

CAUSE NO: 8 OF 2005



*Andy to  
Conalate*



IN THE MATTER OF Section 96 of the  
**Registered Land Law** - *Cont.*

And

IN THE MATTER OF CAYMAN KAI  
SCHEME OF DEVELOPMENT

**Appearances:**

Mr. Andrew Jones, Q.C., of Maples & Calder for the petitioners  
Mr. Jonathan Tarboton standing in for Mr. Ward Sykes of  
Appleby Spurling Hunter for certain respondents  
Mr. Robert Jones of Ritch & Conolly for respondent,  
Mr. Clifford Fowler

**HEARD ON:** July 6, 2005

**RULING**

Mr. Tarboton brings this application for an adjournment of the trial of this petition set to resume before Justice Sanderson on Monday, 11<sup>th</sup> July, 2005. This application is necessitated because of the expected unavailability of Mr. Sykes who has represented the applicants in the trial up until now; but who has gone away on vacation.

I do not regard Mr. Sykes' absence in the present circumstances as reasonable or justifiable. He was aware of the date for the resumed hearing before he went on vacation. His absence suggests that his vacation plans should take priority over his obligations to the Court and to his client to be available when the matter is set to resume. At the very least, if he was unhappy with the date set by the Listing Officer, he was under an obligation to make the application which is made by Mr. Tarboton this morning before he could have seen his way clear to depart. In any event he should either ensure that he returns in time to continue to represent his client on the 11<sup>th</sup> instant or else brief Mr.

Easdon (who has been in the matter with him) or someone else to make the arguments which need to be made.

I share the view expressed by Mr. Andrew Jones, that none of the additional expenses which may be involved in ensuring Mr. Sykes' or other counsel's availability should have to be borne by the clients – observations which I make in response to what Mr. Tarboton intimated to the contrary in that regard.

Mr. Robert Jones' client, I acknowledge, is in a somewhat different position but only marginally so. He is deemed to have had notice of these proceedings now for several months. What he has had substantive notice of (only since 24<sup>th</sup> June), is the amended petition which may arguably seek to include one of his two parcels of land within the proposed scheme of development. But that is not a complex issue – either he is in favour of that or he is not; and any decision he takes in that regard will no doubt be dictated by how he sees his own economic interests.

If he is in favour, all that may be required is that his attorney be instructed to so inform the Court. If not, then the matter will involve the articulation of reasons why not. Either way, by any objective measure having had notice since at least the 21<sup>st</sup> June, he now must be regarded as a party who has had adequate time to get up to speed by 11<sup>th</sup> July 2005, to respond to the petition.

I acknowledge that he contacted Mr. Robert Jones only last Thursday. The brief was then taken on with knowledge of the 11<sup>th</sup> July being set for the resumption of the hearing, but, it seems, in the misplaced hope that this application for an adjournment would be granted. In arriving at my decision I note a point of importance that no one else has expressed – it is as to the availability of the judge and the time allocated by the Court. Clearly Justice

Sanderson is the judge properly seized of this trial which is almost completed. It is part of the reality of life that we must continue to rely on the services of visiting judges such as Justice Sanderson. With their help, this Court is able to respond to the needs of litigants in the customary effective manner and which, I am obliged to say, may not be taken for granted. Justice Sanderson is available for the week of the 11<sup>th</sup> and beyond that I do not know when next he will be available. It would be simply impractical for me to adjourn this matter now, not knowing when it might resume and being aware as I am and, as Mr. Andrew Jones has emphasised, that there are logistical difficulties to be anticipated in fixing a further resumed hearing for a time convenient to the very many persons who are interested.

For all the foregoing reasons the application for the adjournment is refused.

I am asked to make an order for wasted costs against Mr. Sykes or his firm on the failure of this application occasioned as I have found, entirely because of Mr. Sykes' absence.

I would be inclined to so order except that Mr. Tarboton tells me that their clients insisted that this application be made; being fully aware of the reasons for Mr. Sykes absence.

The order I make is intended to allow the applicants, their clients, to consider the fairness of this aspect of the matter for themselves.

Costs of this application of Mr. Andrew Jones' client to be paid by the applicants on the summons this morning; but only on condition that my written reasons for refusing the application is first provided to them; failing that, those costs to be met by Appleby,

Spurling & Hunter, as wasted costs, to be taxed if not agreed.

  
Hon. Anthony Smellie  
Chief Justice

