

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT**

**COMMON LAW AND EQUITY DIVISION**

**2023CLE/GEN/0053**

**BETWEEN**

**HARTLYN M. ROBERTS  
MICHELLE Y. ROBERTS  
NICOLE G. ROBERTS  
S. OBIE ROBERTS  
(As Personal Representatives of the Estate  
of the Honourable Bradley B.E. Roberts)**

**Claimants**

**AND**

**STEVE MCKINNEY**

**Defendant**

**Before: Her Ladyship The Honourable Madam Senior Justice  
Deborah Fraser**

**Appearances: Mr. Sidney Dorsett for the Claimants  
Mr. Halston Moultrie for the Defendant**

**Judgment Date: 28th September 2023**

**Conditional Appearance – Application of the Civil Procedure Rules, 2022 -  
Practice Direction No. 9 of 2023 – Part 9 Rule 9 of the Civil Procedure Rules, 2022  
– Acknowledgment of Service - Defence**

**RULING**

1. The Claimants have brought an application requesting this Court to set aside an unfiled Conditional Appearance of the Defendant, Mr. Steve McKinney.

## **Background**

2. On 24 January 2023, the Claimants filed a Writ of Summons against the Defendant claiming trespass of property belonging to the late Honourable Bradley B.E. Roberts (“**Deceased**”) known as (i) Lot B being All that piece parcel or lot of land situate East of Marcus Bethel Drive, New providence, accessed through Maura Lane and Gibbs Lane and recorded in an Indenture of Conveyance dated 29 November 1985 and; (ii) Lot C being all that piece parcel or lot of land also situate East of Marcus Bethel Drive and accessed through Maura Lane and Gibbs Lane and recorded in an Indenture of Conveyance dated 08 July 1994 (“**Lots**”).
3. According to the Writ, it is alleged that the Defendant and his wife were granted permission to occupy the Lots by the Deceased. However, contrary to a purported agreement between the Deceased and the Defendant and his wife, the Defendant and his wife constructed a parking area, foot paths, a white picket fence, a fruit stand, a chain link fence and a “No Trespassing” sign on the Lots. It is also alleged that they deny that the Deceased owned title to the Lots.
4. Despite purported requests to vacate, the Defendant and his wife refused to leave and claimed that they have occupied the Lots for 20 years.
5. The Claimants seek the following relief:
  - “1. **A Declaration of ownership in the Plaintiffs’ in fee simple;**
  - 2. Mesne profits from date of demand to date of judgment;**
  - 3. Eviction of the Defendant;**
  - 4. Interest under the Civil Procedure (Award of Interest) Act;**
  - 5. A mandatory perpetual injunction restraining the Defendant from further trespassing on the said Lots “B” and “C” situate North of Maura Lane and Gibbs Lane, New Providence;**
  - 6. Further and other relief; and**
  - 7. Costs”**

6. The Writ of Summons was subsequently served on the Defendant on 14 February 2023. To date, no acknowledgment of service or Defence has been filed on behalf of the Defendant.
7. A Notice of Conditional Appearance was filed by the Defendant on 21 February 2023.
8. The Claimants then filed a Summons to Set Aside Conditional Appearance on 30 March 2023. The Summons references an unfiled Conditional Appearance of the Defendant. They request the Court to set aside the unfiled Conditional Appearance.

## **DISCUSSION AND ANALYSIS**

9. The submissions of counsel largely focused on civil procedure under the Rules of the Supreme Court, 1978 (“**Old Rules**”). It is unclear why counsel draws the Court’s attention to the Old Rules when it is the Supreme Court Civil Procedure Rules, 2022 (“**CPR**”) which govern civil procedure in The Bahamas and which took effect as at 01 March 2023.

10. For the avoidance of doubt, the Court draws counsel’s attention to **Practice Direction No. 9 of 2023, clause 2.2** which provides:

**“2.2 Any new interlocutory application which has to be made or any new document which has to be filed, including the Defence, must comply with the Rules.”**

11. The Summons for this application was filed on 30 March 2023 (along with an Affidavit of Nicole Gabrielle Roberts filed on even date and the Affidavit of Patricia Jarrett filed on 11 April 2023), well after the CPR came into effect. Accordingly, this application is subject to the CPR. In any event, the matter before me can quickly be adjudicated upon. Presently, the Defendant is not in compliance with **Part 9 rules 9.1 and 9.2 of the CPR**. Those rules state:

**“9.1 Scope of this Part.**

**(1) This Part deals with the procedure to be used by a defendant who wishes to contest proceedings and avoid a default judgment being entered.**

**(2) The defendant does so —**

**(a) by filing —**

**(i) a defence in accordance with Part 10; and**

**(ii) an acknowledgement of service in Form G9 containing a notice of intention to defend within the time limit under rule 9.3;. or**

**(b) by filing a defence in accordance with Part 10 within the time limit under rule 9.3 or**

**(c) where applicable, by filing an acknowledgement of service in accordance with rule 8.22.**

**(3) The filing of an acknowledgement of service is to be treated as the entry of an appearance for the purpose of any enactment referring to the entry of such an appearance.**

**9.2 Filing acknowledgement of service and consequence of not doing so.**

**(1) A defendant who wishes to —**

**(a) dispute the claim; or**

**(b) dispute the Court's jurisdiction,**

**must file at the Court office at which the claim form was issued an acknowledgement of service in Form G9 containing a notice of intention to defend.**

**(2) A defendant files an [acknowledgement] of service by completing the form of acknowledgement of service and handing it in or electronic filing to the court office.**

**(3) An acknowledgement of service has no effect until it is filed at the court office.**

**(4) A defendant need not file an acknowledgement of service if a defence is filed within the period specified in rule 9.3.**

**(5) If a defendant fails to file an acknowledgement of service or a defence, judgment may be entered if Part 12 allows it (emphasis added).**

12. To date, there is no acknowledgement of service nor a Defence before me. The Defendant has not filed anything which the Claimants must answer. The only document that appears to be filed is a Notice of Conditional Appearance. This document's relevance falls away as the proceedings are governed by the **CPR** and not the Old Rules. Consequently, I need not consider setting aside a document that is not properly before the Court –i.e. the unfiled Conditional Appearance. It is a moot point. I therefore dismiss this application.

**CONCLUSION**

13. Based on the foregoing, I dismiss this application.
14. The Court is prepared to provide dates for case management.
15. I make no order as to costs.
16. For completeness and for the avoidance of doubt, these proceedings are governed by the **CPR** and its amendments.

**Senior Justice Deborah Fraser**

**Dated this day of September 2023**