

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law and Equity Division

2010/CLE/gen/FP/00113  
2014/CLE/gen/FP/00116

**IN THE MATTER OF THE TRUST created under the Last Will and Testament of  
Edward Gerald Patrick St. George dated 24<sup>th</sup> September, 2003**

BETWEEN

**ELIZABETH MISHA DIANA COLLIE**

Plaintiff

AND

**LADY HENRIETTA ST. GEORGE**

First Defendant

AND

**JACY A.J. WHITTAKER**

**(As Trustee of the Estate of Edward Gerald Patrick St. George, Deceased)**

Second Defendant

**IN THE MATTER OF THE TRUST created under the Last Will and Testament of  
Edward Gerald Patrick St. George dated 24<sup>th</sup> September 2003**

**BETWEEN**

**ROSILAND (ROSLYN) COLLIE**

**Plaintiff**

**AND**

**LADY HENRIETTA ST. GEORGE**

**Second Defendant**

**AND**

**JACY A.J. WHITTAKER**

**(As Trustee of the Estate of Edward Gerald Patrick St. George, Deceased.)**

**BEFORE:** The Honourable Mr. Justice Andrew Forbes

**Date:** 20th October 2023

**Appearances:** Ms. Constance E. McDonald KC appearing on behalf of the First &  
Second Plaintiff

Mr. Edward Marshall II on behalf of the First & Second Defendants

## **FORBES, J**

1. By Summons filed on the 7<sup>th</sup> July, 2022, the Applicant seeks an Order to set aside the Plaintiff's Notice of Appeal filed on the 23<sup>rd</sup> May, 2022 on the ground that the said Notice of Appeal was irregular in that it was filed and served by the Plaintiffs more than 29 days after the decision of Deputy Registrar Saunders (as she then was) contrary to the requirements of Order 58 Rule 1 (3) of the Rules of the Supreme Court.

### **Background**

2. The application arises after a protracted litigation period from which the Plaintiffs, Elizabeth Misha Diana Collie and Rosiland Collie, and the Defendants, Lady Henrietta St. George and Jacy A.J. Whittaker, hereinafter collectively called "the Parties", received a decision from Senior Justice Estelle Gray-Evans (as she then was) dated the 27<sup>th</sup> November 2020 ("the Decisions"). In the decisions Justice Evans dismissed the Plaintiffs' claim and made an order as to costs and held that the Plaintiffs were to pay 75% of the Defendants' costs to be taxed if not agreed. The Court will note that there were two separate decisions, one referencing Elizabeth Collie 2010/CLE/gen/FP/00113 ("Elizabeth Case") and a separate action concerning Rosiland Collie, the mother of Elizabeth Collie, 2014/CLE/gen/FP/00116 ("Rosiland Case"). Both actions concerned the Defendants. At the conclusion of the Elizabeth Case and the Rosiland Case Justice Evans made similar findings as to costs but also allowed the parties to advance further arguments on the question of costs. Madam Justice Evans, however, reaffirmed her original order as to cost as it related to both the Rosiland Case and the Elizabeth Case.
3. The Defendants did not immediately file their Bill of Costs or seek to tax their costs and as a consequence, were required to move the Court by way of Summonses filed on the 8<sup>th</sup> February, 2021 seeking an Order for extensions of time to permit the commencement of proceedings. The Summonses in the Elizabeth Case was heard on the 23<sup>rd</sup> June 2021 by Deputy Registrar Saunders where the Defendants were granted leave for an extension of the time to file the Bill of Costs by the 31<sup>st</sup> August, 2021. The Summons for an extension of time to file the Bill of Costs was not heard in the Rosiland Case. However, the Defendants also filed a Bill of Costs in the Rosiland Case.
4. On the 31<sup>st</sup> of August the Defendants filed their Bill of Costs in relation to both the Rosiland Case and the Elizabeth Case; the same was served on the Plaintiffs on the 31<sup>st</sup> August, 2021. The hearing was scheduled to be heard on the 7<sup>th</sup> February, 2022. The Plaintiffs, thereafter, filed their Preliminary Objections on the 7<sup>th</sup> February 2022 to the hearing of Taxation of Costs in reference to the Elizabeth Case and the Rosiland Case. Deputy Registrar Saunders heard the parties on the 16<sup>th</sup> February, 2022 and brought to the attention of Counsel for the Defendants that their Summons for leave to file Bill of Costs in reference to Rosiland's case was outside the Rules of the Supreme Court. The

Deputy Registrar rendered a ruling on the Application on the 25<sup>th</sup> April 2022. At paragraph 19 and 20, the Deputy Registrar said the following:

*“19. As the summons for extension of time was filed on the 8<sup>th</sup> February 2021 and if not for the defendant’s error, would have been heard on the 23<sup>rd</sup> June 2021 along with the summons in Elizabeth’s case, I will exercise my discretion and grant leave to the defendants to extend the time for filing of the Bill of Costs to the 31<sup>st</sup> August 2021.*

*20. This Court has reviewed the case law and submissions of the parties in both Elizabeth’s case and the Rosiland’s case and finds the preliminary objection of the plaintiffs Bills of Cost filed in both actions to be unsustainable and without merit. The foregoing preliminary objections that are relevant to certain items in the Bills of Cost will be determined at taxation hearings. Costs to defendants to be taxed if not agreed.”*

5. On the 23<sup>rd</sup> May, 2022 the Plaintiffs filed a Notice of Appeal seeking an Order rescinding the decision made by the Learned Deputy Registrar. The Plaintiff then served on the Defendants’ Counsel the Notice of Appeal. It is noted at page 3 of the said Notice where the Plaintiffs’ Counsel noted ***“And that the time for appealing against the said order be extended until after the hearing of this Appeal.” (emphasis added)***
6. The Defendants’ Counsel then filed Summonses on the 7<sup>th</sup> July, 2022 with respect to the Elizabeth Case and the Rosiland Case pursuant to Order 2 Rule 1 seeking an order that the Plaintiffs’ Notice of Appeal be set aside on the ground that it is irregular and that it was filed and served more than 29 days after the Order of the Deputy Registrar contrary to Order 58 Rule 1 (3) of the Rules of the Supreme Court as well as an order seeking cost for the Application. The Parties appeared before the Court on the 20<sup>th</sup> October, 2023 and was advised that they could file additional documents or Skeleton arguments on or before the 27<sup>th</sup> October, 2023 and, thereafter, the Court would render a decision and does so now.
7. The Defendants’ Counsel filed on the 25<sup>th</sup> October, 2023 an Affidavit sworn by Samuel R. Rolle who avers that he is Counsel and Attorney at Law and is a Senior Associate at the firm of Delaney Partners, the Attorneys for the 1<sup>st</sup> & 2<sup>nd</sup> Defendant in these proceedings. The Court will note that the contents of the Affidavit of Mr. Brown is an outline of the facts highlighted by the Courts as well as exhibits of correspondence between Counsel for the Plaintiffs’ Counsel and Counsel for the Defendants’. The Court acknowledged the Skeleton Arguments on behalf of the 1<sup>st</sup> & 2<sup>nd</sup> Defendant was laid over on the 18<sup>th</sup> October, 2023 and Skeleton Arguments on behalf of the Plaintiffs’ were filed on the 20<sup>th</sup> October, 2023.

## Law

8. The Court notes that this matter commenced prior to March 2023 and, therefore, the previous Rules of the Supreme Court are applicable opposed to the current Civil Procedure Rules. Where reference is made to rules, it is referring to the Rules of the Supreme Court. The Court will review Order 58 Rule 1 (1) through (4) which reads as follows:

1. *"(1) An appeal shall lie to a judge in chambers from any judgment, order or decision of the Registrar.*

*(2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice to attend before the judge on a day specified in the notice.*

*(3) Unless the Court otherwise orders, the notice must be issued within 5 days after the judgment, order or decision appealed against was given or made and served not less than 2 clear days before the day fixed for hearing the appeal.*

*(4) Except so far as the Court may otherwise direct, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought. (Emphasis added)."*

9. Defendants' Counsel also cite Order 2 Rule 1 which reads as follows:

1. *"(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document judgment or order therein."*

10. The effect of the Appeal to the Judge in Chambers from the decision of the Registrar is dealt with by way of an actual rehearing of the Application which led to the order under the appeal, and the Judge ought to treat the matter as though it came before him for the first time. The party appealing, though the original application was not by him but against him, has the right as well as the obligation to open the appeal. The Judge will of course give the weight it deserves to the previous decision of the Registrar but he is not bound by it. (See Evans v Bartlam [1937] AC 473). The Judge in chambers is in no way fettered by the previous exercise of the Registrar's discretion, per Evans v Bartlam supra. A Judge hearing the Appeal from the Registrar is entitled, if he thinks fit, to adopt the Registrar's reasoning as his own judgment without setting out the reasoning himself and by doing so the Judge does not fail to exercise his discretion conferred upon him. (See Rae v Yorkshire Bank plc, The Times, October 16 1989 CA.). It is a common practice for the Judge in Chambers, as in relation to the question of costs, may admit further or additional evidence by affidavit to that which was before

the Registrar. Alternatively, in his discretion a Judge may refuse a party to adduce further evidence where he has taken his stand on the evidence which was before the Courts. (See **Krakauer v Katz [1954] 1 WLR 278**).

11. The Court also notes the question of time of the filing of the Notice of Appeal is applicable and this was in fact acknowledged by Plaintiffs' Counsel by an insertion into the Notice of Appeal an application for the abridgment of time to permit the Notice of Appeal to proceed. In this regard the Defendants' Counsel filed their Summons and cited Order 2 Rule 1. In which directions given in the English White Book at the equivalent of Order 3 Rule 5 (1), states the Rules of the Supreme Court as to the time it must be observed, and if substantial delay occurs without any explanation being offered, the Court is entitled, in the exercise of its discretion, to refuse the extension of time, even though the delay could be compensated for by costs and no injustice would be done to the other party. (See **Revici v Prentice Hall Inc. [1993] 1 All ER 952**). However, In the case of **Regalbourne Ltd. V East Lindsay District Council [1994] 158 LG Rev 81, The Times, March 16 1993**, the Court of Appeal held that such an approach did not govern an application to extend time for an appeal.... In the absence of an agreement before the Court would consider exercising its discretion to extend time .... It would normally need to be satisfied that there was an acceptable explanation for delay. If there is none the question of prejudice was unlikely to arise. If there was an acceptable explanation, the Court might still refuse to extend the time if the delay was substantial or if to do so would cause substantial prejudice to the respondent.
12. An application for the extension of time is a separate application apart from that of any other application. Therefore, the appropriate way in which to move the Court is by way of Summons supported by Affidavit. It is also in good practice to annex the intended appeal should the extension be acceded to.
13. Moreover, this Court will note the Court of Appeal decision of **Annischka Holmes-Moncur v. Norma Williams SCCivApp. No. 8 of 2023**, where Madam Justice of Appeal Charles laid out the criteria of seeking an extension to Appeal and at paragraph 12 she said as follows: "In *Flowers Development Company Limited v (1) The Bahamas Telecommunications Company Ltd and (2) Mr. Kenneth Whyms and (3) Emerald Palms of South Andros SCCivApp No. 14 of 2022*, this Court, differently constituted, succinctly stated the law governing extension of time applications. In delivering the Judgment of the Court, Evans JA stated at paragraphs 8 -10, the following: "8. *The law governing extension of time applications is well established in this jurisdiction. Nonetheless, the following observations of Barrow J.A. in the Eastern Caribbean Court of Appeal case of Frampton v Pinard et Al; Sanford v Graneau et Al; Ferreira v Henderson et Al; Newton v Bannis-Roberts et Al; Prevost v Blackmoore et Al. Civil Appeal No. 15 of 2005. Court of Appeal (Dominica) (DM 2006 CA 1) may usefully be reproduced: 'In the circumstances of this case and in view of its public importance it is appropriate, at this juncture, to state the fundamental premise that there are rules that govern the grant of an extension of time. The Court cannot grant an extension of time purely as a matter of discretion. The Court can only do so in accordance with the*

*rules that are laid down. Not even in a case of the utmost public importance can the Court overlook the rules because, in a particular case, the Court thinks it fair or reasonable or appropriate or just to do so. The rules must be seen as establishing criteria that are definitive as to what is fair and reasonable and appropriate and just. Because these criteria were in existence before there arose the dispute to which they are to be applied, any possibility of subjective and uncertain considerations operating to influence a decision is excluded. The due application of the rules, therefore, is itself of the utmost public importance because those rules and their due application are the basis upon which opposing parties to litigation are entitled to and must expect their dispute to be determined.” (Emphasis added).*

14. Therefore, the power to extend time is discretionary and it is imperative that the following considerations are pleaded: 1) the length of the delay, 2) the reasons for the delay, 3) the chances of the appeal succeeding if the time was to be extended and 4) the degree of prejudice to the potential respondent if the application is granted. (English White Book 1999 paragraph 59/4/17 and also affirmed in the Court of Appeal case of **Paradise Island Ltd. v Glenn Wells SCCiv App No. 32 of 1994**). Moreover, the most persuasive consideration of the four was whether there is a prospect of success provided that there was no prejudice on the other side per (**Rodriguez Jean-Pierre v the King (Bahamas) [2023] UKPC 15**). Further at paragraph 30, it was held that the discretion will turn on its own set of facts and circumstances. Moreover, an acceptable explanation requires more than a mere statement that the person in charge of the action forgot about it or was too busy to get on with it, an acceptable excuse such as illness will prompt a more sympathetic response to the Application than if the omission is caused by neglect. (See **Mith v Secretary of State for the Environment, The Times, July 6 1978**).

15. Therefore, it is imperative that the relevant material is presented for the Courts to consider. In the case of **Ratnam v Cumarasamy [1964] 3 All ER 993** which concerned an application for the extension of time held:

*“The only material before the Court of Appeal was the affidavit of the appellant. The grounds there stated were that he did not instruct his solicitor until a day before the record of the appeal was due to be lodged and that his reason for this delay was that he hoped for a compromise. Their Lordships are satisfied that this did not constitute material upon which they could exercise their discretion if favor of the appellant.”*

## **Submissions**

### **Plaintiffs’ Submissions**

16. The Plaintiffs’ Counsel in the Skeleton Arguments filed on the 20<sup>th</sup> October, 2023 noted that Madam Justice Evans delivered her ruling on the 27<sup>th</sup> November 2020 and the Defendants filed their Bill of Costs on the 31<sup>st</sup> August, 2021, which was nine (9) months after the Decisions. That the Plaintiffs filed Preliminary Objections to the hearing of the Taxation of Costs on the 7<sup>th</sup> February, 2022. That the Deputy Registrar ruled on the Application on the 25<sup>th</sup> April, 2022. The Plaintiffs’ Counsel suggested that the Registrar showed extreme prejudice and the Plaintiff prefer that the taxation be heard by another

Registrar. Counsel continues that even if the application was made within the allotted time the Deputy Registrar has no discretion without hearing the Plaintiffs thereon to grant any such leave contrary to the Rules of the Supreme Court which lay out the procedure which the defendants were well aware of because they applied for such leave out of time in the Elizabeth Case. Further, the Plaintiff contends that the Deputy Registrar show partiality towards the defendants; and further contended that the Plaintiffs are appealing that they have an extension of time because it took the Deputy Registrar some time to make her decision after which it was emailed to the plaintiffs' attorney and it took a while for the email to be retrieved. The Plaintiffs in arguments cited the case of Michael Wilson and Partners, Ltd v. Sinclair Civil Appeal No. 40 of 2007. This case from the Court of Appeal related to the question of an extension of time to proceed with Bill of Cost. In this case the successful party to the litigation had entered into an agreement to not pursue their cost until after the Application to Privy Council had been determined. The Application concluded unsuccessfully and the successful litigant sort to proceed with their Cost Application. The unsuccessful litigant argued they were out of time. The Court of Appeal agreed. However, the Court noted at paragraph (10) of the ruling the Justice of Appeal Conteh for the Majority of the CA said the following:

*“The Application however, is made directly to this court. I should say that in light of the provisions of sub rule (24) the application for an extension of time should have properly been made to the Registrar as the taxing office in the first instance...”*

And again at paragraph 34 the court said the following:

*“A more simple practical solution would be for a receiving party whose favor costs have been awarded to persuade the Registrar pursuant to sub-rule (24) to extend time for taxation of those costs....”*

The simple interpretation is that the Registrar does retain the discretion to extend time for a bill of cost. The Plaintiffs' contend that the defendants' will not be prejudiced by their Appeal.

### **Defendants Submissions**

17. The Defendants noted that the Notice of Appeal was irregular as it was outside the time limit of 5 days pursuant to Order 58 Rule 1 (3) of RSC. The Defendants also objected to the Plaintiffs application for leave to file their Appeal out of time noting the Court of Appeal decision of Turner v. Turner SCCivApp. No. 170 of 2013 specifically paragraphs 18 to 22, thereof which sets out the criteria for the Court to consider on an application for an extension. The Court accepts those principles as binding on the consideration of this court and would have been binding on the Deputy Registrar on her consideration of the Defendants application. Further, the Defendants contend that the delay between the Registrar's decision and the filing of the Notice of Appeal was some four (4) weeks and was inordinate. Further that the Plaintiffs have not provided any evidence as to why there was a delay. Noting that the Ruling was delivered on 25<sup>th</sup> April 2022 and was emailed to the parties. The Court also notes that from the Affidavit of Samuel Brown and exhibited there at SRB5 a letter dated 18<sup>th</sup> May 2022 and written to

Counsel for the plaintiff's referencing the decision of the Registrar dated the 25<sup>th</sup> April 2022. Counsel for the defendants then wrote requesting that their cost be settled on or before the 25<sup>th</sup> May 2022. Counsel for the defendants further argue that the Plaintiffs' grounds of appeal will fail as that a number of the objections related to the actual cost and not to the procedure. This was with respect to the Elizabeth Case. In so far as the Rosiland Case the argument was that Rosiland didn't advance an objection to the taxation; and in fact, it was the Registrar that pointed out the omission to the parties. The Defendants' reject the argument that they will not be prejudiced noting the time and continued to result in their client not being made whole by the many delays.

### Analysis & Discussion

18. The Court has reviewed the Appeal and accepts that should the Court accede to the Application of the Appeal it amounts to a rehearing of the preliminary objections taken before the Deputy Registrar. That being said the Court notes that the Defendants' have filed Summonses seeking to have the Notice of Appeal struck as being irregular. Should the Court accede to that Application the issue of the Appeal becomes moot. The Court also notes that on the 20th October, 2023 it invited the parties to file any additional material they felt was necessary in support of their respective Applications, inclusive of Affidavits where necessary. That this was to be accomplished on or before the 27th October 2023 close of business day. The Court takes note that the Defendants filed an Affidavit, and the Plaintiffs filed an Affidavit on the 27th October 2023 sworn by Ms. Nakia Cooper, a legal Secretary at the Plaintiffs' Counsel Chambers. Ms. Cooper avers that the purpose of the Affidavit was to exhibit an Affidavit sworn by Ms. Rosiland Collie who is currently out of the Jurisdiction. That the Affidavit was executed and returned via electronic mail. The Court notes that there is an Affidavit exhibited to Ms. Cooper's Affidavit, reportedly, executed by Ms. Rosiland Collie. The Court would note that the Affidavit purports to be executed in Freeport, Grand Bahama, which appears directly inconsistent with the claim of Ms. Rosiland Collie being out of the Jurisdiction. Secondly, the Affidavit is not notarized and if done outside the Jurisdiction certainly would need to comply with International Law as well as Order 41 Rule 11 which reads as follows:

*11. A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a court, judge, notary public or person having authority to administer oaths in a part of the Commonwealth outside The Bahamas in testimony of an affidavit being taken before it or him shall be admitted in evidence without proof of the seal or signature being the seal or signature of that court, judge, notary public or person: Provided that no such document signed, sealed, executed or sworn outside The Bahamas or other part of the Commonwealth shall be admitted in evidence unless the seal or signature is proved by a certificate of the person having authority to give such certificate, which shall be conclusive in all respects, if it states that the person signing the certificate has such authority...*

19. Additionally, it is noted there is colorization difference between pages 1&2 of the Affidavit in contrast to page 3. Finally, the substance of the Affidavit fails to provide

reasons for the actual delay to Appeal. At paragraph 13 the Affiant states that *“the Deputy Registrar gave us several dates to render her decision. On all of those dates her decision was not ready. Eventually the Deputy Registrar emailed her decision. By the time we were aware of the email we were past 5 days to appeal the decision.”* (Emphasis added). The Court accepts that the Parties received the Registrar’s decision by the 25th April 2022, five (5) days would have taken the Plaintiffs to the 30th April 2022 and if the Court wants to be generous the 1st May 2022. However, the Plaintiffs did not file their Notice of Appeal until the 23rd May 2022. The problem is that the Plaintiffs’ fail to explain the delay from the 25th April 2022 to the 23rd May 2022. The affidavit is deficient in this regard and should the Court be minded to consider the Application to extend the time there is no material for the Court to exercise its power. The Court notes the comments of the Court of Appeal in Elizabeth Misha Diane Collie v. Lady Henrietta Fortune Doreen St. George & Jacy A.J. Whittaker SCCivApp. No. 133 of 2021 specifically paragraph 11 is instructive and stated:

*“ This is not a reasonable excuse. The six weeks period for appealing expired on 8 January, 2021. This was well before the surgery of February, 2021. The decision to appeal ought to have been considered and made before the time period for appealing had expired. Nothing in the affidavit indicates that any consideration was given to the issue of appealing prior to the 8 January, 2021 when the six weeks period had expired. The affidavit does not disclose whether during that period prior to the 8 January, 2021 any discussion occurred between her and her counsel as to when such a decision as to appealing had to be made. ”*

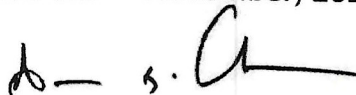
20. The Court also notes that the Plaintiff’s inserted into the filed Notice of Appeal a request for an extension of time in which to file an appeal. Before addressing the question as to whether the Appeal ought to be heard the Court has to address whether to abridge time to allow the Appeal to be heard. It is a tacit admission by the Plaintiffs that their Appeal is perhaps out of time pursuant to the RSC. The question the Court has to answer is can an application for abridgment of time occur in the actual document in which the abridgement is being sought. In this case the Plaintiffs’ filed their Notice of Appeal but clearly recognized it was likely out of time and included as a clause the request for the abridgement. The Court notes that neither party took the point but it is relevant to the larger issue, whether this application of the plaintiffs’ is properly before this court. In applying the decision of Annischka Holmes- Moncur v. Norma Williams SCCivApp. No. 8 of 2023, it is clear that the rules in applying for an extension of time was not followed as the proper form is to move the Court by way of Summons Supported by Affidavit.
21. The length of the delay was some 4 weeks after the judgment of the Deputy Registrar. The Plaintiffs filed an affidavit which fails to give any reasonable reasons for the delay. Further, the Plaintiffs’ may consider the delay of four (4) weeks to be insignificant they are still under an obligation to explain the reasons for the delay. Moreover, in applying the case of Ratnam v Cumarasamy supra material must be pleaded before the Court

- in order for the Court to exercise its discretion. Therefore, the Plaintiffs were still under an obligation to explain the reasons for their delay, which they have not.
22. Further, the Court refers the Plaintiffs' to Revici v. Prentice City Hall, Inc. *supra* and, in fact, when the Plaintiffs had appealed Madam Senior Justice Evans' (as she then was) ruling to the Court of Appeal in this very case, it noted that that they were out of time and had applied for an extension utilizing an affidavit. It appears unusually and irregular to Appeal knowing you are out of time but rather than a separate Application with an Affidavit and exhibiting the Notice of Appeal counsel elected to file the Notice of Appeal and then sought to request the extension.
23. Not only is the Appeal out of time and not in compliance with Order 58 Rule 1(3) of the RSC. The intention of seeking the extension without giving reasons is itself unacceptable. The Court will not go beyond noting the irregularity of the Notice of Appeal itself. The Court Acceded to the Application filed by the Defendants to strike out the Notice of Appeal as being irregular. The Court will therefore not address the substantive issue as to whether the Deputy Registrar exercised her discretion appropriately as permitting the extension and permitting the taxation to proceed.

#### **DISPOSITION**

24. The Court will dismiss the Notice of Appeal as not complying with the Rules of the Supreme Court and accede to the Application of the Defendants' to strike out the Notice of Appeal as irregular. The Court will award costs to the defendants' to be taxed if not agreed.

Dated the 17<sup>th</sup> November, 2023



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**Andrew Forbes**  
**Justice of the Supreme Court**