[2017]JMSC Civ. 23

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2015 HCV 02506

BETWEEN	**SELNOR DEVELOPMENTS LTD.**	**CLAIMANT/ RESPONTENT**
AND	**KENNETH BOSWELL**	**DEFENDANT/ APPLICANT**

IN CHAMBERS

Seyon Hanson, of counsel, for the Claimant/Respondent

Karen O. Russell and Gilroy English instructed by Karen O. Russell, for the Defendant/Applicant

HEARD: November 3 and December 5, 2016; January 13 and 18, 2017

FIXED DATE CLAIM FORM PROCEEDINGS – UNDEFENDED CLAIM – JUDGMENT ENTERED IN FAVOUR OF CLAIMANT – APPLICATION FOR STAY OR EXECUTION OF JUDGMENT – RISK OF INJUSTICE – WHETHER DEFENDANT'S APPEAL HAS ANY PROSPECT OF SUCCESS – WHETHER DECLARATORY ORDERS CAN BE STAYED – WHETHER PERMISSIVE JUDGMENT ORDERS CAN PROPERLY BE SUBJECT TO A STAY OF EXECUTION ORDER – WHETHER JUDGMENT ORDER REQUIRING ACT TO BE DONE BY AN UNSPECIFIED DATE CAN BE MADE SUBJECT TO A STAY OF EXECUTION ORDER – NEED TO COMPLY WITH CASE MANAGEMENT TIMELINES SET BY COURT – NEED TO FILE DEFENCE AND PROPERLY BE DEFENDING CLAIM IN ORDER TO CROSS-EXAMINE THE CLAIMANT'S WITNESSES

ANDERSON, K. J

Introduction

[1] In this matter, judgment was delivered in favour of the respondent/claimant, against the applicant/defendant, on November 3, 2016. The claim was undefended and thus, at trial, the evidence led on the claimant's behalf, was entirely uncontested.

[2] The applicant/defendant had, on November 17, 2016, in the Court of Appeal, filed both a Notice of Appeal and Notice of Application for leave to appeal.

[3] Interestingly, the applicant had also, in the Supreme Court, on November 17, 2016, filed an application for leave to appeal.

[4] Upon the scheduled hearing of that application, which was presided over, by me, on January 13, 2017, the applicant's counsel – Ms. Russell informed the court, that his client's application for leave to appeal is withdrawn. The issue of costs pertaining to that application, has not yet been determined, but will form part and parcel of the orders which will hereafter be made, after of course, I have heard from the parties' counsel, as to same. That application for leave to appeal, it should be noted, had first come up for hearing, at a hearing which was presided over, by me, on December 5, 2016.

[5] On that occasion, there was another application which was made by the applicant, which also then came up for hearing and which was also presided over, by me. That was a, 'Notice of Application for Stay of Execution Pending Appeal.' That court document was filed on November 25, 2016. That application was amended by means of a document which was filed in this court on December 12, 2016.

[6] That amended application had sought the following orders:

> *'i. An order that there be a stay of execution pending leave to appeal and/or appeal from the judgment of the Honourable Mr. Justice K. Anderson delivered in favour of the Claimant/Respondent on the 3rd day of November, 2016.*

ii. Such further and other order as this Honourable Court deems to be just and fit.'

[7] The applicant is relying on the contents of at least two (2), but perhaps three (3) affidavits, in support of his present application. There exists some uncertainty in my mind, in that regard, because at the hearing which was held on January 13, 2017, the applicant's counsel referred to two (2) affidavits – being the affidavit of Kenneth Boswell which was filed on January 9, 2017 and the affidavit of attorney Gilroy English which was filed on January 5, 2017.

[8] An affidavit was though, deponed to by attorney – Karen Russell – the applicant's attorney and same was filed on November 17, 2016. That affidavit though, is headed – *'Affidavit of Karen O. Russell in support of application for leave to appeal.'* That latter-mentioned affidavit is very relevant to the application which is now under consideration, as it sets out the circumstances which led to this claim having been undefended and which led to Ms. Russell having been absent when the trial was held and which ultimately resulted in counsel having, 'held brief' for her at the trial and for that counsel to have applied for and adjournment of the trial. Of course, as things have evolved, that adjournment request was denied by the trial judge.

[9] That affidavit is as important to the present application, as is that of attorney Gilroy English, which will be referred to, in more detail, later on in these reasons. This court has not accepted the submission of the respondent's counsel, that the affidavit evidence of attorney Russell, is in breach of professional ethics. That was an entirely unmeritorious submission and is not worthy of any further consideration. Accordingly, this court has considered Ms. Russell's affidavit for the purposes of her client's amended application for court orders which was filed on December 12, 2016.

[10] The overall consideration of this court, in deciding on whether to grant or refuse an application for a stay of execution of judgment, is the risk of injustice to one or the other, or both parties, if the court were to grant or refuse a stay.

Which of the judgment orders made can properly be made the subject of a stay of execution

[11] It ought to be recognized and understood though, that even prior to considering the risk of injustice to the respective parties, if the stay of execution of judgment, were to either be, or not be granted, this court must first consider whether a stay of execution of judgment, can properly be granted at all and if so, whether such can only properly be granted in respect of some of the judgment orders, or all of those orders.

[12] The risk of injustice phase of the court's deliberations can only properly arise in circumstances wherein there exists a judgment order which one of the parties to the existing claim, is capable of 'executing,' in the event that no, 'stay of execution' order is granted, even though an appeal is pending.

[13] A court will never act in futility, since otherwise, its orders will be meaningless.

[14] Accordingly, it must be clearly stated at this stage, that it is this court's considered view, in respect of the applicant's application for a, 'stay of execution of judgment,' that firstly, the declaratory orders made as orders numbers (i) and (ii) of the judgment orders, cannot properly be stayed pursuant to a 'stay of execution,' or even a 'stay' application. In that regard, see: **Harold Miller and Ocean Breeze Hotel Ltd. and Carlene Miller** [2016] JMCA App. 1.

[15] In addition, order number (iii) is an order which requires the Registrar of Titles to rectify the land register in certain specific respects. Orders numbers (xi), (xii) and (xiii) are also directed to the Registrar of Titles, empowering the holder of that office to take certain actions, but not requiring the taking of those actions.

[16] Accordingly, orders numbers (xi), (xii) and (xiii) are permissive orders and not orders actually requiring anything to be done. Order number (iii) on the other hand, requires that the Registrar of Titles carry out the specific action of rectifying the titles register as directed by that order. The difficulty with order number (iii)

as far as enforcement of same is concerned though, is that no date by which such action is to be taken by the Registrar of Titles, has been specified in that particular order. The failure to specify such a date may very well make that order unenforceable, if same is not complied with, by the Registrar of Titles. See: **rules 45.1**, read along with **rules 45.6 and 53.1 and 53.3, of the Civil Procedure Rules (C.P.R)**, in that regard.

[17] The present application under consideration, is as particularly specified, an application for stay of execution. The 'execution' of a judgment order, is carried out by means of a writ of execution issued by the court. **Rule 46.1 of the C.P.R** sets out the meaning of, 'writ of execution' and same includes an order for confiscation of assets. **Rule 45.6 of the C.P.R** provides that, '*a judgment or order which requires a person – to do an act within a specified time, or by a specified date; or to abstain from doing an act, may be enforced by an order for committal to prison; or for confiscation of assets, under Part 53.'*

[18] From that wording, it is apparent that an order requiring a person to do an act by a specified date, can be enforced by an order for confiscation of assets, in respect of which, a writ of execution can properly be issued by this court. Accordingly, it follows that an order for stay of execution of an order requiring an act to be done by a specified date, as also, an order that a person abstain from doing an act, can properly be made.

[19] In the matter at hand though, order number (iii) has not required the Registrar of Titles, to do anything by a specified date. Furthermore, orders number (xi) (xii) and (xiii) do not require the Registrar to do anything at all, as those orders numbers – (xi), (xii) and (xiii) are all permissive, only.

[20] In the circumstances, to my mind, a stay of execution of those orders cannot properly be ordered by this court, as any such order would be nothing more than an exercise in futility.

[21] In the event that I am wrong in that respect though, I will go on to consider whether a stay of execution of orders numbers (iii), (xi), (xii) and (xiii), ought to be granted, in the event that the Court of Appeal is of the view that those orders can properly be made subject to a stay of execution order.

[22] As far as the declaratory reliefs are concerned though, I consider it to be settled law in Jamaica, that such orders cannot be stayed, much less, can a stay of execution order be made in respect thereof. In the circumstances, the applicant's present application falls hereafter to be considered, bearing at all times, in mind, that the declaratory reliefs which form part of the judgment order, cannot properly be and thus have not been made, the subject of any stay order.

[23] The judgment order contained several restraining orders made against the applicant/defendant. Those orders can clearly be made the subject of a stay of execution order. That is so because, an order which requires a person to abstain from doing an act, may be enforced by an order for confiscation of assets. Judgment orders numbers. (iv), (v), (vi), (vii), (viii) and (ix) made in respect of this claim, are all restraining orders.

[24] Order number (x) is an order that the claimant shall remain in possession of the property which is the subject of this claim, pending the completion of the transfer of the property to the claimant, from the defendant. **Rule 45.4 of the C.P.R** sets out the means by which judgments and orders for the possession of land, may be enforced. Suffice it to state, for present purposes, that such an order can be enforced by an order for confiscation of assets. Accordingly, such an order can be made subject to a stay of execution order.

[25] The applicant has, in his present application, also applied for – 'such further and other order as this Honourable Court deems to be just and fit.' That general wording, in reality, adds nothing to the specific relief applied for. That is so because, **rule 11.7 (1) of the C.P.R** requires an applicant for a court order, to state in that application, what order the applicant is seeking. It is my considered

view that compliance with the said rule of court is generally mandatory and can only be waived by, 'the court.' My view in that regard, is buttressed by the wording of **rule 11.13 of the C.P.R**, which states: '*An applicant may not ask at any hearing for an order which was not sought in the application unless the court gives permission.'*

[26] As such, for present purposes, this court has limited itself to considering whether to stay the execution of the judgment orders which it made during trial, on November 3, 2016.

[27] There was also an order for the costs of this claim to be paid by the defendant to the claimant, either pursuant to agreement between the parties, or an order of taxation by the Registrar. Accordingly, to my mind, for similar reasons as earlier expressed in respect of order number (iii), that order is not enforceable by means of execution, either. I will also though, in the event that I am wrong on that score, go on to consider whether or not a stay of execution order, ought to be granted.

The primary considerations

[28] In considering the risk of injustice to the parties, if the stay were to either be granted or not, it is worthy of note that the fact this claim pertains to a dispute regarding registered land and that the applicant either was, at lease up until the date of the judgment order and perhaps still is, the registered title holder thereof, is not a relevant factor.

[29] As a matter of fact, for the purposes of the present application, save and except for the fact that the applicant bears the burden of proof as it is he who is making the application, the parties presently, otherwise, stand on an equal footing.

[30] That is so, because, on the one hand, the respondent is now in receipt of a judgment which has been granted in their favour and they are entitled to the benefit of the 'fruits' of that judgment. On the other hand though, the applicant, having appealed against that judgment in circumstances wherein, statute, in

particular, the **Judicature (Appellate Court) Act**, affords him the right of appeal against that judgment, is entitled to pursue that appeal to the fullest extent, without same being rendered nugatory, because, no stay of execution order is made, in respect thereof. Accordingly, that is exactly the relief which the applicant is now applying for.

[31] There does exist the possibility that the applicant's appeal may be rendered nugatory, if a stay of execution order is not made, particularly if the title to the disputed properly, is rectified by the Registrar of Titles and the respondent is, by that means, named as the registered title holder, thereof. That is so because, as the registered titled holder thereof, the respondent could cause the property to be charged or even dispose of the property, altogether, to an innocent third party.

[32] Of course too though, it is equally important to realize that the respondent is equally at grave risk of their judgment being rendered nugatory, since the applicant/appellant could equally, either cause the property to be charged, or disposed of altogether, to an innocent third party. That may happen as long as the applicant remains as the registered title holder in respect of the disputed land. No evidence has been provided to this court, which serves to inform that the relevant title has as yet been rectified by the Registrar of Titles, or a new title issued, in accordance with judgment order number (iii).

[33] There are, according to decided cases from our nation's Court of Appeal, two (2) primary factors to be carefully considered, when assessing the risk of injustice. The first of those factors is: Whether the applicant's appeal has some prospect of success. In that regard, see: **Watersports Enterprises Ltd. v Jamaica Grande Ltd. and ors.** – SCCA No. 110/2008, judgment delivered February 4, 2009, at para. 7, per Harrison, J.A., which was referred to, with approval, on that same point, by Morrison, J.A (as he then was) in **Calvin Green and Wynlee Trading Ltd. and Naylor and Turnquest** – [2010] JMCA App 3.

[34] The second of those factors is: Whether the case is a fit one for the grant of a stay. That requires this court to conduct a balancing exercise, in which the courts seek to recognize the right of a successful claimant to obtain, 'the fruits' of the judgment which has been entered by a court of law, in his favour, while at the same time, giving effect to the important consideration that an appellant with some prospect of success on appeal, should not have his appeal rendered nugatory by the refusal of a stay.

[35] Similar comments were made by Morrison, J.A (as he then was), in **Channus Block and Marl Quarry Ltd. v Curlon Orlando Lawrence** – [2013] JMCA App 16, at (10). I have applied that dicta.

[36] I would only further add though, just for the sake of absolute clarity, that in considering whether the case is a fit one for the grant of a stay, what this court must consider is the overall interests of justice and that is why, it is the order which causes the least risk of injustice to the parties, when considered as a whole, or in other words, as a collective, rather than what is the order which will cause the least risk of injustice to either the applicant individually, or the respondent individually, which ought to be considered. It is the least risk of injustice to all concerned parties, overall, that matters most, in adjudicating upon an application such as this.

[37] That is why, the mere filing of an appeal from a judgment or order, does not, in and of itself, operate as a stay of that judgment or order and that is also why, even if an appeal has some prospect of success, that will not, in and of itself, lead to a stay being granted.

Whether appeal has some prospect of success

[38] The applicant has filed evidence in support of the application which is now under consideration. That evidence includes that which has been deponed to, by

attorney, Mr. Gilroy English, who, it will be recalled, held brief for the applicant's attorney – Karen Russell, at the trial.

[39] In that affidavit of his, he has in large measure correctly set out most of what transpired at trial. As aforementioned, this claim was undefended and thus, the evidence led in support of this claim, was unchallenged.

[40] Mr. English had applied for an adjournment. This applicant was not present at the scheduled trial. Clearly though, the applicant's counsel – Ms. Russell, was aware of the trial date. Exhibit 'J.S.7' attached to the affidavit of Jason Smith – which is being relied on, in response to the application, reflects that she was so aware. Furthermore, in so far as she asked counsel to hold brief on her behalf, that in and of itself, makes apparent, her awareness of that court date, which was a trial date.

[41] Trial dates, in reality, ought only to be adjourned in the rarest of circumstances and certainly not simply because counsel is not in attendance at the trial hearing. In any event, attorneys who hold brief, are expected to be in a proper position to take the place of the counsel on whose behalf, that brief is being held.

[42] Counsel cannot agree on the adjournment of trial dates. See: **Rule 27.11 (1), (2) and (5) of the C.P.R** in that regard. Suffice it to state also, that with there having been no defence filed to the claim, it would have been unfair and unjust to the claimant, to have adjourned the trial, so as to have thereby, afforded to the defendant, the opportunity to regularize his defence, if he could have. Parties and their counsel, must always remember and know, that this court is possessed of limited resources, both human and otherwise and like it or not, frequent and unjustifiable adjournments are the bane of the justice system.

[43] If it is counsel's fault or failures that results in litigants' failures to comply with court rules and timelines, it will generally be open to those litigants to pursue appropriate reliefs in the appropriate fora, as against those attorneys. Such fault

or failures on the part of counsel, cannot, other than in the rarest of circumstances, properly be utilized as a good excuse for the failure to comply with requisite court timelines and schedules. If it were otherwise, one could simply avoid complying with the applicable timelines and schedules, by blaming one's neglect to do so, on one's attorney(s)-at-law.

[44] Court timelines and schedules set in each and every case before this court, do not only impact on those cases in respect of which, same have been set. They impact also, on other pending cases and even cases that have not yet come before the court for hearing. That must be so, since the court has finite resources and as such, how long each case before the court takes to be resolved, in accordance with the applicable timelines and schedules, will impact how long it takes before another pending claim, or even a claim, potential claim can even come before this court upon a first hearing, or case management conference, much less, actually be tried and/or concluded, if that claim is pursued.

[45] **Rule 10.2 of the C.P.R** requires that a defendant who wishes to defend a claim, must file a defence, or alternatively, an affidavit in answer, if, as it was in this case, the Fixe Date Claim Form is when filed, supported by affidavit which sets out the claimant's Particulars of Claim. That defence ought to be filed within 28 days of service, in Fixed Date Claim Form proceedings.

[46] Counsel for the applicant, has, for present purposes, submitted that the defendant's affidavit which was filed on June 26, 2015 should have been treated with, at trial, as constituting the defendant's defence. That affidavit though, was filed and headed as: *'Affidavit of Kenneth Boswell in support of Notice of Application for interim injunction.'* Kenneth Boswell did not apply for any interim injunctive relief. On the other hand, the claimant, who is now the respondent to the application which is presently under consideration, did. Not only did the respondent/claimant so apply, the respondent/claimant had in fact, obtained that order, on May 15 and that order was later, extended, until the determination of

this matter, or until further order of this Honourable Court. That latter-mentioned order was made by Mr. Justice G. Brown on June 26, 2015.

[47] This court could not, acting on its own accord, have treated with that affidavit as constituting the defendant's defence. Rightly so, since nothing such occurred during the trial, there was no evidence placed before this court for present purposes, as would even remotely serve to inferentially suggest, that any time during the trial, counsel who was holding brief, had requested that this court treat with that affidavit which had been deponed to, by the applicant/defendant, as constituting his defence to this claim. Instead, what that evidence clearly states, is that '*on being advised that there was no defence filed I again requested that an adjournment be granted to allow for the defendant through his counsel to address any anomalies and to make the necessary applications for extension of time to file Acknowledgment of Service, defence and/or Application for Relief from Sanction …'* (para. 9 of affidavit of Gilroy English)

[48] I do wish though, to make one small correction to the facts surrounding the trial hearing, as deponed to, by Mr. English. Para. 9 ends with the words, which immediately follow, after the words quoted immediately above – '*Mr. Justice Anderson reminded me that such applications when made were not a matter of course.*' What in fact happened though, was that I had then reminded Mr. English, that such applications, when made, were not *granted*, as a matter of course. I take it that said small omission was merely a matter of a small oversight and nothing more.

[49] Mr. English has stated that he was not permitted to cross-examine the claimant's witnesses, namely: Jason Smith and Dunstan Simmonds, both of whom had provided affidavit evidence to this court, in support of the claimant's claim.

[50] Suffice it to state that Mr. English was not permitted to do so, because there existed no defence. If the defendant could not defend the claim, since he had filed no defence, how then could he properly have been permitted to cross-

examine, through an attorney, the claimant's witnesses? Surely, cross-examination of an opposing party's witnesses, can only properly arise, in circumstances, wherein one wishes to be heard, in pursuit of one's defence, in a Fixed Date Claim Form proceeding.

[51] The affiants did not need to give further sworn evidence at the trial. They had already, by means of their respective affidavits, provided sworn evidence to the trial court. Thus, it is surprising that counsel - Mr. English felt it necessary to state, as he did, in para. 12 of his affidavit, that, 'neither of the affiants took the witness box.'

[52] All in all therefore, at least from a procedural standpoint, I am strongly of the view that the court's trial procedure and refusal of the adjournment cannot have any possibility of success, on appeal.

[53] Several grounds of appeal been set out in a draft notice of appeal that draft notice of appeal does not appear to have been appended to any affidavit evidence being relied on by the applicant for the purposes of their present proposed application. In the event that I am wrong about that, I will have consider same, anyway. Those grounds need not all be set out within these written reasons. Suffice it to state that they are labelled as (a) – (i) and grounds (b) – (i), relate, in summary, to procedural grounds primarily surrounding this court and me, as trial judge, having treated with this claim as it did, procedurally, on November 3, 2016, particularly in so far as this court had proceeded with the trial on that date, rather than having granted an adjournment, as had been requested.

[54] It is my conclusion that none of those proposed grounds have even as much as a remote prospect of success. It must never be forgotten that to the extent that this court exercised its discretion in proceeding with the trial and refusing the requested adjournment which was, at the time, opposed by the claimant's counsel – Mr. Hanson, a Court of Appeal will only interfere with the exercise of

that discretion, if such exercise was plainly wrong. The applicant has wholly failed to satisfy this court, for present purposes that there even exists the remotest prospect that the Court of Appeal may very well, so conclude. On the basis of those grounds of appeal therefore, the applicant's appeal appears to me, to have absolutely no prospect of success. All of the reasons as set out by me above, to my mind, makes that clear.

[55] There is though, one other proposed ground of appeal. That is stated as follows: *'The learned Judge in arriving at his decision did not consider or take judicial notice all the relevant facts and evidence from the pleadings or material placed before him.'*

[56] The evidence that was considered by this court, at trial, was the evidence of Messrs Jason Smith and Dunstan Simmonds. That was the extent of the claimant's evidence led in support of their claim. There was no other evidence to be considered, as the claim was an undefended one.

[57] That unchallenged evidence was given based on first – hand knowledge and not hearsay as was submitted in oral submissions made before me, by counsel for the applicant, in specific reference to the evidence of Jason Smith.

[58] Said evidence made it clear, on a balance of probabilities, that the claimant has been in occupation of Lots 150A and 151A, being part of the land contained in duplicate certificate of title with Volume 972, Folio 488 of the Register Book of Titles.

[59] The defendant is the registered proprietor of lands contained in duplicate of title bearing Volume 972, Folio 488 of the Register Book of Titles and he became the registered proprietor thereof, on May 9, 2006.

[60] In 1981, the claimant purchased lands at Spring Valley, registered at Volume 1154, Folio 846 of the Register Book of Titles, which was comprised of 190 acres.

[61] The claimant proceeded to construct a building, using concrete and steel and with a concrete foundation on the lands which they had, by then obtained sub-division approval for. That sub-division approval had, within its parameters, delineated Lots 150A and 151A.

[62] Lots 150A and 151A though, actually are part of parcel of the land contained in the duplicate certificate of title registered at Volume 972 Folio 488 of the Register Book of Titles. Part of the building constructed by the claimant on those lots was constructed on land registered at Volume 972, Folio 488 of the Register Book of Titles.

[63] In addition, the claimant also constructed the entrance and the road leading to their Spring Valley development – as they have termed it, via the affidavit evidence of one of their company directors – the deponent – Mr. Jason Smith. That entrance and road, were constructed on part of Lots 150A and 151A and also, on part of the land which the defendant has, since May 9, 2006, held registered title, for.

[64] The said road and entrance were constructed in or around 1983, whilst the office building was completed in or about 1986.

[65] Long after the construction of the road and entrance to the Spring Valley development in 1983 and also, for long after the completion of the office building in 1986, the claimant had has, continuous, open and undisturbed occupation of that portion of Lots 150A and 151A, which form part and parcel of the land registered at Volume 972, Folio 488 of the Register Book of Titles. When the office was built in 1986, it was walled around, with a concrete wall and a gate was constructed which has operated as an entrance to the property at Lot 151A. The office building was continuously used by the claimant, up until about June, 2010, when the claimant's former managing director died, at which time, it briefly had remained closed and thus, unoccupied with any physical presence.

[66] It was not until about 2014 that the claimant became aware that the property on which the office building had been constructed, was comprised of four (4) parcels of land – two (2) registered and two (2) unregistered.

[67] Upon having been made aware that the parcels of land on which the office building was built and which had been fenced and operated by the claimant since, at the latest – 1986 – when the office building commenced usage and that the access road to the office building was not registered in the name of the claimant, even though same is part of the sub-division approval which the claimant obtained, Mr. Smith instructed his attorneys to have duplicate certificates of title issues in the claimant's name.

[68] As things have evolved though, it will be recalled that the defendant became the registered title holder to part of Lots 150A and 151A, via the title bearing the designation: Volume 972, Folio 488, as of May 9, 2006.

[69] By the time though, when the defendant became the registered title holder thereof, that title had already been partially extinguished, at least in so far as the portion of Lots 150A and 151A, which the claimant had, for over 12 years, enjoyed continuous and undisturbed occupation of, is concerned. That portion of that land which now comprises the defendant's title, would have, in respect of the title thereto, been extinguished from as at 1998 – the latest.

[70] In that regard, see the following cases: **Chisholm v. Hall** – [1959] AC 719 and **Recreational Holdings (Jamaica) Ltd. v Lazarus** – [2016] UK PC 22 (Privy Council).

[71] In respect of the present claim, the claimant's evidence relied on, in support, clearly shows the requisite possession of the disputed land, for the requisite time period and the requisite intention, on the part of the claimant, to possess the said land. See: **Thomas and Donald Broadie v Derrick Allen** – Resident

Magistrate's Civil Appeal No. 10 of 2008 and **Valrie Particia Freckleton v Winston Earle Freckleton** – Claim No. HCV 01694 of 2005.

[72] In the circumstances, judgment following upon the trial - with only the claimant's undisputed evidence as relied on by them, in support of their claim, having been presented to this court thereat, was entered in the claimant's favour.

[73] These reasons constitute not only the reasons for the entry of that judgment, but also, why it is that this court is now of the considered view that the applicant/defendant has no prospect of success in respect of his proposed appeal.

[74] In the circumstances, the applicant's application for a stay of execution of judgment is denied, since, with there being no prospect of success on appeal, it could not be in the interests of justice to grant in the applicant/defendant's favour, a stay of execution of that judgment. In such a circumstance, the respondent/claimant, would undoubtedly face the greater risk of injustice, if the stay of execution as sought, were to be granted. On this point, see: **Seaton Campbell and Donna Rose-Brown and Carlton Brown** – [2016] JMCA App 35.

[75] The orders which will therefore, now be made, are as follows:

1) Defendant/Applicant's application for stay of execution of judgment is denied.

2) Costs of the defendant/applicant's application for leave to appeal is awarded to the claimant/respondent and such costs are summarily assessed at $15,000.00.

3) Costs of the defendant/applicant's application for stay of execution of judgment are awarded to the claimant/respondent and such costs shall be taxed if not sooner agreed.

4) The claimant/respondent shall file and serve this order.

.....
Hon. K. Anderson, J.