

THE EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

**SAINT VINCENT AND THE GRENADINES
VIDEOCONFERENCE**

10th - 14th February 2025

JUDGMENT

Case Name:

**[1] The Minister of Health and the
Environment
[2] The Public Service Commission
[3] The Commissioner of Police
[4] Attorney General
[5] Police Service Commission**

v

**[1] Shanile Howe
[2] Novita Roberts
[3] Cavet Thomas
[4] Alfonzo Lyttle
[5] Brenton Smith
[6] Sylvorne Olliver
[7] Shefflorn Ballantyne
[8] Travis Cumberbatch
[9] Rohan Giles**

[SVGHCVAP2023/0003]

(Saint Vincent and the Grenadines)

Date:

Wednesday, 12th February 2025

**Coram for
delivery:**

**The Hon. Mde. Margaret Price Findlay, Justice of
Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal**

Appearances:

Appellants:

**Ms. Cerepha Harper-Joseph for the 1st, 3rd and 4th
appellants
Mr. Grahame Bollers for 2nd and 5th appellants**

Respondents:

**Ms. Shirlan Barnwell with Mr. Jomo Thomas and Ms.
Cara Shillingford**

Issues:

Civil Appeal - COVID-19 pandemic – Rule 8 of the Public Health (Public Bodies Special Measures) Rules 2021 (“Special Measures”) – COVID-19 vaccine mandate – All employees identified in the Schedule to the Special Measures were to be vaccinated - Unvaccinated public and police officers not to enter workplace – Regulation 31 of the Public Service Commission Regulations – Section 73A of the Police Act - Respondents deemed to have vacated their posts by being absent for 10 continuous working days - Whether Rule 8 of the Special Measures is unlawful and or unconstitutional and void – Whether Minister of Health failed to act on the advice of the Chief Medical Officers in promulgating the Special Measures as required by section 43B of the Public Health Act – Whether Minister of Health usurped the functions of the Public Service Commission in making Rule 8 - Pensions benefit - Whether Rule 8 contravened the respondents’ constitutional rights to protection from deprivation of property and protection of pension right – Proportionality test – Whether the termination measure should be found unlawful on account of being disproportionate - Natural justice – Procedural fairness - Whether the Commission, the Police Service Commission and the Commissioner of Police acted unlawfully and contrary to the rules of natural justice in failing to give the respondents an opportunity to be heard before issuing the letters to the respondents – Whether the Minister of Health in making Rule 8 usurped the authority of the Commission, the Police Service Commission and the Commissioner of Police to make rules governing the appointment and termination of their employees – Whether the COVID-19 (Miscellaneous Amendments) Act is unconstitutional for contravening the separation of powers doctrine

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The declarations made by the learned trial judge at sub-paragraphs 1(a) to (j) and 2(a) and (b) of both paragraphs [234] and [246] of the judgment are set aside.
3. The orders of *certiorari* granted by the learned trial judge at sub-paragraphs 1(a) to (c) and 2 of paragraph [236] and at sub-paragraphs 4(a) to (c) and 5 of paragraph [246] of the judgment are set aside.
4. The declarations made by the learned trial judge at paragraph [237], the consequential orders made at paragraph [238], and the orders made at sub-paragraphs 6(a) and (b) and 7 of paragraphs [246] of the judgment are set aside.
5. The directions for assessment of damages made by the learned trial judge at paragraph [242] and at sub-paragraph 8 of paragraph [246] of the judgment are set aside.
6. The order made by the learned trial judge in the last sentence of paragraph [244] and at sub-paragraph 9 of paragraph [246] of the judgment are set aside.
7. The order for costs made by the learned trial judge at paragraph [245] and at sub-paragraph 10 of paragraph [246] of the judgment are set aside.

Reason:

1. An appellate court ought first to be satisfied that the trial judge was 'plainly wrong' before interfering with the trial judge's findings of fact or his or her evaluations of facts. In the case at bar, the trial judge's finding that the Minister of Health acted ultra vires in that he did not as a matter of fact act on the advice of the CMO in making Rule 8, is contrary to the uncontroverted evidence of the CMO and the Minister of Health. There was no cross examination of either the Minister of Health or the CMO on this issue which meant there was no basis for the learned trial judge to reject the evidence of the CMO and the Minister of Health. Furthermore, the advice of the CMO was only relevant to the first part of Rule 8(1), that is, that an employee who without

reasonable excuse fails to comply with Rules 4 or 5 must not enter the workplace. No such advice was required from the CMO before the Minister of Health could include the second part of Rule 8(1) and Rule 8(2) in the Special Measures. The second part of Rule 8(1) states that an unvaccinated public officer who cannot enter the workplace will be deemed absent from duty without leave and, Rule 8(2) merely states that Regulation 31 applies to such a public officer. These could not be and were not part of the advice given by the CMO to the Minister of Health. Regulation 31 would in any event apply to unvaccinated public officers to whom the first part of Rule 8(1) applied.

Rule 8 of the Public Health (Public Bodies Special Measures) Rules, 2021, Act No. 28 of 2021 considered; Regulation 31 of the Public Service Commission Regulations SR&O No. 48 of 1969 as amended, considered; *Shaista Trading Company Limited d.b.a. Diamond Republic v First Caribbean International Bank (Barbados) Ltd ANUHCVP2018/0021* (delivered 26th April 2021, unreported) followed; *Biogen Inc v Medeva Plc* [1997] RPC 1 applied.

2. For those rules that were not made on the advice of the CMO as per section 43B of the Public Health Act, the Minister had the lawful power to make them under section 147 of the Public Health Act. Section 147 states that the Minister shall have power 'to make rules generally for the carrying out of the purposes of this Act'. There can be no doubt that the Special Measures, including Rules 8(1) and 8(2), were properly made by the Minister pursuant to section 147 of the Public Health Act. In addition, having regard to section 39 of the Interpretation and General Provisions Act, the Minister in any event has the implied power to enforce compliance with the requirement under Rule 8 that public officers must not enter the workplace while unvaccinated. This is a basis founded in law that grounds the powers of enforcement of the Minister. The learned trial judge

was therefore wrong to conclude that Rules 8(1) and 8(2) are unlawful, unconstitutional, and void on this basis.

Sections 147 and 43B of the Public Health Act, Cap 300 of the Laws of Saint Vincent and the Grenadines, as amended by the Public Health (Amendment) Act, 2020 considered; Section 39 of the Interpretation and General Provisions Act Cap 14 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

3. Section 77(13) of the Constitution provides that in the exercise of its functions the Commission shall not be subject to the direction or control of any person or authority. Section 78(1) gives the Commission the power to appoint, discipline, and remove persons who hold or act in offices in the public service. It is clear that these powers are vested exclusively in the Commission. The critical aspect of Rule 8 is that an employee who without reasonable excuse fails to comply with Rules 4 or 5 must not enter the workplace. The words in Rule 8(1) ‘and is to be treated as being absent from duty without leave’ merely reflect a fact that would exist if an employee failed to get vaccinated and was unable to enter the workplace to fulfil their contractual obligations for ten days or more. Moreover, Rule 8(2) merely makes clear the application of Regulation 31 to Rule 8(1). Rule 8 does not usurp any of the functions of the Commission and the learned trial judge also erred in finding that it did.

Sections 77(13) and 78(1) of the Constitution of Saint Vincent and the Grenadines Cap 10 of the Revised Laws of Saint Vincent and the Grenadines, 2009 considered; *Thomas v Attorney-General of Trinidad and Tobago* [1982] A.C. 113 followed.

4. Section 88 of the Constitution protects the pension benefits of persons who are entitled by law to a pension from any change in law that affects the grant of such pension benefits, or any law regulating the circumstances in which any such benefits that

have been granted may be withheld, reduced in amount or suspended, and the law regulating the amount of any such benefits. The only constitutional right that is protected by section 88 is a pension to which a person is lawfully entitled. This Court has made plain that in order for pension benefits to be protected as a property right under section 6 of the Constitution of SVG, the applicant must either qualify for or be entitled to the pension benefit as a matter of law. Therefore, assuming the respondents are correct in their assessment that a person who has abandoned their office under Regulation 31 would not be eligible for a pension, there would be no deprivation of any property because that deprivation would arise from a lack of qualification or entitlement to the pension benefit. The fact that a person may fall generally under a category of persons who are not entitled to a pension under the pensions law, assuming this to be true, cannot be a basis for a finding that the law is unconstitutional for creating the circumstance within which a person may fall that would disentitle them to a pension.

Sections 6 and 88 of the Constitution of Saint Vincent and the Grenadines Cap 10 of the Revised Laws of Saint Vincent and the Grenadines, 2009 considered; *Elvis Daniel et al. v Public Service Commission et al* SVGHCVAP2016/0007 (delivered 29th January 2019, unreported) considered.

5. In the case at bar, there was no evidence that any of the respondents had earned the right to a pension that is protected under section 88 of the Constitution. In other words, the respondents had not shown that they had qualified for or were otherwise entitled by law to (and had lost) any pension benefits. Since the respondents have not provided any evidence of any 'pension benefit' which is protected by section 88 of the Constitution, they are therefore not able to establish that any 'property right' protected by section 6 of the Constitution. Further, there is nothing in Rule 8 which regulates in any way the 'pension benefit' to

which section 88 refers such that the respondents' right to property in the 'amount of such benefits' have been contravened contrary to section 6 of the Constitution relating to protection from deprivation of property. Consequently, section 6 of the Constitution cannot be invoked to challenge the constitutionality of Rules 8(1) and 8(2). However, this does not prevent an affected employee from applying to the Government for their vested pension entitlements in accordance with the pensions laws of SVG. Once that legal entitlement is determined (as of the date of the deemed resignation), the relevant party must simply comply and apply in the normal way for any pension that is due to them from the date of the deemed resignation of any of the respondents.

6. In determining whether a law or measure infringes any of the fundamental rights or freedoms in Caribbean Constitutions, the proportionality test is used. In applying this test, it is necessary to determine: (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objective; (iii) whether a less intrusive measure could have been used; and (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community. When the proportionality test is applied to Rule 8(1) and Rule 8(2), both of which incorporate directly and indirectly Regulation 31 and section 73A of the Police Act, having regard to all the circumstances and the uncontradicted evidence of the appellants, including the evidence of the CMO, bearing in mind the seriousness and severity of the COVID-19 pandemic, the nature of the COVID-19 virus and the ever changing variants, the emergence of COVID-19 vaccines that would prevent the spread of the COVID-19 virus and assist in preventing severe illness, hospitalisations and any loss of life of residents, particularly children, the elderly and those persons who were immunocompromised, Rule 8 was

plainly a proportionate means of protecting the public health interest in the circumstances of a dangerous COVID-19 virus. For these reasons, the respondents' claim for constitutional relief fails *in limine* and should have been rejected by the learned trial judge.

de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing [1998] 3 WLR 675 followed ; *Huang v Secretary of State for the Home Department* [2007] 2 AC 167 followed; *Bank Mellat v Her Majesty's Treasury (No 2)* [2014] AC 700 followed; *Suraj and others v Attorney General of Trinidad and Tobago and Maharaj v Attorney General of Trinidad and Tobago* [2023] AC 337 followed; *GF v Minister of COVID-19 Response* [2021] NZHC 2526 considered.

7. The issue of natural justice does not arise on the operation of Regulation 31 because the deeming of an officer to have resigned from his office is triggered immediately by that officer absenting himself from duty without leave for a continuous period of ten working days. The consequence occurs automatically on the occurrence of the triggering event. The issue in question is whether Regulation 31 satisfies the requirements of fairness. The insertion of the words 'unless declared otherwise by the Commission' in Regulation 31 allows the Commission to hear the officer, either in writing or orally, who can then explain to the Commission why the consequences of Regulation 31 should not apply to him or her. This provision in Regulation 31 allows for any person who is deemed to have abandoned his or her office by the operation of the regulation to seek to have the Commission subsequently modify its decision. None of the respondents made any request to the Commission for a review of their case. Having not availed themselves of the option of seeking from the Commission a modification of the communication concerning their abandonment of their offices, the respondents cannot now argue that there was a breach of natural justice.

Felix DaSilva v Attorney General of Saint Vincent and the Grenadines et al Suit No. 356 of 1989 (delivered 31st July 1997, unreported) considered; R v Secretary of State for the Home Department, ex p. Doody [1993] UKHL 8 (24th June 1993) applied; Endell Thomas v Attorney-General of Trinidad and Tobago [1982] AC 113 considered.

8. It cannot be said that either the Commissioner of Police or the Commission acted on the authority of the Minister of Health in applying Regulation 31 which was only triggered by non-compliance with Rule 8 by the officers to which it was applicable. The application of Regulation 31 in the case of any officer does not involve acting on the instructions of, or the dictates of, neither the Commissioner of Police nor the Chair of the Commission. Rule 8 was not a directive by the Minister of Health to the Commission or the Police Service Commission. The Commission, in issuing letters reflecting the deeming effect of Regulation 31, namely, that the officer is deemed to have resigned their office and that their office becomes vacant and that the officer ceases to be an officer, was doing no more than communicating the effect of Regulation 31. It was a directive to public and police officers concerning their terms and conditions of employment. The Executive was merely laying down additional terms of service for public officers and police officers pursuant to their contracts of employment. There was no control by the Minister of Health or anyone else of any of the functions of the Commission or the Police Service Commission. The learned trial judge was wrong to conclude that the letters issued to the respondents for breaching Regulation 31, for failing to comply with Rule 8, contravened sections 77(12), 77(13), 84(6) and 84(7) of the Constitution.

Endell Thomas v Attorney-General of Trinidad and Tobago [1982] AC 113 followed.

9. The separation of powers doctrine is a fundamental pillar of constitutional law in the Commonwealth Caribbean. This Court has made clear that for any delegation of legislative power to be lawful the legislature must retain effective control over the delegated power by either: (1) circumscribing the power; or (2) by prescribing guidelines or a policy for the exercise of the power. In the context of the COVID- 19 pandemic, the Amendments Act was made during a period of emergency for the purpose of delegating authority on the Minister to amend certain laws to swiftly respond to the ever-changing and fluid COVID-19 pandemic. Parliament retained control by: (1) restricting the application of the Amendments Act to responses to the COVID-19 pandemic, and (2) confining the Minister's power to amend laws for the sole purpose of responding to the COVID-19 pandemic. Only on a strained reading of the Amendments Act could one conclude that the Legislature gave the Minister of Health the power to amend laws passed by Parliament *carte blanche*. It would rather be contrary to common sense if such a power could not be delegated in such a time of a public health emergency and serious danger, subject to Parliamentary control, that was occasioned by the onset of the COVID-19 pandemic. These factors constitute sufficient Parliamentary control for the purpose of circumscribing the power delegated to the Minister by Parliament. The learned trial judge was wrong to hold that the Amendments Act was unlawful for contravening the separation of powers doctrine.

Section 2(2) of the COVID-19 (Miscellaneous Amendments) Act, Act No. 5 of 2020 considered; *J. Astaphan and Co. (1970) Ltd v the Comptroller of Customs and The Attorney General of the Commonwealth of Dominica* Civil Appeal No. 8 of 1994 (delivered 28th May 1996, unreported) followed; *Kwok Wing Hang & Ors v Chief Executive in Council and another* [2020] HKCFA 42 applied.

Per Wallbank JA [Ag.] (dissenting):

10. Abandonment of employment is a voluntary relinquishment of the employment through non-user with the actual or imputed intention on the part of the office holder to abandon and relinquish that office. The combined effect incorporating Regulation 31 by way of Rule 8(2) and the deeming provision in Rule 8(1) was to redefine what had been considered 'abandonment of office'. It was not simply the case of the Minister merely repeating what was already the law. The deeming provision was not 'mere surplusage' neither was the inclusion of reference to Regulation 31 in Rule 8(2). It was a new measure that changed the meaning of a legal concept. In laying down that an officer who has not taken the vaccine and who has not presented proof of vaccination 'is to be treated as being absent from duty without leave', Rule 8(1) had the effect of disapplying the common law criteria for abandonment of office, including the requirement that absence should be voluntary. Rule 8(1) has the effect of imposing a completely different set of artificial criteria for resignation from employment through abandonment and overrides the well and long-established law as to what constitutes abandonment of employment, as a form of resignation.

11. Moreover, the prohibition in Rule 8(1) from entering the workplace does not automatically entail absence from duty. Whether or not such an officer indeed went absent from duty without leave is a question of fact within the context of the particular case. In this case, the evidence showed that although restricted from entering the workplace the respondents continued to perform their duties until they received their letters of termination. It was not the failure to present themselves for work, but non-vaccination, that earned the respondents their termination letters. Similarly, Regulation 31 would not 'automatically' apply to unvaccinated public officers to whom the first part of Rule 8(1) applied had it not been inserted in Rule 8(2), because mere non-vaccination and inability to show proof of

vaccination, and prohibition to enter the workplace, do not of themselves equate to absence from duty without leave.

Huggins Neal Nicholas v Attorney General & The Teaching Service Commission St Lucia Civil Appeal HCVAP 2008/018 (delivered 22nd March 2010, unreported) followed; Seetohul v Omni Projects Ltd [2015] UKPC 5 distinguished.

12. The application of SR&O 28 did not offend against the right to a fair hearing within a reasonable time pursuant to section 8(8) of the Constitution. That is because, in taking the entire procedure of the application of SR&O 28 as a whole, the respondents did not avail themselves of the entirety of the in-built opportunity to be heard. The respondents were not precluded from making representations to the Commissions, which could have changed the overall result after they received their termination letters. However, the Public and Police Service Commissions' decision-making process was flawed in that they prejudged the factual issue of whether the respondents, in each individual case, had a reasonable excuse for non-vaccination against them, without affording the respondents an opportunity to be heard. Those bodies simply assumed from the fact of non-vaccination that the respondents had no reasonable excuse. It was not open to them to state unconditionally and definitively, as they did, that the employees had no reasonable excuse when those bodies did not know and could not have known that without conducting an inquiry into the fact-specific question and without affording the respondents an opportunity to be heard before pronouncing their decision. This was inherently a breach of fundamental principles of natural justice and rendered the decisions of the Public and Police Service Commissions void and of no effect.

Bank Mellat v Her Majesty's Treasury (No. 2) [2013] UKSC 39 applied; Ridge v Baldwin et al [1964] AC 40 applied.

13. There is no scope for the court below, or this Court, to consider the proportionality of the measure introduced by Rule 8 of SR&O 28 divorced from the protection of a fundamental right. The four-step proportionality test cannot be used without reference to a fundamental right. Pension rights are a form of personal property protected under section 6 of the Constitution. Loss of the respondents' pension rights was a form of deprivation of property without compensation, triggering the court's powers of intervention because a constitutionally protected right is arguably being infringed. The uncontradicted evidence is that the respondents' deemed resignation deprived them of their accrued entitlement to be paid a public service pension, i.e. that their deemed resignations cancelled their accrued pension entitlements. That evidence of the respondents could have been contradicted by the appellants with reference to factual matters (i.e. evidence) and/or the law on pensions, but it was not. The Court therefore has sufficient jurisdiction to consider the proportionality of the impugned termination measure in so far as it affected those respondents who had accrued pension rights.

Elvis Daniel et al v Public Service Commission et al SVGHCVAP2016/0007 (delivered 29th January 2019, unreported) followed.

14. The impugned termination measure in the present case, i.e. giving public and police service employees an ultimatum that if they did not get vaccinated, they would lose their jobs, was draconian. It deprived employees of their employment, of their livelihoods for themselves and their dependents, of their financial benefits, socially marginalised them and traumatised them. There were less intrusive measures which could have been used without unacceptably compromising the objective of SR&O 28.

15. Section 6 of the Constitution permits limitation of property rights but draws the line that if property rights are removed, then adequate compensation within a reasonable time must be paid. That line is absolute and cannot be crossed. There is no evidence the Government intended to compensate any of those terminated for loss of their pension rights. The impugned termination measure therefore crossed the line drawn by section 6 of the Constitution, was too intrusive, and consequently was inherently disproportionate. Additionally, SR&O 28 already contained an adequate solution to achieve the stated legislative purpose. Two such measures were already included in SR&O 28 itself – prohibition from entering the workplace and disciplinary action in misconduct for failure to comply with that prohibition. The addition of the impugned termination measure exceeded what was necessary and did not strike a fair balance between the rights of the individual and the interests of the community. For all these reasons, the decisions made by the Public and Police Service Commissions to treat the respondents as having resigned their positions pursuant to SR&O 28 were void and of no effect.

de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing [1998] 3 WLR 675 followed; Bank Mellat v Her Majesty's Treasury (No. 2) [2013] UKSC 39 applied; Suraj and others v Attorney General of Trinidad and Tobago [2023] AC 337 followed.

APPLICATIONS AND APPEALS

Case Name:

Kendine Douglas

v

The King

**[SVGHCRA2023/0018]
(Saint Vincent and the Grenadines)**

Date: Monday, 10th February 2025

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Grant Connell

Respondent: Ms. Renee Simmons holdings papers for Ms. Sejilla Mcdowall

Issues: Application for leave to appeal against conviction and sentence - Amendment of notice of appeal - Whether leave should be granted to appeal against sentence and conviction

Result / Order: IT IS HEREBY ORDERED THAT:

1. The applicant shall file an amended notice of appeal indicating that the appeal is against both conviction and sentence.
2. The applicant shall file the amended notice of appeal on or before the 14th February 2025.
3. Leave is granted to the applicant to appeal both conviction and sentence, the respondent not being opposed to such application.
4. The matter will proceed in accordance with the Court of Appeal rules.

Reason: Before the Court was an amended notice of appeal, which erroneously indicated that the appellant had abandoned the appeal against conviction. The Court indicated that the amended notice of appeal sought to appeal the sentence. Counsel for the applicant confirmed that there was an error. Upon hearing counsel for the applicant on the application to appeal

both sentence and conviction, the Court granted leave to the applicant to appeal both sentence and conviction and accordingly gave directions for counsel for the applicant to re-amend the notice of appeal to include both conviction and sentence.

Case Name:

Bahari Dopwell

v

The King

[SVGHCRAP2023/0019]

(Saint Vincent and the Grenadines)

Date:

Monday, 10th February 2025

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Applicant:

Mr. Grant Connell

Respondent:

Ms. Renee Simmons

Issues:

Application for leave to appeal against conviction and sentence - Amendment of notice of appeal - Whether leave should be granted to appeal against sentence and conviction

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The applicant is to amend the amended notice of appeal to read that the appeal wishes to appeal against both his conviction and sentence.

2. The appellant shall file the amended notice of appeal on or before 14th February 2025.

3. Leave to appeal is granted for the appellant to appeal both against the conviction and sentence, the respondent not being opposed to such application.

Reason:

Before the Court was an amended notice of appeal, which erroneously indicated that both grounds of appeal against conviction and sentence were abandoned. Counsel for the applicant indicated an intention to appeal against both conviction and sentence. Counsel indicated that his intention is to amend the grounds under (a) and (b) of the amended notice of appeal. The Court granted the applicant leave to appeal against conviction and sentence pending the filing of the amended notice of appeal.

Case Name:

David Aimes

v

[1] Carl Palmero Jr

[2] Joan Palmero

[SVGHCVP2016/0016]

(Saint Vincent and the Grenadines)

Date:

Monday, 10th February 2025

Coram:

The Hon. Mde. Margaret Price Findlay, Justice of Appeal

The Hon. Mr. Eddy D. Ventose, Justice of Appeal

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

Appearances:

Appellant: No appearance

Respondents: Ms. Kay Bacchus Baptiste

Issues: Civil Appeal - Appeal against order of learned master - Appellant out of the jurisdiction - Lack of service of documents on the appellant

Result / Order: IT IS HEREBY ORDERED THAT:

The matter is dismissed for want of prosecution.

Reason: Before the Court was a notice of appeal filed on 9th June 2016, to which a notice of opposition had been filed on 16th June 2016. In the Court's possession was a document from the Chief Immigration Officer indicating that the appellant Mr. David Aimes left the jurisdiction of Saint Vincent and the Grenadines in January 2016 and has not returned. Upon the Court office indicating that they were unable to serve Mr. Aimes with any documentation relative to the matter, the Court dismissed the matter for want of prosecution.

Case Name: Ali Gibson

v

The King

[SVGHCRA2017/0009]
(Saint Vincent and the Grenadines)

Date: Monday, 10th February 2025

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Israel Bruce

Respondent: **Ms. Sejilla McDowall**

Issues: **Criminal appeal - Appeal against sentence and conviction - Sentence of 30 years imprisonment for the offence of murder contrary to section 159(1) of the Criminal Code, Cap 124 of the Laws of Saint Vincent and the Grenadines - Whether the sentence of 30 years is too manifestly excessive in all of the circumstances**

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

- 1. The appeal against conviction stands abandoned.**
- 2. The appeal against sentence is dismissed.**
- 3. The sentence is affirmed.**

Reason: **The Court noted that there were no submissions filed on behalf of the respondent in this matter. Upon hearing counsel for the respondent on this issue, the Court did not grant an adjournment for the respondent to file submissions.**

Counsel for the appellant informed the Court that he had not filed any document signed by the appellant indicating his understanding and consent to the withdrawal of the appeal against conviction. The Court inquired from the appellant whether he understood that he was abandoning his appeal against his conviction and only proceeding with his appeal against sentence. The appellant indicated to the Court that he understood and agreed. The Court therefore proceeded to hear counsel for the appellant on the appeal against sentence.

The Court noted that it was not satisfied that the learned trial judge fell into error in adopting a starting point of 25 years in this case. Taking into account the aggravating and mitigating factors of the offence as well as the aggravating factors with respect to the offender including the appellant's criminal record, the Court was of the view that the learned trial judge was

justified in adopting a starting point of 25 years and accordingly the Court dismissed the appeal against sentence.

Case Name:

The Commissioner of Police

v

Erdine Luzette King

**[SVGMCRAP2023/0003]
(Saint Vincent and the Grenadines)**

Date:

Monday, 10th February 2025

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Ms. Sejilla McDowall

Respondent:

Ms. Kay Bacchus Baptiste

Issues:

Magisterial Appeal - Appeal against the decision of the learned Chief Magistrate - Denial of entry into Saint Vincent and the Grenadines - Section 72(1) of the Public Health Act, Cap. 300 of the Revised Laws of Saint Vincent and the Grenadines - Section 27 (d) of the Immigration (Restriction) Act, Cap. 114 of the Revised Laws of Saint Vincent and the Grenadines (Immigration Act)_ - Section 81 (4) of the Customs (Control and Management) Act Cap. 422 of the Revised Laws of Saint Vincent and the Grenadines (Customs Act)- Abuse of Process - Absence of a charge for alleged breach of the Public Health Act and Regulations - Whether an abuse of process occurred upon the prosecution of the respondent for breaches of the Immigration and Customs Acts following her

return to Saint Vincent and the Grenadines one week after denial of entry - Stay of proceedings - Whether the learned Chief Magistrate erred in granting a stay of proceedings on the ground of abuse of process

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason:

N/A

Case Name:

Valtrice Butcher

v

George Fraser

**[SVGMCVAP2015/0007]
(Saint Vincent and the Grenadines)**

Date:

Tuesday, 11th February 2025

Coram:

**The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal**

Appearances:

**Appellant/
Respondent:**

Mr. Ronald Marks and Mr. Cecil Williams

**Respondent/
Applicant:**

Ms. Euchrista St. Hilaire Bruce-Lyle

Issues:

Application to strike out appeal - Delay in serving notice of appeal - Want of prosecution - Whether the notice of appeal should be struck out on the basis that the appellant has failed to serve the record of appeal on the respondent within 28 days of receipt of the notice as stipulated by Part 62.12 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023

Result / Order:

IT IS HEREBY ORDERED THAT:

The notice of appeal filed on 20th August 2015 is struck out and the appeal is consequently dismissed for want of prosecution.

Reason:

Before the Court was an application to strike out for want of prosecution an appeal filed on 20th August 2015 against the judgment of a magistrate granted on 6th August 2015. The Court noted that the relevant facts were simple and the applicable law was simpler.

By statement of claim filed on 20th February 2015, the respondent to the appeal (Mr. George Fraser) instituted proceedings in the magistrate's court against the respondent (Ms. Valtrice Butcher) in respect of damage occasioned to the respondent's motor vehicle whilst being driven by the appellant on 6th July 2014 and for the cost of which damage the appellant was liable to the respondent.

Following a contested trial of the claim, on 6th August 2015 the magistrate gave judgment in favour of the respondent in the amount of \$9,168.25. On 20th August 2015, the appellant filed a notice of appeal, appealing against the judgment of the magistrate. The notice of appeal was not served on the respondent as required by CPR 62.9(1) but was however served on the respondent's counsel on 12th May 2016, far exceeding the 14-day deadline provided for under CPR 62.9(2) for serving the respondent.

On what appeared to be 14th April 2023, nearly 8 years after the filing of the notice of appeal, a record of appeal was filed in this matter, evidently by the magistrate's court office. So that approximately 9 ½ years had elapsed since the date of the judgment of the magistrate which the appellant sought to appeal, and the appellant had not taken any steps whatsoever to prosecute her appeal. On 3rd September 2024, the respondent filed an application to strike out the appeal. The application was accompanied by an affidavit in support and a draft order. The notice of application and accompanying documents were served on the respondent on 6th September 2024, but the respondent made no reply to the application.

The Court considered that inasmuch as courts are reluctant to use their strike out powers to dismiss cases without hearing them, whether at first instance or on appeal, the courts are required to enforce the observance of the rules of court, especially in the face of blatant disregard of the rules by litigants and lawyers. Even disregarding the fact, egregious enough by itself, that the notice of appeal was never served on the respondent to the appeal but was only served on his counsel 8 months after the time it should have been served on the litigant himself, the fact that this appeal (a magisterial appeal) had not been progressed by the appellant for the 9 ½ years since it was filed is a sufficient and proper basis to dismiss it for want of prosecution.

The Court added that, apart from the appellant's obvious difficulty in justifying the preservation of her nearly decade-long magisterial appeal, her cause was not helped by the fact that she did not appear to have good prospects of success on her appeal, which essentially challenged factual determinations made by the magistrate, with an issue squeezed in about the agreement between the parties being an unfair contract, in order to add a legal twist to the factual challenge, an issue which was mentioned only in the closing remarks by counsel for the appellant.

In the circumstances, the Court saw no reason for the appeal to remain on the books of the Court of Appeal, moving from status hearing to case management conference, to hearing of strike out applications and, if the appellant were to succeed, then back to case management. The Court determined that the appeal had outlived its natural life and must now be put to rest. The Court therefore granted the applicant's strike out application.

Case Name:

Augustine J.C. Miguel

v

[1] Natalie Miguel nee Sardine

[2] Jason Sardine

[3] Noel Sardine

[4] Magdaline Sardine

[SVGHCVAP2015/0012]
(Saint Vincent and the Grenadines)

Date: Tuesday, 11th February 2025

Coram: The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal

Appearances:

**Respondents/
Applicants:** Ms. Tonya Da Silva

**Appellant/
Respondent:** Mr. Lyndon George

Issues: Application to strike out appeal - Want of prosecution - Delay - Abuse of Court process - Failure to comply with directions of the Court - Whether the Court should exercise its discretion to strike out the appeal for want of prosecution - The appellant's failure to file written submissions in support of the appeal - Whether the respondent has suffered prejudice because of the inordinate delay in progressing the appeal

Result / Order: IT IS HEREBY ORDERED THAT:

1. The notice of appeal filed on 10th April 2015 against the order of Thom J dated 12th January 2015 is struck out for want of prosecution.
2. Costs is awarded to the respondent/applicant in the sum of \$1500.00.

Reason: Before the Court was an application to strike out the notice of appeal for want of prosecution. The relevant facts are that the appellant made an application pursuant to the Possessory Titles Act of St Vincent & The Grenadines for a declaration that he is the owner of a parcel of land measuring 4.2016 acres by virtue of his exclusive and undisturbed possession of it for in excess of ten years. The application was opposed by the respondents to the appeal.

Following a trial of the matter, the learned judge dismissed the application and ordered the appellant to pay the respondents' costs in the sum of \$7,500.00. By notice of appeal filed on 10th April 2015, the appellant appealed against the judgment of Thom J. After several status hearing and case management orders, a record of appeal was filed on 10th January 2022. After another year and a half had elapsed, and with no further action by the appellant, on 13th June 2023 one of the respondents, Mr. Noel Sardine, made an application to strike out the appeal for want of prosecution. This application was filed together with an affidavit in support. On 16th August 2024, submissions were filed by the applicant in support of the strike out application.

No affidavit or submissions in response to the strike out application have been filed by the appellant/respondent, nor has any application been made by the appellant/respondent for an extension of time to file the skeleton arguments or to regularise the filing of the record of appeal. Therefore, almost 10 years after the filing of the appeal, the appellant has not progressed the appeal.

The Court also noted that nearly six years since notification was given of the availability of the transcript, no skeleton arguments have been filed by the appellant. Instead, the matter has been adjourned on several occasions from one status hearing to another and one case management hearing to another, while a 10-year-old judgment of the Court arising out of a 15-year-old application to the Court remains unexecuted, and case management and status hearing orders of the Court continue to be ignored.

The Court noted that whilst it is reluctant to use its strike out powers without hearing the appeal, the Court is required to enforce the observance of the rules of court, especially in the face of blatant disregard of them by litigants and others. The Courts have indicated that a party cannot merely sit by, not do that which the party ought to do, and rely on the fact that some other party may not have done that which the other party ought to do. Further, a perusal of the judgment of Thom J and the notice of appeal did not suggest that the appellant has good prospects of success on the appeal such as to override other considerations that would influence the Court to strike

out an appeal which has lingered well beyond its natural life. In the circumstances, the appeal was struck out for want of prosecution.

Case Name:

Keith Shaddow Labban

v

The Commissioner of Police

**[SVGMCRAP2016/0031]
(Saint Vincent and the Grenadines)**

Date:

Tuesday, 11th February 2025

Coram:

**The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal**

Appearances:

**Appellant/
Respondent:**

No appearance

**Respondent/
Applicant:**

Ms. Renee Simmons

Issues:

Application to dismiss an appeal for want of prosecution - Appeal against sentence of 9 months for the offence of theft - Appellant finished serving sentence - Failure of the appellant to make any appearance at any of the hearings listed by the Court - Unable to serve the appellant with various court orders and documents since the service of the respondent's application to dismiss the appeal

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appellant's appeal against his 9-month sentence is dismissed for want of prosecution.**
- 2. The Registrar shall cause a copy of this order to be served on the appellant.**
- 3. Liberty is given to the appellant to apply.**

Reason:

On 3rd June 2016, the appellant was sentenced by a Magistrate to 9 months imprisonment for the offence of theft. On 28th June 2016, the appellant applied for an extension of time within which to file an appeal against sentence. By order dated 4th August 2016, the appellant was granted an extension of time to file his appeal. On 24th August 2016, the appellant appealed against his sentence on the sole ground that 'the punishment was too excessive in all the circumstances'. It did not appear that the appellant did anything in the 8 ½ years since the filing of his notice of appeal to progress the matter. Moreover, as of 16th November 2016, the appellant had served his sentence in full. Several attempts were made over the years to serve the appellant with notices, orders and applications concerning his appeal. Apart from being served with the actual application to strike out the appeal on 11th April 2023, the appellant had not been served with any of the orders or other documents in the matter nor had the appellant manifested any intention to proceed with what was now an academic appeal against an already served sentence. The appellant's sole ground of appeal was that the punishment of 9 months imprisonment was too excessive but the Court, having regard to the fact that (1) the maximum sentence for the offence of theft on summary conviction is 2 years and 10 years on indictment; (2) the fact that the appellant had a previous conviction for the very same offence for which he had been sentenced to 3 months imprisonment; (3) the fact that the appellant aged 43 years at the time of the commission of the offence was not a young offender and; (4) that sentencing is within the discretion of the judicial officer presiding over the case, the Court was satisfied that the appellant had virtually no prospect of success on an appeal against his sentence by the presiding magistrate and an appeal would therefore likely be no more than a waste of judicial time. In the circumstances, the appellant's appeal against his 9-month sentence was dismissed for want of prosecution.

Case Name:

Patrick Lovelace

v

The King
[SVGHCRA2009/0017]
(Saint Vincent and the Grenadines)

Date: Tuesday, 11th February 2025

Coram: The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal

Appearances:

**Appellant/
Applicant:** Ms. Kay Bacchus-Baptiste holding papers for Mr. Paul Bowen

Respondent: Ms. Rose-Ann Richardson

Issues: Application for extension of time to file submissions -
Application to deem submissions properly filed

Result / Order: IT IS HEREBY ORDERED THAT:
1. The appellant/applicant is granted an extension of time to file written legal submissions on behalf of the appellant.
2. The submissions filed by the appellant/applicant on 4th February 2025 are deemed to have been properly filed.

Reason: Before the Court was an application filed on 15th November 2024 seeking an extension of time to file legal submissions. Upon counsel in the matter indicating that there is no objection filed in respect of the application, and upon the parties having filed a draft consent order signed by both counsel, the Court was satisfied that the application should be granted.

Case Name:

Patrick Lovelace

v

The King

[SVGHCRAP2009/0017]

(Saint Vincent and the Grenadines)

Date:

Tuesday, 11th February 2025

Coram:

**The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal**

Appearances:

**Appellant/
Respondent:**

Ms. Kay Bacchus-Baptiste holding papers for Mr. Paul Bowen

**Respondent/
Applicant:**

Ms. Rose-Ann Richardson

Issues:

**Application for extension of time to file submissions -
Application deeming submissions properly filed**

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The respondent/applicant is granted an extension of time to file written legal submissions on behalf of the respondent/applicant.

2. The submissions filed by the respondent/applicant on 17th December 2024 are deemed to have been properly filed.

Reason:

Before the Court was an application filed on 20th December 2024 seeking to have the legal submissions filed by the respondent on 17th December 2024 be deemed properly filed. Upon counsel in the matter indicating that there is no objection to the application, and upon the parties having filed a draft consent

order (signed by both counsel), the Court was satisfied that the application should be granted.

Case Name:

Sylvia Sutherland

v

Floyd Patterson

**[SVGHCVAP2019/0022]
(Saint Vincent and the Grenadines)**

Date:

Tuesday, 11th February 2025

Coram:

**The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal**

Appearances:

Appellant:

Mrs. Kay Bacchus Baptiste

Respondent:

Mr. Grahame Bollers

Issues:

Civil appeal - Adjournment of hearing of appeal

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal for St. Vincent and the Grenadines during the week commencing 10th November 2025.

2. Each party shall bear their own costs.

Reason:

By letter dated 4th February 2025 and draft consent order signed by counsel for the parties, a request was made for an adjournment of the hearing of the appeal. In the circumstances, the Court was minded to adjourn the appeal to the next sitting of the Court.

Case Name:

Kemron Spencer

v

The King

**[SVGHCRA2018/0013]
(Saint Vincent and the Grenadines)**

Date:

Tuesday, 11th February 2025

Coram:

**The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal**

Appearances:

Appellant: In person

Respondent: Ms. Renee Simmons

Issues:

Criminal Appeal - Appeal against conviction and sentence - Attempted murder, contrary to Section 315 of the Criminal Code Cap 171 of the 2009 Revised Edition of the Laws of Saint Vincent and the Grenadines – Adjournment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appellant shall file his submissions dated 29th October 2024 on or before 21st February 2025.**
- 2. The Registrar of the High Court shall cause the submissions of the appellant dated 29th October 2024 to be filed and served on the appellant and the respondent on or before 21st February 2025.**
- 3. The respondent is at liberty to file and serve supplemental submissions in response to the appellant's submissions within 14 days of being served with them.**

4. The Registrar of the High Court shall ensure that all written submissions are placed before this Court for its further consideration.

5. The appeal is adjourned to the next sitting of the Court of Appeal for Saint Vincent and the Grenadines during the week commencing 10th November 2025.

Reason:

Upon the Court noting that the appellant desires to proceed with his appeal against his conviction and sentence with respect only to the charge of attempted murder, and upon the Court taking the view that it had not been placed in a position to be able to proceed with the hearing of the appeal, the Court was minded to adjourn the appeal and direct the parties as to the filing and serving of written submissions.

Case Name:

Patrick Lovelace

v

The King

[SVGHCRA2009/0017]

(Saint Vincent and the Grenadines)

Date:

Tuesday, 11th February 2025

Coram:

**The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal**

Appearances:

Appellant:

Ms. Kay Bacchus-Baptiste holding papers for Mr. Paul Bowen

Respondent:

Ms. Rose-Ann Richardson

Issues:

**Criminal Appeal - Appeal against sentence -
Application for adjournment**

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The substantive hearing of the appeal in this matter is adjourned to the next sitting of the Court of Appeal for Saint Vincent and the Grenadines during the week commencing 10th November 2025.
2. This is the final adjournment of the hearing of the matter.
3. Each party shall bear its own costs.

Reason:

Upon the Court hearing the oral application advanced by Counsel for the appellant/applicant seeking an adjournment of the substantive appeal, counsel for the appellant/applicant presented to the Court a draft consent order by virtue of which the parties consent to the adjournment. In the circumstances, the Court was minded to grant the adjournment of the appeal, ordering that it is the final adjournment of the matter.

Case Name:

The Federal Republic of Nigeria
v
Zhongshan Fucheng Investment Co Limited
Process & Industrial Developments Limited
Garnishee

[BVIHCMAP2024/0030]
(Territory of the Virgin Islands)

Date:

Wednesday, 12th February 2025

Coram:

The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal

Appearances:

**Appellant/
Respondent:**

Mr. Tom Ford and Mr. Christopher Pease

**Respondent/
Applicant:**

Mr. Timothy Otty KC and Ms. Lauren Peaty

Garnishee

Mr. Paul Griffiths

Issues:

Application for security for costs - Rule 62.21 Civil Procedure Rules (Revised Edition) 2023 - Whether it is just in all of the circumstances to make an order

for security for costs - Consent order - Application for a stay pending appeal - Whether the Court has jurisdiction to grant the stay - Section 18 of the Eastern Caribbean Supreme Court (Virgin Islands) Act - Whether the appeal would be rendered nugatory if the stay is not granted - Degree of risk of injustice to the parties

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appellant shall give security for Zhongshan's costs in BVIHCMAP2024/0030 in the amount of US \$140,000.00 by the provision of a first-class bank guarantee within 28 business days of the date of this order.**
- 2. Unless the security given is given as ordered by paragraph 1, the appeal stands dismissed with costs without further order in accordance with the Civil Procedure Rules (Revised Edition) 2023.**
- 3. The applicant, Zhongshan shall have liberty to apply to vary the form of security to be provided in the event that it contends that the terms of the guarantee, once provided are inadequate.**
- 4. There is no order as to costs with respect to the application for security for costs.**
- 5. Pending the determination of the appeal, the judgment of the court below and any consequential order granting a final attachment of debts order shall be stayed and not take effect.**
- 6. While the stay ordered at paragraph 5 is in place, any sum of money due or accruing from the appellant from Process & Industrial Developments Limited ("the garnishee") and payable by the garnishee shall be paid into court to be held until further order of the court in BVIHCM2022/0017.**
- 7. There is no order as to costs with respect to the application for a stay.**

Reason:

The Court, having heard counsel for the applicant and counsel for the respondent and reading submissions with respect to the application for security for costs, concluded that it would be just in the circumstances of the matter to grant an order for security for costs. With respect to the application for a stay pending the determination of the appeal, the Court having heard counsel for the parties, was satisfied that it is in the interest of justice that a stay ought to be granted pending the determination of the appeal.

Case Name:

**[1] Kendol Cato
[2] Curt John**

v

The King

[SVGHCRA2020/0007]

[SVGHCRA2020/0008]

(Saint Vincent and the Grenadines)

Date:

Thursday, 13th February 2025

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellants:

**Ms. Kay Bacchus Baptiste for the first appellant
The second appellant in person**

Respondent:

Mr. Cornelius Tittle

Issues:

Criminal Appeal - Robbery - Wounding with Intent - Possession of firearm with intent to commit an offence - Appeal against sentence - Excessive sentence - Whether the first appellant's age and lack of previous convictions was taken into consideration by the trial judge - Whether the social welfare report was deficient - Whether the sentencing judge took into consideration all the relevant factors in the circumstances of the case - Whether the sentence

imposed by the Court was just and reasonable in the circumstances of the case

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason:

N/A

Case Name:

Princess Bibby

v

**[1] Anthony Constantine
[2] Kelly-Ann Constantine
[3] Jimmy Constantine
[4] Melvina Constantine**

**[SVGHCVAP2023/0006]
Formerly SVGHCVAP2006/0023
(Saint Vincent and the Grenadines)**

Date:

Thursday, 13th February 2025

Coram:

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

Appearances:

Appellant:

Ms. Ronnia Durham-Balcombe

Respondents:

Mr. Roderick Jones with him Mr. Chrislon Fraser

Issues:

Civil Appeal - Claim alleging fraud - Validity of deeds of transfer of land to the first respondent - Findings of fact by trial judge - Whether the trial judge misdirected

herself on the facts in finding that the appellant had made serious allegations of fraud against attorney at law Theodore Browne and Marlene Edwards - Whether the learned trial judge misdirected herself in concluding that the medical evidence did not explain dementia and the effects on one's mental capacity - Whether the trial judge made an erroneous finding of fact in determining that the medical doctor did not have the required expertise to pronounce on the mental health and mental capacity of the deceased, Lloyd Bibby - Findings of law - Undue influence - Whether the learned trial judge erred in finding that there was no undue influence in the transactions that transferred the land to the first respondent - Whether the learned trial judge erred in finding that the appellant's claim was statute barred - Statutory limitation of 12 years - Proprietary estoppel - Whether the learned trial judge erred in concluding that the doctrine of proprietary estoppel applied to the first respondent - Whether the respondents are the legal and beneficial owners of the disputed land

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The respondent shall file and serve written submissions on the authority of Della Vallery Nolan nee Jude and another v Vandyke Jude [2024] UKPC 22 within 7 days of the date of this order, that is, by 20th February 2025.
2. Counsel for the appellant shall, by 20th February 2025, provide the Court with a copy of the Survey Plan along with a reference as to where it is addressed in the evidence of Anthony Constantine the remit of the subject matter of the parcel which was transferred in the 1995 Deed.
3. Judgment reserved.

Case Name:

Ackeem Ferdinand

v

The Commissioner of Police

**[SVGMCRAP2022/0014]
(Saint Vincent and the Grenadines)**

Date: Thursday, 13th February 2025

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: In Person

Respondent: Ms. Rose-Ann Richardson

Issues: Magisterial criminal appeal - Appeal against conviction
- Possession of firearm without licence - Possession
of ammunition without licence - Possession of a
controlled drug - Whether the conviction was unsafe
and unsatisfactory having regard to the evidence led
at trial

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The decision of the learned magistrate is affirmed.

Reason: The Court considered the written and oral
submissions advanced by the appellant as well as the
written submissions advanced by counsel for the
respondent. The Court was satisfied that the appellant
had not discharged his burden of proving that his
conviction was unsafe for the reasons advanced by
him. The Court was of the view that the learned
magistrate was well seized of the evidence and
marshaled it admirably in coming to the conclusion
that the appellant was guilty of the offence for which
he was charged.
The Court found that none of the collateral matters
raised by the appellant carried any merit and would
not warrant interference with the reasoned decision
advanced by the learned magistrate. The Court also
found that there was no error of law or error of
principle identified in the matter and was ultimately of

the view that there was no basis on which to interfere with the learned magistrate's conclusions.

The Court noted that there was no appeal against sentence advanced, but with a view to being thorough, the Court noted that the entirety of the appellant's submission was that he wished to have some time taken off his sentence. The Court considered this submission to be an insufficient ground upon which the Court will interfere with sentence and was therefore minded to dismiss the said appeal.

Case Name:

Oran Bute

v

The Commissioner of Police

**[SVGMCRAP2023/0024]
(Saint Vincent and the Grenadines)**

Date:

Thursday, 13th February 2025

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Jomo Thomas

Respondent: Ms. Maria Jackson-Richards

Issues:

Magisterial criminal appeal - Appeal against conviction and sentence - Burglary - Whether the conviction of the appellant is unsafe because of his mental health issues - Whether the sentence was manifestly excessive - Whether the appellant was fit to plea - Whether the appellant had the necessary mens rea at the time of the commission of the offence

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against conviction is allowed.**
- 2. The appellant's conviction for burglary with intent to commit an offence of theft is quashed.**

Reason:

This appeal brought into focus the care that judicial officers ought to exercise when taking guilty pleas from persons who appear to be young, or whose appearance, conduct or demeanour suggest that further inquiries is desirable before proceeding with the case. The central question which arose for consideration was whether the learned magistrate erred in law by proceeding to enter a guilty plea or act on the plea of guilty by the appellant when the circumstances suggested that the plea may not have been voluntary, unequivocal and informed.

The applicable principle was articulated by George-Creque JA in Graham et al v The Police and other cases and referred to by counsel for the respondent in her submissions. The dicta there highlighted underscores the fundamental concept in the criminal law that to be effective and valid a plea of guilty must be voluntary, unequivocal and informed. Having reviewed the facts and circumstances of this case including the conduct of the appellant on the day when he entered the virtual complainant's residence as a trespasser, his behaviour at the court when he was arraigned and sentenced, his age, the fact that he was not represented and was not accompanied by either a parent or guardian at the hearings, the concern raised by learned counsel Mr. Thomas at the sentencing hearing and the subsequent diagnosis of medical practitioner Dr. Alisa Alvis, the Court was satisfied that there was enough material before the learned magistrate to give him pause regarding proceeding to conviction and sentencing of the appellant and that he erred in law by not inquiring into the appellant's fitness to plead and erred further in convicting him and sentencing him.

The Court was therefore of the opinion that the conviction is unsafe and unsatisfactory and ought to be quashed.

