

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV 2016-02811**

**BETWEEN**

**LATCHMIE MOHAN**

**Claimant**

**AND**

**LINCOLN RAMNARINE**

**Defendant**

**BEFORE THE HONOURABLE MADAM JUSTICE M. DEAN-ARMORER**

**APPEARANCES**

Claimant in person

Ms. Harrilal and Mr. Seecharan, Attorneys-at-Law on behalf of the Defendant

**REASONS**

***Introduction***

1. On the 22<sup>nd</sup> December, 2017, the Claimant, through her Attorney-at-law filed her second application for an extension of time, for the filing of Witness Statements and her List of Documents.
2. On the 21<sup>st</sup> February, 2018, I dismissed the Claimant's application for a second extension of time.
3. My reasons for so doing are set out below:

## **Facts**

4. On the 15<sup>th</sup> August, 2016, the Claimant instituted this Claim, seeking an order that a Deed of Gift dated the 4<sup>th</sup> May, 2013 be voided and expunged from the record.
5. The Fixed Date Claim was first listed for hearing on the 2<sup>nd</sup> November, 2016 to enable the defendants to file their defences.
6. On the 8<sup>th</sup> March, 2017, I entered an order by consent that the Defendants refrain from disposing of the subject property pending the hearing and determination of these proceedings. I also granted permission to the defendants to amend their defence and to the Claimant to file a reply.
7. On the 17<sup>th</sup> May, 2017, I gave pre-trial directions including directions for disclosure and inspection of documents and the filing and service of Witness Statements.
8. My directions required that disclosure and inspection of documents take place by the 28<sup>th</sup> July, 2017 and that Witness Statements be filed and served by 30<sup>th</sup> November, 2017.
9. On the adjourned date, 6<sup>th</sup> December 2017, I considered the joint consent Notice of Application dated the 22<sup>nd</sup> November, 2017. I extended time for the filing and service of Witness Statements to 18<sup>th</sup> December, 2017 and adjourned the pre-trial review, pending settlement, to the 21<sup>st</sup> February, 2018.
10. On the 22<sup>nd</sup> December, 2017, learned Attorneys-at-Law for the Claimant filed a Notice of Application seeking an extension of time, for both the filing of the list of documents and Witness Statements.
11. The hearing of this second application for an extension of time was fixed for hearing on the 21<sup>st</sup> February, 2018.

12. On that day, the Claimant appeared in person and indicated that her lawyer was engaged in a matter in Port-of-Spain and would be late. This was borne out by learned Attorney-at-Law for the Defendants, Ms. Harrilal, who indicated that she had received a call from the Claimant's attorney, with a request that the hearing be stood down.
13. However, neither Ms. Harrilal nor the Claimant knew when Mr. Ellis would be available. It was therefore not possible to stand the matter down, since there was no estimated time, by which the Court could expect Mr. Ellis. Accordingly, I proceeded to deal with the application.

### ***Law and Discussion***

14. In *Dr. Keith Rowley v Anand Ramlogan* Civ App 215 of 2014, Justice of Appeal Rajnauth-Lee (as she then was) considered an appeal from a refusal, at first instance, to grant an extension of time for the filing of Witness Statements. At paragraph 13-17 of her judgment, Justice of Appeal Rajnauth-Lee provided this guidance in respect of the grant of extension of time:

*“...the Court of Appeal was disposed to the view, and I agree, that the trial judge's approach in applications to extend time should not be restrictive. In such applications, there are several factors which the trial judge should take into account, that is to say, the Rule 26.7 factors (without the mandatory threshold requirements), the overriding objective and the question of prejudice. These factors, however, are not to be regarded as "hurdles to be cleared" in the determination of an application to extend time. They are factors to be borne in mind by the trial judge in determining whether he should grant or refuse an application for extension of time. The*

*trial judge has to balance the various factors and will attach such weight to each having regard to the circumstances of the case. Of course, not all the factors will be relevant to every case and the list of factors is not exhaustive. All the circumstances must be considered. In addition, I wish to observe that this approach should not be considered as unnecessarily burdening the trial judge. In my view, when one examines principles contained in the overriding objective, it is not difficult to appreciate the relevance of the rule 26.7 factors.*

*14. The following Rule 26.7 factors are therefore applicable without the restriction of the threshold:*

*(a) whether the application was made promptly;*

*(b) whether the failure to comply was not intentional;*

*(c) whether there is a good explanation for the application;*

*(d) whether the party in default has generally complied with all other relevant rules, practice directions, orders and directions;*

*(e) the interests of the administration of justice;*

*(f) whether the failure to comply was due to the party or his attorney;*

*(g) whether the failure to comply has been or can be remedied within a reasonable time; and (h) whether the trial date or any likely trial date can still be met if relief is granted.*

15. Rule 1.1(1) sets out the overriding objective of the CPR which is to enable the court to deal with cases justly. Dealing justly with the case includes –

(a) ensuring, as far as practicable, that the parties are on an equal footing;

(b) saving expenses;

(c) dealing with 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

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

16. In addition, inherent in the overriding objective to enable the court to deal with matters justly are considerations of prejudice. It is for the judge to consider on which party lies the greater risk of prejudice if the application is granted or refused. The court will take account of the various disadvantages to the parties should the application be granted or refused.<sup>1</sup>

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<sup>1</sup> At paragraphs 13-16

15. It was my view that the grant of an extension for the filing of Witness Statements and of the Claimant's list of Documents would have resulted in a delay in progress of the Claim towards trial. Such delay would have had a negative effect on the administration of justice and would have been prejudicial to the Defendant, who had undertaken to refrain from disposing of the property, until the hearing and determination of the claim.
16. It was also my view that the reasons advanced in the supporting affidavit of Rhyjell Ellis, learned Attorney-at-Law for the Claimant, pointed squarely to the default on the part of the Claimant, who failed to produce required documents to her Attorney-at-Law for the purpose of settling her witness statement. <sup>2</sup>
17. I therefore considered that this was the second application for an extension of time and that it was caused by the default of the Claimant. It was being resisted by the Defendant and would have delayed the trial of the Claim.
18. Accordingly, notwithstanding the non-appearance of learned Attorney-at-Law for the Claimant, I held the view that the application dated 22<sup>nd</sup> December, 2017 ought to be dismissed.

Dated this 25<sup>th</sup> day of May, 2018.

M. Dean-Armorer  
Judge

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<sup>2</sup> See the affidavit of Rhyjell Ellis filed on 22<sup>nd</sup> December 2017 of paragraph 5-9