

THE EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

COMMONWEALTH OF DOMINICA
VIDEOCONFERENCE
TUESDAY 13TH JANUARY AND WEDNESDAY 14TH JANUARY 2026

JUDGMENTS

Case Name: Ultra Marine (Antigua) Limited
v
Peter Cochran
[ANUHCVAP2025/0005]
(Antigua and Barbuda)

Date: Tuesday 13th January 2026

Coram for delivery: The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mr. Reginald T.A. Armour, SC Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. David Dorsett

Respondent: Mr. Ian Clarke KC with Mr. Septimus Rhudd

Issues: Interlocutory appeal - Exercise of judicial discretion -
Whether the learned judge was plainly wrong - Appeal
against decision of the learned judge dismissing an
application for an adjournment in a contempt hearing
- Whether the learned judge erred in dismissing the
application to adjourn the hearing of a contempt of
court application, such application arising solely from
the sudden illness of leading counsel Whether the
learned judge erred in the exercise of discretion by not
having no any proper regard to the relevant factors
and principles that fall for consideration so that there
can be a proper exercise of judicial discretion -

Whether the learned judge erred in wrongly exercising his discretion to not adjourn the hearing of the contempt application and subsequently dismissing the contempt application for want of prosecution, such decision being plainly wrong and wholly unjust in all circumstances - Whether the learned judge erred in striking out the contempt application for want of prosecution by failing to have regard to the relevant factors that fall for consideration in the exercise of judicial discretion – Whether the learned judge contrary to CPR 26.2(2) erred in striking out the contempt of court application without the appellant being given a reasonable opportunity to make representations contrary to CPR 26.2(2)

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The orders of the learned trial judge are affirmed.**
- 3. Costs are awarded to the respondent to be agreed within 21 days of the date of this order or upon application by the respondent if there is no agreement.**

Reason:

- 1. The test to be applied to a decision on the adjournment of proceedings is not whether it lay within the broad band of judicial discretion but whether in the judgment of the appellate court, it was unfair. i.e., whether if the trial goes ahead, it will be fair in all the circumstances. If the refusal of an adjournment would make the resulting trial unfair, an adjournment should ordinarily be granted, regardless of inconvenience to the other party or other court users, unless this were outweighed by injustice to the other party that could not be compensated for. The assessment of what is fair is a fact-sensitive one and not one to be judged by the mechanistic application of any particular checklist. The facts of the present matter thus bear emphasis.**

Terluk v Berezovsky [2010] EWCA Civ 1345 followed; Bilta (UK) Ltd. (in liquidation) v

Traditional Financial Services Ltd. [2021] EWCA Civ 221.

- 2. The facts demonstrate that Mr. Simon KC was not the only legal representative of the appellant in his matter. Dr. Dorsett had appeared with Mr. Jarid Hewlett who would have been intimately familiar with this matter. There is no reason why he, with the assistance of Mr. Simon KC, would not have been able to ensure that Mr. Moleta was not unfairly treated during cross examination. Additionally, the learned judge was aware that the orders allegedly breached by the respondent had long been discharged. While there is a public interest in ensuring that court orders be obeyed, in the circumstances of this case it could be said that there was no pressing public interest reason to allow yet another adjournment with the consequent wastage of court resources. In the circumstances this Court is not prepared to say that the refusal to allow the application to vacate was not one of the possible fair outcomes in this matter, particularly in the light of the overriding objective of the Eastern Caribbean Supreme Court Civil Procedure Rules (2023) Revised Edition.**
- 1. The power to strike out for want of prosecution should be exercised only where the court is satisfied that either (1) the default has been intentional and contumelious disobedience to a peremptory order of the court or conduct amounting to an abuse of the court or, (2)(a) that there has been inordinate and inexcusable delay on the part of the claimant or his lawyers and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants either as between themselves and the claimant or between them and a third party.**

Icebird Ltd. v Winegardner [2009] UKPC

24 applied.

- 2. Although it is arguable that the respondent did not show inordinate delay nor demonstrated that the delay would carry a substantiable risk to the fairness of the trial of the contempt application, the conduct of the applicant could reasonably have been viewed by the learned judge as an abuse of the court's process. The issue was not the absence of Dr. Dorsett on account of his illness. The concern of the learned judge was the refusal of Mr. Moleta to proceed along the sensible lines he proposed. The learned judge correctly noted that it was for the appellant to satisfy the court beyond reasonable doubt that the respondent was in contempt of orders of the court. Mr. Moleta offered no evidence at all. The learned judge was left with no option but to strike out and dismiss the contempt application for want of prosecution in the absence of any evidence to discharge the burden which rested on the appellant. Further the argument that the learned trial judge erred in striking out the applications without giving the applicant an opportunity to make representations cannot be sustained. First, the appellant was represented at all times by legal counsel. Second, the appellant had opportunity to make representations to prove its case. When offered this opportunity to prove the allegations the appellant offered no evidence. For these reasons the appeal must be dismissed.**

Case Name:

**Kenneth Krys & Greig Mitchell (Joint
Liquidators)**

v

**Financial Services Commissioner
[MNIHCVAP2020/0020]
(Montserrat)**

Date:

Wednesday 14th January 2026

Coram for delivery:

**The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, KC, Justice of Appeal [Ag.]
The Hon. Mr. Reginald T.A. Armour, SC Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Anna-Kay Brown

Respondent: Mr. Jason Lawrence holding papers for Ms. Sheree Jemmotte-Rodney

Issues:

Civil appeal – Insolvency Law - Winding up order – Liquidation – Priority payments in winding up - Order of payment out of company assets on winding up – Section 457 of the Companies Act, Cap 11.12 – Whether the judge erred in fact and law in implying an agreement between the joint liquidators and the Government and then implying a term into that implied agreement to the effect that the first US147,661.64 realized from the sale of the assets of Montobacco Ltd. be paid to the Government – Whether the judge erred in directing that the first US147,661.64 realized from the sale of the assets of Montobacco Ltd. be paid to the Government - Whether the judge erred in identifying who should be liable for repayment of the sum advanced by the Government to the joint liquidators as liquidators’ fees

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The respondent shall pay the appellants’ costs to be assessed if not agreed within 21 days of the delivery of this judgment.**

Reason:

- 1. A liquidator is an officer of the court and a fiduciary. Their role is not merely contractual but a matter of public duty. The remuneration is**

considered an expense of the winding up, which is essential because the liquidator is charged with securing, collecting, and realizing the company's assets for the collective benefit of all creditors. Without this guarantee of payment, the insolvency system would fail. This guarantee of priority payment provides the incentive for liquidators to discharge this onerous public duty, thus enabling asset distribution to other creditors. Without their work, there would be no assets for distribution. It is precisely because the fees enjoy this highest priority that the court has the primary, non-delegable power to set and approve a liquidator's remuneration. The remuneration fixed by the court should be fair and reasonable for the work properly undertaken. The overriding requirement is that the liquidators must be reasonable and proportionate on an objective basis. This is the court's mechanism to ensure the priority is not abused. The remuneration must be justified to prevent liquidators from dissipating the very fund they are appointed to create. The necessity for priority is thus tempered by the necessity for rigorous judicial oversight.

2. The judge's interpretation that the Government 'stepping into the shoes of the liquidator' created an implied term granting the Government creditor status over KRYs Global, and thus repayment priority over the liquidators' fees, is, with respect, misconceived. As an insolvency law concept, such a mechanism, whereby a third party "funder" or creditor 'steps into the shoes of a liquidator' on a winding up so as to take priority over the costs and expenses of the liquidation, is a legal fallacy. A liquidator is a court appointed officer with fiduciary responsibility. No person or creditor can simply step into the shoes of a liquidator and assume priority over other creditors. It makes no difference that the creditor is the Government.

Attorney General v CL Financial Ltd (in N

liquidation) [2025] UKPC 41 applied.

3. It is a common feature of insolvency that third party funders or existing creditors sometimes play an important role in facilitating asset recovery during insolvency proceedings by funding the liquidation. It is also not an uncommon feature of an insolvent winding up that there is likely to be insufficient assets to satisfy all creditors, so priority payment is critical. In these situations, a funding agreement is usually entered into which details the priority of distribution of any recovered money among the funder and the various classes of creditors. Such agreements are court sanctioned and the Court can then prioritize certain creditors for recovered property over other creditors on account of the risks they undertook in supporting the recovery through funding. The rationale for this is rooted in the public interest. The public interest in encouraging assistance to liquidators in funding difficult and expensive litigation should be vindicated by giving a funding creditor an advantage over other creditors, which is just in consideration of the magnitude of the risk assumed. However, it is to be noted that the priority obtained in such circumstances is over other creditors.

Re Parkston Pty Ltd (in liquidation)
(2000) NSWSC 764 applied.

4. The Government must be taken to have assumed the risk that there might be insufficient assets to satisfy creditors as there was no guarantee given that recovery would yield sufficient assets to cover the costs and expenses of the winding up with surplus for distribution to creditors. Indeed, the liquidators' first interim report dated 24th February 2020 foreshadowed that the amount to be recovered was likely to be less than originally anticipated. It is clear that the Government was actuated by its vested interest in seeing the liquidation through 'in the public interest', as stated in the winding up petition. That seems to be the

reason they advanced money to partially fund the litigation fees and even the Inspector and Receiver-Manager fees, although the learned judge had ordered that the latter was to be recovered from the assets of the Companies. Having made a conscious choice to do so, despite knowing that the liquidators' fees were to be recovered from the assets of Montobacco in accordance with the Companies Act, the Government cannot be heard to complain if recovery of the funds they advanced is subjugated to the liquidators' fees. In the Court's view, having regard to all the circumstances, the order of priority of payment fell to be determined by the provisions of section 457(4), which accords priority to the costs and expenses of the winding up. This means that the liquidators' fees take priority. The judge therefore erred when he ordered that the first US\$147,661.64 realized from Montobacco's assets be paid to the Government.

5. As it stood, the assets realized from Montobacco amounted to only US\$320,000 while the outstanding liquidators' fees were approximately US\$650,000. The liquidators would obviously suffer a shortfall in fees of US\$330,000. The practical effect of the order is to further reduce the fees recoverable by diverting US\$147,661.64 into the hands of the Government. In other words, the effect of the order is to accord priority payment to the Government over payment of the liquidators' fees, contrary to section 457(4) of the Companies Act, and indeed, priority over other creditors of Montobacco.

Case Name:

Golden Home Years for the Elderly

v

Ingrid Branford Hughes

[MNIMCVAP2024/0001]

(Montserrat)

Date: Wednesday 14th January 2026

Coram for delivery: The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, KC, Justice of Appeal [Ag.]
The Hon. Mr. Reginald T.A. Armour, SC Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Jean Kelsick

Respondent: Mr. Wayne Norde holding papers for Dr. David Dorsett

Issues: Civil appeal – Employment Law – Unfair dismissal – Sections 3 and 61(1) of the Labour Code – Section 26 of the Labour Code (Amendment) Act – Whether the Tribunal’s decision that the respondent was unfairly dismissed should be upheld – Correct test for unfair dismissal - Compensation for unfair dismissal – Section 68(2)(e) of the Labour Code – Whether the Tribunal erred in awarding the respondent compensation of \$104,931.15

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed against the Tribunal’s decision of unfair dismissal.
2. The compensation award is reduced to \$84,977.55.
3. There is no order as to costs.

Reason:

1. Gross misconduct is misconduct serious enough to overturn the contract between the employer and the employee thus justifying summary dismissal. Acts which constitute gross misconduct must be very serious and are best determined by organisations in light of their particular circumstances. A single act of disobedience or misconduct, especially an act of wilful

disobedience, could justify dismissal, but only if it was such as to show that the servant was repudiating the contract of service or one of its essential conditions, or that the master/servant relationship cannot reasonably be expected to continue. Accordingly, it is settled law that an employer is only entitled to dismiss an employee for serious misconduct, wilful disobedience or a fundamental breach of contract. However, it is not every act of wilful disobedience which would justify summary dismissal. The underlying principle of “fairness” applicable to an evaluation of a dismissal is that it is not fair to dismiss an employee for conduct which he did not appreciate, and could not reasonably have been expected to appreciate, might attract the sanction of dismissal for a single occurrence.

Butterworths Employment Handbook considered; *Laws v London Chronicle (Indicator Newspapers) Ltd.* [1959] 1 WLR 698 considered; *Cossington v C2C Rail Ltd* [2013] All ER (D) 304 (Nov) considered; *Hewston v OFSTED* [2023] IRLR 878 considered.

2. Having considered the definition of gross misconduct in the Labour Code leading to an employer’s right to summarily dismiss a guilty employee and the applicable principles, the Tribunal identified the correct test at paragraphs 5 and 6 of its decision. Further, while at paragraph 11, the Tribunal correctly stated that an employee’s conduct must be of a “serious nature”, it did add incorrectly that the employer ‘must have taken steps to bring the dissatisfaction to the employee’s notice and allow the employee an opportunity to correct the deficiencies’. This added requirement at paragraph 11 is not applicable to a situation of serious misconduct leading to summary dismissal but would apply to circumstances where the employee’s conduct complained of was not of such a serious nature as to warrant summary dismissal. It is in relation to the latter category of misconduct, that the employer would be required to first give the employee notice of the alleged misconduct, require them to respond to it or to explain why they had acted or behaved in the manner complained of and

give the employee a warning or an opportunity to ensure it was not repeated, failing which it may lead to termination of his/her employment upon the giving of the appropriate or prescribed notice or payment in lieu of notice. However, this was not the test of 'gross misconduct' applied by the Tribunal in coming to its conclusion that the respondent was in the circumstances and having regard to the evidence, especially of Mr. Scotland, unfairly dismissed.

Section 3 of the Labour Code Cap. 15:03 of the Laws of Montserrat applied; Butterworths Employment Handbook considered; Laws v London Chronicle (Indicator Newspapers) Ltd. [1959] 1 WLR 698 applied; Cossington v C2C Rail Ltd [2013] All ER (D) 304 (Nov) applied; Hewston v OFSTED [2023] IRLR 878 applied.

3. It is the respondent's evidence, which was not disputed, that she went out to get assistance to lift up Mr. Morson and returned quickly. Viewed objectively, this does not demonstrate an employee who acted wilfully, or in a manner which would constitute gross misconduct leading to her summary dismissal. It was clearly not an abandonment of her post as submitted by the appellant. In the absence of any evidence, we are unable to conclude that the respondent knew or ought reasonably to have appreciated that not assisting to lift the resident off the ground but going out to seek assistance from the public, would have attracted the sanction of dismissal. Moreover, even if the allegations of misconduct on the part of the respondent in relation to the 13th June 2017 incident are accepted as correct, it is clear that none of them were capable of amounting in law to "serious misconduct" warranting her summary dismissal, as Mr. Scotland himself seems to have accepted during his testimony at the trial.
4. In considering what the respondent was accused of having done or failing to do during or in relation to the incident on 13th June 2017, it must be borne in mind that Mr. Scotland himself in answer to questions in cross-examination and from the

Tribunal agreed or accepted that this incident of itself was not sufficient to amount to “serious misconduct” and did not warrant the summary dismissal of the respondent. His evidence was that, in the end, the decision to summarily dismiss her was because she had not been contrite during the 29th June 2017 meeting in admitting to her faults or inappropriate actions and this was the real reason why she was not still “on the job”. Mr. Scotland’s evidence that she was not “contrite” did not and could not elevate what was not serious misconduct, as he accepted under cross examination, into serious misconduct warranting summary dismissal. If indeed the respondent was not contrite or sufficiently contrite in Mr. Scotland’s opinion, this cannot be used as a reason to justify her summary dismissal. Further, while mention was made in the dismissal letter of the 29th June 2017 meeting and that the respondent ‘took no responsibility or show any remorse’ for her actions on 13th June 2017, this was not a stated reason for the dismissal. For these reasons grounds (a) and (d) fail.

- 5. This Court has held that an unfairly dismissed employee is ‘obviously entitled to compensation for immediate loss of earnings (i.e. loss of earnings between the date of the dismissal and the date of the trial or judgment)’. A claimant also has a duty to take reasonable steps to mitigate the loss to him/her ‘consequent upon the defendant’s wrong and cannot recover damages for any such loss which he could have avoid but has failed, through unreasonable action or inaction, to avoid’, which the Labour Code also contemplates at section 68(2)(e).**

Section 68(2)(e) of the Labour Code Cap. 15:03 of the Laws of Montserrat applied; Montserrat Utilities Ltd v Kirwan (2015) 86 WIR 308 followed.

- 6. The Tribunal awarded the respondent compensation for loss of earnings for the period August 2021 to December 2023. The respondent’s evidence before the Tribunal was that she obtained employment ‘on and off’ from May 2021 to October**

2023'. The respondent also testified that prior to that period, her efforts to obtain employment remained unsuccessful for 4 years. The appellant is correct that the respondent should not have been awarded compensation for the period during which she obtained employment, being May 2021 to October 2023. The respondent should have been compensated for loss of earnings for the period August 2017 to April 2021 and not from August 2017 to the date of judgment in December 2023. The award for loss of earnings should therefore be 'loss of earnings from the date of dismissal to the date of employment, August 2017 to April 2021 which is 3 years and 8 months at \$712.60 per fortnight = \$62,708.80'. The award for loss of protection and manner of dismissal was within the Tribunal's discretion having considered the evidence and should not be disturbed.

APPLICATIONS/APPEALS

Case Name:

Whitney Sommers

v

First Caribbean International Bank

(B'dos)

[DOMHCVAP2024/0017]

(Commonwealth of Dominica)

Date:

Tuesday 13th January 2026

Coram:

The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal

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

The Hon. Mr. Reginald T.A. Armour, SC Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Jeffrey Douglas Murdoch holding papers for Mr. Mark Douglas

Respondent:

Mr. Stephen Isidore with Ms. Saudia Cyrus

Issues:

Application to strike out notice of appeal – Failure to comply with court mandated deadline – CPR 5.7 Whether service at the “Registered Office” Was good service - Application to deem notice of appeal properly served – Whether the service of the notice of appeal can be deemed proper - CPR 26.9 – Rule 9 of the Court of Appeal Rules - Service out of jurisdiction – Whether any defect in service would nullify the appeal -- Relief from sanctions - Application for a stay of proceedings – Whether the balance of prejudice weights against the grant of a stay – Whether the appellant would suffer irreparable harm if a stay if denied - Whether the balance of equities favors a stay - Application for an extension of time to file respondent’s submissions with authorities – CPR 1.1, 1.2 and 26.1 (2) – Whether the failure to file written submissions was not deliberate and intentional - Whether the respondent acted promptly and in good faith

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application for extension of time to file submissions is granted.
2. Time is extended to 31st December 2025 and the submissions filed on 31st December 2025 are deemed to be properly filed.
3. Judgment is reserved on the remaining applications.

Reason:

Before the Court were 4 separate applications:

1. application to extend time to file submissions;
2. application for a stay which had to be adjourned pending the hearing and determination of the 2 following applications;
3. application to strike out the notice of appeal;
4. application to deem service good and sufficient.

The application for extension of time to file written submissions in response to the application filed by the appellant to deem service of the notice of appeal on

the respondent bank proper and sufficient was filed on 22nd December 2025. The application was supported by the affidavit of Ms. Decima Timothy-Myers which asserts that 1. The Bank filed notice of objection to the application to deem service good and sufficient on 16th December 2025; 2. A case management order prescribing legal submissions were to be filed by 22nd December 2025 however that order was only received on 17th December 2025; 3. The application to deem service good and sufficient involves complex matters and areas of the law requiring significant research time so leave was sought to file the submissions by 24th December 2025.

The application for extension of time was not opposed. The Court was satisfied that it had the power to extend time applying the well-known principles adumbrated in *Carleen Pemberton v Mark Brantley* SKBHCVAP2011/0009. Consequently, the Court was satisfied that the extension of time should be granted.

Applications 3 and 4 were heard in priority to that of the application for stay because the outcome may be determinative of any stay. Judgment in these two applications was reserved.

Case Name:

**Olan Vigille
v
Attorney General of the Commonwealth
of Dominica et al
[DOMHCVAP2024/0021]
(Commonwealth of Dominica)**

Date:

Tuesday 13th January 2026

Coram:

**The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mr. Reginald T.A. Armour, SC Justice of Appeal [Ag.]**

Appearances:

Appellants:

Ms. Gina Dyer-Munroe with Ms. Zena Moore-Dyer

Respondent: Ms. Nadira Lando for the 1st and 2nd respondents, holding papers for Ms. Sherma Dalrymple, DPP

No appearance for the 3rd respondent

Issues:

Application for leave to file and serve additional grounds of appeal - Whether in the interests of justice the appellant should be granted leave to file and serve the proposed additional grounds of appeal - No objection by counsel for the respondent

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The notice of application is granted and the appellant is at liberty to argue the additional grounds of appeal contained in the notice of application filed on 15th December 2025.

Reason:

Before the Court was an application filed on 15th December 2025 for the appellant to file two additional grounds of appeal, namely (1) that the learned judge erred and was wrong in law by referring to the claimant's application for the extension of time and relief from sanctions as vague and a blanket application although the application which was before the court was a specific application for extension of time and relief from sanctions in terms of paragraph 3 of the Court Order dated 3rd October 2024 for which the extension of time and relief was being sought and in so doing the learned judge wrongly refused the application and (2) that the learned judge erred and was wrong in law in refusing to extend time and grant relief from sanctions upon the application of the claimant dated 12th June 2024 and in doing so failed to consider the applicable principles set out under part 26 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 ("CPR") and wrongly refused the application and the decision was outside the ambit of reasonable disagreement and plainly wrong

Upon considering the contents of the application filed on 15th December 2025 and the contents of the submissions filed on behalf of the first and second respondents on 22nd December 2025 that they did not oppose the application for the appellants to argue the additional grounds of appeal, the Court granted the application.

Case Name:

**Foued Issa
v
Sorrel Consulting Ltd.
[DOMHCVAP2024/0003]
(Commonwealth of Dominica)**

Date:

Tuesday 13th January 2026

Coram:

**The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mr. Reginald T.A. Armour, SC Justice of Appeal [Ag.]**

Appearances:

Appellant: Mrs. Dawn Yearwood- Stewart holding for Mrs. Singoalla Blomqvist-Williams

Respondent: Mrs. Noelize Knight-Didier

Issues:

Interlocutory appeal - Appeal against order dismissing extension of time to admit the evidence of Vivian Trotter as an ordinary witness - Whether the learned master erred in fact by failing to consider the facts of the case and the nature of the claim before the court, which entails construction work done on the appellant's property and the breach of an agreement pertaining to said construction work - Whether the learned master erred in fact by failing to consider that Vivian Trotter is a qualified Civil and Structural Engineer, possessing relevant professional expertise - Whether the learned Master erred in fact by failing to

consider that, notwithstanding his expertise, Vivian Trotter visited the appellant's property on several occasions and was actively involved in the construction process at the relevant time - Whether the learned master erred in fact and in law in paragraph 3 of the Order by characterising the witness's statement as "could only [be] opinion evidence," thereby misdirecting herself as to the nature of the evidence - Whether the learned Master erred in fact and in law by failing to consider that the witness was entitled to give factual evidence in his witness statement and before the Court, and that any opinion evidence given was capable of being tested and challenged in the usual way - Whether the learned master erred in law by failing to give reasons and or highlight the parts of the draft witness statement that can be considered opinion evidence that may be prejudicial to the Court - Whether the learned master erred in law by failing to elect the option of striking out any opinion evidence that may be prejudicial

Result / Order:

IT IS HEREBY ORDERED THAT:

1. Judgment Reserved.

Reason:

N/A

Case Name:

Olan Vigille

v

**Attorney General of the Commonwealth
of Dominica et al**

[DOMHCVAP2024/0021]

(Commonwealth of Dominica)

Date:

Tuesday 13th January 2026

Coram:

**The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal**

The Hon. Mr. Reginald T.A. Armour, SC Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Gina Dyer-Munroe with Ms. Zena Moore-Dyer

Respondent: Ms. Nadira Lando for the 1st and 2nd Respondents in the name of Ms. Sherma Dalrymple

Issues:

Interlocutory appeal - Application for Extension of time to file interlocutory applications - Appellate interference with judge's discretion - Part 26.7 and 26.8 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 ("CPR") - Whether the learned judge applied the correct legal test/analysis when the application for extension of time and relief from sanction was determined - Whether the learned judge erred in the exercise of her discretion to refuse the application for extension of time and relief from sanctions - Whether the judge's decision is outside the ambit within which reasonable disagreement is possible and plainly wrong - Whether the decision discloses an error of law or principle warranting the interference of the Court of Appeal - Whether the decision is consistent with the overarching objective of the CPR to deal with cases justly, including ensuring adherence to court orders and avoiding unnecessary delays

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The decision of the judge dated 3rd October 2024 is set aside and the appeal is allowed.**
- 2. Upon this court considering the application de novo the application for extension of time and relief from sanctions filed on 12th June 2024 is dismissed.**
- 3. No order as to costs.**

Reason:

Before the Court was a notice of appeal filed on 10th December 2024. The Court considered the written and oral submissions of counsel for the parties and

determined that the appeal should be allowed. A reasoned decision to follow.

Case Name:

**Moses O'Brien
v
Laurel Esprit
[DOMMCVAP2022/0002]
(Commonwealth of Dominica)**

Date:

Wednesday 14th January 2026

Coram:

**The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, KC, Justice of Appeal [Ag.]
The Hon. Mr. Reginald T.A. Armour, SC Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. David Bruney

Respondent: Mrs. Noelize Knight-Didier

Issues:

Magisterial Civil Appeal - Breach of contract - Whether the decision of the learned magistrate is unsafe and unsatisfactory - Misrepresentation - Whether in entering into the lease agreement for rental of the property, the respondent misrepresented to the appellant that she was renting the entire property which includes the ground and first floors of the building

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The order of the learned magistrate dated 21st September 2022 is upheld.**
- 3. Costs in the sum of \$2500.00 is awarded to the respondent to be paid within 6 weeks of the date of this judgment.**

Reason:

Before the Court was an appeal filed on 10th October 2022 from the decision of the learned magistrate delivered on the 21st of September 2022. In that decision, the learned magistrate found for the respondent on the claim and awarded the sum of \$8,474.92 against the appellant, the defendant in the proceedings below. The award of compensation included the sum of \$3,300.00 as outstanding rent; \$3,525.92 as costs of items under an agreement dated 23rd September 2012; \$1319.00 as unpaid electricity bills; plus pre-trial legal fees; costs of day; and stamps.

In the Notice of Appeal, the appellant essentially relied on one ground, namely, that the decision of the magistrate is unsafe and unsatisfactory. The appellant also stated his intention with the leave of the court to file and rely on additional grounds of appeal when the notes of evidence became available. However, no amended notice of appeal was filed by the appellant. This notwithstanding, the appellant in written submissions filed on 22nd May 2023 relied on one ground of appeal which is that in entering into the lease agreement for rental of the property, the respondent misrepresented to him that she was renting the entire property which includes the ground and first floors of the building.

In her oral submissions, learned counsel for the respondent accepted that notwithstanding the appellant's failure to amend the notice of appeal to rely on the misrepresentation ground, it was open to this Court to permit him to do so, and in any event, the respondent had not been taken by surprise having fully addressed this sole ground of appeal in submissions. The Court therefore exercised its discretion and allowed the appellant to rely on the misrepresentation ground.

Having read the written submissions filed, perused the record of appeal filed, and considered the oral submissions of both sides, the Court concluded that there was no merit in the appeal in particular as it relates to misrepresentation. The appellant's case was that on a proper interpretation of the lease, the respondent rented to him the entire premises and

further for the period of two months into the lease, he in fact occupied the entire building including the ground floor. In the Court's judgment, this does not support an allegation of misrepresentation and to the extent that it is the appellant's case that after two months he was excluded from occupying the ground floor, a claim would lie for breach of the agreement and for damages. However, the Court noted, as did the learned magistrate, that the appellant filed no counterclaim for breach of the agreement to lease the premises, or in damages, or breach of the covenant of quiet enjoyment.

Consequently, the appeal was dismissed, the learned magistrate's order upheld, and costs awarded to the respondent.

Case Name:

John Hillman Julien

v

The Police

[DOMMCRAP2022/0011]

(Commonwealth of Dominica)

Date:

Wednesday 14th January 2026

Coram:

The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal

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

The Hon. Mr. Reginald T.A. Armour, SC Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Wayne Norde with Mrs. Gina Abraham-Thomas

Respondent: Ms. Daina Matthew with Mr. Kevin Julien

Issues:

Magisterial Criminal Appeal - Appeal against sentence and conviction - Appeal against sentence of 2 years and 8 months for the offences of possession of cannabis with the intention to supply and the offence to cultivate cannabis - Whether the conviction was

unsafe due to the failure to challenge the prosecution case - Whether the sentence imposed was manifestly excessive

Type of Order:

Directions

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appellant shall within 21 days, or the date of this order, file and serve separate affidavits in relation to the representation received from each counsel, identifying Counsel by name and specifying the allegations or criticisms being alleged in relation to the representation received by the appellant from said Counsel during the trial before the magistrate.**
- 2. Subject to compliance with this direction the appeal will be listed for further directions and orders on a date to be fixed by the Chief Registrar.**
- 3. The matter is adjourned to a date to be fixed by the Chief Registrar.**

Reason:

The Court noted the position taken by learned counsel for the appellants to seek leave to appeal against conviction and to rely as a principle ground on the lack of fairness to the appellant, in light of the representation he received from counsel who appeared on his behalf at different stages of the trial.

These matters were addressed in the written submissions of the appellant and the respondent and it was accepted by both sides that this ground of appeal cannot be proceeded with in the absence of an affidavit from the appellant setting out the allegations made in relations to the said counsel and if necessary a response thereto by affidavit of said counsel, The Court gave directions to the parties on the filing of the said affidavits.