

**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/CV2026/004
GY Civil Appeal No 13 of 2025**

BETWEEN

GUYANA BANK FOR TRADE AND INDUSTRY

APPLICANT

AND

THE REVENUE AUTHORITY

RESPONDENT

Before:

**Mme Justice Rajnauth-Lee
Mme Justice Ononaiwu
Mr Justice Bulkan**

Date of Judgment:

21 September 2026

Appearances

Mr Kamal Ramkarran, Ms Rebecca Khan and Mr Jensen Samaroo for the Applicant

Ms Judy Stuart-Adonis, Ms Maritha Halley, Mr Nicklin Belgrave, Ms Kamla Roopnauth-Chang and Ms Darshanie Lall for the Respondent

Practice and Procedure — Appeal — Leave to appeal — Special leave — Extension of time for leave to appeal — Denial of application to extend time to file witness statements — Protracted delay to apply for leave — No sound and cogent reason — Broad discretion by Court of Appeal — Interests of justice considered — Court of Appeal Rules, Ord 1, r 8.

SUMMARY

This application for special leave is brought by the Guyana Bank for Trade and Industry Ltd (hereafter ‘the Bank’ or ‘the Applicant’) concerning the Court of Appeal’s decision to

grant leave to the Revenue Authority (hereafter ‘the Authority’ or ‘the Respondent’) to appeal a decision of the Full Court refusing its application to extend time to file witness statements at the High Court. The latter application arose in substantive proceedings initiated by the Authority claiming negligence on the part of the Bank for encashing stolen cheques. The main trial became stalled because the Authority sought an extension of time to file its witness statements one day after the deadline, triggering successive litigation by the parties as to whether its application should be granted. At the High Court, the trial judge initially granted the Authority’s application, apparently unaware of an Affidavit filed by the Bank opposing the Authority’s application. The trial judge subsequently recalled the order, invited submissions on the issue, and concluded by refusing the application that he initially granted. This revised decision was appealed by the Authority to the Full Court which upheld that refusal, although on a different basis. The Authority then erroneously attempted to appeal to the Court of Appeal without first obtaining leave, and, after the time for seeking leave had expired, applied to the Court of Appeal for an extension of time to do so. At this juncture, time had elapsed by approximately six months. The Court of Appeal granted the extension and leave to appeal, prompting the Bank to seek special leave to appeal to the Caribbean Court of Justice (hereafter ‘the CCJ’ or ‘the Court’).

The CCJ refused the Bank’s application, holding that it failed to demonstrate any error by the Court of Appeal in granting the extension of time and leave to appeal. The Court emphasised the very broad discretion conferred on the Court of Appeal by Ord 1, r 8 of the Court of Appeal Rules to extend time, where the court is required to strike a balance between the losing party’s opportunity to test the soundness of a decision made against it and the entitlement of the successful party to enjoy the fruit of its judgment without delay. Relying on settled jurisprudence, the Court noted that the paramount consideration in determining an application for an extension of time is the interests of justice. Even where a sound and cogent reason for a party’s delay is not forthcoming, that ought not to result in an automatic dismissal of a party’s application.

The Court relied on authorities including *Sankar v Guyana Rice Development Board* [2019] CCJ 11 (AJ) (GY), *Mitchell v Wilson* [2017] CCJ 5 (AJ) (GY), and *Narine v Persaud* [2012] CCJ 8 (AJ) (GY) to affirm that the length and reasons for delay must be weighed

against the potential merits of the proposed appeal and the possibility of a miscarriage of justice. The Court explored previous cases where the interests of justice warranted an extension of time despite protracted delays. In addition, the Court noted that the merits of the proposed appeal are relevant not only to whether the grant of an extension of time for leave to appeal is necessary to avert a clear miscarriage of justice, but also to whether the grant of leave to appeal is justified. The Court also observed that whatever the outcome of the actual appeal in the Court of Appeal, the reasons in support likely to be given should clarify the divergent positions taken by the lower courts on the various procedural issues.

Ultimately, the Court stressed that procedural rules should not be applied with excessive formalism where a default is capable of being cured. Given that the original delay was occasioned by the Respondent, the Court ordered each party to bear its own costs.

Cases referred to:

Barbados Turf Club v Melnyk [2011] CCJ 14 (AJ) (BB), (2011) 79 WIR 153; *Duke v The Ship "MT Tradewind Passion"* [2025] CCJ 2 (AJ) GY, GY 2025 CCJ 1 (CARILAW); *Griffith v Guyana Revenue Authority* [2006] CCJ 2 (AJ) (GY), (2006) 69 WIR 320; *Hing v Hing* (1978) 25 WIR 391; *Mitchell v Wilson* [2017] CCJ 5 (AJ) (GY); *Narine v Persaud* [2012] CCJ 8 (AJ) (GY); *Persaud v Persaud* [2026] CCJ 2 (AJ) GY; *Ramsahoye v Linden Mining Enterprise* [2019] CCJ 7 (AJ) (GY), GY 2019 CCJ 3 (CARILAW); *Rodrigues Architects v New Building Society* [2018] CCJ 9 (AJ) (GY), (2018) 93 WIR 339; *Sankar v Guyana Rice Development Board* [2019] CCJ 11 (AJ) (GY); *System Sales Ltd v Browne-Oxley* [2015] CCJ 1 (AJ) (BB), (2015) 86 WIR 30.

Legislation referred to:

Guyana – Caribbean Court of Justice Act, Cap 3:07; Court of Appeal Act, Cap 3:01.

JUDGMENT

Reasons for Judgment:

Rajnauth-Lee, Ononaiwu, Bulkan JJ

[1] - [37]

RAJNAUTH-LEE, ONONAIWU, BULKAN JJ :**Introduction**

- [1] In July 2023 the Revenue Authority (hereafter ‘the Authority’ or ‘the Respondent’) instituted an action seeking special damages in excess of GYD23 million for losses sustained due to the alleged negligence of the Guyana Bank for Trade and Industry Ltd (hereafter ‘the Bank’ or ‘the Applicant’). The Authority claimed that the Bank acted negligently in encashing cheques that were stolen from the Authority by its (now former) employees and made payable to persons acting in collusion with said employees. In its defence duly filed, the Bank denied all allegations of negligence, asserting that it had complied with both its internal protocols and the applicable regulatory standards before honouring the cheques. The Bank countered that it was the Authority which was negligent in the systems it maintained for securing its chequebooks.
- [2] To date, this preliminary exchange of pleadings is as far as the matter has progressed, despite the passage of more than three years since the action was filed. What is by now approaching a delay of Dickensian proportions has been precipitated by a one-day lapse on the part of the Authority in applying for an extension of time to file its witness statements, which has since generated a succession of appeals and counter-appeals.
- [3] Before us in this Court, the Bank seeks special leave to appeal a decision of the Court of Appeal of Guyana. In that decision, the Court of Appeal granted to the Authority an extension of time to seek leave to appeal, as well as leave to appeal, the decision of the Full Court that upheld a reconsidered decision of the trial judge

refusing the Authority's application for an extension of time to file and serve witness statements made one day late. Simply put, the issue for this Court is whether the Court of Appeal erred by exercising its discretion in granting the Authority's application for an extension of time and in granting it leave to file a Notice of Appeal. Ultimately, by resisting the Court of Appeal's discretion that was exercised in favour of the Authority, the Bank seeks to preserve intact the judgment of the Full Court (and by extension, that of the trial judge) in its favour.

- [4] Having considered the entire procedural background of this case and the respective submissions of the parties in light of the principles governing the exercise of *this* Court's discretion, we are unanimously of the view that the Bank's application for special leave should be refused. Our reasons are set out below.

Procedural Background

- [5] Initially, the preliminary steps in this action unfolded routinely. After the pleadings were filed, a Case Management Conference took place on 29 January 2024, at which the parties were given two weeks by the trial judge, Harnanan J, to file their witness statements by 12 February 2024. The Bank duly complied. On 12 February 2024 however, the Authority's witnesses were out of office attending a training seminar and were unable to sign the statements. This hiccup, which was in fact quickly resolved, is what led to the various appeals and counter-appeals, resulting in the paralysis of the substantive claim.
- [6] On 13 February 2024, the day after the deadline, the Authority applied to Harnanan J for an extension of time in which to file its witness statements. On 16 February 2024 the judge granted the application, giving the Authority until 19 February 2024 to do so. The Authority complied with this extended deadline.
- [7] However, on the same day that the Authority applied for an extension, the Bank formally opposed it, though it appears that the trial judge was unaware of that

opposition at the time he granted the application. Evidently dissatisfied, and despite the fact that the witness statements were now filed pursuant to a valid court order, the Bank lodged an appeal to the Full Court against the decision of the trial judge to grant the one-week extension.

- [8] On 11 March 2024, the trial judge recalled his order of 13 February 2024 which had granted the Authority an extension of time, directing now that written submissions be filed. By this time, the Authority's witness statements had already been filed some three weeks before in accordance with the extended deadline. However, after hearing the parties, on 23 May 2024 Harnanan J reversed course and refused the application for an extension of time to file witness statements.
- [9] The Authority appealed the second ruling of Harnanan J refusing them the extension of time, seeking at the same time a stay of the proceedings in the High Court. On 19 July 2024, the Full Court heard the applications together and dismissed them. Notably, while the Full Court upheld the decision of the trial judge to refuse the extension, they disagreed with his reason for doing so and acted instead on a different basis. We will return to the fact of this disagreement below.
- [10] Thereafter, this litigation took on an even more tortuous path. In a nutshell, the Authority purported to file an appeal against the decision of the Full Court, evidently unaware that they were required first to seek and obtain leave to do so.¹ By the time they became aware of this mistake, the time for seeking leave had passed, hence their further application to the Court of Appeal in February 2025 seeking an extension of time in which to file their application for leave to appeal. In support, the Authority pleaded a 'genuine error' in computing the time for leave to appeal.²

¹ Pursuant to s 6(4) of the Court of Appeal Act, Cap 3:01.

² Record of Appeal, 'Notice of Motion' [23].

[11] This Motion for an extension of time took a full year before it was heard in the Court of Appeal. In a brief oral ruling delivered on 19 March 2026, the Court of Appeal granted the Authority's application for an extension of time along with leave to appeal. From the verbatim report of the proceedings, the Court of Appeal appeared to exercise its discretion in favour of the Authority for three reasons: (i) when the trial judge purported to recall the order granting the Authority an extension of time to file its witness statements, that order was spent in that the date for compliance had passed and the Authority had duly complied with it in accordance with the time set; (ii) having appealed the initial decision to grant the extension, the Full Court then became seised with jurisdiction over that aspect of the case and the trial judge no longer had the power to recall that order; and (iii) the witness statements filed in accordance with the original order could not 'magically disappear' afterwards, so that the subsequent refusal by the trial judge to grant the extension of time was a complete nullity.

Application for Special Leave

[12] It is from this decision of the Court of Appeal granting the Authority an extension of time to seek leave to appeal, as well as leave to appeal, the decision of the Full Court, that the Bank now seeks special leave to appeal. In support of its application, the Bank essentially relies on two main grounds. First, it submitted that the Court of Appeal erred by taking into account the recall order as the basis for extending time and granting leave to the Authority because that was a new issue which had not been raised by the Authority at any stage and one which it was not given opportunity to address. Describing the recall order as 'innocuous', the Bank submitted that it had nothing to do with the criteria for extension of time to seek leave to appeal – not relevant to the delay nor even to the merits of the proposed appeal.

- [13] Second, the Bank submitted that the Authority failed to satisfy the test, most recently affirmed in *Persaud v Persaud*,³ for an extension of time in its favour. Principally, the Authority was required to provide sound and cogent reasons for failing to apply for leave to appeal within the required time but which it failed to do. Further, the Bank submitted that the Authority did not establish either the merits of its proposed appeal or that a clear miscarriage of justice would result if the extension was refused. The Bank argued, inter alia, that the Authority failed to show how the Full Court erred when all it did was to give full effect to the clear and unambiguous provisions of the Civil Procedure Rules.⁴
- [14] In a comprehensive reply, the Authority commenced by noting that Ord 1, r 8 of the Court of Appeal Rules confers a broad discretion on the court to ensure that technical non-compliance with the Rules does not frustrate the ends of justice. Bearing that in mind, the Authority argued that the Bank's arguments disclosed no egregious error or miscarriage of justice by the Court of Appeal in the manner in which it exercised its discretion. As to the latter consideration, the Authority stressed that the substantive rights of the parties have not been finally determined and all that the extension does is to permit its appeal to be heard on the merits.
- [15] Regarding the specific arguments raised by the Bank, the Authority submitted that what *Persaud* requires is for the court to determine whether its discretion should be exercised. Elaborating, the Authority submitted that *Persaud* does not impose a rigid approach to be taken nor does it prevent the Court of Appeal from assessing the overall justice of the case. On the second ground, the Authority submitted that the Court of Appeal was entitled to consider the recall order, since it forms part of the relevant procedural history and is directly relevant to the justice of the case and whether an extension of time to consider the substantive complaint was warranted. The Authority added that it suffered substantial prejudice by the Judge's recall of his original order, whereas none was sustained by the Bank, further justifying the

³ [2026] CCJ 2 (AJ) GY.

⁴ Record of Appeal, 'Affidavit in support of Notice of Application' [14].

extension of time to seek leave to appeal and leave to appeal the contested legal and procedural issues. The Authority stressed, however, that at this stage nothing was decided and the Court of Appeal's ruling merely facilitated a hearing and resolution of the merits.

[16] Against the foregoing procedural background, the Bank's application for special leave now falls to be considered by this Court. It is brought pursuant to s 8 of the Caribbean Court of Justice Act, Cap 3:07, which provides broadly that '...an appeal shall lie to the Court with the special leave of the Court from any decision of the Court of Appeal from any civil or criminal matter'. This provision has been the subject of detailed interpretation and application, resulting in extensive jurisprudence on the applicable test and the accompanying criteria to be satisfied by an applicant for special leave.

[17] From the inception of this jurisdiction, it was acknowledged that special leave is granted 'purely as an act of Grace...always a matter of discretion and never a matter of right'.⁵ Numerous cases have stipulated that an applicant for special leave must establish a realistic prospect of success.⁶ As Barrow J has explained, this condition is satisfied by demonstrating an egregious error of law or a possible miscarriage of justice,⁷ though these are not the only special features that could indicate the decision sought to be appealed is wrong.⁸

[18] This being the test, the central question for this Court is whether the Court of Appeal erred in granting to the Authority an extension of time to seek leave to appeal, along with leave to appeal, the decision of the Full Court. This requires consideration of the power under which the Court of Appeal purported to act, alongside an examination of the factors or criteria that bear upon the exercise of that discretion

⁵ *Griffith v Guyana Revenue Authority* [2006] CCJ 2 (AJ) (GY), (2006) 69 WIR 320 at [27].

⁶ *Barbados Turf Club v Melnyk* [2011] CCJ 14 (AJ) (BB), (2011) 79 WIR 153 at [7]; *System Sales Ltd v Browne-Oxley* [2015] CCJ 1 (AJ) (BB), (2015) 86 WIR 30 at [11]; *Duke v The Ship "MT Tradewind Passion"* [2025] CCJ 2 (AJ) GY, GY 2025 CCJ 1 (CARILAW) at [14].

⁷ *Ramsahoye v Linden Mining Enterprise* [2019] CCJ 7 (AJ) (GY), GY 2019 CCJ 3 (CARILAW) at [58].

⁸ *ibid* at [55]-[56].

and the respective weight that should properly be attributed to those factors in balancing the rights of the parties.

[19] We start by noting that the Court of Appeal has an extremely wide, almost unlimited jurisdiction, to enlarge time.⁹ Order 1, r 8 of the Court of Appeal Rules provides that ‘... the Court may enlarge the time prescribed by these Rules for the doing of anything to which these Rules apply or may direct a departure from these Rules in any other way where this is required in the interests of justice.’

[20] As with any claim or dispute, each party has opposing rights. On the one hand, there is the right of appeal as conferred by the applicable statute, which effectively confers on a losing party an opportunity to test the soundness of the judgment in question. On the other hand, the successful party is entitled to the fruits of their judgment without protracted and unfair delay.¹⁰ These competing rights must be balanced in the context of the overriding public interest in ensuring finality to litigation, which promotes certainty and avoids wastage of resources. Ultimately, however, as signalled by the provision itself, the dominant consideration is that of the *interests of justice*, which means that the appellate court must be alive to the substantive issues and the potential merits of the case, so as to ensure that justice is not thwarted by excessive formalism.

[21] The above considerations are familiar to Guyanese courts. In *Hing v Hing*, where the Court of Appeal was considering this very power, the venerable Haynes C explained as follows:

The dominant consideration is “the interests of justice”. And it is for this court to determine in every individual case as it arises, whether recourse to the rule is demanded. It is neither possible nor desirable to attempt to define or to categorise the circumstances which can or will do so. This court's sense of justice must be its guide. But it must be the interests of justice according to law. This consideration includes not only the interests of the dissatisfied litigant who wishes to pursue a right of appeal, but also those of the successful one in the satisfaction of the judgment in his favour without

⁹ *Sankar v Guyana Rice Development Board* [2019] CCJ 11 (AJ) (GY) at [67] (Barrow J).

¹⁰ *Rodrigues Architects v New Building Society* [2018] CCJ 9 (AJ) (GY), (2018) 93 WIR 339.

undue delay, as well as regard for the important administrative principle against the undue protraction of litigation. We have to balance the two competing interests, bearing in mind the third. And in so doing it is not irrelevant to recognise that a right of appeal is not one to which a litigant is entitled as a matter of natural justice. It is a statutory right exercisable subject to compliance with the conditions prescribed by the statute or statutory instrument. The litigant who does not comply and so is unable to stand in this court and challenge the judgment of the court below, is not thereby deprived of a right to do so. What has happened is that he has not qualified to exercise the right and a legal bar arises as a result of such non-compliance.¹¹

[22] This Court has fully endorsed Chancellor Haynes' approach and the relevant principles as formulated by him. In *Sankar v Guyana Rice Development Board*, where the Court of Appeal had granted an extension of time to the Respondent to apply for leave to appeal against a decision of the Full Court and leave to appeal that decision after a delay of five-and-a-half months, this Court by a majority refused special leave, thereby upholding the Court of Appeal's discretionary grant of an extension of time. Adopting the approach taken by Haynes C in *Hing*, Rajnauth-Lee J on behalf of the majority said as follows:

...in arriving at a determination as to what is required in the interests of justice, a court should balance the interests of the dissatisfied litigant who wishes to pursue a right of appeal, on the one hand, with the interests of the successful litigant who wishes to have the satisfaction of the judgment in his favour without undue delay, on the other hand. In addition, the court should have regard to the important administrative principle against the undue protraction of litigation.¹²

[23] Admittedly, we have no written decision from the Court of Appeal delineating in detail why they exercised their discretion in the way that they did. Nonetheless, this Court is still able to examine the correctness of that decision based on the governing principles and the procedural background forming part of the Record. Mr Ramkarran on behalf of the Bank argued tenaciously that by not providing any reason for its extensive delay the Authority failed to satisfy an essential precondition for the grant of its application – so that the Court of Appeal erred by

¹¹ (1978) 25 WIR 391 at 397.

¹² *Sankar v Guyana Rice Development Board* [2019] CCJ 11 (AJ) (GY) at [22].

exercising its discretion in the Authority's favour. However, the factual claim is not strictly true, as borne out by the pleadings and the history of the matter.

[24] As part of the grounds in support of its Notice of Motion, the Authority alleged that the delay in its application was due to a genuine error in determining the time for leave to appeal.¹³ This explanation does not seem wholly accurate, as the chronology of events would indicate instead that it was not time but rather unfamiliarity with the procedural requirement of first obtaining leave which led to the missteps on the part of the Authority's legal team. In any event, whatever the precise reason for the delay, its ultimate source lay in some degree of incompetence.

[25] In *Mitchell v Wilson* this Court determined that counsel's ignorance of procedural rules would 'rarely, if ever, provide a good reason for failing to comply with them'.¹⁴ Nonetheless, it did not go so far as to dictate that where a litigant cannot provide a good reason for delay, its application for an extension of time must automatically be dismissed. Indeed, a fair interpretation of *Mitchell* is that the application for an extension of time would have been granted if it would have been manifestly unjust or would have produced a miscarriage of justice not to do so.¹⁵ Such a stance is fully in keeping with the approach outlined by Haynes C in *Hing* and later adopted by this Court, namely that the overriding consideration must be the interests of justice, in keeping with the statutory provision.

[26] That approach was explicitly affirmed and applied by this Court in *Narine v Persaud*.¹⁶ That case also involved an application for special leave, though in circumstances where the Court of Appeal of Guyana had refused to grant an extension of time to appeal because the applicant did not discharge the burden of providing 'cogent and compelling' reasons for not appealing within the required time frame. In the absence of any such reasons, Roy JA refused to consider the

¹³ Record of Appeal, 'Notice of Motion' [21].

¹⁴ *Mitchell v Wilson* [2017] CCJ 5 (AJ) (GY) at [6].

¹⁵ *Ibid* at [7], and see also *Sankar v Guyana Rice Development Board* [2019] CCJ 11 (AJ) (GY) at [69].

¹⁶ [2012] CCJ 8 (AJ) (GY).

merits of the proposed appeal. This Court viewed such a stance as a mistake, granting special leave as well as the requested extension so that the matter could return to the lower courts for a determination of the slew of issues identified as arising. Writing for the Court, Nelson J stipulated:

The public interest in the swift administration of justice is of great importance, but the length of and the reasons for the delay should be weighed against the possible merits of any appeal. Therefore, despite the absence of any plausible explanation for the delay in filing an appeal, the Court of Appeal should have proceeded to assess whether, and to what extent, refusal of an extension of time might result in a miscarriage of justice...¹⁷

[27] The thrust of these authorities is essentially a rejection of rigid formalism in favour of some (though not unrestrained) flexibility. Such flexibility is accommodated principally where the proposed appeal discloses some prospects of success. The merits of the proposed appeal bear upon whether the grant of an extension of time for leave to appeal is necessary to avert a clear miscarriage of justice, as well as whether the grant of leave to appeal is justified. That being so, it would require us to view the discretion exercised by the Court of Appeal in the instant case in a more holistic manner to ascertain whether, in spite of the absence of an acceptable reason from the Authority for its six-month delay, the proposed appeal has merit. On that note, we observe as well that the period of this delay is approximately the same as that which was excused in previous cases, so *prima facie* at least, the Court of Appeal was not acting in a novel or outrageous manner by moving on to consider other factors.

[28] We are somewhat constrained in what and how much can be said about the merits of the proposed appeal, given that it is yet to be argued in the Court of Appeal. Nonetheless, it is possible to identify a number of issues which clearly bedevilled both the parties and the courts below, and which therefore require definitive resolution.

¹⁷ *ibid* at [21].

- [29] There is, first of all, the lawfulness of the procedure followed by Harnanan J as regards the Authority's original application for an extension: granted, appealed against, then recalled, followed by arguments from the parties, ending in a second determination resulting in a refusal. Mr Ramkarran submitted that the Judge's recall order was 'innocuous' and a 'red herring', irrelevant to the issue before the Court of Appeal on whether to grant the extension. He added that since it was not raised by the Authority, the Court of Appeal could have no regard to it, and certainly not without some advance notice enabling him to respond on behalf of the Bank. These arguments are misguided on every count.
- [30] The order refusing leave to the Authority spawned not just the series of interlocutory applications and appeals that followed but has also contributed in no small measure to the extensive delay in hearing the substantive case. Quite apart from the fact of its highly prejudicial impact on how the Authority can conduct its case (if it ultimately stands), as the foundational step in this saga it simply cannot be dismissed as irrelevant, much less innocuous.
- [31] Nor did the fact that the Authority may not have raised this issue preclude the Court of Appeal from doing so *ex proprio motu*. It would in fact be irresponsible of any court, if it thinks an arguable and relevant jurisdictional or other consequential legal issue exists, to throw its hands up in the air helplessly and ignore it, just because the parties did not raise it.
- [32] In that regard, the Bank's concern about a lack of notice or opportunity to make submissions is a valid one, though prematurely raised. At this stage, all that has been granted is an extension of time to seek leave to appeal as well as leave to file a Notice of Appeal. Presumably, therefore, when the parties come to argue the merits at the hearing of the appeal, they will be invited to make submissions on the issue of the recall order, at which stage Mr Ramkarran will have his opportunity to respond on behalf of the Bank. At this point, however, it cannot be said that there

has been any procedural impropriety or that there is reason to believe that basic tenets of natural justice will be jettisoned at the hearing of the appeal by the Court of Appeal.

- [33] Mr Ramkarran claimed further that the Authority failed to demonstrate that the Full Court had erred, when all it did was to give effect to the ‘clear and unambiguous’ provisions of the Civil Procedure Rules. Both the Rules themselves and the positions of the courts below belie this assertion. The procedural issue that gave rise to the interlocutory proceedings is governed by a complex web of overlapping rules. These cover a range of matters, including the procedures at case management as well as the powers of the court to extend time and to sanction non-compliance. Not only were the parties divided as to what was applicable and what governed the issues, but so too were three judges of coordinate jurisdiction who dealt with the matter initially and then on appeal in the Full Court. It must be recalled that while the Full Court upheld the trial judge’s revised order to refuse the application, they rejected his reason for doing so and proceeded on an entirely different basis.
- [34] In these circumstances, the Rules governing this issue can hardly be described as ‘unambiguous’ having spawned such disagreement among multiple judges. At a minimum, these divergent approaches require resolution as to the scope and interpretation of what rules are found to be controlling. Indeed, such clarity is needed not just for the parties in this matter but for all litigants generally, which will presumably be evident in the reasons of the Court of Appeal in its determination of the merits.
- [35] Ultimately, it is worth noting that the original ‘sin’, so to speak, was a one-day delay in applying for an extension of time to file witness statements. The Authority explained that its witnesses were away on a training seminar, and the trial judge accepted this explanation as sufficient to excuse their delay. Of course, it may well be that the Civil Procedure Rules are rigid and do not contemplate the possibility of relief in the absence of a formal application in advance. Relatedly, the trial

judge's original order at case management does not form part of this Record, so we do not know if it was framed in peremptory language. All these factual and procedural considerations reinforce the need for clarification, especially in light of the disagreements below. Moreover, given that the original default was only one day, speedily rectified, it is imperative that before formalism prevails the true meaning of the web of procedural rules be examined. For the avoidance of doubt, we make these observations not to pre-empt the decision of the Court of Appeal on the merits, but simply to anticipate that whatever its decision, the accompanying reasons will necessarily include clarification of the contested rules.

- [36] On this note, we note the longstanding insistence of this Court that procedural lapses or similar technicalities should not be determinative where an offending default can be easily cured. Most recently, in considering the grant of special leave in circumstances involving the striking out of a statement of claim, Jamadar J observed as follows:

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.¹⁸

- [37] In our view, therefore, bearing in mind the relevant principles and the history of the matter, the Court of Appeal reached the conclusion which best served the interests of justice when it granted the Authority an extension of time to seek leave to appeal the decision of the Full Court. Further, we consider that the Court of Appeal did not err in finding that the grant of leave to appeal was justified. We are also mindful that the parties are free to argue the procedural issues at the hearing of the substantive appeal, so that whatever is the ultimate decision of the Court of Appeal, appropriate guidance will be provided to litigants.

¹⁸ *Panday v Panday* [2026] CCJ 4 (AJ) GY at [20].

Disposition

[38] In the circumstances, the Applicant has not satisfied the requirement of showing that the Court of Appeal committed an error – far less an egregious one – in exercising its discretion as it did. For these reasons, the application for special leave is refused. Given the delay of the Respondent that required the application for an extension in the first place, we think it fair that each party bear its own costs and so order.

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ C Ononaiwu

Mme Justice Ononaiwu

/s/ A Bulkan

Mr Justice Bulkan