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Jasmine Hartin v Andrew Ashcroft

Jurisdiction: Belize

Judge: Madam Justice Geneviève Chabot

Judgment Date: 02 December 2022

Reported In: BZ 2023 SC 6

Court: Supreme Court (Belize)

Year: 2023

Docket Number: INFERIOR APPEAL NO. 5 OF 2022

PDF

IN THE HIGH COURT OF BELIZE, A.D. 2023

(APPELLATE JURISDICTION)

Before
The Honourable Madam Justice Geneviève Chabot

INFERIOR APPEAL NO. 5 OF 2022

IN THE MATTER OF SECTIONS 112 of the Supreme Court of Judicature Act, Revised Edition 2011

and

IN THE MATTER OF Rule 3 Ord. LXXIII of the Inferior Courts (Appeals) Rules

Between
Jasmine Hartin
Appellant/Respondent
and
Andrew Ashcroft
Respondent/Applicant

Appearances

Darlene M. Vernon, Counsel for the Appellant/Respondent

Robertha Magnus Usher, S.C., appearing conditionally on behalf of the Respondent/Applicant

RULING ON APPLICATION TO STRIKE OUT

1 The Appellant, Jasmine Hartin (the "Respondent" in this Application), appeals from a decision of the Honourable Magistrate Dale Cayetano (the "Magistrate") rendered on May 25 th, 2022 in the Belize Family Court. In his decision, the Magistrate granted sole custody of the parties' two children to the Respondent, Andrew Ashcroft (the "Applicant" in this Application).

2 The Respondent filed a Notice of Appeal, along with an Urgent Application for Stay of Execution, on May 25 th, 2022. On August 10 th, 2022, the Applicant filed an Application to Strike Out the Appeal on the ground that he has not been served with the Notice of Appeal as required by section 4(1) of the *Supreme Court of Judicature Act (Inferior Courts Appeals) Rules*, 2021 (the *"Inferior Courts Appeals Rules"*). The Applicant argues that the Appeal is not properly before the Court, and therefore that this Court lacks jurisdiction to hear the Appeal.

3 For the reasons that follow, this Court finds that the Applicant has been properly served with the Notice of Appeal. The Application to Strike Out is dismissed.

Factual Background

4 On May 25 th, 2022, the Magistrate rendered a decision granting sole custody of the parties' two children to the Applicant. On the same day, the Respondent filed a Notice of Appeal, along with an Urgent Application for Stay of Execution (the "Application for Stay"), with the then Supreme Court of Belize (now the High Court of Belize).

5 According to an Affidavit of Service dated July 15 th, 2022, PC Winfield Mortis "personally" served the Applicant with the Notice of Appeal and Application for Stay on May 28 th, 2022 at 6:00pm "by delivering [the documents] at his last known address at Grand Colony, Sea Grape Drive, San Pedro Town, Belize District, Belize". [1]

6 In a 2 nd Affidavit dated September 29 th, 2022, PC Mortis provided additional information with regard to his efforts to locate the Applicant. According to PC Mortis, on May 26 th, 2022, after being contacted by the Respondent, he went to the Alaia Hotel to verify the Applicant's address. PC Mortis was told the Applicant lived at Grand Colony. PC Mortis went to the reception at Grand Colony and was told the Applicant was not in. He informed the Respondent that he was unable to locate the Applicant. The Respondent then informed PC Mortis that the children were graduating the following day and that the Applicant would likely be attending the graduation. On May 27 th, 2022, PC Mortis attended the graduation, but the Applicant was not present. On May 28 th, 2022, PC Mortis went to Grand Colony and was told the Applicant was not available. PC Mortis "then left the package in the security booth as this is where I was informed Mr. Ashcroft lived". [2]

7 On May 27 th, 2022, the Respondent sent a copy of the Notice of Appeal and Application for Stay to the law offices of Robertha Magnus Usher and Associates, who represented the Applicant before the Family Court. [3]

8 Sometime between May 25 th and May 28 th, 2022, the Applicant left the jurisdiction with the two children. The Applicant relocated to the Turks and Caicos Islands. [4]

9 This Court received the Notice of Appeal and Application for Stay on Friday, May 27 th, 2022. A hearing of the Application for Stay, which was marked as "urgent", was scheduled for Tuesday, May 31 st, 2022. At the hearing on May 31 st, 2022, Mrs. Magnus Usher informed the Court that she had not yet been retained to act in this matter and had no instructions from the Applicant. In addition, the Respondent had not yet complied with the requirements of section 112 of the *Supreme Court of Judicature Act* [5] (which was applicable at the time). This Court was therefore unable to hear the Application for Stay. A further hearing was scheduled for June 23 rd, 2022.

10 On June 21 st, 2022, the Court received a letter from Mrs. Magnus Usher requesting an adjournment of the June 23 rd, 2022 hearing. In her letter, Mrs. Magnus Usher indicated that she had not been retained by the Applicant to act in this matter. She also indicated that the Applicant had not been served with the Notice of Appeal.

11 On June 22 nd, 2022, the Applicant was personally served with the Notice of Appeal and Application for Stay in Providenciales, Turks and Caicos Islands. [6]

12 At the June 23 rd, 2022 hearing, the Court decided to adjourn the hearing of the Application for Stay to allow Mrs. Magnus Usher time to seek instructions from the Applicant and respond to the affidavits filed by the Respondent. The Court also instructed the parties that it would hear arguments on the issue of service at the next hearing. Both parties were granted leave to file affidavits and submissions on the issue of service and on the Application for Stay in advance of the next hearing.

13 The next hearing was scheduled for August 11 th, 2022. On August 10 th, 2022, the Applicant filed this Application to Strike Out the Appeal on the ground that he has not been served with the Notice of Appeal. The hearing was adjourned to allow the parties time to file affidavits and written submissions. The hearing of this Application proceeded on December 2 nd, 2022.

Submissions

Applicant's Submissions

14 The Applicant first notes that the Notice of Appeal is addressed to three persons: the Magistrate who made the decision under appeal; the Registrar of the Supreme Court; and the Clerk of the Belize District Court. The Notice of Appeal is not addressed to the Applicant. Similarly, the Notice of Grounds of Appeal is addressed to these same three persons, in addition to the Applicant's Attorney in the lower court, but not the Applicant himself. This is indicative of the Respondent's belief that the Notice of Appeal did not require service on the other party, the Applicant.

15 The Applicant argues that the Respondent did not serve him in accordance with the provisions of the *Inferior Courts Appeals Rules*. Rule 4(1) of the *Inferior Courts Appeals Rules* provides, in relevant parts, the following:

> 4.–(1) A person desiring to appeal the decision of the Inferior Court shall, within twenty one days after the pronouncing of a decision, complete and file with the Clerk a Notice of Appeal in Form 1 of Schedule 1.
>
> (2) A person who has filed a Notice of Appeal in accordance with sub-rule (1) shall serve a copy of the Notice of Appeal on the opposite party.

16 The "appellant" is defined in Rule 2 of the *Inferior Courts Appeals Rules* as the party appealing the decision of an Inferior Court, here Ms. Hartin. The only other party to the Appeal is the respondent, here Mr. Ashcroft. According to the Applicant, a party to the Appeal therefore does not include or refer to the attorney-at-law representing that person.

17 Under section 124 of the *Supreme Court of Judicature Act*,

> 124. Any notice or other document required to be served or transmitted under this Act relating to appeals from inferior courts may be served or transmitted by registered post or may be served by delivering or leaving it at the last known place of abode of the party to be served.

18 Apart from personal service, there are two options open to an appellant to effect service of the Notice of Appeal: (1) by registered post, and (2) by leaving it at the last known place of abode.

19 The Applicant submits that the Respondent failed to satisfy the elements of section 124 of the *Supreme Court of Judicature Act*. There is no evidence (photo or signature) that the documents were left in a security booth. In addition, the Applicant does not live in a security booth, and it is unreasonable to expect that in a hotel or condominium development a security

booth could be viewed as the place of abode of a person. Furthermore, there was no attempt by the Respondent to prove that the security booth was the last known place of abode of the Applicant.

20 The Applicant notes that on May 28 th, 2022, he had already left the jurisdiction. It is therefore impossible to establish without any doubt that the Appeal documents were brought to the Applicant's attention by leaving them at the security booth. The process server did not visit the Applicant's apartment, or attach the Notice of Appeal to his door. The Applicant asserts that the process server's testimony is compromised and made unreliable by the fact that in paragraph 1 of his Affidavit dated July 15 th, 2022, he falsely states that he "personally served" the Applicant.

21 The Applicant disputes that the service of the Appeal documents in the Turks and Caicos Islands was valid. Under Order XII, r. 9 of the *Supreme Court of Judicature Rules*, service out of the jurisdiction is only permissible for originating procedures or processes. An appeal of a decision of a court cannot be considered an originating process. Moreover, the Respondent did not first obtain leave from the Court to serve the Applicant out of the jurisdiction.

22 According to the Applicant, service on the attorney in the lower court, or any attorney representing or connected to the respondent to an appeal, is not considered valid service under section 124 of the *Supreme Court of Judicature Act*. Relying on *James Lonsdale et al v Wedlake Bel LLP et al*, [7] the Applicant says that the Applicant's Attorney made it clear on the first appearance in Court that although she received notice of the Appeal, she was not instructed or retained to accept service. The Attorney subsequently filed a conditional appearance to convey the Applicant's intent to contest service.

23 The Applicant argues that unlike the CPR rules discussed in *Lonsdale*, the *Inferior Courts Appeals Rules* do not allow for the Court to extend time or to consider whether the efforts made in bringing the Appeal to the Applicant's attention were reasonable and effective in giving him notice. The options given under section 124 of the *Supreme Court of Judicature Act* are clear and must be strictly adhered to.

24

Rule 4(1) of the *Inferior Courts Appeals Rules* stipulates that the Notice of Appeal must be served on the respondent to the Appeal on filing the same. Given the timelines provided by the *Inferior Courts Appeals Rules*, and the fact that the right to appeal expired within 21 days, such notice had to be served on the Applicant within the same time frame of 21 days. To date, some 5 months since the Order of the Family Court, the Applicant has not been served with the Notice of Appeal in conformity with section 124 of the *Supreme Court of*

Judicature Act. In *Michael Slusser v Sandra Bergquist and another*, [8] the Court of Appeal struck out an appeal on the basis that the appellants had failed to serve the respondents with a copy of the notice within the period of time prescribed by law.

25 In the alternative, if the *Supreme Court of Judicature Act* or the *Inferior Courts Appeals Rules* are deemed silent on the period within which service is to be effected, section 18 of the *Supreme Court of Judicature Act* allows this Court to consider the laws of England. Under section 30.4(4) of the UK *Family Procedure Rules*, an appellant's notice must be served on the respondent within 7 days after it is filed.

Respondent's Submissions

26 With respect to the Applicant's argument that the Notice of Appeal was not addressed to the Applicant himself, the Respondent argues that Rule 4(1) and (2), and Rule 7(1) and (2) of the *Inferior Courts Appeals Rules* do not require the Notice of Appeal and Notice of Grounds of Appeal to be addressed to the Applicant. What the law requires is that a copy of both documents be served on the Applicant, which the Respondent did.

27 The Respondent notes that in *Fort Street Tourism Village Limited v Attorney General et al*, [9] the Belize Court of Appeal held that where attorneys on appeal are the same as the attorneys in first instance, and their retainer has effectively not ended, service of a Notice of Appeal on the attorneys is proper.

28 The Respondent submits that she provided proof of service by way of the Affidavit of PC Mortis dated September 29 th, 2022, which sets out the details regarding service of the documents on the Applicant. The Applicant was served at his last known place of abode as

required under section 124 of the *Supreme Court of Judicature Act*. PC Mortis left the Notice of Appeal at the security booth at Grand Colony on May 28 th, 2022. The Respondent submits that the Grand Colony premise encompasses the security booth.

29 In response to the Applicant's suggestion that PC Mortis should have visited his condominium and attached the Notice of Appeal to the condominium door, the Respondent argues that "a non-resident cannot simply walk into a compound and proceed to a condominium; that defeats the very purpose of a security guard". PC Mortis had made several requests to see the Applicant, to no avail. The only way for PC Mortis to have left or delivered the Notice of Appeal at the last known place of abode of the Applicant was to leave it at the security booth at Grand Colony. Grand Colony was the last known place of abode of the Applicant. This was recognized by the Respondent and many others within and outside of **Ambergris Caye** to be where the Applicant resided. There is no requirement in the *Inferior Courts Appeals Rules* or the *Supreme Court of Judicature Act* for the

Respondent to provide any evidence of a photo or signature to prove that the Notice of Appeal was left in the security booth, as asserted by the Applicant.

30 The Respondent notes that she raised the other mode of service, namely delivery of the Notice of Appeal to the Applicant in the Turks and Caicos Islands, to demonstrate that she went above and beyond what constitutes proper service by law.

31 The Respondent argues that she served the Applicant within the 21 day time limit prescribed by the *Inferior Courts Appeals Rules*. The decision of the Magistrate was rendered on May 25 th, 2022. On the same day, the Respondent filed the Notice of Appeal seeking that the decision be quashed and the order set aside. On May 28 th, 2022, only three days later, the Applicant was served by leaving the Notice of Appeal at his last known place of abode. The Respondent therefore served the Notice of Appeal on the Applicant within the period prescribed in the *Inferior Courts Appeals Rules*. If the Court finds that the *Inferior Courts Appeals Rules* do not indicate a time period within which the Notice of Appeal is to be served, the Respondent submits that she has complied with the 7 day time limit as stipulated in section 30.4 of the UK *Family Procedure Rules*.

Applicant's Reply

32 In reply, the Applicant distinguishes *Fort Street Tourism Village Limited v Attorney General et al* on the ground that the appeal process for cases from the Supreme Court to the Court of Appeal is substantially different, so the determination cannot be made applicable to appeal cases from an Inferior Court to the Supreme Court. Whereas there is in fact an actual entry of an attorney's name on the record for Supreme Court matters, there is no such requirement before the Inferior Courts. Attorneys may change quite often before the Family Court in any one matter without any penalty. Here, there was no entry of appearance before the Family Court for the Applicant, and there is no requirement for such an entry. The proposition that the attorney who appeared in the Family Court for a party is committed and bound to represent that party in proceedings before another court, or to accept service of legal proceedings in another court is without any legal basis or authority.

33 With respect to service in the security booth, the Applicant notes that the Respondent has omitted to name or identify a person as being present in the security booth when documents were allegedly left there. The Respondent's submission that she could have left the documents anywhere on the property "offends every principle of natural justice and logic". In addition, the allegation that Grand Colony was the last known place of abode of the Applicant has not been established.

Analysis

34 This Court is satisfied that the Applicant has been served with the Notice of Appeal in compliance with the *Inferior Courts Appeals Rules* and the *Supreme Court of Judicature Act*.

35 Rule 4(2) of the *Inferior Courts Appeals Rules* provides that "a person who has filed a Notice of Appeal in accordance with sub-rule (1) shall serve a copy of the Notice of Appeal on the opposite party". Rule 4(2) is silent as to the methods of service available under the *Inferior Courts Appeals Rules*. Rule 4(2) must be read alongside section 124 of the *Supreme Court of Judicature Act*, which provides that notices related to appeals from inferior courts may be served "by registered post" or "by delivering or leaving it at the last known place of abode of the party to be served". That section 124 of the *Supreme Court of Judicature Act* is not exhaustive is evident from the fact that personal service on the party to be served is not mentioned as an option. Personal service is to be assumed from the language is Rule 4(2) of the *Inferior Courts Appeals Rules*.

36 The Respondent sought to serve the Notice of Appeal on the Applicant using three different methods: by leaving it in the security booth at Grand Colony; by sending it to the Applicant's Attorney-at-law in the Inferior Court; and by serving the Applicant outside of the jurisdiction.

37 Of these three methods of service, only leaving the Notice of Appeal in the security booth at Grand Colony complied with section 124 of the *Supreme Court of Judicature Act*. The Respondent did not seek this Court's leave before serving the Applicant in the Turks and Caicos Islands, rendering this method of service invalid for the purpose of meeting the requirements of the *Supreme Court of Judicature Act*. As for service of the documents on the Applicant's Attorney-at-law in the Inferior Court, it is not clear from the *Supreme Court of Judicature Act* or the *Inferior Courts Appeals Rules* whether the legislator deems this method of service proper. In any event, Mrs. Magnus Usher clearly indicated to the Respondent and the Court that she had not yet been retained and instructed by the Applicant to accept service of documents in the Appeal. This Court therefore finds that sending the Notice of Appeal to the offices of Mrs. Magnus Usher did not constitute good service.

38 The Applicant was however duly served on May 28 th, 2022, when PC Mortis left the Notice of Appeal in the security booth at Grand Colony. The Court is satisfied that Grand Colony was the last known place of abode of the Applicant. The Respondent had personal knowledge of this fact, which is evidenced at paragraph 14 of her Affidavit dated July 27 th, 2022, in which she refers to Grand Colony as “our home”. In addition, PC Mortis satisfied himself that this is where the Applicant resided. At paragraphs 3 and 4 of his Affidavit dated September 29 th, 2022, PC Mortis swears that he “went to the Alaia Hotel to verify Mr. Ashcroft's address and was told he lived at Grand Colony”. He went to Grand Colony on two occasions and was told “Mr. Ashcroft was not in” and that he “was not available”, not that he did not reside there. It is noteworthy that the Applicant does not dispute that Grand Colony was his last place of abode in Belize. The Applicant's contention is that the Respondent has not sufficiently established that it was. The Court disagrees and finds that Grand Colony was the Applicant's last known place of abode in Belize.

39 Grand Colony is a condominium development with over 21 condominium units. [10] PC Mortis left the Notice of Appeal at the security booth. The Applicant says that he does not reside in a security booth. That is most likely true, but this fact does not negate the validity of the service. Condominium developments (or “stratas”) are divided into private property (or

“strata lot”) and common property. Section 13(1) of the *Strata Titles Registration Act* [11] states that a proprietor of a strata lot is the proprietor in common of the common property in proportion to their shares in the strata lots:

> 13.–(1) The common property shall be held by the members as proprietors in common in shares proportionate to the unit entitlement of their respective strata lots.

40 The common property is therefore part of a proprietor's strata lot. A security booth in a condominium development is part of the common property, and therefore of each proprietor's strata lot.

41 Section 124 of the *Supreme Court of Judicature Act* allows service of any notice or other document in an appeal from an Inferior Court to be effected by “leaving it at the last known place of abode of the party to be served”. Section 124 of the *Supreme Court of Judicature Act* is not particularly specific. Section 124 does not require the document to be affixed to the door, as submitted by the Applicant. While leaving the document elsewhere on the property creates a risk that it will not be found by the intended recipient, there is nothing to prevent a person from leaving the document anywhere within the perimeter of the intended recipient's property.

42 The Applicant chose to reside in a large condominium development which offers safety and privacy through controlled access. The Applicant must accept the consequences of that choice. One of those consequences is that access to his individual unit for the purpose of service of legal documents is controlled. PC Mortis left the Notice of Appeal in the security booth, which is part of the Applicant's common property in the strata lots. While leaving the Notice of Appeal in the security booth created the risk that its contents would not be brought to the attention of the Applicant, it is a risk that the Applicant must bear.

43 The two Affidavits of Service swore by PC Mortis constitute sufficient proof of service. There is no requirement in either the *Supreme Court of Judicature Act* or the *Inferior Courts Appeals Rules* for service to be proven via signature or photographic evidence, and this Court's practice is not to require such evidence.

44 This Court has not been persuaded that PC Mortis' Affidavit of Service dated July 15 th, 2022 is “compromised” and “made unreliable” by the fact that paragraph 1 of the Affidavit states that PC Mortis “personally served” the Applicant. While the word “personally” is used in

error, it is clear from a reading of the remainder of the paragraph that the Applicant was served by leaving the documents at his last known place of abode. The use of the word "personally" cannot be interpreted as a deliberate attempt to mislead the Court.

45 The Court is satisfied that the Respondent effectively brought the Notice of Appeal to the attention of the Applicant. As noted by the United Kingdom's Supreme Court, the most important purpose of service is to ensure that the contents of a document served is communicated to the other party:

> Service has a number of purposes but the most important is to my mind to ensure that the contents of the document served, here the claim form, is communicated to the defendant. In *Olafsson v Gissurarson (No 2)* [2008] EWCA Civ 152, [2008] 1 WLR 2016, para 55 I said, in a not dissimilar context, that
>
> > "… the whole purpose of service is to inform the defendant of the contents of the claim form and the nature of the claimant's case: see eg Barclays *Bank of Swaziland Ltd v Hahn* [1989] 1 WLR 506, 509 per Lord Brightman, and the definition of 'service' in the glossary to the CPR, which describes it as 'steps required to bring documents used in court proceedings to a person's attention…'" [12]

46 Service is not about "playing technical games"; [13] it is about bringing proceedings to the notice of a person. Contrary to the Applicant's submissions, this Court can consider whether the efforts made in bringing the Notice of Appeal to the Applicant's attention were reasonable and effective in giving him notice. As noted above, section 124 of the *Supreme Court of Judicature Act* cannot be considered exhaustive because it does not mention personal service. In addition, the use of the word "may", as opposed to "shall" or "must", in section 124 of the *Supreme Court of Judicature Act* implies that this section is permissive rather than directive. Section 124 of the *Supreme Court of Judicature Act* does not remove this Court's inherent jurisdiction to do what is just and fair in the

circumstances, including considering the efforts made by the Respondent to bring the Notice of Appeal to the attention of the Applicant.

47 In addition to leaving the Notice of Appeal in the security booth, the Respondent took other steps which, although they did not strictly comply with the narrow requirements of section 124 of the *Supreme Court of Judicature Act*, were effective in bringing the Notice of Appeal to the attention of the Applicant.

48

The Applicant left the jurisdiction sometime between May 25 th and May 28 th, 2022, shortly after the Magistrate rendered his decision. By doing so, the Applicant deprived the Respondent of the opportunity to serve him personally with the Notice of Appeal, which would have certainly brought the contents of the Notice of Appeal to his attention. As noted above, the Respondent sent the Notice of Appeal to the offices of Mrs. Magnus Usher, who represented the Applicant in the Inferior Court, on May 27 th, 2022, only two days after the decision which is the subject of this Appeal was rendered. Although the Applicant left the jurisdiction around that time, it is unlikely that Mrs. Magnus Usher would have by then lost all channels of communication with the Applicant. Mrs. Magnus Usher herself does not allege so. It is more than likely that Mrs. Magnus Usher could have alerted the Applicant that an appeal of the decision rendered on May 25 th, 2022 had been launched by the Respondent.

49 In addition, the Applicant was personally served with the Notice of Appeal in Providenciales, Turks and Caicos Islands, on June 22 nd, 2022. While in the absence of this Court's leave, service outside of the jurisdiction was not validly effected, there is no doubt that the contents of the Notice of Appeal had been brought to the Applicant's attention.

50 The Court does not accept the Applicant's submission that the Respondent's failure to address the Notice of Appeal and Notice of Grounds of Appeal to the Applicant himself "is indicative of the Appellant's belief that the Notice did not require service on the other party, the Respondent". [14] The Respondent clearly knew that she had to serve the Notice of Appeal on the Applicant, and went to great lengths to do so using three methods of service. While two of these methods were not valid under the *Supreme Court of Judicature Act* and *Inferior Courts Appeals Rules*, the Applicant was served at his last known place of abode and was made aware of the contents of the Notice of Appeal through these other methods. As a result, the Applicant has been validly served.

51 Since the Applicant was served with the Notice of Appeal only 3 days after the decision under appeal was rendered, service was timely under either the *Inferior Courts Appeals Rules* or the UK *Family Procedure Rules*.

52 For the purpose of Rule 10 of the *Inferior Courts Appeals Rules*, the date of this ruling shall constitute the date of compliance by the Appellant with Rules 4 and 6. Pursuant to Rule 10(2), the Magistrate shall file the statement of reasons with the Clerk of the Family Court within 30

days of this ruling.

IT IS HEREBY ORDERED

(1) The Application to Strike Out is dismissed.

(2) Costs are awarded to the Respondent and shall be costs in the Appeal.

Dated January 30 th, 2023

Geneviève Chabot
Justice of the High Court

[1] Affidavit of Service of Winfield Mortis dated July 25th, 2022.

[2] Second Affidavit of Winfield Mortis dated September 29th, 2022.

[3] Affidavit of Service of Ryan Daly dated May 30th, 2022.

[4] Affidavit of Andrew Ashcroft dated August 9th, 2022.

[5] Cap. 91, Rev. Ed. 2020.

[6] Affidavit of Service of Charles Fulford Stubbs dated June 22nd, 2022.

[7] [2022] EWHC 2169 (" *Lonsdale*").

[8] Civil Appeal No. 3 of 2015.

[9] Civil Appeal Nos. 4 and 6 of 2008 at 11–14.

[10] Affidavit of Andrew Ashcroft dated October 17th, 2022 at para. 29.

[11] Cap. 196, Rev. Ed. 2020.

[12] *Abela & Ors v Baadarani* [2013] UKSC 44 at para. 37 (" *Abela*").

[13] *Ibid* at para. 38.

[14] Applicant's Reply Submissions at para. 3.