IN THE CAYMAN ISLANDS COURT OF APPEAL

CICA (CIVIL) 05/2011

BEFORE

The Rt Hon Sir John Chadwick, President
The Hon Ian Forte, Justice of Appeal
The Hon Dr Abdulai Conteh, Justice of Appeal

ON APPEAL FROM THE GRAND COURT
(D/80/06)

ROBERT DON FOSTER

Appellant

- and -

ANN ROSALIND OWEN FOSTER

Respondent

Mr Christopher Levers of Stuarts Walker Hersant for the Appellant
Mr Simon Calhaem with **Mr Jayson Wood** of Appleby **(Cayman) Ltd.** for the Respondent

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Hearing : 3 August 2011
Judgment delivered: 4 August 2011

JUDGMENT
Revised from transcript and Approved released: 1 September 2011

Sir John Chadwick, President:

1. This is an appeal from an order dated 31 January 2011 made by Justice Quin in matrimonial proceedings between Ann Rosalind Owen Foster and Robert Don Foster. Although they are no longer married, it is convenient to refer to them in this judgment as "the Wife" and "the Husband".

2. The parties were married in May 1999. On 30 May 2006 the Wife filed a petition for the dissolution of the marriage. Shortly thereafter, the Wife (who is a solicitor) proposed the execution of a consent order covering matters of ancillary relief. That order was signed by both parties on 6 June 2006. On 13th June 2006 the parties attended before Henderson J, who, after making inquiries, satisfied himself that the order was a proper order for the court to make and directed that it be perfected and filed.

3. The Consent Order recited that:

> "Upon the parties agreeing that this Order represents the full and final settlement of all ancillary issues arising out of their marriage, the parties hereby release all rights, claims or interests, whether legal or equitable, which either party may have against each other in respect of any other assets or property of any kind whatsoever which either party may have now or in the future, it being intended that the parties should hereby achieve a "clean break" in respect of their financial affairs."

4. Paragraphs 1 and 2 of the Consent Order made provision for the custody, care and control of the minor child of the marriage. Paragraph 3 provided for access to the child. Paragraph 4 made provision for the Husband to pay to the Wife US$1 million as a one-off capital lump sum child maintenance payment from the proceeds of any property transaction in which the Husband had an interest; or from his receipt of any future inheritance. Paragraph 5 provided that until that capital lump sum were paid the Wife agreed and accepted that she would bear the full cost of the maintenance of the child. Paragraph 6 provided that the Wife should have the right and ability to leave the jurisdiction of these islands with the child and to relocate permanently outside that jurisdiction.

5. Paragraphs 7 and 8 of the Consent Order addressed financial issues between the parties. Paragraph 7 provided for the Husband's interest in the former matrimonial home to be transferred absolutely to the Wife. Paragraph 8 was in these terms:

> "The [Husband] shall pay to the [Wife] a capital lump sum of US$1,583,334. US$250,000 of this amount is represented by the transfer of his interest in the former matrimonial home. The balance, US$1,333,334, will be paid from either the [Husband's] proceeds of the sale of the Waterford Private Residence Club in Grand Cayman and/or any other property transaction in which the [Husband] has an interest, and/or from the immediate proceeds of any future inheritance, whichever is the earliest in time, but in any event not later than 4 years from the date of this Consent Order."

6. The Consent Order came back before the Grand Court on a number of occasions between 2006 and 2011. They are set out in detail in the judgment which Quin J delivered on 31 January 2011. It is sufficient to summarise them as follows:

   (1) On 19 September 2006 the Husband (through his then attorneys) issued a summons seeking to vary paragraphs 1 to 6 of the order.

   (2) On 23 October 2006 the Husband (through the same attorneys) filed an amended summons to vary paragraphs 1 to 5 of the order.

   (3) On 2 November 2006 Sanderson J varied the Consent Order in relation to access, leaving other matters to be resolved at a later stage.

   (4) On 18 April 2007 the Husband filed (again through the attorneys then representing him) a re-amended summons for the variation of the Consent Order in relation to the child.

   (5) On 23 April 2007 the Chief Justice did vary the Consent Order in relation to access: but declined to vary the order relating to the payment of $1 million under paragraph 4 to establish a trust fund for the maintenance of the child.

   (6) On 6 March 2008 the Husband (again through the same attorneys) filed a summons in relation to access.

   (7) On 24 October 2008 the Husband filed a further summons relating to access.

(8) On 24 November 2008 the Wife filed a summons requiring the Husband to pay US$1 million, as ordered by paragraph 4 of the Consent Order.

(9) On 13 May 2009 the Wife filed a summons regarding access and maintenance.

(10) On 6 June 2009 the Husband filed another summons seeking variations in paragraphs 1 to 5 of the Consent Order.

(11) On 21 and 22 July 2009 there was a hearing of those summonses at which Foster J made an order requiring the Husband to take steps to sell certain property.

7. On 10 June 2010 the period of four years prescribed in paragraph 8 of the Consent Order expired. It was by that date that the Husband was required to pay $1,333,000 to the Wife. He did not do so. On 23 June 2010 the Wife served a bankruptcy notice seeking payment of that sum. No payment was made in response to that notice. On 3 August 2010 the Wife presented a creditor's petition for bankruptcy.

8. That led to a change in the Husband's legal representation. On 31 August 2010 the Husband's present legal advisers came on the record in the place of those who had been acting for him since, at least, September 2006.

9. The effect of the bankruptcy petition was that, on 23 September 2010 the Husband issued a summons to discharge paragraph 8 of the Consent Order. He sought an order that that paragraph "be hereby discharged with immediate effect". That summons does not seem to have been supported by an affidavit in the matrimonial proceedings; but, at about the same time (also on 15 September 2010), the Husband swore an extensive affidavit in the bankruptcy proceedings, seeking an order that those proceedings be stayed pending resolution of his summons to discharge paragraph 8 of the Consent Order in the matrimonial proceedings.

10. The Wife's response was to file a summons on 4 November 2010 seeking an order that the Husband's summons of 23 September 2010 be struck out "under the inherent jurisdiction of the Court on the ground that the application is frivolous, vexatious and/or an abuse of the process of the Court".

11. The Wife's summons to strike out came before Justice Quin on 13 January 2011. At the outset of the hearing counsel for the Husband made two preliminary submissions. The first was as to the admissibility of an affidavit made by the Wife on 1 October 2010: the second was a challenge to the jurisdiction of the Court to strike out the summons of 23 September 2010.

12. The challenge to the admissibility of the affidavit was dealt with briefly by the judge at paragraph 27 of an interim ruling which he gave *ex tempore* on 14 January 2011. He held that, in order to do justice to both parties, the Court should read and consider all the evidence adduced by the parties in the previously agreed trial bundle; including the Wife's affidavit that was the subject of the challenge.

13. The judge addressed the submissions that had been made to him in relation to the second issue at paragraphs 4 to 21 of his ruling. He considered, in detail and at some length, the submission that there was power under the Grand Court Rules (incorporated by reference to the rules of the Supreme Court of Jamaica) to strike out a summons issued in matrimonial proceedings. And he went on to consider whether or not he had power to strike out the summons to discharge the consent order under the inherent jurisdiction of the court. He held, at paragraph 23 of his ruling that: "If the [Wife] satisfies the Court that the [Husband's] summons has no prospect of success, then the Court has it within its power to strike out an application to vary the Order." In reaching that conclusion the judge referred to the decision of Mr Justice Bennett J in the Family Division of the High Court of England and Wales in *Rose v Rose* [2003] EWHC 505 (Fam). In that case Mr Justice Bennett had made expressed a clear view that he had power, either

under CPR18 r.19 or under the court's inherent jurisdiction, to strike out an application which was bound to fail.

14. Justice Quin's conclusion was that, for the reasons which he had given, the court did have inherent jurisdiction to strike out the Husband's summons "if the case put forward by the Wife met the relevant tests as laid down by the authorities". His reference to "the relevant tests" must be seen as a reference to the degree of caution which a court should always exercise when being asked to strike out proceedings on a summary basis. Following the judge's ruling on the Husband's preliminary submissions, the substantive hearing of the summons to strike out proceeded. The judge gave a full and reasoned judgment on the substantive issues on 31 January 2011. He ordered that the Husband's summons of 23 September 2010 be struck out and that the Husband pay the Wife's costs of the application of 4 November 2010. It is that order of 31 January 2011 which is the subject of the appeal before this Court.

15. It is necessary to describe the structure of the judgment of 31 January 2011. After setting out the history of the proceedings and listing the occasions on which the Consent Order had already been before the court, the judge turned to the Husband's arguments, at paragraphs 47 to 51. He explained that it was the Husband's submission that he had a good arguable case that the Consent Order be set aside on various equitable grounds; including (but not limited to) undue influence and unconscionable conduct on the part of the Wife. He identified those grounds in paragraph 51, under four heads: (i) undue influence; (ii) unconscionable conduct; (iii) the absence of legal representation; and (iv) subsequent events. At paragraphs 53 to 56 the judge set out the basis on which the Husband advanced the first three of those issues. He referred to the decisions of the Courts of England and Wales in *Fry v Lane* (1888) 40 Ch.D. 312 and *Credit Lyonnais Bank Nederland N.V. v Burch* [1996] EWCA Civ 1292; and to the New Zealand decision in *Brusewitz v Brown* [1923] NZLR 1106. At paragraphs 57 to 60 he turned to address the Husband's case under

the fourth head: the occurrence of subsequent supervening incidents. He explained that it was the Husband's case that he had been caught up in the current global economic crisis; and as a result, his property developments, which had been expected to generate funds, had not been fruitful.

16. At paragraph 61 of his judgment the judge described the grounds on which the Wife relied in support of her application to strike out the Husband's summons of 23 September 2010. Those were: (i) delay; (ii) material non-disclosure: (iii) no evidence of undue influence; (iv) no reasonable prospect of success; and (v) that the issues raised by the Husband had already been litigated. He examined each of those grounds at paragraph 76.

17. In considering the third of those grounds - "No Evidence of Undue Influence" - the judge described his understanding of what had happened when the parties were before Justice Henderson in June 2006. He said this:

> "The [Wife] submits that the [Husband] signed the Consent Order on or before the 6th June 2006. Henderson J, called the parties in to ensure, we must assume, that the [Husband] had signed and understood the content of the Order. In addition, there is evidence that the Judge asked the [Husband] if he understood the document and whether he had had a lawyer review it. Even on the [Husband's] own evidence it is clear that in response to the Judge's questions the [Husband] asked Mrs. Roulstone to look over the Order and that the [Husband] said that he was satisfied with its content."

Mrs. Roulstone was a lawyer who had acted as attorney to members of the Husband's family; but it is common ground that she was not retained on behalf of the Husband in the proceedings at the time of the Consent Order.

18. The judge reached the conclusion, at paragraph 89 of his judgment, that it was clear from the evidence adduced by both parties that Justice Henderson was intent in ensuring that the Husband understood the terms of the Consent Order. It was significant, he thought, that Justice Henderson endorsed the Consent Order with a note that the Husband was not represented. The judge found that,

on the Husband's own evidence, Justice Henderson had asked the Husband whether or not he was legally represented; and whether he was satisfied with the content of the Consent Order. The Husband had told Justice Henderson that Mrs. Roulstone had looked over the order and he was satisfied with its content.

19. The judge then went on to consider the Husband's first three grounds (the lack of legal advice, unconscionable bargain, and undue influence) and came to the conclusion, at paragraph 92, that there was no material, in the affidavits on the court file, in the parties' skeleton arguments or in the submissions of both counsel, to support a conclusion that the Wife had been guilty of any undue influence or unconscionable conduct.

20. He then addressed (at paragraphs 93 to 101 of his judgment) the question whether there had been subsequent events which had vitiated the basis on which the consent order was made. He reviewed the Husband's submissions; and he considered the English authorities of *Barder v Barder* [1987] 2 FLR 480, *Cornick v Cornick* [1994] 2 FLR 530 and, most recently, *Myerson v Myerson (No 2)* [2009] 2 FLR 147. From those authorities he concluded that the circumstances in which a court would intervene on the basis of supervening events were limited.

21. He went on to say this, at paragraphs 101 and 102:

> "I repeat that paragraph 8 is simple and easily understood especially by somebody such as the [Husband] who could never be described as a 'poor and ignorant man' in the *Fry v Lane* context. Furthermore, he has had consistent and constant advice from matrimonial attorneys regarding the variation of the Consent Order and if he had been concerned that the terms, and in particular paragraph 8, constituted what he now claims is a 'total and complete inequity' being reached between the parties, then it was open for him to make an application 2006, 2007 or even 2008, and not to wait until late 2010.

> The Court has to ask itself the question: why did the Respondent wait until the 23rd September 2010 to challenge paragraph 8? There is no evidence of any of the matrimonial assets being categorized as having a wrong value, nor is there any new event that could be properly described as being unforeseen and unforeseeable. Furthermore, there is no evidence of any new events occurring within a short time of the Consent Order."

22. On reviewing the chronology the judge took the view that he was forced to the conclusion that the Husband's summons, filed seven days after the hearing for the issue of a provisional bankruptcy order where directions had been given, led to the inescapable conclusion that it was the Wife's petition for the Husband's bankruptcy which had triggered the Husband's application to discharge paragraph 8 of the Consent Order at a time which was over four years after entering into it.

23. He concluded, at paragraph 105 of his judgment, that:

> "Accordingly, it is the Court's decision that the [Husband's] Summons to discharge paragraph 8. . . has no reasonable prospect of succeeding. The Court finds that it is an abuse of the process of the Court, in that, on the evidence before the Court, it is a blatant attempt to delay and frustrate the [Wife's] petition for the Husband's bankruptcy."

24. The basis on which the judge granted the Wife the strike out order which she sought appears at paragraph 108 of his judgment: he was satisfied that the Husband's summons was "frivolous, vexatious and an abuse of the process of the court and should be struck out under the inherent jurisdiction of the court".

25. By summons dated 3 March 2011 the Husband applied for permission to appeal. That summons came before the judge on 9 May 2011. The judge had before him, at the hearing of the summons for permission to appeal, a draft memorandum of the grounds of appeal which the Husband wished to advance, if permission to appeal was granted. The grounds were set out under seven heads. It is only necessary, at this stage, to refer to grounds 1 and 3.

26. Ground 1 alleged that the judge had erred in law in ordering that the Husband's summons of 24 September 2010 be struck out pursuant to either O.18 r.9 of the Grand Court Rules and the Rules of the Supreme Court of Jamaica, or under its inherent jurisdiction. There then followed a series of particulars. In fact, as can be seen from paragraph 108 of his judgment of 31 January 2011, the judge had exercised his power to strike out under the inherent jurisdiction: it is not material, in the context of this appeal, that he had earlier concluded that, in addition to the inherent power, there was a power under the rules by reference to the position in Jamaica.

27. Ground 3 alleged that the judge had erred in law in finding that there was no basis upon which the Consent Order could be set aside on the ground of lack of legal representation; in the circumstances that (it was said) the affidavit evidence on behalf of the appellant demonstrated that he was not legally represented at the time of the execution of the Consent Order, and that he was not the recipient of any legal advice whatsoever at that time. But it is clear that the judge did not decide the point on the basis that, contrary to the Husband's submissions, he was legally represented at the time when the Consent Order was executed. Rather, he looked at the matter in the round, including the circumstances in which the order had been approved and endorsed by Justice Henderson on 13 June 2006.

28. On 13 May 2011 Justice Quin granted leave to appeal, but limited to grounds 1 and 3 in the draft memorandum, He did so for the reasons set out in a judgment delivered on that day. He took the view that the question whether the court had power under the Rules of the Supreme Court of Jamaica or its own inherent jurisdiction to strike out a party's application to vary or discharge an order in a matrimonial case was an issue of public importance which should be examined by the Court of Appeal. And further, he took the view that it would be appropriate for this Court to review the decision of the Court in *Ebanks v Plain* [1988-89] CILR 421, which, it was said, recognised a power to set aside

a consent order in circumstances where it had been entered into without legal representation.

29. Accordingly, the memorandum of grounds of appeal, which is before this Court, contains (as grounds 1 and 2) only the grounds which had been before the judge in the draft memorandum as grounds 1 and 3.

30. The logical order is to consider whether the second ground - that the judge was wrong to think that the Consent Order should not be set aside on the ground of "no legal representation" - should be considered first. If that ground is not made out, then the position is that there can be no challenge to the judge's conclusion that the proceedings were an abuse of process. It is on that premise – and only on that premise - that this Court needs to consider whether there was jurisdiction to strike out under the inherent jurisdiction in ancillary relief proceedings.

31. In *Ebanks v Plain* the appellant had brought an action against the respondent in the Grand Court to recover payment for work performed and materials supplied. The action had been commenced by a specially endorsed writ and the respondent had failed to file a defence. The respondent's request for an adjournment to allow time for the giving of instructions to attorneys was refused; and the appellant obtained judgment in default of defence. Following the judgment in default of defence, the appellant issued a summons for the committal of the respondent for failure to pay. Immediately before the hearing of that summons the respondent entered into a consent order under which he undertook to pay the sum due by installments. He subsequently claimed that he only agreed to that order for fear of going to prison. He obtained new attorneys and applied by summons for orders setting aside the judgment in default of defence and the consequential consent order.

32. In the Grand Court, Chief Justice Collett held that, on the facts, there was a triable issue which would have enabled the respondent to have obtained an

order setting aside the default judgment; but that "the lack of preparedness on the part of the respondent and his attorney had resulted in a miscarriage of justice which the Court would correct by setting aside both the judgment and the consent order". In particular, the Chief Justice held, that in those circumstances, the consent order did not raise an estoppel so as to preclude the respondent from seeking to have the default judgment set aside; since at the time when he gave his consent he was not fully legally advised and was evidently unaware that he could have applied to have the default judgment set aside. In those circumstances it would be an injustice to hold his consent against him.

33. The creditor appealed to this Court. In the judgment of President Zacca the point was addressed shortly, at page 12 line 17 of the transcript:

> "Mr. Polack [counsel for the appellant] further contended that the consent order was an estoppel for setting aside of the default judgment. The respondent in his affidavit seated that the threat of imprisonment laid heavily with him in his decision to consent to the payment of the judgment. It is also clear that the respondent was not aware that he could apply to have the default judgment set aside. His attorneys . . . , who had entered appearance on his behalf, withdrew their services as a result of their being retained by [a third party]. In the case of *Evans v. Bartlam* Lord Russell stated ([1937] 2 All E.R. at 625) that the doctrine of election applies only to a man who elects with full knowledge of the facts. Having regard to the facts in the instant case we are satisfied that the 'consent' order does not constitute an estoppel which would preclude the respondent from seeking to set aside the default judgment."

34. It is clear, if I may say so, that the basis for the decision in *Ebanks v Plain* was that the consent order entered into after the default judgment could not be treated as an election to adopt the default judgment and to pay by instalments in the circumstances that the debtor was not aware of his right to apply to have the default judgment set aside. So the consent order did not operate as a bar to the right, which the debtor would otherwise have had, to apply to the court to have the default judgment set aside.

35. There might have been some analogy with the present case if Justice Quin had held that the Husband's consent on 6 and 13 June 2006 was a bar to his seeking to discharge the whole of the Consent Order. But it is important to have in mind that this was never an application to discharge the whole of the Consent Order. It would have been impossible to mount such an application; given that, during the four years that had elapsed since it was made, both parties had acted under that order and had applied to the court on a number of occasions to vary the order. The relevant question in the present case was whether or not paragraph 8 of the Consent Order should be varied under the powers of the court; it was not, if I may say so, whether the whole of the Consent Order should be set aside.

36. In that context, it is instructive to note the observations of Mr Justice Munby (as he then was) in the High Court in England and Wales in *L v L* [2008] 1 FLR 26. That case had some similarity with the present case; in that the husband in *L v L* alleged that the consent order into which he had entered was over generous and should be varied or set aside. As appears from the headnote:

> "The husband based his applications on the following factors: he had been placed under unfair pressure by the wife, falling short of undue pressure; he had received bad advice; the order incorporated terms that the court had no jurisdiction to order; and the generosity of the original agreement rendered it unfair. He further argued that the consent order had been so manifestly unfair on its face that the district judge had been wrong in exercising her discretion to approve it."

37. Mr Justice Munby, in a full analysis of the relevant principles, explained (at paragraph 38 of his judgment) that the grounds upon which a consent order in ancillary relief proceedings might be challenged were three: first by a fresh action to set aside the consent order; second by an appeal; and third by an application to the judge, at first instance, to exercise his statutory powers to vary. He then considered the various grounds on which the husband sought to set aside the consent order; and reached the conclusion that there was no

substance in any of them. The relevant application, as he saw it, was the husband's application under the statutory provisions of section 31 of the Matrimonial Causes Act 1973 in the legislation of the United Kingdom; which, as the judge said, stood an entirely different position. In relation to that application, it was not a necessary prerequisite that there had been some change in circumstances; and it was irrelevant that the order had been a consent order. But Mr Justice Munby observed that the court would usually be reluctant to intervene absent some change in circumstances where the order was made by consent and where less than a year had elapsed since the order was made; but that went to discretion and not to jurisdiction. He held that the application under section 31 of the 1973 Act should not be struck out; because he was satisfied that that application should go to trial on the facts before him; but he did strike out the applications to set aside on grounds of unfairness, bad legal advice and pressure. He held that those grounds disclosed no proper arguable course of action; and, in a passage of his judgment (at paragraphs 88 to 91 and 110) which is of relevance to the first ground of appeal in this case, he expressly adopted the observations of Mr Justice Bennett J in *Rose v Rose*, to which Justice Quin referred to in his judgment of 31 January 2011.

38. The position, therefore, as it seems to me, is that on a proper analysis the decision of this Court in *Ebanks v Plain* has no relevance to the present case. It is not suggested that the Husband was not entitled, under section 23 of the Matrimonial Causes Law in this jurisdiction, to apply to have paragraph 8 of the Consent Order varied: if he could persuade the court that that was an appropriate course to take. Whether or not it was appropriate to vary paragraph 8 of the Consent Order was the issue which the judge addressed under the head "supervening and unforeseeable circumstances". This was not a case in which the judge held that he must strike out the Husband's summons on the ground that the parties were bound by the Consent Order. The issue raised in *Ebanks v*

Plain did not arise in this case; and the judge did not need to deal with that issue.

39. It follows that I would hold that ground 2 in the memorandum of grounds is of no substance in the context of this case. The challenge to the order of 31 January 2011 on that ground fails.

40. The problem for the Husband, if I may say so, is that he has not appealed to this Court from the judge's decision that this was a case which, on the facts, did not call for a variation of paragraph 8 of the Consent Order under section 23 of the Matrimonial Causes Law. He has not appealed from that decision because he did not get permission to do so from the judge; and he has not sought permission to do so from this Court. Confident in what must, on proper analysis be seen as a bad point, he has not thought it sensible to pursue what might, potentially, have been a good point. But that was his choice.

41. The question then is whether this Court should hold, in response to ground 1 in the memorandum of grounds, that the judge had no jurisdiction to strike out, under the inherent jurisdiction of the court, an application which he had characterised as abusive for the reasons which he gave.

42. It is said on behalf of the Husband that the Matrimonial Causes Rules do not incorporate by reference the Grand Court Rules: and so, in particular, do not incorporate the power under GCR 18.9 to strike out proceedings on the basis that they are vexatious or abusive. The answer to that submission is that they do not need to do so. The inherent power of the court to protect its own process from abuse is not dependent upon its rules. The submission has to be put on the basis that the fact that the power in the Grand Court Rules has not been incorporated in the Matrimonial Court Rules should be taken as indicative of the intention of the rule-making body to abrogate the inherent power of the court in ancillary relief proceedings: a power which exists independently of the Grand Court Rules. That, in my view, is a hopeless

proposition. It would be bizarre if the rule-making body (or the legislature) had intended to deprive the court of its power to protect itself from abuse. If that was really what was intended; it would have been expressly spelt out in the clearest possible terms.

43. The Husband's counsel accepted – as the logic of his submission compelled him to do - that, if an application for a variation had been made and refused on the basis of all the evidence that he could put before the court, it would be open to his client to submit the same application, on the same evidence, on the following day; and the court would be bound to let that second application go to a further trial. It would be open to his client to ignore the decision which the court had just taken on the matters before it and ask the court to take the same decision again; without either appealing or showing that there had been any change in circumstances.

44. I reject that submission. The court must have power to protect its process from abuse. Time spent in dealing with unmeritorious applications is time which could be used by the court in dealing with meritorious applications. Litigants are entitled to have their cases dealt with by the court as expeditiously as resources permit. They are entitled to expect that the court's time and resources will not be spent in dealing with cases which can be seen, at an early stage, to be so unmeritorious that they can be properly described as abusive. Mr Justice Bennett took that view in *Rose v Rose*; and his view was adopted and followed by Mr Justice Munby in *L v L.* A power to strike out proceedings which can be seen to be an abuse of the court's process is, in my judgment, a power which the court is not only entitled, but bound, to exercise in a proper case.

45. For those reasons, I have no doubt that the challenge under ground one must also fail. In those circumstances, the appeal, advanced as it is, on the limited basis which I have described, must be dismissed.

Justice Forte, J.A.

46. I agree with the reasons advanced by My Lord President for coming to the conclusion that this appeal must be dismissed. I have nothing further to add.

Justice Conteh, J.A.

47. I also agree.

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Chadwick P

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Forte JA

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Conteh JA