

THE EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL

**SPECIAL SITTING FOR
THE TERRITORY OF THE VIRGIN ISLANDS
VIDEOCONFERENCE
Thursday, 2nd April 2026**

JUDGMENTS

Case name:

Geminis Investors Limited

v

[1] Goods Technology Starting International Limited

[2] G-Force Int'l Co Limited

[BVIHCMAP2022/0020]

Consolidated with

Geminis Investor Limited

v

[1] Goods Technology Starting International Limited

[2] G-Force Int'l Co Limited

[BVIHCMAP2022/0043]

TERRITORY OF THE VIRGIN ISLANDS

Date:

Thursday, 2nd April 2026

**Coram for
delivery:**

**The Hon. Mde. Margaret Price-Findlay, Chief Justice (Ag.)
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal**

Appearances:

Appellant: Mr. Dan Griffin

Respondent: Ms. Sara-Jane Knock

Issue:

Leave to appeal to His Majesty in Council - Section 3(1)(a) of the Virgin Islands (Appeals to Privy Council) Order 1967 - Appeal as of right - Whether a refusal to set aside a statutory demand involves a claim to or question respecting property or right of the value of £300 sterling or upwards - Whether the debt is quantified at the statutory demand stage - Application for conditional leave to appeal - Great general or public importance - Section 3(2)(a) of the 1967 Order - Whether the interests of justice satisfy the requirement for a genuinely disputable question of law - Insolvency - Statutory Demand - Winding up proceedings - Stay of Execution - Principles for granting a stay - Whether an appeal against a declaratory order is capable of being stayed - Requirement for cogent evidence to prove an appeal would be rendered nugatory

Result/order:

IT IS HEREBY ORDERED THAT:

1. The applications for conditional leave to appeal to the Privy Council and the stay application in the default judgment leave application are refused.
2. Costs to the respondents to be assessed by a judge of the Commercial Court in default of agreement within 21 days of this judgment.

Reason:

1. In relation to the claim for leave to appeal as of right in the Demand Proceedings, the refusal to set aside a statutory demand does not involve a claim to or question respecting property or right of the value of £300 Sterling or upwards. Applying a strict construction of section 3(1)(a) of the 1967 Order, at this stage there is not a quantification of the debt, and the Value Threshold does not come into play. The

application to set aside a statutory demand does not involve directly or indirectly a claim to a right of the required value because the resulting order is a *sui generis* mechanism that does not result in an enforceable order for a liquidated sum but is instead a procedural prerequisite to the filing of substantive winding-up proceedings. Because the statutory demand process is a standalone mechanism where the debt remains unquantified until the subsequent liquidation phase, the £300 Sterling threshold is not legally engaged.

Sian Participation Corp (In Liquidation) v Halimedia Ltd [2024] UKPC 16 applied; BEC Limited v A2 and A1 BVIHCP2022/044 (delivered 9th September 2022, unreported) considered.

2. Even if the Value Threshold were met, the proposed appeal does not raise a genuinely disputable triable issue to satisfy the Sparkasse Bregenz Bank AG test and that line of authority which the Privy Council in Sian Corporation has endorsed. The Court of Appeal was clear on the evidence which it accepts was before the lower court including the contractual construction of the Demand Notes, as well as the concessions made by appellant's counsel in the lower court and the court of appeal. These concessions, which confirmed that the appellant had not satisfied the mandatory conditions for an asset settlement, left an undisputed and admitted debt balance well in excess of the statutory minimum required to deem the company insolvent. In the absence of a genuine dispute on substantial grounds, there is no basis upon which the court could conclude that the appeal has a reasonable prospect of success.

Sparkasse Bregenz Bank AG v Associated Corporation BVIHCVAP2002/0010 (18th June 2003, unreported) followed; Sian Participation Corp (In Liquidation) v Halimedia Ltd [2024] UKPC 16 followed.

3. Regarding the application for discretionary leave in the Substantive Proceedings, the applicant failed to identify a specific question of law of great general or public importance. An intended appellant must satisfy the court that the question of law is one of great general or public importance such that it ought to be submitted to His Majesty in Council. The questions proposed by the applicant, which centered on the interests of justice following a failure to file a defence, are not questions of law of great general or public importance but are rather questions of fact or of the application of well-settled principles of law to the specific circumstances of the case. The discretion to grant leave under section 3(2)(a) is to be exercised sparingly and only where the question involves a serious issue of law or a matter of constitutional significance that impacts the public at large.

Section 3(2)(a) of the Virgin Islands (Appeals to Privy Council) Order 1967 applied; *Kenneth M. Krys v Farnum Place LLC BVIHCVAP2013/0014* (delivered 23rd August 2023, unreported) applied.

4. A party seeking a stay should provide cogent evidence that the appeal will be stifled or rendered nugatory unless a stay is granted. On this application the applicant has put no evidence far less cogent evidence to make out the application for the stay or that refusing the stay means that the proposed appeal will be rendered nugatory. The general rule remains that a successful litigant is entitled to the fruits of their judgment, and the mere obligation to pay a sum of money or face insolvency proceedings does not, without more, constitute a ground for a stay. Furthermore, because the order in the Demand Proceedings was declaratory in nature merely authorizing the creditors to apply for the appointment of liquidators without requiring them to do so it did not create enforceable rights and was therefore not capable of being stayed. The appropriate course of action would have been for the company to apply for

an injunction to restrain the creditors, rather than a stay of the order itself.

C-Mobile Services Limited v Huawei Technologies Co Ltd BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported) applied; BEC Limited v A2 and A1 BVIHCMAP2022/0044 (delivered 9th September 2022, unreported) followed; ICM SPC On behalf of Ancile Special Opportunity and Recovery Fund Segregated Portfolio v Ryan Paul Jarvis and Rachelle Frisby [As Joint Liquidators] BVIHCMAP2024/0019 (delivered 17th February 2026, unreported) considered

Case name:

Mario Perez Charles

v

The King

[SLUHCRA2025/0001]

Saint Lucia

Date:

Thursday, 2nd April 2026

Coram for delivery:

**The Hon. Mde. Margaret Price-Findlay, Chief Justice (Ag.)
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal**

Appearances:

Appellant: Ms. Wauneen Louis-Harris

Respondent: Ms. Kelly Thomson

Issue:

Criminal Appeal – Section 85(b) of the Criminal Code – Section 3(1) and (7) of the Criminal Records (Rehabilitation of Offender) Act - Whether the trial judge erred in law in

deciding that there were no mitigating factors of the offence whereas the appellant was indicted under section 85(b) of the Criminal Code which enacts that a person commits murder if he or she causes the death of another person intending to cause grievous bodily injury – Intention to cause serious bodily harm - Whether the trial judge erred in law in deciding to make an upward adjustment from 25 years to 28 years and in failing to take into account that the intention to cause serious bodily harm rather than to kill was a mitigating factor in relation to the offence – Spent convictions - Whether the trial judge erred in law in concluding that the previous convictions of the appellant when he was a minor was an aggravating factor which ought to have been considered in determining the appropriate sentence of the appellant – Good character and good prospects of rehabilitation – Whether the trial judge misdirected herself on the law in failing to take into account the good character of the appellant and the fact that he had good prospects of rehabilitation in relation to the mitigating factors which would have justified a further reduction in the sentence

Result/order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The appellant's sentence of 18 years and 6 months is varied. A sentence of 17 years and 6 months is substituted, to run from the original date of sentencing, i.e. 9th December 2022, with credit given to the appellant for time spent on remand.

Reason:

1. Under the Eastern Caribbean Supreme Court Sentencing Guidelines 2019, a sentencing judge is required to take into account any aggravating and mitigating factors pertaining to the offence, and then as a second step to the offender, to the extent that it has not allowed for them in its choice of starting point, so that care must be taken not to double-count. This means that a sentencing judge must ensure that

any aggravating or mitigating factor is not taken into account both in formulating a starting point and again in adjusting the sentence in accordance with the guidelines. The transcript reveals that the appellant's intent to cause serious bodily harm rather than to kill was expressly taken into account in arriving at the starting point of 25 years. Having done so, the learned judge could not properly consider the appellant's intent as a mitigating factor of the offense.

Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules

2. The evidence does not reveal whether the offence was premeditated or not. The appellant's statement is sparse. He does not provide much detail, nor do the agreed facts of the case reveal any evidence of premeditation, whether it be supporting or rebutting the existence of planning or aforethought. The learned judge's approach was correct, that is to say that she was justified in not considering premeditation as an aggravating factor as there was no proper basis on which to do so. By the same token, there was equally no basis to consider premeditation as a mitigating factor. Grounds 2 and 3 therefore fail in light of the learned judge's proper finding that there were no mitigating factors of offense to be considered at that stage.

Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 followed.

3. On grounds 3 and 4, the appellant's previous convictions were in relation to possession of marijuana and a firearm, and he received a non-custodial sentence in 2009. The correct rehabilitation period in accordance with Schedule 1 of the Criminal Records (Rehabilitation of Offender) Act ("Criminal Records Act") is 5 years. The Criminal Records Act is clear that a conviction is spent where the defendant has not been convicted of any other offence during the rehabilitation period. The conviction in this case for murder took place well over 10 years after the appellant's previous convictions in

2009. The rehabilitation of 5 years would have elapsed and the convictions for possession of marijuana and a firearm are spent. It is apparent from the record that the learned judge considered the appellant's previous convictions to not be spent at the time of the commission of the offence. That conclusion, in itself, is not an error of fact. The offence took place approximately 3 years after the possession of drugs and firearm convictions, during the rehabilitation period. Importantly however, the Criminal Records Act is concerned not with the date of the commission of the offence but with the date of conviction. In this case the appellant was only convicted in 2022, having been on remand for about 10 years. In those circumstances learned judge erred in concluding that the appellant's previous convictions were not spent under the Criminal Records Act and consequently misdirected herself in treating those convictions as an aggravating factor of the offender.

Criminal Records (Rehabilitation of Offender) Act Chap 3.13 of the Revised Laws of Saint Lucia applied.

- 4. Section 7(1)(d) of the Criminal Records Act creates an exception through which spent convictions may be admitted in criminal proceedings. This exception exists in circumstances of absolute necessity, where justice is impossible without evidence of the previous spent convictions. This is a higher threshold and not applicable in this case, as a just and fair sentence could have been arrived at solely on the facts of the case itself without need for reference to the previous convictions. Since section 7(1)(d) is not applicable in this case, the learned judge fell into error in taking the previous convictions into account and determining that the appellant was not of positive good character. Before the judge could properly do so, she was required to engage with section 7(1)(d) and ask herself whether justice could not be done without reference to the spent convictions. Understandably, because she erred in treating the conviction as not spent, this question was not addressed. Even if it had**

been, the exceptions under section 7 of the Criminal Records Act would not have justified taking account of the spent convictions, which occurred when the appellant was a minor and which attracted a community service order. In those circumstances it would have been unjustifiable to have regard to the appellant's spent convictions and to treat them as aggravating factors. Therefore, there is some merit to ground 4 of the appellant's grounds of appeal.

Criminal Records (Rehabilitation of Offender) Act Chap 3.13 of the Revised Laws of Saint Lucia applied; A V B UKEAT/0025/13/DM considered.

5. Where an offender is considered to have no relevant or recent convictions, he must be credited, as a mitigating factor, for being of good character. As a direct result of the judge's error in treating the previous convictions as not spent, the learned judge further erred in failing to consider the appellant's good character as a mitigating factor where the Sentencing Guidelines expressly provides for the same. The appeal must therefore succeed on the ground that the learned judge erred in considering the appellant's previous spent convictions as an aggravating factor and as a result failed to consider the good character of the appellant as a mitigating one.
6. Good prospects of rehabilitation constitute a distinct mitigating factor pertaining to the offender under the Sentencing Guidelines. The learned judge's statements in the record reveal that she was aware of the same. In fact, it was presented by counsel for the Crown in the court below as a mitigating factor. The parties to the sentencing exercise however seemingly placed primary focus on whether there was remorse on the part of the appellant and whether the lack of maturity explained the offending. As a result, it remains unclear whether the two-year downward adjustment included consideration of good prospects

of rehabilitation. This lack of clarity is particularly prejudicial to the appellant where his Pre-Sentence Report describes him as essentially a 'model prisoner' who embraced the journey of rehabilitation. In those circumstances the learned judge ought to have paid special attention to the appellant's good prospects of rehabilitation as a mitigating factor. Accordingly, credit should properly be afforded to the appellant, as a mitigating factor of the offender, for good prospects of rehabilitation.