

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. Civ 43 of 2025

BETWEEN:

CARLA MINELLI GENTLE AIKMAN

Claimant

and

ZEIDA YOUNG (personal representative
for the Estate of THOMAS JEFFERSON YOUNG)

First Defendant

MINISTER OF NATURAL RESOURCES

Second Defendant

REGISTRAR OF LANDS

Third Defendant

ATTORNEY GENERAL OF BELIZE

Fourth Defendant

Attorneys

Mr Rene Montero for the Claimant

Mr Richard Bradley for the first defendant

Ms Samantha Matute, Deputy Solicitor General, for the second to fourth defendants

16 April 2026

27 April 2026

JUDGMENT

Practice and Procedure – Application for extension of time to file a defence - CPR 10.3(1) as read with CPR 10.3(9) and CPR 26.1(2)(c) – Whether the CPR imposes a sanction on a defendant for failing to file and serve a defence within the stipulated timeframe - Application for relief from sanctions – CPR 26.7 and 26.8 – Whether an application for an extension of time to file a defence is or similar to an application for relief from sanctions - Whether a defendant who seeks an extension of time to file a defence is required to cite and satisfy the CPR 26.8 criteria for relief from sanctions – Test in relation to applications for extension of time to file a defence

1. **HONDORA J.:** This is my decision on (a) the first defendant's application for relief from sanctions and an extension of time to file a defence and a counterclaim; and (b) the claimant's application for an order striking out the first defendant's proposed counterclaim.
2. In these proceedings, references to the specific provisions of the Senior Courts (Civil Procedure) Rules are abbreviated as 'CPR'.
3. The parties' attention is drawn to the change of name of the first defendant. Ms Zeida Young (as the personal representative of the Estate of Thomas Jefferson Young) has replaced the original first defendant, Mr Thomas Jefferson Young. At the time the proceedings were commenced, the first defendant was listed as Mr Thomas Jefferson Young. However, Mr Young is now deceased. An order was made by consent on 4 February 2026, permitting Ms Young to continue the proceedings as the representative of Mr Thomas Jefferson Young's estate.

Background

4. On 29 January 2025, the claimant, Carla Minellie Gentle Aikman, filed a Fixed Date Claim Form and commenced legal proceedings against the defendants in her capacity as Administratrix of the Estate of Ivan Russel. The claimant seeks several orders against the defendants, as follows, and I paraphrase:
 - (a) A declaration that the Estate of Ivan Russel is the proprietor of land in Caye Caulker measuring 583.76 square metres, known as Parcel 737, Block 12, Caye Caulker Registration Section (the property).
 - (b) An order requiring the Registrar of Lands, in relation to the property, to rectify the register by deleting the name Thomas Jefferson Young (the first defendant) and replacing it with the claimant's name as Administratrix of the Estate of Ivan Russel.
 - (c) An order mandating the first defendant to deliver to the claimant vacant possession of the property;
 - (d) An injunction prohibiting the first defendant and his agents from entering the property.
 - (e) Damages for trespass.
 - (f) Alternatively, damages against the third defendant.
5. Good service of the claimant's legal process was effected on the second to the fourth defendants. In response, the Commissioner of Lands, Mr Talbert Brackett, filed an affidavit in defence on 19 March 2026. The second to the fourth defendants pleaded that the claimant is mistaken about the boundaries of Parcel 737 and that the claimant has no valid cause of action against them for fraud or mistake. In effect, the second to the fourth defendants' plea in defence appears to be that the claimant is not the owner of Parcel 737; rather, the property was owned by the government, which legitimately sold it to Mr Thomas Jefferson Young (Mr Young).
6. On 24 March 2025, the claimant applied for substituted service and filed an affidavit in support, in which Police Constable Reynaldo Bol stated that he was familiar with Mr Young and that on 19 February 2025 at 4 PM he

attempted to serve him at his home at “Caye Caulker Village, Belize District, Belize” but “the First Defendant was not at home.” PC Bol further averred that on 20 February 2025 he again attempted to serve Mr Young, “but no one was home.” On the same day, he visited Mr Young’s place of business and was informed by the manager that Mr Young was not there. PC Bol asserted that, in his view, service should be effected by publication in a widely circulated newspaper.

7. The claimant’s application for substituted service was upheld on 1 April 2025. The court ordered that the claimant’s originating process be served on Mr Young by “two consecutive publications in a newspaper with general circulation in Belize.” Mr Young was given 14 days from the date of the first publication to acknowledge service and 28 days from the date of the second and last publication to file a defence.
8. The claimant’s attorneys filed an affidavit of service, to which they appended adverts published in the Amandala newspaper on 18 and 25 April 2025.

First defendant’s application for relief from sanctions and an extension of time to file a counterclaim

9. On 10 October 2025, the first defendant, through his daughter, his next friend, Zeida Young (Ms Young), applied for relief from sanctions and for an extension of time to file a defence and a counterclaim.
10. On 11 November 2025, Ms Zeida Young (Mr Young’s daughter) filed an application for leave to be appointed as next friend, on the basis that her father, Mr Young, had been admitted to Karl Huesner Memorial Hospital (KMH) and was seriously unwell. In her first affidavit, Ms Young attached a letter from KMH, signed by Dr Pedro Arriaga. The letter stated that, at the material time, Mr Young had been in KMH’s Intensive Care Unit since 27 September 2025 and had been transferred from a private hospital in critical condition. KMH is a public hospital. Among other matters, the letter stated that:

“Mr Young is bed-ridden, do not follow command, the patient opens eyes and blinks only, and is suffering with left side hemiparesis, the patient is not able to swallow and is fed using a feeding tube.

Mr Young needs continued hospital care, after discussion with Neurologist we believe that the patient neurological deficits will be long term and with minimal improvement.”

11. In her second affidavit, Mr Young attached a letter dated 3 November 2025 from the KMH, which stated that

“Due to [a] Cerebrovascular accident, the patient presents chronic neurological sequelae resulting from significant cognitive impairment which impedes the patient from making informed decisions, hence lacks decision making capacity.”
12. On 17 November 2025, the claimant, through her attorney, wrote to the court stating that she had no objection to the first defendant’s 11 November 2025 application for Ms Young to be appointed as Next Friend of Thomas Jefferson Young. At a Case Management Conference held the same day, the court, by consent, ordered the appointment of Ms Zeida Young as Next Friend for Mr Thomas Jefferson Young. Several orders were also made to enable the hearing of the application for relief from sanctions and for an extension of time to file a defence and

a counterclaim.

13. Tragically, on 1 January 2026, Mr Thomas Jefferson Young passed away. On 29 January 2026, Ms Young applied for a stay of the proceedings pending the grant of representation, or, alternatively, for an order appointing Ms Young to represent Mr Thomas Jefferson Young's estate.
14. On 4 February 2026, the claimant, through her attorneys, filed a notice consenting to the orders sought by Ms Young, including the order appointing Ms Young as a personal representative of the Estate of Mr Thomas Jefferson Young for the purposes of these litigation proceedings, namely Claim No. 43 of 2025.
15. At a Case Management Conference on 16 April 2026, the parties agreed that their respective applications be dealt with on the papers. I set out my decision below on the following issues: (i) whether the first defendant should be granted relief from sanctions; (ii) whether the first defendant should be granted an extension of time to file her defence; and (iii) whether the first defendant's counterclaim should be struck out.

Whether the first defendant should be granted relief from sanctions

16. Several factors must be considered when assessing whether the first defendant's application for relief from sanctions should be upheld, including:
 - (a) Within what timeframe do the Rules require a defendant to file their defence to the claimant's claim?
 - (b) Do the Rules impose a sanction on a defendant for failing to file a defence within the timeframe set out in the CPR? If so, what sanction? If not, should a sanction be implied?
 - (c) Depending on the answer to (b) above, if the Rules do not impose a sanction on a defendant for failing to file a defence within the timeframe set out in the CPR, is the defendant required to file an application for relief from sanctions, in addition to filing a related application for an extension of time to file a defence?
17. I find it helpful to begin my analysis by citing the relevant Rules and by outlining the applicable legal principles.

The Rules

18. CPR 1.1 (1) provides that the "overriding objective of these Rules is to enable the court to deal with cases justly." As to what dealing with cases justly means, CPR 1.1(2) provides that this includes, among other things, dealing with cases expeditiously and proportionately, taking into account the amount of money involved, the importance of the case, the complexity of the issues, the parties' respective financial positions and the court's resources. CPR 1.2 also provides that the court must seek to give effect to the overriding objective when it (a) exercises any discretion given to it by the Rules or (b) interprets any Rule.
19. Relatedly, CPR 26.4(1) provides that where a party has failed to comply with any of the Rules for which no sanction for non-compliance has been imposed, any other party may apply to the court for an "Unless Order". Although

trite, it is worth noting that an Unless Order is a court order that imposes a conditional sanction for non-compliance with a specified act by a specified date or within a particular period.

20. Crucially, CPR 26.9(2) provides that a failure to comply with a Rule does not invalidate the step taken in the proceedings unless the court orders otherwise. Relatedly, CPR 26.9(3) provides that, where there has been a failure to comply with a Rule, the court may order that matters be put right.
21. As relates to these proceedings, CPR 26.7(2) provides that where a party has failed to comply with any of the Rules, any sanction for non-compliance imposed by the relevant Rule takes effect unless the party in default applies for and obtains relief from the sanction. In addition, CPR 26.9 does not apply, i.e., the rule providing (a) that an error of procedure or a failure to comply with a Rule, practice direction or court order does not invalidate a step taken in the proceedings; and (b) that where there has been an error of procedure or a failure to comply with a Rule, practice direction, court order or direction, the court may make an order to put matters right.

Timeframes to file a defence

22. The Rules governing the filing of a defence in any matter commenced by way of a claim form or a fixed date claim form are set out in Part 10 of the CPR. CPR 10.3(1) provides that the general rule is that the period for filing a defence is 28 days from the date of service of the claim form or fixed date claim form.
23. CPR 10.3(4) to (6) also provides that parties to litigation may agree to extend the period for filing a defence, that they may not make more than two agreements for an extension of that period, and that the maximum total extension of time that may be agreed is 56 days.

Sanction for failure to file a defence within the stipulated timeframes

24. Does Part 10 of the CPR impose a sanction on a defendant who fails to file their defence within the stipulated or agreed time limit? CPR 10.3(8) provides:

“Where the time limited for filing a defence either by the rules or by agreement has expired, a defendant may apply for an order extending time to file a defence.” [Emphasis added]

25. While CPR 10.3(9) provides that:

“Where the time limited for filing a defence either by the rules or by agreement has expired, a defendant must apply for an order extending time to file a defence.” Emphasis added]

26. As relevant to these proceedings, the key provision is CPR 10.3(9), which is couched in peremptory terms. To obtain an extension of time to file a defence out of time, a defendant must apply for an order extending the time to file a defence. This raises the question: Is the peremptory requirement that a defendant seek an extension of time a sanction or merely a peremptory procedural step? Starting with the latter proposition, the language used indicates that CPR 10.3(9) provides for a mandatory procedural step and nothing more.

27. If characterised as a mandatory procedural step, does that mean a defendant may not file a defence after the time stipulated in the Rules or as agreed between the parties has passed? I hold that if it were the draftsman's intention to prohibit a defendant from filing their defence after the time stipulated in the Rules or as agreed between the parties has passed, CPR 10.3(8) would have been drafted differently to set out the prohibition in clear and certain terms.
28. Is the mandatory procedural step a sanction? In my view, it is not. If the legislature had intended to provide for a sanction in the Rules governing a defendant's failure to file their defence within the time stipulated in the Rules or as agreed between the parties pursuant to CPR 10.3(4) to (6), that intention would have been clearly spelt out. The inescapable conclusion, in my respectful view, is that Part 10 of the CPR does not impose a sanction on a defendant for failing to file a defence within the time stipulated in the Rules or as agreed between the parties pursuant to CPR 10.3(4) to (6). In addition, none of the provisions of Part 10 of the CPR provide that a defendant may not, as a practical matter, file a defence out of time.
29. If CPR 10.3(9) is not a sanction-imposing provision, what purpose does it serve, and how should it be interpreted and applied in practice? In my view, the provision enables a defendant who has filed, or intends to file, their defence out of time to apply to the court, giving reasons, for an extension of time. It also enables the court to impose a sanction where, after a defendant has applied for an extension of time to file their defence, the court is of the view that the justice of the matter requires the application to be dismissed. To that extent, CPR 10.3(9) is an enabling provision, i.e., it provides for a procedural step that allows the court to consider the defendant's application for an extension of time to file their defence and, if the application is dismissed, that dismissal becomes the sanction imposed on an errant defendant.
30. For completeness, I should add that if a defendant does not file a defence within the timeframe stipulated in the Rules, or as agreed between the parties pursuant to CPR 10.3(4) to (6), a claimant is entitled, depending on the nature of the claim, to seek default judgment, or, if a fixed date claim, to apply for an order permitting the first hearing to be held as the trial of the matter, or to have the matter dealt with summarily (see CPR 27.2).
31. In my view, the words in CPR 10.3(8), read in context and in their ordinary grammatical sense, do not prevent a defendant from filing a defence out of time. However, that does not mean a defendant is free to ignore the timelines set out in the Rules for filing a defence. Nor does it follow that there are no consequences for failing to file a defence within the time stipulated in the Rules. That much is trite.

Implied sanction?

32. Should CPR 10.3(9) be read as providing for an implied sanction against a defendant who fails to file a defence within the stipulated or agreed timeframes?

33. In addressing this question, it is convenient to start with the Privy Council's decision in **Attorney General of Trinidad and Tobago v Matthews** [2011] UKPC 38, which addressed the prevailing jurisprudence in Trinidad and Tobago regarding provisions of their CPR similar to Part 10 of our Rules. Those provisions provided that no defence could be filed after the time for filing a defence had expired and that an application for relief from sanctions was required in such circumstances. See the decisions in **Khanhai v Cyrus** (Civ App 158 of 2009) and **Attorney General of Trinidad and Tobago v Regis** (Civ App No 79 of 2011) (unreported), 13 June 2011), which the Privy Council deemed were made per incuriam.

34. At para. 10 of **Matthews**, the Privy Council stated:

The majority of the Court of Appeal in the present case applied the reasoning of its earlier decisions of **Trincan Oil Ltd v Schnake** (Civ App No 91 of 2009) and **Khanhai v Cyrus** (Civ App 158 of 2009). In **Trincan**, P Jamadar JA explained the correct interpretation and application of rule 26.7 where the time specified by the rules for taking some procedural step has passed and no prior application for an extension of time has been made. He said that the consequence of the non-compliance with the rule was the imposition of an "implied sanction": in **Trincan**, the implied sanction was that, since the time specified by the rules for filing an appeal had passed, no appeal could be pursued. In **Khanhai**, the defendant failed to file a defence within the period specified by the rules for doing so and no application had been made for an extension of time before the expiry of that period. The Court of Appeal held at para 20 of **Khanhai** that the sanction imposed by the CPR for non-compliance with the rules was that, without the permission of the court, no defence could be served after the time for filing a defence had elapsed. It followed that rule 26.6(2) required an application for relief from sanctions pursuant to rule 26.7.

35. At para. 13, the Privy Council described the concept of implied sanction, as argued by the claimant, as follows:

"In any case where (a) a party needs or wishes to take procedural steps, (b) a mandatory time limit is prescribed by the rules for the taking of this step, (c) the time limit has expired without the party making an application for an extension of time for the taking of the step, then (d) unless a rule expressly otherwise states, the party is disabled from taking the relevant step, (e) being placed under that disability is an adverse consequence for that party which flows from that failure to observe the rule which prescribes the time limit, and (f) the adverse consequence is a sanction within the meaning of rule 26.7. As regards (d), rule 9.3(3) is an example of a rule which expressly otherwise states. Rule 9.3(1) provides for a general rule that the period for entering an appearance is 8 days after the date of service of the claim form. But rule 9.3(3) provides that a defendant may enter an appearance "at any time before a default judgment is entered."

36. The Privy Council noted that central to the claimant's argument was the proposition that a defendant cannot file and serve a defence after the time for doing so had expired (see para. 13). Furthermore, the Privy Council noted:

"Rule 10 does not say so in terms, but it is submitted that it is to be interpreted as if it had done so. If the position were otherwise, the defendant would have an unlimited right to file a defence at any time before judgment is entered. If that were the case, what purpose would be served by having rules which impose a time limit for the filing of a defence? Furthermore, it is significant that there is no provision corresponding with rule 9.3(3) in relation to the filing of a defence. Thus an application to file a defence out of time where the agreement of the claimant has not been obtained is not merely an application under rule 10.5. It is in reality an application for relief from the automatic sanction imposed by the rules. In short, it is submitted on behalf of the claimant that rule 26.6 and 26.7 are designed to ensure compliance with all the time limits provided by the rules of court, court orders and practice directions." [Emphasis added]

37. In **Matthews**, the Privy Council rejected and set aside the Trinidad and Tobago Court of Appeal's decision and

the above-referenced propositions of law on the following grounds, which I share in relation to similar provisions in our CPR. First, the Privy Council held (see para. 14) that a defence can be filed without the court's permission after the filing deadline has passed. It also held that if the claimant takes no action despite the defendant's failure to file a defence within the timeframe stipulated in the Rules, or waives late service, the defence stands and no question of sanction arises. Relatedly, if judgment has not been entered when the defendant applies for an extension of time to file their defence, no sanction can be regarded as having been imposed on them. The reasoning underpinning this approach to the interpretation and application of the Rules, which I adopt, is entirely consonant with our CPR 26.9(2), which provides that a failure to comply with a Rule does not invalidate the step taken in the proceedings unless the court so orders.

38. In addition, the Privy Council referred to Trinidad and Tobago's Rules 26.6 and 26.7, which are broadly similar to our CPR 26.8(1) and CPR 26.7(2), respectively, and added that:

"...rules 26.6 and 26.7 must be read together. Rule 26.7 provides for applications for relief from any sanction *imposed* for a failure to comply inter alia with any rule. Rule 26.6(2) provides that where a party has failed inter alia to comply with any rule, "any sanction for non-compliance *imposed* by the rule....has effect unless the party in default applied for and obtains relief from the sanction"(emphasis added). In the view of the Board, this is aiming at rules which themselves impose or specify the consequences of a failure to comply. Examples of such rules are to be found in rule 29.13(1) (which provides that if a witness statement or witness summary is not served within the time specified by the court, then the witness may not be called unless the court permits); rule 28.13(1) (consequence of failure to disclose documents under an order for disclosure); and rule 33.12(1) (consequence of failure to comply with a direction to disclose an expert's report). [Emphasis added]

39. I am of the view that there is no need to read an implied sanction into our CPR for failing to file a defence within the stipulated timeframe.

40. In para. 16 of **Matthews**, the Privy Council expressed the following view on the description of a sanction, which I again share in relation to the issues arising in these proceedings:

"It is striking that there is no similar provision in relation to a failure to file a defence within the time prescribed by the rules. There is no rule which states that, if the defendant fails to file a defence within the period specified by the CPR, no defence may be filed unless the court permits. The rules do, however, make provision for what the parties may do if the defendant fails to file a defence with the prescribed period: rule 10.3(5) provides that the defendant may apply for an extension of time; and rule 12.4 provides that, if the period for filing a defence has expired and a defence has not been served, the court must enter judgment if requested to do so by the claimant. It is straining language to say that a sanction is imposed by the rules in such circumstances. At most, it can be said that, if the defendant fails to file a defence within the prescribed period and does not apply for an extension of time, he is at risk of a request by the claimant that judgment in default should be entered in his favour. That is not a sanction imposed by the rules. Sanctions imposed by the rules are consequences which the rules themselves explicitly specify and impose." [Emphasis added]

41. As in **Ascendancy Belize v Gongora**, Claim No. 65 of 2023 (per Nabie J, at para. 33), I hold that the CPR does not impose a sanction on a defendant for failing to file a defence within the stipulated timeframe. Where a defendant fails to file a defence within the stipulated or agreed timeframe, the Rules neither impose a sanction on

the defendant nor require the defendant to apply for relief from sanctions.

42. In arriving at this decision, I am conscious that it conflicts with propositions set out in at least two earlier High Court decisions. The relevant decisions, which I address below, are based on, or can only be characterised as being based on, the principle of implied sanctions, which, in my view, find no support in the CPR. I am, of course, bound to follow a decision of a judge of coordinate jurisdiction if it is on point and, in my considered view, not clearly wrong (see **Smith v Berryman's Lace Mawer Service Company** [2019] EWHC 1904 (QB), at para. 15; **Coral Reef v Silverbound Enterprises** [2016] EWHC 3844 (Ch), at para. 23; **Pearce v Parole Board** [2020] EWHC 3437 (Admin), at para. 28; **R v Manchester Coroner ex p Tal** [1985] 1 QB 67, at 81). In addition, in accordance with the longstanding tradition of the common law system, I must, providing reasons (as I must remind myself), address all relevant authorities of which I am aware whose expositions on relevant principles of law I am unable to follow. For the reasons set out above and amplified below, I prefer and should, under the stare decisis principle, generally consider applying the jurisprudence of the most recent High Court decision in **Ascendancy Belize v Gongora**.
43. In this regard, I propose to address certain propositions of law set out in (a) **Fuller v Fort Street Tourism Village**, Claim No. 661 of 2012; and (b) **Palacio v Football Federation of Belize**, Claim No. 54 of 2017, both of which were brought to my attention by the parties.

Fuller v Fort Street Tourism Village

44. In **Fuller**, the claimant was ordered, pursuant to case management orders dated 29 October 2012, to file witness statements by 6 December 2013. The claimant's attorneys filed affidavits, in addition to witness statements, only on 9 December 2013. Thereafter, on 14 January 2014, after a change of attorneys, the claimant applied for relief from sanctions. The claimant based the application on Rule 26.8 of the then Supreme Court (Civil Procedure) Rules, 2025, which were not amended in the 2025 CPR.
45. CPR 26.8(1) provides:
- (1) An application for relief from any sanction imposed for a failure to comply with any rule, order or direction must be –
 - (a) made promptly; and
 - (b) supported by evidence on affidavit.
 - (2) The court may grant relief only if it is satisfied that –
 - (a) the failure to comply was not intentional;
 - (b) there is a good explanation for the failure; and
 - (c) the party in default has generally complied with all other relevant rules, practice directions, orders and directions.
 - (3) In considering whether to grant relief, the court must have regard to –
 - (a) the effect which the granting of relief or not would have on each party;
 - (b) the interests of the administration of justice;

- (c) whether the failure to comply has been or can be remedied within a reasonable time;
- (d) whether the failure to comply was due to the party or the party's legal practitioner; and
- (e) whether the trial date or any likely trial date can still be met if relief is granted.

46. In para. 2 of the decision, the court stated:

“At [a] case management conference held on October 29, 2013, orders were made for specific and standard disclosure to be made on or before November 22, 2013 and for witness statements to be filed and exchanged on or before December 6, 2013. The pith and substance of the application resides in the fact that there (*sic*) were filed on behalf of the Claimant on December 9, 2013, two affidavits sworn to by the Claimant himself and by an intended witness, Vallan Leonard Hendy, instead of witness statements as mandated by the case management order. It follows that the said Case Management Order was not complied with in two respects, namely, as to the time within which the documents were to be filed and as to the nature and format of the documents actually filed.” [Emphasis added]

47. In para. 5 of the decision, the court held that “Plainly the Claimant was seeking to address the requirements of an application for relief from sanctions.” Notably, however, the judgment does not state that the issued case management orders imposed a sanction for any failure to comply. The Court dismissed the application for relief from sanctions and for an extension of time to file witness statements.

48. In these proceedings, the **Fuller** case appears to have been cited as authority for the general proposition that a failure to comply with a court order or the Rules automatically attracts a sanction, and that an application for relief from sanctions is required to progress the matter.

49. It may be that the case management orders issued on 29 October 2013 contained a sanction. However, the judgment as articulated does not support this conclusion. If I am correct that the 29 October 2013 case management orders did not contain a sanction, it would follow that the decision was based on the principle that a failure to comply with a case management order or a Rule attracts an implied sanction, and that an application for relief from the implied sanction is required. The decision did not address the concept of implied sanctions for failure to comply with a case management order for which no sanction was stipulated. Consequently, no relevant persuasive ratio and jurisprudence emerge from the case on the concept of an implied sanction for failure to comply with a case management order (or a Rule) for which no sanction is stipulated.

50. I hold that if **Fuller** was intended to develop and apply the concept of implied sanctions in Belizean law, this would have been articulated in the judgment and the basis for it set out. In addition, if that were the case, it stands to reason that, when the Senior Courts (Civil Procedure) Rules 2025 were promulgated, relevant changes would have been made to clarify and codify the Rule.

51. I also hold, obiter, that if a failure to comply with any order of the court attracted an automatic implied sanction, there would be no need for CPR 26.7(1), which provides that:

“Where the court makes an order or gives directions, the court must whenever practicable also specify the consequences of failure to comply.”

52. Inherent in CPR 26.7(1) is the tacit acknowledgement that not every breach of a court order or direction attracts adverse sanctions for the defaulting party. This is not to say that wilful disregard of case management orders and directions has no consequences. There invariably are, including adverse costs orders. However, whether sanctions are imposed for a breach of a court order, direction, or a Rule, and, if so, which sanctions, turn on the facts of the matter, the relevant Rule, and the parties' respective positions in relation to the alleged breach and the case overall. It is not unusual for parties to litigation to waive objections to breaches of case management orders and directions in light of the overriding objective.
53. In my view, the words used in the CPR must be given their ordinary grammatical meaning and interpreted in context to promote the overriding objective of dealing with cases justly. Imposing an implied sanction for alleged breaches of some, but not all, provisions of the CPR, where none are stipulated, stretches the language of the procedural code and lacks a principled basis, i.e., a basis grounded in a clear set of principles.
54. I would also add that implying sanctions for alleged breaches of some, but not all, Rules in the CPR that require a litigant to act within a specified timeframe, in the absence of a test or set of principles to determine when an implied sanction applies, would drive a coach and horses through the procedural code, i.e., the CPR. It would create unnecessary uncertainty about outcomes arising from breaches, including minor breaches of the Rules, complicate the interpretation and application of the Rules, and increase the frequency of applications for relief from sanctions. That, in my view, undermines the overriding objective of dealing with cases justly, expeditiously, and at proportionate cost to the parties and the court's limited resources. The CPR is intended to be, and should be interpreted to result in, an easy-to-apply procedural code that any litigant, including litigants-in-person, can utilise with relative ease.

Palacio v Football Federation of Belize

55. In ***Palacio***, the claimant failed to file a reply to the defendant's defence and counterclaim within the time limits set out in the CPR. At a case management conference on 15 November 2017, the claimant orally sought an extension of time to file a defence to the counterclaim. Two days before 15 November 2017, the defendant had applied for default judgment on its counterclaim. The court referred to CPR 18.12 (now repromulgated with minor changes as Rule 18.9(1) in the 2025 Senior Courts (Civil Procedure) Rules), which provided:
- (1) This rule applies if the party against whom an ancillary claim is made fails to file a defence in respect of the ancillary claim within the permitted time.
 - (2) The party against whom the ancillary claim is made
 - (a) is deemed to admit the ancillary claim, and is bound by any judgment or decision in the main proceedings in so far as it is relevant to any matter arising in the ancillary claim; and
 - (b) Subject to paragraph (5), if judgment under Part 12 is given against the ancillary claimant, he or she may apply to enter judgment in respect of the ancillary claim.
 - (3) However paragraph (2) does not apply in ancillary proceedings against the Crown unless the court gives permission, subject to Rule 18.7;

- (4) An application for the court's permission under paragraph (3) may be made without notice unless the court directs otherwise;
- (5) The ancillary claimant may not enter judgment under paragraph (2)(b) without the court's permission if the ancillary claimant wishes to obtain judgment for any remedy other than a contribution or an indemnity for a sum not exceeding that for which judgment has been entered against the ancillary claimant.
- (6) The court may at any time set aside or vary a judgment entered under paragraph (2) if it is satisfied that the ancillary defendant
 - (a) applied to set aside or vary the judgment as soon as reasonably practicable after finding out that judgment had been entered;
 - (b) gives a good explanation for the failure to file a defence; and
 - (c) has a real prospect of successfully defending the ancillary claim. [Emphasis added]

56. In para. 14, the court held:

"The Claimant's application for extension of time to file a defence to the counterclaim is accepted as having been filed pursuant to Rule 26.1(2)(c) — the Court's general power on case management to extend time. In the Court's view, it must first be recognised that Rule 18.12(2)(a) imposes a sanction for a failure to comply with a rule of the CPR — namely — Rule 18.9 which prescribes the period of 28 days within which to file a defence to a counterclaim. Rule 18.12(2)(a) then imposes a sanction for non-compliance with the time period for filing a defence to the counterclaim — that the party is deemed to admit the counterclaim. From this perspective, the operative rule in respect of any action the claimant is permitted to take, becomes Rule 26.7(2) which states as follows (emphasis mine):-

"Where a party has failed to comply with any of these Rules, a direction or any order, *any sanction for non-compliance imposed by the Rule, direction or the order has effect unless the party in default applies for and obtains relief from the sanction, and Rule 26.9 shall not apply* 12."

An application for relief from sanctions is of course made pursuant to CPR Rule 26.8 which will be considered shortly.

57. I share the view that CPR 18.12(1) and (2) imposed a sanction on a counter-defendant who failed to file a defence within 28 days of service of the counterclaimant's statement of case. The sanction was that the counter-defendant was deemed to have admitted the ancillary claim and was bound by any judgment or decision in the main proceedings to the extent that it was relevant to any matter arising in the ancillary claim. However, for the same reasons I have expressed above in relation to the **Fuller** case, I do not share the view that the 28-day period (now set out in CPR 18.9(1) for filing a counter-defence) is, in itself and for no other reason, a sanction.

Summary

58. I hold that:

- (a) Part 10 of the CPR does not impose sanctions on a defendant for failing to file their defence within the time stipulated in the Rules. As yet, there is no binding principle of law in our jurisprudence that provides for an implied sanction against a defendant who fails to file their defence within the stipulated timeframe. Relatedly, it is questionable whether such a principle of law is advisable or practicable.
- (b) In contrast to Part 10 of the CPR, CPR 18.9(1) and (2)(a) impose a sanction on a counter-defendant who

fails to file their defence to a counterclaim within 28 days of service of the counterclaimant's statement of claim. The sanction is that the counter-defendant is deemed to have admitted the counterclaim if there is a material connection between the claim and the counterclaim. This is a specific example of a Rule whose breach carries an express, delineated sanction, for which an application for relief from sanction is required to avoid it.

- (c) As set out in CPR 26.7(2), applications for relief from sanctions arise where there has been non-compliance with a Rule that imposes a sanction, or with a court order or direction imposing a sanction. In relation to the latter, such orders are typically, though not always, described as 'Unless Orders'.
- (d) In these proceedings, the defendant failed to file her defence within 28 days of service of the claimant's statement of claim. The Rules do not impose any sanction for the defendant's failure to file her defence within 28 days of service of the claimant's statement of claim. Consequently, the defendant is not required to file an application for relief from (non-existent) sanctions in addition to her application for an extension of time to file her defence. The latter was the only application the defendant was required to file for the court's consideration in advancing her intention to prosecute her defence in respect of the claimant's claim.

Whether the court should grant the defendant an extension of time to file her defence.

59. As noted above, CPR 10.3(9) provides that:

"Where the time limited for filing a defence either by the rules or by agreement has expired, a defendant must apply for an order extending time to file a defence." [Emphasis added]

60. In addition, CPR 26.2(c) provides that the court may:

"...extend or shorten the time for compliance with any Rule, practice direction, order or direction of the court even if the application for an extension or shortening of the time is made after the time for compliance has passed or before it has commenced."

61. It is clear that the power to extend the time to file a defence is discretionary and, as required by CPR 1.2(a), must be exercised to give effect to the overriding objective.
62. The CPR does not set out the principles or test to be applied when determining whether to extend or shorten the time for compliance with any Rule. In this regard, I note that, apart from comparative jurisprudence, the parties did not cite any binding authority that sets out the factors a defendant seeking to extend the time to file their defence must satisfy. I also note that, drawing on comparative jurisprudence, the parties contend that a party seeking an order extending the time to file a defence must satisfy the principles relating to applications for relief from sanctions set out in CPR 26.8.
63. CPR 26.8 provides:

- (a) An application for relief from any sanction imposed for a failure to comply with any Rule, order or direction must be—
 - (a) made promptly; and

(b) supported by evidence on affidavit.

(b) The court may grant relief only if it is satisfied that–

- (a) the failure to comply was not intentional;
- (b) there is a good explanation for the failure; and
- (c) the party in default has generally complied with all other relevant rules, practice directions, orders and directions.

(c) In considering whether to grant relief, the court must have regard to–

- (a) the interests of the administration of justice;
- (b) whether the failure to comply was due to the party or his or her legal practitioner;
- (c) whether the failure to comply has been or can be remedied within a reasonable time;
- (d) whether the trial date or any likely trial date can still be met if relief is granted; and (e) the effect which the granting of relief or not would have on each party.

64. As stated above, I do not share the view that an application for an extension of time to file a defence under CPR 26.2(c) must be made pursuant to, or expressly rely on, CPR 26.8, which provides for an application for relief from a sanction imposed for a failure to comply with any Rule or an order or direction issued by a court. As noted above, the CPR does not impose a sanction on a defendant for failing to file a defence within the timeframes stipulated in the Rules. In my view, it is inaccurate to describe an application for an extension of time to file a defence as an application pursuant to CPR 26.8 for relief from sanctions. CPR 26.8 must be read together with CPR 26.7, which provides (as set out above) that where:

“a party has failed to comply with any of these Rules, a direction or any order, any sanction for non-compliance imposed by the Rule, direction or order has effect unless the party in default applies for and obtains relief from the sanction.”

65. In other words, an application for relief from sanctions pursuant to CPR 26.8 applies only in relation to a Rule or a court order or direction in respect of which a specific sanction has been stipulated. A breach of a Rule or a court order or direction in respect of which no specific sanction is stipulated does not require the defaulting party to apply pursuant to CPR 26.8 for relief from sanctions.

66. I recognise the appeal of using the factors set out in CPR 26.8 to determine whether to extend the time within which a defendant may file their defence. However, the use or reference to the CPR 26.8 factors does not mean that an application for an order extending that time is the same as, or inherently is, a CPR 26.8 application for relief from sanctions. Holding as such conflates two distinct processes: on the one hand, an application for an extension of time to file a defence; and on the other, an application for relief from sanctions. This case, if an example were needed, demonstrates the challenge that results in unnecessary applications for relief from sanctions.

67. In my respectful view, it is better to consider the factors set out in CPR 26.8 as broadly the same as those that apply in relation to an application for an extension of time to file a defence.

68. It ought to be recognised, as provided by CPR 26.1(c), that the court may grant an application to “extend or shorten the time for compliance with any Rule, practice direction, order or direction of the court even if the application for

an extension or shortening of the time is made after the time for compliance has passed or before it has commenced". In other words, a defendant is entitled to seek an extension of time before the time to file his defence has elapsed (CPR 10.3(8)). In such a situation, it cannot plausibly be argued that the defendant is seeking relief from sanctions, since at the time the application is made, the defendant would not have been in breach of any Rule on timeframes.

69. Given that a defendant is at liberty to seek an extension of time to file their defence both before and after the deadline for filing a defence has passed, it follows that some, but not all, of the very useful factors set out in CPR 28.6 may be applicable. In other words, the factors set out in CPR 26.8 do not constitute a mandatory and exhaustive set of factors that a defendant seeking to extend time to file their defence must satisfy in every case.
70. In exercising its discretion to determine whether to grant an application for an extension of time to file a defence, the court must, in light of the overriding objective of the just resolution of the parties' dispute, be guided by all the circumstances of the case. In my view, the court must consider whether the applicant should be granted an extension of time to file their defence, having regard to (i) the reasons proffered by the applicant in support of the application and any explanation for the anticipated or actual default in complying with the stipulated timelines for filing a defence; (ii) the applicant's conduct upon learning of the intended or commenced legal proceedings; (iii) the apparent merits of the applicant's proposed defence; (iv) any potential prejudice to the parties arising from a decision either granting or refusing the application for an extension of time to file a defence; and (v) the overriding objective of dealing with cases justly, at proportionate cost to the parties and in the interests of the good administration of justice.
71. In this regard, I note the opinion expressed by Rajnauth-Lee JA in ***Dr Rowley v Anand Ramlogan***, Civ. App. No. P215 of 2014, at paras. 13 and 16, that:
13. ...the trial judge's approach in applications to extend time should not be restrictive. In such applications, there are several factors which the trial judge should take into account, that is to say, the Rule 26.7 factors (without the mandatory threshold requirements), the overriding objective and the question of prejudice. These factors, however, are not to be regarded as "hurdles to be cleared" in the determination of an application to extend time. They are factors to be borne in mind by the trial judge in determining whether he should grant or refuse an application for extension of time. The trial judge has to balance the various factors and will attach such weight to each having regard to the circumstances of the case. Of course, not all the factors will be relevant to every case and the list of factors is not exhaustive. All the circumstances must be considered. In addition, I wish to observe that this approach should not be considered as unnecessarily burdening the trial judge. In my view, when one examines the principles contained in the overriding objective, it is not difficult to appreciate the relevance of the rule 26.7 factors.
14. ...
15. ...
16. In addition, inherent in the overriding objective to enable the court to deal with matters justly are considerations of prejudice. It is for the judge to consider on which party lies the greater risk of prejudice if the application is granted or refused. The court will take account of the various disadvantages to the parties should the application be granted or refused."

72. Respectfully, however, defendants seeking an extension of time to file their defence should not be required to cite and satisfy all the provisions of CPR 26.8. Jurisprudence that requires this approach adds to the current uncertainty and dissonance over whether an application for an extension of time to file a defence is, in practice, an application for relief from sanctions. Legal practitioners, as well as litigants-in-person, are better served by jurisprudence that distinguishes between applications that properly relate to and seek relief from sanctions under CPR 26.7 and 26.8, and those seeking extensions of time to file defences under CPR 10.3(9) read with CPR 26.1(2)(c).
73. Notably, in ***Commissioner of Customs v Eastwood Care Homes (Ilkston) Ltd*** [2001] EWHC Ch 45, at para. 8, Lightman J advanced a persuasive proposition regarding the court's power to extend time to serve its Notice of Appeal following the adoption of the new English CPR:
- “ It seems to me that it is no longer sufficient to apply some rigid formula in deciding whether an extension is to be granted. The position today is that each application must be viewed by reference to the criterion of justice and in applying that criterion there are a number of other factors (some specified in the rules and some not) which must be taken into account. In particular, regard must be given, firstly, to the length of the delay; secondly, the explanation for the delay; thirdly, the prejudice occasioned by the delay to the other party; fourthly, the merits of the appeal; fifthly, the effect of the delay on public administration; sixthly, the importance of compliance with time limits, bearing in mind that they are there to be observed; seventhly, (in particular when prejudice is alleged) the resources of the parties.”
74. I would also add Lightman J's caution, at para. 9, that:
- “the existence of this broad approach, which decides the case by reference to justice, is not to be treated as a passport to the parties to ignore time limits because, as I say, one of the important features in deciding what justice requires is to bear in mind that time limits are there to be observed and that justice may be seriously defeated if there is any laxity in that regard.”
75. For completeness, I should, of course, acknowledge that the prevailing approach in England since 2014 is set out in ***Denton v White*** [2014] EWCA Civ 906, which provides a simpler three-part test for applications for relief from sanctions.
76. I should also add that parties to litigation should cooperate. A defendant who believes they are unlikely to meet the timelines for filing their defence, or who has already breached them, should, as a general rule and as a matter of best practice, first write to the opposite party to inform them of this. In addition, they should provide reasons and request agreement to their proposed application for an extension of time to file their defence, along with the timeframe within which they intend to file it. This approach avoids unnecessary, drawn-out, and contested applications on arid interlocutory procedural matters that do little to promote the just and expeditious resolution of disputes on their merits at proportionate cost to the parties and the court's limited resources.
77. In determining the defendant's application for an extension of time to file her defence out of time, I propose to apply the principles set out in **para. 70 above**, which, as I have explained, are broadly similar, though not identical, to those in CPR 26.8.

Application of the principles

(i) Reason for failure to file a defence in time

78. The applicant, Ms Young, explains that her father, the original first defendant, did not file a defence within the stipulated timeframe because he had dementia, was suffering from a serious neurological condition and has since died. She adds that, at the time service was effected through the Amandala newspaper, Mr Young was forgetful and in poor health. In relation to Ms Young's application for permission to be appointed as Mr Young's Next Friend, the claimant accepted the medical opinion evidence presented, which indicated that Mr Young was seriously ill, bedridden, unable to speak, had severe neurological deficits and lacked capacity.
79. I find that Mr Young (now deceased) did not file a defence because, as admitted by the claimant, he was seriously ill and lacked capacity. It is more likely than not that his medical condition meant he did not have notice of the legal proceedings commenced against him, which were served by way of an advert in the Amandala newspaper. In my view, that is a reasonable explanation for Mr Young's failure to file a defence within the time stipulated in the CPR.
80. The claimant is correct that Ms Young held a power of attorney authorising her to bring and defend legal proceedings in Mr Young's name. Ms Young has provided information about how, in June 2025, she became aware that the claimant had initiated legal proceedings against Mr Young after a family member brought it to her attention, and about the steps she took thereafter. She also provided information and evidence showing that, between 10 April and 26 September 2025, she undertook pre-arranged travel to the United Kingdom, Mexico, Guatemala, Colombia and Brazil; the efforts she made to obtain relevant information on the case and to secure legal counsel; and her efforts to obtain an order permitting her to appear as Mr Young's Next Friend. In the circumstances of this case, I find that Ms Young acted reasonably at all times. She did not act in disregard of the Rules, nor is there any hint that her conduct in relation to the legal proceedings is open to reproach. In light of the overriding objective, justice would not be served by refusing the application for an extension of time to file a defence.

(ii) Proposed time to file a defence

81. In her application, Ms Young proposed, in effect, a one-day period to file the first defendant's defence, a copy of which was attached. In my assessment, that indicates a commendable willingness not to delay the progress of the legal proceedings on the merits of the parties' respective cases.

(iii) Proposed defence

82. In the proposed defence, the first defendant, as do the second to fourth defendants, pleads that the claimant is mistaken about the location of the property purchased by the first defendant, which the claimant claims she owns. The second to fourth defendants have provided detailed accounts of the transfers of ownership of the disputed property over time, from the State to the first defendant. Whether the disputed property, currently registered in the

first defendant's name (and owned by his estate following his death), belongs to the claimant or to the first defendant's estate can only be properly determined on evidence at trial.

83. At this stage of the proceedings, I am not persuaded that the defendants' plea of mistake of fact is not viable. The first defendant's plea of mistake of fact is supported by the second, third and fourth defendants, and there is no issue with the filing of their defence, which is properly before the court and must be determined. I also consider the defendants' pleas contesting the claimant's allegations of fraud, negligence and breach of statutory duties to be viable, with the respective merits of each to be determined at trial.

(iv) Prejudice

84. The claimant has not pleaded that she would be prejudiced if the court orders an extension of the first defendant's time to file a defence, and no apparent prejudice appears from the pleaded facts. Rather, failing to grant the first defendant an extension of time will adversely prejudice her ability to advance her defence and the very real risk of losing the property.

(v) Summary

85. Drawing on the above, I hold that it is in the interests of justice for the first defendant to be granted an extension of time to file a defence.

Strike-out application

86. As noted in para. 1 above, the claimant has filed an application to strike out the first defendant's proposed counterclaim. The strike-out application plainly has no merit. At this stage of the proceedings, the counterclaim is a proposed counterclaim, filed by the first defendant together with the proposed defence. Consequently, the application is premature and must be dismissed.

Costs

87. I have granted the first defendant's application for an extension of time to file her defence and have held that she did not need to apply for relief from sanctions. I have also dismissed the claimant's strike-out application. In light of these outcomes, it is fair that each party bears its own costs.
88. I should add that I am grateful to all three counsel for their concise and to-the-point written submissions.

Order

89. Drawing on the above, I order as follows:
1. The first defendant's application for an extension of time to file her defence is allowed.
 2. The first defendant shall file her defence and, if so advised, her counterclaim within 14 days of the date of this judgment. If she fails to do so, the matter will proceed as unopposed by the first defendant.

3. The claimant's application to strike out the first defendant's proposed counterclaim is dismissed.
4. The parties shall bear their own costs.

**Mr Justice Hondora
High Court
Civil Division**