

**IN THE CARIBBEAN COURT OF JUSTICE  
APPELLATE JURISDICTION**

**ON APPEAL FROM THE COURT OF APPEAL OF  
THE CO-OPERATIVE REPUBLIC OF GUYANA**

**CCJ Application No GY/A/CV2025/001  
GY Civil Appeal No 2023-NO.27-M-DEMERARA**

**BETWEEN**

**HARRY PANDAY**

**APPLICANT**

**AND**

**MALCOLM PANDAY**

**FIRST RESPONDENT**

**DEOSARAN DAVID represented herein  
by his duly Constituted Attorney  
MALCOLM PANDAY agreeably by Power  
of Attorney No 1444 of 2002**

**SECOND RESPONDENT**

**Before:**

**Mr Justice Barrow  
Mr Justice Jamadar  
Mme Justice Ononaiwu  
Mr Justice Eboe-Osuji  
Mr Justice Bulkan**

**Date of Judgment:**

**17 March 2026**

**Appearances**

Mr. Ronald Burch-Smith for the Applicant

Mr. Rajendra Jaigobin for the First Respondent

Mr. Nirvan Singh for the Second Respondent

*Practice and Procedure – Application to strike out statement of claim – Whether an amendment should be permitted where a statement of claim is lacking material particulars or is deficient – Constitution of Co-operative Republic of Guyana Act, Cap 1:01 – Supreme Court (Civil Procedure) Rules 2016 – United Kingdom Practice Direction 3A.*

## **SUMMARY**

The Applicant, Harry Panday, and the First Respondent, Malcolm Panday, are brothers and according to the Applicant had a partnership. The dispute centres on a judgment sum of USD733,451 recovered from a third party, Kayman Sankar Ltd. The Applicant contends these funds are partnership property and that the Second Respondent acted as a nominee of the partnership in recovering same.

In 2021, the Applicant filed a Statement of Claim ('SOC') seeking a declaration that these sums were held in trust for the partnership. The High Court dismissed the SOC as statute barred. On appeal, the Full Court disagreed on the limitation issue but struck out the claim for disclosing no reasonable grounds for bringing a claim. The Court of Appeal ('CA') subsequently refused leave to appeal, agreeing with the Full Court that the SOC disclosed no reasonable grounds for bringing a claim.

On an application for leave to appeal, this Court determined that even if the refusal of leave by the Court of Appeal is not a 'final decision', this Court may nonetheless hear the present application and in the exercise of its discretion grant special leave to appeal.

The Court considered the primary issue of whether the lower courts erred in striking out the SOC without first considering whether an amendment should have been permitted. Generally, and anchored in the overriding objective of the CPR, the role of a court is to determine cases on their merits. The recommended approach is to first inquire: (1)(a) whether the statement of claim in question, assuming all pleaded facts are true, discloses a legally recognisable cause of action; (1)(b) whether the claim is frivolous, vexatious or an abuse of process; and (1)(c) if a cause of action exists, whether there is sufficient relevant material facts/particulars to enable a defendant to know the case they must meet, and second: (2) if the statement of claim is found to be lacking/deficient in stating sufficient

relevant material facts/particulars but does disclose a reasonable ground for bringing the claim, the court must then conduct a balancing exercise weighing the considerations of: (a) resources (b) proportionality (c) fairness (d) other factors and (e) the overriding objective. Striking out on the basis of no reasonable grounds for bringing a claim should only be done after such an analysis, and a consideration of whether the use of Unless Orders, imposing other consequences for non-compliance with Court orders and directions, and appropriate cost orders, can meet the overriding objective of dealing with cases justly.

Having applied these approaches, the Court found that the SOC did disclose a cause of action, and that the striking out of same was premature. The lower courts ought to have considered permitting an amendment. Therefore, on 17 December 2025, the Court granted the application for special leave, allowed the appeal, remitted the matter to the High Court to be resumed before a different judge and awarded costs to the Applicant.

**Cases referred to:**

*Barbados Rediffusion Service Ltd v Mirchandani (No 1)*, [2005] CCJ 1 (AJ) (BB), (2005) 69 WIR 35; *Campbell v R* (2010) 77 WIR 323 (JM PC); *Duke v The Ship "Mt Tradewind Passion"* [2025] CCJ 2 (AJ) GY; *Janov v Morris* [1981] 1 WLR 1389; *Junior Wood Trucking Services Inc v Butcher* BB 2014 HC 24 (CARILAW), (15 April 2014); *Meloney v Meloney-Gajadhar TT 2023 HC 134 (CARILAW)*, (23 May 2023); *Narine (Mohan) v Persaud* [2012] CCJ 8 (AJ) GY; *Panday v Panday* (GY CA, 31 July 2024); *Panday v Panday* (GY FC, 10 February 2023); *Real Time Systems Ltd v Renraw Investments Ltd* TT 2011 CA 46 (CARILAW), (20 December 2011); *Real Time Systems Ltd v Renraw Investments Ltd* (2014) 84 WIR 439 (TT PC); *Sankar v Guyana Rice Development Board* [2019] CCJ 11 (AJ) (GY); *Three Rivers District Council v Bank of England (No 3)* [2001] 2 All ER 513; *Williams & Humbert Ltd v W & H Trade Marks (Jersey) Ltd* [1986] AC 368.

**Legislation referred to:**

**Guyana** – Caribbean Court of Justice Act, Cap 3:07, Constitution of the Co-operative Republic of Guyana, Cap 1:01; Supreme Court (Civil Procedure) Rules 2016; **United Kingdom** –Civil Procedure Rules.

**Treaties and International Materials referred to:**

Agreement Establishing the Caribbean Court of Justice (adopted 14 February 2001, entered into force 23 July 2002) 2255 UNTS 319.

**Other Sources referred to:**

*Civil Procedure 2013* (Sweet & Maxwell 2013); Kodilinye G and Kodilinye V, *Commonwealth Caribbean Civil Procedure* (4th edn, Routledge 2016); Saunders A (ed), *The Caribbean Civil Court Practice* (3rd edn, LexisNexis 2024).

**REASONS FOR DECISION**

**Reasons:**

Jamadar J (Barrow, Ononaiwu, Eboe-Osuji and Bulkan JJ concurring)

**Disposition**

[33]

**JAMADAR J:**

**Introduction**

[1] This Application for Special Leave to appeal to the Caribbean Court of Justice ('CCJ') centres around the procedural requirements a litigant is required to satisfy in their statement of claim and the responsibilities of a court when considering striking out same for disclosing no reasonable grounds for bringing a claim. The specific issue before us is whether the Court of Appeal of Guyana ('CA') erred in refusing leave to appeal a decision that struck out the statement of claim ('SOC') of Mr Panday, the Applicant. The material question is whether a court faced with pleadings which it deems deficient for want of particularity ought to strike out the claim immediately or whether a more measured and curative approach of permitting an opportunity to amend should be considered and applied.

## **Background**

- [2] The Applicant, Harry Panday, and the First Respondent, Malcolm Panday, are brothers and were business partners since the 1980's. Their partnership is in the process of being dissolved, the Applicant having commenced proceedings for same against the First Respondent. This dispute centres on a judgment sum of USD733,451 plus interest, which the Respondents sought to recover from a third party, Kayman Sankar Ltd. The Applicant contends that the Respondents have recovered / are recovering a judgment sum in the matter HCA No 2008-No 90-S-Demerara dated 23 June 2008, the recovery action, with part payment having been made in the sum of GYD150,000,000. The Applicant further contends that the funds recovered are the property of the said business partnership and that the Second Respondent, Deosarran David acted as a nominee or agent for the partnership.
- [3] By the SOC filed on 15 February 2021 in High Court Action No 2021-HC-DEM-CIV-SOC-33, the Applicant sought, among other things, a declaration that the judgment sums and any other consideration received by the Respondents in the recovery action are held in trust for the partnership ('the original action'). The Respondents, in their defence, denied that the judgment proceeds were related to the partnership.
- [4] At the High Court, the Respondents applied to strike out the claim in the original action. Navindra Singh J, on 3 December 2021, dismissed the SOC in its entirety primarily on the basis that the claim was statute-barred. The trial judge found that the claim ought to have been brought by 23 June 2014. The trial judge also commented that the Applicant had not specifically pleaded certain material facts.<sup>1</sup>

---

<sup>1</sup> Transcript of proceedings, *Panday v Panday* (High Court of Guyana, High Court Action No 2021-HC-DEM-CIV-SOC-33, 03 December 2021) 212, 213.

[5] The Applicant appealed to the Full Court. In its judgment of 10 February 2023, the Full Court disagreed with the trial judge's finding that the claim was statute-barred. The Full Court however dismissed the appeal, ruling that the SOC disclosed no reasonable grounds for bringing a claim and should be struck out on that basis.<sup>2</sup> Specifically, the court found that the SOC failed to sufficiently plead the details of the partnership and the alleged loan agreement, thereby failing to establish a nexus between the partnership and the judgment sum.<sup>3</sup>

[6] On 24 February 2023, the Applicant sought leave to appeal to the CA. On 31 July 2024, the CA refused leave. The CA agreed with the Full Court's analysis that the SOC disclosed no reasonable ground for bringing the claim.<sup>4</sup> Following this, on 11 September 2024, the Applicant applied to the CA for leave to appeal to the CCJ. On 18 July 2025, the CA also refused this application, holding that its refusal of leave to appeal ordered on 31 July 2024 was not a 'final decision' contemplated under s 6(a) of the Caribbean Court of Justice Act, Cap 3:07 ('CCJ Act') and was therefore not appealable as of right to the CCJ.

[7] Before this Court, the Applicant appealed on the grounds (summarised) that:

1. The original application for leave to appeal to the CA was meritorious. The lower courts improperly struck out the SOC by making premature judgments on matters of evidence and on issues that were not in dispute, and in doing so misapplied the relevant legal principles.
2. They were entitled to a reasonable opportunity to amend the SOC to address any deficiency in particulars, but the Full Court and/or CA did not consider or allow for this, which was also a misapplication of relevant legal principles.

[8] On 17 December 2025, this Court having heard the application for special leave and appeal made the following orders:

---

<sup>2</sup> *Panday v Panday* (GY FC, 10 February 2023) at [14].

<sup>3</sup> *ibid* at [10].

<sup>4</sup> *Panday v Panday* (GY CA, 31 July 2024) at [24].

1. The application for special leave to appeal is hereby granted.
2. The appeal is allowed with reasons to follow.
3. The case is remitted to the High Court to be resumed before a different judge.
4. The costs awarded against the Applicant in the High Court, the Full Court and the Court of Appeal are hereby vacated.
5. The costs of this application and the costs in the Courts below be costs in the cause.

### **Issues**

[9] The following issues are addressed:

1. Whether the CCJ had jurisdiction to consider the application for special leave even if the order of the CA made on 31 July 2024 was not a final decision.
2. Whether special leave should be granted and the appeal allowed.

### **Law and Analysis**

**Issue 1: Whether the CCJ had Jurisdiction to Consider the Application for Special Leave even if the Order of the CA made on 31 July 2024 was not a Final Decision.**

[10] Preliminarily, a point of contention was whether the order of the CA (31 July 2024) is ‘final’ or ‘interlocutory’. However, even if this Court were to determine that the order is ‘interlocutory’ or ‘final’, it retains a broad discretionary jurisdiction under s 8 of the CCJ Act, to grant special leave to appeal. This Court held in *Duke v The Ship “Mt Tradewind Passion”*,<sup>5</sup> that s 8 of the CCJ Act unambiguously gives this

---

<sup>5</sup> [2025] CCJ 2 (AJ) GY at [11].

Court the widest jurisdiction to hear special leave applications to appeal decisions of the Court of Appeal; and in the exercise of this unfettered power, this Court may review any decision of the Court of Appeal including a decision to refuse an application for leave to appeal to the Court of Appeal.

[11] In *Narine (Mohan) v Persaud*,<sup>6</sup> it was held that s 8 of the CCJ Act, which gives effect to Article XXV(4) of the Agreement Establishing the CCJ,<sup>7</sup> that is cast in equally broad terms, reserves an unlimited residual discretion to prevent miscarriages of justice. It permits applications for special leave to the CCJ from ‘any decision of the Court of Appeal’ even if it is not possible for such a decision to proceed on appeal to the CCJ via ss 6 or 7, whether based on earlier rulings or a ruling in the case in question. Similarly, the Privy Council in *Campbell v R*,<sup>8</sup> determined that equivalent legislation reserved to the Board an unlimited residual discretion to review any decision from the Court of Appeal, to cater for exceptional circumstances and to prevent miscarriages of justice.

[12] Thus, pursuant to *Duke* and *Narine (Mohan)*, even if the order of the CA is not a ‘final decision’, this Court may nonetheless hear this application, and if it so determines, grant special leave to appeal. The CCJ has jurisdiction to entertain this special leave application.

## **Issue 2: Whether Special Leave should be Granted and if so should the Appeal be Allowed**

[13] The test for special leave in civil appeals is stated in *Sankar v Guyana Rice Development Board*,<sup>9</sup> which referenced several of the Court’s determinations on applications for special leave in civil cases under s 8 of the CCJ Act in Guyana.<sup>10</sup>

---

<sup>6</sup> [2012] CCJ 8 (AJ) GY.

<sup>7</sup> Agreement Establishing the Caribbean Court of Justice (adopted 14 February 2001, entered into force 23 July 2002) 2255 UNTS 319. (2010) 77 WIR 323 (JM PC).

<sup>8</sup> [2019] CCJ 11 (AJ) (GY).

<sup>10</sup> *ibid* at [13] and [63].

Per *Sankar v Guyana Rice Development Board*,<sup>11</sup> the applicant must establish a real prospect of success on appeal or that an egregious error of law appears to have been committed by the court below or there is apparently a substantial miscarriage of justice to be corrected.<sup>12</sup> Further, as stated in *Duke v The Ship 'Mt Tradewind Passion'*,<sup>13</sup> where the Court of Appeal accepts jurisdiction and exercises its discretion not to hear an appeal, this Court is unlikely to intervene unless such intervention is unavoidably necessary to prevent a gross miscarriage of justice.

[14] Under the Supreme Court (Civil Procedure) Rules 2016 ('Guyana CPR'), a statement of claim is a formal document that sets out a party's position in a proceeding and must include a description of the nature of the claim, state all facts upon which the party relies, and specify any remedy being sought (r 2.03(1) and r8.02(1)). This includes material facts, that is, those necessary to establish the essential elements of the cause of action, and particulars, that is, details that prevent surprise, allow the other party to know the case to be met, and assist the court in defining the issues.

[15] Part 14 of the Guyana CPR sets out the rules regarding striking out a statement of claim. Pertinent to this matter is r 14.01(1)(a)(i). Striking out is permissible if '...the Statement of Case or the part to be struck out, (i) does not disclose any reasonable ground for bringing or defending the claim...'. Thus, under r 14.01 of the Guyana CPR, the court may strike out a SOC if it does not disclose a reasonable ground for bringing a claim. However, under r 25.02(g) the court under its case management powers, has the power to take any other step, give any other direction or make any other order that furthers the overriding objective. This broad power includes the power to permit a party to amend their statement of claim in furtherance of the overriding objective and on terms that are just and fair.

---

<sup>11</sup> *ibid* at [63].

<sup>12</sup> *ibid*. See also *Barbados Rediffusion Service Ltd v Mirchandani (No 1)* [2005] CCJ 1 (AJ) (BB), (2005) 69 WIR 35 where de la Bastide P laid down a two-stage test that requires the CCJ to ascertain the circumstances in which the application was made (such as whether the application is made directly to the Court as of right, or if the Court of Appeal refused leave to appeal); and then determine whether there is some special feature which would warrant the court giving special leave. The test that the CCJ has applied in determining the presence of a special feature is whether there is a realistic prospect of success. The appearance of an egregious error of law or possible miscarriage of justice are two indicators of a real prospect of success in considering whether the test has been satisfied.

<sup>13</sup> *Duke* (n 5).

- [16] Conventionally, per *Williams & Humbert Ltd v W & H Trade Marks (Jersey) Ltd*,<sup>14</sup> and as confirmed in *Three Rivers District Council v Bank of England (No 3)*,<sup>15</sup> striking out a claim is appropriate only in plain and obvious cases, and those cases which require prolonged and serious argument are unsuitable for striking out. According to *The Caribbean Civil Court Practice*,<sup>16</sup> a party's statement of claim should not be struck out where the argument between the parties involves a substantial point of law which does not admit of a plain and obvious answer, or the law is in a state of development, or where the strength of the case may not be clear because it has not been fully investigated.
- [17] Similarly, *Janov v Morris*<sup>17</sup> confirms that the court's discretion to strike out under the rules is broad, but that an appeal is viable if the discretion is exercised unreasonably or without proper consideration of the circumstances, including the possibility of amendment. In *Three Rivers District Council v Bank of England (No 3)*<sup>18</sup> it was recognised that the power to strike out must be exercised with caution, and that the tests for summary judgment and striking out are closely aligned in requiring a careful assessment of whether the claim is truly unsustainable. This approach is consistent with the overriding objective of the CPR to deal with cases justly. Per Kodilinye,<sup>19</sup> rather than striking out, the court may allow a statement of claim to be amended, provided that the circumstances are such that an amendment would accord with the overriding objective.<sup>20</sup>
- [18] Finally, in *Real Time Systems Ltd v Renraw Investments Ltd*,<sup>21</sup> the Privy Council, approving the approach taken by the Court of Appeal of Trinidad and Tobago,<sup>22</sup> agreed that striking out a claim is a 'nuclear option' and that a court faced with a

---

<sup>14</sup> [1986] AC 368.

<sup>15</sup> [2001] 2 All ER 513.

<sup>16</sup> Adrian Saunders (ed), *The Caribbean Civil Court Practice* (3rd edn, LexisNexis 2024) 310.

<sup>17</sup> [1981] 1 WLR 1389.

<sup>18</sup> *Three Rivers District Council* (n 15).

<sup>19</sup> Gilbert Kodilinye and Vanessa Kodilinye, *Commonwealth Caribbean Civil Procedure* (4th edn, Routledge 2016) 204.

<sup>20</sup> See *Junior Wood Trucking Services Inc v Butcher* BB 2014 HC 24 (CARILAW), (15 April 2014) at [17].

<sup>21</sup> (2014) 84 WIR 439 (TT PC).

<sup>22</sup> TT 2011 CA 46 (CARILAW), (20 December 2011).

strike-out application for deficient pleadings must consider less drastic alternatives. Under its broad case management powers, a court has the authority to make alternative orders, such as directing the claimant to provide further particulars and/or to serve an amended SOC within a specified timeframe. This power can be exercised on the court's own initiative. The burden is therefore not solely on a claimant to apply for an amendment. Indeed, there is a duty on a court under the CPR and in furtherance of the overriding objective to discover and determine a matter on the real issues raised on the papers (r 25(1) and r 27.01(4)(b)) and which have a realistic prospect of success (rr 12.03(3)(c) and 13.02(2)(b)).

[19] Thus, a court can act *suo moto* (on its own motion) and make an order for the amendment of a statement of claim on fair and just terms, rather than striking it out *in toto*. In fact, under r 14.01(1)(a), the basis for striking out a claim (in part or whole) is that it ‘does not disclose any reasonable ground for bringing ... the claim’(emphasis added).

### **The New CPR Approach**

[20] On a first principles basis, anchored in the CPR and the right to a fair hearing (Constitution of the Co-operative Republic of Guyana 1980, arts 40 and 144), cases should wherever possible be determined on their substantive merits as opposed to being dismissed for curable procedural deficiencies which can be remedied on terms that are fair and just, and provided that any such interventions align with the overriding objective. With this in mind, we outline some general guiding principles in exercising the discretion to permit an amendment of a potentially deficient but curable statement of claim:

1. Where a potentially deficient but curable statement of claim is identified either by the court or the respective parties (for example, through filing of an application for striking out), the court must first examine the statement of claim and determine the nature of the

issues raised on the pleadings and any deficiencies. A court must ask itself:

- (a) Does the statement of claim, if all pleaded facts are proven true, fail to disclose a reasonable *ground* for bringing the claim (a cause of action)?
- (b) Is the statement of claim frivolous, vexatious or an abuse of process?
- (c) If the statement of claim identifies a reasonable ground for bringing a claim (a cause of action), does it contain sufficient relevant material facts and/or particulars to fairly enable a defendant to know the case they must meet and for the court to identify the issues in dispute?

2. If the statement of claim is found to be lacking/deficient in stating sufficient relevant material facts and/or particulars but does disclose a reasonable ground for bringing the claim, the court must then conduct the following balancing exercise. This is in furtherance of the overriding objective to deal with a case justly (r 1.01(1)). This analysis involves weighing, among other Ord 1 considerations, the following factors to determine whether the claimant ought to be permitted to amend their statement of claim:

- (a) **Resources:** Is it a more effective use of the court's and parties' resources to allow an amendment rather than to strike out the claim and allow for a potential re-filing or appeal? (See r 1.01(2)(b), (d), (e))
- (b) **Proportionality:** Is the striking out of the claim a proportionate response? (See r 1.01(2)(c))
- (c) **Fairness:** Here, an inquiry into considerations of promptitude, prejudice, costs and delay is relevant. (r 20.02(1)) Questions to ask may include: Would the permission of an amendment significantly prejudice the defendant or other parties and /or would its denial significantly prejudice the claimant? Can an order for an amendment be made on terms that are fair and just to all parties, especially the defendant?
- (d) **Other Factors:** The nature and circumstances of each case may be different, and a court must be able to identify further considerations such as an abuse of process, the vexatious or frivolous character of the claims, repeated or intentional

non-compliance with procedural requirements, alternative remedies, and any other relevant considerations. (See rr 14.01(1), 20.02(2))

(e) **Overriding Objective:** What orders and/or directions align most appropriately with the overriding objective. (See r 1.01)

3. The option of striking out a claim should only be exercised having carried out such an evaluative analysis. If permission is given to amend a statement of claim, fair terms should be imposed to consider and compensate for any wasted costs and expenses well as to ensure compliance or in default appropriate consequences. Thus, the use of Unless Orders should always be considered, and in any event and as far as is reasonable, there should be consequences imposed for the failure to comply with any court orders and directions. (See r 27.03)

[21] This approach is not novel. For example, in the 2023 Trinidadian case of *Meloney v Meloney-Gajadhar*, Mohammed J references the UK White Book on Civil Procedure 2013 in discerning what constitutes a statement of claim that discloses no reasonable grounds for bringing a claim, and opines: ‘The striking out of a claim should be viewed as an ultima ratio, a measure to be employed only when all other avenues have been exhausted.’<sup>23</sup> Further 1.2 of the United Kingdom’s Practice Direction 3A – Striking out a Statement of Case, gives general examples of what claims might be classified as disclosing no reasonable grounds, as follows: (i) those claims which set out no facts indicating what the claim is about, (ii) those claims which are incoherent and make no sense, and (iii) those claims which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the Defendant.<sup>24</sup>

### **Application of the New CPR Approach**

[22] In the current appeal, the High Court dismissed the claim on the grounds that the limitation period had elapsed,<sup>25</sup> but also considered certain deficiencies with the

---

<sup>23</sup> TT 2023 HC 134 (CARILAW), (23 May 2023) at [49].

<sup>24</sup> 3A PD 1.2

<sup>25</sup> Record of Appeal, ‘Affidavit in Support of Notice of Application’ 19.

Applicant's SOC,<sup>26</sup> specifically that certain particulars were insufficiently pleaded and that the Claimant had failed to establish certain material facts. Thereafter, both the Full Court and CA concluded that the Applicant's SOC disclosed no reasonable ground for bringing the claim. The Respondents emphasise that the SOC failed to set out the basic details of the alleged partnership and disclosed no nexus between the partnership and the judgment proceeds from Kayman Sankar Ltd.<sup>27</sup> The Respondents in their application to strike out also pointed to numerous alleged factual inconsistencies within the SOC alongside numerous further procedural deficiencies such as failure to file an Affidavit of Documents, or seek relief from sanctions.<sup>28</sup>

[23] Following the approach explained above, an examination of the SOC reveals that it does indicate the existence of the partnership<sup>29</sup> but does not specify the details of same. The SOC also refers to the judgment debt against Kayman Sankar & Co Ltd and sets out some preliminary details/facts on how the debt came about.<sup>30</sup>

[24] Applying the first limb of analysis, which seeks to interrogate whether there are sufficient facts pleaded which if proven true will reasonably support grounds for bringing the claims, one notes that the overall cause of action is clearly identifiable as being a claim for the recovery of certain sums claimed to be owed to the partnership by Kayman Sankar & Co Ltd, which according to the Applicant, were subsequently recovered by the 2nd Respondent (Deosarran David). If the facts pleaded were proven true, the present SOC discloses grounds for a cause of action.

[25] Further, and applying the second limb of analysis, while the details of the partnership may be in contention, the claim cannot, on the pleadings, be deemed to be frivolous, vexatious or an abuse of process. Under the third limb, which

---

<sup>26</sup> Record of Appeal, 'Affidavit of Opposition of Second Respondent' 367.

<sup>27</sup> Record of Appeal, 'Affidavit of Opposition of Second Respondent' 366-367; Deosaran David, 'Submissions on behalf of the Respondent', Submission in *Panday v Panday*, GY/A/CV2025/001, 18 November 2025.

<sup>28</sup> Deosaran David, 'Submissions on behalf of the Respondent', Submission in *Panday v Panday*, GY/A/CV2025/001, 18 November 2025.

<sup>29</sup> Record of Appeal, 'Statement of Claim' 55, 58.

<sup>30</sup> Record of Appeal, 'Statement of Claim' 58-59.

interrogates the sufficiency of facts or particulars pleaded to enable a fulsome response by the Respondents and an identification of issues by the court, and as identified by the lower Courts and the Respondents, the SOC may be lacking in certain details. However, the current SOC's sparseness may be curable. And with focused inquiries and appropriate directions and orders, the material facts or particulars to sufficiently enable the Defendant to know the cause they must meet and for the court to identify the material issues may be duly elicited.

[26] Accordingly, in the current circumstances, the finding by the Full Court and the CA that the SOC disclosed no reasonable grounds for bringing the claim on the basis of deficiency appears premature. Apart from the blanket dismissal of the CA that it saw no merit in the contentions that the SOC was curable,<sup>31</sup> there is no indication that these courts considered or applied a thorough analysis of whether an amendment should be permitted. The failure of the lower courts to make due inquiries and to consider ordering the Applicant to provide particulars before dismissing the claim, therefore, amounts to a misapplication of judicial discretion and /or an error of law.

[27] As indicated above, cases should, wherever possible, be decided on their substantive merits rather than being dismissed for procedural deficiencies. The purpose of an amendment is to allow parties to correct errors, clarify their case, and ensure that the real questions in controversy between the parties are the ones that are ultimately determined by the court. Striking out a claim for a lack of particulars without first considering whether to give the claimant an opportunity to amend, can be at odds with this principle. Such a course of action conflates a curable defect with an incurable one and prematurely denies a litigant their due process and fair hearing rights (Constitution of the Co-operative Republic of Guyana 1980, arts 40 and 144).

---

<sup>31</sup> *Panday* (n 4) at [24].

[28] Accordingly, a deficiency in pleadings/particulars should not automatically lead to a strike-out without first considering and conducting a balancing exercise exploring whether the defect can and ought to be cured by amendment, as explained above. Moreover, it is apparent that it would have been a more effective use of the court's and parties' resources to consider allowing an amendment rather than to strike out, as is evident by this procedural issue progressing all the way to the final court only to be remitted for this consideration to be undertaken.

[29] Further, considering the nature of the pleaded claim, the grounds disclosed and the extent of the SOC's deficiencies, an outright striking out of the SOC without considering the usefulness of an opportunity to amend was disproportionate. Finally, the permission to grant an amendment may not have significantly prejudiced the Respondents if appropriate orders for say costs and Unless Orders were made.

[30] A court in exercising its discretion to allow an opportunity to amend on terms, if necessary, must also have regard to other relevant circumstances which in this case includes the failure of the Applicant to seek permission to amend. And according to the Respondents, the Applicant made no attempt to amend the SOC as provided for under r 20.01.<sup>32</sup> However, this alone may be insufficient to deny an opportunity to amend if found to be necessary. For our purposes, that is a matter to be engaged on the re-consideration of this matter. Nonetheless, the failure of the lower courts to consider ordering the Applicant to provide particulars before dismissing the claim is a misapplication of judicial discretion and an error of law.

## **Conclusion**

[31] This Court has jurisdiction to entertain this Application. Pursuant to s 8 of the CCJ Act and Article XXV(4) of the Agreement Establishing the CCJ, this Court retains

---

<sup>32</sup> Record of Appeal, 'Affidavit of Opposition of Respondents'; Deosaran David, 'Submissions on behalf of the Respondent', Submission in *Panday v Panday*, GY/A/CV2025/001, 18 November 2025.

a broad residual discretion to grant special leave from any decision of the Court of Appeal where it is necessary to prevent a miscarriage of justice.

[32] The application for special leave is granted and the appeal allowed. The Applicant has demonstrated a realistic prospect of success. The CA's refusal of leave constituted an error of law. Having examined the SOC, both the Full Court and the CA ought to have considered whether the Applicant was entitled to an opportunity to amend their SOC and to have considered that as a viable alternative prior to striking out the claim.

### **Disposition**

[33] On 17 December 2025, this Court having heard the appeal made the following orders:

1. The application for special leave to appeal is hereby granted.
2. The appeal is allowed.
3. The case is remitted to the High Court to be resumed before a different judge.
4. The costs awarded against the Applicant in the High Court, the Full Court and the Court of Appeal are hereby vacated.
5. The costs of this application and the costs in the Courts below be costs in the cause.

/s/ D Barrow

---

**Mr Justice Barrow**

/s/ P Jamadar

---

**Mr Justice Jamadar**

/s/ C Ononaiwu

---

**Mme Justice Ononaiwu**

/s/ C Eboe-Osuji

---

**Mr Justice Eboe-Osuji**

/s/ A Bulkan

---

**Mr Justice Bulkan**