**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE COURT OF APPEAL**

**Civil Appeal No. P-269 of 2020**

**Claim No. CV2012-04329**

**IN THE MATTER OF THE WILLS AND PROBATE ACT, CHAP 9:03**

**AND THE SUCCESSION ACT CHAP 9:02**

**AND**

**IN THE MATTER OF THE**

**ESTATE OF SIEWKARAN SAWH ALSO CALLED BHARRAT ROOPLA (DECEASED)**

**BETWEEN**

**RITA SINGH**

**First Respondent/First Claimant**

**HAROLD SAWH**

**Second Claimant**

**JOYCE BOODOO**

**Third Claimant**

**ROODAL SAWH**

**Fourth Claimant**

**AND**

**BICKRAM BISSONDATH SAWH**

**MICHAEL JAILAL SAWH**

**DULCIE ANGELA SAWH**

**Appellants/Defendants**

**Panel: V. Kokaram JA**
**R. Boodoosingh JA**

**Appearances:**
**Mr. Farai Hove Masaisai and Ms. Antonya Pierre instructed by Mr. Anthony Noel Egbert, Attorneys at Law for the Appellants.**

**Date of Delivery: Wednesday 9th December 2020**

**I have read the judgment of Kokaram JA and I agree.**

*Ronnie Boodoosingh* **(E-signed)**

**.....**

**Ronnie Boodoosingh**

**Justice of Appeal**

## JUDGMENT

1. This is a procedural appeal against the case management decision of the learned Judge extending the time for the first Respondent to file her affidavit in response to the Appellants' affidavits on the hearing of the Respondent's application for committal proceedings/injunctive relief[1].

2. The two main grounds of this appeal are that the extension of time was wrongly granted on the Respondent's oral application and that the learned judge was biased. The Appellant contends that there was no evidence filed in support of the application and the learned judge failed to apply the relevant law on extensions of time. In particular the oral explanation from counsel for the Respondent that more time was needed due to the voluminous nature of the affidavits filed by the Appellants was not a good reason and that the learned Judge failed to take into account the prejudice to the Appellants. With respect to the ground of bias, the Appellant allege that the learned judge approached the application with a closed mind against them.

3. Pursuant to Part 64.9(13) Civil Proceeding Rules "(CPR)" we dispensed with the need for an oral hearing of this appeal and indicated to the parties that our decision will be delivered in writing by e-mail.

4. We have considered the Appellants appeal, written submissions and authorities[2]. We are not convinced that the trial judge was plainly wrong[3]

[1] See Notice of Appeal dated 01/10/2020 and paragraph 11 to 15 of the Appellant's written submissions
[2] The Respondent failed to file any written submissions within the time prescribed by Rule 64.9(7) CPR and there has been no application made to extend the time for so doing.
[3] AG v Miguel Regis CA 79/2011

in granting the extension of time for the filing of the Respondent's affidavit. We also find that the allegation of apparent bias of the learned Judge lacks merit. We say so for the following reasons.

5. First it is clear that in the circumstances of this case the Court was exercising its case management discretion in managing the hearing and determination of a substantive application for committal and injunctive relief with serious consequences for the parties. That was an application by the Respondent for committal where she alleged the Appellants had breached the terms of a consent order. A main focus of the parties, as it was for the Court, must be to consider all the evidence to arrive at a just resolution of that application. The Court established a timetable for the filing of evidence by the parties and retained control over that schedule for the purpose of giving effect to the overriding objective. See rule 25.1(g) CPR.

6. Given the context of committal proceedings/injunctive relief, the need to ensure both parties file their relevant evidence in response to each other, the short time frames established by the learned judge in his original timetable, the need to receive the Respondent's evidence in reply to justly determine the application, the absence of any express sanctions imposed by the Court's order and the absences of any prejudice to the Appellants, it cannot be said that the learned judge was plainly wrong to deal with an oral application for an extension of time pursuant to the exercise of his case management power, rule 26.1 (1) (d) CPR.

7. To that extent, the Court has the general power to dispense with an application in writing for an extension of time. On what occasions a Court

will do so will vary with the particular circumstances of this case and in any event must be an exercise of a discretion, which gives effect to the overriding objective.[3] It was plain given the circumstances outlined above that it was just to do so in this case.

8. Second with respect to the submission by the Appellant that the learned judge erred in law by failing to take into account the relevant factors on the grant of an extension of time, we have not been supplied by the Appellant with a transcript of the reasons of the learned Judge. In the absence of those reasons this Court is in just as good position as the learned Judge to determine whether an extension of time would be a lawful exercise of discretion. We are of the view that it is for the following reasons:

    (a) We have considered the applicable principles as set out in **Roland James v the Attorney General CA 44 of 2014 and Keith Rowley v Anand Ramlogan CA 215 of 2014**. This requires an examination of all the relevant factors of rule 26.7(1) (3) (4) CPR and prejudice in the context of the overriding objective. While the application was not made promptly and even if the explanation was not a good one, as contended by the Appellant that does not lead to an automatic failure for the Respondent's application. There are other factors to be considered such as there was no evidence of general non compliance, no evidence that the Respondent intended to breach the order, no prejudice to the Appellant, that it did not negatively impact the administration of justice, that it maintained parties on

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1. [3] See rule 11.4(2) CPR an application can be made orally if the court dispenses with the requirement for the application to be made in writing [Rule 11.4(2) CPR]. While the **Practice Direction on the Late Filing of Documents [2013]** requires documents that are filed after the date prescribed by an order shall be accompanied by an application for an extension of time it is also subject to the Court's overarching discretion in rule 11.4(2) to dispense with the requirement in the circumstances of the case and the Court's case management powers of Rule 25.1 (g) and 26.1 CPR.

an equal footing and was a proportionate response to the failure to file the affidavit on time.

(b) We are not satisfied that the submission of the Appellant amounts to evidence of general noncompliance. The Appellant points to one instance of a failure to comply with the case management order of the learned Judge. Even that failure was addressed by the learned Judge and cannot amount to evidence of failure to generally comply.

(c) The Appellant's submitted that the administration of justice will be negatively impacted as this extension of time will set a precedent that extensions of time will be granted where there is no good explanation or granted on oral applications. The Appellant fails to appreciate that the exercise of a discretion by a case management judge is fact specific and depends on all the circumstances of the case. Even considerations such as promptitude or good reason or general compliance must be evaluated by reference to the specific facts. No exercise of a discretion to further the overriding objective which is suitable for one case is necessarily binding or conclusive in another. However it plainly is in the interest of the administration of justice that an extension of time is granted to ensure all the evidence is filed justly determined the application.

(d) The Appellants accept that any failure to comply can be remedied within a reasonable period of time.

(e) The Appellants argument on prejudice lacks merit. There was no significant prejudice to the Appellant in granting the extension of time. The extension sought was for a relatively short period of time. There was no evidence of previous breaches which demonstrated that the application lacked bona files. There was a substantive application with serious implications that had to be determined after both parties were given a full opportunity to submit their

respective evidence. The substantive application is yet to be determined on its merits.

(f) An extension of time gives effect to the overriding objective as proceeding to determine the application without properly having an affidavit in response to voluminous affidavits by the Appellant would not have put parties on an equal footing. The extension of time was a proportionate response to the nature of the substantive application that had to be determined.

9. Nothing in this judgment is to be interpreted as sanctioning applications for an extension of time without making a proper written application. In fact we repeat and endorse the general principle that the Court must be armed with the relevant evidence by the party seeking an extension of time. Of course with applications for relief from sanctions an application supported by evidence is mandatory. However there will be circumstances such as these where the necessity for the grant of an extension of time becomes obvious, consistent with achieving the overriding objective and can easily be discussed and agreed to by the parties.

10. Finally, with respect to the Appellants' contention that the learned judge was biased, the Appellant has failed to produce any transcript or evidence to demonstrate that the trial judge approached this application with a closed mind or infected by apparent bias. We have considered the authorities submitted by the Appellant and the well-known test of bias established in **Porter v Magill [2002] 2AC 357**. An allegation of bias is not a trifling one and must be supported by proper facts See Warner JA in **Panday v Virgil**. There has been no evidence or submissions made of any remarks made by the learned judge at the hearing of the application for this extension of time. In any event we have considered all the circumstances of the case and do not think that any fair minded, well informed observer, properly seized of the facts would come to the

conclusion that there was a real possibility that the judge was biased. Further any allegation of bias ought to have been made first to the learned judge. It appears from the contents of pages 66 and 67 of the Appellants' submissions that there are matters to be raised at the substantive hearing for the Judges' determination: see **Walsh v Ward [2015] CCJIS**.

11. We wish to add that, the Appellant's unreasonable position in opposing the application and worse pursuing a procedural appeal is the type of objection which was deprecated by Mendonca JA in **James v AG** which deserves repeating:

> …"the law is not concerned with trivial or insignificant things. Where therefore the delay is trivial or insignificant I do not expect that such applications would usually be opposed or if it is that it should generally detain the Court for any length of time. Thirdly it is the duty of the parties and their representative to help the Court to further the overriding objective. This is clearly spelt out at rule 1.3 which provides: "The parties are required to help the court to further the overriding objective." Parties should therefore work together to ensure that applications for extensions of time are avoided. In relation to that obligation the Court of Appeal of England and Wales in Denton v T.H. White Ltd. and Anor. ; Decadent Vapours Ltd. v Bevan and others; Utilise T.D.S. Ltd. v Davies and others [2014] EWCA Civ. 906 (at para 43) made the following comments and observations in the context of an application for relief from sanction which I think are apposite here: "The court will be more ready in the future to penalize opportunism. The duty of care owed by a legal representative to his client takes account of the fact that litigants are required to help the court to further the overriding objective. Representatives should bear this important obligation to the court in mind when considering whether to advise their clients to adopt an uncooperative attitude in unreasonably refusing to agree extensions of time and in unreasonably opposing applications for relief from sanctions. It is as unacceptable for a party

to try to take advantage of a minor inadvertent error, as it is for rules, orders and practice directions to be breached in the first place. Heavy costs sanctions should, therefore, be imposed on parties who behave unreasonably in refusing to agree extensions of time or unreasonably appose applications for relief from sanctions." If therefore the court is of the view that the claimant's opposition to an application for an extension of time was unreasonable conduct it may under rule 66.6 order the claimant to pay the costs of the application."

12. Parties must develop a credo of procedural consensus and assist the court in achieving the overriding objective (Rule 1.3 CPR). We see absolutely no merit in procedural objections such as these. Parties must understand the need to economically utilise their resources focusing on the main issues for determination. In this case the parties were on track to the Respondent filing affidavits in response to the appellants within an extended time window. Instead the parties' resources were diverted to this procedural appeal where the Appellant has filed a record of appeal of two volumes in excess of 300 pages and written submissions and authorities about 391 pages. Had we convened an oral hearing, bearing in mind the judgment of Mendonca JA cited above, there would have been some justification to award costs against the Appellant.

13. This procedural appeal is therefore dismissed. Unless we receive written submissions on the issue of costs within seven days of the date of this judgment, there will be no order as to costs on this appeal.

**……**
**Vasheist V Kokaram**
**Justice of Appeal**