

THE EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

CLAIM NO. SLUHCV2023/0103

BETWEEN:

DENICUS ATILLE

Claimant/Judgment Creditor

-and-

CLINTON REGIS

Defendant/Judgment Debtor

Before the Honourable Mr. Justice Alvin S. Pariagsingh

Appearances:

Mrs. Lydia B. Faisal for the Claimant/ Judgment Creditor

Mr. Leslie K. Prospere and Mr. Reyhan Jean for the Defendant/ Judgment Debtor.

2026: July 8 – Hearing
August 7, 28, 31 – Submissions
September 21 – Decision

JUDGMENT

Judgment Summons — Enforcement of Judgment — Variation of Instalment Order — Jurisdiction Pending Appeal — Refusal of Stay — Reconsideration of Order — Material Change of Circumstances — Committal for Non-Payment — Means to Pay — Civil Code Art. 2135 — Suspended Committal.

INTRODUCTION:

[1] **PARIAGSINGH, J:** - There are two applications before the Court. The first is the Defendant's application filed on 22 May 2026 asking the Court to reconsider and vary its order of 17 September 2025 ("the September order"). The second is the Claimant's application, also filed on 22 May 2026, seeking committal of the Defendant for failure to comply with the September order.

- [2] The proceedings arise from a judgment entered in favour of the Claimant on 30 November 2023 in the sum of \$543,320.66. A substantial part of that judgment remains unpaid.
- [3] The September order was made following judgment summons proceedings in which the Defendant gave evidence concerning his means and was cross-examined. The Court considered his income, expenses, assets and liabilities.
- [4] The Court found, among other things, that although his salary was substantially absorbed by loan repayments and household expenses, he owned two motor vehicles, had pledged shares at the Credit Union and had recently obtained substantial credit. The Court also found that he had not made full disclosure of his assets in his first affidavit, which adversely affected his credibility.
- [5] The Court concluded that, although the Defendant had not at that stage willfully defied the Court, he had failed to take meaningful steps to satisfy the judgment and had or had had the means to pay but had culpably neglected to do so.
- [6] He was ordered to pay \$15,000.00 on or before 30 November 2025 and thereafter \$1,000.00 per month beginning on 31 December 2025. No payment has been made following the September order.
- [7] The Defendant appealed the order on 28 October 2025 and applied to the Court of Appeal for a stay of execution on 13 March 2026.
- [8] On 28 April 2026 Farara JA (Ag.) refused the stay. The Court found that the Defendant had not produced cogent evidence that the appeal would be rendered nugatory without a stay and considered that the balance of prejudice favoured the Claimant. The appeal remains pending.

ISSUES:

- [9] The applications raise two (2) distinct questions:
- (1) Whether, notwithstanding the present appeal, this Court retains jurisdiction to determine the Defendant's application and, if so, should it be exercised.

(2) Whether the requirements for committal have been established.

THE DEFENDANT'S APPLICATION FOR RECONSIDERATION:

[10] The Defendant asks the Court to reduce the \$15,000.00 lump sum and the monthly payment of \$1,000.00, or alternatively to extend the time for compliance.

[11] The Defendant's case is that his financial circumstances have changed since the September order and that this has materially affected his ability to comply with the terms of the said order. He relies principally on his reduced income, increased loan repayments since refinancing his loan to undertake repairs to his minibus, continuing expenditure associated with that vehicle and his financial obligations exceeding his disposable income.

[12] The Defendant submits that the Court retains a limited jurisdiction to entertain his application to reconsider the September order notwithstanding his appeal against the order. Reliance is placed on CPR 26.1(2)(y), the inherent jurisdiction of the Court¹, the liberty to apply contained at paragraph 6 of the September order, and authorities including **Michael Wilson and Partners Ltd v Temujin International Ltd & Ors**² citing **Collier v Williams**³ and **Tibbles v SIG plc**⁴.

[13] In **Collier**, the Court of Appeal recognised that the High Court may revisit an earlier order where the applicant demonstrates a material change in circumstances or that the judge who made the order was misled as to the factual position; where reconsideration is sought on the basis of the same material, however, the proper avenue is an appeal. Similarly, in **Tibbles**, the Court of Appeal reaffirmed that the jurisdiction to vary or revoke an order is exceptional and is not intended to operate as a substitute for an appeal, but held that it will ordinarily be exercised where there has been a material change of circumstances since the order was made, or where the facts on which the original decision was based were misstated. The Defendant submits that his application falls within the former category.

¹ See *Danone Asia Pte Ltd & Ors v Golden Dynasty Enterprise Ltd & Ors* BVIHCVAP2009/0002 (delivered 28th September 2009), [2009] ECSCJ No. 153.

² BVIHCV2006/0307 (delivered 2nd March 2007 & 30th April 2007) at [11].

³ [2006] EWCA Civ 20.

⁴ [2012] EWCA Civ 518.

[14] The Defendant says that he does not seek to relitigate the merits of the original decision by this application. Rather, he seeks a consideration of whether subsequent material changes to his financial position justify reconsideration of the manner in which the September order is to be complied with. His position is that if the Court declines to exercise its jurisdiction, he would be exposed to penal consequences without any court having first determined whether the material change in his financial circumstances, since the September order was made, warranted a variation of the September order.

[15] The Claimant accepts that the Court retains a narrow jurisdiction to revisit an order in a proper case but submits that this is not a case where that power should be exercised. The Claimant contends that the Defendant has not established a material change in his circumstances after the September order; the Defendant's application was not prompt; his financial disclosure remains incomplete; the relief sought amounts in substance to an attempt to reopen an order which is already under appeal and in respect of which the Court of Appeal has refused a stay; and if granted the relief would alter the very terms under appeal.

[16] Paragraph 6 of the September order grants the parties liberty to apply, but, on the Claimant's submission, that provision is directed to resolving difficulties arising in carrying the order into effect and does not provide a mechanism for reopening the Court's substantive determination or altering the rights and obligations established by the order. The Claimant relies on **CC & F Inc v Manor International Inc & Anor**⁵ for the proposition that an application made under liberty to apply must fall within the purpose for which that liberty was given.

[17] The Claimant submits that the Defendant's application is not genuinely concerned with clarification or implementation of the September order. Rather, the Claimant contends that the Defendant is seeking either to substitute the two payment amounts ordered by the Court with sums which he considers reasonable, or to obtain additional time for payment. In the Claimant's submission, both forms of relief would alter the substantive terms of the

⁵ SKBHCV2015/0167 (delivered 25th July 2022), [2022] ECSCJ No. 268.

September order, which are already the subject of an appeal. The Claimant therefore argues that allowing the application to proceed would permit the High Court to reconsider matters presently before the appellate court, duplicate the appellate proceedings, undermine the existing order and cause further delay in enforcement.

[18] The Claimant further submits that if the Defendant wishes to maintain his appeal and rely on subsequent financial evidence, he must seek such relief in the Court of Appeal. It is for that Court to determine the admissibility and relevance of any later evidence to the Order under appeal. The Claimant's position is that the proper course is to dismiss the application and permit enforcement to proceed, without prejudice to any remedies lawfully available to the Defendant in his existing appeal.

[19] In any event, the Claimant submits that the Defendant's evidence does not establish a material change in his financial circumstances sufficient to justify his complete failure to comply with the payment terms of the September order.

THE APPLICABLE RULES:

[20] CPR 1.1 provides that the overriding objective is to enable the Court to deal with cases justly, proportionately and expeditiously. Rule 1.2 requires the Court to give effect to that objective when exercising any discretion under the Rules.

[21] CPR 26.1 confers general case-management powers upon the Court, including the power to extend the time for compliance with any order and, under rule 26.1(2)(y), to take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective. Those powers are additional to powers conferred by other rules or enactments.

[22] More specifically, CPR Part 47 deals with variation of the terms of judgments. Rule 47.1 provides that Part 47 applies to variation of the terms of a judgment for a specified sum of money as to the time and method of payment. Rule 47.2 expressly permits a judgment debtor to apply for such a variation and rules 47.3 and 47.5 prescribe the procedure.

[23] I therefore do not accept that the Court is invariably deprived of jurisdiction to regulate payment after a payment order has been made. The more difficult question is whether that jurisdiction should be exercised in this case while the order is actively under appeal.

Effect of the appeal:

[24] CPR 62.23 provides that an appeal does not operate as a stay of execution or of proceedings unless the court below, the Court of Appeal or a single judge otherwise directs.

[25] The Court of Appeal also has extensive interlocutory powers, including power to stay execution and to deal with interlocutory applications arising during an appeal. CPR 62.24 gives the Court of Appeal all the powers and duties of the High Court in relation to an appeal, including the powers in Part 26. The Defendant has already invoked that appellate jurisdiction. He appealed the September order and then asked the Court of Appeal to suspend its operation. That application was refused. The September order therefore remains operative.

[26] I am mindful of the distinction between a stay application and an application under Part 47 based upon a genuinely subsequent circumstance arising after judgment. The former concerns whether the operation of an order should be suspended pending an appeal; the latter concerns whether subsequent circumstances justify altering the time or method by which the judgment debt is to be paid. Even so, there is considerable overlap in the practical relief sought. The Defendant asks this Court to alter the operative payment terms, i.e., reduce the lump sum and monthly instalment or extend the time for compliance, of an order which remains the subject of an appeal. The Court must therefore consider whether granting that relief would in substance require this Court to interfere with matters which are presently before the Court of Appeal.

[27] The authorities relied upon by the Defendant recognise a narrow jurisdiction to reconsider an earlier order where circumstances have materially changed or where the original factual basis has fundamentally altered. They also make clear that such a jurisdiction is exceptional and is not a substitute for an appeal. Further, none of the authorities relied on by the Defendant establishes that the High Court may, in the exercise of its jurisdiction to vary or reconsider an order, substantively alter an order which is presently under appeal.

[28] I accept that the Defendant's evidence is directed to circumstances which he says have arisen or materially changed since the September order. I also accept the limited principle that in an appropriate case, a material change in circumstances occurring after an order has been made may provide a proper basis for an application to vary the terms of that order under CPR 47. However, in my view, it would be inappropriate for this Court to undertake a reconsideration of the payment terms of the order currently under appeal, even where the application is framed by reference to alleged material changes in circumstances. To do so could risk this Court varying payment terms that are presently the subject of the pending appeal, thereby creating a conflict with the order under appeal.

[29] I also accept the Claimant's submission concerning the "liberty to apply" provision in paragraph 6 of the September order. That provision does not, in my view, confer an unrestricted power to vary the order. In **Cristel v Cristel**⁶ the court held that the words "liberty to apply" referred prima facie to the working out of the actual terms of the order. In **Poisson and Woods v Robertson and Turvey**⁷ Stirling LJ noted that, "the addition of those words did not enable the court to deal with matters which did not arise in the course of working out the judgment". Therefore, its purpose is simply to permit the Court to resolve difficulties in implementation rather than reconsider substantive rights already determined.

[30] Accordingly, notwithstanding the material changes in circumstances alleged by the Defendant, I decline to exercise the Court's discretion under CPR 47 to vary the September order. The Defendant's application is accordingly dismissed with costs.

THE CLAIMANT'S APPLICATION FOR ENFORCEMENT:

[31] The Claimant seeks committal of the Defendant under CPR Part 53 for failure to comply with the September order, which remains operative in the absence of a stay of execution.

[32] The September order, however, was made in judgment summons proceedings and the enforcement provisions applicable to judgment summons in Part 52 must therefore be considered.

⁶ [1951] 2 All ER 574 at 577, per Somervell LJ.

⁷ (1901) 50 WR 260, 261.

[33] CPR 52.5(c) permits the Court, after examining a debtor's means, to adjourn the judgment summons, commit the debtor, suspend committal on payment terms, dismiss the judgment summons or order payment by a particular date or by specified instalments.

[34] The September order is of the kind contemplated by CPR 52.5(c)(v) – an order for payment by a particular date or by specified instalments. CPR 52.6(c) provides that where such an instalment order is not obeyed, the judgment creditor may apply in writing to restore the judgment summons. At the restored hearing, CPR 52.7(2) permits the Court to exercise any of its powers under rule 52.5.

[35] Although the Claimant's application was presented as an application for committal under Part 53 rather than as an application under CPR 52.6(c) to restore the judgment summons, it is in writing, identifies the September order and the default, and seeks committal because of that default.

[36] The Defendant has had full notice of the case against him and has filed affidavit evidence and submissions addressing both his means and the question of committal.

[37] In keeping with the guidance of the Privy Council in **Texan Management Ltd & Ors v Pacific Electric Wire & Cable Company**⁸ that procedural rules are intended to facilitate the just determination of proceedings and further that procedural non-compliance may, where appropriate, be cured through the Court's case management powers, I am satisfied that the said procedural defect of the form in which the committal application was brought is not fatal. The substantive requirements of the applicable procedure have been met, the Defendant suffered no prejudice and the defect does not prevent the Court from restoring the judgment summons and proceeding in accordance with CPR 52.5.

[38] In those circumstances, no useful purpose would be served by requiring the Claimant to file a second application containing substantially the same material. I therefore treat the Claimant's application as an application under CPR 52.6(c) to restore the judgment summons. The judgment summons is therefore restored, and I proceed under CPR 52.5.

⁸ [2009] UKPC 46.

The Civil Code:

[39] The power to imprison a civil judgment debtor is subject to the Civil Code. Article 2133 provides that imprisonment in civil cases is permitted only against the persons and under the conditions specified in the succeeding articles.

[40] Article 2135 provides that the Court may commit a person for a term not exceeding six weeks where it is proved to the satisfaction of the Court that the person in default has or has had since judgment the means to pay and has refused and refuses to pay.

[41] The distinction is therefore an important one. A debtor cannot be imprisoned merely because a civil debt remains unpaid. The Court must be satisfied that the case is one of refusal despite means rather than genuine inability.

Knowledge and service of the order:

[42] The September order bears a penal notice and the Claimant's evidence is that it was served on the Defendant on 25 September 2025. In any event, the Defendant's knowledge of the order is beyond dispute. He appealed it, applied for a stay of it, and has now applied to vary the very payment terms which he has not obeyed.

[43] There seems to be some doubt about the inclusion of the penal notice in the order. That issue was already determined by the Court of Appeal in **Peter Alexander & Ors v Hicklyn Nyack & Anor**⁹. The insertion of a penal notice in an order is not a judicial act. A Judge or Master does not have to sanction or order a penal notice to be attached to an order. The insertion of a penal notice is purely administrative and can be done by the applicant or his legal practitioner.

[44] I am therefore satisfied that the Defendant knew what the order required and knew that it remained in force.

Whether the requirements for committal are satisfied:

[45] I approach the question of committal cautiously because the liberty of the Defendant is engaged.

⁹ GDAHCVAP2021/0033 (Unreported) (COA Digest) – Per Blenman JA delivered 7th April 2022.

[46] The Defendant submits that the Court should refrain from exercising its power of committal for the following reasons:

- (1) It has not been established that the Defendant has willfully disobeyed the September order;
- (2) The Defendant may face the consequence of a term of imprisonment despite not having willfully disobeyed the order;
- (3) The Defendant's imprisonment shall most certainly result in his loss of employment;
- (4) The Defendant's imprisonment shall result in a further adverse diminution of his income; and
- (5) As the application for the grant of a stay of the Order was not refused upon the basis that the appeal is devoid of merit, this Court may risk causing irreparable prejudice and a serious miscarriage of justice to the Defendant should it proceed to commit him to imprisonment if his appeal is later allowed.

[47] On the other hand, the Claimant submits that the facts are simple and cannot be displaced by the Defendant's arguments. The Claimant says that the terms of the September order were clear. A penal notice was added to the order, no payment was made following the order, the deadlines for compliance passed, no stay of execution exists, and further that the breach is admitted by the Defendant's request to revisit the payment terms.

[48] I do not treat the September finding concerning the Defendant's means as automatically decisive of the present application. I have considered his present evidence afresh.

[49] Nevertheless, the history is relevant. The Court had already found, following cross-examination, that the Defendant had or had had means to pay and had culpably neglected to do so. Since then, he has remained employed, is now permanently employed, and continues to operate an income-producing minibus. His reduction in salary is \$227.91.

[50] Against that background, the Defendant has still not provided complete financial records showing that compliance became impossible. Most significantly, he has paid nothing.

[51] He paid nothing before seeking the stay. He paid nothing while that application was pending. He paid nothing after the Court of Appeal refused the stay. The absence of any payment is

not considered in isolation. I take it together with the earlier findings as to means, the Defendant's continuing employment, the continued operation of the minibus, the absence of complete financial disclosure and the failure to establish any substantial post-order deterioration.

[52] According to the Claimant's evidence, the continued non-payment has caused and continues to cause real prejudice to the him. As a result of the injuries sustained, the Claimant has been unable to work and has faced ongoing medical expenses and ordinary living expenses. He has been forced to rely on credit to meet those obligations, with payments received from the Defendant's insurer having been substantially applied towards accumulated debts, including medical expenses. The delay in satisfying the September order therefore continues to cause immediate financial hardship to the Claimant.¹⁰

[53] On the evidence as a whole, I am satisfied that this is not a case of genuine inability to pay.

[54] I am satisfied that the Defendant has had the means to comply with the September order and has refused and continues to refuse to pay within the meaning of Article 2135 of the Civil Code. The statutory basis for committal is therefore established.

[55] Having found that the requirements for committal have been established, the Court must determine the appropriate period and whether the order should take immediate effect. **Article 2135 of the Civil Code** permits committal for a term not exceeding six weeks. The fact that six weeks is available does not mean that the maximum term should be imposed in every case. The period selected must reflect the circumstances of the particular default and remain proportionate to the purpose for which the jurisdiction is exercised.

[56] There are aggravating features in this case. The Defendant has made no payment at all under the September order. That is so notwithstanding the earlier findings concerning his means and the inadequacy of his financial disclosure, his continuing employment and his continued operation of the minibus. He also remained in default after the Court of Appeal refused his application for a stay and the order therefore continued to be enforceable.

¹⁰ See paragraphs 16 and 17 of Exhibit DA3 filed on 22nd May 2026.

[57] On the other hand, I do not consider that the maximum period of six weeks is necessary.

This is the first occasion on which the Court is making an order of committal arising from the Defendant's breach of the September payment order. The jurisdiction is principally coercive. Its purpose is to secure obedience to the Court's order and payment of the judgment debt, rather than to punish the Defendant for its own sake. Immediate imprisonment may also jeopardise his employment and thereby reduce his ability to satisfy the judgment.

[58] Balancing those considerations, I am satisfied that a period of 7 days' imprisonment properly reflects the seriousness and persistence of the Defendant's non-compliance. This period does not impose the statutory maximum in circumstances where the Court can still give the Defendant a final opportunity to comply.

[59] CPR 52.5 expressly permits the Court to suspend committal upon payment of the judgment debt on such dates and by such instalments as the Court may order. I consider suspension appropriate in this case. The Defendant will therefore be committed to the Bordelais Correctional Facility to serve a term of seven (7) days imprisonment, suspended upon him paying the sum of \$15,000.00 within 21 days of this judgment and thereafter complying with the continuing monthly payment obligation under the September order.

[60] The Defendant should be under no misunderstanding as to the effect of this order. The suspension affords him a final opportunity to comply. If he fails to satisfy the terms upon which the committal is suspended, the Claimant will be at liberty to apply to the Registrar for the issue of committal warrant upon the filing of an affidavit confirming the Defendant's non-compliance with the term of suspension of the committal order. For the avoidance of any doubt, the warrant is to be issued without further order of this Court.

COSTS:

[61] The Claimant has succeeded on both applications. Under CPR 64.6, the general rule is that the unsuccessful party pays the costs of the successful party, subject to the Court's discretion having regard to all the circumstances. I see no sufficient reason to depart from that rule.

[62] I propose to summarily assess costs at \$2,400.00. This sum reflects 3 hours work on each application at an hourly rate of \$400.00, making 6 hours in total and a sum of \$2,400.00. I consider this sum to be proportionate to the work done by counsel in this matter.

ORDERS:

[63] For the reasons above I make the following orders:

- 1) The Defendant's application filed on 22 May 2026 to reconsider or vary the order of 17 September 2025 is dismissed.
- 2) The Claimant's application is treated, pursuant to CPR 52.6(c), as an application in writing to restore the judgment summons.
- 3) The Court declares that it is satisfied that the Defendant has had the means to comply with the order of 17 September 2025 and has refused and continues to refuse to pay within the meaning of Article 2135 of the Civil Code.
- 4) The Defendant is committed to the Bordelais Correctional Facility to serve a term of seven (7) days imprisonment suspended on condition that the Defendant pays the sum of \$15,000.00 to the Claimant on or before 2:00pm on Monday 12 October 2026.
- 5) The Defendant shall pay \$1,000.00 monthly beginning 30 November 2026 and continuing thereafter on the last working day of each month until the debt is liquidated or further order.
- 6) The Defendant shall pay the Claimant's costs of both applications, summarily assessed in the sum of \$2,400.00.

**Alvin Shiva Pariagsingh
High Court Judge**

By the Court,

Deputy Registrar of the High Court