

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

APPELLATE DIVISION

2025/APP/mag/00009

BETWEEN

BRENT LYNN FOX

Intended Appellant

AND

YILKA MARCHANTE FOX

Intended Respondent

Before: The Honourable Acting Justice Gail Lockhart Charles

Hearing Date: 24 February 2026

Appearances: Mr. Tavarrie D. Smith for the Intended Appellant

Mr. Alexander Maillis for the Intended Respondent

**DECISION**

(Extension of Time)

INTRODUCTION

[1] This is an application by the Intended Appellant, Mr. Brent Lynn Fox, for an extension of time within which to file a Notice of Appeal against the "Bound Over Order" made by Her Worship Ian-Marie Darville-Miller, Magistrate, on 1 May 2025 in Magistrate's Court Action No. 403/24. The Intended Appellant further seeks that the filing of the Notice of Appeal operate as a stay of the said Order pending the determination of the appeal.

[2] The application is made pursuant to section 56 of the Magistrate's Court Act, Chapter 54 and section 4 of the Appeals from Magistrates (Procedure) Rules. The factual background and grounds of opposition have been canvassed in the affidavit of Mr. Duval Davis filed 4 June 2025, the affidavit of Mr. Renaldo Burrows filed 12 December 2025, and the comprehensive written submissions lodged by both parties.

FACTUAL BACKGROUND

[3] The impugned Order was made by the learned Magistrate on 1 May 2025. It is common ground that the hearing proceeded on that date in the absence of both the Intended Appellant and his counsel. The Intended Appellant was abroad on pre-arranged business from 8 April 2025 and was not due to return until 2 May 2025. His counsel, Mr. Smith, was scheduled to appear before the Nassau Street Court at 10:00 a.m. on the same day, some seventeen miles distant from the Bernard Road Family Court Complex where the Magistrate's hearing was listed.

[4] The chronology of listings is material. The matter was last fixed for 1 May 2025 at 1:00 p.m. However, by email dated 28 April 2025, the Magistrate's chambers advised that the hearing was being advanced to 9:00 a.m. on the same day owing to the Magistrate's compassionate leave. Counsel was expressly invited to provide alternative dates for May and June if the 1:00 p.m. hearing was inconvenient. Mr. Smith duly provided such dates. Notwithstanding this exchange, the matter proceeded at 9:00 a.m. on 1 May 2025 in the absence of the Intended Appellant and his counsel. The Intended Respondent and her counsel were present, and the learned Magistrate proceeded to hear the application and render her decision.

[5] The Order itself was not served on the Intended Appellant's chambers until 30 May 2025. Within five days of receiving notice of the Order, on 4 June 2025, the Intended Appellant filed the present application for an extension of time to appeal. The Notice of Motion was accompanied by the affidavit of Mr. Duval Davis setting out in detail the circumstances surrounding the non-attendance and the delay.

[6] The Intended Appellant contends that the learned Magistrate lacked jurisdiction to make coercive orders affecting access to the subject property, given that the property was at all material times subject to ongoing ancillary relief proceedings in the Supreme Court and was under receivership pursuant to an order of the Supreme Court in a separate matter. The Receiver, who was the only party lawfully empowered to regulate access and use of the property outside of the Supreme Court, was not joined to the proceedings. It is further contended that counsel appearing in support of the Bound Over application was conflicted, having previously represented the Intended Appellant, and that a formal objection to her continued involvement was raised but never resolved.

[7] The Intended Respondent opposes the application. Mr. Alexander Maillis, on her behalf, submits that the extension ought not to be granted because the Bound Over Order is due to expire on 1 May 2026, approximately two months from the date of this ruling. He argues that permitting the appeal to proceed at this stage would result in wasted time and judicial resources, as the Order will shortly lapse by its own terms.

[8] Mr. Maillis candidly acknowledged at the hearing that the delay in filing the appeal was not the fault of the Intended Appellant. He accepted that the applicant had acted promptly once the Order came to his attention. His objection rested squarely on the utility and proportionality of permitting an appeal to proceed when the Order under challenge is so close to its natural expiry.

## THE LEGAL FRAMEWORK

### Statutory Provisions

[9] Section 56 of the Magistrate's Court Act, Chapter 54 provides that an appellant shall, within seven days after the Magistrate has given his decision, serve notice in writing of the intention to appeal and the general grounds thereof. The proviso to section 56 states:

"Provided that any person aggrieved by the decision of a magistrate may, upon notice to the other party, apply to the court to which an appeal from such decision lies, for leave to extend the time within which the notice of appeal prescribed by this section may be served, and the court upon the hearing of such application may extend the time prescribed by this Section as it deems fit."

[10] Section 4 of the Appeals from Magistrates (Procedure) Rules governs the procedural mechanism for such applications:

"Where a case has been heard in New Providence and a person aggrieved desires to apply for an extension of time under the provisions of the proviso to section 56 of the Act, such application shall be made by notice of motion in the Form A in the Schedule hereto, accompanied by an affidavit setting out briefly the reasons for such application, and if a copy of such notice and affidavit be served upon the other party in accordance with the provisions of rule 3 of these Rules such notice and service shall be sufficient and good."

[11] The Intended Appellant has complied with these procedural requirements. The Notice of Motion in Form A was filed on 4 June 2025, accompanied by the affidavit of Mr. Duval Davis. Service was effected on the Intended Respondent, and the affidavit of Mr. Renaldo Burrows filed 12 December 2025 confirms compliance with the service requirements.

#### The Overriding Objective

[12] Although the Civil Procedure Rules (CPR) do not directly govern appeals from the Magistrate's Court, the principles enshrined in the overriding objective at CPR 1.1 inform the exercise of judicial discretion in all civil proceedings. The court must seek to deal with cases justly, which includes saving expense, ensuring proportionality, dealing with cases expeditiously and fairly, and allotting to each case an appropriate share of the court's resources. These considerations are relevant to the present application.

#### Principles Governing Extensions of Time

[13] The principles applicable to an application for an extension of time within which to appeal are well-settled. In *Junkanoo Estates Ltd et al v UBS (Bahamas) Ltd* [2017] UKPC 8, the Privy Council identified the matters to be taken into consideration including the following 3 factors: (i) whether the appeal would be arguable, (ii) the explanation for the delay and (iii) what if any prejudice that delay may have caused the respondent

[14] The Court of Appeal has consistently applied these principles. In *Wilton Livingston Saunders and Nivron Limited v Sunshine Finance Limited and Sharon Wilson & Co (A Firm)* SCCivApp No. 153 of 2024, the Court summarised the approach at paragraph 20 and 21 as follows:

"Where an applicant has no prospects of success on appeal, the Court will refuse an extension of time. In the case of *Wahoo Resort Foundation v. Scott E. Findeisen and Brandon Findeisen* SCCivApp No.64 of 2020, this Court observed that:

**'22. The Court will refuse an application for an extension of time if it is satisfied that the applicant had no realistic prospect of succeeding on appeal.** Further the Court can grant the application even if it is not so satisfied where the issue raised may be one which the Court considers should, in the public interest, be examined by the Court or where, the

Court takes the view that the case raises an issue of law which requires clarifying."  
[Emphasis added]

21. In the Privy Council decision of *Junkanoo Estates Ltd et al v. UBS (Bahamas) Ltd* [2017] UKPC 8, the Board specified matters to be taken into consideration in instances where leave to appeal and an extension time are required. In particular, Lord Sumption observed that:

“11. ...it remains open to them to apply for leave in the manner that the Board has indicated... On such an application, a number of matters will have to be considered. They will include **(i) whether the appeal would be arguable, (ii) what explanation is proffered in the defendant’s evidence for the delay in seeking leave, including what has occurred and what the defendants have been doing in the meanwhile, and (iii) what if any prejudice that delay may have caused...**” [Emphasis added]”

## ANALYSIS

### Length of the Delay

[15] The starting point is the seven-day period prescribed by section 56 of the Magistrate's Court Act. The decision was pronounced on 1 May 2025. However, as the evidence establishes, neither the Intended Appellant nor his counsel was present at the hearing. The Order was not served on the Intended Appellant's chambers until 30 May 2025.

[16] Within five days of receiving notice of the Order, on 4 June 2025, the Intended Appellant filed his application for an extension of time. In my judgment, in the context of an application where the affected party had no notice of the proceedings or the outcome, the delay must be assessed from the date when the Intended Appellant became aware, or could reasonably have become aware, of the decision.

[17] When viewed through that lens, the delay was modest and a good explanation has been provided. It arose directly from a lack of notice and not from any inaction or indifference on the part of the Intended Appellant.

### Reasons for the Delay

[18] The reasons for the delay are comprehensively set out in the affidavit of Mr. Duval Davis. They disclose a pattern of unilateral listings by the Magistrate's Court, without consultation as to counsel's availability, in circumstances where counsel was engaged in a long-scheduled Coroner's Inquest.

[19] The hearing was advanced from 1:00 p.m. to 9:00 a.m. on 1 May 2025 by email dated 28 April 2025. Counsel was unable to attend at 9:00 a.m. as he was already scheduled to appear before the Nassau Street Court at 10:00 a.m. Although counsel was invited to provide alternative dates and did so, the matter nevertheless proceeded at 9:00 a.m. in his absence. The Intended Appellant himself was abroad on a pre-arranged business trip, a fact of which the court was informed.

[20] These circumstances provide a credible, and satisfactory explanation for both the non-attendance at the hearing and the ensuing delay in filing the appeal.

#### Prospects of Success of the Intended Appeal

[21] The intended appeal raises serious and substantial issues of law and jurisdiction. I am satisfied that the appeal is plainly arguable and far removed from being frivolous or hopeless.

[22] First, the Intended Appellant was never heard on the Bound Over application. The Order was made in circumstances that, on their face, amount to a denial of the right to be heard. The audi alteram partem rule is a fundamental principle of natural justice. A decision made in the absence of a party who had no notice that the matter would proceed substantively is prima facie open to challenge on procedural fairness grounds.

[23] Secondly, there is a live issue as to whether the learned Magistrate lacked jurisdiction to make coercive orders affecting access to the subject property. The property was subject to ongoing ancillary relief proceedings in the Supreme Court and was under receivership pursuant to an order of the Supreme Court. The Receiver was not joined to the proceedings. The question of whether a Magistrate's Court ought to interfere with property under the supervision of the Supreme Court and subject to a subsisting receivership is a matter worthy of appellate scrutiny.

[24] Thirdly, the issue of counsel's alleged conflict, and whether the matter ought to have proceeded without that issue being resolved, raises additional questions about the fairness of the proceedings.

#### Prejudice to the Respondent

[25] This is the factor on which Mr. Maillis placed greatest emphasis. He submitted that the Bound Over Order is due to expire on 1 May 2026, approximately two months from the date of this ruling. He argued that permitting the appeal to proceed would result in wasted time and judicial resources, as the Order will shortly lapse by its own terms. He further submitted that prejudice exists for both parties due to the appeal's financial and judicial resource costs.

[26] I have given careful consideration to these submissions. However, I am not persuaded that the imminent expiry of the Order is determinative against the grant of an extension.

[27] First, Mr. Maillis properly accepted that the delay in filing was not the fault of the applicant. The Intended Appellant acted promptly once the Order came to his attention. The fact that the Order is now nearing expiration is a consequence of the time taken to list and determine this application, not of any dilatoriness on the applicant's part.

[28] Secondly, the Intended Respondent will suffer no material or further prejudice if time is extended. She has been duly served with the application, has had full notice of the grounds relied upon, and remains fully able to respond to the intended appeal on its merits. No evidential prejudice has been identified.

[39] Thirdly, the Intended Appellant has endured the practical and economic consequences of the impugned Order for approximately ten months. His business operations have been disrupted. The basement of the property, which houses plumbing and sewage infrastructure, has been the subject of competing claims and practical difficulties. These are real and subsisting consequences.

[30] Fourthly, although the Order is due to expire shortly, the appeal remains necessary. There has been no material change in circumstances regarding access to the property. There is a real likelihood that the Intended Respondent may seek to renew or replicate the impugned relief. Absent appellate intervention, the underlying jurisdictional and procedural defects will persist, exposing the Intended Appellant to repeated applications and continuing harm. The issues raised are not merely academic; they concern the proper limits of the Magistrate's Court's jurisdiction and the requirements of procedural fairness.

[31] Fifthly, the public interest in ensuring that inferior courts act within their jurisdiction and observe the principles of natural justice is a factor that must be weighed in the balance. Where an appeal raises substantial questions about the scope of a Magistrate's Court's powers and the fairness of its proceedings, it is in the public interest that those questions be examined by an appellate court.

[32] In all the circumstances, the balance of prejudice weighs in favour of the Intended Appellant. Refusing an extension of time would permanently deprive him of appellate scrutiny of an Order said to have been made without jurisdiction and in breach of natural justice. Granting the extension will occasion no meaningful prejudice to the Intended Respondent that cannot be addressed in costs or otherwise.

#### The Overriding Objective and the Interests of Justice

[33] The overriding objective requires the court to deal with cases justly, which includes ensuring that parties are on an equal footing, saving expense, and dealing with cases in ways that are proportionate. The court must also enforce compliance with rules, practice directions, and orders.

[34] This is not a case of casual delay or procedural indifference. It is a case in which an Order was made without notice, in the absence of the affected party, where jurisdiction is seriously in issue and substantial rights are engaged. The Intended Appellant has provided a full and satisfactory explanation for the delay. The appeal has real prospects of success. The respondent suffers no material prejudice beyond the usual burden of defending an appeal.

[35] The interests of justice plainly favour permitting the appeal to proceed so that these matters may be determined on their merits rather than disposed of on a technicality.

#### CONCLUSION

[36] Having considered all the relevant factors namely, the length of the delay, the reasons for it, the prospects of success of the intended appeal, and the prejudice to the respondent, I am satisfied that this is a fit and proper case for the exercise of the court's discretion to extend time.

[37] The Intended Appellant has acted promptly and in good faith. The delay is fully explained and was not his fault. The appeal raises serious and arguable grounds. The respondent will suffer no material prejudice that cannot be addressed by an appropriate order for costs if the appeal ultimately fails.

[38] In the exercise of my discretion, and applying the principles articulated in *Junkanoo Estates Ltd v UBS*, I grant the application for an extension of time.

#### ORDERS

[40] It is hereby ordered as follows:

1. The Intended Appellant shall have an extension of time to file his Notice of Appeal up to and including 13 March 2026.
2. The filing of the Notice of Appeal shall operate as a stay of execution of the Magistrate's Order dated 1 May 2025 pending the determination of the appeal, or until further order of this court.
4. There shall be no order as to costs.

Dated this 6th day of March, A.D. 2026.

Gail Lockhart Charles KC

Justice (Acting)