

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
Claim No. 2024/CLE/gen/01056

B E T W E E N

ENOS MILLER

Claimant

AND

DENNIS DEAN

Defendant

Before: **The Honourable Madam Acting Justice Cheryl Bazard KC**

Appearances: **Mr. Enos Miller, *pro se***
 Mr. Rouschard Martin for the Defendant

Hearing Dates: **2 July, 2025 and 20 August 2025**

Practice and Procedure – Strike Out application – Part 26.3(1) of The Supreme Court Civil Procedure Rules, 2022 (as amended) – Abuse of the Court’s Process – Whether Statement of Case discloses no reasonable grounds for bringing the claim – Judgment in Default of Defence – Part 12.2 of the Supreme Court Civil Procedure Rules

RULING

Bazard, J (Acting):

INTRODUCTION

[1.] This is a Ruling on two extant applications. The action commenced on 19 February, 2024, the Claimant filed a Notice of Application with a Supporting Affidavit seeking permission to file a Judgment in Default of Defence.

[2.] On 26 February 2025, the Defendant filed a Notice of Application seeking to strike out the Claimant's Statement of Case.

[3.] On 5 June, 2025, the Claimant filed a Notice of Referral to Case Management.

[4.] As the overriding objective of the Supreme Court Civil Procedures Rules, 2022 is to enable the Court to deal with cases with a view to saving expenses, the Court has determined to hear both applications at the same time.

[5.] The following material was provided to me for consideration:-

- a. The Claimant's submission with a bundle of authorities
- b. The Defendant's submission consisting of a bundle of authorities along with the Affidavit of Ronald Miller.

BACKGROUND

[6.] The Claimant on the 19 November, 2024 filed a Fix (sic) Date Claim against the Defendant and his ex-wife Barbara Dean and at paragraph 1, he seeks the following:-

- i. **A Decree pronouncement that the Claimant is the sole proprietor in fee simple in possession owner of ALL THAT piece and parcel of land being portion of Allotment #118 larger tract of land situated at Summerset estate containing measurement ('298.07') by ('35' about 550 Feet East of Lazaretto and 1210.44 feet Northward Cowpen Road in the Western District of the Island of New Providence, Bahamas Total Area of 8,942.1 Sq. Ft formerly the property of Alonzo Kemp the Claimant will rely on a survey diagram showing the hereditaments size of the subject Property.**
- ii. **A Decree pronouncing that the Defendants liable for Property damages to the Claimant's Rock Wall, Electrical Wires and Mature Fruits Trees *inter alia*.**
- iii. **The Claimant Claim damage for wrongful destruction the Claimant's rock wall, mature trees and electrical wires.**
- iv. **The Claimant claim against trespass: and trespass in conveyance by the First and Second Defendants, and/or treat the executed conveyance as being not legal binding and/or ineffectual.**
- v. **Damages for property damage and loss suffered**
- vi. **A Decree pronouncing an Injunction restraining the Defendants their respective servants and/or from carrying on construction on the building on the Claimant's Land.**
- vii. **A Decree pronouncement that the First and Second Defendant to put the Claimant's Land in its original state; AND cancellation of Conveyance of the said Crown Allotment #118 Lot to the Defendants in relation to the Claimant's Land**

An Order for Payment for Private Property damages cause by the Defendants and removal of concrete building structure off the Claimant Land."

[7.] There are further declaratory reliefs claimed as well as claims for an Order, Injunctive relief, Interest and Costs.

[8.] The Fixed Claim is 17 pages long and includes 85 paragraphs.

The Claimant's case

[9.] The Claimant alleges against the Defendants, criminal trespass, tort, fraud, uttering and filing fraudulent documents in the Registry of Records and avers that he went into physical possession of the land in or about September, **1997**, and built his family dwelling home on the said Land or (sic) about in 27th day of August **1996**. He further avers that there is “... ***“intrinsic evidence”*** of his undisturbed open physical possession of the said Land exceeding 27 years his title is far superior to any other purported title and ‘ouster’ or ‘extinguish’ any other entitlement including the Defendants purported predecessor’s in title thereto.”

[10.] He acknowledges at paragraph 12 of his claim, that the Defendants are in possession of an Indenture of Conveyance dated 11 May, 2005 purporting to convey the land in question to them. The document is recorded in the Registry of Records in Volume 9265 at pages 134 to 138.

[11.] By Order of Registrar Renaldo Toote dated 29 April, 2025 and filed 15 May, 2025, the Claimant obtained the following:

1. Leave is granted to Enos Miller to withdraw against the Second Defendant from this Action.
2. The Claimant may be at liberty to withdraw the Second Defendant the claim herein on the 29th of April, 2025 and served on the First Defendant. (sic)
3. There is no order as to Costs incidental to this application.

[12.] The Defendant has not filed a Defence in the action.

[13.] On the 17 February, 2025, the Claimant filed a document entitled Request For Default Judgment. The body of the Judgment reads as follows:-

“The 17th day of February, A.D, 2025

The First Defendant DENNIS DEAN having failed to file a Defence to the Fix (sic) Date Claim filed on the 19th day of November, A.D., 2024 and served on DENNIS DEAN, on the 7th day of January, A.D., 2025 personally at Summerset Estate off Cowpen Road New Providence, Bahamas it is this day finally adjudged that the First Defendant do pay the Claimants liquidated damages with cost and interest pursuant to the Civil Procedure (Award of Interest) Act 1992.

DATED the 17th day of February AD., 2025

**ENOS MILLER
Sunlight Cottage & Fritz Lane**

Nassau, Bahamas
The Claimant

[14.] The Defendant filed a Notice of Application on 26 February, 2025 to Strike out the Claimant's Fixed Date Claim and Statement of Claim.

[15.] The grounds of the Application are stated as follows:

- c. **That the Statement of Case, that is, the Fixed Claim Form, Statement of Claim pursuant to CPR 26(3)(1)(c) be struck out against the First Defendant is (sic) frivolous, vexatious, scandalous and an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings on the ground that**
 - i. **It discloses no reasonable cause of action;**
 - ii. **It is frivolous, vexatious, scandalous and an abuse of the process of the Court.**
 - iii. **Failure to comply with the Rules...namely CPR 3.7, 5.5, 8.1(c), 8.6(1) (2), 8.7(2), 9.3(3), 9.7(3)(6)(b)(c), 12.2(b), 12.5(a), 19(3)(4) and 30.5(1)(d).**

[16.] In a Notice of Supplemental Grounds dated 30 June, 2025, the Defendant added the following:-

- a. **The Claimant's Fixed Date Claim fails for certainty in that it does not sufficiently describe the land being claim (sic) so as to allow the Defendant to prepare and file a Defence to the claim;**
- b. **The Claimant communicated to the Defendant in the attached letter of the 25th June, 2025 that the Defendant's building is overlapping onto the northern part of his property by two feet. However the Claimant's property is bounded by a road on the northern side while the Defendant's building and property is (sic) separated from the southern portion of the Claimant's land by a rock wall.**
- c. **The Claimant, by his Fixed Date Claim, states at paragraph 20 on page 4 that his property with "his dwelling home on the said land was completely enclosed". The only enclosure the Claimant can refer to is a rock wall. The Defendant's property is beyond the Claimant's rock wall and therefore there is no dispute as to where the Claimant and Defendant property or boundary lines are.**
- d. **The grounds above and those set out in the aforesaid Notice of Application establishes (sic) that the Claimant's statement of case does not disclose any reasonable ground for bringing or defending a claim. It also establishes that the Claimant's statement of case is frivolous, vexatious and an abuse of the process of the court.**
- e. **The Claimant's Fixed Date statement of case is a plain and obvious one that should be struck out with costs of the action and application to be paid by the Claimant to the Defendant to be taxed if not agreed."**

[17.] The letter referred to in paragraph 16(b) above states the following:

Enos Miller
No. 2 Sunlight Cottage and Fritz Lane
Email: enosmiller@hotmail.com
Ph. 242.....

25th June, 2025

Re: Enos Miller v Dennis Dean quantum of damages

Claim No. CLE/gen/01056 of 2024

I write in regards of the above-caption. The purpose of this letter is to advise you on the quantum of damages in respect of your client (sic) transgression in this matter as to be prepared for Case Management Conference on the 2nd of July 2025 and the way forward.

Therefore, I hereby do advise that the quantum damage for the cost in this matter is \$28,000.00 *inter alia* to put my Property in the original state as before your client has breach of the peace. Conversely, in particular, the removal of two feet of your client's building structure off the Northern side of my Property.

Indeed, I do hereby advise if the cost is not agreed in the amount of \$28,000.00, I will seek to have the matter prosecuted to ensure the same.

Should you not response (sic) to my letter within five 5 days will continue the legal process to ensure compliance.

Faithfully yours

.....

Enos Miller

[18.] In making his application, the Defendant relied on the Affidavit of Ronald Miller filed on 18th July 2025. The Affidavit is sworn before C.A Martin. Mr. Miller averred at paragraphs [3] to [6]:

- “ 3. That I am familiar with the Claimant, Enos Miller, who is my younger brother and the Defendant, Dennis Dean, who owns a property across the street from where I live. The Defendant's property has two separate two storey apartment units on it. The Defendant built both units without any disturbance from the Claimant. I witnessed his construction of the units.
4. That the Claimant resides at No. 2 Sunlight Cottage and Fritz Lane in the Island of New Providence. The Claimant and Defendant's property were always divided by a rock wall which the Claimant built. The Claimant knows without a doubt that the rock wall is where his property ends.
5. That I am familiar with the Claimant and Defendant's property. I am well aware of their separate ownership and where their boundary lines are. The Defendant purchased and visited his property regularly since 2005. The Claimant established his boundary lines by using a very noticeable rock wall along with various types of trees. There is no dispute as to where the Claimant and Defendant's boundary lines are.
6. That this litigation came about after the fire destroyed the Claimant's building on his property. There was never an issue until after the fire which the Claimant appears to be disgruntled about. Starting a court action and complaining about a fire will not change the fact that there is no boundary dispute. If there were a genuine dispute, the Defendant would not have been able to build an entire two storey structure without a word, a letter

or an injunction from the Claimant who is a well-known self-represented litigant. This action will waste the Court's time and therefore should be stopped."

[19.] The summaries of the parties' submissions on the issues, as set out below, are taken from the skeleton arguments of the Claimant and Mr. Martin and their oral submissions made at the hearing.

Issues

[20.] The issues before the court are:-

- 1. Can the claimant obtain a default judgment if at the time, the court is considering the issue of the defendant's application to have the claimant's statement of case struck out under rule 3.4, and that application has not been dealt with?**
- 2. Whether the present action is an abuse of process?**
- 3. Whether the Claimant's claim discloses no reasonable grounds for bringing the claim or no reasonable cause of action?**
- 4. Whether the Court should exercise its discretion and strike out the present action?**
- 5. Whether the Court should enter Judgment in Default of Defence should it not exercise its discretion to strike out the present action?**

Issue No. 1: Can the Claimant obtain a default judgment if at the time the court is considering the issue of the defendant's application to have the claimant's statement of case struck out under rule 3.4 and that application has not been dealt with?

[21.] It is well accepted that a claimant cannot obtain a default judgment if there is an outstanding application by the Defendant to strike out the claimant's statement of case. This implies that the court must first address the application to strike out before considering the application for default judgment. This ensures that the Defendant's application is resolved prior to any default judgment being granted, thereby prioritizing the Defendant's application. This is so, as once a judgment is entered, the Court is *functus officio*.

[22.] According to the Civil Procedure, White Book 2023 at paragraph 12.3(3)(a)(i)

"(3) The claimant may not obtain a default judgement if at the time the court is considering the issue-

(a)The defendant has applied-

(i) to have the claimant's statement of case struck out under rule 3.4"

[23.] In **Yuk Ming Cheung v. Office of Intercollegiate Services & Ors. [2025] EWHC 1109 (KB)**). Per Madison J, at **para 78 (3):-**

"(3) The claimant may not obtain a default judgment if at the time the court is considering the issue –

(a) The defendant has applied –
(i) to have the claimant’s statement of case struck out under rule 3.4; or
(ii) for summary judgment under Part 24,
and, in either case, that application has not been dealt with.”

[24.] On this issue the law is settled, the Claimant cannot obtain a Judgment in Default until the Defendant’s Application to strike out is heard.

Abuse of Process

[25.] The Defendant’s submission on this ground has several prongs.

[26.] The first was that the statement of case “...contains a miscellany of convoluted allegations, none of which can be deemed as meritorious as reflecting a reasonable cause or action or any reasonable causes thereof.”

[27.] It is also the Defendant’s submission that the pleadings are “...vague and deficient, fraught with words that are unclear, muddled and prolix.” Further, “the Claimant has not made clear to the Court what he wants the Court to adjudicate upon, whether a civil matter, criminal matter or entitlement to land or the determination of ownership of property.”

[28.] The Defendant relied on **West Island Properties v. Sabre Investments Limited and others SCCivApp No. 119 of 2010, Wentworth Musgrove v Winnifred Musgrove-Taylor, Hubbuck & Sons Ltd v. Wilkinson, Heywood & Clark Ltd (1891), Derek Sands v Dr. Ededede Magnus**. No citations were made, and the cases were not provided to the court in contravention of the Court’s direction.

[29.] The Defendant also relied on **Wenlock vs Maloney (1965), Enos Miller vs McKinney, Bancroft & Hughes, Hartis Pinder SCCIVApp. No. 27 of 2021**.

[30.] The Claimant’s Submission at paragraph 52 is that he is “... entitled to have the Defendant’s Notice of Application dismissed as an abuse of the process on law because the condition in the CPR Rules relating to filing a Defence has not been satisfied.” He further asserts at paragraph 56 of his submissions that the Defendant’s Notice of Application is frivolous and vexatious.

[31.] At paragraph 65 of his submissions, the Claimant states that his Statement of Claim “...is sufficiently particularized for the First Defendant to mount a Defence, and the Statement Of Claim does assert a cause of action that would be successful.”

[32.] At paragraph 109, he contends that "...the Court does not technically have jurisdiction to hear the Defendant (sic) application and or (sic) but the manner of "exercise" of the jurisdiction."

[33.] At paragraph 117, he further asserts that "The Notice of Application is not properly before the Court because there is no supporting Affidavit."

[34.] At paragraph 121, he contends, "The fact that 'lapse of time' had been raised as a discrete (sic) ground in the Claimant's Notice of Application, meant that it is especially unfair to the Claimant who admit (sic) the evidence to meet the issue when it had arisen "ex improvis" in the (sic) his SOC to have his SOC dismiss (sic).

Law and Analysis

[35.] In this jurisdiction, **the Supreme Court Civil Procedure Rules, 2022 (SCCPR) r. 26.3(1)** empowers the Court to strike out a claim. It provides:

(1) In addition to any other power under these Rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that –

- (a) there has been failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings;**
- (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;**
- (c) the statement of case of the part to be struck out is frivolous, vexatious, scandalous, an abuse of process of the Court or is likely to obstruct the just disposal of the proceedings; or**

the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10."

[36.] It is well established that the Court's jurisdiction to strike out is a summary power to be exercised with caution. In the *locus classicus* **Drummond-Jackson v British Medical Association [1970] 1 All ER 1094**, Lord Pearson made observations that are frequently relied on in relation to strike out applications. At page 1101, he states:

"It has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases and the order for striking out should only be made if it becomes plain and obvious that the claim or defence cannot succeed."

[37.] The striking out principle was echoed by Dennis Byron CJ (Ag.), as he then was, in the case of **Baldwin Spencer v The Attorney General of Antigua and Barbuda (Civil Appeal No. 20A of 1997)** when he said:

"This summary procedure should only be used in clear obvious cases, when it can be seen on the face of it, that a claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court....Striking out has been described as "the nuclear power" in the court's arsenal and should not be the first and primary response of the court".

[38.] Further, Charles J, as she then was, reminded that striking out should be used only in exceptional circumstances in **B.E. Holdings Limited v Piao Lianji 2014/CLE/gen/10472** at paragraph 7 she stated:

“7. As a general rule, the court has the power to strike out a party’s case either on the application of a party or on its own initiative. Striking out is often described as a draconian step, as it usually means that either the whole or part of that party’s case is at an end. Therefore, it should be taken only in exceptional cases. The reason for proceeding cautiously has frequently been explained as that the exercise of this discretion deprives a party of his right to a trial and his ability to fortify his case through the process of disclosure and other procedures such as requests for further and better particulars.”

[39.] The starting point, as the Court of Appeal affirmed in **Bahamas Ferries Limited v. Charlene Rahming SCCivApp. No. 122 of 2018**, must always be the pleadings. Sir Michael Barnett, JA (as he then was), at paragraph 39 stated:

“39. The starting point must always be the pleadings. In Loveridge and Loveridge v Healey [2004] EWCA Civ. 173 Lord Phillips MR said at paragraph 23:

‘In *McPhilemy v Times Newspapers Ltd.* [1999] 3 ALL ER 775 Lord Woolf MR observed at 792 – 793:

‘Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader.’”

[40.] In **Farley v Paymaster Ltd (1836) EWHC 282 (KB)** at [86], it was noted that:

“A striking out application requires analysis of the statement of case, without reference to evidence. Unless demonstrably and patently hopeless, the Court proceeds on the assumption that the relevant factual averments will be established by evidence at trial.”

[41.] The Court is not called upon to engage in a mini-trial but simply to assess whether the Claim discloses a triable issue.

[42.] The rule also empowers the Court to amend any pleading or indorsement or any matter therein. If a statement of case does not disclose a course of action relied on, an opportunity to amend may be given, though the formulation of the amendment is not before the Court. Where the defect lies in the fact that some material averment has been omitted, the Court while striking out

the pleading, will not dismiss the action but give the Claimant leave to amend unless the Court is satisfied that no amendment will cure the defect.

Issues Nos. 2, 3 and 4: Is the present action an abuse of the process as it discloses no reasonable ground for bringing the action, and should the court exercise its discretion and strike out the action.

[43.] The central issue in this application whether the Claimant's Statement of Claim discloses a reasonable ground for bringing the action, or whether it is so defective as to amount to an abuse of process of the Court and should therefore be struck out. In this case, both parties advanced opposing views: the Claimant objected to the application, arguing that the statement of case is sufficiently detailed for the Defendant to form a defence. However, the Defendant opposed on the grounds that the Claimant's allegations are convoluted, vague, incomplete, unclear, muddled, and overly lengthy. Having reviewed the Statement of Case, I accept the Defendant's submission that it is verbose, convoluted and conflates civil and criminal allegations. The Claimant pleads acts of arson, fraud, criminal trespass and damage without distinguishing between allegations of criminal liability (which this Court does not have jurisdiction to adjudicate upon) and civil remedies. In essence the core issues to be distilled are narrowed to three issues:

- (i) Possessory title to land at Summerset Estate;
- (ii) Trespass to land; and
- (iii) Damages.

[44.] These are civil causes of action capable of being determined at trial. The fact that the pleadings are verbose does not render them hopeless. As observed in **Farley v Paymaster (Supra)**, unless a claim is "demonstrably and patently hopeless", the Court proceeds on the assumption that the factual allegations can be proved at trial.

[45.] I note that the Claimant is a pro se litigant, which may explain the conflation of issues. While the pleading as drafted is inelegant, they are not incurably defective. It is therefore appropriate to strike out only the paragraphs which improperly frame criminal allegations, namely paragraphs 11, 13, 14, 17, 18, 19, 20, 21 and 23. The claim lacks supporting evidence despite being referenced, for example, the police report at paragraph 13 and the land survey plan at paragraph 38. No evidence was exhibited. The Claimant should annex to the amended pleading the documents referenced i.e. the aforesaid police report and land survey plan.

[46.] The Court's discretion to strike out is to be exercised sparingly. In the circumstances, I think it would be draconian to strike out the Claimant's case. Notwithstanding the claim being verbose, it raises a reasonable cause of action that can be advanced for determination at trial. As noted by Lord Pearson in *Drummond-Jackson* "***...reasonable cause of action means a cause of action with some chance of success... when only the allegations in the pleadings are***

considered.’ In such a case where there is conflation of criminal and civil allegations in a claim, the court can exercise its discretion for the party to cure his pleadings by amending the statement of case to redact the paragraphs referencing the criminal trespass and arson.

[47.] As I have indicated earlier, upon review of the statement of case, I do not find that the statement of case does not disclose a reasonable ground. The claim raises issues that require fact-finding, and this is not an appropriate case to strike out, as the issues can be resolved at trial. As such, based on judicial precedent and authorities, the Defendant's application for striking out is dismissed in part, and I grant the Claimant leave to amend his statement of case by deleting paragraphs 11, 13, 14, 17, 18, 19, 20, 21 and 23 and attaching the documents noted ***supra***.

Issue No. 5: Whether the Court should enter Judgment in Default of Defence should it not exercise its discretion to strike out the present action?

[48.] Having regard to the Claimant’s application for Judgment in Default of Defence, it is not in dispute that the Defendant failed to file a Defence within the required time. However, given that the Statement of Claim is to be amended; it would therefore not be appropriate to enter a Default Judgment at this time. The Defendant’s time to file a Defence shall run from the date of service of the amended Statement of Claim.

[49.] In the circumstances and for the reasons outlined above, the Court orders as follows:

1. The Claimant’s application for Default Judgment is dismissed;
2. The Defendant’s application to Strike out is dismissed;
3. The Claimant is granted leave to file and serve an Amend Statement of Claim with documents annexed within 21days of this Order;
4. The Defendant shall have 28 days from service of the Amended Statement of Claim to file and serve his Defence.
5. Costs is reserved.

Dated 3rd day of November, 2025

The Honourable Madam Justice (Acting) Cheryl Bazard, KC