim. Pursuant to those orders, the claimant effected service on British Caribbean Insurance Company Limited within the extended period granted by the Court.

- [6] On April 2, 2019, the defendants, represented by counsel instructed by British Caribbean Insurance Company Limited, filed an Acknowledgement of Service.
- [7] On April 30, 2019, the second defendant filed a Defence. At that time, no application was made disputing the jurisdiction of the Court or challenging service of the Claim Form.
- [8] The matter subsequently proceeded through case management and was referred to mediation on December 10, 2020. Mediation was conducted on January 12, 2021, but was unsuccessful.
- [9] On June 22, 2023, the claimant filed a further Notice of Application for Court Orders, which prompted the procedural objections now under consideration.
- [10] On August 9, 2024, the second defendant filed a Notice of Application for Court Orders challenging the Court's jurisdiction to try the Claim and seeking to strike out the orders made on February 11, 2019. An extension of time for the filing of the application was also sought.

Submissions

- [11] The claimant submitted that the court had the jurisdiction to correct or cure the defect in the order made to give effect to its intention, which was to give life to and maintain the validity of the claim form for service, and to enable the claimant to pursue the claim. The claimant had complied with rule 8.15, and courts exist to do justice between the parties.
- [12] The second defendant submitted that the claim was a nullity and, as such, they were entitled to challenge the court's jurisdiction to try it. The application was filed out of time, however the court could extend time under rule 26.9. The filing of an acknowledgement of service did not operate as a waiver in these circumstances.
- [13] The CPR states that, for an extension to be granted, the application must be filed before the expiration of the claim form or any subsequent extension. At the hearing

date on February 11, 2019, the claim form had expired on January 23, 2019. There was no proper application to further extend the life of the claim form before the court.

[14] In addition, there was no affidavit evidence to show what reasonable steps were taken to serve the defendants. The second extension of time ought not to have been granted, as the amended application and the original application are to be treated as one application. Therefore, the claimant could only receive one extension.

[15] It was contended that in the case at bar, the claimant did not file another application for extension and support that application with an affidavit of urgency or any other affidavit. The oral application was made after the claim form had expired, and the claimant did not satisfy the court that all reasonable steps had been taken to serve the claim form. Furthermore, the documents served on the second defendant did not bear the certificate by the claimant or his counsel showing the period for which the validity of the claim form had been extended. The claimants failed to comply with rule 8.15(5) and, as a result, the second extension is null and void. Finally, the statute of limitations has long expired, as has the time for service on the claimant.

Issues

[16] The issues for determination are:

1. Was there compliance by the claimant with rule 8.15 of the CPR.
2. The issue raised by rule 8.15(2).
3. Whether the defendants are entitled to dispute the jurisdiction of the Court.

Discussion

[17] This court is not sitting in appeal over the earlier order of the learned Master. The issue is whether, under the CPR, there was jurisdiction to extend the validity of the claim form at the time the orders were made. The power to extend arises only

while the claim form remains extant. Once the claim form has expired, there is nothing upon which the court's discretion may operate. Any order purporting to extend validity after expiry of the claim form cannot, as a matter of law, avail the claimant.

The Applicable Rules

[18] The Court has considered the provisions of rules 8.14 and 8.15 governing the validity and extension of claim forms, rule 9.6 governing challenges to jurisdiction, and rule 26.9, which confers a general power on the Court to rectify procedural errors.

Was there compliance by the claimant with Rule 8.15 of the CPR

[19] Rule 8.14 of the CPR states that the claim form must be served within 6 months of filing, and if this period passes, the claim becomes invalid. Rule 8.15 outlines the procedure for requesting an extension of time for service. The order for extension takes effect on or before the original expiry date of the claim form. If it takes effect after the claim has expired, the claim is considered a nullity.

[20] The collision subject of the claim occurred on January 31, 2012. The claim form was filed on January 25, 2018, just six days before the statute of limitations would have expired. The claim form would have expired on July 24, 2018. The original application to extend the life of the claim form was filed on June 22, 2018. It was supported by an affidavit and was filed while the claim form was still valid.

[21] The claimant complied with Rule 8.15(3) of the CPR, which sets out the period for making applications for extensions of the validity of claim forms. It provides, in part, that such applications must be made while the claim form is still valid, or has had its validity extended.

[22] The rule states:

“(3) An application [to extend the period within which the claim form may be served] –

(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, and

(b) may be made without notice but must be supported by evidence on affidavit.”

[23] The original application to extend the validity of the claim form was made while the claim form was still valid. However, that is not the end of the matter. The claimant filed an amended application.

The issue raised by rule 8.15(2)

[24] The amended application to extend the validity of the claim form raises the issue governed by rule 8.15(2). The hearing of the original application was adjourned by the order of Master P. Mason, who ordered that the claimant file an amended application to be heard on February 11, 2019. By this hearing date, the claim form had expired on January 23, 2019.

[25] Counsel for the claimant had filed the amended application on December 17, 2018, and in it, sought an “order that the time within which the Claim Form should be served [sic] for a further period of six months.” As well as an “order that the time within which the Claim Form should be served[sic] extended for a further period of six months.”

[26] Rule 8.15(2) permits the court to extend the period of validity by only six months in any one application. The relevant part of the rule states:

“(2) The period by which the time for serving the claim form is extended may not be longer than 6 months on any one application”

[27] Even though the original application had been made before the life of the claim form would have come to an end, it has to be treated as one with the amended application.

[28] The application was heard on February 11, 2019. The learned Master in the exercise of her discretion under the CPR made order number one, which extended the validity of the claim form filed on January 25, 2018, from July 23, 2018, to January 24, 2019.

[29] Order number two read:

“On the claimant’s oral application for a further extension of the validity of the said Claim Form, the validity of the Claim Form is further extended from January 23, 2019, to July 24, 2019.”

[30] An affidavit did not support the oral application. The amended application resulted in a 12-month extension in a single application. The learned Master could properly have granted only one extension on that amended application. Therefore, the first order extending the life of the claim form to January 24, 2019, was the only valid extension.

[31] The application of rule 8.15(2) to the facts means that the extension on the oral application from January 23, 2019, to July 24, 2019, was invalid as being in breach of that rule. Since one extension of time had already been granted, then another application for further extension had to have been made within the period of extension permitted by the court. In other words, the claimant had to have applied for a further extension after December 17, 2018 and before January 23, 2019.

[32] No further applications were made for an extension of the validity of the claim form. The order to extend must relate, return to and become effective from the period before the expiry of the claim form, as the court cannot extend its validity from a period after the claim form has already expired. Based on the foregoing, I hold that the claimant did not comply with rule 8.15(2).

Whether the Defendants are entitled to dispute the jurisdiction of the Court

- [33] In **Rayan Hunter v Shantell Richards and Stephanie Richards**¹, McDonald-Bishop, JA (as she then was), discussed the issue of the setting aside of service of claim forms and particulars of claim on the respondents. The learned judge discussed the procedure under the CPR for disputing the Supreme Court's jurisdiction or arguing that the court should not exercise its jurisdiction over a claim due to a breach of a procedural rule.
- [34] The learned judge described the core question as whether the appellant's filing of acknowledgements of service in respect of the claims precluded him from raising the point that service on him should be set aside on the ground that it was irregular or null and void.
- [35] In **Rayan Hunter**, one of the points raised by the respondents, in urging the court to dismiss the appeal, is that the appellant failed to challenge the court's jurisdiction within the time limited by rule 9.6(3), within the period for filing the defence. That same point has been raised in the instant application by the claimant, namely that the defendants did not contest this court's jurisdiction, nor did they indicate any intention to dispute service on them.
- [36] In the case at bar, the second defendant filed an acknowledgement of service without indicating that the issue of jurisdiction was live. The second defendant defended the claim and, after being served, filed an acknowledgement of service and defence pursuant to the learned Master's orders. The second defendant, thereafter, took steps to prosecute the matter. It appears that the judge raised the issue of jurisdiction at a case management conference on May 3, 2024, and the second defendant filed an application on August 9, 2024, disputing the jurisdiction of the court in light of that.

¹ [2020] JMCA Civ 17

- [37] In a Notice of Application for Court Orders filed on August 9, 2024, the second defendant and his insurer sought a declaration that the court lacked jurisdiction to try the claim, that service on the insurer be set aside (although the words set aside are omitted from the notice that is what was meant and was argued) and that the claim form and particulars of claim be struck out, in addition to an extension of time for the filing of the application.
- [38] The application was grounded in rules 9.6 and 11.16 and based on the orders made on February 11, 2019. The second defendant argued that, when the claimant made the oral application, unsupported by affidavit evidence, at the hearing on February 11, 2019, for a second extension of the validity of the claim form, the claim form had expired on January 23, 2019, and that this was impermissible. The application brought by the second defendant mounted a legal challenge, contending that service upon him was improper and should be set aside on the grounds that the claim form is a nullity.
- [39] In **Rayan Hunter**, McDonald-Bishop, JA (as she then was) expounded on the issues of the validity of a claim form served outside of the time limit set down in the rules and its effect on an acknowledgement of service, McDonald-Bishop, JA (as she then was) said:

*“[45] In this case, the claim forms had expired, without there being any extension of time applied for before the expiration of the 12 months’ period. Rule 8.15 provides that an application for an extension of time, within which the claim form may be served, must be made within the period for serving the claim form specified by rule 8.14. **If an extension of time had already been granted, then an application for further extension must be made within any period of subsequent extension permitted by the court. It means then that in our rules, once the claim form has expired, an application cannot be made after its expiration to extend time for it to be served or to renew it.** An expired claim form, without there being in place an order extending it (as in this case), ceases to be valid. This renders the position under the CPR different from the provisions of the RSC that were applicable in *Sheldon v Brown Bayley’s Steelworks Ltd*. It is also different from the regime for service of a claim form under the UK CPR, which permit[sic] applications for extension of time to be made after the*

expiration of the time for the service of the claim form, albeit subject to specified conditions.

[46] Following the path of reasoning of their lordships in Sheldon v Brown Bayley's Steelworks Ltd, it leads one to the inevitable conclusion that the expired claim forms in this case were null and void and of no legal effect for all purposes, including service on the appellant. It is settled law that while an irregularity can be waived, a nullity cannot be: see The Gniezno; Owners of the Motor Vessel Popi v Owners of Steamship or Vessel Gniezno [1967] 2 All ER 738. It follows then, that the step taken by the appellant to file an acknowledgment of service (even if not in the terms he had done) could not have operated as a waiver of the invalidity of the claim forms because he could not have waived what was in law a nullity. On this basis alone, the appellant would have been entitled to an order setting aside the service of the claim forms on him."

[40] The issue facing the claimant is that the claim form was rendered invalid by operation of law. In the case of **Glasford Perrin v Donald Cover**,² the Court of Appeal held that the jurisdiction of the Court depends on the life of the claim at the time of the application, and any purported order extending its life must be construed so as to operate while the claim form remains valid. That case does not assist the instant claimant.

[41] In **Juliette Wright v Alfred Palmer & Jason Salmon**,³ Edwards, JA, extensively discussed the effect of a claim arising from a 2013 accident filed on August 29, 2019, just months before the six-month limitation period expired. The claim form was valid until February 28, 2020. The claimant applied for an extension on February 25, 2020, three days before the claim form's expiration date. However, the claim form was not served before it expired. Following the COVID-19 pandemic, the Supreme Court registry set the hearing for January 2021, which was well after the deadline for extending the original claim form.

² [2019] JMCA Civ 28

³ [2021] JMCA Civ 32

[42] An amended application sought two six-month extensions. Edwards, JA, noted that this application was fundamentally flawed because it sought more than six months' extension in a single application, infringing rule 8.15(2), which restricts extensions to a maximum of six months per application. The claimant was not permitted to combine multiple extensions into a single application to circumvent these time restrictions.

[43] Edwards JA made the following observation at paragraph [35]:

"From these rules, it is clear that an applicant who wishes to have the life of a claim form...extended, must make an application for extension during the validity of the claim form. The court may grant the extension but can only do so for six months in the first instance, and on any one application..."

*[14] And at paragraph [38], she stated: "Although the application was made before the expiry of the validity of the claim form, the problem which faced the appellant..., was that no single extension of its validity could be made beyond six months. **Also, no court can revive the dead, so that any extension the master, in her discretion, could have possibly given, had to relate back to and take effect from a period before the claim form expired.**" (Emphasis mine)"*

[44] In the case of **Annette McLean v Princess Edmondson**,⁴ a case similar to that of **Juliette Wright**, Dunbar-Green, JA, writing for the Court, considered the case of **Juliette Wright** and affirmed its reasoning.

[45] This court declines to delve into the propriety of how the oral application was addressed at the time the orders were granted, as the focus of this decision is on the court's jurisdiction. The claimant could not have resurrected the claim form, and therefore, by filing the acknowledgement of service, no issue of waiver arises. The statutory limitation period for the substantive claim in negligence had also expired.

⁴ [2021] JMCA Civ 41

[46] The claimant's amended application is construed by this court as seeking two six-month extensions in one application. This indicates that at the hearing, the application was "fundamentally flawed" to use the words of Edwards, JA, as it sought by combining the amended application with an oral application, to obtain in one order an extension exceeding six months in a single application, thereby contravening rule 8.15(2), which restricts extensions to a maximum of six months per application. The claimant was not permitted to combine multiple extensions into a single application to bypass the operation of the rule. The absence of affidavit evidence only compounded the difficulty.

[47] It cannot be denied that at the time of service, the claim form was invalid and that service amounts to a nullity. Therefore, the effect of the service of the invalid claim form cannot be rectified. The application filed on behalf of the second defendant succeeds on the ground that the service of the claim form and particulars of claim occurred after the expiration of the period of validity. Consequently, the court lacks jurisdiction to hear the substantive claim, as no valid claim form is currently before the court.

[48] Orders:

1. The time for the filing and service of this application is extended.
2. The Court declares that the claim numbered SU2018 HCV00308 is a nullity.
3. Service of the Claim Form, Particulars of Claim, Notice to the Defendants, Prescribed Notes for the Defendants, Defence Form and Acknowledgement of Service of the Claim Form on the second defendant is set aside.
4. Costs to the second defendant to be agreed or taxed.

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Wint-Blair J