BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

CV 0595 of 2020

BETWEEN

SIR DAVID ANTHONY CATHCART SIMMONS	**CLAIMANT**
-AND-	
MARIA JANE GODDARD	**DEFENDANT**

Before the Hon. Mr. Justice William J. Chandler, Judge of the High Court

Dates of hearing: 2021: May 18, 25; September 14; and November 24
2022: March 29; April 20; June 15; September 19

Date of decision: 2023: February 03

Leslie F. Haynes K.C. in association with Kashawn K. Wood for the Claimant

The Defendant in person

Defamation action-Judgment entered for damages in default of acknowledgment of service-Case management orders made and partially complied with-Application to set aside default judgment-No draft defence filed-applicable principles-Whether default judgment ought to be set aside.

DECISION

CHANDLER J:

Introduction:

[1] Before the Court is an application filed 19 April, 2022 by the Defendant to set aside a judgment in default of acknowledgment of service entered by the

Registrar of the Supreme Court (the Registrar) in favour of the Claimant for damages to be assessed in a defamation suit.

Brief background:

[2] On 26 June 2020, the Claimant, Sir David Simmons commenced these proceedings in which he sought damages arising out the publishing of alleged defamatory statements posted by the Defendant, Maria Jane Goddard on Facebook. The Defendant was served with the claim on 1 July, 2020. The Defendant failed to file the Acknowledgement of Service by the time delimited in the **Supreme Court Civil Procedure Rules 2008 (CPR)** and Judgment in default (the default judgment) was entered against her on 27 November, 2020

The words complained of

[3] The Claimant pleaded in his Statement of Claim firstly, that the Defendant on or around 4 June 2020 falsely and maliciously published a video on her Facebook page with the title "BARBADOS LAND FRAUD Chapter 1 containing the following words which are defamatory of the Claimant"

> "And the other 51% were supposed to be owned by SBG ..... The issued shares of SBG 51 % of whose shares were owned equally by Peter Simmons, David Simmons and Philip Greaves who just happened to be the Deputy Prime Minister. That is 1993. They stole our property."

The Claimant averred at para. 3.2 of the Statement Claim, that those words, in their natural and ordinary and/or innuendo meanings, mean or were understood to mean that he was involved in a fraudulent property transaction in Barbados in 1993 or committed the criminal offence of theft.

[4] Secondly, at paragraph 4.1 of the Statement of Claim, it is pleaded that the Defendant on 4 June 2020, whilst discussing the decision of the Judicial Committee of the Privy Council (the Privy Council) in respect of the Defendant's mother, Marjorie Ilma Knox's appeal to the said Pricy Council, falsely and maliciously published another video entitled "Barbados Land Fraud Chapter 2" containing the following words alleged to be defamatory of the Claimant:

> "How in Heaven's name could a decision be made in the absence of 12 years of audited financial statements when the Chief Justice of Barbados knows that the Government owed Kingsland in excess of $22 million."

[5] The Claimant also averred that those words, in their natural and ordinary and/or innuendo meaning meant and were understood to mean that:

> "(a) As Chief Justice in Barbados, he improperly withheld pertinent information concerning Kingsland from the Judicial Committee of the Privy Council in the year 2005 when that Board adjudicated an appeal NO.9 of 2004 involving an appeal by the Defendant's mother, Marjorie Knox, against Kingsland and Classic Investments Ltd.;

(b) As Chief Justice the Claimant knew or ought to have known that the Government of Barbados owed Kingsland $22 million and he failed to inform the Board of that debt;

(c) As Chief Justice, seised with pertinent information of a debt of $22 million owed to Kingsland, the Claimant should have interfered with the adjudicatory process of the Board and compromised his integrity and that of the judges in the Privy Council."

[6] By application dated 19 April 2022, the Defendant applied for the following orders

"1) An order pursuant to **Part 13.3** of the ***Supreme Court (Civil Procedure) Rules*** **2008 (CPR)** setting aside the Default Judgment entered by the Registrar.

2) Time to file a defense.

3) An order requiring the delivery of all documents in the possession of the Claimant related to Thornbrook International Consultants, GBI Golf (Barbados) Inc. formerly Latitude Golf Developments Ltd., in Joint Venture with S.B.G Development Corporation;

4) An order requiring the production of a copy of Sir Harold's St. John's opinion paid for by Cottle Catford & Co. on 31 December 1992 out of the deposit it held as stakeholder in the sale of the shares of KEL to SBG Corporation.

5) An order requiring the production of the agreement entered into by G.S Brown & Associates Ltd et al with the Government of Barbados in a joint venture with SBG Development Corporation and the Government of Barbados and all related documentation.

6) An order requiring production of the executed Release of the Undertaking signed by the family shareholders to which the Claimant's company was a party a draft of which KEL gave to Majorie Ilma Knox in 1993.

7) Such further order as the Court may deem fit."

[7] The grounds of the Defendant's application are that:

a) The Defendant has a realistic prospect of success.
b) There are contradictions in the witness statements by the Claimant.
c) The Claimant is aware of the conflict of his Attorney-at-Law.
d) Statements made by the Defendant are in the public domain and supported by documents.
e) Serious illness in the family.

The Issue

[8] Since the issue and the law are not the subject matter of dispute, they are conveniently set out early in this decision. The principal issue for resolution is whether the Court ought to set aside the default judgment. If the answer is in the affirmative, then the secondary issue is what order ought to be made consequent upon the Order. It follows that if the Court refuses the application, that the matter will proceed to assessment of damages in accordance with the default judgment after full compliance with the Case Management Orders.

The Law

[9] **Part 13.3 (1)** of the **CPR** provides that:

> **The Court may set aside or vary a judgment entered under Part 12 if the Defendant has a real prospect of successfully defending the claim.**

[10] **CPR Part 13 (2)** provides the considerations which the Court must take into account in deciding whether to set aside a default judgment in the following terms:

> **(2) In considering whether to set aside or vary a judgment under this rule, the court must consider whether the defendant has**
>
> ***(a)*** **applied to the court as soon as reasonably practicable after finding out that judgment had been entered; and**
>
> ***(b)*** **given a good explanation for the failure to file an acknowledgement of service or a defence as the case may be.**

CPR 13 (3) provides that:

> **Where this rule gives the court power to set aside a judgment, the court may instead vary it.**

The Defendant's submissions

[11] In support of her application, the Defendant filed written submissions dated 3 May, 2022, a witness statement dated 11April, 2022, an affidavit dated 19 April, 2022 and supplemental written submissions dated 19 May, 2022. Under the heading "The Defendant has a realistic prospect of success" the Defendant refers to **CPR 13.3** and submits a history of transactions that occurred in relations to the Kingsland Estates. Where necessary, any relevant portions of the affidavit will be referred to in the discussion.

[12] In support of her application, the Defendant states that:

> "the Claimant is a public figure and the Defendant has not uttered anything that cannot be found in the public domain.

> She is telling the evidence backed truth. She bears the Claimant no malice."

[13] The Defendant submits further that there are a number of contradictions in the Claimant's witness statement, that the Claimant is aware of the conflict with his attorney-at-law and that her statements were in the public domain and document backed.

[14] Under the head of "Serious Illness in the family", she stated that she received the Claimant's pre-action letter on 12 June, 2020 and the claim form on 29 June, 2020. She responded to the Claimant's counsel on 01 July, 2020 and thereafter absented herself from the jurisdiction as she became caretaker for her 'gravely ill son'. She travelled to Miami on 16 August, 2020 and returned to the Island on 23 December, 2020 during COVID.

[15] The Defendant further submitted that the Claimant had been dilatory in pursuing his case, that his counsel was absent from court on two occasions and failed to meet some of the deadlines set by the court.

[16] After giving her account of the history of dealings in respect of Kingsland Estate Ltd, the Defendant reiterated that the Claimant is public figure and that to the best of her knowledge the facts in the public domain were the truth and had never been refuted.

The Claimant's submissions

[17] In response, Mr. Leslie F. Haynes KC, lead counsel for the Claimant, prefaced his written submissions filed 10 May, 2022, with the following chronology of events which he opined were important in considering whether the Defendant had acted promptly in seeking to set aside the default judgment:

(a) 29 June 2020 - Claim Form together with Acknowledgment of Service Form served on the Defendant.

(b) 1 July 2020 - Defendant sent an email to Mr. Leslie Haynes.

(c) 14July 2020 - Last date for filing Acknowledgement of Service.

(d) 28 July 2020 - Last date for filing Defence.

(e) 16 August 2020 - 23 December 2020 - Defendant's son was ill, and she and he went to Miami and returned to Barbados.

(e) 27 November 2020 - Default judgment entered against the Defendant.

(g) 19 April 2022 - Defendant applied to set aside default judgment.

[18] Mr. Haynes KC submitted that the Defendant did not submit a draft of the proposed defence. It was his view that the overarching issue is whether the default Judgment ought to be set aside and also referred to **CPR 13.3.** and submitted that the Defendant must show (1) that she has a real prospect of successfully defending the Claim, (2) that she has applied to the Court as soon as reasonably practicable after finding out that judgment had been

entered and (3) that she has given a good explanation for her failure to file an acknowledgment of service as well as a defence.

[19] Counsel relied upon **CPR 13.4(3) and *Evans v Bartlam [1937] AC 272* (*Evans v Bartlam)*** as establishing the primacy of the requirement to show a good defence.

[20] Mr. Haynes KC also submitted that in resolving the issue the primary consideration for the Court was whether there was a defence with a real prospect of success, citing ***Thorn plc v MacDonald [1999] CPLR 660; [1999] Lexis Citation 2848***). He relied also upon the judgment of **Richards J** in ***Unreported decision CV 1840 of 2014 Patricia Gibbs v The Attorney-General et al date of decision 15 July, 2020*,** quoting approvingly the dicta of ***Lord Woolf MR*** in ***Swain v Hillman [2017] 1 All ER 91*** at ***92*** to support his argument that a real prospect of success directs the Court to consider whether there is a "realistic" as opposed to a "fanciful prospect of success."

[21] It was Mr. Haynes KC's further submission that any consideration of the issue must bear in mind the following additional principles:

a) The burden of proof is on the Defendant to show that he [sic] has a reasonable prospect of defending the claim
b) The court must not engage in a mini trial if there are significant differences between the parties with respect to issues of fact.
c) That in the absence of cross examination, a court is not entitled to reject any written evidence as being untrue, unless on the

basis of all the evidence before the court it considers that the written evidence is simply incredible.

d) The mandatory nature of **CPR 13. 4(3)** per **Cornelius J** in unreported decision in ***CV 0719 of 2015, Massy Properties Barbados Ltd v John Fleming and Pier 1 Night Club, date of decision 19 March 2019 (Massy Properties)***

[22] It was Mr. Haynes KC's final submission that, nothing deposed to by the Defendant in her affidavit, demonstrated that she had a realistic prospect of success.

Analysis and Discussion

[23] Before I proceed with the Notice of application, I note with interest that the Defendant appears in person. What then is the standard that I must hold her to during these proceedings. I refer with approval to the words of **Carrington J** in ***unreported decision CV 0867 of 2021 Grenville Walter Phillips v The Attorney-General of Barbados, High Court of Barbados decided 24 November 2021*** where he stated that:

> **"Litigants in person are encouraged to participate in the process by complying with the legal requirements that are set before them, so long as they are not busy-bodies or given to frivolous and vexatious claims, it may be necessary at times to consult counsel for guidance because instituting legal proceedings requires a response from the opposing side and the allocation of judicial time to hear and determine the matters. Failure to comply may result in the imposition of sanctions or worse, having their matters dismissed."**

The same is true where the litigant in person is a Defendant.

[24] The concept of a realistic prospect of success has its genesis in the **CPR** and the interpretation which ought to be placed on this concept is found in the dictum of ***Lord Woolf MR,*** in ***Swain v Hillman & Anor [199] EWCA Civ 3053*** that:

> ***"The words "no real prospect of being successful or succeeding" do not need any amplification, they speak for themselves. The word "real" distinguishes fanciful prospects of success…they direct the court to the need to see whether there is a "realistic" as opposed to a "fanciful" prospect of success."***

That is the basis of the dicta in the cases cited in the submissions.

[25] In ***Theresa Hawkins V Kenneth Hayden Arthur et al (Hawkins v Arthur), unrepoted decision No. 302 of 2003 (date of decision 30 Octobe, 2003)*** **Chandler J (Ag)**, as I then was, quoted approvingly the following dictum of ***Lord Atkin*** in the celebrated case of ***Evans v Bartlam*** *at* ***479 et seq***, whilst dealing with the application of ***Order XIII., r. 10, and Order XXVII., 15*** of the ***RSC (UK),*** *said*:

> ***"I agree that both rules, Order XIII., r. 10, and Order XXVII., 15, give a discretionary power to the judge in Chambers to set aside a default judgment. The discretion is in terms unconditional. The Courts, however, have laid down for themselves rules to guide them in the normal exercise of their discretion. One is that where the judgment was obtained regularly there must be an affidavit of merits, meaning that the applicant must produce to the Court evidence that he has a prima facie defence. It was suggested in argument that there is another rule that the applicant must satisfy the Court that there is a reasonable explanation why judgment was allowed to go by default, such as mistake, accident, fraud or the like. I do not think that any such rule exists, though obviously the reason, if any, for allowing judgment and thereafter applying to set it aside is one of the matters to which the Court will have regard in exercising its discretion. If there were a rigid rule that no one could have a default judgment set aside who knew at the time and intended that***

there should be a judgment signed, the two rules would be deprived of most of their efficacy. The principle obviously is that unless and until the Court has pronounced a judgment upon the merits or by consent, it is to have the power to revoke the expression of its coercive power where that has only been obtained by a failure to follow any of the rules of procedure."

[26] In ***Hawkis v Arthur***, I also also approved ***Sir Roger Ormrod's*** dictum in ***Alpine Bulk Transport Co. Inc. v. Saudi Eagle Shipping Co. Inc. (The Saudi Eagle) [1986] 2 Lloyds Reports 221 at 223*** that:

"…General indications to help the Court in exercising the discretion" (per Lord Wright at p. 488) can be extracted from the speeches in Evans v. Bartlam, [1937] A.C. 473, bearing in mind that "in matters of discretion no one case can be authority for another" (ibid. p. 488):

> ***(i) a judgment signed in default is a regular judgment from which, subject to (ii) below, the plaintiff derives rights of property;***
>
> ***(ii) the Rules of Court give to the Judge a discretionary power to set aside the default judgment which is in terms "unconditional"and the Court should not "lay down rigid rules which deprive it of jurisdiction" (per Lord Atkin at p. 486);***
>
> ***(iii) the purpose of this discretionary power is to avoid the injustice which might be caused if judgment followed automatically on default;***
>
> ***(iv) …***
>
> ***(v) Again as a matter of common sense, though not making it a condition precedent, the Court will take into account the explanation as to how it came about that the defendant ... found himself bound by a judgment regularly obtained to which he could have set up some serious defence [per Lord Russel of Killowen at p. 482].***

[27] Whilst these cases dealt with the pre-**CPR** concept of "merits" unlike **CPR** which deals with "a realistic prospect of success" the principles underlying setting aside a default judgment under **CPR** remain relevant. It is my view these dicta are aimed at achieving the overriding objects of the **CPR 1.4** describes as dealing with cases justly.

The failure to file a defence

[28] The Defendant in this matter has failed to submit a defence in contravention of the provisions of **CPR 13.4(3)**. I differ from the learned judge in ***Massy Properties*** who opined that it not for the court … to "trawl through the affidavit" of the Defendant "even if it could, to discern a defence". In my view this failure on the Defendant's part does not automatically mean that her application fails. I agree with the opinion of ***Sykes J.*** (as he then was) in ***Saunders (Sasha-Gaye) v Michael Green et al claim No. 2005 HCV 2868 Supreme Court of Judicature of Jamaica, decided 27 February 2007,*** referring to whether there was a defence with a real prospect of success, that:

> "real prospect is not blind or misguided exuberance. It is open to the court, where available, to look at contemporaneous documents and other material to see if the prospect is real."

[29] The burden of proving that there is a realistic prospect of successfully defending the claim lies upon the Defendant. The standard of proof is the civil standard of a balance of probabilities.

[30] In order to contextualize the defence of truth in this case, I consider it appropriate to set out the legal concept of theft which the Claimant has been accused of. **Section 3** of the **Theft Act, Cap 155** provides that:

> "3. (1) A person who dishonestly appropriates property belonging to another with the intention of permanently depriving the other of that property is guilty of theft and liable on conviction in indictment to imprisonment for 10 years."

Section **2.** (1) provides that, in this Act,

> "property" includes money and all other property, whether real or personal, including things in action and other intangible property;"

Things in action or choses in action include shares in a company. It necessarily follows that the Defendant must establish that she has a reasonable prospect of successfully establishing that the Claimant has stolen her family's land. Her affidavit evidence is that this information is within the public domain. I now turn to the affidavit evidence of the Defendant.

[31] The Defendant's affidavits spell out a history of dealings and/or transactions which relate to various matters involving Kingsland Estates which are irrelevant in determining whether the Defendant has a real prospect of defending the claim of defamation against her. That affidavit is largely irrelevant since nowhere in the affidavit is there any evidence that the Claimant stole or engaged in any fraudulent activity with respect to

Kingsland Estates which could ground a defence of truth. This affidavit evidence, in my considered opinion, relates to the relief sought by the Defendant at paragraph [6] (3) to 6) of this decision.

[32] It is important for me to state that I have no jurisdiction in those matters and cannot make the Orders sought with respect to Kingsland Estates. Those matters are within the exclusive province of the Courts presiding over them.

[33] On an examination of the affidavits submitted by the Defendant, the court cannot discern a defence of truth that has a real prospect of success.

The allegations that certain matters are in the public domain

[34] With respect to the Defendant's submission that the facts are in the public domain and are a matter of record, I note that this submission is not predicated upon any evidence contained in the affidavit to support the submission. Where is the documentary proof upon which reliance ought to be placed that it is in the public domain that the Claimant stole any property from the Defendant's family or any other person? Since the alleged theft is of land and not a chattel, the Defendant must provide the public record of such theft, e.g. share transfers. There is none, instead the Defendant submits that "every fact used is backed up in records. These are available at the Land Registry, the Corporate Registry in the Archives or in the updated list of Documents filed in this matter and available for inspection." I will return

to this when dealing with the Claimant's affidavit at para [53] of this decision.

[35] If the Defendant is alleging that these allegations are a matter of public record, then it is incumbent upon her to produce that record in support of her application. It is not for this Court or to go on a speculative fact finding exercise. In addition, the documents filed do not support the submissions. In my respectful opinion, no proof has been proffered before this Court by the Defendant to support her submissions. A bald assertion of an alleged fact is insufficient to prove a realistic prospect of successfully defending the case.

[36] In consequence, I hold that the application also fails on this ground.

The alleged conflict of interest of Mr. Haynes KC

[37] This ground is predicated upon the assertion that Mr. Haynes KC and other Attorneys-at-Law have received millions of dollars in legal fees from KEL by mortgaging and realizing its property. The Defendant also submits that Mr. Haynes KC has withheld this information from Courts on both sides of the Atlantic.

[38] It is my view and I hold that any issue with respect to Mr. Haynes KC's fees is a matter between himself and his client or clients and is not a matter for this Court. Where does the alleged conflict of interest exist between the Defendant and Mr. Haynes KC? Where is the evidential basis upon which

this submission is founded? I can see no alleged conflict of interest in Mr. Haynes KC representing the Claimant in this matter as alleged in the instant proceedings. The answer to both questions posed is therefore in the negative.

Serious Illness in the family

[39] The Defendant alleges that she received the Pre-Action protocol letter on 12 June, 2020 and the Claim on 29 June, 2020. It is also her submission that she responded by e-mail of 1 July, 2020. Her further submission is that she was unable to deal "further with the matter and any rush to a default judgment during the latter half of 2020." It is her submission also that as caregiver to her gravely ill son she travelled with him to Miami on 16 August, 2020 and returned 23 December, 2020 during Covid and that the Defendant informed the court both verbally by Zoom conference and by affidavit of the situation regarding her son.

[40] This Court had no communication with the Defendant until after the default judgment had been entered and the matter came up for a Case Management Conference on 25 May, 2021. On that date no mention was made about an application to set aside the default judgment. So that the Court was unable to assist the Defendant at that stage. Case management Orders were made and a date set for Pre-trial Review. Those Orders have been partially complied with by all parties.

The email to Mr. Haynes KC

[41] The Court notes that in the email mentioned at (b) above, the Defendant noted that "The facts presented are a matter of record. This was never intended to be a personal affront." She continued "In relation to the Claim Form No. 595 of 2020: -

> "Please be advised that because of the deep-rooted victimization and terrorism my family has faced for so many years we have nothing left to satisfy any claim."

[42] Nowhere in that email did the Defendant ask for time to file the acknowledgment of service or a Defence.

[43] I have taken note of the Application filed by the Defendant to set aside the default judgment, the affidavit filed in support and the submissions filed in support of the Application. Although the affidavit in relation to Kingsland Estates is misguided and largely irrelevant I have taken note of the manner in which the Defendant has presented her case and have found her to be an intelligent person who understands what she is doing. I have come to the view that, the Defendant knew or ought to have known of her ability to apply to set aside the judgment. It is my opinion therefore, having regard to her compliance with the Case Management orders thus far, that her failure to apply sooner to set aside the default judgment is not a matter of plain oversight but that does not end the matter.

I have considered this omission in the context of the factual matrix in which the application to set aside has been made in coming to my conclusions.

The second defamation

[44] Mr. Haynes KC submitted quite rightly that the Defendant has not responded in her affidavit to the second defamation which was an attack on the Claimant in his professional capacity as Chief Justice of Barbados. Counsel opined that the Defendant's statement suggested that the Claimant knew of a debt of $22 million owed by the Government of Barbados to Kingsland and he ought to have intervened in the litigation involving the Defendant's mother while that litigation was before the Privy Council and told the Law Lords of the debt.

[45] It is my view that the Defendant's statement suggests that the outcome of the decision of the **Judicial Committee of the Privy Council** (**JCPC**) would or could have been different if the Claimant had informed the **JCPC** that the Government owed Kingsland in excess of $22 million. It also suggests that the Claimant withheld information from the **JCPC** to the prejudice of the Defendant's mother.

[46] In her supplemental written submissions filed 19 May 2022, the Defendant stated:

> "5.10 Regarding the second alleged defamation, quite apart from the fact that the absence of audited financial statements is a badge of fraud and the decision at first instance in CV 1805 of 1998 should have raised an alarm

with the Claimant once he became Chief Justice, their absence also served to conceal the theft of the Undertaking which begun in CA 17 of 2001 when the application for Security for Costs was made and then an order made against Marjorie Ilma Knox in favour of all Respondents.

5.11 ...

5.12 The Defendant submits that the Claimant when he became Chief Justice was fully aware of the Undertaking which was concealed from the Court of Appeal as he had dealt with Mr. Armstrong, "the doyenne of legal practitioners in these matters". The Claimant could easily at the beginning of his tenure prevented the theft from being perpetrated in the Court of Appeal without involving the Justices in the Court of Appeal or Their Lordships in the Privy Council Had he acted judiciously and alerted the Attorneys at Law that they perhaps were creating an abomination which could backfire badly one day on him and them also, the matter would never even have reached the JCPC.

5.13 The Defendant submits that when their Lordships ruled in 2005 KEL and Classic sought to mortgage all the lands of KEL to FCIB to finance the leveraged buyout of KEL. They needed Certificates of Urgency in CV 1683 of 1993 and CV l332 of 2006 to remove impediments to their purported acquisition. The Certificates of Urgency were granted by the Claimant. Again, this mortgage of lands of KEL to FCIB was completed in the absence of Audited Financial Statements where the liability of KEL to Marjorie Ilma Knox regarding the Undertaking should have appeared, another instance of the theft.

5.14 The Defendant submits the debt owed to KEL of at least $22 million for lands acquired by the Government when SBG came on the scene would have been known to the Claimant as he was the Attorney General and a Member of Cabinet.

5.14.1 The Claimant does not claim ignorance of the $22 million debt to KEL so the Defendant takes the opportunity to submit he knew that $22 million was a lot higher than what his company, SBG had

offered the shareholders of KEL which was $7 million or 1/3 and that Classic was offering the shareholders even less. The Claimant would also have known because SBG/GBI Golf (Barbados) Inc. was to benefit from the proceeds of the acquisition and of other incomplete KEL land sales.

5.14.2 He would have known that KEL had already plead impecuniosity in CV 1805 of 1998 when the Court of Appeal was petitioned for Security for Costs and the Respondents taxed their costs for exorbitant sums.

5.14.3Surely with this knowledge the Claimant need only have acted judiciously and alerted all of the Attorneys at Law that they perhaps were creating an abomination which could backfire badly one day on him and also them. The matter would never have reached the JCPC and the Claimant's farfetched interpretations of the truth published by the Defendant would not now be serving to incriminate him and point to a self interest in KEL."

[47] I have quoted the submissions fairly extensively to provide some context to the Defendant's defence of truth and what, in my opinion, appears to be comment on the Kingsland decisions. The Defendant has not proven that the Claimant was under any legal duty to communicate any information to either the lawyers is involved in the Kingsland matters or the **JCPC**. The Claimant is a former Chief Justice of Barbados and is duty bound to respect the legal process. Accordingly, he cannot interfere in matters before the Courts of which the **JCPC** was, at that time, the Apex Court for Barbados. Any interference in judicial matters would have been a gross dereliction of duty and a violation of the Claimant's oath of office contrary to the

Defendant's assertion that the Claimant "need only have acted judiciously and alerted all of the Attorneys-at-Law that they perhaps were creating an abomination which could backfire badly one day on him and also them."

[48] It must also be said that, as a matter of law, no judicial officer can discuss any case with Attorneys-at-Law representing parties which is before another Court in violation of his oath.

[49] It is for the Attorneys-at-Law to decide what evidence they will put before the Courts in accordance with their instructions and not for the Attorney General or Chief Justice to interfere in the process. This would put the independence of the judiciary in peril.

[50] It appears to me that these submissions are predicated upon the belief that the decision of the **JCPC**, Court of Appeal and the High Court are based upon, *inter alia*, the withholding of pertinent information which the Defendant has set out in her submissions. To accept this submission would mean arrogating to myself the authority to question the decisions of Courts of concurrent and superior jurisdiction to myself. This would be a fundamental error of law which I will not commit by allowing the instant case to become a collateral attack upon the decisions of those Courts.

[51] I am of the view and hold that the submissions of the Defendant are predicated upon a misunderstanding of the law and do not provide any basis

upon which this court can find the there is a reasonable prospect of the Defendant successfully defending the case.

The Claimant's witness statement

[52] The Claimant filed a witness statement on 25 August, 2021 in which he deposed to his involvement with SBG. This was prayed in aid by Mr. Haynes KC in support of his opposition to the instant application. Whilst the burden of proof lies upon the Claimant, the Court must advert to the Claimant's witness statement and all other available information to see whether the Defendant, a litigant in person, has a reasonable prospect of successfully defending the claim.

[53] Mr. Haynes KC submits that, at paragraphs 9, 10, 11, 12 and 14 of his Witness Statement, the Claimant stated that he was not a shareholder but one of the incorporating directors and the Attorney-at-law of SBG. He further stated that he was instructed to, and did make, an offer to purchase the shares of Kingsland. He sent $400,000.00 as a deposit to Cottle Catford & Co. SBG could not raise the balance of purchase price and lost the sale and the deposit. The Claimant also stated at para.12 that "After the loss of its deposit, SBG had no further involvement with KEL." Counsel opined that, since SBG and none of its shareholders/directors ever acquired any of Kingsland's property, it is impossible to argue that they stole Kingsland's

property. They did not "appropriate" property belonging to Kingsland or the Defendant.

[54] Mr. Haynes KC, referred to the copy of a decision of ***Shaughnessy J***. on 4 May 2009, in ***Nelson Barbados Group Ltd. V Richard Ivan ox et al, Court File No 07-0141, date of decision 4 May, 2009, Ontario Superior Court of Justice (Nelson v Cox et al)***, appended as Exhibit "A" to the Claimant's Statement of Claim, concerning 62 high profile Barbadians and international companies who were sued in Canada allegedly as having conspired to have the shares of Kingsland transferred to themselves and others. The case against the Claimant was discontinued on 23 March 2009. Counsel, invited this Court to have regard to paragraphs. 6, 7, 21, 23, 25, 11 of the judgment where, it was his opinion that, the learned judge indicated that Classic Investments Ltd. became the owner of Kingsland's shares (and its other property) at para.26 when he stated that:

> "[2] On or about 1997, after the failed SSG Development Corporation bid, Classic Investments Ltd. offered to purchase the shares of Kingsland. All of the Kingsland shareholders, with the exception of Marjorie Knox, agreed to sell their shares of Kingsland pursuant to an offer made by Classic Investments Ltd."

[55] It was Mr. Haynes KC's submission, consequent upon the Claimant's witness statement that, as a matter of fact and of law, the Claimant never obtained, appropriated or owned any of Kingsland's shares. As a result, the Defendant had not discharged the burden of proof on a balance of

probabilities by adducing evidence showing that she has a real prospect of successfully defending the first defamation.

[56] While I am not bound by the decision of ***Shaughnessy J*** the Defendant has referred to decisions in the ***Court of Appeal*** and the ***JCPC*** in support of her application. It is clear from the decision in **Nelson v Cox et al** and the witness statement of the Claimant that the failure to complete the sale means that the Claimant could not have appropriated the property of which he was accused. No evidence has been adduced by the Defendant that the Claimant occupied any shares or procured any conveyance --- or ----- or any entity of which he was a shareholder. In ***Nelson v Cox et al, Shaughnessy J*** remarked at paragraph [116] of the decision, that; the submissions of counsel for the Plaintiff that "the Chief justice has a history" and "he and his brother are up to their necks in this matter of conspiracy", after having discontinued the action against the Chief Justice and his brother, were "salacious, unfair and unsupported by any evidence and are based simply on Mr. McKenzie's opinion of the Chief Justice, his brother and the justice system of Barbados."

[57] The Claimant was cross examined for two hours prior to that finding, now the Defendant is claiming that the Claimant's actions were inappropriate and prejudicial to her mother's case, her submissions that her statements are true are also without foundation and contrast sharply with ***Shaughnessy J*** **'s** findings which she seeks, perhaps inadvertently, to undermine by her

defence of truth which would also be a collateral attack upon ***Shaughnessy J's*** findings.

[58] This is an example of seeking to relitigate matters where there are findings of facts which have not been appealed. I therefore also find that the Defendant has no real prospect of successfully defending the claim.

Conclusion

[59] The Defendant is a litigant in person, this, however, does not absolve her of the responsibility to follow the Rules. I am of the view, however, that the failure to file a draft defence is not fatal. I do not share the view expressed in ***Massy*** but rather subscribe to the view that the Court ought to look at all the materials before it to see if the defence is made out which has a realistic prospect of success.

[60] With reference to whether the Defendant applied to the Court as soon as reasonably practicable after finding out the judgment had been entered. I have already stated that her e-mail did not indicate an intent to apply to set aside the judgment. The defendant complied with the Case Management Orders even with knowledge that the default judgment was entered. She has given no explanation for not applying sooner save and except her son's illness and her ignorance of the provisions of the CPR which is no excuse.

[61] Notwithstanding the above, and having regard to all of the affidavit evidence, I am of the view and hold, for all the reasons above outlined, that

the Defendant has failed to show a real prospect of successfully defending the claim even in the absence of a draft defence.

Disposal.

[62] In the circumstances, it is ordered that:

1. The Defendant's application to set aside the default judgment is dismissed, and
2. The Claimant shall have his costs to be assessed if not agreed certified fit for one attorney-at-law.

William J Chandler
Judge of the High Court