

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law & Equity Division**

**Claim No. 2023/APP/mag/FP/00009**

**B E T W E E N:**

**GARVIN ALMANDO GIBSON**

Appellant

AND

**SCOTT FERGUSON**

(on behalf of Treasure House Holding Ltd)

First Respondent

AND

**TREASURE HOUSE HOLDING LTD.**

Second Respondent

**Before:** Honourable Madam Justice Constance Delancy

**Appearances:** Andrew C. D. Smith for the Appellant [26 March, 2025; 23 May 2025]

Garvin Gibson *Pro Se*

Jacy Whittaker for the First and Second Respondents

**Hearing Date:** 26 March, 2025 and 23 May 2025

**RULING**

**DELANCY, J**

[1.] This is the judgement of the Court concerning an appeal of the Magistrate's decision made 19 July, 2023.

[2.] The learned Magistrate, after a trial, rendered the following ruling:

Upon hearing the evidence of the Plaintiffs and their witnesses and upon hearing the evidence of the 1 Defendant, Mr. Garvin Gibson, the court has carefully considered the evidence and the submissions of both counsel. The court accepts the evidence of the Plaintiffs' witnesses. **The court finds that the Plaintiffs have proven their case to the**

**requisite standard of a balance of probabilities.** Accordingly, the Defendant and the occupants of the residence known as Casa Besilu located at #35 Ocean Boulevard, Treasure Cay, Abaco are ordered to vacate the premises immediately.

Reasons

**It is common ground that the residence is owned by Treasure Holdings Ltd. The court accepted the evidence of the 1st Plaintiff and the Plaintiffs' witnesses.**

[Emphasis added]

[3.] The Notice of Appeal was filed on 25 July, 2023. The grounds of the appeal are reproduced below:

(1) That the learned Magistrate erred in law when she allowed the Respondent to bring and prosecute the initial action on behalf of Treasure House Holding Ltd., as he was neither an officer, nor director nor has he ever held or produced a power of attorney to act on behalf of Treasure House Holding Ltd.

(2) That the learned Magistrate erred in law when she allowed the Respondent to introduce an Affidavit containing documents into evidence on the 6<sup>th</sup> of June 2023, without first giving the Appellant the opportunity to review the Affidavit, and as well as, the Opportunity to object to the affidavit or any part of it being entered into evidence for the magistrate's consideration

(3) That the learned Magistrate erred in law and in fact when she accepted a document attached to the said Affidavit of the Respondent, purporting to be a resolution from the company Treasure House Holding Ltd., notwithstanding the document did not have the official seal of the company nor any date of authentication affixed thereto.

(4) That the learned Senior Magistrate erred in law and in fact when she concluded that Benjamin Leon Jr. and Sylvia Leon were shareholders and/or directors of the company, Treasure House Holding Ltd., at the date of the hearing or on June 30<sup>th</sup> 2022 when the Appellant executed a contract with the company, Treasure House Holding Ltd.; without any evidence whatsoever to support this erroneous claim.

(5) That the learned Magistrate erred in law and in fact when she accepted the oral evidence of the Respondent and his witnesses and rejected the evidence of the Appellant without giving any reasons based in law.

(6) That the Appellant reserves the right to add further grounds for appeal once the written decision of the learned Magistrate has been made available.

[4.] The "*Intendant Respondents*" [sic] filed a Notice of Application for strike out of the Appellant's appeal, confirmation of the Magistrate's order and Writ of Execution in respect of Lot No. 35, Block No.1, Casuarina Beach Estates subdivision, Treasure Cay, Abaco and Costs. The Court notes that none of the relevant sections of law were cited in the Notice nor was the inherent jurisdiction of the Court invoked. Nonetheless, Counsel for the Respondents proceeded with the matter and raised the application in the form of preliminary objections.

## **Preliminary Objections**

*Time for Service of Notice of Appeal/Delay in Filing Extension of Time*

[5.] Counsel for the Respondents first took objection to what he views as a breach of the statutory time for notice of appeal. However, section 56 of the Magistrates Court Act (“the Act”) states that the Appellant has 7 days after the date of the magistrate’s decision to file and serve a notice of appeal on the Court and on any other party. Further, if it is required the Appellant may apply to the Supreme Court for an extension of time. Section 56 of the Act is reproduced below:

The appeal shall have the effect of suspending the execution of the decision appealed from until the case shall have been determined, and shall be on motion, or, where the case has been heard in New Providence, by special case as hereinafter provided.

**The appellant, within seven days after the day on which the magistrate has given his decision, shall serve a notice in writing, signed by the appellant or his counsel or attorney, on the other party and on the magistrate of his intention to appeal and of the general grounds of his appeal:**

**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.**

[Emphasis added]

[6.] Further, Counsel for the Respondent drew the Court's attention to section 4 and 5 of the Appeals from Magistrates (Procedure) Rules (“the Rules”), which states:

4. 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.

5. (1) **Where a case has been heard in an Out Island** application to extend the time under the proviso referred to in **rule 4 of these Rules may be made by notice in Form B in the Schedule hereto, accompanied by an affidavit setting out briefly the reasons for such application** and given in the first place to the magistrate concerned. **A copy of such notice may be served upon the other party in accordance with the provisions of rule 3 of these Rules and such notice and service shall be sufficient and good...**

(3) **Where either the applicant or the objector states that he wishes to be heard in the matter then the notice, affidavit or affidavits and certificate** shall be sent **by the magistrate to the Circuit Justice who shall set a date for such hearing as early as may be convenient.**

[Emphasis added]

[7.] Rule 3 (referred to above) of the Rules states:

In all appeals against a decision of a magistrate in the exercise of his summary matrimonial or civil jurisdiction **the notices of appeal required by the provisions of section 56 of the**

**Act may be served upon the magistrate concerned by handing the same to the said magistrate, or to his clerk, and upon the other party by the process-server of the particular magistrate's court to whom the said other party shall be pointed out and identified by the appellant or his representative.**

[Emphasis added]

[8.] In regard to the procedure for the extension of time application, it was not challenged. However, the application for an extension of time was made and the Court will address the same later in its ruling.

[9.] Nonetheless, the Supreme Court Civil Procedure Rules (“the CPR”) came into force on 1 March, 2023, which has the allotted time period for the filing of magistrates appeals Parts 57.1 (3) and 57.3 states:

57.1 (3) No such appeal shall be filed after the expiration of six months from the date of the judgment, order or decision in respect of which the case was stated unless the delay is accounted for to the satisfaction of a judge of the Court.

...

57. 3 Within four days after an appeal from the magistrate's court by case stated is filed the appellant must serve notice of the appeal on the respondent.

[10.] Further, the Court notes at page 351 of the CPR guidebook states:

The appellant's notice must be filed within six months from the date of the judgement, order or decision that is being appealed. The brevity of the time allowed reflects the clear policy decision in favour of finality. Any party seeking to challenge a judicial decision must move with expedition. In the immediate aftermath of the judgement below both the party and their advisers are fully seized of the case. They can be expected to formulate any grounds of appeal without delay.

[11.] As the Respondents recognized that they were served on 1 August 2023, the delay would only had been 6 days which is not inordinate.

[12.] The Court, in exercising its discretion under any rule, must be guided by the overriding objective to “*deal with cases justly and at proportionate cost*” (Part 1.1(1) CPR). The Court, dealing justly, so far as is practicable includes:

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways which are proportionate to —
  - (i) the amount of money involved;
  - (ii) the importance of the case;
  - (iii) the complexity of the issues; and
  - (iv) the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly;

- (e) allotting to it an appropriate share of the Court’s resources, while taking into account the need to allot resources to other cases; and
- (f) enforcing compliance with rules, practice directions and orders. (*Part 1.1(2) CPR*).

[13.] The Court, guided by the overriding objectives, must also consider whether the breach has caused real prejudice or jeopardized a fair trial, and whether a lesser sanction would suffice. In **Biguzzi v Rank Leisure Plc 1 WLR 1926** Lord Woolf M.R. observed that a judge has broad powers to strike out a statement of case under the Court’s case management powers in Part 3.4 of the English CPR (*comparable to the Part 26.3 CPR*) at para. H p.1932 and paras. A-B p.1933:

“(2) The court may strike out a statement of case if it appears to the court-

- (a) that a statement of case discloses no reasonable grounds for bringing or defending the claim;
- (b) that the statement of case is an abuse of the court's process....”

and, most importantly:

“(c) **that there has been a failure to comply with a rule, practice direction or court order.**”

Under Part 3.4(c) **a judge has an unqualified discretion to strike out a case such as this where there has been a failure to comply with a rule. The fact that a judge has that power does not mean that in applying the overriding objectives the initial approach will be to strike out the statement of case.** The advantage of the CPR over the previous rules is that the court's powers are much broader than they were. **In many cases there will be alternatives which enable a case to be dealt with justly without taking the draconian step of striking the case out.**

[Emphasis added]

[14.] Counsel for the Respondent relied on the case of **Thompson v. Max** [1998] BHS J No. 135 where a magistrates’ appeal was dismissed, in the absence of an extension for time application. The facts do not mirror this instant case, in the *Thompson case* the Court found that the filing of the appeal was out of time and there was no extension for time application before the Court. In this instant case, the Appellant filed the application within the prescribed 7 days, entered into recognizance, in the amount of \$500, that was accepted by the Court; and filed an application, inter alia, for the extension of time on 18 March, 2023 pursuant to Part 26.1(q) of the CPR.

[15.] The Respondent also takes issue with the time in making the application, however, the Court notes the service was effected on 1 August, 2023. Therefore, an extension of time application with regards to service, under the MCA and the Rules, can be made at any time prior to the date of the hearing of the matter.

[16.] The Court when determining whether time should be extended considered the dictum of *Charles, J.* (as she then was) in the case of **Petrona Russell and another v Anthony Thompson** (2021) 1 BHS J. No. 1, in which she found the dictum of *Gibbs J* in **Wiedenhofer v Commonwealth** [1970] HCA 54 to be instructive, at para. [28] of her decision:

As the Plaintiffs correctly submitted, the Australian decision of *Wiedenhofer v The Commonwealth* [1970] HCA 54; (1970) 122 CLR 172, is instructive relative to instances where the Court is faced not only with an application for judgment in default but also with an application for an extension of time for the filing of a defence. There, *Gibbs J* stated at paragraph 8 that:

**‘...In the present case, where I have before me not only a motion for a judgment but also a motion for extension of time for filing the defence, and where a defence has in fact been delivered although out of time, and there is no ground to suggest that this defence is merely frivolous or filed for the purpose of delay and an explanation has been given of the failure to deliver it within time, in my opinion it would lead to injustice to take any other course than to grant a reasonable extension of time and to refuse the motion for judgment.**

[Emphasis added]

[17.] Although *Wiedenhofer supra* concerned the extension of time application for serving a defence, the general considerations of the Court concerning the extension of time are, (a) the length of delay, (b) the reason for delay, (c) whether there is an arguable case before the Court and (d) the degree of prejudice to the Respondent if the extension is granted (see **Flowers Development Company Ltd. v The Bahamas Development Company Ltd.** SCCivApp No. 14 of 2022).

[18.] The length of delay in this matter is in relation to service of the Notice, which was delayed by 6 days. The Notice was filed in the requisite 7-day period; however, the delay concerning service of 6 days in this Court’s view the facts, was not inordinate and there is an extension of time application before the court.

[19.] The reason for the delay, as put forth by Counsel for the Respondents was that the Appellant was ill, there was no medical note in relation to this illness and that the Appellant was represented by Counsel. However, the Appellant does affirm this reason but provides no proof to the same.

[20.] The Court in determining whether there is an arguable case must take care not to depart from or substitute the lower court’s finding of facts (see **Bahamasair Holdings Ltd v Messier Dowty Inc.** (2018) UKPC 25). In this instant case, the appeal grounds are with merit when considering the law and objections brought at the time of trial. The magistrate in this matter made certain findings of fact, however, how she arrived at the conclusion is not set out in her decision. A perusal of the transcripts shows that there are no admissions nor clear findings beyond the magistrate stating she “*preferred*” the Respondents’ evidence on the balance of probabilities. The Appellant’s grounds of appeal are concise and specific and in this Court’s view, has a reasonable prospect of success on appeal.

[21.] The issue before the Court with reference to the Preliminary objections is whether to strike the statement of case for non-compliance with the 7-day notice requirement in the Act.

[22.] Further, procedurally once the Notice is filed and served on the Magistrate in accordance with Section 56 of the Act, it is to be served on the other party. However, for the purposes of the Supreme Court action, the Appellant has 6 months to file its appeal, and as the Claim form is valid for 6 months, the Appellant has a further 6 months to serve its Claim.

[23.] Therefore, the Appellant has complied with the time requirements for filing with reference to the Supreme Court action and, therefore, no extension is required.

[24.] The Court finds that the Appellant has complied with the time requirements for filing with reference to the Supreme Court action and, therefore, no extension is required. The Court reviewed the various sections of the Act, the Rules and the overriding objectives of the CPR hereby extends the time for service of the Notice of Appeal as the delay was not inordinate. Though the Appellant's reason for delay is weak, the delay was not inordinate, the Appellant has an arguable case and to drive the Appellant from the judgement seat would be an abuse of process of the Court. Further, the Respondents would have suffered no identifiable prejudice.

### **Substantive Appeal**

[25.] The claim brought by the First Respondent on behalf of the Second Respondent in the Magistrate Court was that of trespass. The particulars of the summons are as follows:

On the 20 March 2023, **the Plaintiff became aware that two men had broken into the home of the Leon's** on Lot No. 35, Block One, Casuarina Beach Estates, Treasure Cay, Abaco and had taken possession of the home and property without the Claimant's authorization. It is the Claimant's case that **both men are trespassing, are illegally occupying the home and have never been granted permission** at anytime to **occupy the home. I am requesting the Court to evict the two defendants and declare that the property is legally owned by the Claimant.**

[Emphasis added]

[26.] The Court previously stated that the decision of the learned Magistrate lacked the necessary particulars needed for the Court to understand the application of the law and evidence. Counsel for the Respondents seemingly argues that the Court ought not delve into the ownership of the Second Respondent. Further, that the Court not make a difference in the finding of facts from that of the Trial Court with reliance on **Beacon Insurance Company Limited v Maharaj Bookstore Limited** [2014] UKPC 21. The Court notes that the case of Beacon supra was applied in the Court of Appeal's decision in **Summit Insurance Company Limited, Heritage Insurance Co. Ltd. v Taino Beach Limited** 2017/APP/sts/00001 at paras. [22] and [23] which state:

[22] The Privy Council comprehensively dealt with this issue in **Beacon Insurance Company Limited (Respondent) v Maharaj Bookstore Limited (Appellant)** [2014] UKPC 21. In delivering the judgment of the Board, *Lord Hodge* stated at para. [12]:

“In *Thomas v Thomas* [1947] AC 484, to which the Court of Appeal referred in its judgment, Lord Thankerton stated, at pp 487-488:

**"I Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion; II The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence; III The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."**

In that case, Viscount Simon and Lord Du Parcq (at pp 486 and 493 respectively) both cited with approval a dictum of Lord Greene MR in *Yuill v Yuill* [1945] P 15, 19:

**"It can, of course, only be on the rarest occasions, and in circumstances where the appellate court is convinced by the plainest of considerations, that it would be justified in finding that the trial judge had formed a wrong opinion."** [Emphasis added]

**It has often been said that the appeal court must be satisfied that the judge at first instance has gone "plainly wrong"**. See, for example, Lord Macmillan in *Thomas v Thomas* at p 491 and Lord Hope of Craighead in *Thomson v Kvaerner Govan Ltd* 2004 SC (HL) 1, paras 16-19. This phrase does not address the degree of certainty of the appellate judges that they would have reached a different conclusion on the facts: *Piggott Brothers & Co Ltd v Jackson* [1992] ICR 85, Lord Donaldson at p 92. Rather it directs the appellate court to consider whether it was permissible for the judge at first instance to make the findings of fact which he did in the face of the evidence as a whole. That is a judgment that the appellate court has to make in the knowledge that it has only the printed record of the evidence. The court is required to identify a mistake in the judge's evaluation of the evidence that is sufficiently material to

undermine his conclusions. Occasions meriting appellate intervention would include when a trial judge failed to analyse properly the entirety of the evidence: Choo Kok Beng v Choo Kok Hoe [1984] 2 MLJ 165, PC, Lord Roskill at pp 168-169.” [Emphasis added]

[23] At paragraph 17, Lord Hodge continued:

**“Where a judge draws inferences from his findings of primary fact which have been dependent on his assessment of the credibility or reliability of witnesses, who have given oral evidence, and of the weight to be attached to their evidence, an appellate court may have to be similarly cautious in its approach to his findings of such secondary facts and his evaluation of the evidence as a whole.** In re B (a Child) Lord Neuberger at para 60 acknowledged that **the advantages that a trial judge has over an appellate court in matters of evaluation will vary from case to case. The form, oral or written, of the evidence which formed the basis on which the trial judge made findings of primary fact and whether that evidence was disputed are important variables.** As Lord Bridge of Harwich stated in Whitehouse v Jordan [1981] 1 WLR 246, 269-270:

**“[T]he importance of the part played by those advantages in assisting the judge to any particular conclusion of fact varies through a wide spectrum from, at one end, a straight conflict of primary fact between witnesses, where credibility is crucial and the appellate court can hardly ever interfere, to, at the other end, an inference from undisputed primary facts, where the appellate court is in just as good a position as the trial judge to make the decision.”**

See also Lord Fraser of Tullybelton, at p 263G-H; Saunders v Adderley [1999] 1 WLR 884 (PC), Sir John Balcombe at p 889E; and Assicurazioni Generali SpA v Arab Insurance Group (Practice Note) [2003] 1 WLR 577 (CA), Clarke LJ at paras 12-17. **Where the honesty of a witness is a central issue in the case, one is close to the former end of the spectrum as the advantage which the trial judge has had in assessing the credibility and reliability of oral evidence is not available to the appellate court. Where a trial judge is able to make his findings of fact based entirely or almost entirely on undisputed documents, one will be close to the latter end of the spectrum.”** [Emphasis added]

[27.] There was no finding of fact with relation to the contract proffered by the Appellant placed before the learned magistrate at the time of trial, which goes to the substance of the Appellant’s defence. Nonetheless, while the Court does agree with Counsel for the Respondents that the Appellant at the very least was a contractual licensee and agrees that a license may be revocable where the consideration is not met (see **Wood v Leadbitter** (1845) 13 M & W 838), the issue

which is not explored is who, in the name of the Second Respondent, has the power to revoke that contract. At the trial of this matter, competing documents were presented to the Learned Magistrate with relation to the ownership of the Second Respondent and with relation to alleged resolutions made by the Second Respondent. There was no finding of fact with relation to these documents which the Court, upon view of the decision, can determine why the documents were rejected or accepted. The Court notes that there are no findings of fact nor is the credibility of the witnesses called into question. However, the Court cannot reasonably come to the same conclusion as the trial court where there are competing documents with regard to the ownership of the Second Respondent, as only the owners or shareholders can either grant/direct the revocation of the license.

[28.] The Court, therefore, allows the appeal as it is not sound in law in regards to issues concerning the ownership of the Second Respondent.

[29.] The Court notes, that the summons sought a second relief *“I am requesting the Court to evict the two defendants and declare that the property is legally owned by the Claimant.”* Therefore, the Court is of the view that this matter cannot be remitted to the Magistrates Court. Though a magistrate does have the jurisdiction to hear trespass matters pursuant to section 15 and 23 of the Act which states:

15. In addition to the original jurisdiction conferred upon a stipendiary and circuit magistrate by this or any other Act, **a stipendiary and circuit magistrate shall also have jurisdiction and authority to try summarily any case in which the title to land is involved where the value of the land in dispute shall not exceed ten thousand dollars and nothing contained in sections 52 and 53 of this Act shall be deemed to apply to a stipendiary and circuit magistrate exercising jurisdiction under this section.**

[Emphasis added]

However, The Magistrate does not have the jurisdiction to hear matters related to title where the title or interest therein is being challenged. Sections 52 and 53(1) of the Act states:

52. Subject to the provisions of section 15 and section 23 of this Act, a magisterial court **shall have no jurisdiction to try summarily any case in which title to land or any interest therein is directly or incidentally in dispute:**

Provided that this section shall not apply to the following cases —

- (1) where the claim to such title is impossible in law;
- (2) where, in the opinion of the court, the claim to such title is not set up in good faith;
- (3) where, in the opinion of the court, the act complained of was not done in assertion of the title claimed;
- (4) where the main point at issue is a dispute as to the correct position of the boundary line of the land in respect of which the action is brought.

53. (1) **In any case in which the defendant objects to the jurisdiction of a magisterial court on the ground that title to land or any interest therein is in dispute, the court shall require the defendant to state the nature of the title claimed.**

[Emphasis added]

[30.] It is this Court's view that, interest in the land is incidental and in dispute as well as the title to land in this matter is valued over \$10,000. Nor did the Magistrate in her decision state whether the exceptions listed in Section 52 were met. Thus the Court finds that it may not be appropriate in these circumstances to remit this matter to the Magistrates Court.

**Disposition**

[31.] Therefore, the Court allows the appeal and quashes the order made 19 June, 2023 and matter is not remitted to the Magistrate Court.

[32.] Costs to the Appellant to be assessed in not agreed.

Dated: 6 May 2026

*[Original Signed and Sealed]*

Constance Delancy  
Justice