



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023CV01363

BETWEEN	CATHERINE MANNING SALMON (Administrator of Estate of Keon Salmon)	1st CLAIMANT
AND	ANSEL SALMON (Administrator of Estate of Keon Salmon)	2nd CLAIMANT
AND	JAMAICA DEFENCE FORCE	1st DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	2nd DEFENDANT

IN CHAMBERS

**Ms. Sasha-Gay Brown Instructed by Oswest Senior Smith & Co. Attorneys-at-Law
for the Claimants**

**Mrs Taniesha Rowe-Coke instructed by Director of State Proceedings for the
Defendants**

HEARD: February 29, 2024, May 20, 2024, July 17, 2024, November 15, 2024

**CIVIL PROCEDURE - DELAY – ABUSE OF PROCESS – APPLICATION FOR EXTENSION OF TIME -
FATAL ACCIDENTS ACT – LAW REFORM (MISCELLANEOUS PROVISIONS) ACT – LIMITATION
PERIOD**

MASTER KAMAR HENRY ANDERSON

- [1] There are presently 2 applications before the Court for its consideration, that is an application filed on June 8, 2023, by the 1st and 2nd Defendants to strike out the Claimants case as an abuse of the process of the court or in the alternative, that an extension of time is granted to the Defendants within which to file their defence.
- [2] The other application by the Claimants which was filed on January 4, 2024, seeks an extension of time within which to commence an action under the Fatal (Accidents) Act ("FAA").
- [3] The background to these applications in brief, are that on November 4, 2012, Keon Salmon who was a recruit undergoing training with the 1st Defendant at Port Royal died from drowning during the course of the training exercise. The Claimants who are the parents of the deceased then brought a claim in 2016 against both the 1st and 2nd Defendants seeking damages arising from his death due to the negligence of the Defendants under the FAA and Law Reform Miscellaneous Provisions Act. ("LRMPA")
- [4] Both claims were subsequently discontinued by the Claimant and a new claim under both legislations was again brought in April 2023. It is the filing of this new claim that has led to the above 2 applications being filed by the parties.
- [5] The factual history of this case is of particular importance to both applications as it provides the context within which the Court should assess the arguments raised by both parties and as such a chronology of the main events leading up to the filing of these applications has been provided. The chronology was in large measure obtained from the affidavits filed in support of the Claimants Application for Extension of time.

CHRONOLOGY

- November 4, 2012 - Keon Salmon died from drowning
- May 11, 2016 – A claim (2016HCV01929) was filed by the parents of the deceased in the Supreme Court (also the present Claimants in this matter) against the Defendants for negligence under the Fatal Accidents Act and The Law Reform (Miscellaneous Provisions) Act
- In 2017 – Claim No. 2016HCV01929 was wholly discontinued by the Claimants by way of Notice of Discontinuance filed February 23, 2017.
- 2018 – The Coroner's report related to the Deceased's death was received by the Claimants
- 2018 - Filing of Application by the Claimants for Letters of Administration.
- December 2022 – Letters of Administration was granted to the Claimants in the Estate of Keon Salmon
- April 28, 2023 – The present claim was filed by the Claimants against the Defendants for negligence under the FAA and LRMPA
- June 8, 2023 – The Defendants filed their present Application to strike out the 2023 claim or alternatively to extend time to file a Defence
- January 4, 2024 – The Claimants filed an Application seeking an extension of time to file the claim under the FAA

[6] *The central issues before the Court, based on the applications filed, are as follows:*

1. *Whether the Court should exercise its discretion to allow the Claimants' to file their claim under the FAA, pursuant to section 4(2) of the FAA?*
2. *Whether the Court should strike out the Claimants' case under the LRMPA as an abuse of process on the grounds that the claim is now statute-barred?*
3. *If the claim is not deemed statute-barred, should it still be struck out based on the Claimants' conduct in prosecuting the case? This includes consideration of the significant delay and what the Defendants argues are insufficient reasons provided for that delay in bringing this new claim.*

[7] *Both parties provided the Court with written and oral submissions in support of their applications which the Court has sought to summarize as follows:*

Claimants Submissions

[8] The Claimants submitted that the delay in filing their claim was due to circumstances beyond their control, which they particularized as follows:

1. They argued that they had been awaiting their appointment as Administrators of the Estate of Keon Salmon since 2018, which was only granted in December 2022. While Counsel for the Claimants at the hearing acknowledged that this appointment was not necessary to file a claim under the FAA given that they had standing as close relatives of the Deceased under section 4(i)(b) of the FAA, they maintained that it was a prerequisite for filing their claim under the LRMPA.

2. The Claimants emphasized that, once they received the Letters of Administration, they acted promptly, filing the new claim within four months of its receipt.
3. Another reason cited for the delay was their prolonged wait for the conclusion of the Coroner's Court hearings, which extended over a lengthy period and that they in fact did not receive the coroner's report until 2018.
4. Additionally, the Claimants argued that they were emotionally distressed from reliving their son's death during the Coroner's Court proceedings, and thus, the delay was neither intentional nor contumacious.

[9] Counsel directed the Court's attention to both procedural rules and relevant case law, supporting the position that, given these circumstances, the Court should grant the application for an extension of time.

LRMPA and Limitation of Actions

[10] Counsel for the Claimants argued that their claim could not be struck out as an abuse of process on the grounds of being statute-barred. The Claimants contended that the limitation period for bringing a claim under the LRMPA does not commence from the date of the incident itself. Instead, they asserted that the limitation period begins from the date that the Letters of Administration were granted, and that they had therefore filed the instant claim within the limitation period, as they only received the grant in 2022. In support of this position, they cited the case of ***Daedrial Hayles (Administratrix in the estate of Rojae Romario Wright, deceased v The National Irrigation Commission Limited*** [2021] JMSC Civ 6.

Defendants Submissions

[11] The Defendants submitted that the Court's analysis should begin with the premise that the claim is statute-barred under the Fatal Accidents Act (FAA), as section 4(2) of the Act sets a three-year limitation period from the date of the incident for bringing an action. Consequently, any claim filed after this three-year period is statute-barred unless the Court grants an extension, provided that it is satisfied, that such an extension is warranted in the interests of justice.

[12] Further, the Defendants posited that, whilst they acknowledge the court's discretion to extend the limitation period in the interests of justice, this discretion must be exercised with careful consideration of several factors, including:

- i. the length of the delay,
- ii. the nature of the evidence,
- iii. the conduct of the defendant,
- iv. the promptness of the claimant,
- v. any prejudice involved, and
- vi. the likelihood of the claim's success.

as established in ***Shaun Baker v O'Brian Baker and Angella Scott-Smith***, Claim No. 2009 HCV 5631.

[13] The Court it was submitted also requires the relevant evidence to exercise this discretion, as outlined in ***Jenetta Johnson-Stewart v Attorney General*** Claim No HCV 4385 of 2009.

[14] On the facts of this case, the Defendant asserted that the Claimant should not succeed, citing the length of the delay, the reasons behind it, and the Claimant's general attitude and conduct regarding the pursuit of the claim. The Defendants then systematically addressed each reason presented in the Claimant's arguments, demonstrating why these reasons did not meet the standard required for the Court to justify an extension of time.

Length of and Reasons for Delay

- [15] The Defendants submitted that the length of the delay in filing this present Claim was inordinate, as it was filed some 10 years after the incident and 7 years after the limitation period had expired.
- [16] They also highlighted that the reasons given for the delay were insufficient, as it was submitted that there was no need for the Claimants to wait on the coroner's report to file the claim, as this was a civil claim, not a criminal matter and the Defendants had always been known. The Claimants it was argued had in fact provided no evidence as to how the coroner's report that they had received had advanced the prosecution of the claim or its prospects of success, and therefore there was no cogent reason advanced as to why they had to wait approximately 6 years for the report to initiate the claim. They cited here the **Shaun Baker Case** and the **Jenetta Johnson-Stewart case** in support.

Letters of Administration

- [17] The Claimants' argument that one of the primary reasons for the delay, was that they as the personal representatives were unable to file a claim without a grant of administration, was also heavily challenged by the Defendants. The Defendants argued that while this would apply to claims brought under the LRMPA, it does not apply to those claims brought under the FAA, where near relations may file a claim without a grant, as the claim is not for the estate's benefit. There was therefore no need for the Claimant to have waited on the Letters of Administration to be granted to bring a claim under the FAA.
- [18] The Defendants Counsel also, drew the Court's attention to the fact that no explanation was provided as to why it took so long for the Claimant to in fact apply for and obtain the Letters of Administration so that they could properly bring their claim under the LRMPA.
- [19] The Defendants argued that when one looks carefully at the history of the matter it shows the dilatory attitude of the Claimant to the claim on a whole, as

- (i) the first claim was not filed until 2016, that is, after the 3-year period of limitation under the FAA had elapsed, and
- (ii) at that time, like the present scenario before the court, no application for an extension had been filed at the time of the filing the claim.

It was further highlighted by Counsel that the present Application for Extension was not made until approximately 8 months after the claim was filed and that it was in fact filed by the Claimants, as a direct response to the Defendant's application to strike out the claim as an abuse of process.

Prejudice

- [20] Counsel here conceded that no specific evidence was submitted to the Court as to any actual prejudice that was suffered by the Defendants, however, it was also submitted that just based on the length of the delay, that is, the fact that the claim was filed some 10 years after the deceased's death and 7 years after the limitation period under the FAA, there is, apparent prejudice to the Defendants. The Court's attention was drawn to paragraph 21 of the ***Daedrial Hayles*** case and what was outlined as the purpose of the limitation defence. That is, that the limitation defence was created to protect the Defendant from having to deal with a stale claim being brought many years after the incident and one which given the length of time, he did not expect to be facing. In the circumstances, it was argued by Counsel, that it must be prejudicial to a defendant to be facing a case again now approximately 12 years after the incident occurred.

LRMPA and the Statute of Limitations

- [21] With regards to the Issue of whether the Limitation of Actions Act operates in the case of a claim being brought under the LRMPA, the Defendants submitted firstly that it was their view that it did apply, citing the case of ***Shaun Baker v O'Brian***

Baker and Angella Scott-Smith, and as such the Court had no power to extend time if the claim wasn't brought within 6 years after the incident.

[22] However, Counsel submitted that even if the case of ***Daedrial Hayles (Administratrix in the estate of Rojae Romario Wright, deceased v The National Irrigation Commission Limited*** that was cited by the Claimants was correct, and that time began to run from the date that Letters of Administration was obtained by the Claimants and as such, the present claim is not statute barred, this cannot be the only consideration for a Court when determining whether the Claim should be allowed to proceed under an application for striking out a claim as an abuse of process.

[23] The Court it was submitted by Counsel must still look at the overall conduct of the Claimants with regards to the prosecution of the claim and it was further submitted, that the behaviour of the Claimants in this case when one looked at the entire process, was abusive.

ANALYSIS AND DISPOSITION

Claims Under The FAA

[24] Both parties accepted that the relevant sections of the Fatal Accidents Act that are applicable to the present application are Sections 2 and 4 of the Act

Section 2(1) provides:

...

...

'near relations' in relation to a deceased person, means the wife, husband, parent, child, brother, sister nephew or niece of the deceased person.'

Section 4 provides:

4.-

(1) Any action brought in pursuance of the provisions of this Act shall be brought-

(a) by and in the name of the personal representative of the deceased person; or

(b) where the office of the personal representative of the deceased is vacant, or where no action has been instituted by the personal representative within six months of the date of death of the deceased person, by or in the name of all or any of the near relations of the deceased person,

and in either case any such action shall be for the benefit of the near relations of the deceased person.

(2) Any such action shall be commenced within three years after the death of the deceased person or within such longer period as a court may, if satisfied that the interests of justice so require, allow.

(3) Only one such action shall be brought in respect of the same subject matter of complaint.

...

...

[25] Both parties also agreed that even though the Claimant filed the claim after the 3-year limitation period, and the claim is statute barred, the court still has a discretion to grant the extension of time. The parties however disagree as to whether, in the circumstances of this case, an application for extension ought properly to be granted.

[26] It was also accepted that when deciding on an application for an extension of time, the Court should consider several factors, including the length of the delay, reason for the delay, conduct of the parties, any prejudice to be occasioned by

the parties, the merits of the case, and the overall interests of justice. That is, the principles which were utilized by Justice Edwards (as she then was) in the case of ***Shaun Baker v O'Brian Baker and Angella Scott-Smith*** which this court must state, that it found helpful, in assessing and analysing the facts of the case and the arguments submitted by the parties.

Delay, Reasons for the Delay and Conduct of the Parties:

- [27] Regarding the delay in filing this application for extension, this Court must agree with the Defendant on both fronts, that is firstly, with regards to the delay being inordinate and excessive and secondly, that the reasons advanced for the delay by the Claimants are inadequate given the magnitude of the delay.
- [28] A delay of approximately 7 years beyond the limitation period, and 10 years since the death, can only be regarded by this Court as inordinate. This delay is exacerbated by what the Court finds to be insufficient reasons put forward by the Claimants, namely their waiting for the Coroner's Court report, a report which, as Counsel for the Defendants rightly pointed out, has not been shown to have any relevance to these proceedings and their wait for the grant of administration, which was not even required to bring a claim under the FAA. While the Court acknowledges and sympathizes with the emotional distress experienced by the Claimants due to the loss of their son, such distress cannot justify a delay of this magnitude.
- [29] Regarding the Claimant's conduct throughout the proceedings, I must also agree with the Defendants that it has been marked by delays and missteps. Specifically, that:
- (i) It took nearly 4 years for the Claimants to file the first claim, and, at that point, they had not sought to apply for letters of administration prompting the Defendants to apply to strike out the Claim under the LRMPA.

- (ii) Even after the first Claim had been discontinued due to the Claimants' error, it took them another approximately one year to apply for Letters of Administration and on receipt of it, another approximately 4 months to file the claim and 8 months after it was filed, to apply for an extension of time. In fact, the application for extension of time here, as argued by Counsel for the Defendant, appears to be reactionary, that is, as a response to the Defendants' Application to Strike Out the claim rather than a proactive step taken by the Claimants in recognition of their need for an extension of time given the delay. In contrast, the Court notes that the Claimants have advanced no evidence suggesting that the delay in this case could be attributed to any conduct on the part of the Defendants.

Merits of the Claim /Likelihood of Success and Prejudice to the Parties:

- [30] This Court observes that the Claimants' submissions and evidence made no attempt to establish the merits of their claim. That is, nothing was put forward by the Claimants indicating the likelihood of success of the claim, if the application for extension of time is granted. Ordinarily, it should be noted, a Court will not grant an application for extension of time without some evidence before it of the merits of the case for which the extension is being sought as the court doesn't act in futility, and it would be pointless for the Court to grant an extension to proceed with an unmeritorious claim.
- [31] Further this court acknowledges, that assessing prejudice in this matter requires that a careful balance is struck. That is, between the prejudice to be suffered:
- (i) by the Claimant if the application is denied, as the Claimants will be unable to pursue their claim under the FAA, and
 - (ii) conversely, by the Defendants, if the application is granted, as though the Defendants could still be permitted to file and mount a

Defence, this would be occurring some 12 years after the incident and is therefore likely to be challenging due to the lapse of time.

[32] In evaluating prejudice, the Court finds that while both parties stand to experience some disadvantage, the determinative factor should be which decision best serves the interests of justice.

[33] This Court finds that in this case given the overall conduct of the Claimants/Applicants throughout, the prejudice to be caused to them was largely due to their own failings and thus, it would not be fair and just, to allow the extension sought by them under the FAA. In the circumstances, the Claimants Application for Extension of Time under the FAA is denied and the claim brought under the FAA, which is statute barred, is struck out.

LRMPA and the Limitation of Action

[34] Much of the arguments advanced by the parties centred around the issue of whether the claim out to be struck out on the basis that the action was statute barred having been filed about 4 years, after the 6 years, limitation period prescribed under the Limitation of Actions Act for bringing an action for damages for the tort of negligence.

[35] This was the position articulated by the Defendants and as stated above, they cited the case of ***Shaun Baker v Obrian Brown and Scott Smith*** in support. The Court in **Shaun Baker** was of the view, a point which was seemingly accepted by all the parties in that case, that in applying the Limitation of Actions Act, time begins to run on a claim brought under the LRMPA from the date of the death of the deceased. Therefore, the claim that was filed in that case some 17 days after the 6-year period elapsed was found to be statute barred. The issue that therefore confronted the Court was not from when time begins to run, but rather, whether the Court had a discretion to extend time for filing the claim, given the fact that it was statute barred.

- [36] The Court in that case decided after a detailed assessment of the matter, that it had no such discretion to extend the time for filing the claim. In fact, Justice Edwards (as she then was), in her written judgment when finally disposing of the matter at paragraph 115, stated that “the Court rules that the time limited for filing a claim under the Law Reform (Miscellaneous Provisions) Act having expired, there is no rule of law, or practice or any enabling legislation allowing a Court to extend time within which to file such a claim. The claim is statute barred.”
- [37] The Claimants, in response to the Defendants’ arguments above, cited the case of ***Daedrial Hayles (Administratrix in the estate of Rojae Romario Wright, deceased v The National Irrigation Commission Limited*** as support for their assertion, that their claim though filed under the LRMPA admittedly more than 4 years, outside of the 6-year limitation period prescribed under the Limitation of Actions Act, is not statute barred. This submission was based on that Courts finding that time does not begin to run against a Claimant from the date of the death of deceased but rather from when the Claimant obtains the Letters of Administration. In the circumstances of this case the Claimants submitted that since they only obtained the grant in December 2022, which was just 4 months prior to the filing of their claim, their claim was not statute barred. Reference was made to paragraphs 23 and 24 of the Learned Master’s written judgment where after outlining in detail the submissions and authorities cited by the parties on the point, the Court found that

Para 23 ... *Notwithstanding the above, I have before me a Court of Appeal decision which clearly states that until someone is appointed administrator he is unable to bring a claim on behalf of the estate of a deceased and as such time must begin to run from the date when he is so appointed. For ease of reference, I again set out what Downer JA in the case of Attorney General v Administrator General of Jamaica (estate Elaine Evans) had to say at page 7 of the judgment: “Therefore the standard limitation period of six years for torts is applicable for actions vested in her. Since the action is*

for the benefit of the Estate time begins to run from the time Letters Administration were granted”

Para 24In this case before me, the Claimant has argued that the Defendant has always been aware of the Claimant’s intention to bring a claim under the LRMPA against it and as such the Defendant will not be prejudiced if this claim is allowed to proceed. The Defendant’s argument that if a defendant has to wait until an administrator is appointed in circumstances when there is no time limit on when grants of administration are to be applied for, it could result in a potential claim hanging over a potential defendant’s head for a significant number of years, also has merit. Despite the merit in both arguments, the Court of Appeal’s position must prevail.

[38] Given the fact that the Court of Appeal case of **Attorney General v Administrator General of Jamaica (Estate of Elaine Evans)** Civil Appeal No. 11/2001 was the primary basis upon which the determination was made in **Daedrial Hayles**, this Court had a thorough reading of the authority to determine the context in which the extract of page 7 of the judgment quoted by the Learned Master (as she then was), was made.

[39] The **Administrator General of Jamaica (Estate of Elaine Evans)** case was an appeal arising from a decision of the Judge below to grant an extension of time to file a statement of claim and refusal to dismiss the claim for want of prosecution and abuse of process. The background to the appeal stemmed from a suit brought by the Respondent under the LRMPA and FAA against 4 Defendants, which included the Appellant, the Attorney General, for damages for negligence arising from a motor vehicle accident which caused the death of Elaine Evans on March 4, 1993. The Respondents obtained the Letters of Administration on October 11, 1996, the writ was filed on the July 30, 1997 and served on August 20, 1997. The Claimants however failed to file the Statement of Claim within time,

prompting the application for extension. The Defendant countered by filing summons to strike out the action based on delay, abuse of process et al.

- [40] On appeal, several points were raised, but the one that is relevant to the claim under the LRMPA and the issue of statutory limitations of action, was whether the appeal should be allowed with regards to the extension of time to file the portion of the statement of claim related to the claim brought under the FAA. The Court in treating with this issue sought to distinguish the legal position with regards to claims that were brought under the FAA and those brought under the LRMPA. That is, the Court sought to highlight that under the FAA, since there was a statutory requirement that a claim had to be filed within 3 years, unless an extension was granted, then that portion of the claim would not be allowed to stand.
- [41] The Court then sought to distinguish the Respondent's position under the LRMPA where the estate had a right to commence the claim within the usual 6 yr limitation period, with that brought under the FAA, whereas stated earlier the limitation period is 3 years, and it was in this context that the court stated that they calculated the 6 years from the granting of the Letters of Administration.
- [42] It should be noted here that the issue as to when time begins to run in relation to actions brought under the LRMPA was never expressly argued and addressed by the Court in the case, as to do so would have been unnecessary on the facts before them. As based on the facts of that case, whether one calculated time from the date of the deceased's death or from the grant of letters of administration it would have been well within the 6 yrs prescribed under the Limitations of Action Act.
- [43] On the facts as presented before the Court of Appeal, since the claim was filed after the 3-year period under the FAA and the required extension had not been obtained, the Court found that that portion of the claim related to the FAA could not stand, and the appeal was therefore allowed in part.

- [44] In light of these observations, this Court is of the view that the pronouncement of Justice of Appeal Downer in the Elaine Evans **case** referred to by the learned Master in the ***Daedrial Hayles case*** were expressions of his opinion on the law which were not essential to the arrival of the Court's decision, but rather statements made “by the way” and as such formed part of the obiter dicta of the Court's judgment.
- [45] This Court is therefore of the opinion that the law on this issue, that is, from when time begins to run, in claims brought under the LRMPA still remains unsettled, given the two competing perspectives outlined in the cases of ***Shaun Baker*** and ***Attorney General v Administrator General of Jamaica (Estate of Elaine Evans)*** which was applied in ***Daedrial Hayles***.
- [46] However, this Court agrees with the Defendants' counsel that their application to strike out concerns an abuse of process, which in the context of this case is a much broader issue than merely determining whether the claim is statute-barred. In considering an application to strike out a claim as an abuse of process, this Court agrees that it must assess the Claimant's overall conduct in prosecuting the claim, from the time of the deceased's death to the present, and determine whether, in these circumstances, the Claimants should be permitted to proceed with their claim.
- [47] In this matter, the Court is guided by the Court of Appeal authority of ***Sandals Royal Management Ltd. v Mahoe Bay Company Ltd.*** [2019] JMCA App 12.
- [48] This case originated from a 1992 claim by Mahoe Bay alleging trespass by Sandals Royal Management. The dispute centred on construction of land purportedly owned by Mahoe Bay, with claims for injunctions and damages. Over the years, the case experienced substantial delays, prompting numerous court applications, including Sandals' application to dismiss Mahoe Bay's appeal for want of prosecution or to strike it out as an abuse of process. The appeal focused on an earlier order that had struck out Mahoe Bay's claim and entered judgment in favour of Sandals.

- [49] The Application by Sandals to dismiss Mahoe Bay's appeal for want of prosecution or to strike it out as an abuse of process stemmed from Mahoe Bay's filing of an appeal in 2008, which was not actively pursued for 11 years. Sandals argued that Mahoe Bay's failure to advance its appeal constituted an abuse of process, leading to significant prejudice, including witness unavailability and administrative costs.
- [50] The Court of Appeal agreed with Sandals, finding that Mahoe Bay had been inactive for a significant period, with no attempt to advance the appeal. Mahoe Bay's inactivity and failure to provide any explanation for the delay therefore justified the dismissal of the appeal.
- [51] The Court further ruled that Mahoe Bay's inactivity amounted to an abuse of process. It emphasized that litigants must show a proactive interest in advancing their cases, and that the court's processes should not be used to keep matters indefinitely unresolved.
- [52] The Court also held that a court may dismiss an action for want of prosecution where there has been inordinate and inexcusable delay, which poses a substantial risk that a fair trial is not possible or causes serious prejudice to the defendant. Further, that the Court's power to dismiss actions for want of prosecution where there is no real intention by the plaintiff to progress the case, extends even to cases where no procedural rules have been explicitly breached.
- [53] This Court would wish to highlight paragraphs 88-90 of the judgment where Justice of Appeal McDonald Bishop, as she then was, stated: -

[88] Sandals Royal Management having secured a judgment conferring it with a right in 2007, would also suffer prejudice if the judgment were to be set aside after 12 years. Such an occurrence in these circumstances would be truly inimical to and undermine the administration of justice.

[89] I conclude that there has clearly been inordinate and inexcusable delay and inactivity on the part of Mahoe Bay. In addition, the evidence led me to the view that Mahoe Bay was neither interested in a speedy resolution of the appeal nor the substantive issues which led to the claim. In fact, Mahoe Bay has shown, for a considerable time, a lack of interest in the matter.

[90] This set of circumstances also reflected an abuse of the process of the court. I acknowledge that striking out for abuse of process is a measure of last resort and should be done only in plain and obvious cases such as in this matter.

[54] The Court here also referred to the House of Lords case of **Grovit and Others v Doctor** [1997] UKHL 13 which concerned the power of the Court to strike out proceedings and dismissal of writs for want of prosecution. In affirming the decisions of the Courts below Lord Woolf stated that...

***“... I am satisfied that both the deputy judge and the Court of Appeal were entitled to come to the conclusion which they did as to the reason for the appellant's inactivity in the libel action for a period of over two years. This conduct on the part of the appellant constituted an abuse of process. The courts exist to enable parties to have their disputes resolved. To commence and to continue litigation which you have no intention to bring to conclusion can amount to an abuse of process. Where this is the situation the party against whom the proceedings, is brought is entitled to apply to have the action struck out and if justice so requires (which will frequently be the case) the courts will dismiss the action. The evidence which was relied upon to establish the abuse of process may be the plaintiff's inactivity. The same evidence will then no doubt be capable of supporting an application to dismiss for want of prosecution.*”**

However, if there is an abuse of process, it is not strictly necessary to establish want of prosecution under either of the limbs identified by Lord Diplock in Birkett v. James [1978] A.C. 297.

[55] In the case at bar, the Court finds it unnecessary to determine when the limitation period begins to run for a claim brought under the LRMPA, given the extensive delay and the Claimant's overall conduct in prosecuting the claim. Although it is accepted that the Claimant may not have breached any specific rule or practice direction, the inordinate and unjustifiable delay in filing the current claim—combined with the fact that this is the second claim arising from the same event, namely the death of Keon Salmon, filed by the Applicant within a span of seven years—along with prolonged periods of inactivity by the Claimant lasting at times for years, clearly constitutes an abuse of process. Consequently, the Court finds that the Defendants are not required to demonstrate specific prejudice suffered due to the delay, as no Defendant should be compelled to face a claim for the second time nearly 12 years after the incident. Considering these circumstances, the Court grants the Defendants application to strike out the claim as an abuse of process.

DISPOSITION

- 1. The Claimants Application for Court Orders to extend time to commence an action under the Fatal Accidents Act is denied.**
- 2. The Defendants Application to strike out the Claimants claim as an abuse of process is granted.**
- 3. The Claimants claim brought under the Fatal Accidents Act and Law Reform (Miscellaneous Provisions) Act are struck out.**

- 4. Costs of the Applications are awarded to the Defendants, to be taxed, if not sooner agreed.**
- 5. The Defendants Attorneys-at-Law are to file and serve the formal order.**