

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
HYBRID: VIDEOCONFERENCE/IN PERSON
SAINT LUCIA
MONDAY 19TH – FRIDAY 23RD MAY 2025

JUDGMENT

Case Name:

Darwin Blyden

v

Benedicta Samuels et al

[BVIHCVAP2023/0005]
(Territory of the Virgin Islands)

Date:

Wednesday, 21st May 2025

**Coram for
delivery:**

The Hon. Mde. Esco L. Henry, 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. Sydney Bennett KC

Respondents: No appearance

Issues:

Interlocutory appeal – Rule 20.1 of the Civil Procedure Rules (Revised Edition) 2023 – Application to amend Claim Form and Statement of Claim – Factors taken into consideration in granting permission to amend – Whether the learned master erred in dismissing the amendment application – Principles relative to exercise of discretion – When an appellate court will exercise its discretion afresh

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed and the decision of the learned master is set aside.
2. The re-amended Claim Form and Statement of Claim filed on the 3rd May 2023 is deemed properly filed.
3. The respondent shall be given the opportunity to re-amend their defence within 21 days of the date of this Order.
4. The appellant will have his costs of this appeal to be assessed by a Judge of the High Court within 21 days of this order if not agreed.

Reason:

1. An appellate court will only interfere with the exercise of a judge's discretion if the decision is plainly wrong or exceeded the generous ambit within which reasonable disagreement is possible. Before the Court can interfere, it must be shown that the judge has either erred in principle in his approach, by taking into account some feature that he should not have considered or has left out of account some factor that he should have, and as a result has made a decision that is wholly wrong.

AEI Rediffusion Music Ltd v Phonographic Performance Ltd [1999] 1 WLR 1507 applied.

2. The court is empowered under the Civil Procedure Rules to allow amendments to a Statement of Claim at a case management conference or at any time on application to the court. The factors to be considered by the court in determining an application to amend are set out under CPR 20.1(3). These factors include the promptitude of the application, prejudice to the parties, whether such prejudice can be compensated by costs or interest, whether the trial date can still be met and the administration of justice.

Rules 20.1(3) Civil Procedure Rules (Revised Edition) 2023 applied; Allert et al v Matheson et al GDHCVAP2014/0007 (delivered 24th November 2014, unreported) applied.

3. The court should be guided by the general principle that amendments necessary to ensure the real questions between the parties are determined ought to be made, provided they do not cause inconvenience that cannot be compensated. The rules must be applied fairly to both parties and not in a way that prevents a litigant from putting forward their case on a mere technicality. It is in the public interest and in the interest of justice to allow amendments where the issues are relevant and have a real prospect of success. It is also inappropriate to refuse an amendment on the merits where one of the main issues turns on a disputed factual situation, as that is best resolved at trial.
4. The constituent elements of proprietary estoppel must be placed before the court in pleadings and cannot properly arise in a witness statement or in oral testimony for the first time. The party seeking to advance a claim of proprietary estoppel must in such circumstances state the promise which was made, assert that he relied on that promise and set out the detriment suffered by him in reliance on that promise. If this is done the party may then amplify in a witness statement or in oral testimony the factual matrix on which he or she relies, but not otherwise.
5. Even though courts are now less willing to grant late amendments, the application in this matter in the context of the proceedings cannot be said to have been late, being made as it was at the time of the first case management conference. However negligent or careless may have been the omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other party. There is no injustice if the other side can be compensated by costs.

Clarapede & Co v Commercial Union
Association (1883) 32 WR 262 applied;
Kettemen v Hansel 1984 1 WLR 1274 applied.

APPLICATIONS AND APPEALS

Case Name:

**[1.] Peter Toussaint
[2.] Terentia Nigel Toussaint-Carroll
for and on behalf of the Heirs of Thelma
Toussaint**

v

Peter Michael Barnard

**[SLUHCVAP2024/0005]
(Saint Lucia)**

Date:

Monday, 19th May 2025

Before:

**The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Petra Nicola Byer, Justice of Appeal
[Ag.]
The Hon. Mr. Reginald T.A. Armour, Justice of Appeal
[Ag.]**

Appearances:

Applicants: Mrs. Terentia Nigel Toussaint

**Respondent: Mr. V. Dexter Theodore, KC with him Mrs. Cynthia
Combie Martyre**

Issues:

**Application for extension of time to file supplemental
skeleton arguments - Application to amend record of
appeal and hearing bundle**

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

The notice of application filed by the applicants on 8th January 2025 for an extension of time to file supplemental arguments, an amended record of appeal, and amended hearing bundle is refused.

Reason:

Upon reading the notice of application filed by the appellants on 8th January 2025 for an extension of time to file and exchange the appellants supplemental skeleton arguments, and to amend the record of appeal and hearing bundle, and for relief from sanctions, and upon reading the document headed “affidavit” filed on 8th January 2025, and sworn to by Linda Toussaint, and the appellants supplemental skeleton arguments filed on 8th January 2025;

Upon reading the notice of opposition, filed on 13th January 2025, in opposition to the application filed by the appellants and upon noting that one of the grounds of the application for extension of time is “the addition of documents to the record of appeal, to support the prescription filed with the registrar in 2014”, which suggests that the appellants seek to introduce documents that were not before the learned judge during the trial in the High Court; AND THE COURT noting that in the document labeled ‘affidavit’, it is stated, “the appellants seek the Court's indulgence, for having filed its application at such a late date, but represents to the Court and the parties that because of constraints with other responsibilities and the interruption of the holidays, the appellants were not able to provide the requisite seven days notice” and “I was unable to locate an application for prescription that had been filed with the Registrar of Lands in 2014 but only this week located an email that had been sent inquiring of the status of that application, and the affidavits of witnesses”;

And the Court noting that the appellants filed no application to adduce fresh evidence on appeal and the Court considering that such a course may be adopted only if the Court grants permission to adduce fresh evidence on being satisfied that the criteria set out in *Ladd v Marshall* [1954] 1 WLR 1489

have been met and any such document would therefore not be admissible as fresh evidence;

And the Court being mindful of the factors to be considered by the Court on an application for an extension of time as set out in *Grant v Tanzania Tobin Tanzil SKBHCVAP2020/0004* (delivered 6th July 2020, unreported), and in the *Barbuda Consul v the Attorney General and others* Civil Appeal No. 12 of 1994, namely: 1.) the length of the delay, 2.) the reasons for delay, 3.) the merits of the appeal, and 4.) the prejudice to the litigants; AND THE COURT having considered the oral submissions of the parties and the applicable legal principles and the Court noting that nowhere in the referenced affidavit did the affiant seek to explain the reasons for the delay in making the application for an extension of time to file skeleton arguments, amend the record of appeal and hearing bundle and further failed to exhibit the documents they propose to include in the proposed amended record of appeal and proposed hearing bundle;

And the Court being of the view that in light of the settled principles regarding judicial interference with the registration of land in St. Lucia under the Land Adjudication Act, in particular, the dicta in *Louisien v Jacob* [2009] UKPC 3 and *Ferdinand James v Planviron (Caribbean Practice) Limited and Rodney Bay Marina Limited SLUHCVAP2017/0050* (delivered 16th October 2019, unreported), that only two reasons, namely, mistake in the course of registration and/or fraud would justify cancellation or variation of a registration of title made under the Land Registration Act Cap. 5.01, Revised Laws of Saint Lucia 2015 based on the Land Registration and Titling Project and therefore that the appellants have an uphill task if they are to succeed on any of the grounds of appeal set out in their notice of appeal;

And upon the Court being of the view that in all of the circumstances, the greater prejudice would be occasioned to the respondent in granting the application for extension of time to file the supplemental skeleton arguments, the amended record of appeal and amended hearing bundle;

And the Court being satisfied that for all the foregoing reasons, the appellants did not meet the threshold for an extension of time to file and serve the supplemental skeleton arguments, amended record of appeal or amended hearing bundle, and that the interests of justice would best be served by a refusal of the application;

It was ordered that the notice of application filed by the applicants for an extension of time to file supplemental arguments, an amended record of appeal, and amended hearing bundle is refused.

Case Name:

Isaac Joseph

v

Matthew Blair

**[GDAHCVAP2025/0005]
(Grenada)**

Date:

Monday, 19th May 2025

Before:

The Hon. Mde. Esco L. Henry, Justice of Appeal

The Hon. Mde. Petra Nicola Byer, Justice of Appeal

[Ag.]

The Hon. Mr. Reginald T.A. Armour, Justice of Appeal

[Ag.]

Appearances:

Applicant:

In person

Respondent:

No appearance

Issues:

Application to amend appeal - No appearance by the respondent

Type of Order:

Directions

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. Being mindful that Cpl DeCoteau does not hold himself out as being a medical expert, the Court places on record that it would be necessary to obtain a medical report from a registered medical practitioner in relation to the statements in Cpl DeCoteau's affidavit as to Mr. Blair's inability to 'hear, see, move and of being bedridden'. The Registrar of the High Court is requested to bring this concern to the attention of the respondent's caretaker and/or his son Edward Blair by service of this order.**
- 2. The appellant is directed to make inquiries regarding the identity of a suitable person who may be appointed to represent the respondent in the appeal and if so minded may apply to the Court to appoint a representative to conduct the appeal on the respondent's behalf under the Court's inherent jurisdiction.**
- 3. The matter is adjourned to a date to be fixed by the Chief Registrar at the earliest convenient opportunity.**
- 4. The Court office shall arrange for this order to be served on the respondent and the respondent's caretaker within 14 days of today's date with proof of service.**

Reason:

Upon the matter coming on for hearing on 19th May 2025 in respect of an application for amendment of a decision and appeal from the High Court and the Court noting that the hearing was adjourned to today's date from 7th May 2025 due to the respondent's absence and lack of service on him.

Upon noting that by order of the Court dated 7th May 2025 the court office was directed to serve notice of hearing on the respondent at least 5 days in advance with proof of service and the Court noting that the affidavit of service dated and sworn by Cpl#261 DeCoteau on 13th May 2025 indicated that he served the respondent on 13th May 2025 with a summons as to today's hearing date.

Upon further noting the statement in the affidavit that the respondent 'Mr. Blair is presently bedridden and cannot speak, see, hear or move' and the Court being of the considered opinion that in the circumstances physical service of the summons on the respondent was likely ineffective to bring to his - conscious mind that his matter is scheduled for hearing by the Court today. The Court noted that it was necessary in the circumstances that a next friend or representative be appointed to represent the respondent at the hearing of the appeal and having heard representations by the appellant who is unrepresented by a legal practitioner and appears pro se, and there being no objection from him the Court was satisfied that it would be unjust to proceed with the hearing of the appeal in light of these concerns..

Case Name:

**[1.] Peter Toussaint
[2.] Terentia Nigel Toussaint-Carroll
for and on behalf of the Heirs of Thelma
Toussaint**

v

Peter Michael Barnard

**[SLUHCVAP2024/0005]
(Saint Lucia)**

Date:

Monday, 19th May 2025

Before:

**The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Petra Nicola Byer, Justice of Appeal
[Ag.]
The Hon. Mr. Reginald T.A. Armour, Justice of Appeal
[Ag.]**

Appearances:

Appellants:

**Mrs. Terentia Nigel Toussaint with her Mr. Claudius
Toussaint**

Respondent:

Mr. Dexter Theodore KC

Issues:

Civil Appeal – Appeal against the decision of the learned trial judge – Whether the learned trial judge erred in law and in fact when she found that the respondent had sold the property to Tanburn Estates when no evidence on Tanburn Estates was provided during the trial – Whether the learned trial judge erred as a matter of law and fact when she found that the respondent was not the owner of the property at the time of filing of the claim form – Whether the learned trial judge erred as a matter of law when she failed to consider the evidence supplied by the defendants in reaching her decision – Whether the learned trial judge erred in law when she failed to rectify the register

Type of Order:

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The decision is reserved.**
- 2. The respondent is required to provide the Court and the appellants within the next 7 days (i.e. on or before 27th May 2025) copies of the following two authorities: (1) David Sweetnam et al v Government of Saint Lucia Civil Appeal No. 42 of 2005 and (2) Jean Baptiste Petit Frere aka Jn Baptiste Montoute v Catherine Paul Civil Appeal No.5 of 2004.**
- 3. The 1st appellant is required to provide to the Court and the respondent within the next 7 days (i.e. on or before 27th May 2025) copies of the authority, Denton v Romanof.**
- 4. The respondent is permitted to present for the Court's consideration within 7 days of today's date (i.e. on or before 27th May 2025) and shall serve on the appellants an original or certified copy of the Land Register in respect of the**

conveyance from Marie Bernard to Peter Bernard foreshadowed in the list of documents, on condition that the safeguards as to verification and authentication by the relevant custodian of the records at the High Court as stipulated under the Evidence Act and/or under the Civil Code are satisfied.

5. The Chief Registrar will notify the parties when the judgment is ready for delivery.

Reason

The Court was of the view that to the extent that the registration of the transfer from Marie Bernard to Peter Bernard was presented in evidence before the judge below, the Court is duty bound to consider all of that evidence and the Court will need to ensure that the stipulated statutory preconditions for examining that document are satisfied so that in the interests of justice it cannot be argued sustainably that any prejudice was occasioned to any of the parties.

The Court also noted that under the Evidence Act of Saint Lucia and/or the Civil Code there are provisions which require that certain acts of certification and authentication are to be performed by the custodian of records in the High Court, (who is the Registrar of the High Court), before this Court can take judicial notice of such records, as it is authorized to do in its inherent jurisdiction. The Court also noted that to the extent that the Court needs to see all of the evidence of the court below, the respondent is permitted to provide the Court with the land register page reflecting the registration of the transfer from Marie Bernard to Peter Bernard.

Case Name:

**[1.] Electrical Associates Limited
[2.] Marcellinus Stephen trading as MS
Stephen Tiling
v
Sunrod Property Inc.**

[SLUHCMAP2024/0001]

(Saint Lucia)

Date: Tuesday, 20th May 2025

Before: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard St.C Farara, Justice of Appeal
[Ag.]

Appearances:

Applicants: Ms. Wauneen Louis Harris

Respondent: Ms. Vanessa Pinnock

Issues: Application to revoke order of a single judge- Rule 62.19 of the Civil Procedure Rules (Revised Edition) 2023 - Whether the single judge had jurisdiction to determine an extension of time to comply with an unless order made by the Full Court in which it ordered the applicant to file an amended expert report - Legal principles for the granting of an application for extension of time to comply with an unless order

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

**[1.] The Roserie Company Limited
[2.] Thomas Roserie
[3.] Sonia Roserie
[4.] Chemical Manufacturer And Investment
Company Limited
v
First Caribbean International Bank (Barbados)
Limited**

**[SLUHCVAP2021/0012]
(Saint Lucia)**

Date: Tuesday, 20th May 2025

Before: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal
[Ag.]

Appearances:

Applicants: Ms. Cynthia Hinkson-Ouhla

Respondent: Mr. Bota Mc Namara

Issues: Application for leave to appeal to the Caribbean Court of Justice - Section 108 (1) (a) and 5 of the Constitution of Saint Lucia Chap 1.01 of the Revised Laws of Saint Lucia - Whether the applicant has filed the application in accordance with the applicable procedural rules

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The appellant/applicant is to file and serve an amended application for leave to appeal to the Caribbean Court of Justice on or before 17th June 2025.
2. The respondent is to file and serve a response (if necessary) on or before 2nd July 2025.
3. The applicant is to file a reply if necessary on or before 17th July 2025.
4. The application for leave to appeal to the Caribbean Court of Justice is adjourned for hearing on paper by the currently constituted panel on a date to be fixed by the Chief Registrar. The parties to be notified of the hearing date.

Reason: Consequent on the late filing of submissions by the respondent on 20th May 2025, the applicant, who seeks leave to appeal to the Caribbean Court of Justice as of right, had not had sight of these submissions which indicated that there were procedural errors in the application. As a result the Court was minded to adjourn the matter to allow the applicant to make the necessary amendments to the application.

Case Name: [1.] Cleious Deterville
[2.] Pernette Jn Marie Deterville
v
Telis Joseph Edward
[SLUHCVAP2023/0009]
(Saint Lucia)

Date: Tuesday, 20th May 2025

Before: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal
[Ag.]

Appearances:
Appellants: Mr. Dexter Theodore KC with him Ms. Cynthia Combie Martyre

Respondent: No appearance

Issues: Civil Appeal - Appeal against award of damages - Non service of notice of hearing on respondent - Respondent now residing outside of the State - Application for adjournment

Type of Order: Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. Leave is granted to the appellant to advance an application for service on the respondent by alternative means within 14 days of today's date or by 4th June 2025.**
- 2. The matter is traversed to the next sitting of the Court of Appeal in Saint Lucia commencing 27th October 2025 in order to allow the appellant to effect service on the respondent of i. the Record of Appeal, ii. the Hearing Bundle, iii. the Skeleton Arguments with authorities; iv. a copy of today's order, and v. the Notice of Hearing.**

Reason:

The Court reviewed the affidavit of non-service filed by the bailiff of the High Court on 16th May 2025 indicating that he was unable to effect service of the notice of hearing on the respondent and indicating also his belief that the respondent no longer resides on island. The Court heard counsel for the appellant in which he represented that the respondent does not reside on island and may in fact have taken up residence in England. The Court was satisfied that the respondent would not have had the requisite notice of the hearing of this appeal on today's date and further that he would not have been served with the Record of Appeal or Hearing Bundle in this matter and was of the view that the appropriate course would be to adjourn the matter.

Case Name:

**Bamboo Springs Bottled Water Limited
v**

The Bank of Nova Scotia

**[SLUHCMAP2022/0003]
(Saint Lucia)**

Date:

Wednesday, 21st May 2025

Before:

The Hon. Mde. Esco L. Henry, 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/Respondent:

Mr. Martin Martin

Ms. Natalie Da Breo holding a watching brief on behalf of the appellant

Respondent/Applicant:

Mr. Deale Lee

Issues:

Application to strike out notice of appeal - Legal representation in commercial matters - Whether the appeal is a commercial appeal within the meaning of Part 71 of the Civil Procedure Rules (Revised Edition) 2023 and therefore requires a legal practitioner to represent the appellant - Whether it is just in the circumstances to strike out the appeal

Type of Order:

Directions

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The appellant is required and directed to retain a legal practitioner and ensure that a notice of acting is filed and served within 28 days of today's date i.e. on or before 18th June 2025; file and serve its record of appeal within 6 weeks of today's date, i.e. on or before 2nd July 2025 and further take all reasonable steps to ensure that it is represented by a legal practitioner when this appeal is rescheduled for hearing during the week commencing 27th October 2025.**
- 2. The determination of the notice of application filed by the respondent/applicant on 2nd**

October 2024 to strike out the notice of appeal is deferred to a later hearing date and in the event that the notice of appeal is struck out as a result of noncompliance by the appellant with the directions and undertakings in this order, the notice of appeal filed on 27th April 2022 and the notice of application filed by the respondent/applicant on 2nd October 2024 shall stand dismissed without further order.

3. No order as to costs.

Reason:

The respondent/applicant, having filed a notice of application to strike out the appeal on 2nd October 2024 with affidavit in support and exhibits filed on even date and the matter coming on for consideration, the Court of its own volition invited the appellant/respondent to consider giving some undertaking as to the timelines within which the appellant proposes to retain a legal practitioner to represent it, to file the record of appeal and to give a commitment to ensure that the appellant is represented by a legal practitioner at the next sitting of the Court in Saint Lucia during the week commencing 27th October 2025;

The appellant's director, Mr. Martin Martin having given the Court the undertaking that the appellant will within 1 month of today's date, i.e on or before 18th June 2025 retain a lawyer who will by that date file and serve a notice of acting and the undertaking to ensure that the record of appeal is filed within 6 weeks of today's date, i.e on or before 2nd July 2025 and the further undertaking to take all reasonable steps to ensure that the appellant is represented before this Court by a legal practitioner when the matter comes on for hearing during the week commencing 27th October 2025;

The applicant/respondent having represented that it would wish for the notice of application to strike out to be deferred to a subsequent hearing in the event that it becomes relevant and the Court being satisfied that in furtherance of the overriding objective it is in the interest of justice to make an 'unless order' directing the appellant to comply with the timelines

proposed by its director and that unless the appellant complies with each of the said timelines and performs the undertakings outlined earlier that its notice of appeal filed on 27th April 2022 will stand dismissed without further order.

Case Name:

**Frederick Henry
v
[1] Phillipa Regis
(Executrix of the estate of Carrington Regis)
[2] Marcella Edwards

[SLUHCVAP2024/0016]
(Saint Lucia)**

Date:

Wednesday, 21st May 2025

Before:

**The Hon. Mde. Esco L. Henry, 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. Horace Fraser

Respondents: Mr. Alvin St. Clair

Issues:

Civil Appeal - Dismissal of appellant's defence and counter claim - Whether the learned trial judge erred in refusing to exercise his discretion pursuant to section 17 of the Eastern Caribbean Supreme Court (Saint Lucia) Act - Whether the disputes were purportedly resolved on a matter not raised by the parties i.e. positive prescription pursuant to Article 2103 A of the Code of Civil Procedure Act Cap. 243 of the Revised Laws of Saint Lucia, 1957 - Whether the learned trial judge refused or omitted to consider all the evidence especially material documentary evidence that were placed before the Court - Whether the learned trial judge deliberately left issues undetermined to be dealt with at a subsequent trial -

Whether the learned trial judge failed to deal or treat with the appellant's claims of (1) overriding interest and (2) prescription within the meaning of Article 2112 of the Code of Civil Procedure Act - Whether the learned trial judge dealt or treated with irrelevant matters not raised in the pleadings and the cases presented by the parties

Type of Order:

Oral Decision

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The appeal and counter appeal are allowed.**
- 2. The judgment of the learned judge dated 11th June 2024 is set aside.**
- 3. The matter is remitted to the High Court for the Fixed Date Claim Form and counterclaim to be tried by another judge following a pre-trial conference at which appropriate directions are to be issued.**
- 4. The Registrar is directed to ensure that this decision is served on all parties and that proof of service be provided particularly in respect of personal service on the 2nd named defendant in the Fixed Date Claim Form.**
- 5. Each party is to bear his or her own costs of the appeal and the proceedings in court before the trial judge.**

Reason:

This was an appeal by the appellant/1st named defendant filed on 28th June 2024 against the judgment of the learned judge in which he dismissed the appellant's defence to the respondents' claim for, among other things, possession of a parcel of land registered as Block 1640B Parcel 53 in the Registration Quarter of Dennerly ('Parcel 53'); and dismissed the appellant's counterclaim in which he sought a declaration that he had an overriding interest in Parcel 53; rectification of the Land Register in respect of Parcel 53 by inserting his name as the registered owner and the registration of an

overriding interest in Parcel 53 in his favour; and awarded costs to the respondents to be assessed, if not agreed.

The appellant advanced several grounds of appeal.

By Counter Notice of Appeal filed on 9th July 2024 the respondents Phillipa Regis executrix of the estate of Carrington Regis and Marcella Edwards, who were the claimants in the High Court, counter-appealed against the learned judge's decision. They appealed against his order at paragraph 90 of the judgment that they face the challenge as to the extent of the occupation of their lands by the appellant and the other defendant in the court below, and his order that the Fixed Date Claim proceed in the ordinary way with the respondent's evidence taken before the trial judge.

The respondents raised two grounds of appeal. Firstly, that the learned judge misdirected himself in determining or dealing with a trial as if he was dealing with a preliminary point. Secondly, that the learned judge erred in that although he found for the respondents factually and legally, he failed to make orders for possession of the properties in question (parcels 53 and 311).

It was apparent on the face of the record that the claim in the court below commenced on 24th April 2015 with the filing of a Fixed Date Claim Form and Statement of Claim in accordance with rule 8.1(5) (b) of the Civil Procedure Rules 2000 ('CPR') which provides that a fixed date claim form must be used in proceedings for possession of land. The record revealed further at page 95 lines 13-17, and page 96, lines 5-15 of the core bundle that the learned judge did not conduct a trial to receive evidence from the parties and/or their witnesses either orally or by affidavit, but rather on 19th December 2022 when the case was called, he signaled to the parties that he would determine the matter on the written submissions because the issues to be determined are largely legal and the facts are not really in dispute. The transcript disclosed further that the parties were all represented by legal practitioners

none of whom objected to this approach. The case was thereupon adjourned and the referenced judgment was delivered on 19th June 2024.

It was a matter of record that four witness statements were filed in this case. Included in the record and considered by the learned judge were three survey reports. A number of other documents inclusive of survey plans are part of the record and were considered by the learned judge in determining this matter. None of the witness statements, expert reports or other documents comprise sworn testimony.

At the commencement of the appeal, the Court directed the attention of the parties and their legal practitioners to the fact that no evidence was led at the trial and invited submissions from them in light of the provisions of rule 27.2(3) of the CPR and this Court's decision in *Edson Lewis v Hilary Ghansah* (as Executrix of the Estate of Ruth Victoria Thomas, deceased) ANUHCVP2021/0014 (delivered 20th October 2022, unreported).

The Court considered CPR 27.2(3) which empowers the Court to treat the first hearing of a Fixed Date Claim Form as the trial of the claim if it is undefended and considers that it can be dealt with summarily. The Court noted that in the *Edson Lewis* case, the learned judge omitted to require that evidence be led and entered judgment for the claimants. The appellant in *Edson Lewis* advanced as a ground of appeal that:

“The learned judge erred in law in adjudicating upon the matter summarily and pronouncing judgment in the absence of any evidence, being no oral evidence and no written evidence in the form of either a witness statement or an affidavit”.

He argued that when the court decided to proceed summarily, it was required to receive evidence from or for the respondent, either orally or by affidavit, and conduct a summary trial to satisfy itself that the respondent had established his claim, before it could enter judgment for the claimant. He submitted further

that the rules forbid the entry of a default judgment on a Fixed Date Claim Form and that was exactly what the learned judge did. He reasoned that consequently the order made by the judge was irregular for these reasons and must be set aside.

The Court agreed with him, holding that:

“the learned judge erred when she failed to take either viva voce or by affidavit, evidence from or for the respondent, to substantiate the claims made in her fixed date claim form and statement of claim”.

The Court held further:

“The statement in rule 27.2(3) of the CPR about the court treating the first hearing as the trial of the claim if it is not defended ‘or it considers that the claim can be dealt with summarily’ must not be understood to mean that there can be a summary judgment without a trial on a fixed date claim, because rule 15.3 specifically states that ‘[t]he court may give summary judgment in any type of proceedings except ... (c) proceedings by way of fixed date claim’. Once there is a trial, there must be evidence by or for at least one of the parties to the proceedings; and this evidence must satisfy the court to the requisite standard of the merits or demerits of the claim, as the case may be.’

Counsel for both parties before the Court accepted that determination as representing the current legal position and have submitted to the Court that the appropriate course would be to remit this matter to the High Court for the trial of the Fixed Date Claim and the counterclaim to be heard and determined by another judge.

Having considered the oral submissions by counsel for the parties, the fact that the claim under consideration in this appeal and counter-appeal was initiated by a Fixed Date Claim Form, the record referenced earlier and this Court’s decision in *Edson Lewis v Hilary Ghansah* (as Executrix of the estate of Ruth Victoria Thomas deceased), the Court formed the view that no evidence was led at the hearing on 19th December 2022 either orally or through affidavit

testimony. Further, since this case was started by a Fixed Date Claim Form it was necessary for the learned judge to require that evidence be led by one or more parties and/or witnesses at a trial in the High Court even if only summarily, before he could deliberate on the matter and render a merits-based decision on the issues arising on the claim. The Court was satisfied that the learned judge erred by not conducting a trial, even if only in a summary manner and receiving evidence from or on behalf of the respondents.

In the circumstances, the Court found that the learned judge's judgment delivered on 19th June 2024 was irregular, invalid and must be set aside.

Case Name:

**James Simpson
v
Selecta Insurance and Reinsurance
(Company) Caribbean Limited
[NEVHCVAP2025/0010]
(Saint Christopher and Nevis)**

Date:

Wednesday, 21st May 2025

Before:

**The Hon. Mde. Esco L. Henry, 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. Terence Byron

Respondent:

Ms. Edisha Greene

Issues:

Civil appeal - Committal order against officer of body corporate - Rule 53.4 of the Civil Procedure Rules

(Revised Edition) 2023 - Whether the committal order is procedurally unfair - Whether learned judge erred in making committal order - Section 3(1) of the Debtors Act, Cap 5.07 of the Laws of Saint Christopher and Nevis

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The decision is reserved.**
- 2. The Chief Registrar will notify the parties when the decision is available.**

Case Name: Bary Mc Milan Hunte
v
The King

**[SLUHCRA2020/0002]
(Saint Lucia)**

Date: Thursday, 22nd May 2025

Before: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Reginald T.A. Armour, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. David Francis

Respondent: Mr. Daarsrean Greene, Director of Public Prosecutions

Issues: Criminal appeal - Appeal against conviction and sentence - Section 133 (1) (a) of the Criminal Code of Saint Lucia - Buggery - Gross Indecency - Corroboration - Recent complaint - Whether the learned judge erred in failing to direct the jury on statements made by the virtual complainant to his mother about the incident - Good character direction - Whether the learned trial judge's failure to give a good character direction renders the conviction unsafe – - Section 35 of the Supreme Court Act - Whether the proviso should be applied. – Sentence – Whether the judge omitted to consider the appellant's prospects of rehabilitation.

Type of Order: N/A

Result / Order: [Oral Delivery]
Judgment is reserved.

Case Name: Eternity Sky Investments Limited
v
Zhang Xiaomin
[BVIHCMAP2024/0016]
(Territory of the Virgin Islands)

Date: Friday, 23rd May 2025

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

Appearances:
Applicant: Mr. David Lewis KC with him Ms. Urvashi Salecha and Ms. Kimberly Crabbe-Adams
Respondent: No appearance

Issues:

Ex parte notice of application - Leave to appeal against the judgment and interlocutory order of the Wallbank J dated 5th June 2024 – Rule 62.2(8) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 – Whether the appeal has a realistic prospect of success – Whether there is some other compelling reason why the appeal should be heard

Notice of application – application for extension of time to file written submissions and supplemental bundle in support of ex parte notice of application for leave to appeal

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The prospective appellant is granted an extension of time to file the written submissions and supplemental bundle in support of its ex parte application for leave.**
- 2. The written submissions and supplemental bundle filed on 25th April 2025 are deemed properly filed.**
- 3. The prospective appellant is granted leave to appeal the 5th June 2024 Order made in Claim No. BVI HCOM 2023/0089.**
- 4. The prospective appellant shall file its notice of appeal no later than 16th June 2025.**
- 5. The prospective appellant's costs be costs in the proposed interlocutory appeal.**

Reason:

The Court, having received and read the documents in support of the application for leave to appeal as contained in the bundle filed on 8th August 2024 as well as the submissions and other material contained therein, was minded to accede to the application for leave to appeal.

Case Name:

**CIE Limited
v
Keegan Jervais Charles**

**[SLUHCVAP2023/0024]
(Saint Lucia)**

Date:

Friday, 23rd May 2025

Before:

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

Appearances:

Applicant:

Mr. Leslie Prospere

Respondent:

Mr. Tiris Frederick

Issues:

Application to strike out appeal for want of prosecution - Failure of the appellant to file skeleton arguments and Record of Appeal after being notified that the transcript of proceedings was available - Delay - Whether the delay was inordinate - Reasons for delay in filing and serving skeleton arguments and record of appeal - Prospects of success of appeal - Whether the appeal has a realistic prospect of success - Prejudice to the respondent by the appellant's failure to prosecute the appeal

Application for an extension of time to serve the notice of appeal - Application for leave to serve notice of appeal via substituted service or an alternate means of service - Whether error in procedure or the failure to comply with the rules should be rectified pursuant to Part 26.9 of the Civil Procedure Rules - Application for an extension of time to file and serve the Record of Appeal and Skeleton Arguments

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The notice of appeal filed on 20th October 2023 is struck out and dismissed with costs to the respondent.
2. The application for an extension filed on 31st March 2025 to file skeleton arguments and the record of appeal is dismissed with costs to the respondent.
3. Costs to be assessed if not agreed within 21 days of the date of this order.

Reason:

Before the Court was an application by the respondent to the appeal (or “the applicant”) to strike out the notice of appeal filed by the appellant on 20th October 2023 challenging the judgment of Phillip J delivered on 4th October 2023 in which he held the appellant liable in negligence and awarded damages. The respondent’s application was filed on 14th April 2025. The applicant sought to strike out the appeal for want of prosecution on the basis that the appellant failed to serve the respondent with the notice of appeal within the time prescribed by the Civil Procedure Rules (Revised Edition) 2023 (“CPR”), that is, within 14 days of filing the notice of appeal, but instead served the respondent, some 400 days later, on 11th December 2024. Secondly, that the appellant has to date, failed to file and serve the skeleton arguments within the time prescribed by CPR 62.14, which requires an appellant to file its skeleton arguments within 52 days of receipt of the notice issued by the High Court, pursuant to CPR 62.12 (1)(a)(ii) notifying the parties of the availability of the transcript.

It was also said that the appellant has failed to file a record of appeal and core bundle, despite the availability of the transcript, of which the parties were notified on 27th November 2023. By CPR 62.15, the record of appeal was required to be served within 42 days of the notice of the availability of transcript.

In response to the strike out application, the appellant subsequently filed an application for an

extension of time to serve the notice of appeal, or to deem the service effected on 11th December 2024 to be proper service, and also sought an extension of time to file and serve its skeleton arguments and record of appeal. The affidavit in support explained that on 30th October 2023, the notice of appeal and authorization code were served on the chambers of counsel who had had conduct of the trial and who now appears on this appeal. However, it was subsequently returned on the basis that counsel had not been instructed in the appeal. A process server was then engaged to attempt to serve the respondent personally. When these efforts proved unsuccessful, the appellant caused the notice of the proceedings, addressed to the respondent to be published in the “Voice Newspaper” on 22nd and 25th November 2023. In the meantime, efforts to serve the respondent personally continued, and he was eventually served personally on 11th December 2024.

In relation to the delay in serving the skeleton arguments and the record of appeal, the appellant asserted that despite reaching out to the respondent for his input into the record of appeal, as required by the CPR., he had not cooperated, and thus the appellant was unable to proceed to settling the record of appeal.

In considering first the respondent’s application to strike out the notice of appeal, the Court noted that the principles that guide the Court when presented with an application to strike out a notice of appeal are well known, and have been clearly articulated by this Court in several decisions.

In short, the aim is to do justice between the parties in furtherance of the overriding objective. Factors relevant to the attainment of that objective include the length of the delay, the reasons for delay, the merits of the appeal and any prejudice to the litigants. The appeal should not be struck out where there is a satisfactory explanation for the failure to file the record of appeal and skeleton arguments and the delay is neither intentional nor inordinate and has occasioned no prejudice to respondent.

Bearing those principles in mind, the relevant considerations were assessed by the Court as follows:

1.) The length of delay- the total length of delay in serving the notice of appeal is approximately 404 days. The delay in filing and serving the skeleton arguments and the record of appeal is approximately 1 year and 4 months. These periods of delay prima facie constitute inordinate delay.

2.) The reasons for the delay- the appellant's reasons for the delay as it relates to service of the notice of appeal demonstrated some promptitude in its attempts to effect service of the notice of appeal. The explanation for failing to file its skeleton arguments and record of appeal was wholly unsatisfactory. The Court has previously commented on the excuse that the respondent did not cooperate in preparing the record of appeal. In such a situation, the appellant must proceed to put it together as best they can, explaining that it has not secured the respondent's cooperation, despite its best efforts. To simply file nothing is not an option. In the round, the Court concluded that the reasons for failing to file and serve the skeleton arguments and record of appeal were inexcusable.

3.) Prospects of success of the appeal- The Court directed counsel's attention to this particular limb. Having considered the oral and written submissions with respect to the prospects of success, and having given due consideration to the specific grounds of appeal which the appellant stressed in their submissions, as having merit and a realistic prospect of success, the Court was not satisfied that the appeal has realistic prospects of success. The Court observed that a number of the grounds of appeal questioned the learned judge's finding of fact, and one challenged the quantum of general damages.

The Court noted that it is well established that an appellant faces an uphill task in challenging a judge's assessment of evidence, the facts found following that assessment and ultimately his assessment of general damages. Having considered the judgment and the grounds that challenge findings of fact and law, and the appellant's submissions, the Court was not satisfied that the appeal presented any realistic prospects of success. The appellant did in their written submissions invite the Court to consider the less draconian measure of an 'unless order', although in oral submissions, Mr. Prospere did resile somewhat, submitting that even that course is unwarranted in the circumstances of this case.

However, having regard to its findings on all of the relevant factors, but more specifically, the prospect of success limb, the Court considered that the question of making an unless order did not properly arise. Accordingly, the notice of appeal filed on 20th October 2023 was struck out and dismissed with costs to the respondent. The application filed on 31st March 2025 for an extension of time to file the skeleton arguments and record of appeal was also dismissed with costs to the respondent in the appeal.