

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCVAP2014/0002

BETWEEN:

TRAVIS AUGUSTIN

Appellant

and

CHOC ESTATES LIMITED

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE
The Hon. Mr. Davidson Kelvin Baptiste
The Hon. Mr. Mario Michel

Chief Justice
Justice of Appeal
Justice of Appeal

Appearances:

On written submissions filed by the Appellant in person

2015: June 9.

Interlocutory appeal – Fixed date claim – Dealing with fixed date claim summarily – Rule 27.2(3) of the Civil Procedure Rules 2000 – Appellant’s defence struck out by learned judge in court below and first hearing of claim treated as trial and/or matter dealt with summarily – No evidence received from or on behalf of respondent/claimant by judge in dealing with claim and judgment ultimately entered for respondent/claimant – Whether learned judge erred in adjudicating claim in this manner

Held: allowing the appeal, setting aside the order of the learned judge dated 21st January 2014, reverting the matter to the High Court for case management, and awarding the appellant costs in the appeal in the amount of \$1,000.00, that:

1. Having decided to treat the first hearing of the fixed date claim as a trial after striking out the appellant’s defence, the learned judge was obligated to receive evidence from or for the respondent,¹ whether orally or on affidavit, on the basis of which the claim would be determined. Notwithstanding that a matter is being dealt with summarily, the claimant must prove that he/she is entitled to the relief being

¹ The respondent was the claimant in the court below.

sought – a trial must be conducted, albeit in a summary way. Accordingly, the learned judge erred in treating the first hearing of the claim as a trial of the matter and/or in dealing with the claim summarily, and proceeding to adjudicate the matter in favour of the respondent without receiving any evidence from or for the respondent.

Richard Frederick et al v Comptroller of Customs et al SLUHCVAP2008/0037 (delivered 6th March 2009, unreported) followed.

JUDGMENT

[1] **MICHEL JA:** This is an interlocutory appeal against an order made by Wilkinson J on 21st January 2014 wherein the learned judge ordered that:

(1) The defence is struck out and judgment is entered for the claimant.²

(2) The defendant³ is to vacate the claimant's premises on or before 31st May 2014.

(3) Costs to the claimant in the sum of \$750.00.

(4) The claimant is to draw, file and serve this order.

[2] The order was made at the adjourned first hearing of a fixed date claim in which the respondent claimed possession of a portion of land from the appellant, together with mesne profits, costs and further or other relief.

[3] The appeal against the learned judge's order was filed pursuant to leave granted by the Court on 20th February 2014. The appellant filed his notice of appeal on 12th March 2014 containing eight grounds of appeal. The notice of appeal was filed together with legal submissions by the appellant in support of his appeal. The notice of appeal and submissions in support were served on the respondent on 20th March 2014, but no submissions have been filed by the respondent in answer.

² The respondent was the claimant in the court below.

³ The appellant was the defendant in the court below.

[4] I do not propose to address all eight of the appellant's grounds of appeal, but will address only grounds two and five which, separately or together, lead to the appeal being allowed and the order of the learned judge being set aside.

[5] Ground two of the appellant's grounds of appeal reads as follows:

"The Learned Judge erred in law by striking out the defence of the Applicant and by granting summary judgment on the Fixed Date Claim Form whereupon the Respondent had failed to prove its case by evidence which is required in a summary trial of the proceedings."

Ground five reads (in part):

"That the Learned Judge erred in law by failing to adhere to the mandatory requirement that the Respondent prove its case with evidence in consonance with CPR Rule 27.2 (3)"

[6] The essence of these two grounds of appeal and, in particular, the second limb of ground two and the whole of ground five, is that at the first hearing of a fixed date claim the court may treat the hearing as a trial of the claim if it is not defended or it considers that the claim can be dealt with summarily and that in the court below the learned judge did not do so but nonetheless gave judgment in favour of the claimant.

[7] In the court below, the learned judge struck out the defendant's defence, leaving the claim undefended, and proceeded to treat the first hearing of the claim as a trial. In so doing, the learned judge was obligated to receive evidence from or for the claimant, whether orally or on affidavit, on the basis of which she could determine the claim. This was made clear by our Court of Appeal in **Richard Frederick et al v Comptroller of Customs et al**⁴ where the Court held that, in dealing with such a case, '[t]he claimant must still prove that he is entitled to the relief sought'⁵ and that 'a trial must be conducted albeit in a summary way'.⁶

⁴ SLUHC VAP2008/0037 (delivered 6th March 2009, unreported).

⁵ See para. 46 of judgment.

⁶ See para. 46 of judgment.

- [8] As is revealed by the transcript of the proceedings before the learned judge, she did not receive any evidence from or for the claimant, but instead she adopted the strange posture of having the defendant sworn and give evidence, from which she determined that he had no defence to the claim and then gave judgment in favour of the claimant.
- [9] The learned judge clearly erred in treating the first hearing of the claim as a trial of the matter, and/or dealing with the claim summarily, and proceeding to adjudicate the matter in favour of the claimant without any evidence from or for the claimant.
- [10] The appeal is accordingly allowed; the order of the learned judge dated 21st January 2014 is set aside; and the matter is reverted to the High Court for case management, including directions as to the status of the defence filed by the appellant/defendant on 25th November 2013.
- [11] The appellant is awarded costs on this appeal in the amount of \$1,000.00.

Mario Michel
Justice of Appeal

I concur.

Dame Janice M. Pereira, DBE
Chief Justice

I concur.

Davidson Kelvin Baptiste
Justice of Appeal