

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

GRENADA

Monday, 26th January 2026 – Friday, 30th January 2026

JUDGMENTS

Case Name:

**[1] AKEEM BENJAMIN
[2] MARK MANSOOR
[3] MARTIN MANSOOR**

v

**[1] Novella Phillip
[2] Wayne Phillip**

**[ANUHCVP2023/0014]
(Antigua and Barbuda)**

Date:

Monday 26th January 2026

**Coram for
Delivery:**

**The Hon. Mde Esco Henry, Justice of Appeal
The Hon. Mde. Cadie St. Rose Albertini, Justice of
Appeal
The Hon. Mr. Reginald Armour, Justice of Appeal [Ag.]**

Appearances:

Appellants: Ms. C. Debra Burnette with Ms. Mandi A. Thomas

**Respondents: Mr. Kendrickson Kentish KC with him, Ms. Kathleen
Bennett and Mr. Ralph Bowen**

Issues:

**Civil Appeal – Fatal Accident – Negligence – Award of
damages on behalf of deceased's estate – Causes of
Action (Survival) Act – Whether the judge erred in**

making awards of damages for the benefit of the deceased's estate under the Causes of Action (Survival) Act – Findings of fact – Whether the judge failed to conduct a proper evaluation of the facts and/or to ascribe appropriate weight to the evidence in finding the appellants liable in negligence – Apportionment of liability – Contributory negligence – Whether the judge erred in her assessment and apportionment of 15% contributory negligence to the deceased – Fatal Accidents Act – Whether the assessment of damages by the learned trial judge without a jury was contrary to the provisions of the Fatal Accidents Act – New point raised on appeal

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed in part and the learned judge's award to the deceased's estate of XCD\$5,000.00 for loss of expectation of life, US\$23,370.86 in respect of lost years for the benefit of the estate and XCD\$3,500.00 for funeral expenses are set aside.**
- 2. The prescribed costs ordered to be paid to the respondents in the court below are to be calculated on the diminished amount of the overall award of damages to the respondents occasioned by the setting aside of the awards at sub-paragraph (1) of this paragraph.**
- 3. The appeal against the orders of the learned judge holding the appellants 85% liable in negligence and the deceased 15% contributorily negligent on the dependency claims and against the damages awarded in relation to the same is dismissed.**
- 4. The damages awards made by the learned judge in relation to the dependency claim are affirmed.**

5. The respondents shall have $\frac{3}{4}$ of their costs and the appellants shall have $\frac{1}{4}$ of their costs in the appeal to be assessed within 21 days of today's date if not agreed.

Reason:

1. An action that devolves to the estate of a deceased person must be initiated by the duly constituted legal personal representative of the deceased's estate. Where the deceased dies intestate, the legal representative will usually be the duly appointed administrator (whether appointed by Letters of Administration or via court order to conduct proceedings on behalf of the estate) or if the deceased died testate, the executor of the deceased's estate. Since Ms. Oniqua Phillip, the deceased, died intestate, her estate could not be the beneficiary of an award under the Causes of Action (Survival) Act in circumstances where there was no duly appointed administrator. The learned judge erred in law by making such awards in the absence of a claim by a duly appointed administrator or representative claimant on behalf of the estate.

Causes of Action (Survival) Act, Cap. 78 of the Laws of Antigua and Barbuda Applied.

2. Failure to properly plead and particularise the cause of action in the Claim Form or Statement of Claim as per rule 8.7 of the Civil Procedure Rules will result in a procedurally deficient claim. In the present appeal, the respondents failed to properly particularise the claim under the Causes of Action (Survival) Act and therefore any claim under that Act is unsustainable. Merely mentioning the Causes of Action (Survival) Act in the pleadings is not adequate particularisation of the cause of action for the purposes of compliance with the CPR. Likewise, the respondents' failure to identify any heads of loss under which damages were being sought was another deficiency in the pleadings in respect of the claim for the benefit of the deceased's estate.

The awards made by the judge to the estate of the deceased are accordingly set aside.

Rule 8.7 of the Civil Procedure Rules, 2023 applied; Charmaine Bernard (Legal Representative of the Estate of Reagan Nicky Bernard) v Ramesh Seebalack [2010] UKPC 15 followed.

- 3. It is trite law that an appellate court is always slow to disturb findings of fact by a trial judge and would do so only if persuaded that the lower court was plainly wrong in making such findings by reason that the trial judge failed to properly analyse the totality of the evidence and as a result made findings that are impermissible on the evidence adduced. In considering whether the learned judge erred in her evaluation of the evidence such that her conclusion that the appellants were liable in negligence for the deceased's death is fatally flawed, the principles of negligence in respect of motorists are to be borne in mind. They are taken into consideration for this purpose and in deciding (if necessary) whether any identified error(s) was fatal to her finding that the appellants were liable in negligence for the deceased's death as they contended. Drivers of motor vehicles owe in law a duty of care to other users of the road. The duty of care owed by a motorist on a given day at a particular time will depend on all the prevailing circumstances including the weather conditions, the amount and type of traffic on the roadway, the presence or absence of pedestrians including the number of pedestrians, noise levels, obstructions on the roadway if any, visibility, and any other relevant factors. Furthermore, the caution to be exercised by a motorist in any given situation should be commensurate with whether any harm would be occasioned otherwise and the type of harm that could be caused to a road user if due care is not employed by him in driving his vehicle. The learned judge took into account the oral testimonies and witness statements of the parties, the police report, the postmortem report and the undated**

letter from the magistrate of Districts A and B certifying the results of the Coroner's Inquest into Ms. Phillip's death. These formed the evidential background from which the learned judge made her findings of fact. Having reviewed the evidence that was before the judge, the Court is satisfied that the learned trial judge was entirely justified in finding that the appellants did not meet the requisite standard of care. It is more than obvious that the evidence and especially the cross examination elicited sufficient evidence which led the learned trial judge to find the respondents' assertion of negligence more likely true than not.

Benmax v Austin Motor Co Ltd [1955] 1 All ER 326 applied; Shaista Trading Company Limited d.b.a Diamond Republic v First Caribbean International Bank (Barbados) Ltd ANUHCVP2018/0021 (delivered 26th April 2021, unreported) followed.

4. The test for finding liability in negligence and the basis for a claim under the Fatal Accidents Act are not to be conflated. What is required to establish liability under the Fatal Accidents Act is quite different from the elements of negligence. It is not relevant to a determination of negligence for a court to find proof that the death was caused by a wrongful act, neglect or default. Therefore, the appellants' criticism that the learned judge did not say what wrongful act, neglect or default was attributed to Mr. Benjamin is not made out.

Elizabeth Annette Fyfield (Intended Administrator of the Estate of Kitwana Fyfield, deceased) v Dwight Harris SKBHCV2013/0184 (delivered 23rd October 2015, unreported) considered; Landau v Big Bus Company and another [2014] EWCA Civ 1102 distinguished.

5. Contributory negligence involves the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act

as a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless. In assessing whether the deceased was contributorily negligent, the learned judge noted that there was no evidence of what exactly happened at the time of the accident and that the driver did not see the deceased at the time of impact or before. She took into account that neither the deceased's mother nor the Mansoors were in proximity to the site of the incident. She noted further that there was no evidence of when the THC which was reported in the postmortem report was used by the deceased or whether her decision-making was affected by its consumption. The learned judge took note that there was also no positive indication of alcohol in the medical report. In this regard, the totality of the evidence with respect to alcohol being in the deceased's blood amounted to nothing more than speculation by the deceased's mother that she may have consumed alcohol. Although the appellants mentioned a report wherein it was found that the deceased had alcohol and drugs in her blood, no such report or document was produced in evidence. The judge however did accept that the deceased came into contact with the right rear wheel of the truck in the area between the rig/truck and the trailer which suggested that the deceased did not sufficiently heed the sound of the horn and that the deceased likely positioned herself in a manner and/or at a location that was likely to cause personal harm. Having regard to the foregoing, the Court is satisfied that the judge conducted a structured, well-reasoned and sound evaluation of the relevant factors and that she did not overlook any material considerations or give too little or too much weight to any in arriving at the conclusion that the deceased was liable for contributory negligence or in apportioning the deceased's liability at 15%.

Attorney General v Collingford John et al
SVGHCVAP2017/0006 (delivered 20th September

2018, unreported) followed; Jones v Livox Quarries Ltd [1952] 2 QB 608 applied.

6. An appellate court is cautious to allow a litigant to raise a new point on appeal but may do so if the interests of justice so requires on application by the party seeking to rely on it, with a clear and convincing explanation why it was not raised in the lower court. Other relevant considerations include the nature of the proceedings in the first instance court, the nature of the new point and any prejudice to the parties in granting or refusing leave to argue the new point. In this appeal, the appellants made no application to rely on the fourth ground of appeal where they contend that the learned trial judge exceeded her jurisdiction when she conducted an assessment of damages under the Fatal Accidents Act, although it was included in the Notice of Appeal. No explanation was provided as to why it was not raised before the learned judge. It appears to the Court that the administration of justice would in this instance be served by refraining from entertaining this new point on appeal. The trial proceeded below in circumstances where a procedural point about the forum for the assessment could have been raised but was not and where no other issue was taken regarding any other irregularity in the proceedings. In addition, it would be prejudicial to require the parties and the Court to consider setting aside the assessment of damages conducted by a judicial officer if the appellants were to prevail on this point. This ground of appeal is accordingly dismissed.

Win Business (Caofeidan) Limited formerly Win Business (Africa) Ltd v Anadarko China Holdings 2 Company et al BVIHCMAP2022/0044 (delivered 5th July 2023, unreported) considered; Notting Hill Finance Limited v Sheikh [2019] EWCA Civ 1337 considered.

Case Name:

Kenty Williams

v

Kyrol Williams

[SVGHCVAP2021/0003]

(Saint Vincent and the Grenadines)

Date:

Tuesday 27th January 2026

**Coram for
Delivery:**

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal**

Appearances:

Appellant:

Mr. Nicholas Providence

Respondent:

Ms. Tonya Da Silva

Issues:

Matrimonial causes – Ancillary relief – Property adjustment and settlement – Sections 32 and 34 of the Matrimonial Causes Act (Saint Vincent and the Grenadines) – Discretion of trial judge – Assessment of parties' respective interests in matrimonial property – Whether interest must be calculated by reference to net equity or may be calculated by reference to assessed value – Treatment of outstanding mortgage liability – Financial and non-financial contributions – Fairness – Appellate restraint

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The order of the learned judge in which she awarded the respondent a 35% interest in the house of Ruthland Vale to be calculated on the value as stated in the valuation of Franklyn Browne dated 7th July 2017 is set aside.**

3. The respondent is entitled to a 35% interest in the net equity of the property at Ruthland Vale.
4. The appellant will have its costs to be assessed by a judge of the High Court if not agreed within 21 days.

Reason:

1. In determining applications for ancillary relief, the court exercises a statutory discretion which must be exercised without discrimination and with the ultimate objective of achieving fairness. On appeal, an appellate court must be slow to interfere with the exercise of that discretion, having regard to the trial judge's advantage in seeing and evaluating the witnesses and assuming, unless demonstrated otherwise, that the judge properly directed herself as to the matters to be taken into account. Appellate intervention is justified only where there has been procedural irregularity, the consideration of irrelevant matters, the failure to consider relevant matters, or where the decision is plainly wrong, a threshold described as a high hurdle.

Piglowska v Piglowski [1999] 1 WLR 1360 applied; Foster v Foster [2003] EWCA Civ 565 applied.

2. In determining an application for ancillary relief under section 32 of the Matrimonial Causes Act, the court is required by section 34 to have regard to all circumstances of the case, including the parties' financial resources and needs, the standard of living during the marriage, and both financial and non-financial contributions to the welfare of the family. In exercising that discretion, the court must seek to achieve a fair outcome, must not discriminate between husband and wife, and must not favour the breadwinner over the spouse who looked after

the home and children. As articulated in *White v White*, equality is not a rule but a yardstick, and the court may depart from equal division where there is good reason to do so. Where, having regard to these principles, the trial judge correctly identifies matrimonial property, considers the evidence relating to its acquisition and development, and evaluates both the financial contributions of one party and the non-pecuniary contributions of the other, the court is entitled to consider that there are ample reasons to depart from awarding an equal share. In such circumstances, an award of a lesser percentage interest to one spouse, resulting in the other spouse receiving the greater share, properly reflects the application of section 34 and the overarching requirement of fairness.

Sections 32 and 34 of the Matrimonial Causes Act applied; *White v White* [2001] 1 AC 596 applied.

3. In ancillary relief proceedings, a spouse's respective share in matrimonial property is generally calculated based on net equity, after the mortgage and other secured loans have been deducted from the current market value. Although there is a dearth of case law which expressly mandates this approach, local and regional authorities are replete with examples of judges adopting and applying it. The use of net equity ensures a fair distribution based on the true value of the asset, taking into account outstanding debts or liabilities. Equity represents the difference between the current market value of the property and any secured liabilities and therefore reflects the portion of the asset actually available for division. Accordingly, the court and the parties should, unless there is a cogent explained reason otherwise, generally use the

net value after liens, not the gross value of the property, when determining parties' respective interests in matrimonial property. The ultimate objective remains the achievement of a fair outcome, with net equity forming the proper basis upon which the court exercises its discretion under section 34 of the Matrimonial Causes Act, having regard to all the circumstances of the case.

4. From a practical standpoint, applying market value rather than net equity would undermine the result intended by the learned judge. On the stated valuation of \$293,000.00, a 35% interest would yield \$102,550.00 to the respondent and a 65% interest \$190,450.00 to the appellant. However, the property is encumbered by a secured mortgage which both parties are legally obliged to satisfy. If the property were sold in accordance with the clean break principle, repayment of the outstanding mortgage would result in negative equity, as the mortgage exceeds the property's value. This was a material factor which the learned judge was obliged to take into account.
5. Fairness required the court to consider the overall financial picture, including the property and the entire matrimonial pool of assets and liabilities. The learned judge failed to properly weigh the full implications of the outstanding mortgage on the Ruthland Vale Property. As a result, the appellant would be obliged to pay the respondent \$102,550.00 representing 35% of the open market value of the property, without regard to the existing mortgage which jointly encumbered it. This constituted an error of principle warranting appellate interference and the setting aside of the award.

Case Name: Ikon Shina Ltd (formerly Nokian Shina LLC)

v

Olga Borisovna Smyshilaeva

**[BVIHCMAP2022/0073]
(Territory of the Virgin Islands)**

Date: Wednesday 9th July 2025

**Coram for
Delivery:** The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mde. V. Georgis Taylor Alexander, Justice of
Appeal [Ag.]
The Hon. Mde. Cadie St. Rose Albertini, Justice of
Appeal [Ag.]

Appearances:

Appellant: Mr. Ian Tucker

Respondent: In person

Issues: Commercial Appeal - Appeal against the order of a judge of the Commercial Division of the British Virgin Islands – Dismissal of appellant’s claim for enforcement of a money judgment of the Commercial Court of the Republic of Bashkortostan in the Russian Federation – Whether the June Ruling operates to assign to the appellant the debt established under the March Ruling – Whether the March and June Rulings should be construed together as constituting a foreign judgment for a definite sum, enforceable by the appellant against the respondent – Whether the March and June Rulings are final and conclusive as against the respondent – Whether the March and June Rulings are unenforceable in the BVI as being contrary to public policy

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The orders dismissing the appellant's Claim against the respondent are set aside. The Counter Appeal is dismissed.**
- 2. Judgment is entered against the respondent in favour of the appellant in the amount of 1,554,102,387.86 rubles with interest to run from the date of the Wallbank J. Order until payment, at a rate of 5% per annum under the Judgments Act Cap 35.**
- 3. The appellant is awarded its costs on appeal and in the court below to be assessed if not agreed within 14 days of the date of this order.**
- 4. The claim against Mr. Smyshliaev shall proceed in the High Court in accordance with the Civil Procedure Rules.**

Reason:

- 1. The June Ruling had the legal effect of assigning to the appellant a portion of the judgment debt created by the March Ruling. The June Ruling did not merely effect a procedural substitution of the appellant in place of the bankruptcy estate but rather operated as a partial assignment of the judgment debt established under the March Ruling. The rulings must be read together, as part of a single procedural continuum, grounded in Russian insolvency law. The effect of the June Ruling, properly construed under the *lex fori*, is that the appellant acquired a distinct, enforceable right to recover the portion of the judgment debt corresponding to its admitted claim in the Track bankruptcy. This conclusion is supported by the uncontested expert evidence that Russian law, following the 2017 insolvency reforms, permits such assignment mechanisms to enable creditors to enforce recovery independently. While there remains academic debate on the downstream distribution of proceeds, that does not alter the fact that the appellant stands as the assignee of a specific, quantifiable portion of the judgment debt.**

Flat Point Development Limited v Canisby Limited ANUHC VAP2016/0006 (delivered 7th December 2017, unreported) applied.

- 2. The June Ruling did not undermine the finality of the March Ruling. Rather, its purpose was to assign to the appellant a portion of Track's right to enforce the March Ruling, pursuant to Article 61.17 of the Russian Bankruptcy Law. The judgment expressly recorded the application as substituting the appellant as the creditor entitled to recover that portion of the claim. The Russian court confirmed that, under the applicable statutory framework, this right to recover, transferred to the creditor electing that mode of enforcement, upon substitution. The appellant acquired the right to enforce its allocated share of the judgment debt in its own name. The March and June Rulings form part of a single cause of action: the enforcement of liability against the controlling persons of Track under Case No. A07-1646/2016. The June Ruling implemented a statutory mechanism for the assignment of enforcement rights, giving effect to the March Ruling which had imposed the underlying liability. When read together, the two judgments establish a clear and enforceable obligation for a definitive sum by providing that the respondent, jointly and severally with others, is liable to pay to Nokian a total sum of 1,554,102,387.86 rubles, comprising: 1,169,116,226.17 rubles (principal); 5,766,839.25 rubles (financial sanctions); 85,413,247.94 rubles (principal); and 293,806,074.50 rubles (financial sanctions). The existence and enforceability of the obligation must therefore be assessed by construing both judgments in tandem.**

Russell v. Smyth (1842) 9 M. & W. 810, 819; Schibsby v. Westenholz (1870) L.R. 6 Q.B. 155 applied; Godard and another v Gray and another (1870) LR 6 QB at 139,149-150 applied; Adams v Cape Industries PLC [1990] 2 WLR 659 applied, Rubin and another v Eurofinance SA and others [2013] 1 AC 236 followed; Dicey, Morris

and Collins on the Conflict of Laws (16th edn, Sweet & Maxwell 2022) considered; Adrian Briggs, Private International Law in the English Courts (2nd edn, Oxford University Press 2023) considered.

3. It is well established that a foreign judgment is impeachable for fraud under English law, and by extension BVI law, only where such fraud falls within the categories recognised in Rule 43 of Dicey, Morris and Collins on the Conflict of Laws. The claim of fraud however does not fall within the scope of Rule 43 and does not suffice to render the foreign judgments unenforceable. The alleged forgery relates to internal matters within Track and was not shown to have been perpetrated or known by the appellant.

Owens Bank v Bracco [1994] 2 WLR 759 applied; Dicey, Morris and Collins on the Conflict of Laws (16th edn, Sweet & Maxwell 2022) considered; Halsbury's Laws of England (Vol. 19, 2024) considered.

4. While a foreign judgment obtained in breach of natural justice may be refused recognition on public policy grounds, the respondent's complaint is procedural and relates to a limitation imposed by Russian law at the time of the ruling. The inability to challenge the guarantee's validity was a consequence of the applicable procedural framework, not a denial of the right to be heard. The respondent, by her own evidence in the lower court, acknowledges that Track had an opportunity to be heard in the bankruptcy proceedings on the question of whether the Guarantee was forged. The respondent therefore has not established a denial of justice sufficient to violate basic principles of fairness under BVI law.
5. The 2017 amendments to Russian insolvency law are designed to facilitate creditor recovery from those who abuse corporate structures to shield themselves from liability, when their conduct justifies deviation from corporate separateness.

The BVI courts are not being asked to override the Russian insolvency regime but to give effect to judicial determinations rendered within it. The enforcement sought does not conflict with the collective aims of that regime; rather, it operates within its framework, following the assignment of claims by the bankruptcy trustee pursuant to Russian law. There is, therefore, no principled reason why the Rulings should be denied recognition on insolvency-related public policy grounds. The respondent's public policy objections to enforcement are therefore without merit and the underlying/related ground of appeal must be dismissed.

6. The Rulings constituted a debt for a definitive sum by the respondent in favour of the appellants and are not unimpeachable on the grounds cited in the Counter Appeal. The Rulings do not leave any matters outstanding, nor do they require any further judicial determination or procedural step in the foreign court to give them legal effect. They finally and authoritatively determine the respondent's liability and the quantum of the debt. Furthermore, the Rulings have not been impeached under any of the relevant exceptions under Rules 42 to 45 of Dicey, Morris and Collins on the Conflict of Laws, such as fraud, public policy, or lack of due process. The respondent's arguments in the Counter Appeal failed to establish any viable ground upon which the Rulings might be impugned. Accordingly, the Rulings are enforceable in the BVI. They are res judicata between the parties and therefore, they are final and conclusive as against the respondent.

Nouvion v Freeman (1889) LR 15 App Cas 1 applied; Dicey, Morris and Collins on the Conflict of Laws (16th edn, Sweet & Maxwell 2022) considered

Case Name:

Antigua and Barbuda Airport Authority

v

Antigua Hangars Inc.

**[ANUHCVP2023/0005]
(Antigua and Barbuda)**

Date: **Wednesday 28th January 2026**

Coram for Delivery: **The Hon. Mde Margaret Price Findlay, Chief Justice [Ag.]
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant: **Mr. Hugh Marshall**

Respondent: **Ms. Sherrie-Ann Bradshaw**

Issues: **Civil Appeal - Statutory Authority - Section 4 Airport Authority Act No. 17 of 2006 - Easement - Easement of necessity - Alternative access - Private Land Rights - Implied easement - Necessity and convenience (Strict necessity) - Fixtures - Fence affixed to land - Ownership passing with conveyance -Trespass to land - Unauthorised entry - Removal of fixture - Nominal damages -Trespass sufficiently pleaded - Whether the learned judge erred in law in finding that no easement of necessity was established by the claimant/appellant over the defendant/respondent's land - Whether the learned judge erred in awarding nominal damages for trespass when it was not pleaded by the respondent in its counterclaim**

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

1. The appeal is dismissed and the decision and orders of the learned judge affirmed.

2. The respondent shall have its costs in the appeal to be assessed by a judge or master of the High Court, if not agreed by the parties within 21 days of the date of delivery of this judgment.

Reason:

1. The doctrine of easement of necessity is based not on the reasonableness of the enjoyment or use of the dominant land, but on the premise that the only access to the dominant land is over the servient land. It is only in such circumstances that the court will invoke the concept of an implied grant in declaring that an easement of necessity exists; and only for so long as such unqualified necessity continues to exist. It follows that where that 'necessity' ceases to exist, no easement of necessity and no implied grant of such an easement can continue to be maintained as a matter of law. Therefore, the existence of another or alternative access in favour of the dominant land is completely inimical to the existence of an easement of necessity and renders any such equitable claim unsustainable.

Halsbury's Laws of England vol 87 (5th edn.) applied.

2. The burden of proving an easement of necessity rests on the party asserting its existence or existence by implication in favour of their dominant land. This is a heavy burden, and courts are reluctant to imply an easement that has not been expressly reserved. An easement of necessity arises under specific circumstances by operation of law, through the doctrine of implied grant, to address a particular necessity. It is not sufficient that the easement is merely convenient for the reasonable enjoyment of the dominant tenement; rather, it is one without which the dominant tenement cannot be used at all.

Additionally, for an easement of necessity to arise where a single owner holds the legal estate in two plots, the following conditions must be satisfied: (i) access from one plot to a public highway must lie solely over the other plot, and (ii) one of the plots must be disposed of without any express grant or reservation of a right of way. If these conditions are absent, or if an alternative means of access exists, no easement of necessity arises.

Alhaji Bora Manjang v Kebba Drammeh [1990] UKPC 50 applied; Joseph W Horsford v Geoffrey Croft [2014] UKPC 4 applied and Leslie Emmanuel & Anor v ACE Engineering Ltd., DOMHCVAP2013/0014 (delivered 8th December 2015, unreported) followed.

3. An easement of necessity arises only to provide the owner of the dominant land with access to their property over the servient land, typically from and to a public road. In this case, the appellant does not claim such access over Parcel 118 from the public road. Its claimed easement is solely to reach a fence on Parcel 118 for inspection and maintenance of the Runway 10 perimeter fence, as one of its statutory obligations under section 4 of the Airport Authority Act. However, the doctrine of implied grant depends on strict necessity, not public policy or statutory duty. A statutory obligation to maintain property does not, by itself, create an easement of necessity. Absent an easement of necessity, the entitlement to an easement over the land of another can arise only by express grant.

Nickerson v Barraclough [1981] 1 Ch 426; Joseph W Horsford v Geoffrey Croft [2014] UKPC 4 followed.

4. A fence on land is a fixture, and ownership of that fixture passes with the land. Removal or interference with the fence without the consent of the landowner, absent any binding and enforceable agreement to do so, constitutes trespass in law, and nominal damages are recoverable even in the absence of proof of actual loss. In the instant matter, the appellant failed to establish that an easement of necessity exists in its favour over the respondent's land. The learned judge's finding that no such easement was proven is therefore unassailable. This conclusion is supported by several reasons. First, the appellant's claim is not for access to and from a public road, but solely to reach a fence on the respondent's land. Second, the claimed purpose for doing so, that is, inspecting and maintaining that fence does not fall within the established concept of an easement of necessity, but rather the assertion of a right to maintain property on the respondent's land, which right admittedly does not exist. Third, and most important, no real necessity has been demonstrated or proven by the appellant. The indisputable evidence shows that the appellant can access the said fence from the Burma Public Road and over Crown land. Accordingly, there is no necessity to use the respondent's land for the appellant to discharge its statutory obligations under section 4 of the Airport Authority Act. On this basis alone, the judge's findings of fact and law are unassailable and the appellant's claim to an easement of necessity fails.
5. In law a trespass arises from unlawful entry upon land in the possession of another, even where no actual damage occurs. The mere act of stepping on to another's land, or crossing its boundary, constitutes actionable trespass.

Halsbury's Laws of England (5th Ed. 2020) Vol. 4, para. 319. applied; Rolston Michael v Jo Hutchens ANUHCv2004/0298 (delivered 22nd May 2007, unreported) followed; Loretta Blake v Noel Palmer [RMCA18/2004] (delivered 28th July 2006) applied; Law of Torts (19th edn.) applied.

6. Considering all the findings and circumstances, including the trespass and removal of the fence, and the appellant's clear admission of such trespass at paragraph 6 of its Defence to Counterclaim, the respondent is entitled to an award of damages for trespass to Parcel 118, even in the absence of particulars or proof of actual loss. In these circumstances, this Court finds no basis to disturb the learned judge's award of EC\$6,500 as damages for trespass. The appellant has not challenged the quantum as being unreasonable or disproportionate but contends only that trespass and damages were not properly pleaded. Having rejected these grounds of appeal, there is no justification for setting aside the award.

Case Name:

West Indies Petroleum (Saint Lucia) Limited

v

1. Courtney Wilkinson

2. John Levy

[SLUHCv2024/0004]

(Saint Lucia)

Date:

Friday, 30th January 2026

**Coram for
Delivery:**

**The Hon. Mde Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]
The Hon. Mr. Reginald T.A. Armour, Justice of Appeal
[Ag.]**

Appearances:

**Appellant: Ms. Keña Melville holding for Georgia Gibson Henlin
KC**

Respondents: Ms. Deandra Goss holding for Ms. Renee St. Rose KC

Issues:

**Interlocutory Appeal - Contract - Consent Order - Stay
of execution - Maintenance of stay of a consent order
pending trial of a claim to set it aside for fraud -
Principles governing the grant or discharge of a stay -
Whether the learned judge erred in law or fact by
maintaining the stay against the corporate appellant
while discharging it against individual defendants -
Settlement of a winding up petition - Nature of a
consent order as a contract given the force of a court
order - Vitiating of a contract by fraud - Article 925 of
the Civil Code of Saint Lucia - Allegations of fraudulent
misrepresentation and intentional non-disclosure of
material financial information - Whether a consent
order can be declared a nullity where induced by fraud -
Burden of proof in interlocutory applications - Effect of
exhibiting illegible documents to an affidavit -
Responsibility of the party to provide clear and
probative evidence - Preservation of the status quo -
Adequacy of damages - Whether a claim based on the
fraudulent undervaluation of shares sounds only in
damages - Whether the court should compel the
completion of a transaction under a contract whose
very validity is challenged as a nullity**

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.

**2. The appellant shall pay the respondents' costs to
be assessed by a judge of the High Court or**

Master if not agreed within 21 days of the date of delivery of this judgment.

Reason:

- 1. A consent order is essentially a contract between parties to litigation which is given the force and enforceability of an order of the court. As such, under Article 925 of the Civil Code of Saint Lucia, such an agreement is a nullity if consent was induced by error, fraud, or violence. In the instant case, the judge was correct to conclude that there is a 'good arguable case' that the Consent Order and settlement of the winding-up petition was procured by the intentional withholding of material financial information by the appellant and the individual defendant/shareholders of the appellant company, in particular, the non-disclosure of a US\$21.86 million Directors' Loan to the said individual shareholders enabling them to purchase an interest in the Refinery. Accordingly, the court retains the jurisdiction to stay its execution pending a trial on the merits of its nullification.**

Article 925 of the Civil Code of Saint Lucia, Cap 4.01 of the Revised Laws of Saint Lucia applied.

- 2. The learned judge was correct to maintain the stay against the appellant, notwithstanding the appellant's assertions regarding an irretrievable breakdown in the relationship between the two sets of individual shareholders, and the appellant's apparent readiness to complete the share purchase pursuant to the terms of the Consent Order, on the basis that they have, allegedly, secured loan funding of the US\$3.2 million purchase price from Sygnus Capital and were ready to wire transfer the said funds to the respondents upon receipt from them of their bank wiring instructions. While these factors relate to the underlying desire for a 'clean break', they do not necessarily go to prejudice and the balance of harm when the very status and binding nature of the Consent Order is a live issue in the Claim for determination. The judge**

was correct to conclude that the respondents, as claimants in the proceedings below, should not be compelled by the lifting of the stay to complete the transaction under the terms of a contract where the respondents have raised arguable grounds on the basis of fraud for seeking revocation of the Consent Order, as the relevant status quo to be protected is the situation prevailing prior to the entering into of the Consent Order sought to be impugned in the said proceedings.

C-Mobile Services Limited v Huawei Technologies Co. Limited [BVIHCMAP2014/0017, delivered 2nd October 2014, unreported] followed; Alexandra Vinogradova v Elena Vinogradova and Sergey Vinogradova [BVIHCMAP2018/052, delivered 30th July 2019, unreported] followed.

3. The appellant failed to satisfy the court with documentary and other evidence regarding alleged intervening third party rights or a loan from Sygnus Capital. There was nothing in the slew of documents exhibited by the defendants which substantiated their claim that a stay would cause irreparable harm to Sygnus Capital, and the judge was correct to so find for the reasons which she gave. The appellant's failure to exhibit copies of facility letters, loan agreement or security documents meant there was no cogent evidence of a loan or acceleration of debt resulting from the stay. The basic principle in civil litigation is 'he who asserts must prove'. Pursuant to rule 30.4(3) of the Civil Procedure Rules (Revised Edition) 2023, it is the duty of the party relying on an exhibit to their affidavit evidence to ensure that the copy of the original document is clearly legible for the scrutiny of the Court. The only document provided in relation to transfer of funds, Exhibit GCC13, is completely illegible, and does not permit the Court to form any conclusion on what that document purports to be or to say.

Rule 30.4(3) of the Eastern Caribbean Supreme Court Civil Procedure Rules Revised Edition (2023) applied.

- 4. The appellant is not a 'nominal' or 'neutral' party to the Claim and/or the Consent Order. First, the appellant is a consenting party to the Consent Order sought to be set aside. Second, and most importantly, by paragraph 1 of the Consent Order, the appellant is one of the consenting parties which it is agreed, by the terms of the Consent Order, is entitled to purchase the respondents' shares in itself. Third, the evidence before the court below, including the instruments of transfer of shares, demonstrates conclusively that it is the appellant which is in fact exercising that right under the Consent Order to purchase the shares of the respondents. These factors all lay hollow the notion that the appellant is a mere 'nominal party' to either the Claim or the Consent Order.**

- 5. A judge ought not to be required at the hearing of a stay application to determine complex issues of fact and law, including allegations of concealment, and it is sufficient that the respondents raised a 'good arguable case' on their pleadings. For a claim of fraudulent misrepresentation to be arguable for the purposes of a stay, there must be a showing that the representations induced the party to enter the contract. While the appellant argued that 'conscious awareness' of the facts at the time of the contract is required, the intentional non-disclosure of the full extent and nature of financial dealings, such as the Directors' Loan used to purchase a competing refinery, can support a claim for fraud. The respondents allege that they were not aware of the fraudulent acts at the time of entering into the Consent Order as these acts were concealed by the defendants through the withholding of financial and other documents to which they were entitled as shareholders, and by the failure to hold general meetings of the said company. The respondents also plead that they entered into the Consent**

Order on the fundamental assumption or implied representation by the appellant and the individual shareholders of full financial transparency and full compliance with the duty to disclose and to provide to the independent valuer, Grant Thornton, all financial information necessary for them to conduct a proper assessment of the value of the company. However, the 'Scope Limitations' in the final Grant Thornton report later called into serious doubt the conduct of the appellant and the other individual shareholders.

Leeds City Council and others v Barclays Bank plc and anor [2021] QB 1107 distinguished.

6. Delay cannot in and of itself result in a discharge or a stay order or the refusal to stay proceedings. It is but one of several factors to be considered and weighed against the totality of the circumstances. In the circumstances of this matter, delay, if any, was minimal at best. The respondents filed their claim within the 90-day completion window under the Consent Order following the final valuation. Any earlier delay was mitigated by the fact that the valuer was still seeking missing or undisclosed financial information from the appellant up to and at the time that the final report was issued. The respondents' right to move the court to set aside and, in the interim, to stay the Consent Order was, in the circumstances, not a stale right.

Alfa Telecom Turkey Limited v TeliaSonera Finland OYJ [BVIHCVAP2008/012] distinguished.

Case Name:

NKT

v

1. NMH

2. ATG

[BVIHCMAP2024/0031]
(Territory of the Virgin Islands)

Date: Friday, 30th January 2026

Coram for Delivery: The Hon. Mde Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mr. Reginald T.A. Armour, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Dean Robson holding for Alain Choo-Choy KC

Respondents: Mr. Ben Valentin KC with him, Mr Andrew Trotter, Mr. James Petkovich and Ms. Isobel McKnaught

Issues: Commercial appeal - Court's power and jurisdiction to join parties – Arbitration Award – CPR 2000 Part 19, 48 – Arbitration Act – Business Companies Act – Judgments Act – Whether the learned judge erred in law when he concluded that the appellant had been properly joined as a defendant to the claim despite having found that there was no pleaded case against the appellant – Whether the learned judge erred in law in concluding that gateways for permission to serve the appellant outside of the jurisdiction were satisfied – Whether the learned judge erred in law in finding that there was a basis for a charging order application (and other ancillary relief) to be served on the appellant outside of the jurisdiction – Whether the learned judge erred in holding in the course of judgment that a charging order personal jurisdiction does not need to be established over the party whose assets are sought to be charged and that a final hearing can proceed without personal jurisdiction being established over that party – Whether the learned judge erred when making a costs order in relation to the application without having sought representations from the parties before doing so

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The costs on the appeal and the costs in the court below, are awarded to the respondent to be assessed by a Judge of the Commercial Court or Master of the high Court, if not agreed within twenty-one (21) days of the date of delivery of this judgment.**

Reason:

- 1. The absence of a pleaded case against the appellant in the Arbitration Award Registration Proceedings was not a relevant consideration for the purposes of the joinder application. The matters in issue in a joinder application do not have to include a cause of action against the person to be joined. What is required is that the issue to be determined is connected to the matters in dispute in the proceedings, and the word 'proceedings' in the CPR is to be given a broad interpretation. The learned judge was correct in his analysis of the legal issues and there is no basis on which his reasoning can be faulted. Although there was no pleaded case against Mr. Shani in the original claim form, this did not preclude joinder because CPR 19.2(3) expressly empowers the court to add a new party if it is desirable so that the court can resolve all the matters in dispute in the proceedings, or if there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue. The learned judge's approach was also consistent with the overriding objective under CPR 1.1 which mandates dealing with cases justly and efficiently. Moreover, the joinder ensures procedural fairness by allowing Mr. Shani to be heard and be bound by the determination of beneficial ownership.**

Rules 1.1 and 10.2(3) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 applied; C Inc v L & Anor [2001] CLC 1054 applied; XYZ v. Various (Transformation Medical Group) Limited and others [2014] EWHC 4056 applied; In re Pablo Star [2018] 1 WLR 738 applied; Re Bleinheim Leisure (Restaurants) Ltd. [2000] BCC 544 applied.

2. The learned judge did not fall into error when he refused to set aside the service out aspect of the ex parte order and found that the gateway in CPR 7.3(2)(a) clearly applied. The judge considered the principles to be applied in respect of a valid service out order. Those principles are well-known and are, that in relation to a defendant that is outside of the jurisdiction, there is a serious issue to be tried on the merits; there is a good arguable case that the claim falls within one or more classes of case in which permission to serve out may be given; and in all the circumstances the forum which is being seized is clearly or distinctly the appropriate forum for the trial of the dispute. Further, that in all the circumstances the court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction. The judge then applied these principles to the case and found that all three principles were met. If it was right for Mr. Shani to be joined as a party, it was clear that the 'necessary or proper' gateway under CPR 7.3(2)(a) was engaged. It is the description of 'proper' that is particularly applicable in the instant case. The 'necessary or proper gateway' is 'no less wide' than the court's power to add or substitute a party under CPR 19.2(2).

AK Investment CJSC v Kyrgyz Mobil Tel [2012] 1 WLR 1804 (UKPC) applied; United Film Distribution Ltd. v Chhabria [2001] EWCA Civ 416 applied.

3. The learned judge was plainly right to find that a 'good arguable' case regarding gateways was

made out and correct in finding that these aspects of the ex parte order were also valid, and accordingly these findings ought not to be disturbed.

Rules 7.3(2)(a), 7.3(10) and 7.14 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 applied; section 7(1) of the Eastern Caribbean Supreme Court (Virgin Islands) Act applied; Oscar Trustee BVIHCM2021/0022 (delivered 18th April 2024, unreported) distinguished; Nilon Ltd and another v Royal Westminster Investment SA and others (2015) 86 WIR 285 applied.

4. It is well known that a charging order creates proprietary rights. Since the order creates an interest in property, it can only attach to shares in companies within the jurisdiction. A charging order can be made against the judgment debtor's beneficial interests in stocks and shares that are not registered in his name if the court is satisfied of such beneficial interest. The court would have to conduct a trial to determine a factual dispute arising in relation to the beneficial ownership, in the context of a charging order, where the individuals claiming to be both the legal owners and the true beneficial owners are outside of the court's jurisdiction. The learned judge's approach, and his treatment, particularly of the CPR Part 48 rules and joinder issues in the judgment, amply demonstrate that he fulfilled the court's duty with regard to the overriding objective.

Rules 1.1, 1.2, and Part 48 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 applied, BCS Corporate Acceptances Ltd. et al v Daniel Terry [2018] EWHC 2349 (QB) applied; Hardy Exploration & Production (India) Inc v Government of India (India Infrastructure Finance Co (UK) Ltd, third party) [2019] QB 544 applied; Dicey, Morris & Collins on the Conflict of Laws (16th edition) considered; Cooper v Griffin [1892] 1 QB 740 considered; Bolland v

Young [1904] KB 824 applied; Rosseel NV v Oriental Commercial and Shipping (UK) Ltd. et al (1991) WL 838487 applied.

- 5. Even if Mr. Shani were to succeed at trial in establishing that he is the beneficial owner of the shares, the issues that were dealt with in the court below, i.e. joinder, service and the court's jurisdiction would not arise for consideration again at the trial, or at its close. Thus, there was no reason for the learned judge to delay in making a costs order. An appellate court will not interfere with the exercise of a trial judge's discretion unless it is satisfied that the judge erred in principle, by either failing to take into account relevant considerations, giving too little or too much weight to relevant factors, or by taking into account irrelevant considerations. The manner in which the learned judge exercised his discretion in relation to the costs order cannot be faulted. The overall outcome of the application was in the respondents' favour. Although the appellant succeeded in obtaining the discharge of the freezing order, this was ancillary and did not alter the respondents' substantive success. The learned judge was entitled to regard the respondents as the successful parties and to award them their costs.**

Rule 64.6(1) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 applied; JTrust Asia PTE Ltd. v Mitsuji Konoshita et al BVIHCMAP2020/2022 (delivered 31st May 2021, unreported) followed.

Case Name:

- 1. Lau Man Sang James**
- 2. Lung Hung Cheuk**
- 3. Cheung Wing Sum, Albert**
- 4. Ngai Hin Kwan, Albert**
- 5. Yeung Yiu Chong**

6. Zhang Guo Wei

v

1. King Bun Limited

2. Kency Ltd

**3. Kar Kwong Development Limited (trading
as Kai Kwong Trading Company)**

4. Khi Capital

5. Kenture Company Limited

6. Hui Pak Kong

[BVIHCMAP2025/0003]

(Territory of the Virgin Islands)

Date: Friday, 30th January 2026

**Coram for
Delivery:** The Hon. Mde Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]
The Hon. Mr. Reginald T.A. Armour, Justice of Appeal
[Ag.]

Appearances:

Appellants: Mr. Renel Benjamin

Respondents: Dr. Alecia Johns

Issues: Interlocutory appeal – Set Aside Application – Quantum Trial – Notice of hearing to parties – Nonattendance at trial – The test of ‘good reason’ in CPR 39.5(5)(a) - Whether the learned judge, in his assessment of the evidence adopted, contrary to the principles and guidance in English case law, an ‘overly rigorous’ and too technical approach to determining under CPR 39.5(5)(a) whether the appellants had a ‘good reason’ for not attending the Quantum Trial - Whether in adopting that approach, the learned judge committed blatant errors of principle and made erroneous findings

of fact such that this Court ought to set aside these findings and his dismissal of the Set Aside Application

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The appellants shall pay the respondents' costs of the appeal to be assessed by a judge of the Commercial Court or a Master, if not agreed by the parties within 21 days of the date of this judgment.

Reason:

1. The starting point when considering an application to set aside a judgment or order made in the absence of the applicant/party is rule 39.5 of the CPR. Properly construed, rule 39.5 provides for three distinct categories of set aside applications, each governed by a specified test. The first category of set aside applications are those where the evidence establishes that there has been no notification of the trial date to the applicant/party or their legal practitioner (the 'no trial date notification' category) and is governed by rule 39.5(4). The second category (all other cases) consists of two distinct limbs and are governed, respectively by sub-paragraphs (a) and (b) of rule 39.5(5). Under the first limb (sub-para. (a)) the test is two-fold and cumulative. The first is, the 'good reason' test and the second is had the applicant or their legal practitioner attended the trial or hearing whether it is likely that some other judgment or order would have been given or made. The third category (subpara. (b)) is whether the applicant/party has on the evidence established that there are exceptional reasons why the judgment or order ought to be set aside (the "exceptional reasons" test).

Rule 39.5 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 applied.

2. In the first category of set aside applications under rule 39.5(4) (the no trial date notification category) where the evidence adduced shows, to the court's satisfaction, that neither the party against whom the judgment was made or their legal practitioner was 'notified' of the date fixed for the trial at which the judgment or order sought to be set aside was given or made, the judge has no discretion, and the judgment or order must, without more, be set aside. This first category, and the mandatory dictates of its operation, is in keeping with the overriding objective under the CPR for the court to deal with cases justly. More fundamentally, it is in keeping and expressive of a litigant's fundamental constitutional right to equality before the law and equal protection and benefit under the law, and the right to a fair hearing or trial before an independent and impartial court. These fundamental rights include the right not to have a matter or claim tried by a court in the absence of a party, without that party's having had prior notification by the court of the date, time, and place of the trial or hearing. The right to a fair trial, which underpins most modern democracies, is enshrined in and protected under Article 6 of the European Convention on Human Rights (right to a fair hearing), which Convention has been extended by the United Kingdom and made applicable to the Territory of the Virgin Islands ("BVI").
3. The second category of set aside applications under rule 39.5(5) is 'all other cases'. These are cases where the evidence establishes that the applicant for such relief or their legal practitioner had been notified of the trial date but failed to attend the hearing. It is only where an application is made under sub-paragraph (a) of rule 39.5(5) that the evidence adduced in support of the application must show that (i) the applicant/party had a 'good reason' for failing to attend the hearing or trial; and (ii) had they attended, some other judgment or order might have been given or made by the court. These

two requirements are cumulative. Where a set aside application is made under subparagraph (b) of rule 39.5(5) (the third category), the test is a higher one and the applicant must, on the evidence, show that there were 'exceptional reasons' why the judgment or order should be set aside. This third category is where an applicant is or may be unable to satisfy either or both of the cumulative requirements of the second category under rule 39.5(5)(a).

4. The test of what is or constitutes a 'good reason' under rule 39.5(5)(a)(i) is fact sensitive, and a good reason in one case may not necessarily be a good reason for non-attendance in another. Accordingly, a judge must consider all the evidence relevant to the applicant's non-attendance, determine what was the real reason for their non-attendance, and come to a conclusion as to whether that reason or reasons, taken singularly or cumulatively, amounts to a 'good reason' for their nonattendance in the circumstances of that matter, warranting setting aside of the judgment or order given or made in their absence.
5. In deciding whether the evidence amounts to a good explanation or good reason for the applicant's non-attendance, the judge ought not to adopt 'too rigorous' or an 'overly rigorous' or too technical an approach to his assessment of what amounts or is capable of amounting to a 'good reason'. This not too rigorous approach is of particular significance, where the claim is for a large sum of money or for the ownership of assets or rights thereto or recovery of assets or rights which are of considerable value, and where the defendant has either a defence with a reasonable prospect of success to the claim or part of the claim, or where the defendant has a reasonable prospect of challenge to the amount claimed or awarded to the claimant or where the refusal to set aside the judgment or order will have very serious financial or other consequences for the defendant.

6. In adopting a not too rigorous approach to his assessment of the applicant's evidence, the judge must bear in mind that the underlying policy of the court under the CPR is to discourage unwarranted waste of the court's resources and not to encourage or to facilitate in any way a party seeking to use the set aside process as a means of stymieing the claim or prolonging or delaying unjustifiably the outcome of a legitimate claim and avoid finality of the proceedings. Also, in coming to a decision on whether the applicant's evidence is capable of supporting a 'good reason' for non-attendance, the judge must consider this question taking into account all the evidence adduced. In this regard, the judge is entitled to make reasonable findings of fact, bearing in mind that where questions have been raised as to whether the applicant's evidence on affidavit(s) or important elements of it ought to be believed, the court invariably will not have the benefit of such evidence having been tested by cross-examination.

Section 16(1) of the Virgin Islands Constitution Order 2007 applied; Article 6 of the European Convention on Human Rights applied; Rule 39 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 applied.

7. When dealing with an application under rule 39.5(5)(a)(i) ('good reason') to set aside a judgment or order given or made in their absence, the judge must assess the evidence adduced by the applicant in support of his/her set aside application to establish that he has a 'good reason' for non-attendance. The decision whether to set aside the judgment or order on the basis of a 'good reason' for non-attendance, is a matter of judicial discretion exercised on the basis of the evidence adduced as to whether a 'good reason' in fact existed, which either prevented or resulted in the non-attendance of the applicant at the trial or hearing, notwithstanding that the applicant and/or their legal practitioner had prior notice of the trial or

hearing. In deciding whether the applicant has shown on the evidence a 'good reason' for their non-attendance, the judge must consider whether the evidence or explanation offered is of the type and quality such that it is capable of belief. If it is not, that is the end of the matter, and the application ought to be dismissed. If it is intrinsically capable of belief, the judge must evaluate whether the evidence, even with some shortcomings, amounts to a 'good reason' for non-attendance.

8. A party to litigation must take a proactive interest in the litigation and in protecting and advancing their interest in its outcome. It is therefore not good enough for a party not to have in place a 'proper system' or, if they have put a system in place, not to see to its continued effectiveness. Where that system has in some respects broken down, it may be necessary to take the steps to either remedy the issues with it or to put in place some other system which is better or more reliable and effective. The necessity for a proper and effective litigation system becomes even more crucial when, to the party's knowledge, as in the instant matter, the litigation is ripe for a trial of the dispute, and the setting by the court of a trial date or dates is imminent, or where a trial window has already been set by the judge, subject to its confirmation.

Brazil v Brazil [2002] EWCA Civ 1135 applied; Rule 39 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 applied.

9. Where the applicant's evidence in support of the set aside application, reasonably considered, shows an absence of any proper litigation system for receiving communications from the court or the other party, or there has been a failure of the system put in place by the party, the evidence must be examined carefully to ascertain whether the failure or failures are attributable to the applicant and whether any

such failures are or can constitute a 'good reason' for the applicant's nonattendance. A factor of obvious significance to the court's exercise of its discretion is the second limb of the cumulative requirements of rule 39.5(5)(i), that is, whether had the applicant attended the trial or hearing, it is likely that some other decision, judgment or award may have been made by the court, as the judge found in this matter. However, both limbs of this rule must be satisfied, and the failure of an applicant to satisfy either of them will result in the application being dismissed, unless the applicant can demonstrate on the evidence, where reliance has been placed on the third category of set aside applications, an 'exceptional reason' why the judgment or order should be set aside under rule 39.5(5)(b).

Rule 39 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 applied.

10. It is clear that the learned judge considered the various explanations and reasons given in the evidence advanced and relied on by the appellants and in their submissions, in seeking to satisfy the 'good reason' limb of the test under rule 39.5(5)(a) for not attending the Quantum Trial. In doing so, the learned judge dealt with most if not all of the important points and evidential issues and factors relied on by the appellants in reaching his decision to dismiss the Set Aside Application. The learned judge examined in some detail the evidence adduced by the appellants, especially the evidence of Mr. Lock as to the alleged junk mail incident and when it commenced. He considered and analysed each of the factors or reasons relied on by the appellants and by Mr. Lock in both of his affirmations. He found or held in relation to each of them that they did not, in his assessment and judgment, constitute a 'good reason' as a matter of fact and law; that the appellants had not discharged the burden on them to demonstrate that they had a 'good

reason' for their nonattendance at the Quantum Trial; and dismissed the Set Aside Application having found none of the reasons to constitute a 'good reason'. By this approach and findings, the learned judge concluded that he was obliged under rule 30.9(5) to dismiss the Set Aside Application. In doing so, the learned judge did not apply too rigorous or technical an approach to his evaluation of the appellants' evidence in support of the Set Aside Application and did not take irrelevant matters into consideration nor did he fail to take relevant matters into account. Accordingly, there is no basis upon which this Court can or ought to disturb the judge's findings and exercise of discretion.

APPLICATIONS AND APPEALS

Case Name:

Gennilyn Ettienne

v

Elizabeth Cameron

**[GDAHCVAP2022/0016]
(Grenada)**

Date:

Monday 26th January 2026

Coram:

**The Hon. Mde Esco Henry, Justice of Appeal
The Hon. Mde. Cadie St. Rose Albertini, Justice of Appeal
The Hon. Mr. Reginald Armour, Justice of Appeal [Ag.]**

Appearances:

Applicant/Appellant: Mr. Ian Sandy

Respondent: Mr. David Edmund

Issues:	Oral application to strike out supporting affidavit- Whether the application complies with Parts 62.12 and 62.15 of the Civil Procedure Rules (Revised Edition) 2023 - Whether the supporting affidavit ought to be struck out on the basis that it was sworn by counsel with conduct of the matter
Type of Order:	Oral Decision
Result / Order:	IT IS HEREBY ORDERED THAT: 1. The oral application to strike out the affidavit filed on the 14th August 2025 and sworn to by learned counsel David Edmund in support of the extant application to strike out the notice of appeal filed by the appellant on 22nd June 2022 is granted. 2. The oral application by the respondent to dismiss the application to strike out the appeal is refused. 3. No order is made as to costs, the oral application having been made in the course of the Court considering the substantive application to strike out the notice appeal.
Reason:	Before the Court was an oral application by learned counsel for the respondent requesting an order that the affidavit of David Edmund, counsel for the applicant in respect of the application to strike out the notice of appeal filed on the 14th of August 2025 be struck out on the ground that it violates the legal principle set out initially in <i>Casimir v Shillingford and Another</i> (1967) 10 WIR 269 which was echoed in <i>Richard Frederick et al v Comptroller of Customs et al</i> SLUHCVP2008/0037 (delivered 6th July 2009, unreported) and applied in <i>Flying Dutchman Overseas Ltd v The Port Authority et al</i> ANUHCVP2023/0254 (delivered 6th June 2024, unreported), that it is wholly unacceptable for counsel with conduct of the matter to swear an affidavit for consideration by the court as this amounts to counsel giving evidence from the bar table.

The Court noted that the learned Justice of Appeal George-Creque in Richard Frederick et al v Comptroller of Customs et al, indicated that it would not have applied in that case because the legal practitioner who swore to the affidavit did not have conduct of the proceedings before the Court however, in the case of Flying Dutchman Overseas Ltd v The Port Authority et al, the learned judge invoked the legal principle and struck out the affidavit.

This Court was satisfied and persuaded that learned counsel Mr. Sandy made compelling arguments as represented and exemplified in the decisions referred to and in those circumstances, the Court is required to strike out the affidavit of David Edmund filed on 14th August 2025 in support of the application to strike out the notice of appeal that was filed by the appellant on the 21st of June 2022. In doing so, the Court considered the legal principles in the cases referred to and was of the view that application to strike out must proceed. The Court noted the affidavit of the applicant Elizabeth Cameron in reply and the affidavit of Chelsie Bartholmew which was filed on 26th January 2026 on behalf of the applicant. - The contents of the affidavit of Chelsie Bartholomew, are relevant to the notice of application to strike out the notice of appeal. The Court decided that notwithstanding the late filing, the interest of justice and the overriding objective require that the Court should consider the affidavit of Chelsie Bartholomew. However, the Court issued a strong rebuke to Mr. Edmund for filing the affidavit so late. Filing that affidavit - on the date of the hearing impinged on the courtesies, patience and goodwill of the Court and in those circumstances, the Court emphasized that this is not a course of conduct that should be encouraged and if such conduct persists with respect to any other application filed, the Court will not be so forgiving. In those circumstances, the oral application to dismiss the application to strike out the notice of appeal was not be granted.

With respect to the contents of the affidavit of Chelsie Bartholomew filed on 26th January 2026, the Court noted that said affidavit refers to a letter which, , appears to have been sent to the Registrar of the High

Court on the 25th of January 2026 well after the application to strike out was filed and it would be improper to allow the applicant to rely on that letter. The Court also took into consideration that 25th January 2026 was not a business day and, in all of the circumstances it is not a fitting response and the affidavit was not one which the Court would entertain in all of the circumstances of this case.

Case Name:

Gennilyn Ettienne

v

Elizabeth Cameron

**[GDAHCVAP2022/0016]
(Grenada)**

Date:

Monday 26th January 2026

Coram:

**The Hon. Mde Esco Henry, Justice of Appeal
The Hon. Mde. Cadie St. Rose Albertini, Justice of Appeal
The Hon. Mr. Reginald Armour, Justice of Appeal [Ag.]**

Appearances:

Applicant/Respondent: Mr. David Edmund

Respondent/Appellant: Mr. Ian Sandy

Issues:

Application to strike out Notice of Appeal - Whether the Notice of Appeal discloses any reasonable ground of appeal - Whether the grounds of appeal are vague or insufficiently particularised - Whether the Notice of Appeal is improper for being argumentative and/or narrative - Whether the Notice of Appeal accords with the Court's overriding objective under Part 1 of the Civil Procedure Rules (Revised Edition) 2023

Type of Order:

Oral Decision with written reasons to follow

Result/Order:

IT IS HEREBY ORDERED THAT:

1. (a) The Application filed on 14th August 2025 by the applicant/respondent to strike out the appeal filed by the appellant/respondent 21st June 2022 is granted in part in that grounds 1 and 7 of the Notice of Appeal be and are hereby struck out.

(b) Ground 1 is struck out as disclosing no reasonable ground of appeal and ground 7 is struck out as being vague and general in terms.
2. The parties are directed to agree the terms of a draft order to be submitted to the Court on or before February 18th 2026 for approval, outlining agreed steps to:
 - a) dispense with the requirement for the transcript.
 - b) prepare and rely on agreed notes of evidence to be compiled by the parties for use as part of the record of appeal.
 - c) expedite the progression of the appeal in accordance with Rules 62.8 and 62.12 (3) of the Civil Procedure Rules Revised Edition (2023) and
 - d) proposing an agreed timetable to have the appeal ready for hearing within the last term of 2026.
3. The Chief Registrar is directed to schedule this appeal for regular Status Hearings and Case Management Conferences commencing at the beginning of the second term of 2026.
4. Liberty to the parties to apply.
5. The respondent/appellant shall pay to the applicant/respondent costs summarily assessed in the sum of \$1200.00 on or before the 18th of February 2026.

Reason:

N/A

Case Name:

Grenada Investment Development Corporation

v

Sonia Roden

**[GDAHCVAP2024/0013]
(Grenada)**

Date: Monday 26th January 2026

Coram: The Hon. Mde Esco Henry, Justice of Appeal
The Hon. Mde. Cadie St. Rose Albertini, Justice of Appeal
The Hon. Mr. Reginald Armour, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Karen Samuel with Mr. Trevon St. Bernard

Respondent: Ms. Deborah Mitchell

Issues: Civil Appeal - Appeal against Judicial Review decision - Labour Relations Act, Cap. 157A of the Continuous Revised Laws of Grenada - Whether the learned judge erred in law by failing to determine, as a threshold issue, whether the impugned decision was public in nature - Whether the impugned decision disclosed any sufficient public law element to engage judicial review - Arbitration - Whether the learned judge erred in finding that the appellant consented to arbitrate the respondent's unfair dismissal complaint - Statutory interpretation- Whether section 45(4) of the Labour Relations Act requires conjunctive rather than disjunctive compliance - Delay - Whether the learned judge erred in finding that the Appellant delayed the prosecution of the complaint - Rationality - Whether the learned judge misdirected herself by placing undue weight on the stay application and failing to give due weight to the appellant's position - Whether any agreement to arbitrate, if established, could subsist only for a reasonable period - Pleadings - Whether an incorrect inference was drawn from the appellant's application to stay the respondent's High Court claim for damages - Reasons - Whether the respondent as a

matter of public law was entitled to reasons for the appellant's withdrawal from the arbitration process - Unreasonableness - Whether the appellant's withdrawal from participation in arbitration was irrational or unjustified having regard to section 45 of the Labour Relations Act and the respondent's conduct.

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason: N/A

Case Name: Joshua Matheson
v
Pearl Albert nee Allert (Administratrix of the
estate of George Gordon and Louis Albert,
deceased)

[GDAHCVAP2020/0010]
(Grenada)

Date: Tuesday 27th January 2026

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. Nicola Byer, Justice of Appeal

Appearances:

Applicant/Respondent:	Mr. Kristopher-Ross Fields
Respondents/Applicants:	Mr. Alban John and Mrs. Hazel Hopkins LaTouche

Issues:

Application for an extension of time to file affidavit in reply and submissions - Whether the delay is inordinate - Whether the applicant has put forward good reasons for the delay - Whether the appellant has good prospects of success in opposing to application to strike out the appeal - Application to strike out affidavit and submissions filed for breach of case management order having been filed out of time - - Application to strike out notice of appeal - Adjournment of application to strike out notice of appeal

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application filed on 22nd January 2026 to strike out the affidavits sworn by Monica Maturine on 15th January and 19th January 2026 as well as the submissions filed on 16th January 2026 is refused.**
- 2. The application for an extension of time filed on 23rd January 2026 is granted.**
- 3. The affidavits filed on 15th January 2026 and 19th January 2026 as well as the submissions filed on 16th January 2026 are deemed properly filed.**
- 4. The respondents to the appeal shall file an affidavit in reply as well as legal submissions on or before 18th February 2026.**
- 5. The appellant shall file the hearing bundle for the hearing of the application to strike out the notice of appeal on or before 25th February 2026.**
- 6. The application to strike out the notice of appeal filed on 20th August 2025 is adjourned to a date to be fixed by the Chief Registrar on or before the next sitting of the Court of Appeal in Grenada scheduled for the week commencing 18th May 2026.**

7. Costs in the sum of \$2500 to be paid to the respondent to the appeal no less than 7 days before the adjourned hearing date of the application to strike out the appeal.

Reason:

Before the Court were 3 applications of which the Court considered 2; the application filed on 22nd January 2026 to strike out the affidavits sworn by Monica Maturine on 15th January 2026 and on 19th January 2026 along with submissions which were filed on 16th January 2026 and the application for an extension of time to file the said affidavits and submissions filed on 23rd January 2026.

The Court considered the applications and the evidence filed in support thereof. The Court further considered the legal authority of *Carleen Pemberton v Mark Brantley Saint Christopher and Nevis* HCVAP2011/0009 (delivered 14th October 2011, unreported) which advises the Court on the factors which must be taken into account in determining whether or not an extension of time should be granted. The Court also considered the powers that it has under Civil Procedure Rules Revised Edition 2023 Part 26 to strike out evidence.

In taking these factors into account, the Court was satisfied that the reasons for the delay were nebulous and unconvincing and therefore that the delay was inordinate but having regard to the other factors which must affect the Court's exercise of discretion, the Court was satisfied that there was sufficient weight to warrant the grant of the extension of time.

In the premises, the Court made the following orders: dismissing the application to strike out the affidavits filed on 15th January and 19th January 2026 as well as the submissions filed on 16th January 2026; granting the application for an extension of time for the filing of the same; the affidavits filed on 15th January 2026 and 19th January 2026 as well as the submissions filed on 16th January 2026 are deemed properly filed.

The Court determined that notwithstanding the outcome of these applications that it is right and proper

that the respondents to this appeal be compensated by way of costs consequent upon the adjournment of the application to strike out the appeal, that application filed on 20th August 2025 which was due to be heard today. Costs were agreed in the amount of \$2500 and the Court ordered that such costs be paid no less than 7 days before the next adjourned date of the hearing of the application. The respondents to the appeal shall file an affidavit in reply as well as legal submissions on or before 18th February 2026. The respondent was ordered to file the hearing bundle for the hearing of the application on or before 25th February 2026. The application to strike out the notice of appeal filed on 20th August 2025 is adjourned to a date to be fixed by the Chief Registrar on or before the next sitting of the Court of Appeal in Grenada for the week commencing 18th May 2026.

Case Name:

1. Patricia Cox-Squires

2. Ann Cox Julien

3. Marcia Wise

4. Anthony Lewis

**(The personal representative in the estate of
Leila Lewis)**

v

1. Valerie Francis

2. George Joseph

~~3. Deanne Hills~~

4. Maria Richards

**(Substituted by Curl Richards as personal
representative of the estate of Maria Richards)**

[GDAHCVAP2023/0013]

(Grenada)

Date:

Tuesday 27th January 2026

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal**

The Hon. Mde. Nicola Byer, Justice of Appeal

Appearances:

Appellants: Ms. Caryn Adams

**Respondents: Mr. Deloni Edwards and Ms. Britney Scott for the 1st and 2nd Respondents
Mr. Ruggles Ferguson KC with him Ms. Aisha McLean and Ms. Mckaeda Augustine for the 4th Respondent**

Issues:

Civil appeal - Adverse possession - Fair trial - Whether the learned judge erred in law when he proposed to dispose of the entire claim on 13th February 2023 - Strike out - Whether, in light of Ronex Properties Limited v John Laing Construction Limited [1983] 1 QB 398, the learned judge erred in granting the application of the fourth respondent to strike out the claim which failed to show a cause of action or reasonable grounds - Whether the learned judge erred in law when he dismissed the claim against the first defendant on the ground of failing to disclose a cause of action

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Judgment is reserved.**
- 2. The 4th respondent is to provide copies of the authorities Riches v Director of Public Prosecutions (1973) 1 WLR 1019 and Myrna Norde v Jacqueline Mannix (as personal representative of Henry Alford Mannix) ANUHCVAP2015/0034 (delivered 16th February 2017, unreported) to the court and the other side by close of business of today's date.**
- 3. If necessary, the appellant shall file submissions confined to the said authorities of consisting of no more than 5 pages on or before 6th February 2026.**

4. The respondent shall file, if necessary, submissions of no more than 5 pages in reply on or before 18th February 2026.

Reason: N/A

Case Name: Cassandra Mitchell

v

Margaret Lerlin Charles

**[GDAMCVAP2023/0001]
(Grenada)**

Date: Wednesday 28th January 2026

Coram: The Hon. Mde Margaret Price Findlay, Chief Justice [Ag.]
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

Appearances:

Appellant/Respondent: In person

Respondent/Applicant: Mr. Ruggles Ferguson KC with him Ms. McKaeda Augustine

Issues: Application to strike out the appeal - Want of jurisdiction - Want of prosecution - Abuse of process – Merits of the appeal – Whether the respondent has been improperly joined as a party which ought to be brought against the state - Whether the Court of Appeal lacks jurisdiction to entertain the appellant’s alleged constitutional challenge since such matters fall within the exclusive original jurisdiction of the High Court pursuant to section 16 of the Constitution of Grenada - Attorney General not joined as a party as mandated by CPR Part 56 - Whether the appellant has demonstrated a lack of diligence in prosecuting the appeal – Whether

the respondent/applicant is prejudiced by the appeal remaining in abeyance, occasioned by ongoing uncertainty, legal costs and restrictions on her ability to deal with her property

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application to strike outdated 31st October 2025 to strike out the notice of appeal filed by the appellant on 19th January 2023 is allowed.**
- 2. The appeal is struck out for want of prosecution, want of jurisdiction and abuse of the process of the Court.**
- 3. The appellant/respondent is ordered to pay to the applicant/respondent costs in the sum of \$750 on or before 3rd March 2026.**

Reason:

Before the Court was an application filed on 31st October 2025 to strike out the notice of appeal filed by the appellant on 19th January 2023.

Upon reading the affidavit of Margaret Lerlin Charles in support of the application filed on 31st October 2025 with a certificate of exhibits and draft order, the submissions in support of the application filed on 17th December 2025, the response to the application filed on 23rd January 2026 and the appellant's affidavit filed on 23rd January 2026;

Upon hearing oral submissions by the appellant/respondent as well as brief submissions by counsel for the respondent/applicant;

And upon the Court being of the view that three years' delay by the respondent delay in prosecuting the appeal was inordinate and inexcusable and further that the Court of Appeal did not have jurisdiction to determine the proposed appeal as the grounds of appeal revealed a constitutional challenge that fell within the exclusive original jurisdiction of the High

Court pursuant to section 16 of the Constitution of Grenada and the other grounds of appeal were unmeritorious.

Accordingly, the Court allowed the application to strike out the notice of appeal with costs summarily assessed at \$750.00 to be paid to the respondent/applicant on or before 3rd March 2026.

Case Name:

Sonia Roden

v

Grenada Investment Development Corporation

[GDAHCVAP2024/0003]

(Grenada)

Date:

Wednesday 28th January 2026

Coram:

**The Hon. Mde Margaret Price Findlay, Chief Justice
[Ag.]**

The Hon. Mde. Esco Henry, Justice of Appeal

**The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Ms. Deborah Mitchell

Respondent:

Ms. Karen Samuel and Mr. Trevon St. Bernard

Issues:

Civil Appeal - Employment law - Severance pay - Date from which severance pay ought to be calculated - In light of the retroactive retirement of the appellant as a public officer to 1st March 1985, on what contractual and or other legal basis would the appellant be entitled to her severance pay being calculated from that date - Whether the finding of the learned trial judge that the appellant was only employed with the respondent from 2nd January 2001 and was only entitled to severance pay from 2nd January 2001 to 8th September 2014 should be set aside - Continuous service - Whether the

appellant was employed with the respondent for continuous years of service dating back to 1985 - Vacation pay - Whether the appellant was deprived of the benefit of her vacation leave when at the respondent's request she proceeded to exhaust her accrued vacation.

Type of Order:

N/A

Result/Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason:

N/A

Case Name:

Massy Properties (Trinidad) Ltd.

v

Norab Mansour

**[GDAHCVAP2025/0008]
(Grenada)**

Date:

Thursday 29th January 2026

Coram:

**The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Nicola Byer, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal**

Appearances:

Appellant

Mrs. Melissa-Modeste Singh

Respondent

Mr. Anslem Clouden

Issues:

Civil appeal - Adverse Possession - Land - Whether the learned trial judge erred in law in misdirecting herself by finding that the respondent had satisfied the requirements for adverse possession without a precise identification of the land claimed and in the absence of

sufficient evidence establishing the necessary factual possession and animus possidendi as to dispossess the appellant as the paper title owner of the land - Whether the learned trial judge erred in law in concluding that the appellant's claim was statute-barred despite the authorities establishing that a person seeking to dispossess the owner of land by adverse possession must identify with precision the land being claimed - Whether the learned trial judge erred in law and made an inconsistent ruling when she declared that the respondent succeeded on the counterclaim which sought a declaration of possession whilst simultaneously directing him to make an application for possessory title - Whether the learned trial judge's reasons for believing the witnesses for the respondent and disbelieving the witnesses for the appellant were unjustifiable, unsatisfactory and untenable - Whether the findings made by the learned judge on the evidence before her are convincingly overridden, rebutted or falsified by indisputable facts and evidence

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason:

N/A

Case Name:

Winston Murray

v

The King

**[GDAHCRAP2013/0003]
(Grenada)**

Date:

Thursday 29th January 2026

Coram: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Nicola Byer, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal

Appearances:
Appellant: Mr. Anselm Clouden
Respondent: Ms. Crisan Greenidge

Issues: Criminal Appeal - Appeal Against Sentence (Murder Conviction) - Whether the learned judge erred by failing to specifically state that she had credited the appellant for the approximately three (3) years and four (4) months spent in pre-sentence custody (remand) - Whether the learned judge failed to apply or adequately consider relevant regional jurisprudence governing the treatment of pre-sentence custody - Whether the learned judge failed in accordance with established sentencing principles, in not disclosing the methodology by which any allowance or discount for time spent on remand was applied

Type of Order:

Result/Order: IT IS HEREBY ORDERED THAT:

1. The appeal against the sentence is allowed.
2. The period of 1,246 days spent on remand is deducted from the 30-year sentence imposed.

Reasons: Before the Court was an appeal against the sentence imposed on the appellant. The discrete ground of appeal contended that the sentencing judge erred in principle in not giving credit fully and transparently for the time which the appellant spent on remand. At the time of sentencing the respondent did not provide a precise calculation of that time, which stood at one thousand two hundred and forty-six (1246) days or three (3) years and four (4) months.

Counsel for the appellant relied on the cases from the Privy Council, *Callachand & Anor v State of Mauritius* [2008] UKPC 49 and the Caribbean Court of Justice case of *Romeo Da Costa Hall v The Queen* [2011] CCJ 6

(AJ) in support of his proposition that the judge was required to calculate and deduct in a mathematical way the time spent on remand from the sentence imposed.

The authority cited by the respondent, *Shonovia Thomas v The Queen* HCRAP2010/006 (delivered 27th August 2012, unreported), which was one of the first cases from this jurisdiction to apply the Callachand principle, endorsed and followed that approach. This judgment was in existence at the date of sentencing and was therefore part of the jurisprudence of the Eastern Caribbean Supreme Court with respect to sentencing methodology, in particular with respect to the treatment of time on remand.

This Court was satisfied that the learned judge's statement that she would take into account the approximately three years that the appellant spent on remand does not comport with the requirements established in those authorities. The injunction is against merely offering a form of words and what is required is a demonstration, transparently done, establishing that the prisoner has in fact been credited for the time on remand, and such pronouncement must be made by the court and not any other administrative body as it is the Court who bears the responsibility for undertaking the calculation.

Having deducted the time spent on remand, what remained was the sentence to be actually calculated. The judge having failed to do so, the Court was satisfied that there was an error in principle, which was amenable to review and rectification by this Court.

Case Name:

Lindon Panchoo

v

The King

[GDAHCRAP2022/0016]

(Grenada)

Date:

Friday, 30th January 2026

Coram:

The Hon. Mde Vicki Ann Ellis, Justice of Appeal

**The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]
The Hon. Mr. Reginald T.A. Armour, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Jerry Edwin

Respondent: Mr. Howard Pinnock

Issues:

Criminal appeal - Appeal against sentence - Whether the sentence was manifestly excessive in the circumstances - Whether the learned judge failed to adequately consider the mitigating factors - Whether the learned judge failed to properly apply the ECSC Sentencing Guidelines – Whether the learned judge failed to grant the appellant the full discount of 1/3 for his early guilty plea

Type of Order:

Oral Judgment

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against sentence is allowed.**
- 2. The sentence of the learned judge in the court below as reflected in the transcript of proceedings and the minute of conviction of 12 years' imprisonment in respect of the offence of dangerous harm is set aside.**
- 3. A sentence of 10 years 8 months is substituted.**
- 4. The sentence made in respect of the rehabilitative orders are also substituted with orders removing the default provisions and the following orders are made:**
 - i. The appellant is to undergo a course of counselling aimed at assisting with his anger management and resolving conflict.**
 - ii. The appellant is to also undergo alcoholic treatment and counselling.**
- 5. The court recommends that the appellant learns a trade of his choice and learns to play an instrument.**

Reason:

Before the Court was an appeal against sentence of 12 years' imprisonment for the offence of causing dangerous harm contrary to section 208 of the Criminal Code as amended by section 35 of the Criminal Code (Amendment) Act.

The Court, having listened to the submissions of counsel for the appellant and counsel for the respondent and having reviewed the record of appeal, was minded to reduce the appellant's sentence having regard to the fact that the full one third discount for the guilty plea ought to have been afforded to him. The appeal was therefore allowed and a sentence of 10 years 8 months substituted.

The Court also substituted the sentence made in respect of the rehabilitative order with orders which effectively removed the default provisions entirely; the Court being satisfied that these default provisions were not supported by statute or common law.

The order was therefore substituted in terms that: 1.) the appellant is to undergo a course of counselling aimed at assisting with his anger management and resolving conflict; and 2.) the appellant is to also undergo alcoholic treatment and counselling.

The Court also recommended that the appellant learns a trade of his choice and learns to play an instrument.

Case Name:

Keith Julien

v

The Commissioner of Police

**[GDAMCRAP2023/0012]
(Grenada)**

Date:

Friday, 30th January 2026

Coram: The Hon. Mde Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]
The Hon. Mr. Reginald T.A. Armour, Justice of Appeal
[Ag.]

Appearances:

Appellant:	In person
Respondent:	Mr. Howard Pinnock

Issues: Magisterial criminal appeal - Appeal against conviction for the offence of damage to property causing harm contrary to sections 94(2) and 82(1) of the Criminal Code Cap. 72A of the 2010 Continuous Revised Edition of the Laws of Grenada - Whether the conviction ought to be overturned - Whether the magistrate erred in proceeding to conduct the trial in the absence of the appellant in circumstances in which he had recently suffered a bereavement as his daughter had passed just one day prior - Whether the magistrate erred in convicting the appellant in the absence of medical evidence proving the actual harm which had been suffered by the complainant - Whether the magistrate erred in convicting the appellant in the circumstances where the actual cellphone was not entered into evidence to prove damage to property

Type of Order: Oral decision

Result/Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed and conviction and sentence are set aside.
2. The matter shall be re-listed for trial before a different magistrate.

Reason: Before the Court is Magisterial Criminal Appeal by which the appellant alleges that the magistrate's decision of conviction and sentencing should be set aside, which was filed on 15th September 2023, and sets out three grounds: (1) the magistrate erred in proceeding to conduct the trial in the absence of the

appellant in circumstances which he had recently suffered a bereavement as his daughter had passed just one day prior, (2) the magistrate erred in convicting the appellant in the absence of medical evidence proving the actual harm which had been suffered by the complainant and, (3) the magistrate erred in convicting the appellant in the circumstances where the actual cellphone was not entered into evidence to prove damage to property.

The Court considered the submissions of the appellant contained in correspondence of 30th May 2025, 24th June 2025 and 24th August 2025 as well as the oral submissions advanced. The Court also considered the written legal submissions advanced by counsel for the respondent in which counsel would have conceded the appeal at paragraphs [10] and [11]. The Court also took into account the judgment of this Court in BVIMCRAP2022/0002 Darryl Frett v The Commissioner of Police in particular paragraphs [24] - [27] which provides guidance to judicial officers and, the factors that judicial officers ought to take into account in determining whether a matter should be conducted the absence of the defendant.

The Court determined that the appeal should be allowed and the judgment of the court below be set aside after noting : (1) the non-appearance of the appellant at the date of trial was reasonably justifiable, (2) the previous conduct of the appellant discloses that he had faithfully appeared at each and every occasion that the matter had been called, (3) the appellant had been represented and it is indicated that he had advised his counsel of his bereavement, (4) counsel who had been retained did not make any appearance on the date of trial and so the appellant would have been unrepresented, (5) in the circumstances it would not have been prejudicial to grant him a further adjournment applying the factors adumbrated in this Court's decision at paragraphs [24]-[27] in BVIMCRAP2022/0002 Darryl Frett v The Commissioner of Police. Therefore, the Court allowed the appeal, set aside the conviction and sentence and ordered that the matter be re-listed for trial before a different magistrate.

