

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

Magisterial Appeal
2025/MAG/APP/FP/00011

BETWEEN

LARRY ELEAZOR ARTILLUS

Appellant

AND

TINA PINDER

Respondent

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Larry Eleazor Artillus Pro Se

Tina Pinder Pro Se

HEARING DATE: 26 March 2026

JUDGMENT

Hanna-Adderley, J.

Introduction

1. This is an appeal by the Appellant from the Decision made on 19 August 2025 by Stipendiary and Circuit Magistrate Simone Brown in a civil matter arising out of a dispute between neighbouring parties concerning injuries allegedly sustained by the Respondent's dog.
2. S & C Magistrate Brown ("**the Magistrate**") ordered the Appellant to pay the Respondent the sum of \$900.00 for damages and the sum of \$786.04 for costs in the action.
3. The Appellant seeks an Order setting aside the Decision from the Magistrate on the basis that the Summons served on him did not bear his name, that he attended the Freeport Court

on the appointed date and was informed that his matter was not listed there, that he was unaware the matter would be heard in Eight Mile Rock, that his non-appearance was not intentional, that the matter proceeded only on the Respondent's evidence, and that the resulting Decision was unfair and unreasonable.

Statement of Facts

4. The Magistrate's Court Summons was filed on 3 July 2025. The particulars of claim set out the Summons provides as follows:

“ On June 30 2025. I was home in Deadman's Reef around 6:45 PM my neighbor Joshua ...came to my residence and told me he just stopped the neighbor three pitbull from attacking my puppy and he think the puppy is injured I went outside looking for my puppy he was under the car. I called the police he came to the scene got some information and left I went looking for Mr. Larry Nautilus he was not at home I contacted Mr. Nautilus and I told him what happen to me There is nothing he can do I will like to be converscated for my puppy medical expects That is started at \$286.04. Amount of Claim:\$1,200.00. Amount of Costs: \$286.04”

5. The Affidavit of Service Police Officer Richard Leadon states:

“...

2. That I am a Police Officer.

3. That the original summons relating to the above mentioned parties which was filed on the 3rd day of July 2025 was personally served by me on an adult person 3:00 PM o'clock in the afternoon on the 3 day of July 2025 at his workplace located at Third Dimension Grand Bahama Bahamas.”

6. Being satisfied as to the service of the Summons on the Appellant the matter proceeded in the absence of the Appellant. The Magistrate heard the Respondent's case and entered Judgment in her favour in the sums already stated.

7. The Decision of Magistrate Brown was as follows:

“Court ruling: Having heard the viva voce evidence of the Plaintiff and noting the three exhibits brought to the Court. The Court is satisfied on the balance of

probabilities that she has proven her claim against the Defendant and has thus established liability. But, on the issue of quantum, the Court will not award the sum as prayed, as the plaintiff is not mitigated for such a loss. In the circumstances, considering the veterinary expenses as well as the possible loss of the animal, this court will instead award the sum of Nine Hundred Dollars (\$900.00) for the claim. As for costs, due to the Defendants failure to appear today's date and the Court having embarked on a full trial, a total of Seven Hundred and Eighty Six Dollars and Four cents (\$786.04) is awarded in costs”

8. The Appellant’s grounds of the appeal set out in the Notice of Intention to Appeal filed herein on 25 August 2025 are as follows that:

- (1) The Summons served on the Appellant did not have the Appellant’s name on the Summons;
- (2) The Appellant appeared in the Freeport Court on the court date, inquired on the court matter and was told that his matter was not on the list. The Appellant was not aware that it was to be heard in the Eight Mile Rock Court;
- (3) That the Appellant’s non-appearance for the Court hearing was not intentional;
- (4) That the matter was only heard on the merits of the Respondent and the Appellant was not able to defend himself;
- (5) That the decision was unfair and unreasonable;
- (6) Such other grounds as appear just to the court upon the hearing of the appeal.

9. The Magistrate’s Court Minutes state, in part, as follows:

“19th August, 2025

Plaintiff appears, no appearance of the defendant at 2:10 pm. Defendant was duly served by Richard Leadon on the 3rd July 2025 at Third Dimension, Grand Bahama, as evidenced by the filed Affidavit of Service dated the 4th of July 2025.

Plaintiffs sworn in by affirmation.

Plaintiff states, I am seeking more costs as the Defendant is not here as he went to work.

Court advises Plaintiff that she must give evidence to prove her claim then the Court would consider the issue of costs.

Tina Pinder

My name is Tina Pinder
I live in Deadman's Reef
Mr. Nautilus is my neighbor
I can't remember the day, I was at home, my daughter and kids were outside playing.
A pit-bull attacked my dog
I have one dog
a Shih tzu
I went outside to look
I walked to Mr. Noutilus and he was not home
I contacted him and told him his two pit bulls attacked my dog.
He said there is nothing he can do.
So I said my dog has to go to the vet as he looked like he'd die.
The vet charged me \$350.00, I couldn't afford it so I gave the dog some antibiotics.
The next vet didn't want to bother as the injury was too long.
So I am still nursing the dog
The legs were fractured from where the dog was pulled by the two pit bulls.
I have photographs
I took them on my phone and printed them

Witness produces a bundle containing six pages of photos

1. First one shows a close up where the dogs escaped from
2. A close up of his backyard. Yes that's his bad dog sign
3. A front view of his home
4. The view of my neighbor's house from Wallace St.
5. This is one of his pit bulls
6. This is the next one. Yes this is my white Acura it's next to.
7. This is my dog after being attacked
8. This is my yard

Bundle of photos so mocked exhibit TP1

I have the estimate from the vet

Witness shows estimate from Caribbean Health and Healing Center

Yes this is just an estimate
Its \$286.04

Estimate so marked Exhibit TP2

I have the receipt from when I got the dog
I just bought this dog

Witness shows receipt of sale of puppy

I got the dog on the 16th April, 2025

Receipt so marked exhibit TP3

The \$1200.00 would cover the purchase of the dog and the vet bill
The vet estimate is not the full figure
But I estimated the \$1200.00

After the incident he called me and said his dog was coughing up blood the next one had bursts in the scalp.
But I don't know if the other neighbors beat his dogs to get it off of mine.
He said my dog teases his dogs
But my dog is a house dog
...

20th August, 2025

Defendant appears states that he failed to appear on the 19th of August, 2025 as he was sick. States that even though he was served he notes that the name on the summons is incorrect. States that his name is in fact Larry Artillus not Larry Nautilus. States that the court ruling yesterday should not stand.

Court: Defendant advised that once served the onus lies on him to provide this court with either a doctor's slip noting his non-appearance or he could have appeared and raised his objections in limine to the name error on the summons before trial was commenced.

Additionally, this matter was called after 2:00pm and should this Defendant had appeared or sent communication to the Court it could have been done as he had ample time

In the circumstances this court is functus officio and cannot rehear the case at this stage. Defendant advised that judgment was awarded to the Plaintiff in the amount of \$900.00 and costs in the amount of \$786.04.

Appeal notice given to the Defendant.

Transcript to be prepared today for the Defendant.”

Submissions

The Appellant

10. The Appellant was not represented by Counsel. He stated that on 19 August he got a call from the Court in Freeport and was told that he was supposed to be in Court in Freeport. He went to the Court in Freeport. He waited a while and then checked on the case and he was told there was no case there for him. He then went to the Court in Eight Mile Rock where he saw officer Leadon who told him that the case was already dealt with and he would have to speak with the Magistrate. The next day he spoke to the Magistrate who told him he had to appeal the case which he did.
11. That the Summons he was served also had his name wrong on it. That it was directed to someone totally different from him. That to prosecute somebody you hear both sides of the story. That he never got a chance to defend himself on Court.

12. That the Respondent did not have any proof that his dog bite her dog and she had no proof of her dog's illness from the veterinarian. She had no receipt to show the amount paid. Her evidence was that she needed \$1,600 to replace the dog. The dog is still running around today like nothing happen to it. The Respondent's dog is alive and nothing is wrong with it.
13. He did not understand the Magistrate's reference in the Decision to possibility of loss and the award of \$900.00. That the dog did not die or anything like that. There is no record to show that she paid for medical attention for the dog. An estimate is not the same as a receipt saying that the dog got treated.

The Respondent

14. The Respondent was not represented by Counsel. She stated that before the Magistrate she was able to explain that the Appellant's dog attacked her dog. She presented pictures showing the distance where the pitbull came from. She showed her ownership of the dog. She got an estimate from one vet. He was asking for \$350.00 and she could not afford it. She thought the dog was going to die. So, she just nursed it with antibiotics and she nursed him back to health. She did not pay any money to have the dog treated. At the time of the incident she was at home in bed. Her daughter and the other children were outside playing with the dog. Her neighbour ran to her and told her 2 pitbulls had just attacked the dog. The dog was underneath her car. She took pictures and she called the police. She called the Appellant and told him what happened. He said there was nothing he could do. That she had no proof to say that his dog attacked her dog.

Issues

15. The Court must determine:
 - a) whether the Appellant was given proper notice of the hearing and a fair opportunity to be heard;

- (b) whether the proceedings in the Magistrate's Court were affected by procedural unfairness by reason of the alleged defect in the summons and the circumstances of the Appellant's absence;
- (c) whether, on the evidence placed before the Magistrate, the Respondent had sufficiently proved liability and loss; and
- (d) whether the Decision below ought to stand.

Analysis and Discussion

16. Having reviewed the evidence presented in the Magistrate's Court proceedings and the submissions of the parties, I find that the Decision arrived at on the issues of liability and damages by the Learned Magistrate are not supported by the evidence, nor does the Decision set out satisfactory the reasons underpinning the award of costs. From the viva voce evidence of the Appellant and the Respondent, I am inclined to agree with the Appellant's position that the Decision should not stand.

The Law

17. Sections 64-66 of the Magistrates Act ("the Act") states:

64. On an appeal by motion, unless the court considers the justice of the case requires a re-hearing, the appellant shall begin, and unless he satisfies the court that it is necessary to call on the respondent, the order or judgment shall be confirmed: Provided that, if the court directs a re-hearing, the respondent, if the issue is with him, shall begin and prove his case, and the court may, if the justice of the case requires it, adjourn the hearing to some convenient day.

65. At the hearing of an appeal on motion, the appellant shall, before going into the case, state all the grounds of appeal on which he intends to rely, and shall not, unless by leave of the court, go into any matters not raised by such statement, nor shall he be entitled to examine any witnesses not examined at the hearing of the case before the magistrate unless he has given to the respondent three clear days' notice in writing of the names and addresses of such witnesses and of the substance of the evidence they will give and unless he has subsequently obtained the leave of the court to the examination thereof.

66. On an appeal by motion the court may draw inferences of fact from the evidence given before the magistrate, and, subject to due notice having been given as hereinbefore mentioned, shall hear any further evidence tendered by the appellant, and may take and admit, if it think fit, any further evidence tendered in reply and also such other evidence as it may require, and it may decide the appeal with reference both to matters of fact and to matters of law.

18. Sections 67 and 68 of the Act states as follows:

68. The court may adjourn the hearing of the appeal, and may upon the hearing thereof confirm, reverse, vary or modify the decision of the magistrate or remit the matter with the opinion of the court thereon to the magistrate, or may make such other order in the matter as it may think just, and may by such order exercise any power which the magistrate might have exercised, and such order shall have the same effect and may be enforced in the same manner as if it had been made by the magistrate.

69. The court may make such order as to the costs to be paid by either party as it may think just, and in the event of costs being allowed may direct a lump sum to be paid by way of costs not exceeding fifty dollars, for each day of attendance at court according to the importance of the appeal, or the length of time occupied by the hearing thereof, and such sum shall cover all fees of office and all fees of counsel or attorney: Provided that no magistrate shall be liable to any costs in respect of any appeal against his decision.

19. Section 1-2 of Part 1 of the Magistrates' Rules of Court, First Schedule of the Act provides as follows:

1. All civil proceedings shall be commenced by application to a magistrate for the issue of a summons.

2. (1) The summons shall contain the names and addresses of the parties and the day on which the defendant is to appear and shall be endorsed with a statement of the nature and where possible with the particulars of the claim or of the relief claimed. If necessary particulars may be attached to the summons. In the case of a summons issued in New Providence where the defendant resides therein the day of appearance shall not be less than five days or more than thirty days after the issue of the summons, and where the defendant resides in a district other than that in which the summons is issued. the day of appearance shall not be less than fourteen days or more than forty-two days after the

issue of the summons. In cases where a summons is issued at an Out Island by the magistrate for service within his district, the day of appearance shall not be less than five days or more than twenty days after the issue of the summons:

Provided the magistrate may, on application, extend the number of days. [Emphasis added]

20. On an appeal from the Magistrate's Court, the Supreme Court is concerned with whether the proceedings below were conducted fairly, whether the parties were afforded a proper opportunity to be heard, and whether the decision reached was supported by the evidence. A party should not ordinarily be deprived of the opportunity to present a defence where his absence is attributable to defective notice, genuine mistake, or procedural confusion rather than willful default.
21. It is a fundamental requirement of civil justice that each party be given notice of the case against him and a fair opportunity to answer it. Where judgment is entered after a hearing conducted in the absence of one party, the Court must be satisfied that the absent party had proper notice of the proceedings and that it was fair in all the circumstances to proceed.
22. In a civil claim of this nature, the burden remained on the Respondent to prove, on a balance of probabilities, both that the Appellant was legally responsible for the injuries to the dog complained of and that the damages relating to injury claimed were proved by admissible and sufficient evidence.
23. Where there is no eyewitness evidence to the alleged incident, the Court must approach the evidence with care. Liability cannot rest upon speculation alone, or like in this case, estimated costs. The Court must be able to conclude from the evidence that it is more likely than not that the Appellant's dogs were responsible for the attack and that the loss claimed was causally connected to that attack.

Grounds of the Appeal

24. **Ground 1: The Summons served on the Appellant did not have the Appellant's name on the Summons**

Procedural Fairness: The Appellant contends that the summons served on him did not bear his name. If that assertion is correct, it represents a serious irregularity, because the originating process must identify with reasonable clarity the person against whom relief is sought. There is no doubt that the Summons was taken out against one Larry Nautilus and not Larry Eleazor Artillus. The Magistrate quite rightly sought to satisfy herself that the Appellant had been served with the Summons by reference to the Affidavit of Service of Officer Leadon. But Leadon states in a sworn affidavit that he served one Larry Nautilus and not Larry Eleazor Artillus. The Affidavit of Service is defective in itself as it does not indicate how the process server identified the person he served, that is, that he knew him personally or that that some picture ID had been produced. The fact that the Appellant acknowledged being served subsequently before the Magistrate does not cure the defective originating process. The Court proceeded to hear the matter pursuant to an irregular and defective Summons. The Appellant was not obliged to appear in Court to answer a Summons that did not bear his name as is required by Section 2 of the Rules.

25. Ground 2: The Appellant appeared in the Freeport Court on the court date, inquired on the court matter and was told that his matter was not on the list. The Appellant was not aware that it was to be heard in the Eight Mile Rock Court

The Appellant further says that he attended the Freeport Magistrate's Court on the date fixed, made inquiries, and was informed that his matter was not listed there. He maintains that he did not know that the case would be heard in Eight Mile Rock. There is nothing in the material before this Court to suggest that his non-attendance was deliberate or intended to obstruct the proceedings. The Summons clearly states that the matter was set down to be heard at the Eight Mile Rock Court on Tuesday 19 August 2025 at 10:00 am. Now, the Appellant gives 2 reasons for not attending the Eight Mile Rock Court. The Minutes reflect that he attended the Eight Mile Rock Court on 20 August 2025 and told that Magistrate that he did not attend the Court because he was sick. He told this Court that he got a call telling him to attend Court in Freeport. Notwithstanding the conflicting excuses for his absence, the Summons was irregular, and in truth and in fact, Larry Eleazor Artillus was not properly before the Court. What is also clear is that his absence was unintentional.

26. Ground 3: That the Appellant's non-appearance for the Court hearing was not intentional

In those circumstances, and particularly in a matter involving self-represented neighbours in a modest civil claim, the Magistrate ought to have been slow to proceed finally in the absence of the Appellant unless satisfied that there had been proper service, that the hearing venue had been clearly notified, **and that the Appellant had knowingly failed to attend.** There was no evidence before the Court that the Appellant had knowingly failed to attend Court in Eight Mile Rock and for the reason stated the Summons was irregular and defective.

27. Ground 4: That the matter was only heard on the merits of the Respondent and the Appellant was not able to defend himself

The record, as presented in this appeal, does not disclose a basis upon which the Court can be satisfied that the Appellant was afforded a real and fair opportunity to answer the claim. The combination of the defect in the Summons, the asserted confusion as to the court location, and the fact that the matter proceeded solely on the Respondent's untested evidence leads me to the view that the hearing below was procedurally unfair. In short, the matter was not heard fully on the merits.

28. Ground 5: That the decision was unfair and unreasonable

Even apart from the issue of procedural fairness, the evidential foundation for the award was thin. There were no witnesses called to give evidence about the alleged attack although the Respondent indicated in the Summons that one "Joshua" came to her house and told her that he stopped the pitbulls from attacking her dog. The Respondent's children were in the yard playing at the time of the attack but none of the children gave evidence and the Respondent did not witness the attack. The Respondent's case was therefore necessarily circumstantial. While a Court may in an appropriate case infer responsibility from surrounding circumstances, such an inference must rest on evidence and not conjecture. On the material described, there was no opportunity for the Appellant to challenge the allegation that his dogs were the animals involved, to test the circumstances of the incident, or to contest the extent of the alleged loss.

29. Ground 6: Such other grounds as appear just to the court upon the hearing of the appeal

As to damages, the Respondent claimed the value of the dog and veterinary estimates, but the dog did not undergo the proposed treatment at the vet and instead was treated the dog at home with antibiotics by the Respondent. The dog did not die and so the cost to purchase the dog was not relevant. Pictures of the street show the proximity of the houses and yards of the parties but do not provide evidence of the attack. The Magistrate states in her Decision that she assessed the damages at \$900.00 by “**considering the veterinary expenses as well as the possible loss of the animal**”. In those circumstances, the proof of “**actual loss**” required careful scrutiny. What was presented was not proof of “actual loss”. An award could only properly be made upon satisfactory evidence of the loss actually suffered and its amount. The Magistrate’s reason for her Decision for her award of \$786.04 for costs was: “**As for costs, due to the Defendants failure to appear todays date and the Court having embarked on a full trial, a total of Seven Hundred and Eighty Six Dollars and Four cents (\$786.04) is awarded in costs**”. The Respondent did not have an attorney in the Court below and so did not incur legal fees/costs. She did not represent that she lost wages by attending Court that day. The Magistrate’s “full trial” as she states consisted of taking evidence from one witness, the Complainant. Her assessment of the amount of costs was excessive and without any real legal basis in the circumstances.

Conclusion

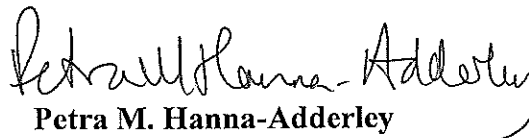
30. In my judgment, the deficiencies in notice and hearing fairness are sufficient in themselves to dispose of the appeal. The Appellant was denied a fair opportunity to participate in the trial, and further, the evidence adduced by the Respondent did not support the claim and the resulting Decision cannot safely stand.

Disposition

31. The appeal is therefore **allowed**.
32. The Decision of the Magistrate awarding the Respondent **\$900.00 damages** and **\$786.04 costs** is hereby **set aside**.

33. The matter is remitted to the Magistrate's Court for rehearing before a different Magistrate, if available, so that both parties may be afforded a full and fair opportunity to present their evidence and submissions.
34. For the avoidance of doubt, this Court makes no final determination on the ultimate merits of the Respondent's claim. Those matters are to be decided at the rehearing on the evidence properly adduced.
35. The costs order made below is set aside.
36. As this appeal succeeds by reason principally of procedural unfairness and insufficient evidence, and bearing in mind the nature of the dispute between private parties, there shall be **no order as to the costs of this appeal**.
37. The parties were advised of their rights to appeal and the process to appeal this decision to the Court of Appeal pursuant to Section 21 of Part V of the Court of Appeal Act.

Dated this 26th day of April, A.D., 2026


Petra M. Hanna-Adderley
Justice