

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

Claim No. 2019/CLE/gen/01414

B E T W E E N

DONALD ROLLE

Appellant/Plaintiff

AND

(1) THE BAHAMAS HOTEL AND ALLIED INDUSTRIES PENSION FUND

AND

(2) THE BAHAMAS HOTEL CATERING AND ALLIED WORKERS UNION

Respondents/Defendants

Before: The Honourable Mr. Justice Neil Brathwaite

Appearances:

Paralegal Leslie Stuart for the Plaintiff

Attorney Norwood Rolle for the First Respondent

Attorneys Erica Munroe and Lashona Knowles for the Second Respondent

DECISION

BRATHWAITE, J

INTRODUCTION

[1.] This is the Court's ruling on the Appellant's Notice of Appeal filed on 14th December, 2020 by Mr. Leslie Stuart, who purports to act on the Appellant's behalf. By the Notice of Appeal, the Appellant seeks leave of this Honourable Court to extend the time within which to appeal the decision of the Learned Assistant Registrar, Mr. Renaldo Toote (as he then was), delivered on 8th July, 2020.

[2.] By that decision, the Learned Assistant Registrar struck out the Plaintiff's Writ of Summons and Statement of Claim filed 1st October 2019, but only insofar as they related to the Second Respondent, who alone had sought relief.

[3.] At the hearing of the Appeal, Counsel for the First Defendant invited the Court to determine the First Defendant's Summons filed 21st September 2020, which seeks to strike out the Plaintiff's claim against it pursuant to Order 18 rule 19 of the Rules of the Supreme Court. That application not previously determined is addressed in this decision.

BACKGROUND

[4.] The Plaintiff, a man said to be mentally disabled, commenced these proceedings by a specially indorsed Writ of Summons with Statement of Claim filed on 1st October 2019. The documents were prepared and filed by Mr. Leslie Stuart, a paralegal, who purported to act on the Plaintiff's behalf. Notwithstanding this, the Writ and Statement of Claim identified the Plaintiff as acting *pro se*. Prior to their filing, Mr. Stuart sought and obtained from the then Registrar, Mrs. Camille Darville-Gomez, a waiver of court fees in respect of the matter.

[5.] On 17th October 2019, the Second Defendant entered an appearance and on the same date, filed an application to strike out the action against it pursuant to Order 18 rules 19(1)(a)(b) and (d) of the Rules of the Supreme Court ("RSC") ("the strike-out application"). That application was supported by the affidavit of Ms. Sheila Burrows, filed 24th February 2020.

[6.] The strike-out application was heard by the Learned Assistant Registrar on 14th November 2019. At that hearing, it was acknowledged that Mr. Stuart was not an attorney-at-law. Mr. Stuart asserted that he was acting pursuant to an Enduring Power of Attorney dated 20th February 2018, allegedly granted by the Plaintiff's brother, Mr. Randy Rolle, who was said to be acting as the Plaintiff's guardian *ad litem*.

[7.] By ruling delivered on 8th July 2020, the Learned Assistant Registrar struck out the Plaintiff's claim against the Second Defendant pursuant to Order 18 rule 19(1) of the RSC. Central to that determination were what the Assistant Registrar described as "*inherent irregularities [in] the Plaintiff's application*", including the manner in which Mr. Stuart purported to represent the Plaintiff and the Power of Attorney on which he relied. The Assistant Registrar also took into account Mr. Stuart's admission that the Plaintiff was "*mentally disabled*", the said admission engaging the operation of **Order 70 rule 2 of the RSC**.

[8.] On 16th July 2020, the Appellant applied to the Assistant Registrar for an extension of time to appeal the ruling. No determination was made on that application.

[9.] Thereafter, on 21st September 2020, the First Defendant filed a Summons pursuant to Order 18 rule 19(1)(a), (b) and (d) of the RSC seeking to strike out the Plaintiff's claim against it. Subsequently, on 14th December 2020, Mr. Stuart filed the present Notice of Appeal.

[10.] It is against that background that both the First Defendant's Summons and the Notice of Appeal fall to be determined by this Honourable court.

Grounds of Appeal

[11.] The Notice of Appeal advances eight (8) grounds on which the appeal should be granted, viz.,:

- i. That the Assistant Registrar, Mr. Renaldo Toote, lacked jurisdiction to strike out the Appellant's Statement of Claim on the basis of lack of standing, allegedly in contravention of an Order of his superior, the Registrar, Mrs. Camille Darville-Gomez (as she then was), who permitted Mr. Leslie Stuart to file the Statement of Claim on behalf of the Appellant, pursuant to Order 32 rule 11(1) of the RSC ("**Ground 1**");
- ii. That the ruling of the Assistant Registrar constitutes a nullification of the Order of the Registrar in contravention of Order 2 rule 1 of the RSC, which provides that non-compliance with the Rules shall be treated as an irregularity and shall not nullify proceedings ("**Ground 2**");
- iii. That the Assistant Registrar acted wrongly in law when he struck out the Appellant's statement of claim without hearing or reading the skeleton submissions submitted by Mr. Leslie Stuart on behalf of the Appellant in contravention of the rules of natural justice ("**Ground 3**");
- iv. That the Assistant Registrar thereby violated the Appellant's right to a fair hearing under Article 20(8) of the Constitution of the Commonwealth of The Bahamas ("**Ground 4**");
- v. That the Assistant Registrar was wrong in law and was prejudiced against the Appellant when he ruled that the Appellant had no standing, when standing was not raised as a ground of the Respondent's application to strike out, nor was objection taken by the Respondent to Mr. Stuart's representation ("**Ground 5**");

- vi. That the Assistant Registrar was wrong in law when he ruled that Mr. Leslie Stuart lacked standing in contravention of the principles stated in **Munshi Munu Lal and Others v Ghulan Abbas and others** (Privy Council, 1901), and **Mussammat Bibi Wilian and Others v Banki Behani Pershad Singh and other** (30 L R Indian Appeals p 182), and contrary to section 118 of the Evidence Act, it being contended that judgments of the Privy Council are binding on Bahamian courts (“**Ground 6**”);
- vii. That the Assistant Registrar erred in law when he struck out the Appellant’s claim against the Bahamas Hotel Catering and Allied Workers Union, thereby severing the Respondent’s liability from the Bahamas Hotel and Allied Industries Pension Fund contrary to the Respondent’s Trust Agreement (“**Ground 7**”); and
- viii. That the Assistant Registrar erred in law when he relied on the affidavit of Ms. Shelia Patrice Burrows, which the Appellant alleges fraudulently withheld information which indicated that the Plaintiff worked at several other Hotel properties and would have been entitled to his disability pension from the Respondents, rendering the ruling void, in accordance with the case of **Hip Foong Hong v H Neotia and Company [Privy Council Appeal No 98 of 1917]** in which the Court held that “...*A judgment that is tainted and affected by fraudulent conduct is tainted throughout, and the whole must fail* (“**Ground 8**”).

[12.] By the Notice of Appeal, the Appellant further seeks:

- i. An order setting aside the ruling of the Assistant Registrar and restoring the Statement of Claim for expedited hearing, pursuant to section 46(3) of the *Persons with Disabilities (Equal Opportunities) Act 2014*; and
- ii. Costs in this Court and the Court below.

[13.] In support of the appeal, the Appellant relies on the following affidavits sworn by Mr. Stuart:

- i. Affidavit filed 21st January, 2021 (the “First Affidavit”);
- ii. Affidavit filed 16th April, 2021 (the “Second Affidavit”);
- iii. First Supplemental Affidavit filed 24th June, 2021; and
- iv. Second Supplemental Affidavit filed 9th August, 2021.

[14.] By order dated 20th August 2021, this Court granted the Plaintiff leave to amend the Notice of Appeal on or before 10th September 2021, and directed that written submissions be provided by all parties, on or before 30th September 2021.

[15.] The Notice of Appeal, however, was not amended. Notwithstanding this, Counsel for both Respondents provided the Court with written submissions opposing the appeal, though their submissions were confined to the grounds advanced in the original appeal application. No formal written submissions were provided on behalf of the Appellant prior to the hearing of the intended amended Notice of Appeal, however, during the hearing the Court was provided with a written version of the submissions Mr. Stuart, at that time, advanced orally.

APPELLANT'S CASE

[16.] The Appellant relies on the four Affidavits sworn by Mr. Leslie Stuart, together with his oral submissions. Although Mr. Stuart is not an attorney-at-law, the Appellant maintains that he was and is lawfully authorized to act on the Appellant's behalf throughout the proceedings.

Authority to Act and Standing

[17.] At the core of the Appellant's case is the contention that Mr. Stuart's authority to represent the Appellant before the Supreme Court derived from a Power of Attorney granted to him by Mr. Randy Rolle, the Appellant's purported guardian *ad litem*. Though Mr. Stuart acknowledged in his First Affidavit, that Mr. Rolle was never formally or "*officially appointed*" by the Court as guardian *ad litem*, he nevertheless maintained that Mr. Rolle had been informally recognized as such in earlier proceedings and that such recognition was sufficient to validate Mr. Rolle's delegation of authority to him.

[18.] To support this position, in his First and Second Affidavits, Mr. Stuart relied on the decision in **Mussamat Bibi Wilian and Others v Banki Behani Pershad Singh and others (30 L.R., Indian Appeals)**, contending that once a person has been recognized by the Court as guardian *ad litem* during the progress of a suit, it is too late to challenge the validity of that appointment, even in the absence of a formal order.

[19.] In his First Affidavit, Mr. Stuart further deposed that, prior to commencing the action, he wrote to the then Registrar, Mrs. Camille Darville-Gomez, on 11th September 2019, seeking a waiver of filing fees pursuant to section 46 of the *Persons with Disabilities (Equal Opportunities) Act, 2014*, in order to file a Writ of Summons and proceed before the Court on the Appellant's behalf. He asserted in the same affidavit, that on 16th September 2019, the Registrar granted the waiver and permitted him to act "*before the Supreme Court on behalf of [the Appellant]*". He

maintained, in his oral submissions that, the Registrar's order in this regard, constituted official recognition of his authority to act under section 36 of the *Interpretation and General Clauses Act*.

[20.] In his First Affidavit, Mr. Stuart submitted that the Registrar's order was lawfully made in the exercise of her office and not, as he emphasized in his oral submissions, as any "favour" to the Plaintiff. Rather, he stated that "*what should be of note*" is that while the Defendants in their Skeleton Submissions tried "*to impeach the [said] Order*", neither applied to set it aside. As a result, he explained in his oral submissions that the Registrar's order remained valid and operative throughout the proceedings.

[21.] In addition, in his First Affidavit, Mr. Stuart relied on the fact that the Second Defendant served its strike-out application upon him as the "*proper person*" for service, and the Court's acceptance of that service, evidenced by the fixture of the matter for hearing amounted to further recognition of his standing (**Mussammam Bibi Wilian and Others**) (supra). Moreover, in his Second Supplemental Affidavit, he contended that by electing to proceed with the strike-out application rather than applying to set aside the Registrar's order, the Second Respondent waived any objection to his authority pursuant to Order 2 rules 1 and 2(1) of the RSC by engaging with him (**Metaxides & Anor v Swart & Ors [2015] UKPC 32**).

[22.] In support of his asserted authority to act, in his Second Affidavit, Mr. Stuart relied on several statutory provisions, including:

- i. Section 5 of the *Powers of Attorney Act, 1992*, which provides that acts done by a donee under a power of attorney shall be as effective as if done by the donor;
- ii. Sections 35 and 36 of the *Interpretation and General Clauses Act*, upon which Mr. Stuart relied as supporting the validity and effect of the Registrar's order;
- iii. Sections 79,80, and 102 of the *Evidence Act*, which establish that the Court must take judicial notice of notarial seals and presume the authenticity of powers of attorney; and
- iv. Section 25 of the *Legal Profession Act*, which preserves any enactment empowering an unqualified person to act in legal proceedings, although it must be noted that no such enactment was identified.

Alleged Fraud and Substantive Claim

[23.] Further, by way of the affidavits of Mr. Stuart, the Appellant contended that his substantive claim was improperly struck out, without due consideration by the Assistant Registrar of what

were said to be serious allegations of fraud. In particular, Mr. Stuart alleged across his affidavits that the affidavit of Ms. Sheila Burrows, relied upon by the Respondents in support of the strike-out application, was false and “*fraudulently left out*” material facts.

[24.] More specifically, in his First Supplemental Affidavit, Mr. Stuart asserted that Ms. Burrows’ affidavit intimated that the Appellant had only been employed at the Britannia Beach Hotel. However, he contended that National Insurance Board records, together with a notarized letter from a former hotel manager of the New Olympia Hotel exhibited to his First Affidavit, demonstrated that the Appellant had also been employed at the New Olympia Hotel between 1989 and 1993. On that basis, in his First Affidavit, Mr. Stuart maintained that this additional period of employment amounted to approximately 221 weeks, and would, if accepted, entitle the Appellant to additional pension credits under the Bahamas Hotel Allied Industries Pension Fund Handbook.

[25.] Further, in the same Affidavit, Mr. Stuart contended that, when combined with the Appellant’s employment at the Britannia Beach Hotel, the additional period of employment at the New Olympia Hotel resulted in the accrual of approximately 18 pension credits, thereby qualifying the Appellant for a disability pension which, it was asserted, ought to have been payable more than twenty-seven years ago. He also alleged that the omission of the New Olympia Hotel employment from Ms. Burrows’ affidavit was fraudulent, and that the Defendants, as trustees of the Pension Fund under the Trust Agreement dated 8th February 1980, either knew or ought to have known of the Appellant’s full employment history. In his written statement provided during the hearing, Mr. Stuart further asserted that reliance on Ms. Burrows’ affidavit amounted to perjury and a fraudulent breach of trust contrary to Sections 423, 424 and 347 of the Penal Code. These matters were advanced as allegations and do not constitute findings of the Court.

[26.] In his Supplemental Affidavits, Mr. Stuart further expanded upon the fraud allegations, invoking the maxim that “*fraud unravels everything*” and citing authorities including **Hip Foong Hong v H Neotia and Company (PC)**, **Takhar v Gracefield Developments Ltd [2019] UKSC 13**, and **Skandinaviska Enskilda Banken AB (Publ) v Conway & Anor (as Joint Official Liquidators of Weaving Macro Fixed Income Fund Ltd (Cayman Islands) [2019] UKPC 39** to support the proposition that fraud, once established, vitiates proceedings and renders decisions tainted by it liable to be set aside.

[27.] In his oral submissions, he also contended that the Assistant Registrar erred in refusing to read the Plaintiff’s skeleton submissions, which purportedly detailed evidence of additional employment and the alleged fraud. In his written statement sent to the Court during the hearing, he cited **Connolly and another v The Consumers Cordage Company (Canada) [1903] UKPC 57** for the principle that courts are obliged to consider allegations of illegality or fraud at any stage of the proceedings if sufficiently proved.

[28.] As to his failure to file an amended Notice of Appeal, Mr. Stuart explained that the amendment was intended to particularize allegations of perjury and fraudulent breach of trust. He stated that he filed an ex parte summons seeking discovery from the National Insurance Board on 23rd August, 2021 to obtain further evidence, but the summons was not acted upon, thereby preventing his compliance with the Court's directions.

[29.] In those circumstances, Mr. Stuart submitted in his Second Supplemental Affidavit, that striking out the Appellant's claim without the requested discovery and without adjudicating the fraud allegations would have the effect of permanently concealing the truth of the matter. He further submitted in that affidavit that the Court would be "*well within its jurisdiction to conclude on the balance of probabilities that judgment should be entered for the Plaintiff based on fraud*" (**Hip Foong Hong v H Neotia and Company (Privy Council Appeal No 98 of 1917)**).

RESPONDENTS' CASE

[30.] The Respondents rely on the written submissions of the First and Second Defendants, together with the oral submissions of their respective Counsel. Taken together, their submissions challenge the Appellant's standing, the legality of Mr. Stuart's purported representation, and the merits of the appeal itself.

First Defendant's Submissions

[31.] The First Defendant's written submissions primarily address Grounds 5 & 6 of the Notice of Appeal, both of which raise issues of standing, capacity, and representation.

[32.] Counsel for the First Defendant submitted that, as the Plaintiff/Appellant was alleged to be a person under a disability, he was required to sue by a next friend or guardian *ad litem* from the commencement of the proceedings. Counsel relied on **Order 70 rule 2 of the RSC**, together with the relevant provisions of the Supreme Court Practice (1993 and 1999), viz. **Orders 80/2/1, 80/2/2, and 80/2/3**, and submitted that these authorities make clear that a guardian *ad litem* must act through an attorney-at-law.

[33.] Against that legal framework, Counsel submitted that Mr. Stuart was not acting on behalf of any duly appointed guardian *ad litem*, but instead purported to act directly for the disabled Plaintiff. On that basis, Counsel submitted that the Plaintiff lacked the requisite capacity under the said Rules to commence or maintain the proceedings, and on that basis the proceedings ought to be dismissed with costs awarded to the Defendants.

[34.] Turning then to Ground 6, Counsel accepted that "*anyone can represent the Ms. Elves in a court of law, if he or she doesn't want, or can't afford, a lawyer*". However, Counsel emphasized that the right of self-representation does not extend to representing others. In that regard, Counsel

relied on **Section 10(1) of the *Legal Profession Act***, which provides that no person shall be admitted to practice unless qualified in accordance with the Act and not disqualified thereunder. Counsel therefore submitted that it is pellucid that only persons so qualified are permitted to represent others in legal proceedings.

[35.] Further, Counsel submitted that Mr. Stuart purported to rely on an unfiled Power of Attorney granted by Mr. Randy Rolle, who was described therein as guardian *ad litem* for the Plaintiff. However, Counsel submitted, that no document appointing Mr. Randy Rolle as guardian *ad litem* was ever produced. While **section 5 of the Powers of Attorney Act** permits a donee to act in the name of the donor, Counsel emphasized that according to **Black's Law Dictionary, (7th ed.)**, a Power of Attorney merely creates an agency relationship by "*granting someone authority to act as agent or attorney-in-fact for the grantor*". Counsel noted however, that an "attorney-in-fact" is distinct from an "attorney-at-law".

[36.] More specifically, Counsel submitted that a Power of Attorney cannot authorize acts which amount to the practice of law. Rather, Counsel submitted that the right to conduct litigation and to represent others before the courts is reserved exclusively to qualified persons admitted to practice under the *Legal Profession Act*.

[37.] In that regard, Counsel relied on **sections 2, 4, 12, and 20 of the Legal Profession Act**, submitting that Mr. Stuart was neither admitted to practice nor entitled to rely on section 25 of the Act, as he had identified no enactment empowering an unqualified person to conduct or defend legal proceedings. Accordingly, Counsel reiterated during oral submissions, that Mr. Stuart had no standing before the Court.

[38.] Further, during oral submissions, Counsel emphasized that the affidavits relied upon by the Plaintiff are themselves improperly constituted. He submitted that simply put, their content offends the principles governing affidavit evidence. In support, Counsel referred to **Dr Jacqueline Penn Knowles trading as Women Care Reproductive Diagnostic Centre v Dr Pamela T Carroll trading as Women Care Centre and others 2016/2 BHS J/No 15** where Bain J, referring to **Marionetta Holdings Ltd v Canadian Imperial Bank of Commerce No 505 of 1991**, reiterated Hall J's rules on affidavit evidence regarding the inadmissibility of submissions and opinions in affidavits. Counsel further highlighted that the said affidavits were sworn by Mr. Stuart, who simultaneously seeks to appear as Counsel, a dual role expressly cautioned against in **Practice Note 1 of 1995** concerning attorneys acting as witnesses.

Second Defendant's Submissions

Grounds 1 and 2: Jurisdiction and the Registrar's Order

[39.] In its Skeleton Arguments, Counsel for the Second Defendant submitted that, by the Plaintiff's own submissions, the Assistant Registrar had jurisdiction to strike out his application

as against the Second Respondent pursuant to the powers conferred by Order 32 rule 11(1) of the RSC.

[40.] Addressing Ground 2, Counsel submitted orally that the order made by the then Registrar, being limited to the grant of a waiver of filing fees to the Appellant pursuant to the *Persons with Disabilities (Equal Opportunities) Act*, did not authorize Mr. Stuart to practice law or to represent the Plaintiff in court proceedings, or to bring proceedings on behalf of the Plaintiff.

Grounds 3 & 4 – Natural Justice and Fair Hearing

[41.] Turning to Grounds 3 and 4, Counsel submitted in the Second Defendant's Skeleton Arguments that the Appellant failed to identify any statutory or legal authority supporting the contention that the Assistant Registrar breached the rules of natural justice. Relying on **Lawlor and Others v Union of Post Office Workers [1965] 1 All ER 353**, Counsel submitted that the essential requirements of natural justice are notice of the case to be met and an opportunity to be heard.

[42.] Further, Counsel submitted orally that, notwithstanding Mr. Stuart's lack of entitlement to appear, the Assistant Registrar afforded him more latitude than he was strictly entitled to, particularly considering the absence of:

- i. Any evidence that Mr. Stuart was an attorney-at-law;
- ii. Documentary evidence of the Plaintiff's mental incapacity;
- iii. A court order appointing Mr. Randy Rolle as guardian *ad litem*;
- iv. Any lawful authority enabling the purported Power of Attorney to confer standing;
and
- v. Any basis upon which an incapacitated Plaintiff could properly sue in his own name.

[43.] In those circumstances, Counsel submitted orally that the Assistant Registrar acted reasonably and correctly in striking out the claim.

Grounds 5 and 6: Foreign Authorities and the Evidence Act

[44.] As to Grounds 5 and 6, in the Second Defendant's Skeleton Arguments, Counsel submitted that the Appellant's reliance on Indian authorities was misplaced and that, in any event, such authorities are not binding on Bahamian courts.

[45.] Counsel further submitted that as the ruling of the learned Assistant Registrar falls under sections 117 of the *Evidence Act* which defines "judgment" as inter alia one of a Bahamian court, and section 118 which provides that "*every judgment is conclusive evidence against all persons*

of the legal result which it affects”, the ruling of the Assistant Registrar is binding unless and until overturned on appeal, and in any event, the Appellant’s Notice of Appeal discloses no proper basis for doing so.

Grounds 7 and 8: Trust Agreement and Allegations of Fraud

[46.] With respect to Ground 7, it was submitted by Counsel in the Second Defendant’s Skeleton Arguments that the Trust Agreement relied upon by the Appellant merely established the Second Defendant as a separate legal entity. However, according to Counsel, it did not render the First Defendant liable, in the manner alleged.

[47.] Counsel further submitted that, if the Appellant intended to pursue claims against trustees, the proper parties to this action had not been joined and even if he had joined any such trustees, the claim disclosed no cause of action and would still have been struck out.

[48.] Turning to the allegations of fraud, Counsel submitted that these were disingenuous as the Second Defendant only became aware of the Appellant’s alleged additional employment history upon receipt of Mr. Stuart’s affidavit filed 21st January 2021. Counsel submitted that, had such information been available earlier, the Appellant would have been directed to the appropriate pension administrator, as the Second Defendant was not responsible for the payment or distribution of benefits. On that basis, Counsel submitted that the Second Defendant was a wrong party to the proceedings and that the Assistant Registrar correctly struck out the claim against it.

[49.] In response to the fraud allegations, Counsel submitted in the Second Defendant’s Skeleton Arguments that it was the Appellant and his representative whose conduct was fraudulent as:

- i. They commenced proceedings in the name of a person alleged to be mentally incapacitated;
- ii. Mr. Stuart purported to act under a Power of Attorney granted by a person without legal authority; and
- iii. Mr. Stuart proceeded with his representation of the Plaintiff despite knowledge that no guardian *ad litem* had been appointed.

[50.] Counsel therefore relied on the equitable maxim that “*he who comes to equity must come with clean hands*”, and invited the Court by way of its Skeleton Arguments to strike out the Notice of Appeal and to award costs to the Defendants, submitting that any such costs should properly be borne by Mr. Stuart.

THE ISSUES

[51.] The issues for determination by this Court are:

- i. Whether the Appellant has satisfied the Court that an extension of time should be granted to appeal against the decision of the Learned Assistant Registrar delivered on 8th July 2020; and
- ii. Whether the Plaintiff's claim against the First Defendant should be struck out pursuant to Order 18 rule 19(1)(a),(b) and (d) of the Rules of the Supreme Court.

THE LAW

Appeals from Registrars and Extension of Time

[52.] An appeal from a Registrar's decision lies to a Judge in chambers under **Order 58 rule 1 of the Rules of the Supreme Court**. Where the appellant is out of time, any request for an extension must be supported by evidence (**Dial Partners LLP v Eastern Airways International Ltd [2019] EWHC 2060 (QB)**).

[53.] The grant of an extension of time is discretionary, requiring consideration of delay, prejudice, prospects of success, and the overriding objective (**Sayers v Clarke Walker (A Firm) [2002] EWCA Civ 645; Denton v TH White Ltd [2014] EWCA Civ 906; R Dinjan Hysaj v Secretary of State for the Home Department [2014] EWCA Civ 1633**).

[54.] Where the decision under appeal involves a discretionary or case management power, the appellate court will not interfere unless it is demonstrated that the Registrar erred in law, considered irrelevant matters, failed to consider relevant matters, or reached a conclusion that was plainly wrong (**Rehana Azhar v All Money Matters T/A TFC Home Loans [2023]**).

Representation of Persons under Disability

[55.] A person under disability may bring or defend proceedings only through a next friend or guardian *ad litem*, who must act by an attorney (**Order 70 rule 2(1) RSC**). Proceedings commenced by or against a person under disability cannot continue without such an appointment (**Orders 80/2/1 to 80/2/3, The Supreme Court Practice 1993 and 1999**).

[56.] The appointment of a guardian *ad litem* is made only by Court order. In the absence of such an order, any purported guardian has no lawful authority to act on behalf of the person under disability.

Legal Representation and the Legal Profession Act

[57.] The right to conduct proceedings on behalf of another is governed by the **Legal Profession Act (“LPA”)**. **Section 20(1)** prohibits unqualified persons from acting as counsel and attorney-at-law, or commencing, carrying on, or defending proceedings, except where expressly permitted by statute. **Section 25** preserves only those statutory powers expressly conferring such authority. Absent statutory authorization, an unqualified person has no right of audience or authority to represent another party.

Powers of Attorney

[58.] Under **Section 5** of the **Powers of Attorney Act**, a donee may perform acts in his own name by the authority of the donor, which are as effective as if performed by the donor.

[59.] A Power of Attorney cannot however, authorize acts the donor is not legally entitled to perform, nor can it override statutory restrictions imposed by the LPA. Rather, a Power of Attorney appoints an “attorney-in-fact”, which is distinct from an “attorney-at-law” admitted under the LPA. Accordingly, it does not confer a right of audience or authorize the practice of law (**Black’s Law Dictionary, 7th ed**).

Procedural Irregularities, Registrar’s Order and Waiver

[60.] The Registrar exercises statutory and procedural powers, including case management, filing and fees. Orders of the Registrar must be construed according to their terms, and legal effect.

[61.] Non-compliance with the Rules is generally an irregularity and does not nullify proceedings unless the Court so directs (**Order 2, rules 1 - 2 RSC**). **Rule 2(1)** requires that an application to set aside for irregularity be made within a reasonable time and before any fresh step is taken. These provisions, however, do not cure fundamental defects relating to jurisdiction, standing, or capacity, which cannot be remedied by waiver, acquiescence, or failure to object.

Natural Justice

[62.] The principles of natural justice require that a party be given notice of the case to be met and a fair opportunity to be heard. What constitutes fairness, however, is context-specific, depending on the nature of the proceedings and the issues to be determined (**Lawlor v Union of Post Office Workers [1965] 1 All ER 353**). The duty to act fairly, though, does not oblige a court to hear submissions from a person who lacks standing or a right of audience, nor to consider the merits of a claim where jurisdictional or capacity requirements have not been met.

Allegations of Fraud

[63.] It is well established that fraud, if proved, vitiates decisions tainted by it (**Hip Foong Hong v H Neotia and Company (Privy Council Appeal No 98 of 1917)**). However, allegations of fraud must be distinctly pleaded and determined in properly constituted proceedings. Where proceedings are fundamentally defective due to lack of capacity or lawful representation, the Court is not required to investigate allegations of fraud raised therein.

Strike-Out

[64.] Finally, Order 18 rule 19(1) of the RSC empowers the Court to strike out any pleading, or the indorsement of any writ, or anything in the pleading or in the indorsement, on the ground that:

- i. it discloses no reasonable cause of action or defence;
- ii. it is scandalous, frivolous or vexatious;
- iii. it may prejudice, embarrass or delay the fair trial of the action; or
- iv. it is otherwise an abuse of the process of the Court.

[65.] The jurisdiction to strike out is a summary one which must be exercised sparingly (**Asa H. Pritchard Ltd v Bahamas Supermarkets Limited (2015) BHS J No.32**). However, where a claim is fundamentally defective due to lack of standing, capacity, or lawful representation, striking out is appropriate.

[66.] In determining an application under Order 18 rule 19, the Court is not concerned with the merits of disputed facts but with whether, assuming the pleaded facts to be true, the proceedings are capable of being maintained in law. The question is whether the case is so “*plainly inarguable that there is no point in having a trial*” (**Asa H. Pritchard Ltd v Bahamas Supermarkets Limited (2015) BHS J No 32**).

ANALYSIS AND DISPOSITION

[67.] At this juncture, the Court is seized of two issues: whether an extension of time should be granted to the Appellant to appeal against the decision of the Learned Assistant Registrar and, whether the Plaintiff’s claim against the First Defendant should be struck out pursuant to **Order 18 rule 19 of the RSC**. I will consider each issue in turn.

Extension of time to appeal

[68.] In determining whether to grant an extension of time, the Court must consider not only the length of delay and any resulting prejudice, but also whether the intended appeal discloses a real

prospect of success (**Dial Partners LLP v Eastern Airways International Ltd [2019] EWHC 2060 (QB)**; **Sayers v Clarke Walker (A Firm) [2002] EWCA Civ 645**; **Denton v TH White Ltd [2014] EWCA Civ 906**). While I acknowledge that the Appellant's initial application for leave to appeal was never determined by the learned Assistant Registrar, the decisive consideration in this matter is whether the proposed appeal has any real prospect of success. In my judgment, it does not.

[69.] At the hearing before the Assistant Registrar, Mr. Stuart expressly asserted that the Plaintiff is a person under disability. Once that position was taken, the procedural consequences prescribed by **Order 70 rule 2 of the Rules of the Supreme Court** were unavoidable. In my view, the proceedings could only lawfully have continued if brought by a guardian *ad litem* duly appointed by the Court (**Orders 80/2/1- 80/2/3, Supreme Court Practice**). No such appointment was ever evidenced by a court order. Although Mr. Stuart contended that his authority derived from a guardian *ad litem* who had been informally recognized in prior proceedings, it is my finding that such informal recognition cannot substitute for the mandatory requirement of a formal appointment. Each set of proceedings must independently comply with the Rules governing capacity and representation.

[70.] Turning then to the Power of Attorney relied on by Mr. Stuart, I am satisfied that it could not confer authority to conduct litigation on the Appellant's behalf. While **Section 5 of the Powers of Attorney Act** permits a donee to perform acts that the donor may lawfully perform, it does not override the **Legal Profession Act**, which expressly prohibits unqualified persons from commencing, carrying on, or defending proceedings on behalf of another in the absence of statutory authority that empowers it. No such statutory authority was identified or produced empowering Mr. Stuart to act as counsel (**Legal Profession Act, ss. 20,25; Black's Law Dictionary 7th Ed**). It follows, in my judgment, that Mr. Stuart lacked standing and a right of audience, and the Assistant Registrar was therefore correct to determine that threshold issue.

[71.] The Appellant also relied on the order of the then Registrar dated 16th September 2019. While I accept that the order effected a waiver of filing fees under the **Persons with Disabilities (Equal Opportunities) Act**, I do not accept that it appointed a guardian *ad litem*, or authorized representation by an unqualified person, or amounted to a recognition of the brother of the Plaintiff as a guardian *ad litem*. In any event, it is my view that the Respondents' failure to challenge that order cannot cure jurisdictional defects arising from lack of capacity and lawful representation, as such defects are not capable of waiver under **Order 2 rules 1 and 2 of the Rules of the Supreme Court**.

[72.] As to natural justice, I am satisfied that Mr. Stuart was afforded an opportunity to be heard notwithstanding his lack of standing. The evidence demonstrates that there was no breach of fairness, as a Court is entitled to determine threshold issues of standing and capacity without

embarking on a consideration of the substantive merits where a person lacks a right of audience (**Lawlor v Union of Post Office Workers [1965] 1 All ER 353**).

[73.] Finally, with respect to the allegations of fraud, perjury, and fraudulent breach of trust, while I accept that fraud may vitiate decisions where properly pleaded and proved, such allegations cannot displace the requirement that proceedings be properly constituted. In my view, the Assistant Registrar was entitled to decline to entertain substantive submissions where the proceedings were fundamentally defective for lack of capacity and lawful representation.

[74.] Having considered the submissions of the parties, and the authorities relied upon, I am satisfied that the intended appeal is fundamentally unarguable and discloses no real prospect of success. Consequently, the application for an extension of time to appeal is refused, and the Notice of Appeal fails.

[75.] At this stage, it is also appropriate to acknowledge the submission of Counsel for the First Defendant that the affidavits relied upon by the Appellant are themselves improperly constituted and offend the instruction of **Practice Note No 1 of 1995**. While it is unnecessary to make a determinative finding on these matters in light of my conclusions on standing, capacity, and lawful representation, I accept that these defects further undermine the evidential foundation of the Appellant's case and reinforce the conclusion that the proceedings are fundamentally unsustainable.

First Defendant's Strike-Out Application

[76.] The First Defendant's Summons filed on 21st September 2020 seeks to strike out the Plaintiff's claim against it pursuant to Order 18 rule 19(1)(a),(b) and (d) of the RSC. Although the Summons post-dated the decision under appeal, it raises threshold issues of standing, capacity, and abuse of process, which this Court is entitled and obliged to determine.

[77.] For the reasons already outlined, these proceedings were commenced and maintained on behalf of a person under disability in the absence of a duly appointed guardian *ad litem* and without lawful representation. Such proceedings are not merely irregular but in my view fatally defective.

[78.] Accordingly, it is my finding that the Statement of Claim discloses no reasonable cause of action capable of being maintained against the First Defendant within the meaning of Order 18 rule 19(1)(a) of the RSC, and that the continuation of the proceedings constitutes an abuse of the process of the Court within Order 18 rule 19(1)(d). The First Defendant's Summons must therefore succeed.

CONCLUSION

[79.] For the reasons set out above, I am not satisfied that the Appellant has met the threshold for the grant of an extension of time to appeal. The decision of the Learned Assistant Registrar disclosed no error of law, no misapplication of principle, and no improper exercise of discretion. I further find that proceedings commenced on behalf of a person under disability in the absence of a duly appointed guardian *ad litem* and lawful representation are not merely irregular, but fatally defective *ab initio*.


[80.] It is therefore ordered that:

- i. The application for an extension of time to appeal against the decision of the Learned Assistant Registrar is refused; and
- ii. The Notice of Appeal filed 14th December 2020 is dismissed;

[81.] As regards the First Defendant's Summons filed 21st September 2020, for the reasons already given, the Statement of Claim discloses no reasonable cause of action capable of being maintained against the First Defendant within the meaning of Order 18 rule 19(1)(a), and the continuation of the proceedings constitutes an abuse of the process of the Court under Order 18 rule 19(1)(d). The Plaintiff's claim against the First Defendant is accordingly struck out.

[82.] Finally, having regard to the intimation that the Appellant is a person under disability, and was granted leave to file at no cost, no order as to costs is made against the Appellant. It has been suggested that costs should be awarded to be borne personally by Mr. Stuart, but I find no basis to support such a draconian award. I therefore make no order as to costs.

Dated this 18th day of February, A.D. 2026


Neil Brathwaite
Justice

