

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2025/CLE/GEN/ 00121

BETWEEN

MILLER ENTERPRISE LIMITED

1st Claimant

AND

EARL MILLER

2nd Claimant

AND

SHUNDA STRACHAN

(In her capacity as Chief Valuation Officer (Acting))

THE MINISTER OF FINANCE

DEPARTMENT OF INLAND REVENUE

Commonwealth of The Bahamas

1st Defendant

AND

THE TREASURER

Commonwealth of The Bahamas

2nd Defendant

AND

THE ATTORNEY GENERAL

Commonwealth of The Bahamas

3rd Defendant

Before: The Honorable Madam Justice Carla Card-Stubbs

Appearances: D. Halson Moultrie for the Claimants
Zoe Gibson, Kenria Smith and Perry McHardy, of Office of the Attorney General, for the Defendants

Hearing date: April 30, 2025; May 1, 2025 (and May 9, 2025 on further written submissions)

RULING

Application for leave to apply for Judicial Review – Procedural requirement - Whether leave may be granted after initiation of action – Part 54 CPR The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR') – Part 1 CPR Overriding Objective – Enforcing Compliance with the rules

On March 5, 2025, the Claimants/Applicants filed a Fixed Date Claim Form for Judicial Review and, on the following day, filed an Amended Fixed Date Claim Form for Judicial Review. The Claimants/Applicants filed an Amended Notice of Application on April 3, 2025 drafted as (1) Application for leave to appeal and for stay of proceedings and (2) Application for leave to apply for judicial review pursuant to Part 54, The Supreme Court Civil Procedure Rules (CPR), 2022.

Held: There is no competent application for leave to pursue judicial review filed. Application dismissed.

In judicial review proceedings, leave is a mandatory pre-condition. Rule 54.3(1) CPR provides that “no application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.” To embark on judicial review proceedings without leave is fatal to those proceedings. To institute proceedings in the wrong manner and without leave is fatal. Application for leave is by Form JR1. Commencing an action is not rectified retroactively by an application for leave, which, when examined, is itself flawed in substance and in form. The process undertaken by the Claimants/Applicants is fundamentally flawed.

CARD-STUBBS J.

INTRODUCTION

[1.] This is the Claimants' application for leave to apply for judicial review by way of an Amended Notice of Application filed on April 11, 2025. That Amended Notice of Application also made application for leave to appeal the discharge of an injunction and for a stay of the court's order. Leave to appeal was refused. The stay was refused. This ruling deals with that part of the Amended Notice of Application seeking leave to to apply for judicial review.

[2.] For the reasons set out below, the application for leave to apply for judicial review is dismissed.

[3.] In this ruling, the Claimants may also be referred to as the Applicants. These references will be used interchangeably.

[4.] In this ruling, the Defendants may also be referred to as the Respondents. These references will be used interchangeably.

THE BACKGROUND

[5.] On 13th February, 2025, the Claimants filed a Notice of Application and a Certificate of Urgency supported by the Affidavit of Earl Miller, 2nd Claimant, also filed on 13th February 2025. The Application sought, *inter alia*, to restrain the Defendants from “exercising the Power of Sale and/or accepting bids to purchase” the Claimants’ property.

[6.] On 19th February, 2025, the court heard the matter *ex parte* and acceded to the Claimant’s application. On 5th March, 2025, the Defendants filed a Notice of Application and a Certificate of Urgency supported by the Affidavit of Shunda Strachan, also filed 5th March 2025. The Application sought the discharge of the injunction. At an *inter partes* hearing on 20th March, 2025, the court discharged the injunction.

[7.] In the meantime, on 5th March, 2025, the Claimants filed a Fixed Date Claim Form for Judicial Review and on 6th March, 2025, the Claimants filed an Amended Fixed Date Claim Form for Judicial Review supported by the Affidavit of Earl Miller filed on 5th March 2025.

[8.] On 11th March 2025, the Defendants filed an Acknowledgment of Service of the Amended Fixed Date Claim Form.

[9.] On 18th March, 2025, the Claimants filed an Affidavit of Earl Miller in response to the Defendants’ affidavit.

[10.] Subsequent to this Court’s order of March 20, 2025, the Claimants filed a Notice of Application seeking leave to appeal the Court’s order and for ‘a stay of execution of the said order’ on 24th March, 2025 followed by an amended Notice of Application also filed on 24th March 2025 supported by an affidavit of Earl Miller filed 24th March 2025.

[11.] By Order dated 25th March, 2025, this Court granted the Claimants leave to further amend their Notice of Application for leave to appeal. The Court also acceded to the Claimant’s application for a stay of the Court’s Order of 20th March, 2025. The stay was granted until the hearing of the Claimants’ application on April 30, 2025. Subsequently, on April 30, 2025, the Court granted an extension of the stay pending the determination of the Claimants’ Application for leave to appeal.

[12.] The Claimants filed an Amended Notice of Application on 3rd April, 2025. This Amended Notice of Application is drafted as (1) Application for leave to appeal and for stay of proceedings and (2) Application for leave to apply for judicial review pursuant to Part 54, The Supreme Court Civil Procedure Rules (CPR), 2022. Notably this was the first introduction of any application for leave to apply for judicial review. The Application for leave to Appeal was supported by supplemental affidavits of Earl Miller filed 3rd April 2025 and 24th April, 2025. The Claimants also filed a Notice of Intention to Cross Examine the 1st Defendant on 7th April, 2025.

[13.] The Application for judicial review was supported by a second supplemental affidavit of Earl Miller filed 28th April 2025.

THE APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

Application for leave

[14.] The Amended Notice of Application is said to be made pursuant to “CPR Rules of the Supreme Court, Civil Procedure Rules, 2022” and was crafted to include an application for leave to appeal and an application for judicial review. The Application for leave to apply for judicial review reads as follows:

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW PURSUANT TO PART 54, THE SUPREME COURT CIVIL PROCEDURE RULES (CPR), 2022

1. In addition, the Claimants, Miller Enterprise Limited and Earl Miller make application for leave to apply for Judicial Review to quash the decision of Shunda Strachan, in her capacity as Chief Valuation Officer to execute a Power of Sale via a 'Public Auction' to purportedly sell the Claimants' property without following the proper procedures and in breach of sections 7, 18, 19, 23, 25 and 38 through 41 of the Real Property Tax Act and in violation of the Claimants' constitutional rights protected by Articles 20, 28 of the Constitution of the Commonwealth of The Bahamas.
2. The grounds in this application for leave to apply for judicial review are:
 - a. Unjust, unconstitutional and therefore illegal confiscation and/or seizure of the assets of a private individual and private company;
 - b. The procedural impropriety by the 1st Defendant in failing and/or refusing in good faith in resolving varying, contradictory and disputed historical tax figures. And failing and/or refusing to answer and/or acknowledge receipt of correspondence and inquiries.

- c. The exercise of the power of sale was irrational based on the statutory options available and in all the circumstances, fraudulent and a [sic] abuse of the process in that the demand for full payment of the claimed and disputed tax arrears after accepting a payment of \$200,000.00 on the arrears was disproportionate when the Defendants' acquiescence and maladministration of the collection of real property taxes over the years contributed to the existing situation.
 - d. The judicial review of the 1st Defendant's actions is the only available option to arrest, stop and prevent this kind of blatant abuse and unreasonable exercise of Executive power which if not reviewed could irretrievably frustrate, destroy and render any appeal nugatory.
2. The Relief sought in this application are that the Honourable Court:
- a. be pleased to grant leave to the claimants to apply for a prerogative order of Certiorari to quash the decision of the Chief Valuation Officer of the Department of Inland Revenue of the Commonwealth of The Bahamas to sell the Claimants' property by Power of Sale via 'Public Auction' which was done in breach of statutory procedures and in violation of the Claimants constitutional rights
 - b. be pleased to grant leave to the Claimants to apply for a prerogative order of Mandamus compelling the Defendants and in particular the 1st Defendant to determine the:
 - i. appraised property value,
 - ii. assessment property value,
 - iii. accurate annual tax amounts
 - iv. accurate annual surcharge;
 - v. specific ingredients that makeup the "OTHER" Charges;
 - vi. charges in accordance to the established and laid down procedure;
 - c. be pleased to grant leave to the Claimants to apply for a prerogative order of Mandamus compelling the Defendants and in particular the 1st Defendant to:
 - i. follow globally accepted administrative practices by responding to inquiries, answering correspondence, meeting with and engaging taxpayers, and follow Court directives;
 - ii. provide educational materials summarizing procedural steps, procedure, and dispute resolution options and procedures;
 - iii. provide annual statements detailing the categories of real property tax assessed
 - d. A declaration that the Chief Valuation Officer has acted in contravention of the rules of natural justice, globally accepted administrative best practises [sic] and in violation of the Claimants' constitutional rights to due process
 - e. A declaration that the Chief Valuation Officer misinterpreted the meaning of a 'Public Auction' when a sole bidder was deemed via a Notice in the Newspapers

- to satisfy the requirements of a public auction;
- f. A declaration that the purported sale by 'public auction' of the Claimants' property and conveyance are null and void and of no legal effect;
 - g. A declaration that the Real Property Tax (Amendment) Act which brought into force the ultra vires and unregulated exercise of an Executive Power of Sale infringes on the constitutional rights of the taxpayer guaranteed and protected by Articles 20 and 27 of the Constitution of the Commonwealth of The Bahamas and ought not to have been given the Royal Assent by the Governor General;
 - h. A declaration that ALL decisions and purported transactions executed under the section 25 amendments of the Real Property Tax Act are susceptible to the risk of unilateral, political and Executive abuse and targeting and are therefore amenable to judicial review;
 - i. An order that all further proceedings against the Claimants be stayed pending the outcome of this application for judicial review;
 - J. That the costs of this application be costs in the cause;
 - k. Any other order (s) which this Court may deem fit, and just to grant.

[15.] The application is supported by a second supplemental affidavit of Earl Miller filed 28th April 2025.

ISSUES

[16.] The question before this court is whether the court ought to grant leave to the Applicant to pursue judicial review. This Court's jurisdiction is reflected in Part 54 CPR, as recited in the Application of the Claimants. The application for judicial review in this case was made after this court's order giving the Claimants leave to amend his application for leave to appeal.

[17.] On hearing the Claimants' application for leave to apply for judicial review, this Court invited the parties to address the court on whether the rules of Part 54 CPR had been complied with and to make written submissions thereon. The parties were at liberty to lodge and exchange such written submissions on or before May 9, 2025. This Court acknowledges the receipt of the written submissions of both parties. Those submissions are captured below.

[18.] I record that the Court's request of the parties to address it on the matter of compliance with Part 54 met with vociferous objection by Counsel for the Claimants/Applicants. It is this Court's view that a court ought to always bear in mind

whether it has jurisdiction to grant any relief being sought by a litigant and, if so, whether the litigant has properly invoked the court's jurisdiction. Unless a rule of law otherwise provides, the consent of parties does not vest a court with jurisdiction. A court is concerned with the fair and just application of the law and is unfettered by instructions of a litigant. It is in the interest of justice that a court invites counsel for a party to address it on relevant and fundamental aspects of any application that it makes to the court.

[19.] It is therefore not unusual for a court to identify an issue or issues on which the parties should make submissions in order to assist the court to determine the application before it. In this case, the application is said to be brought pursuant to Part 54 CPR The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR'). In that context, this Court directed the parties to make oral and written submissions in relation to Part 54. It would be a surprising proposition that a court would not be able to consider whether the rules of court were being observed and whether a competent application lay before it. It is within the inherent jurisdiction of a court to determine whether the rules governing its proceedings are being complied with or, for example, whether there is an abuse of process. In this case, there is the preliminary issue of whether the application is properly before this court.

[20.] The issues to be resolved therefore are:

1. Whether this court may act on the application before it and
2. If so, whether the court ought to grant leave to the Applicants to pursue judicial review.

ISSUE 1

[21.] Issue 1 is a preliminary issue to be addressed. The issue is whether this court may act on the application before it, viz, whether there is a competent application for judicial review before the court.

Submissions of The Claimants/Applicants

[22.] The Applicants submit that the Amended Notice of Application complies "in both form and substance" with Rule 54.3, providing the requirement as set out in the rules, "including setting out the Grounds and the Reliefs sought". The Applicants point out that the Amended Notice of Application "features a Supporting Affidavit and a Draft Order of the Reliefs sought." The Applicants submit that Rule 54.2 allows for the joinder of claims for relief and "the Amended Notice of Application, seeking leave to appeal, a stay of proceedings and leave to apply for judicial review avoids delays and multiple hearings and makes the most efficient use of the court's time."

[23.] The Applicants further submit that "an aggrieved party need not seek leave to file a Notice of Application for leave to apply for judicial review whether the notice is drafted

and filed for that singular purpose or combined in a Notice of Application via an amendment.” The Applicants also submit that “no prejudice has been caused because the amendments has [sic] been allowed and the application heard in combination with another without any objection in the substantial Submissions of the Defendants or application to strike out any part thereof.”

[24.] The submission of the Applicants is that there has been substantive compliance with the rules and that, in the absence of an objection or strike out application by the Defendants, the Court ought to decide on the substantive application since the Court has also heard the substantive application.

Submissions of the Defendants

[25.] The Defendants submit that the Claimants initially filed a Fixed Date Claim form which they amended and that the “Notice of Application, was in substance a further amendment to the original Fixed Date Claim.” The Defendants submit that “at no point, to date, have the Claimants filed with this Honourable Court any application for leave to apply for Judicial Review.”

[26.] The Defendants submit that the Claimants failed to file Form JR1 as required by Part 54 and that the “use of an amended Notice of Application combining unrelated procedural requests such as their application seeking leave to appeal and an application for a stay of proceedings does not satisfy the structured gatekeeping mechanism of Form JR1.” The Defendants further submit that the Claimants filed an action using a Fixed Date Claim and that action was assigned to the Common Law and Equity Division “which does not have carriage of Judicial Review matters under the current court structure”. They note that “had the Claimants properly initiated their application for Judicial Review under CPR Part 54, by filing a Form JR1 accompanied by the appropriate affidavit, the matter would have been assigned to the Public Law Division of the Supreme Court.” The Defendants rely on the case of **Byron Bullard v The Minister Responsible for Lands and Surveys [2024] BHS J No. 6**, to emphasize the importance of procedural compliance and the consequences of the failure to comply with the requirements of Part 54.

[27.] The Defendants submit that the Claimants fail to “clearly and properly identify the specific public law decision” and instead have made a reference to “the statutory power of sale generally”. The Defendants submit that this omission is a procedural deficiency. The Defendants also argue that the affidavit filed in support failed to verify the facts relied on in the application as required by the rules. They submit that the affidavit filed in support of the application fails to provide any material which would substantiate the allegations made and that the affidavit does not incorporate any other affidavit for this purpose.

[28.] The Defendants argue that the application should also fail based on the time of the application. They argue that the evidence shows that public notices of the intended sale were published on February 22, 2024 and again on June 24, 2024, that an agreement for sale was executed on November 20, 2024, and that a conveyance was completed on January 22, 2025, passing legal title to a third-party purchaser. The Defendants argue that the Claimants did not “purport to apply for leave to apply for Judicial Review until April 3, 2025, well after the transaction had concluded.” The Defendants argue that there was a delay in making the application (from February 2024 to April 2025) and that leave should be refused on that ground. They also argue that title has passed to another and that, therefore, the Claimants lack standing to apply for judicial review.

LAW AND ANALYSIS

JURISDICTION FOR JUDICIAL REVIEW

[29.] Judicial Review invokes the supervisory jurisdiction of the court. It is trite law that judicial review concerns the legality of a decision taken and not the merits of it. The guidance notes to Part 54.1 as appear in the Supreme Court Civil Procedure Rules, 2022, Practice Guide January 2024 are helpful in this regard. The first two paragraphs read:

Judicial review is concerned “*with the legality rather than the merits of the decision, with the jurisdiction of the decision-maker and the fairness of the decision-making process rather than whether the decision was correct.*”: *Kemper Reinsurance Co. v Minister of Finance* [2000] 1 A.C. 1 at 14.

Judicial Review is the process by which the Court exercises a “*supervisory jurisdiction over public decision-making bodies to ensure that those bodies observe the substantive principles of public law and do not exceed or abuse their powers while performing their duties.*”: *Phillippa Michelle Finlayson v The Bahamas Pharmacy Council* [2019] 1 BHS J. No. 63 at 130.

[30.] Procedurally, a claimant must first seek and obtain leave to launch proceedings before a claimant can cause the court to undertake a substantive review.

[31.] Part 54 of the Supreme Court Civil Procedure Rules, 2022, as amended (‘CPR’) sets out the procedure for hearings by way of Judicial Review. Rule 54.1 identifies those cases fit for judicial review and Rule 54.3 sets out the application for leave procedure. That rule provides:

54.3 Grant of leave to apply for judicial review.

- (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this

rule.

- (2) An application for leave shall be made without notice to a judge by filing in the Registry —
 - (a) a notice in Form JR1 containing a statement of —
 - (i) the name and description of the applicant;
 - (ii) the relief sought and the grounds upon which it is sought;
 - (iii) the name and address of the applicant's attorney, if any;
 - (iv) the applicant's address for service; and
 - (b) an affidavit which verifies the facts relied on.
- (3) The judge may determine the application without a hearing, unless a hearing is requested in the notice of application, and need not sit in open Court provided that in no case shall leave be refused or granted on terms not sought in the application without giving the applicant a hearing.
- (4) Where the application for leave in any criminal cause or matter is refused by the judge, or is granted on terms, the applicant may renew it by applying to the Court of Appeal.
- (5) In order to renew his application for leave the applicant shall, within ten days of being served with notice of the judge's refusal, file in the Registry notice of his intention in Form JR2.
- (6) The Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit provided that if the applicant shall fail to amend his statement within the time specified by the order of the court then such order shall cease to have effect unless the court orders otherwise.
- (7) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.
- (8) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.
- (9) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.
- (10) Where leave to apply for judicial review is granted, then —
 - (a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;
 - (b) if any other relief is sought, the Court may at any time grant

in the proceedings such interim relief as could be granted in an action begun by writ.

[32.] Judicial Review is said to be a remedy of last resort and this is a consideration undertaken in the application for leave procedure. It is also one of the rationales for the application for leave process. The Application for leave process is to be observed – it is not a mere formality. That process filters out cases not fit for judicial review: **Byron Bullard v The Minister Responsible for Lands and Surveys [2024] BHS J No. 6.**

[33.] The Application for leave process also allows the court to shape and direct how the substantive hearing should proceed if leave is given. See, for example, Rules 54.3(6), 54.3(9), 54.3(10) and 54.5 CPR.

[34.] Rule 54.5 provides for the mode of application on the institution of an action once leave is obtained. Rules 54.5(1) and (2) provide for application by an originating application.

54.5 Mode of applying for judicial review.

(1) In any criminal cause or matter, where leave has been granted to make an application for judicial review, the application shall be made to a judge sitting in open Court by an originating application.

(2) In any other such cause or matter, the application shall be made by an originating application to a judge sitting in open Court, unless the Court directs that it shall be made to a judge in Chambers.

[35.] In summary, the rules require that a claimant who wishes to pursue judicial review proceedings must first comply with Rule 54.3, by filing notice in Form JR1 with the requisite information and a verifying affidavit. Only after leave is granted, may the claimant institute action by way of an Originating Application. An Originating Application is one of the modes of instituting actions under the CPR: Part 8. The other modes are Standard Claim form and a Fixed Date Claim form.

[36.] In the matter before me, the Claimants seek leave by way of a Notice of Application in a matter instituted by a Fixed Date Claim Form. A Notice of Application is the general mode of applying for interlocutory relief in a matter already constituted: Part 11 CPR. In this instance, the application for leave for judicial review seems to be a belated attempt at seeking leave to pursue judicial review proceedings because it came after this Court gave leave to amend what had been filed as an application for leave to appeal this Court's order and where one of the grounds of appeal is the failure of this court to grant leave to pursue judicial review proceedings. I have already rendered a ruling on the application for leave to appeal, which application was refused. This Court

notes that there had not been, before then, any application for leave to pursue judicial review.

[37.] The Claimants submit that the amended Notice of Application complies “in both form and substance” with Rule 54.3 CPR. I do not accept that this is so. The Notice of Application filed in an *extant* action is not akin to a notice by Form JR1 filed *prior* to the institution of an action. While one may discern the elements of Rule 54.3(a) in the Notice of Application, I accept the submission of the Defendants that the affidavit filed in support does not verify the facts and therefore fails to comply with Rule 54.3(b). On inspection, in order to find any support for the allegations made in the Application, one must review the several affidavits said to be “incorporated” by the affidavit made in support of the application for leave. The incorporation is a reference to several affidavits filed in respect of the Fixed Date Claim Form, the application for an interim injunction and the application for leave to appeal.

[38.] Is this a situation capable of rectification? In construing Part 54 CPR and the requirements of Rule 54.3, a court must have regard, and give effect, to the Overriding Objective. Part 1 CPR provides:

1.1 The Overriding Objective

(1) The overriding objective of these Rules is to enable the Court to deal with cases justly and at proportionate cost.

(2) Dealing justly with a case includes, so far as is practicable:

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways which are proportionate to —
 - (i) the amount of money involved;
 - (ii) the importance of the case;
 - (iii) the complexity of the issues; and
 - (iv) the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly;
- (e) allotting to it an appropriate share of the Court’s resources, while taking into account the need to allot resources to other cases; and
- (f) enforcing compliance with rules, practice directions and orders.

1.2 Application of overriding objective by the Court.

(1) The Court must seek to give effect to the overriding objective when —

- (a) exercising any powers under these Rules;
- (b) exercising any discretion given to it by the Rules; or
- (c) interpreting these Rules.

(2) These Rules shall be liberally construed to give effect to the overriding objective and, in particular, to secure the just, most expeditious and least expensive determination of every cause or matter on its merits.

1.3 Duty of parties.

(1) It is the duty of the parties to help the Court to further the overriding objective.

(2) In applying the Rules to give effect to the overriding objective the Court may take into account a party's failure keep his duty under paragraph (1)

[39.] I consider that this Court must deal with cases justly and at proportionate cost. Factors that a court takes into account include saving expense, ensuring that the case is dealt with expeditiously and fairly, allotting to it an appropriate share of the Court's resources and enforcing compliance with rules, practice directions and orders. Against this backdrop, in considering the compliance with rules, a court has a discretion to allow for the correction of minor procedural errors which have not caused serious prejudice to the other parties. A court must consider the interests of all parties.

[40.] The Claimants' submission is that Part 54 CPR has been complied with. I find that submission misconceived. The process embarked on by these Applicants flouts the rules of Part 54. There is a certain "procedural rigour" that must be observed in judicial review proceedings. The Defendants have referred to the application process as a "structured gatekeeping mechanism" and I adopt that appellation.

[41.] It is in light of the Overriding Objective that I consider the failure of the Claimants to comply with the procedure set out in Rule 54.3 CPR. I have before me an attempt to do something that is not permitted by the rules, viz, initiate an action for judicial review without the litigants first having obtained leave. The Applicants now purport to attempt to cure the default by belatedly filing an application for leave to pursue judicial review. That application is attached to an application for leave to appeal. One of the filed grounds in the original and twice-amended applications for leave to appeal was that this court failed to grant leave to pursue judicial review. Prior to the last amendment, there had been no application for leave to pursue judicial review. Even so, at this stage, the flawed application for leave to pursue judicial review is not supported by the affidavit evidence which a court has to take into account in making a determination on a leave application. For example, the Affidavit filed April 28, 2025 merely refers to the "1st Defendant's decision to exercise the Power of Sale" but does not give the details or facts of that decision. It appears that the facts are to be discovered by a study of the other affidavits filed in reference to other aspects of the instituted action.

[42.] Should, and can, the court "regularize" such procedural missteps? A court has a discretion to cure errors where appropriate. My opinion is that this is not an appropriate case for the curing of several and compounded defects. The Applicants did not seek leave before initiating proceedings. The application before me is made as part of an existing

action. To cure the procedural missteps of the Claimants would require procedural gymnastics that this Court is not prepared to undertake. It would require the unravelling, and undoing, of an action instituted by Fixed Date Claim Form and brought in the Common Law & Equity Division of this court. In that action, orders were already sought and made.

[43.] In instituting an action, securing an interim remedy and causing the other parties to enter an acknowledgement of service and to respond to notices of applications and a notice to cross-examine a witness, the Applicants have proceeded in a manner not contemplated by the rules. The conduct of the Applicants has, prior to any leave being obtained, put the other parties at expense.

[44.] In judicial review proceedings, leave is a mandatory pre-condition. Rule 54.3(1) CPR provides that “*no application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.*” To embark on judicial review proceedings without leave is fatal to those proceedings. To institute proceedings in the wrong manner and without leave is fatal. It is my view that to belatedly apply for leave, subsequent to instituting an action, is equally fatal. Commencing an action is not rectified retroactively by an application for leave which, when examined, is itself flawed in substance and in form. Application for leave is to be made by Form JR1. Once leave is granted, the proceedings are instituted by Originating Application. The process undertaken by the Claimants/Applicants is fundamentally flawed.

[45.] It is my determination that there is no competent application for leave to pursue judicial review before this Court.

ISSUE 2

[46.] Given this court’s determination of Issue 1, there is no competent application invoking the jurisdiction of the court.

[47.] In the circumstances, the application is dismissed.

CONCLUSION

[48.] The court’s supervisory power is being invoked. Judicial review proceedings undergo two stages: application for leave to initiate proceedings and the initiation of proceedings. This is clearly set out in the rules. An application for leave is the starting point.

[49.] The Applicants have already filed proceedings. The Applicants served the Defendants with notice of those proceedings and the Defendants entered an

acknowledgement of service. The Applicants also filed a notice of cross-examination of the Defendants. The Applicants have embarked on a course of action which is outside of the stipulations of the rules.

[50.] The application launched cannot properly support an application for leave for judicial review under Part 54 CPR. In the circumstances the application is dismissed.

COSTS

[51.] The Claimants/Applicants have been unsuccessful in the application for leave to apply for judicial review. The Defendants/Respondents have successfully resisted the application. Taking into account the provisions of Part 71, CPR and in particular the provisions of Part 71, Rule 71.6, I find no reason to depart from the general rule that the unsuccessful party should pay the costs of the successful party. Therefore, in this matter, the Claimants/Applicants shall pay the Defendants'/Respondents' costs, to be assessed if not agreed.

ORDER

[52.] For the foregoing reasons, the order and directions of this Court are as follows.

IT IS HEREBY ORDERED THAT:

1. The Claimants'/Applicants' application by way of Amended Notice of Application filed April 11, 2025 for leave to apply for judicial review is dismissed.
2. The Defendants'/Respondents' costs of the application are to be paid by the Claimants/Applicants, such costs to be assessed if not agreed.

Dated the 19th day of May, 2025

A handwritten signature in black ink, appearing to read 'Carla Card-Stubbs', with a stylized flourish at the end.

Carla Card-Stubbs
Justice