

THE EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT CHRISTOPHER AND NEVIS
IN PERSON

Monday 21st July 2025 – Thursday 24th July 2025

JUDGMENTS

Case Name:

[1] Ming Bo Ting, Alice
(Personal representative of the Estate
of the Late Ming Shui Sum)

v

[1] Ming Sui Hung, Ronald (deceased)
[2] Shaw Siu Kuen, Bertha
[3] Regina Ming
(Personal Representative of the Estate
of the Late Ming Shiu Tong)

[BVIHCMAP2022/0001]
(Territory of the Virgin Islands)

Date:

Tuesday, 22nd July 2025

Coram for
delivery:

The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances
(via zoom):

Appellant: **Ms. Sophie Christoduolou**

Respondents: **Mr. Andrew Gilliland and Mr. Malcolm Arthurs**

Issues:

Application for stay pending determination of the appeal - Rule 62.19(1)(b) and Rule 26.1(2)(q) of the Civil Procedure Rules (Revised Edition) 2023 – Principles for the grant of a stay of execution pending appeal - Whether the appeal would be rendered nugatory if a stay is not granted - Whether the balance of harm lies in favour of staying execution of the Judgment - Whether there are strong grounds of appeal

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application filed on 6th February 2025 by the appellant is dismissed.**
- 2. Costs to the respondents, such costs to be assessed by a judge of the Commercial Court if not agreed by the parties within 21 days from the date of delivery of this judgment.**

Reason:

- 1. A litigant should not be deprived of the fruits of their judgment pending appeal save in exceptional circumstances. Thus, an applicant for a stay must make out a proper case for the grant of a stay since a stay is the exception rather than the rule. An applicant does so by providing cogent evidence that the appeal will be stifled or rendered nugatory unless a stay is granted. The applicant has failed to establish by cogent evidence that the appeal would be rendered nugatory in the absence of a stay. The concerns raised regarding the potential forced sale of JFM's properties at discounted prices and the resulting depletion of assets are speculative, unsupported by detailed or documentary evidence, and amount to no more than the ordinary consequences faced by a judgment debtor who is unable to pay the judgment debt. Moreover, the current financial predicament with JFM stems from the misconduct of Lawrence, including the findings**

of unfair prejudice, withholding financial information, and attempting to acquire shares at undervalued prices, which led to the judgment now under appeal. The applicant's non-compliance with the terms of a binding Consent Order and the agreed deadlines for payment therein to the respondents, further undermines the application. In these circumstances, the stay sought appears to be an attempt to delay enforcement rather than to prevent the appeal from being rendered nugatory.

C-Mobile Services Ltd v Huawei Technologies Co Limited BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported) applied; Lunan Pharmaceutical Group Corporation v Zhao Long BVIHCVAP2021/0007 (delivered 27th April 2023, unreported) applied.

2. In exercising its discretion for the grant of a stay, the court applies what is in effect a balance of harm test in which the likely prejudice to the successful party must be carefully considered. The applicant has failed to demonstrate, by cogent evidence, that the balance of harm favours the grant of a stay. The core of the applicant's submissions rests on the contention that enforcement would necessitate the sale of additional JFM properties in a depressed Hong Kong property market, thereby reducing the value of Lawrence's estate. However, this financial predicament is a direct consequence of Lawrence's own misconduct. Critically, the applicant is contractually bound by the terms of the Consent Order to pay the first and second respondents in full by 20th May 2025 and granting a stay would undermine that agreement to the detriment of these respondents. Similar considerations also apply to the third respondent pursuant to the order of

Mithani J made on 6th February 2025 and the subsequent agreement reached by the appellant and the third respondent that the latter should be paid in full also by 20th May 2025. The respondents face ongoing prejudice from delayed payments despite the first and second respondents already having received partial sums, and the third respondent having not been paid any portion of the buy-out sum for his shares in JFM. In these circumstances, the balance of harm clearly favours the respondents.

C-Mobile Services Ltd v Huawei Technologies Co Limited BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported) applied.

- 3. The court should take into account the prospects of the appeal succeeding, but only where strong grounds of appeal or a strong likelihood the appeal will succeed is shown. The grounds raised by the applicant relating to the trial judge's preference for the respondents' expert valuation, the application of no minority discount, the award of quasi-interest, the refusal to deduct transactional costs from the Buy-Out Price, and alleged procedural irregularity due to delay in delivering judgment, do not meet the high threshold required. While the delay in judgment delivery is concerning, the applicant has not shown that it rendered the judgment unsafe or undermined the judge's reasoning to such an extent as to constitute strong grounds of appeal. Similarly, the trial judge's acceptance of the respondents' expert evidence, having provided reasons for doing so, falls within the realm of factual findings to which appellate courts will ordinarily defer the the trial judge. The remaining grounds, while arguable, lack sufficient weight or clarity to be characterized**

as strong. Accordingly, the applicant has not demonstrated strong grounds of appeal or a strong likelihood of success on appeal sufficient to support the grant of a stay.

C-Mobile Services Ltd v Huawei Technologies Co Limited BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported) applied.

4. A court may also grant a stay of execution if, in the round, the interest of justice would be best served. In these circumstances, a stay would unjustifiably impede enforcement and contravene the interests of justice. Taking all relevant circumstances into account, including the prolonged nature of the litigation, the findings and judgments already delivered in favour of the respondents at all three phases, and the binding nature of the Consent Order and agreement reached, the Court is satisfied that justice lies in permitting the respondents to proceed with enforcement and not granting a stay of the judgment, in whole or in part. The respondents (or their estates) should not be further delayed in receiving full payment of the judgment debt/But-Out Price, particularly after years of litigation and given the death of two of the original claimants and the original defendant Lawrence. Any non-compliance by the applicant with the agreed terms must be remedied by taking the necessary steps, including selling JFM properties, rather than by imposing a stay.

C-Mobile Services Ltd v Huawei Technologies Co Limited BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported) applied.

Case Name:

Director of the ONDCP

v

Michael G. Archibald

**[ANUHCVP2024/0011]
(Antigua and Barbuda)**

Date: **Tuesday, 22nd July 2025**

Coram for delivery: **The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

**Appearances
(via zoom):**

Appellant: **Mr. Curtis Bird, Mr. Marvin Hall and Ms. Shannon Potter**

Respondent: **Mr. Andrew O'kola**

Issues: **Civil appeal – Production orders – Procedure for obtaining a production order - Statutory framework for production orders – Section 15 of the Money Laundering (Prevention) Act 1996 – Money Laundering (Prevention) (Amendment) Act, 2020 – Whether a respondent, as a financial institution, which is served with a production order to produce documents in relation to an underlying criminal investigation has the right to be served with documents in support of the ex-parte application - Whether the respondent as counsel for the subject of the underlying investigation should have been heard on the issue of legal professional privilege before the learned judge granted the application for the production order - Whether a judge of concurrent or coordinate jurisdiction can review the order of another judge which had restricted disclosure**

Result / Order: **IT IS HEREBY ORDERED THAT:**

- 1. Appeal is allowed.**
- 2. The order of Smith J made on 19th March 2024 is set aside and the stay of the order of Bakre J**

made on 26th February 2024 is discharged with immediate effect.

3. The respondent shall pay the appellant's costs to be assessed if not agreed within 21 days of the delivery of this judgment.

Reason:

1. Smith J did not have jurisdiction to overrule Bakre J's non-disclosure order on the application before her because as a court of concurrent or coordinate jurisdiction, she was not exercising an appellate jurisdiction. At most, Smith J could determine whether Bakre J's failure to stipulate a return date was a procedural irregularity requiring a stay of his order pending an inter partes hearing. Smith J's remit did not extend to determining whether Bakre J was right to order non-disclosure of the documents and evidence used in support of the ex parte application.

Marilyn Jeffers Nee Weste v The Personal Representative of The Estate of Wyndgam West et al ANUHCVP2022/0013 (delivered 24th March 2023 unreported) applied; Harding v Forrester and others (2014) 84 WIR 389 applied.

2. Furthermore, in purporting to exercise her discretion to order disclosure, Smith J considered irrelevant matters and failed to take account of highly relevant matters. She also erred by failing to appreciate that the respondent was not the defendant in the underlying criminal proceedings and as such there was no case against him. The production order was directed at the respondent in his capacity as an Attorney-at-Law performing an activity of a nature that renders him a financial institution within the meaning of the MLPA. In ordering non-disclosure, Bakre J expressly stated that "the defendant, not being the subject of the claimant's investigation, may be served this

order without the claim form, Application Without Notice, or Access Code”. This order was intended to safeguard the integrity of the underlying criminal investigation.

3. Smith J erred in not considering that her order for disclosure had the potential to undermine the underlying criminal investigation into the respondent’s client and further erred in ordering disclosure of such highly sensitive material without at least reviewing it herself to consider, for example, whether any redactions should be made. There is nothing in Smith J’s order or her certified notes of the hearing to suggest that she gave any consideration to such matters.
4. A court hearing an application for a production order pursuant to section 15(ii) of the MLPA has to be mindful of the sensitive nature and purpose of the application and must not adopt a mechanical application of the CPR, particularly in relation to disclosure of the evidence in support of the application, while ignoring the fact that the rules provide for deviation in special circumstances.
5. In the context of attorneys at whom a production order is directed, *qua* a financial institution, legitimate concerns about privilege might arise. Legal privilege applies to certain communications made in connection with providing legal advice or related to legal proceedings, including items enclosed or referred to in such communications. It is the making of communication in those circumstances which confers legal privilege. The privilege belongs to the client. However, it is a rule of the common law that privilege cannot be asserted and does not exist where the client has the intention to further a criminal purpose, even if unknown to his solicitor. Section 15 of the MLPA does not oust legal professional privilege.

R v Central Criminal Court, ex parte Francis & Francis [1989] 1 A.C. 346 applied; R. v. Cox and Railton (1884) 14 QBD 153 applied.

- 6. The ability to be heard on the question of setting aside or varying a production order is therefore an important safeguard. Given the importance of this issue, it would have been prudent for Bakre J to have stipulated a return date to afford the respondent an opportunity to be heard on the question of privilege. In this case however, Bakre J was very much alive to the issue of privilege: he called for and received submissions on this issue at the ex parte hearing and delivered a brief written ruling explaining why he concluded that privilege did not attach to the documents that were the subject of the production order.**
- 7. In the circumstances of this case, given that the respondent sought to assert privilege on the erroneous premise that he was the subject of the investigation, and once it is remembered that the privilege is the client's and that legal professional privilege does not exist where communication between the client and counsel is in furtherance of a criminal purpose, even if unknown to counsel, there is no utility in remitting the matter on the issue of privilege in circumstances where it is patently clear that the premise on which the respondent seeks to set aside or vary the order of the first learned judge is entirely misconceived.**

R v Central Criminal Court, ex parte Francis & Francis [1989] 1 A.C. 346 applied; The Attorney General v The Jamaica Bar Association [2023] UKPC, 6 applied; JSC Bank v Mukhtar Abylyazov [2015] UKSC 64 applied.

Case Name: [1] Heritage Plantation Condominiums Ltd
[2] Heritage Plantation Inc.
[3] Mervin Grant

v

Doche & Doche Inc

**[SKBHCVAP2024/0002]
(Saint Christopher and Nevis)**

Date: Wednesday, 23rd July 2025

Coram for delivery: The Hon. Mde. Margaret Price Findlay, Chief Justice [Ag.]
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal

Appearances:

Appellants: Dr. Henry Browne KC

Respondent: Mr. Sylvester Anthony and Ms. Renal Edwards

Issues: Interlocutory application – Application to discharge order of single judge of the Court of Appeal granting a stay of execution pending appeal – Rule 62.20(1) of the Civil Procedure Rules, 2023 (“CPR”) – Notice of hearing – CPR 62.18(4) - Whether the failure by the appellants to give the respondent 7 days’ notice of the hearing was procedurally unfair – Factors to be considered in granting or refusing a stay of execution – Whether the appeal would be stifled or rendered nugatory – Balance of harm - Likelihood of appeal succeeding – Whether the principles of res judicata or issue estoppel apply – Ownership of shares in the first appellant company already determined in previous decisions of the court

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application to revoke or discharge the order of the single judge made on 23rd April 2024 in which she granted a stay of execution of the judgment of Gill J pending the hearing and determination of the appeal is granted and that order is accordingly set aside.
2. The application for a stay of execution is accordingly dismissed.
3. The respondent/applicant will have its costs to be assessed if not agreed within 21 days of the date of this judgment.

Reason:

1. Where the Full Court is asked to review and reconsider a decision taken by the single judge of appeal, the Court applies the principles articulated in *Dufour and Others v Helenair Corporation Limited and others* as to the basis upon which an appellate court would interfere with the exercise of a judicial discretion by a trial judge. The jurisdiction of the Full Court to review an order made by a single judge is captured by rule 27 of the Eastern Caribbean Supreme Court, Court of Appeal Rules and rule 62.20(1) of the Civil Procedure Rules 2023.

Rule 62.19 and 62.20(1) of the Civil Procedure Rules, 2023 applied; Rule 27 of the Eastern Caribbean Supreme Court, Court of Appeal Rules applied; *Danone Asia PTE Limited et al v Golden Dynasty Enterprise Limited et al BVIHCVAP2009/0002* (delivered 28th September 2009, unreported) followed; *Dufour and Others v Helenair Corporation Limited and others* (1996) 52 WIR 188 followed.

2. CPR 62.18(4) provides that the court office must give the parties to the appeal at least 7 days' notice of any hearing, unless the court otherwise directs. The requirement for notice is a fundamental element of due process, guaranteeing that parties are not unfairly

disadvantaged by sudden or unexpected court proceedings. It ensures that all parties are aware of the hearing and have sufficient time to prepare their arguments, evidence, and legal strategy and otherwise affords a reasonable opportunity to prepare for the hearing. The case at bar does not present a situation where a judgment/decision would have been granted without any notice to the litigant and in breach of the rules of natural justice. While the notice of hearing was served (by hand delivery) on 20th April 2024 for a hearing (on papers) on 23rd April 2024, the Court's Office would have issued a notice of hearing dated 18th March 2024 to both sides indicating that the application would come up for consideration on paper before a single judge of the Court on Tuesday, the 23rd day of April 2024 at 10 o'clock in the forenoon. This notice would have been uploaded in the E-Litigation Portal (to which the respondent/applicant would have due access) on 19th March 2024. The respondent/applicant would therefore have had a more than adequate opportunity to advance representations in opposition to the stay application. The affidavit of service which was before the single judge reflected that the application for the stay of execution as well as the notice of appeal were served on the respondent/applicant on 19th January 2024 along with the authorisation code. Thereafter skeleton submissions in support of the stay application would have been filed and served by the appellants via the Electronic Litigation Portal ("E-Litigation Portal") on 1st March 2024. The respondent/applicant did not file any notice of opposition or evidence in response to the application. The respondent/applicant therefore cannot now complain of a want of due process. Moreover, the respondent/applicant has not attempted to advance any plausible account to explain why it would not have been possible to advance submissions in opposition even in

the abridged timeframe, or alternatively, why there was no attempt to communicate any concerns about the lack of fairness occasioned by the short notice, to request an adjournment of the hearing. The respondent's/applicant's procedural challenge lacks merit and would not warrant the discharge or revocation of the single judge's order.

Rules 62.18(4) of the Civil Procedure Rules, 2023 applied; Rule 15(1) of the Eastern Caribbean Supreme Court (Electronic Litigation Filing and Service Procedure) Rules, 2019 applied.

3. A 'stay of execution' order temporarily halts the enforcement of a judgment, allowing the party appealing the judgment to challenge the decision without immediate consequences. A single judge's decision to grant a stay is discretionary. In exercising the discretion to grant a stay, ultimately, the court aims to make an order which best accords with the interest of justice. The principles which accord with that determination are well documented in the seminal decision of *C-Mobile Services Limited v Huawei Technologies Co. Limited* which include the consideration of various factors such as the likelihood of the appeal succeeding. If there are strong grounds of appeal or a strong likelihood of success the court should seriously consider whether the stay should be granted and will usually grant a stay. Conversely, if the grounds of appeal or likelihood of success are only arguable the court would generally not grant a stay unless there are other circumstances that are compelling such as the appeal being rendered nugatory if a stay is not granted. The Court must however bear in mind that an application for a stay of execution is an interlocutory application and the Court in hearing that application is therefore not expected to come to a determination of the

merits of the appeal or conduct a full hearing of the appeal.

Marguerite Desir et al v Sabina James Alcide SLUHCVAP2011/030 (delivered 14th December 2011, unreported) followed; C-Mobile Services Limited v Huawei Technologies Co. Limited BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported) followed; Nam Tai Property Inc et al v West Ridge Investment Company Limited BVIHCMAP2021/0010 (delivered 8th November 2021, unreported) followed.

- 4. At the heart of the appeal are the findings made by Gill J in her order dated 11th December 2023, particularly paragraph 1 of the order which concerns the allocation of shares to the respondent/applicant and HPI in HPC and both their entitlement to be registered as members of HPC. This issue was canvassed and determined in previous determinations, namely the orders of Ventose J in a High Court judgment dated 27th January 2020 and the Court of Appeal's decision authored by Webster JA [Ag.] dated 29th April 2021. In both decisions, the courts have found that the respondent/applicant is entitled to and is the unregistered shareholder of 90% shareholding in HPC and that HPI is entitled to 10% shareholding in HPC. The findings of the Court of Appeal's 2021 judgment were correctly and definitively interpreted by Ward J in a judgment dated 11th April 2022, no appeal having been successfully launched against the latter judgment. The reality is that the issue of the ownership of the shares in HPC is a settled matter which has not been successfully appealed. Although the appellants seek to frame the issue on the appeal as one concerning the payment of shares, this was also addressed by Webster JA [Ag.] in his judgment where he observed that the respondent's/applicant's entitlement**

to it shares came about as a result of its financial contribution to and participation in the joint venture project and its ownership is reflected in the 2014 Shareholder's Agreement. The principles of res judicata therefore apply. Given the state of affairs, the appellants' appeal does not have a strong likelihood of success. These previous decisions informed the order of Gill J and yet they were largely untrammelled before the single judge. This is a critical factor which a court considering the stay of execution would have been compelled to take into account. This finding would have had to have been weighed by the single judge along with the other principles in the C-Mobile test in deciding whether to grant a stay pending the hearing and determination of the appeal. The order of the single judge does not disclose that this would in fact have been weighed and on that basis warrants interference by the Full Court.

Henderson v Henderson (1843) 67 ER 313 considered; Arnold v National Westminster Bank plc [1991] 2 AC 93 applied.

5. An appeal is nugatory when success will have little or no value for the appellant because of changed circumstances, usually, but not always, brought about by the respondent. There must be cogent, full, and frank evidence in support of an application for a stay. The onus is on the applicant to make its position clear, and it should not leave the Court speculating or trying to fill the gaps. The appellants relied on affidavit evidence filed in support of the stay application. Having reviewed the affidavit, it is immediately apparent that rather than raising any irreparable consequences of the rectification order, the consistent concern appears to be the purported failure of the audited financial accounts of HPC to make clear all of the financial contributions of the respondent/applicant. The appellants

are principally concerned about payment or proof of payment. This averment does not provide any basis upon which one can conclude that the appeal would be rendered nugatory if a stay is not ordered. Even if the appellants are successful in their appeal, the remit of this Court's powers would negate the possibility of a nugatory appeal.

6. Another of the factors the court ought to consider is whether there is a risk of harm to one or other or both parties if the court grants or refuses a stay. Where there is a risk of harm to one party or another, whichever order is made, the court has to balance the alternatives to decide which is the least likely to cause injustice. No evidence was filed by the parties on this factor. However, there can be no doubt that the respondent/applicant would be deprived of its judgments (having had the benefit of two judicial rulings pronouncing ownership of the shares) if a stay is granted and the appeal fails and deprived of its ownership and right to participate in the affairs of HPC. These factors reinforce the position that the order of the single judge ought to be set aside.

Case Name:

Tomaz Slivnik

v

- [1] MARTIN DINNING (as Conservator)**
- [2] HUDSON CARR (as Conservator)**
- [3] SHAWN WILLIAMS (as Conservator)**
- [4] ROBERT MILLER (as Conservator)**
- [5] EASTERN CARIBBEAN CENTRAL BANK**
- [6] ANGUILLA FINANCIAL SERVICES COMMISSION**
- [7] ATTORNEY GENERAL OF ANGUILLA**

**[8] FOREIGN, COMMONWEALTH AND
DEVELOPMENT OFFICE
[9] NATIONAL BANK OF ANGUILLA
LIMITED (IN RECEIVERSHIP)
[10] CARIBBEAN COMMERCIAL BANK
LIMITED (IN RECEIVERSHIP)
[11] GARY MOVING (as Receiver of
NBA and CCB)
[12] NATIONAL COMMERCIAL BANK
OF ANGUILLA LIMITED**

**[AXAHCVAP2023/0005]
(Anguilla)**

Date:	Wednesday, 23rd July 2025
Coram for delivery:	The Hon. Mde. Margaret Price Findlay, Chief Justice [Ag.] The Hon. Mde. Vicki Ann Ellis, Justice of Appeal The Hon. Mde. Esco L. Henry, Justice of Appeal
Appearances:	
Appellant:	In person
Respondents:	Ms. Navine Fleming for the 2nd, 3rd, 5th, 9th, 10th and 11th respondents and holding papers for Mr. James Willan KC for the 12th respondent Ms. Yanique Stewart on behalf of the 6th respondent
Issues:	Application to adduce fresh evidence – Whether the evidence could not have been obtained with reasonable diligence for use at the trial – Whether the evidence would have an important influence on the result of the case – Whether it is just in all the circumstances for the Court to grant the application – Interlocutory appeal – Appeal against decision of the learned master to set aside the extension order for service of the claim form and striking out the claim with respect to some of the respondents - Whether the learned master erred in the exercise of his discretion by refusing leave to the appellant to effect service on the fourth respondent by substituted service - Whether the learned master erred in the exercise of his discretion by setting aside the Extension Order as

against the 2nd , 3rd , 5th , 6th , 7th , 9th , 10th , 11th and 12th respondents – Whether the learned master erred in the exercise of his discretion by refusing the application to amend the claim

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application by the appellant to adduce fresh evidence in this appeal is refused.**
- 2. The appeal is upheld in relation to the Amendment Order. Paragraph [60] 1 of the learned master's decision dated 25th April 2023 dismissing the application to amend the claim form so far as it pertains to the first and eighth respondents is set aside. The Notice of Application to amend the claim form in relation to the first and eighth respondents is remitted to be determined by another master.**
- 3. The appeal against the Setting Aside Order and the Striking Out Order in relation to the seventh respondent is dismissed. The order setting aside the Extension Order in relation to the seventh respondent as set out at paragraph [58] 1 of the learned master's decision dated 25th April 2023 is affirmed. The order striking out the claim as against the seventh respondent as set out at paragraph [58] 2 of the learned master's decision dated 25th April 2023 is affirmed.**
- 4. The appeal against the Substituted Service Order set out at paragraph [66] of the learned master's decision dated 25th April 2023 is dismissed. The order striking out the claim against the fourth respondent at paragraph [66] 1 of the master's decision dated 25th April 2023 is set aside. Liberty to the appellant to apply for any consequential orders.**

5. The appeal against the order setting aside the Extension Order in relation to the 2nd, 3rd, 5th, 6th, 9th, 10th, 11th and 12th respondents and striking out the claim against them, set out at paragraph [58] 1 and 2 of the learned master's decision dated 25th April 2023 is dismissed. The learned master's order is affirmed.
6. The respondents shall have their costs of this appeal to be assessed within 21 days of today's date (i.e. on or before 14th August 2025) if not agreed.

Reason:

1. To succeed on an application to adduce fresh evidence the applicant must satisfy the court firstly, that it was not possible to obtain the evidence with reasonable diligence for use at the trial. Secondly, it must be established that the evidence would likely have an important influence on the outcome of the case but it need not be determinative. Thirdly, while the evidence does not have to be incontrovertible, it must appear to be credible. Where a fresh evidence application arises with respect to an interlocutory appeal the first criterion is to be applied with less rigour. In applying the first limb, it is clear that the medical reports of patient 1 and patient 2, the case history form of patient 1, the CT brain scan report of patient 2 had been available before the claimants filed their evidence in response to the set aside application. Those materials could therefore have been obtained with reasonable diligence by the claimants and presented to the court as part of the evidence. The 2023 annual returns would not have been available until they were filed in June and September 2023. They were therefore not within the applicant's possession or control at the relevant time of submitting evidence. As to whether the medical reports and forms would likely have had an important impact on the outcome of the case, the Court is of the view that they would not. The alleged unavailability of patient 1's spouse and/or

patient 2 to contribute to group discussions among the claimants did not prevent the claimants from giving instructions to legal practitioners to lodge the application for an extension of the claim's validity. Further, there is no evidence that the strokes suffered by the patients contributed to lack of service of the claim during the period of validity. In these circumstances the applicant has failed to satisfy the first and third limbs of the test to adduce fresh evidence.

Ladd v Marshall [1954] 1 WLR 1489 applied; Geminis Investors Limited v Goods Technology Starting International Limited BVIHCMAP2022/0043 (delivered 23rd August 2023, unreported) followed.

2. The Court retains implicit and inherent jurisdiction to make orders to achieve its objectives of correcting wrong decisions and ensuring public confidence in the administration of justice. Notwithstanding the seventh respondent's initial avowed neutrality to the set aside application, the court settled on the position that by virtue of the common interest among the respondents the determination of the set aside application cannot be fragmented. Furthermore, although the issue of the validity of the claim form with respect to the seventh respondent did not arise as a separate issue for the learned master's consideration during the hearing, he was correct to address his mind to it to ensure that consistency of treatment is maintained and that no absurd result arises from the court's determination of the set aside application. It was necessary and proper for the learned master to consider it since the seventh respondent made representations to which the appellant responded. The impugned orders setting aside the Extension Order and striking out the claim against the seventh respondent were appropriate.

Taylor v Lawrence [2002] All ER 353 followed.

3. The learned master's finding that as there was no valid claim form to be served and that it was not necessary to consider the application to amend the claim form cannot stand in regard to the first and eighth respondents, in light of his failure to revisit this ruling in the Second Decision in which he found that a valid claim form existed in relation to them. The appeal on this ground must be allowed and the Amendment Application must be remitted for consideration, limited only to the first and eighth respondents
4. It is clear that the learned master failed to consider relevant material (the evidence of Mr. Liburd and Mr. Byron) as to the fourth respondent's residence and whereabouts when he determined the application for substituted service. As a result, the learned master concluded that the fourth respondent resided within the jurisdiction and by extension that the validity of the claim form had expired in relation to him. By omitting consideration of those two affiants, the learned master erred. It is therefore necessary for the Court to consider the application for substituted service afresh. In considering an application for substituted service the Court must, in accordance with CPR 1.2 have regard to the overriding objective to act justly. It must take into account any prejudice or advantage that would be occasioned to either party by the grant or refusal of the application and it must be satisfied that the claim form is valid and that the proposed method of service would probably enable the defendant to become aware of the contents of the claim. Mr. Byron's evidence introduces significant doubt that the proposed method of service would likely have brought the claim documents to the fourth respondent's attention. While it is accepted that the evidence supports a finding that the fourth respondent lives outside the Federation of Saint Christopher and Nevis and that the claim form was valid, the application should not be granted as service on the ECCB is unlikely to result in

the contents of the claim form and statement of claim coming to the fourth respondent's knowledge. This ground of appeal is accordingly dismissed.

5. The CPR dictates that a claim form must generally be served within 6 months of its issuance (Rule 8.12(1)). Rule 8.2(1) provides that a claim form may be issued without the statement of claim or supporting affidavit only where the claim form contains all of the information that rules 8.6, 8.7, 8.9 and 8.10 mandate are to be included or if the court grants permission. A claimant who encounters genuine difficulties serving the claim form within the time limited by rule 8.12 may apply to the court under rule 8.13(1) for an extension of the time within which to serve the claim and the application must be supported by affidavit evidence. The court may in the exercise of its judicial discretion extend the validity of the claim form pursuant to CPR 8.13(4)(a) or (b) but only if satisfied on the evidence that the claimant has taken all reasonable steps to trace the defendant and serve the claim but has been unable to do so; or that there is some other special reason for extending the period. The special reason gateway is introduced under sub-paragraph (b) of rule 8.13(4). The regime for extension of the validity of a claim form is, as a matter of public policy and public interest, strict and the protocols and rules rigidly observed and applied. The power to extend the validity of a claim is only to be exercised for 'good reason', which would normally involve showing good reason for the failure to serve the claim form during the period of its validity. The court will have a special reason for doing that only if the claimant has previously been precluded or has refrained from effecting service in circumstances which make it unjust that he should not be granted an extension of time within which to effect service.

Rondex Finance Inc v Ministry of Finance of the Czech Republic BVIHCV2010/0069 (delivered

13th May 2011, unreported) followed; *Aktas v Adepta* [2011] QB 894 applied; *Marty Steinberg and others v Swisstor & Co and another* BVIHCVAP2011/012 (delivered 12th March 2012, unreported) followed; Rules 8.12(1) and 8.13(4) of the Civil Procedure Rules, 2000 applied.

6. It is not disputed that the learned master had no medical evidence before him as to the fact of or the timing of the illnesses of the patients. What is clear however is that the existence of the extension application and the affidavit evidence before the learned master reflects that the claimants appeared to encounter no difficulty in obtaining adequate instructions from the patients or their representatives with respect to the filing of that application during the relevant period or, alternatively, with proceeding without such instructions. In addition, the appellant has adduced no evidence to demonstrate how the patients' strokes prevented the service of the claim and no information was set out detailing what, if any, steps were taken regarding service of the claims throughout the six-month period. Further, no evidence probative of the strokes or their alleged effects has been presented to the Court. For these reasons it was perfectly open to the learned master to conclude as he did both on the law and with respect to the evidence.
7. None of the cases cited by the appellant supports his contention that the special reason requirement in CPR rule 8.13(4)(b) is met by a claimant who decides to await review by a legal practitioner of the finalization of particulars of a claim under the English regime. Applying the principles enunciated in *Rondex* or *Steinberg* to the evidence before the court, the claimants and the appellant's decision to await review by a King's Counsel before serving the claim was deliberate, well-considered and intentional and does not meet the threshold of a special reason under CPR rule 8.13(4)(b) to warrant the grant of an extension of the validity of the claim form. Ultimately, the learned master's decision on this aspect of the application was the correct

decision although the authority he applied in reaching it did not contain the finding that he said it did.

Leeson v Marsden conjoined with Glass v Surrendran and Collier v Williams [2006] EWCA Civ 20 considered; Hoddinott v Persimmon Homes [2008] 1 WLR 806 considered; City & General (Holborn) Ltd v Structure Tone [2009] EWHC 2139 (TCC) considered; Rule 8.13(4)(b) of the Civil Procedure Rules, 2000 applied.

- 8. The appellant's reliance on Aktas v Adepta and Firman v Ellis in the context of lawyer error to constitute a special reason for the purposes of rule 8.13(4)(b) is misguided. Aktas v Adepta and Firman v Ellis reveal that the pronouncements of the courts that decided those cases are of no applicability in the instant appeal for the simple reason that the issues under consideration are not similar. In Aktas v Adepta and Firman v Ellis the English Courts were examining section 33 of the UK Limitation Act which empowers the court in personal injury claims to refrain from applying the three-year limitation period as well as the strict approach that is followed in applications for extension of validity of a claim. Although the parties accept that the strictness of the regime is common to the English and Welsh and this jurisdiction, no similar provision to section 33 of the UK Limitation Act is under contemplation in the case at the appeal bar. Accordingly, being guided by case law from this jurisdiction, the learned master was entitled to not find on the law and evidence before him that the behaviour of the claimants' legal practitioners constitute lawyer errors or a special reason under rule 8.13(4)(b).**

Aktas v Adepta [2011] QB 894 distinguished; Firman v Ellis [1978] QB 886 distinguished.

- 9. The possibility of a limitation defence is one of the factors that the court must consider when determining an application for the extension of validity of a claim form. It is well-established**

that an extension of validity of a claim will be set aside if it can be demonstrated that the defendant might be deprived of a limitation defence by the extension of the claim's validity. In exceptional cases, an extension of time may be granted notwithstanding the possibility of a limitation defence. An examination of the Claim Form and Statement of Claim in this case illustrates that the claimants alleged that the respondents conspired and took a series of premeditated steps commencing on 12th August 2013 and earlier, ending with a transfer of assets on 22nd April 2016 from NBA and CCB to NCBA and engaged in certain actions designed and intended to deprive the claimants of property and cause them loss. Additionally, it was pleaded that the fraudulent preference was committed by the signing of the Purchase and Assumption Agreement ('PAA') on 22nd April 2016 and the subsequent transfer of funds belonging to PB&T and CCIB depositors to NCBA. In their subsequent application to amend the claim filed on 24th November 2022 the appellant and the other claimants accepted that the limitation period had expired by that filing date. Against this background, it was open to the learned master in keeping with the principles set out in *Steinberg*, to conclude that the respondents potentially had a limitation defence in relation to the tort of conspiracy to deprive the appellant and other claimants of their property and cause loss to them. This was a relevant factor which justified setting aside the Extension Order unless exceptional circumstances justified a different outcome.

Marty Steinberg and others v Swisstor & Co and another BVIHCVAP2011/012 (delivered 12th March 2012, unreported) followed.

Case Name:

[1] Electrical Associates Limited
[2] Marcellinus Stephen trading as MS
Stephen Tiling

v

[1] Wesley J. Hall also known as Wes Hall

[2] The Harbor Club Ltd

[3] Sunrod Property Inc

**[SLUHCMAP2024/0001]
(Saint Lucia)**

Date: **Thursday, 24th July 2025**

Coram for delivery: **The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Kimberly Cenac - Phulgence, Justice of Appeal [Ag.]**

**Appearances
(via zoom):**

Appellants: **Ms. Wauneen Louis-Harris**

Respondents: **Ms. Vanessa Pinnock**

Issues: **Application to discharge order of single judge of the Court of Appeal – Unless Order of Full Court directing applicants to file and serve amended expert report within 21 days of the date of order failing which the Expert Report shall stand struck out without further order of this Court – Non-compliance with Order of the Full Court – Application for extension of time to file report – Application for relief from sanctions - Whether the application to extend the time stipulated in the unless order of the court should be granted**

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application to discharge or revoke the order of the single judge dated 18th February 2025 is granted.**

2. The application for extension of time to file the expert report is dismissed.
3. The sanction imposed by the unless order will therefore take effect and the expert report is consequently struck out.
4. The appellants will pay the respondent's costs of this application to be assessed if not agreed.

Reason:

1. A single judge has a wide jurisdiction to grant or deny applications for extension of time. The power of the single judge to extend time or abridge time is not proscribed by CPR Part 62.19 which specifically empowers the single judge to grant an extension or abridgement of any time limit prescribed in Part 62. There is a much broader remit accorded to the single judge to extend time under rule 27 of the Eastern Caribbean Supreme Court, Court of Appeal Rules. It follows that the learned single judge in the application herein had the jurisdiction to consider an application extending the time to file the amended expert report notwithstanding that the time limit was prescribed in an order of the Court rather than CPR Part 62.

Rule 27 of the Eastern Caribbean Supreme Court, Court of Appeal Rules, *Danone Asia PTE Limited et al v Golden Dynasty Enterprise Limited et al* BVIHCVAP2009/0002 (delivered 28th September 2009, unreported) applied.

2. The single judge has wide case management powers to extend or shorten the time even if the application for an extension is made after the time for compliance has passed. An

application to extend the time for compliance with an unless order which specifies a sanction for non-compliance made prior to the expiration of the stipulated time for compliance, falls to be considered by the court pursuant to CPR 26.1(2)(k) and the overriding objective, and not CPR 26.8 pertaining to relief from sanctions. This is so even where the application is not heard and determined by the court until after the time stipulated in the order for the sanction to take effect. In this case, the application for extension of time and relief from sanctions, having been filed before the sanction took effect, therefore fell to be determined as an application for an extension of time. The learned judge accordingly erred in treating with the application as one for relief from sanctions and the basis upon which the learned judge exercised her discretion was plainly wrong.

Rules 26.1(2), 26.7 and 26.8 of the Civil Procedure Rules 2000 considered BBL Limited and Anor. v Canouan Resorts Development Limited and Anor SVGHCVAP2019/0006 (delivered 12th January 2021, unreported) applied.

3. A judge considering an application to extend time for complying with an unless order must take into account the factors which must be weighed when considering an application for extension of time. These factors, which are now well settled, include: (i) the length of the delay, (ii) the reasons for the delay, (iii) any prejudice to the respondent; and (iv) whether the appellant's pleaded case is, in any event, a hopeless one - the chances of success. These factors do not appear to have been considered or applied by the single judge. In these premises, the Court is satisfied that the learned single judge's order should be revoked.

Adam Bilzerian v. Gerald Lou Weiner et al SKBHCVAP2015/0015 (delivered 27th January 2016, unreported) applied, Ferdinand Frampton v. Ian Pinard et al Civil Appeal No. 15 of 2005 applied, John Cecil Rose v Anne Marie Uralis Rose (SLUHCVAP2003/0019 delivered 22nd September 2003, unreported) applied, Carleen Pemberton v Mark Brantley SKBHCVAP2011/009 (delivered 14th October 2011, unreported) applied.

- 4. This Court must therefore, in the exercise of its discretion de novo, consider whether to permit the extension sought by the appellant. In doing so, the Court took into account (1) that the appellants proffered no cogent or persuasive evidence which explains why they would not have been able to comply with the unless order. (2) the appellants did little to assist the court in assessing the chances of success. Copies of the claim form, statement of claim and defence were not included as part of the hearing bundle in this matter. The Court was not taken by counsel for either side to the respective pleaded cases. The fact that the appellants are reluctant to address the substantive issues which arise in their claim did little to persuade the Court as to the chances of success. A court cannot assess the chances of success of a claim solely on the basis that it has reached the point of pretrial review. (3) no analysis of the issues arising in the claim was advanced and no attempt to connect the expert evidence to these issues or to weigh its import. It is not contended that a refusal of the application would have a devastating impact on them and on their ability to prosecute their claim. (4) that the appellants' dilatory conduct has contributed to significant delays in the progression of the**

litigation. A trial date had been set for this matter during the pre-trial review conducted in December 2023. The scheduled trial dates of 18th -19th March 2024 had to be vacated. Realistically, there is no prospect of the trial taking place this year. There is therefore inherent prejudice to the respondents.

5. Ultimately, the evidence adduced by the appellant did not rise to the standard expected on an application which seeks to extend the time for complying with an unless order. Having regard to the evidence filed in support of the application and the legal submissions advanced in writing and orally by the appellants, the Court is satisfied that the overriding objective, which obliges courts to deal with cases justly and proportionately and economically, compels this Court to refuse this application to extend the time stipulated in the unless order for the appellants to file the amended expert report.

Case Name:

Emerson Ricardo Machado Campos

v

The Commissioner of Police

**[DOMMCRAP2024/0003]
(Dominica)**

Heard together with:

JOSE-DEL CARMEN SERRADA CASSERO

and

**THE COMMISSIONER OF POLICE
[DOMMCRAP2024/0004]
(Dominica)**

Heard together with:

WILBER OLIVEROS

and

**THE COMMISSIONER OF POLICE
[DOMMCRAP2024/0005]
Dominica**

Heard together with:

YOFRAN ALEXANDER MARTINEZ

and

**THE COMMISSIONER OF POLICE
[DOMMCRAP2024/0006]
Dominica**

Heard together with:

LUIS ALREDO MACHADO CAMPOS

and

**THE COMMISSIONER OF POLICE
[DOMMCRAP2024/0007]
Dominica**

Heard together with:

OSARUMWENSE BARRECY IBUZE

and

**THE POLICE
[DOMMCRAP2023/0005]
Dominica**

Date:	Thursday, 24th July 2025
Coram for delivery:	The Hon. Mde. Vicki Ann Ellis, Justice of Appeal The Hon. Mr. Trevor M. Ward, Justice of Appeal The Hon. Mde. Kimberly Cenac - Phulgence, Justice of Appeal [Ag.]
Appearances (via zoom):	
Appellants:	Mr. Wayne Norde
Respondents:	Ms. Sherma Dalrymple, Director of Public Prosecutions
Issues:	Criminal appeal – Appeal against sentence – Constitutional law - Minimum mandatory sentence – Separation of powers - Section 16 (1) of the Drugs (Prevention of Misuse) Act – Whether the mandatory

minimum sentence imposed by section 16(1) of the Drugs (Prevention of Misuse) Act is unconstitutional – Section 5 of the Constitution of the Commonwealth of Dominica - Sentencing practice - Departure from the sentencing guidelines

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeals against sentence are allowed.**
- 2. The sentence of each appellant is varied to time served.**

Reason:

- 1. Parliament has the right to determine what conduct should constitute a criminal offence and to determine the appropriate level of punishment for such conduct. To offend the separation of powers doctrine, it must be shown that the legislature is undermining the decisional authority or independence of the judicial branch by compromising judicial discretion. In determining whether the doctrine is infringed, the court must assess whether the legislation negatively impacts its adjudicative process, constraining the court in its application or interpretation of legal principles. Parliament's exercise of its right to enact a mandatory minimum penalty does not in and of itself violate the separation of powers doctrine as that is a power within its legitimate remit under section 5 of the Constitution which does not prohibit Parliament from enacting a mandatory punishment applicable to all persons who commit a particular crime.**

The Attorney General of Belize v Zuniga and others [2014] CCJ 2 (AJ) applied; Reyes v R [2002] 2 AC 235 applied; Hinds v R [1977] AC 195 applied; Chandler v The State of Trinidad and Tobago [2023] AC 285 applied.

- 2. In adjudicating the constitutionality of mandatory minimum sentences, the court must assess whether the punishment as set out in law**

would be grossly disproportionate in its application to likely offenders. In making this assessment, the court may have regard to the reasonably hypothetical scenario. Applying the approach of testing the mandatory minimum sentence against a reasonably hypothetical scenario, the mandatory minimum sentence of seven years could result in the imposition of grossly disproportionate sentences in violation of section 5 of the Constitution. While a mandatory minimum provision may be held to be unconstitutional, it does not follow that the sentence imposed always will always be set aside. The sentence will not be disturbed if having regard to the circumstances of the offence and the offender, it is proportionate and fits the crime.

Thelbert Edwards v The Queen Criminal Appeal No. 3 of 2006 (delivered 15th January 2007, unreported) followed; The Attorney General of Belize v Zuniga and others [2014] CCJ 2 (AJ) applied; R v Smith [1987] 1 SCR 1045 applied; R v Nur [2015] 1 R.C.S. 773 applied; Section 16 (1) of the Drugs (Prevention of Misuse) Act Cap 40:07 of the Laws of Dominica considered; Section 5 of the Constitution of the Commonwealth of Dominica Enacted as Schedule 1 to the Commonwealth of Dominica Constitution, Chap. 1:01. considered.

- 3. Rule 4 of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules provides that when sentencing for an offence for which a guideline has been issued, the court must apply the relevant sentencing guideline and sentence unless to do so would not be in the interest of justice. In this case, the learned magistrate's reason for departing from the guidelines failed to demonstrate why the application of the guidelines in the circumstances of the case would produce an injustice. In fact, the reason advanced as warranting departure can be said about all cases of drug trafficking. If these common features are sufficient to justify a departure from the guidelines because to apply**

them would cause injustice, this could render the guidelines redundant for the most part and would introduce an unsatisfactory degree of arbitrariness in the approach to sentencing for drug trafficking offences, which the guidelines were intended to reduce. The learned magistrate therefore erred in principle when he purported to depart from the sentencing guidelines in the circumstances of this case.

4. Applying the relevant sentencing guidelines, a sentence of 2 years at the upper end would have been appropriate to start but reduced to 1 year and 2 months on account of the appellants' good character and their early guilty pleas. Such a sentence would have been proportionate in circumstances where each appellant was found in possession of a relatively small quantity of cocaine, each functioned at the lowest end of the chain as drug mules and who, to their credit, entered guilty pleas at the earliest opportunity and had no previous convictions.
5. Considering that an appropriate sentence for each appellant in the circumstances of these cases would have been a sentence of 2 years at the upper end, a sentence of 7 years imprisonment was grossly disproportionate and manifestly excessive on ordinary sentencing principles. The same conclusion would follow if the magistrate applied the mandatory minimum sentence of 7 years automatically. The mandatory minimum sentence constitutes inhuman and degrading treatment and in breach of section 5 of the Constitution of Dominica because its net is cast too wide and can result, as it did here, in a sentence that is grossly disproportionate to what would otherwise been an appropriate sentence.
6. In mandating that a law inconsistent with the Constitution is void to the extent of its inconsistency, the Constitution sanctions the principle of severance and encourages its exercise where possible. This approach aims to fashion a remedy that involves minimum

trespass on the remit of Parliament and avoids invalidating more of the statute than is necessary while ensuring that what is left represents a sensible, practical and comprehensive scheme for meeting the fundamental purpose of the act which it can be assumed that Parliament would have intended. In this case, severing the mandatory minimum sentence provision does not so mutilate the legislative objective so that what remains does not reflect what Parliament originally intended. Parliament's general intention seems to have been to increase the penalties for drug trafficking offences as a means of deterrence. There is no reason to suppose that Parliament would not have enacted section 16(1) without the mandatory minimum provisions. Section 16(1) of the Drugs (Prevention of Misuse) Act must be read as if the words "but which shall not be less than seven years" were excised from the provision, leaving a maximum term of imprisonment of 15 years.

The Attorney General of Belize v Zuniga and others [2014] CCJ 2 (AJ) applied; Thelbert Edwards v The Queen Criminal Appeal No. 3 of 2006 (delivered 15th January 2007, unreported) applied.

APPLICATIONS AND APPEALS

Case Name:

**[1] Mohammad Sadek Atassi
(by his attorney Malek Atassi)
[2] Chirin Atasi
(by her attorney Malek Atassi)**

v

**[1] Raghed Murtada
[2] Live Nevis Development Limited
[3] The Bank of Nevis Limited**

[SKBHCVAP2024/0010]
(Saint Christopher and Nevis)

Date: Monday, 21st July 2025

Coram: The Hon. Mde. Margaret Price Findlay, Chief Justice [Ag.]
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal [Ag.]

Appearances:
Applicants: Mrs. M. Angela Cozier

Issues: Application for leave to appeal – Whether judge erred in dismissing the applicants’ applications for specific disclosure and interim payment - Rule 62.2(8) of the Eastern Caribbean Civil Procedure Rules Revised Edition 2023 - Whether there is a real prospect of success to grant leave to appeal

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:
1. Application for leave to appeal is dismissed.
2. No order as to costs.

Reason: Having read the notice of application filed on 27th August 2024, the affidavit in support of the application filed on 28th August 2024 with authorities, the written submissions filed on 10th March 2024 and the draft notice of appeal, and having heard the oral submissions of counsel, the Court was satisfied that the applicants had not met the threshold for the grant for leave to appeal. The Court found that the matters raised ought to be properly determined at trial, therefore the appellant had not demonstrated a real prospect of success or that there was some

compelling reason why the appeal ought to be allowed.

Case Name:

Malvern Walwyn

v

**The Attorney General of St. Christopher and
Nevis**

**[NEVHCVAP2024/0013]
(Saint Christopher and Nevis)**

Date:

Monday, 21st July 2025

Coram:

**The Hon. Mde. Margaret Price Findlay, Chief Justice
[Ag.]
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of
Appeal [Ag.]**

Appearances:

Applicant:

No appearance by Counsel or the applicant

Issues:

**Application for leave to appeal – Whether leave to
appeal the order of Thompson J dated 25th June 2025
ought to be granted – Whether the appeal has a
realistic prospect of success - No appearance of the
applicant or counsel for the applicant**

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

**The application is dismissed for want of
prosecution.**

Reason: Before the Court was an application for leave to appeal filed on 3rd July 2024. At the hearing of the application, counsel for the applicant and the applicant were absent with no explanation. The application was therefore dismissed for want of prosecution.

Case Name: [1] Exclusive Retreats Limited
[2] Kevin Andrew Horstwood

v

First Caribbean International Bank (Barbados) Limited

**[SKBHCVAP2024/0006]
(Saint Christopher and Nevis)**

Date: Monday, 21st July 2025

Coram: The Hon. Mde. Margaret Price Findlay, Chief Justice [Ag.]
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Dexter Theodore KC with him Ms. Cynthia Combie – Martyr

Respondent: Mr. Damien Kelsick KC with him Ms. Hadya Dolphin and Ms. Chante Francis

Issues: Interlocutory appeal – Judge dismissing the appellants’ application to adduce the expert evidence of a Certified Business Valuer - Whether the learned judge failed to consider adequately or at all, that the expert evidence was reasonably required for the just resolution of the various aspects of the claim at trial – Whether judge erred in failing to consider adequately or at all, that in light of the pleadings of corporate loss, wastage, loss of bargain and loss of opportunity, the court would benefit from obtaining and reading the report of a Certified Business Valuer – Whether the

learned judge erred in failing to consider adequately, or at all, the ground in the appellants' application and affidavit that the curriculum vitae of Mr. Prem Lobo demonstrates that he has the requisite qualifications, experience and expertise to assist the Court in understanding the technical and financial impact caused to the various corporate facets of the appellants' business by the destruction of their hotel by fire, whilst under the control of the respondent bank – Rules 32.6(1) and (2) of the Civil Procedure Rules (Revised Edition) 2023 – Whether judge erred in misconstruing the appellants' application as an application seeking to appoint an expert witness for settlement purposes only

Type of Order:

Oral Judgment

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The matter is remitted to the High Court for hearing before another High Court Judge.**
- 3. Costs agreed by both parties in the sum of Two Thousand Dollars EC\$2000.00 to the appellant.**

Reason:

Coming on for hearing was an interlocutory appeal filed on 2nd December 2024 against the decision of Justice Tamara Gill delivered on 3rd May 2024 wherein the learned judge dismissed an application by the appellants to adduce the Expert evidence of a Certified Business Valuer. At the hearing of the appeal, counsel for the respondent, Mr. Damien Kelsick KC, conceded that the appeal should be allowed. Having had regard to counsel for the respondent's position and the written submissions of the appellant, the Court was also in agreement that the appeal should be allowed. Accordingly, the appeal was allowed and the matter remitted to the High Court for re-hearing before another judge. Costs were agreed by counsel in the sum of EC\$2,000.00 to be paid to the appellant.

Case Name:

BONI (Bank of New Innovation) Ltd

V
ARC Holdings Company LLC

[NEVHCVAP2025/0013]
(Saint Christopher and Nevis)

Date: Tuesday, 22nd July 2025

Coram: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Applicant: Ms. Nadia Chiesa

Issues: Application for leave to appeal – Leave to appeal order of Thompson Jr J made on 11th March 2025 in which the judge granted summary judgment in respect of the 3rd claimant in the court below - Whether the intended appeal poses a realistic prospect of success – Rules 62.2 (8) of the Civil Procedure Rules (Revised Edition) 2023 Whether the learned trial judge made a finding of fact that was not supported by evidence - Whether the learned trial judge erred in concluding that a fuller investigation would not result in an alteration or a change to the outcome of the decision in respect of the 3rd Claimant

Type of Order: Oral Decision

Result/Order: IT IS HEREBY ORDERED THAT:
The application for leave to appeal is dismissed.

Reason: By notice of application filed on 21st May 2025, which was amended by leave of the Court, the applicant sought leave to appeal the decision of Thompson Jr J dated 11th May 2025 wherein he granted summary judgment, in part, in favour of the 3rd claimant in the sum of US \$3,116,400.91. The applicant sought leave to appeal on the following grounds:

- 1) The learned judge erred in fact in holding that BONI refused to say what additional verification of the information supplied would entail.
- 2) The learned judge erred in concluding that there are no reasonable grounds that existed for believing that a fuller investigation into the facts would add or alter the available evidence and change the outcome in respect of the 3rd claimant.

On an application for leave to appeal, the test which the applicant must satisfy is set out in rule 62.2(8) of the Civil Procedure Rules, Revised Edition (2023). This rule provides that leave to appeal may be given where: (a) the court considers that the appeal would have a realistic prospect of success; or (b) there is some other compelling reason why the appeal should be heard. This test is stated in simple and unambiguous terms and require little elaboration save perhaps to observe that very now well settled meaning of a realistic prospect of success is one that is real as opposed to fanciful and one that is more than merely arguable per Othneil Sylvester v Faelleseje Civil Appeal No. 5 of 2005 (delivered 20th February 2006, unreported).

Having heard counsel for the applicant and having read the notice of application, supporting affidavit, draft notice of appeal and written submissions, the Court was satisfied that the applicant had failed to meet the grant of leave to appeal. The proposed grounds of appeal do not present a realistic prospect of success and there are no compelling reasons why leave should be granted and not

Accordingly, the application for leave to appeal was dismissed.

Case Name:

[1] Petrodel Investors Advisors (Nevis)
Ltd
[2] Michael Prest

v

[1] BNI Holdcorp Ltd

[2] Nicolas Hoffman
[3] Mark Kucher
[4] BONI (Bank of New Innovation)
Limited

[NEVHCVAP2025/0011]
(Saint Christopher and Nevis)

Date: Tuesday, 22nd July 2025

Coram: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Applicants: Mr. Terence Byron holding papers for Mr. Peter Foster KC

Respondents: Mr. Benjamin Drakes and Mr. Jared Tenant
Ms. Nadia Chiesa for BONI on a watching brief

Issues: Application for leave to appeal - Application for an adjournment

Type of Order: Adjournment

Result/Order: IT IS HEREBY ORDERED THAT:

1. The application for an adjournment is granted.

2. The matter is adjourned to a date to be fixed by the Chief Registrar.

Reason: Counsel, Mr. Terence Byron advanced an application for an adjournment on behalf of counsel, Mr. Peter Foster, KC. requesting that the matter be re-scheduled to the soonest available date. Mr. Byron indicated to the Court that unfortunately, Mr. Foster KC was unable to appear as he was unavailable on the scheduled date of the matter. The Court acceded to the application for an adjournment.

In relation to an application for costs made by counsel for the 1st, 2nd and 3rd, respondents, the Court noted that this was an ex parte application for leave to appeal and there was no requirement for the attendance of the respondents or the filing of written submissions in opposition.

Case Name:

The Estate of Linton Liburd SNR, Deceased

v

Krysta Liburd Clarke

[NEVHCVAP2024/0014]

(Saint Christopher and Nevis)

Date:

Tuesday, 22nd July 2025

Coram:

**The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Leon Charles

Respondent: Mr. Errol Williams

Issues:

Interlocutory Appeal – Appeal against parts of the order of Thompson Jr. J made on 3rd July 2024 in which the judge refused an application to strike out the claim filed on 17th April 2024 and ordered the appellant/defendant to file a defence on or before 31st July 2024 – Whether the claim filed by the respondent has no real prospect of success and is bound to fail - Whether the appellant is a proper party to the claim and as such whether the claim as filed can be properly sustained against the appellant – Principles of Laches and Delay – Whether the claim is “stale” and barred by unconscionable delay - Whether the judge failed to consider that the respondent’s claim was statute

barred pursuant to section 6(3) of the Limitation Act, Cap 5.09 – Whether the judge erred in that he failed to give adequate reasons and/or insufficient reasons for his decision not to grant the application to strike

Type of Order:

Oral Judgment

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The interlocutory appeal is dismissed.
2. The order of the learned judge as to the filing of the defence is affirmed except that the filing of same is deferred to 21 days from today's date.
3. The appellant shall pay costs of the appeal to the respondent to be assessed if not agreed within 21 days.

Reason:

Before the Court was an interlocutory appeal filed by the appellant on 31st March 2025 against the order of Justice Patrick Thompson Jr dated 3rd July 2024 in which he refused the appellant's application to strike out the respondent's claim and ordered the appellant to file his defence on or before 31st July 2024. Leave to appeal was granted on 10th March 2025. By Claim Form and Statement of Claim filed on 19th March 2024, the Claimant as the Personal Representative for the Estate of Herman Liburd, deceased, sought a declaration that he is entitled to at least a 25% beneficial interest in a commercial property in Nevis ("the disputed property") arising out of and by virtue of the principles of constructive trust and of proprietary estoppel. The disputed property was until 5th May 2023 registered in the name of Linton Liburd Snr by Certificate of Title registered in Book 32, Folio 85. Herman Liburd and Linton Liburd Snr were both brothers who are both deceased. On 17th April 2024, the lawfully appointed executors of the appellant's estate filed an application to strike out the proceedings on the bases that it disclosed no reasonable cause of action and that the Claim Form and Statement of Claim were an abuse of the process of the court. The appellant contended, among other things, that the claim could only be

proved by his evidence because it was based on an alleged agreement or understanding between the deceased Liburd brothers and not evidence by any written material; further, that the respondent was not a proper party as the Estate of the deceased, Dr. Linton Liburd, Snr, had been administered and the disputed property passed to the Executors of the estate jointly with others; that there was no basis for claiming constructive trust as no legal claim was made during the lifetime of the deceased, Herman Liburd, and; the doctrine of laches operated as a bar to the claimant's "stale" claim. The appellant contended, among other things, that His Lordship Justice Patrick Thompson Jr, made an order on the application to strike refusing to grant the application to strike out the Claim Form on the basis that the claim raised difficult questions of law and fact on issues which could only be addressed during the trial.

Before the Court, the appellant renewed the legal contentions made before the learned trial judge. The appeal was strenuously resisted by the respondent. The appellant set out in its interlocutory notice of appeal 19 grounds of appeal, principal among them was that the learned judge failed to give accurate reasons and or sufficient reasons for his decision not to grant the application to strike. The Court considered the notice of interlocutory appeal, the submissions filed by the appellant and respondent, the impugned order of the learned judge as well as the oral submissions of the appellant and the respondent. The Court noted that there were three hearings between 20th May 2024 and 3rd July 2024 before the learned judge in which extensive oral and written submissions were presented and considered by the learned judge in relation to the various issues raised on the strike out submissions. The Court took note that at paragraphs 2 and 6 of the respondent's written submissions before the Court, he asserted that the appellant, on the second hearing of the application before the learned judge, had conceded when prompted by the court, that issues relating to limitation and delay were issues for trial, although before this Court, learned counsel for the appellant submitted that he had no recollection of those concessions having been made.

The Court was satisfied that the learned judge succinctly set out his reasons for refusing the application, namely, that the Claim and Statement of Claim raised difficult questions of law and fact and issues which could only be addressed during trial. However, in a matter such as this where he did not give fulsome reasons, the Court considered that having regard to its history and the changes made before the Court on the date of the hearing, it was satisfied that the conclusion reached by the trial judge was a correct conclusion and though the Court can exercise its independent assessment of the application would have concluded that in respect of all of the issues under consideration before the learned judge that substantive triable issues of fact and law were contained therein that would have caused this Court to arrive at the same conclusion as the learned judge. In that regard, the Court was of the opinion that in relation to the appellant's contention that the Claim Form and Statement of Claim did not disclose a factual basis on which the pleaded arrangement between the brothers, Herman Liburd and Dr. Linton Liburd Snr, can be made out without even listening against the evidence being adduced, that with respect to the claim based on constructive trust and proprietary estoppel, the claimant has in addition to an oral arrangement, pleaded in paragraphs 6 to 8 of the Statement of Claim circumstances from which inferences can properly be drawn that could establish a prima facie case of either or both causes of action. As to the limitation and delay contentions by the appellant that likewise these involve contentions of fact unknown that can only be determined at trial. Further that the learned judge was entitled to find that the question as to whether there was a basis for the claim in constructive trust noting that a claim having been made during the lifetime of the deceased Herman Liburd, that legal and factual issues which are best resolved at the trial emanate from those submissions. Further that the question of whether the claimant is a stranger to the alleged arrangement between the appellant and the respondent, canvassed by the trial judge, signified that an amendment to the claim form and statement of claim can satisfactorily address such an issue. In relation to whether the now registered of the disputed property are innocent purchasers for value without

notice of the respondent's claim which arose on submissions filed on behalf of the appellant and the respondent in the court below and also before this Court, was also an issue which can properly be resolved at trial. Much of the appellant's submissions before the Court pointed to a conclusion that all of the issues which had been raised before the Court on the interlocutory appeal ought to be canvassed at trial between the parties. The Court was also satisfied that on the premises, the pleadings filed by the respondent in the High Court raised substantive issues of fact and law that can only be properly resolved at trial and that in the exercise of his discretion, the learned judge determination was not plainly wrong. For the reasons outlined in this order, the appeal was accordingly dismissed.

Case Name:

**[1] The Development Control Authority
[2] The Attorney General**

v

Mondesir Estates Limited

**[SLUHCVAP2023/0020]
(Saint Lucia)**

Date:

Wednesday, 23rd July 2025

Coram:

**The Hon. Mde. Margaret Price Findlay, Chief Justice
[Ag.]
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal**

Appearances:

Applicants:

Mr. Anand Ramlogan SC with Mr. Jared Jagroo, Mrs. Rochelle John-Charles and Mr. Kurt Satney

Respondent:

Mr. Richard Harwood KC with Mr. Peter I. Foster KC and Ms. Marie-Ange Symmonds and Ms. Tianah Foster

Issues:

Application to adduce fresh evidence - Whether the evidence would have an important influence on the

result of the appeal - Whether the fresh evidence is necessary in the interests of justice to properly resolve the issues raised in the appeal - Whether the documents sought to be adduced satisfy the requirements of the Ladd v Marshall test

Type of Order:

N/A

Result/Order:

**IT IS HEREBY ORDERED THAT:
Judgment is reserved.**

Case Name:

**[1] The Development Control Authority
[2] The Attorney General**

v

Mondesir Estates Limited

**[SLUHCVAP2023/0020]
(Saint Lucia)**

Date:

Wednesday, 23rd July 2025

Coram:

**The Hon. Mde. Margaret Price Findlay, Chief Justice
[Ag.]
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal**

Appearances:

Appellants:

**Mr. Anand Ramlogan SC with Mr. Jared Jagroo, Mrs.
Rochelle John-Charles and Mr. Kurt Satney**

Respondent:

**Mr. Richard Harwood KC with Mr. Peter Foster KC
and Ms. Marie-Ange Symmonds and Ms. Tianah
Foster**

Issues:

**Civil Appeal - Statutory appeal - Section 26 of the
Physical Planning and Development Act - Whether the
trial judge erred in dismissing the appellants'
objection that there was a viable alternative remedy in
the form of an appeal under section 26 of the Physical**

Planning and Development Act - Whether the court erred in finding that a constitutional claim was the proper and appropriate method of challenge based on the facts of the claim- Whether the Attorney General was a proper party to the proceedings - Whether the court erred by usurping the role and function of the Physical Planning and Development Appeals tribunal by making a premature intervention which permitted the respondent to bypass the appeal process - Jurisdiction of the court - Whether the court assumed or arrogated to itself jurisdiction in excess of the powers conferred by section 26 - Whether the instances of non-compliance with the Act amounted to a breach of mandatory provisions such that the first appellant was disabled from carrying out its statutory duties - Whether the trial judge erred in purporting to direct the first named appellant to consider the payment of compensation to the respondent consequent upon the remission of the respondent's application to the first named appellant - Whether the LAC study was correctly found to be a document which could not be relied on by the first named appellant in determining the respondent's application - Whether the statutory provisions in respect of the preparation of physical plans were mandatory - Whether the trial judge erred in considering that PMAAC's existence and the DCA's reliance upon it as a referral agency in respect of developments within the PMA required rationalization or confirmation by Cabinet or other legal instrument or statutory authority having regard to the definition of "referral agency" under the Act - Whether the appropriate procedures under the Act were followed - Whether the trial judge erred by failing to take into consideration that the right guaranteed under section 6 of the Constitution is not an absolute right - Whether the judge erred when he sought to resolve the issue of section 6 of the Constitution by concluding that the first named appellant's refusal of the respondent's application for development was ultra vires

Type of Order:

N/A

Result/Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Camille Kelly

v

Winston Crooke

**[NEVHCVAP2025/0008]
(Saint Christopher and Nevis)**

Date:

Thursday, 24th July 2025

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Kimberly Cenac - Phulgence, Justice of Appeal [Ag.]**

Appearances:

Applicant:

Ms. Angela Cozier

Issues:

Application for leave to appeal – Appeal against the decision of the learned judge dated 1st April 2025 – Payment of money judgment – Rule 62.2(8) of the Civil Procedure Rules (Revised Edition) 2023 - Whether the appeal has a realistic prospect of success

Type of Order:

Oral Decision

Result/Order:

IT IS HEREBY ORDERED THAT:

The application for leave to appeal is dismissed.

Reason:

Before the Court was an application for leave to appeal the decision of the learned judge dated 1st April 2025. The decision of the learned judge was made on a judgment summons hearing relating to the

enforcement of a judgment entered in favour of the respondent (the claimant in the court below) dated 3rd February 2023 for the sum of \$226,663.63. The Court noted that the judgment dated 3rd February 2023 is the subject of an appeal which was pending in NEVHCVAP2023/0027 and there was no stay of execution of this judgment. On 12th February 2025, the court made an order for the judgment summons to be amended and served on the applicant, the defendant in the court below. On 17th February 2025, the amended judgment summons was filed and served on the applicant. The hearing of that amended judgment summons was scheduled for 27th February 2025 but was adjourned as the applicant had been short served. At that hearing, the application for a stay of the judgment summons and other proceedings was heard.

By Order dated 27th February 2025, the application for a stay of the judgment summons and other proceedings was refused on the basis that the application ought to have been made to the Court of Appeal and the matter was adjourned to 1st April 2025. The applicant then sought and obtained leave to appeal the order dated 27th February 2025. That interlocutory appeal remains pending in NEVHCVAP2025/0006. By the order dated 1st April 2025 the learned judge adjourned the hearing of the judgment summons, ordered the judgment debtor who is the applicant in these proceedings to pay a portion of the judgment debt into Court by the adjourned date and to file an affidavit of means. These were the relevant parts of the learned judge's order which were the subject of the application.

At the outset the Court recognized that the applicant had not filed a draft notice of appeal setting out the grounds on which the appeal was to be advanced or submissions in support of the application. The sole ground advanced by the applicant was that the amended judgment summons filed presented cogent evidence that the notice of appeal against the judgment dated 3rd February 2023 would be rendered nugatory if the amended judgment summons is enforced against the applicant. The application therefore conflated several matters. The applicant had treated the application as if it was an application for a stay of the judgment or of the proceedings in the court below, but

this was an application for leave to appeal the order dated 1st April 2025 made on a judgment summons application. The Court noted that this was not an application for a stay of the judgment dated 3rd February 2023 and there was no current stay in place. The Court noted that it is trite law that an appeal does not operate as a stay of execution or of the proceedings and therefore there was nothing to prevent the judgment of 3rd February 2023 from being enforced by the respondent, who was the claimant in the court below.

Having considered the application for leave to appeal with the affidavit in support filed on 23rd April 2025 and the order of the learned judge dated 1st April 2025, the Court was satisfied that the applicant had not advanced cogent evidence which supported the application and which would have informed the factors which the Court must consider in exercising its discretion to grant leave to appeal. Given the requirements of CPR 62.8 (8), the Court found that the applicant had not demonstrated that her appeal of the learned judge's order dated 1st April 2025 had a realistic prospect of success or that there is any other compelling reason why the appeal should be heard. Accordingly, the application for leave to appeal was dismissed.

Case Name:

Sheldon Shield

v

Tyrel Hendricks

[SKBHCVAP2024/0015]

(Saint Christopher and Nevis)

Date:

Thursday, 24th July 2025

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Kimberly Cenac - Phulgence, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. DeLara MacClure Taylor

Respondent: Dr. Henry Browne KC with him Mr. O’Grenville Browne

Issues:

Interlocutory Appeal - Default Judgment - Setting aside default judgment - Affidavit of service - Whether the Master erred in law when he failed to set aside the Default Judgment - Whether the appellant was properly served with the claim form and other relevant documents - Rules 13.2 and 13.3 of the Civil Procedure Rules (Revised Edition) 2023 - Prospect of success of intended appeal

Type of Order:

Oral Decision

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The judgment of the master is affirmed.
3. The respondent to have costs assessed in the sum of \$2700.00 to be paid within 21 days of today’s date.

Reason:

Before the Court was an interlocutory appeal against the decision of Master Saunders dated 23rd October 2024. The appeal was lodged on 21st February 2025 and brought in issue a decision taken by the learned master on 12th July 2023 in which he dismissed an application of the appellant (the 1st defendant in the court below) to set aside a default judgment made against him. Having considered the documents in the hearing bundle as well as the provisions of the Civil Procedure Rules (Revised Edition) 2023, the Court determined that the appeal should be dismissed and the judgment of the master affirmed. A reasoned order will be provided at a later date.

Case Name:

Rayjorn Richards

v

The Chief of Police

**[SKBMCRAP2024/0001]
(Saint Christopher and Nevis)**

Date: Thursday, 24th July 2025

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Kimberly Cenac - Phulgence, Justice of Appeal [Ag.]

Appearances:

Appellant (via zoom):	Mr. Romel Watkins
Respondent:	Mr. Leslie Roberts

Issues: Magisterial criminal appeal - Appeal against sentence - Whether the sentence passed was such that a magistrate viewing the circumstances reasonably could not properly have so decided - Whether the sentence imposed was unduly severe

Type of Order: Oral Decision

Result/Order: IT IS HEREBY ORDERED THAT:
1. The appeal is dismissed.
2. The sentence imposed by the learned magistrate is affirmed.

Reason: Before the Court was an appeal against the sentence of 4 years and 8 months imposed on the appellant by the magistrate of District B following a plea of guilty to the offence of possession of a firearm and possession of 9 rounds of ammunition.

The brief facts were that on 4th November 2020, police executed a search warrant at the appellant's home. While searching his bedroom, in the appellant's presence, they discovered under the bed mattress one high point pistol firearm, .45 model firearm containing

9 rounds of .45 ammunition. He was arrested and subsequently charged with possession of a firearm and possession of ammunition. When interviewed, he told the police that the firearm belonged to a friend who was now deceased and that he had it to defend himself. In the plea of mitigation, counsel told the magistrate that the appellant feared for his life because he had been recently shot. When arraigned, the appellant pleaded guilty to both charges and following the plea in mitigation, the learned magistrate sentenced him as aforesaid. By amended notice of appeal filed on 4th July 2025, the appellant sought to challenge the sentence on two grounds: 1) the sentence passed was such that a magistrate viewing the circumstances reasonably could not properly have so decided; and 2) that the sentence imposed was unduly severe.

On behalf of the appellant, Mr. Watkins submitted in summary that the magistrate had adopted too high of a starting point however during the hearing before this Court, he withdrew his contention. It was also submitted that the magistrate failed to treat as a mitigating factor, the fact that the appellant had possession of the weapon through intimidation or coercion, having been previously targeted. The Court pointed out that to him that if this submission was correct, that would be effectively promoting and condoning vigilante justice as was said at paragraph 35 of the case of The Director of Public Prosecutions v Dwayne Martin and Carlan Hendrickson SKBHCR2015/0033 (delivered 12th May 2017, unreported) as persons who were caught up in gang rivalry or other rivalry will feel free to arm themselves with illegal weapons to either initiate violence or retaliate. When put this way, Mr. Watkins readily resiled from that submission. Mr. Watkins had originally submitted that the magistrate had failed to treat the appellant's expression of remorse as a mitigating factor but had to concede that there was no evidence of this on the record. In relation to the appellant's status as the sole financial provider for two minor children, Mr. Watkins sought to rely on the case of The Director of Public Prosecutions v Dwayne Martin and Carlan Hendrickson. The situation in that case is distinguishable because in that case, both parents faced the prospect of incarceration and there was

evidence that the young children resided with them. In the case at bar, while there was evidence that the appellant was the provider, the evidence was clear that the children did not reside with the appellant. That said, the magistrate ought to have addressed his mind to this factor which was a mitigating factor. The respondent conceded in written submissions that this was a mitigating factor which the magistrate failed to consider. Finally, Mr. Watkins submitted that the magistrate erred in failing to treat as a mitigating factor the appellant's relatively clean record, given that his only conviction was for indecent language for which he was sentenced to 14 days in prison. The fact was that the appellant did have a conviction which the magistrate did not treat as an aggravating factor. Even assuming that counsel's argument is correct, it could only have led to a negligible reduction given the circumstances of this case. Viewing the sentence overall and mindful of the principle that the Court of Appeal does not interfere with a sentence unless it is manifestly excessive or wrong in principle, the Court found that the sentence of 4 years and 8 months imposed in this case was just and proportionate having regard to the circumstances of this case and the offence committed and it was well within the range of sentences contemplated on a proper application of the Sentencing Guidelines for Firearms Offences.

In the circumstances the appeal was dismissed and the sentence imposed by the learned magistrate affirmed.