

THE EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
MONTSERRAT
VIDEOCONFERENCE
MONDAY 9TH FEBRUARY AND TUESDAY 10TH FEBRUARY 2026

APPLICATIONS AND APPEALS

Case Name:

Keston Riley
v
Montserrat Port Authority

[MNILTAP2025/0001]
MONTSERRAT

Date:

Monday 9th February 2026

Before:

Her Ladyship, The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
Her Ladyship, the Hon. Mde. Esco Henry, Justice of Appeal
Her Ladyship, the Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal

Appearances:

Appellant: **Mr. Hugh Marshall and Ms. Marcelle Watts**

Respondent/Applicant: **Mr. Jean Kelsick**

Issues:

Application to strike out appeal – Labour Code, Chapter 15.03 – Section 26(4) of the Labour Code (Amendment) Act, No. 4 of 2022 – Whether, on a proper computation of time under the Labour Code, the Notice of Appeal was filed within the prescribed twenty-eight (28) days and, if not, the consequences of non-compliance – Whether the filing of a Notice of Appeal nineteen (19) days outside the

prescribed time (28 days) renders the Notice of Appeal a nullity or otherwise invalid, thereby warranting its striking out – Whether the Court of Appeal has jurisdiction under the Labour Code or the Regulations made thereunder to extend time for the filing of a Notice of Appeal against a decision of the Labour Tribunal – Whether the Notice of Appeal ought therefore to be struck out

Type of Order:

Oral Decision

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The Notice of Appeal filed on 27th January 2025 is deemed to be properly filed.**
- 2. The Notice of Appeal is deemed properly served on 29th January 2025.**
- 3. The application to strike out the notice of appeal is dismissed.**
- 4. No order as to costs.**

Reasons:

Before the Court was an application filed on 10th March 2025 to strike out the Notice of Appeal filed on 27th January 2025 (“the Application”) . The Application was supported by the affidavit of Joseph O’Garro.

The grounds advanced for the application are that:

- 1. the Notice of Appeal, having been filed 19 days late, is a nullity;**
- 2. the Labour Code (Amendment) Act, No. 4 of 2022 (which prescribes a fixed period of 28 days for lodging an appeal) has not been complied with; and**

3. no extension of time has been sought or granted for the said filing of the Notice of Appeal.

By Notice of Opposition filed on 3rd April 2025 supported by the affidavit of Keston Riley, the appellant opposed the Application exhibited to the affidavit was “KR1,” which contained a series of correspondence between counsel for the respondent (the appellant herein), the E-Litigation Portal (“ELP”) support team and the Registry of the High Court.

The Court also considered the written submissions in support of the application to strike out filed on 10th March 2025, the submissions in response filed on 19th December 2025, and the reply submissions of the applicant filed on 13th January 2026.

The Court took into account the provisions of Rule 62.9 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2023 (“CPR”), which prescribes the filing and service of Notices of Appeal; the relevant appeals provisions in the Labour Code (Amendment) Act, No. 4 of 2022; Rule 9(5) of the Eastern Caribbean Supreme Court Electronic Litigation and Service Procedure Rules 2020 (“ELISPR 2020”); and Part 1.2 of the CPR, which outlines that the court must give effect to the overriding objective to deal with cases justly.

The Court reviewed the evidence including the certificate issued by the High Court Registry in Montserrat on 4th March 2025, which was issued well after the Notice of Appeal would have been filed and served. That certificate confirmed that on 6th January 2025, counsel for the respondent attempted to lodge the Notice of Appeal but was unsuccessful due to challenges with the ELP, which have since been rectified.

The Court did not accept that there was any basis to look behind the certificate issued by the High Court Registry. Applying Rule 9(5) of the ELISPR 2020, the Court was satisfied that time is to be treated as having stopped running between 6th January 2025 and 27th January 2025, the period during which the ELP challenges persisted.

Accordingly, the Notice of Appeal was deemed to have been filed on 27th January 2025 and was within the prescribed period of 28 days set by the Labour Code.

Consequently, there was no need for the Court to entertain an application for extension of time.

The Court noted that the Notice of Appeal was served on the respondent on 27th January 2025 and the authorization code was served on 29th January 2025. On that basis the Court accepted that service was effected on 29th January 2025 and was within the time fixed for service under Rule 62.9(2).

Having regard to Rule 1.2 of the CPR, the Court took the view that granting the application to strike out in these circumstances would not be consistent with the overriding objective in any event.

The Court therefore found as follows:

1. that the Notice of Appeal filed on 27th January 2025 was deemed properly filed;
2. that the Notice of Appeal was deemed properly served on 29th January 2025; and
3. that the application to strike out is accordingly dismissed.

Having considered to the evidence in exhibit “KR1” and the representations made by counsel in oral submissions, the Court was also satisfied that, notwithstanding the outcome of the application, it would not be appropriate to award costs to the appellant, bearing in mind that the matters raised in opposition to the Application would have been unknown to the applicant (which was unfortunate) as well as the fact that the application was ultimately determined on basis of the application of ELISPR 2020 would not have been known to the applicant.

Case Name:

Leron Brade

v

The King

[MNIHCRAP2022/0001]

MONTSEERRAT

Date: Monday 9th February 2026

Before: Her Ladyship, The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
Her Ladyship, the Hon. Mde. Esco Henry, Justice of Appeal
Her Ladyship, the Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Oris Sullivan, Director of Public Prosecution

Issues: Appeal against conviction – Juror Bias – Bias of trial judge – Misdirection of the jury – Judge descending into trial arena – Whether the conduct of the trial judge adversely affected the appellant’s right to a fair trial – Whether the conviction can be supported by the evidence – Whether the purported expert was unqualified – Whether the components the appellant was found in possession of could be classified as a firearm – Whether the transcript proceedings of the first trial should have been relied upon by the Court in this retrial – Wrongful charges – Wrongful arrest – Whether the learned judge took into account irrelevant factors – Whether the conviction was unsafe in all of the circumstances

Type Of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: Claude Gerald
v
Public Service Commission et al

**[MNIHCVAP2021/0004]
MONTSERRAT**

Date: Tuesday 10th February 2026

Coram for delivery: His Lordship, The Hon. Mr. Trevor M. Ward, Justice of Appeal
Her Ladyship, the Hon. Mde. P. Nicola Byer, Justice of Appeal
His Lordship, the Hon. Mr. Reginald T.A. Armour S.C., Justice of Appeal [A.g.]

Appearances:

Applicants/Respondents:	Ms. Cedricia Shiell
Respondent/Appellant:	Dr. David Dorsett

Issues: Application to strike out notice of appeal – rule 26.3 Civil Procedure Rules (Revised Edition) 2023–
Non-compliance with court orders – Abuse of process – Delay – Failure to prosecute appeal in a timely manner – Breach of CPR 62.11 – Failure to file skeleton arguments within 52 days after the preparation of the transcript – Failure to file and serve record of appeal as ordered – Prospects of success

Type of Order: Oral Decision

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The notice of appeal filed on 25th February 2025 is struck out.
2. Costs are awarded to the respondents to be assessed if not agreed within 21 days of this Order.

Reason: Before the Court was an application by the Respondents filed on 23rd September 2025 to strike out the notice of appeal filed by the appellant on 5th February 2021. The application is supported by two affidavits sworn by

Vanessa Mark filed on 23rd September 2025 and 9th February 2026. The application is grounded on the appellant's consistent failure to comply with procedural requirements for prosecuting an appeal as set out in Part 62 of the Civil Procedure Rules (Revised Edition) 2023.

The substantive matter originated from an application for administrative orders filed by the appellant on 5th December 2019 challenging the recruitment process for an Agricultural Science teacher at the Montserrat Secondary School. On 14th January 2021, the High Court dismissed the claim, finding that the temporary recruitment of a teacher by special agreement to fill a pressing gap was not improper and that there was no procedural flaw or breach of natural justice.

The principles that guide the Court when presented with an application to strike out a notice of appeal are well known, settled and have been clearly articulated by this Court in several decisions. These include *Michael Baptiste v Yoland Bain-Joseph* HCVAP2006/026 (delivered on 7th February 2008, unreported) and *First Domestic Insurance Co. Limited v Industrial Enterprises Ltd. et al* DOMHCVAP2014/0024 (delivered on 27th May 2020, unreported). 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, reasons for the delay, the merits of the appeal and prejudice to the respondent. 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 the respondent.

In addition to these principles, Dr. Dorsett brought the Court's attention to *Real Time Systems Limited v Renraw Investments Limited and others* [2014] UKPC 6. This case considered an application to strike out pleadings. The Privy Council held that while the court has a discretion under CPR 26.2 to strike out a statement of case, they must consider any other details that would militate against its nuclear option of striking out. Dr. Dorsett submitted that in furtherance of the overriding objective, the Court should not strike out the appeal because the delinquency was cured by the filing of the record of

appeal on 20th October 2025 and skeleton submissions on 27th October 2025. Additionally, he submitted that pursuant to an Order dated 5th December 2025 at a status hearing, the appellant filed a hearing bundle on 28th January 2026. In essence, his submission is that past failure notwithstanding the appeal is ready to proceed.

The points raised by Dr. Dorsett cannot be taken in isolation but must be considered alongside the overall circumstances of the case. A perusal of the record reveals a history of significant inaction by the appellant. On 14th January 2021, the High Court delivered its decision. On 25th February 2021, the appellant filed their notice of appeal. On 29th March 2022, the transcript of the High Court proceedings became available, and the parties were notified accordingly. On 19th January 2023, at the status hearing, the court ordered the respondent to notify the appellant of the documents that they wished to have included in the bundle pursuant to CPR 62.12(2) on or before 17th February 2023. The Order further directed the appellant to file and serve the record of appeal on or before 31st March 2023. The respondent duly complied with its obligations. Between 17th February and 22nd February 2023, counsel for the respondent engaged in correspondence with Dr. Dorsett, counsel for the appellant, in relation to the documents required for the appeal. CPR 62.12(3) mandated the appellant to file the record of appeal within 42 days of receipt of notice of the availability of the transcript and by CPR 62.11(1), he was required to file skeleton arguments within 52 days of receipt of that notice.

As at the date of the respondent's application, more than three years after the transcript became available, the appellant failed to serve any skeleton arguments or the record of appeal. He only filed the appeal bundle on 20th October 2025, followed by his skeleton submissions on 27th October 2025. The Court finds that the application to strike out the appeal must succeed for the following reasons:

1. Failure to comply with filing timelines – The Appellant has flagrantly disregarded timelines stipulated in Part 62 of the CPR for filing and service of the record of appeal and skeleton arguments. These rules are designed to ensure the

efficient administration of justice and cannot be ignored indefinitely and with impunity.

- 2. Inordinate delay – The delay in this matter is inordinate. More than four years have elapsed since the filing of the notice of appeal and over three years have elapsed since notice of the availability of the transcript was issued. Such a protracted period of inactivity without any progression of the appeal is an abuse of the Court’s process.**
- 3. Lack of explanation for the delay – Critically, the Appellant has unacceptably failed to provide an affidavit explaining the reasons for the significant delay in prosecuting the appeal. While the Appellant’s notice of opposition mentions “challenges in obtaining documents”, this assertion is not supported by evidence on affidavit explaining why no action was taken between 21st March 2022 and October 2025. This evidentiary lacuna stands in stark contrast to the evidence adduced by the respondent. That evidence discloses that the respondent engaged in communication with counsel for the appellant to inquire about the progress of the appeal as early as 17th February 2023, to no avail. This Court sees far too often an unacceptable trend whereby appellants sit on the appeal without taking any steps to progress it but suddenly come alive once the respondent files an application to strike out the appeal. This unsavory practice is an abuse of process and should be strongly deprecated. Nothing said in Real Time Systems provides a charter for condoning this type of egregious and unexplained conduct.**
- 4. Prospect of the appeal succeeding – The appellant has filed two grounds of appeal: 1) The learned judge erred in dismissing the Appellant’s application for an administrative order by failing to find that the “named person” was performing the duties and functions of the advertised position, which position was a position in the public service, and there being no evidence that the “named person” applied for the position; and 2)**

The learned judge erred in dismissing the Appellant's application for an administrative order by way of a declaration by failing to have regard or proper regard to the full impact and the conjoint effect of section 109 of the Montserrat Constitution Order 2010 and Regulation 18(2) of the Public Service Regulations. Upon a review and assessment of the grounds of appeal, the Court finds that the appeal lacks sufficient merit to warrant dismissing the application to strike out the appeal for want of prosecution. The High Court correctly identified that the temporary worker X was engaged under a "special agreement" or contract for a finite period, pursuant to powers granted to the Deputy Governor under section 24 of Montserrat Constitution, and, though not expressly mentioned, the judge clearly had in mind section 109(1) of the Constitution, when he referenced the power of the Deputy Governor to hire persons to function in the public service on contract. Hence, his finding that the Public Service Commission's oversight functions for permanent appointments were not triggered. Further, the judge found that the appellant's own application for the post was admitted to be flawed as it failed to include the required supporting documentation.

In light of this, the Court is not persuaded that the appeal represents a realistic prospect of success. The Court's resources are finite, and litigants must pursue their appeals with due alacrity and reasonable diligence. The appellant's failure to prosecute this appeal for several years coupled with the lack of an explanation for the delay, together with the dim prospects of success necessitate the termination of these proceedings at this juncture.