

No. 8 - 2012

I assent,

[L.S.]

(Sgd.) P. L. Allen
Governor-General.

13th November, 2012

AN ACT to Amend the Judicature (Supreme Court) Act and to Validate and Confirm the making of interim payment orders by Judges of the Supreme Court of Judicature of Jamaica, acting in good faith and inadvertent of the fact that the provision enabling the making of such orders had been repealed and not replaced.

WHEREAS section 441A of the Judicature (Civil Procedure Code) Law had empowered the Supreme Court of Judicature, where there were proceedings pending and in such circumstances as may have been specified in Rules of Court, to make an order requiring a

party to any proceedings to make another party to the proceedings an interim payment of such amount as may be specified in the order:

AND WHEREAS section 4(2)(j) of the Judicature (Rules of Court) Act provides that the Rules of Court may make provisions for specifying the circumstances in which the Supreme Court may make an order for an interim payment:

AND WHEREAS the Rules Committee of the Supreme Court, acting under the abovementioned section 4(2)(j), made the Civil Procedure Rules, 2002 which provided in Part 17, for the procedure to obtain an interim payment order, the circumstances in which the order may be made and the factors to be considered in the making of the order:

AND WHEREAS when the Judicature (Civil Procedure Code) Law was repealed in 2003 and replaced by the Civil Procedure Rules, 2002, the provision under section 441A of the repealed Law giving the Supreme Court the power to make an interim payment order was inadvertently removed and not replaced:

AND WHEREAS the Court of Appeal in *Best Buds Limited v Garfield Dennis (Unreported, Claim No. 2010 HCV120)* confirmed that the Supreme Court no longer had the power to make interim payment orders, despite the Civil Procedure Rules, 2002 setting out the parameters in which that power is to be exercised:

AND WHEREAS Judges of the Supreme Court have, in good faith and believing that power to do so existed, in fact made interim payment orders despite the repeal of the Judicature (Civil Procedure Code) Law which contained the enabling provision:

[14th November, 2012]

NOW, THEREFORE, BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

Short title and construction.

1. This Act may be cited as the Judicature (Supreme Court) (Validation and Amendment) Act, 2012 and as regards section 4

shall be read and construed as one with the Judicature (Supreme Court) Act (hereinafter referred to as the principal Act) and all amendments thereto.

2.—(1) Notwithstanding anything to the contrary in any law, the making by Judges of the Supreme Court of orders for interim payment in the circumstances specified in Part 17 of the Civil Procedure Rules, 2002, during the period commencing on the 26th day of March, 2003 and ending on the date of the coming into operation of this Act, in good faith that there was statutory authority to do so, shall notwithstanding the absence of such authority, be deemed to have been lawfully done, and to have been valid and effective, to all intents and purposes. Validation.

(2) The provisions of Part 17 of the Civil Procedure Rules, 2002 relating to the power of the Supreme Court to make orders for interim payments, are hereby—

- (a) declared to have been valid and effective and to have validly continued in operation, notwithstanding the repeal of the Judicature (Civil Procedure Code) Law; and
- (b) deemed, with effect from the coming into operation of this Act, to have been properly made under the provisions of the principal Act as amended by this Act.

3. For the avoidance of doubt, it is declared that the provisions of this Act shall not affect or prejudice the validity or effectiveness of any decision of a court of competent jurisdiction made during the period commencing with the 26th day of March, 2003 and ending on the date of the coming into operation of this Act and which overturned or set aside any order for interim payment made before the latter date. Savings.

4. The principal Act is amended by inserting next after section 28E the following as section 28F— Insertion of new section 28F in principal Act.

Power of Court to order interim payments. 28F.—(1) The Court may, where there are proceedings pending and in such circumstances as may be specified in Rules of Court, make an order

requiring a party to any proceedings to make to another party to the proceedings an interim payment of such amount as may be specified in the order.

(2) Rules of Court made in respect of interim payments may include—

- (a) provision for enabling a party to any proceedings who has made an interim payment in pursuance of an order under subsection (1) to recover the whole or part of the amount of the payment in such circumstances and from such other party to the proceedings as may be determined in accordance with those Rules; and
- (b) such incidental, supplementary and consequential provisions as the Rules Committee of the Supreme Court may consider necessary or expedient.

(3) Nothing in this section shall be construed as affecting the exercise of any power relating to costs including any power to make Rules of Court relating to costs.

(4) In subsections (1) and (2)—

- (a) “interim payment” in relation to a party to any proceedings, means a payment on account of any damages, debt or other sum (excluding any costs) which that party may be held liable to pay to or for the benefit of another party to the proceedings if a final judgment or order of the Court in the proceedings is given or made in favour of that other party; and

- (b) any reference to a party to any proceedings includes a reference to any person who for the purposes of the proceedings acts as next friend or guardian of, or in any other representative capacity for, a party to the proceedings.”.

Passed in the Honourable Senate this 18th day of May, 2012 with two (2) amendments.

ANGELA BROWN BURKE
Deputy President.

Passed in the Honourable House of Representatives this 16th day of October, 2012.

MICHAEL PEART
Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.