

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

COMMONWEALTH OF DOMINICA

DOMHCVAP2026/0006

BETWEEN:

**[1] VICTORIA SIMON
As Personal Representative of Savillia Douglas, Deceased**

1st Applicant

**[2] ODETTE GILBERT
As Personal Representative of Laura Celestine, Deceased**

2nd Applicant

and

ALEX MAYERS

3rd Applicant

Before:

The Hon. Mde. Margaret Price Findlay
The Hon. Mde. P. Nicola Byer
The Hon. Mr. Gerard St. C. Farara

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mrs. Noelize Knight-Didier for the 1st Applicant
Mr. Kerron Bruney, for the 2nd Applicant
Ms. Lisa de Freitas, for the 3rd Applicant

2026: July 31.

Civil Appeal - Rule 27 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 (CPR) – Consent Application - Extension of time to file an agreed pre-trial memorandum - Whether the learned judge’s interpretation of CPR 27.8 was correct – Exercise of Discretion – Whether the learned judge rightly exercised her discretion in refusing to accept the consent order and ordering the filing of an application

RULING ON PAPER

- [1] **BYER JA:** Before the Court is a Notice of Appeal filed on 29th July 2026 pursuant to the order of this Court made on 29th July 2026 ordering that the appeal would be heard on an expedited basis pursuant to rule 62.8 of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 (“CPR”)** and further ordering the filing of the Notice of Appeal on that said date. The Court also ordered that the appeal would be heard and determined on paper. This is the ruling of the Court.

Background

- [2] This appeal emanates from a joint application filed in the court below on 11th May 2026 for an extension of time to file a joint or agreed pre-trial memorandum. The learned master, by case management order dated 18th March 2026, directed the parties to file an agreed pre-trial memorandum on or before 20th April 2026.
- [3] The parties subsequently filed the agreed pre-trial memorandum on 21st April 2026. They also filed an application seeking to have the agreed pre-trial memorandum, which had been filed one day late, deemed properly filed.
- [4] Thereafter, the pre-trial review was scheduled before the learned judge on 6th July 2026. At that hearing, the parties presented a consent order in relation to the application for an extension of time.
- [5] By order dated 6th July 2026, the learned judge referenced that there was an application filed by the applicants pursuant to rules 27.8 (5) and 42.7 of the CPR. At paragraph 3 of that order, the learned judge stated the following:

“CPR 27.8(5) permits the parties to agree to vary a date in the timetable other than a date referred to in CPR 27.8(1) or (2). CPR 27.8(1)(c), however, provides that where a party seeks to vary a date fixed by the Court for a pre-trial review, an application must be made to the Court. Accordingly, the parties were not entitled to seek the extension solely by way of a consent order. The proper procedure was to make a formal application for an extension of time.”

- [6] The learned judge then went on to find that the court, having a discretion to approve or refuse the proposed consent order, found that the application was not in keeping with the procedure under the CPR and ordered that an application be filed for an extension of time to file the pre-trial memorandum within 7 days of the date of the order.
- [7] Being dissatisfied with the order of the learned judge, all parties joined in the appeal before this Court, in an unprecedented posture which effectively means that at the hearing before this Court, there is no respondent.

Grounds of Appeal

- [8] The applicants identified five grounds of appeal which were as follows:
- (1) The learned judge erred in finding that the application fell to be considered pursuant to rule 27.8(1) as the application before the learned judge did not seek to vary any trial date, pre-trial review date, or any other date as contemplated by the rule, and further that neither the case management order setting the date for the filing of the agreed pre-trial memorandum nor the CPR, had any provision for an express sanction for the late filing. Thus, the application was properly brought and could vary the case management timetable under rules 27.8(5) and (6);
 - (2) In refusing the application the learned judge failed to have regard to the established considerations for an extension of time application and instead considered that the application was improperly brought and was therefore plainly wrong;
 - (3) Even if the learned judge was correct in her conclusion that the application was procedurally defective, the learned judge erred in not considering the case management powers under rule 26.9 to treat the application as a non-consensual application for an extension of time and to deem the memorandum properly filed under the relevant rules;

(4) the learned judge erred in law in that her decision was made without affording the parties the opportunity to be heard on the particular issue(s) that the court was deliberating on; and

(5) the learned judge erred in the exercise of her discretion by failing to take into account the material prejudice occasioned to all parties by the adjournment of the pre-trial review hearing to October 2026, creating a real risk that the matter would not get an early trial date undermining the overriding objective that matters are to be heard fairly and expeditiously.

[9] In considering the grounds of appeal, the central issue for determination is whether the interpretation ascribed by the learned judge to rules 27.8(1) and (2) as it related to the application filed and the consent order was correct, and therefore, whether she rightly exercised her discretion in refusing to accept the consent order and ordering the further filing of an application.

[10] CPR 27.8(1), which was the provision that the learned judge relied on to deny entering of the consent order, says this:

“A party must apply to the court if that party wishes to vary a date which the court has fixed for -

- a) case management conference;
- b) a party to do something where the order specifies the consequences of failure to comply;
- c) **a pre-trial review**;
- d) the return of a listing questionnaire; or
- e) the trial date or trial period” (Emphasis added).

CPR 27.8(2), in buttressing sub-rule 1 thereof, states that “any date set by the court or these rules for doing any act may not be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in paragraph (1).”

- [11] It is therefore clear that subparagraphs 1 and 2 of rule 27.8 as set out above, speak to the necessity of filing an application where the party seeks to vary a date of a court hearing for (a case management conference, trial, pre-trial review), where there is sanction for non-compliance, or where the assessment of trial as required by the listing questionnaire, are to be varied. Those provisions in this Court's mind clearly do not apply where what is being sought is the variation of the date for filing of a document which had no sanction for late filing, or a listing questionnaire, and where it did not seek to vary the date fixed for the pre-trial review in the matter. It would therefore appear that in considering the applicability of rules 27.8(1) and 27.8(2), the learned judge interpreted the consent order on the application for an extension of time as seeking to vary the date of the pre-trial review itself, rather than the date for filing the agreed pre-trial memorandum.
- [12] It was, however, clear at the pre-trial review that two things had occurred. First, the parties had in fact filed an application, thereby satisfying the requirement that a party seeking to vary a date in the timetable must apply to the court. Second, and more importantly, the application had been compromised by consent between the parties and did not affect the date or hearing of the pre-trial review or any other hearing.
- [13] Indeed, the application filed by the parties was made pursuant to rule 27.8(5), which states that "the parties may agree to vary a date in the timetable other than one mentioned in paragraph (1) and (2)." In fact, rule 27.8(6) goes even further to state that where the parties so agree as under sub-rule 5, the parties are required to file a consent application, which they did, and to certify that the agreed variation would not affect the date fixed for trial or the period within which the trial was to commence.
- [14] The Court is therefore satisfied that the learned judge erred in misconstruing the application for extension of time and the consent order. In doing so, the learned judge committed an error of principle and secondly, as a result of that error or the degree of error in principle, her decision exceeded the generous ambit within which reasonable agreement is possible and may therefore be said to be clearly wrong.¹

¹ Dufour v Helenair Corporation Ltd. (1996) 52 WIR 188 per Flossaic CJ.

- [15] The Court will therefore exercise the discretion afresh on the application for an extension of time and the consent order entered into by the parties. In doing so, the Court is satisfied that the applicants (1) made an application pursuant to rules 27.8(5) and (6); (2) that the application was a joint application supported by a consent order signed by all the applicants pursuant to rule 42.7; and (3) that the consent order could have been entered into by the parties as it was varying a procedural order that did not offend rules 26.7, 27.8(1) or (2).

Disposition

- [16] For the foregoing reasons, the appeal is allowed and the following orders made:

- (1) The order of the learned judge dated 6th July 2026 is set aside.
- (2) The application for an extension of time to file the agreed pre-trial memorandum is granted, and the agreed pre-trial memorandum filed on 21st April 2026 is deemed properly filed.
- (3) The matter shall proceed with the pre-trial review scheduled for 5th October 2026.
- (4) There shall be no order as to costs.

I concur.
Margaret Price Findlay
Chief Justice

I concur.
Gerard St. C. Farara
Justice of Appeal [Ag.]

By The Court

Deputy Chief Registrar