

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE
COMMONWEALTH OF DOMINICA

Monday, 7th April 2025 – Thursday, 10th April 2025

JUDGMENTS

Case Name:

Kurtley Garvey
v
The King

[SLUHCRA2023/0001]
(Saint Lucia)

Date:

Wednesday 9th April 2025

**Coram for
delivery :**

The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Reginald Armour, Justice of Appeal [Ag.]

Appearances:

Appellant: **Mr. Al Elliot**

Respondent: **Mr. Linton Robinson**

Issues:

Criminal appeal – Appeal against sentence –
Legitimate expectation of sentence – Sentence
indication – Right to legal representation in criminal
proceedings – Whether the sentence imposed is unfair
- Whether the sentence imposed is excessive and
disproportionate

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against sentence is allowed.**
- 2. The sentence of 25 years imprisonment is set aside.**
- 3. A sentence of 13 years 4 months and 22 days is imposed.**

Reason:

- 1. An appeal against sentence is an appeal against the sentencing judge's discretion. It is not the function of an appellate court considering an appeal against sentence to conduct a sentencing hearing. Its task is to determine whether the sentence was manifestly excessive or wrong in principle.**

R v Chin-Charles; R v Cullen [2019] 1 WLR 5921; [2019] EWCA Crim 1140 applied; ; Steve Gurrie v The Queen GDAHCRAP2013/0004 (delivered 5th April 2022, unreported) applied applied; Franklyn Perkins v The Queen MNIHCRAP2017/0005 (delivered 28th November 2018, unreported) applied.

- 2. Whether the court should intervene in the interests of justice to alter a sentence on the basis of a legitimate expectation depends entirely on what was said and what transpired at the hearing before the court in a particular case. Casual or non-binding remarks by a judge are insufficient to establish a legitimate expectation of a specific type of sentence. In this case, it is readily apparent that at every stage the learned judge made it clear that she was not and had not made any pronouncements on sentence. Having reviewed the transcript of proceedings, and the sequence of statements made by the learned judge, both before and after the appellant's guilty plea, the Court is unable to conclude that the learned judge's remarks taken as a whole would have created a legitimate expectation of a sentence within the range of 6-8 years (after a guilty plea).**

R v Gillam [1981] Crim LR 55 applied; R v Horseferry Road Magistrate's Court ex parte Rugless (2000) 164 JP 311 applied; R v Rees [2023] EWCA Crim 387 applied; R v Toni Page [2005] EWCA Crim 406 applied; R v Nibras [2023] EWCA Crim 1343 applied.

- 3. A judge has an unfettered discretion to refuse altogether to give a sentence indication or to delay/defer an indication. In this case, following the initial request for a sentence indication, the learned judge repeatedly ordered the parties to provide submissions in order to give a proper sentence indication following the guidelines of R v Goodyear. Neither party filed submissions as ordered. It is therefore inapposite for the appellant to claim unfairness when he did nothing in the court below to assist the learned judge in making the sentence indication that he requested.**

R v Goodyear [2005] EWCA Crim 888 applied.

- 4. The Saint Lucia Constitution Order and the Criminal Code allow for accused persons to have access to counsel at all phases of criminal proceedings. The Constitution details an accused individual's right to counsel and effective assistance, the right to present a defence and to due process. Moreover, the established practice in Saint Lucia is that when a defendant is charged with the offence of murder, the court would ensure that the defendant is legally represented and where he is unrepresented, it is the duty of the court, whether requested or not, to assign counsel to him as a necessary prerequisite of due process of law. This moral imperative persists not only during the course of a substantive trial, but also during sentencing. The appellant in this case was charged with murder contrary to section 85(b) and 87(2) of the Criminal Code and was therefore entitled to have legal assistance of his choosing or to have legal assistance assigned to him. The appellant in this case had legal representation up to the point when he entered**

the guilty plea. Though the learned judge assigned legal counsel to the appellant, it is clear from the record of appeal that neither of the assigned attorneys were present on the day of the sentencing hearing and the appellant was left unrepresented. Further, in circumstances where the allocutus was not put to the appellant and he was not invited to offer submissions to the court which would mitigate the harshness of his sentence, the sentencing judge would not have considered the personal circumstances of the appellant, despite being required to do so. Accordingly, the sentencing judge erred in the exercise of her discretion. It accordingly falls on this Court to examine the circumstances and seek to determine whether in all the circumstances the sentence of 25 years imprisonment is just and appropriate.

Section 3(2) of the const. *Rudolph Lewis v The Queen* SVGHCRA2009/016 (delivered 16th April 2012, unreported) applied

5. The new Sentencing Guidelines on murder cannot be applied in order to test whether or not a judge committed an error of principle in sentencing the appellant before the date of its promulgation. Thus, it falls to this Court in determining whether or not the sentence imposed was excessive, to apply the principles and guidelines that were long established in the case law and which were applicable at the time of the appellant's sentencing hearing. The Court is obliged to give deliberate consideration to: (i) the circumstances of both the offender and the circumstances in which the offence was committed; (ii) the principles of sentencing namely retribution, deterrence, prevention and rehabilitation; (iii) the maximum penalty for the offence and the appropriate notional sentence; (iv) the mitigating and the aggravating factors, weighing them against each other; and (v) the credit to be given to the guilty plea entered on re-arraignment.

Akim Monah v The Queen GDAHCRA2021/0015 (formerly GDAHCRA2014/0002) (delivered 23rd February 2022, unreported) applied.

- 6. The practice of the regional courts, according to the authorities, was to adopt a notional sentence of 30 years starting point for the offence of murder and thereafter to consider both the aggravating and mitigating factors in the case to fashion the appropriate sentence. Weighing the mitigating factors against the aggravating factors in this case, the mitigating factors outweigh the aggravating factors. A reduction of 5 years is appropriate in bringing the appellant's sentence to 25 years imprisonment. Given the procedural confusion in the matter and the fact that a new indictment had been filed and substituted, the Court is inclined to agree and treat the appellant's plea as occurring at first instance and he is thus entitled to a 1/3 full discount for his guilty plea. Following this discount, the appellant's sentence would be 16 years and 7 months. A further reduction of 3 years 3 months and 8 days for the time spent by the appellant on remand brings the appellant's new sentence to 13 years, 4 months and 22 days.**

Yanne Drysdale v The Queen SLUHCRA2017/0003 (orally delivered 8th November 2021, unreported) applied; Simon Marius v The King SLUHCRA2008/0007 (delivered 16th January 2025, unreported) applied; Shonovia Thomas v The Queen BVIHCRA2010/0006 (delivered 27th August 2012, unreported) applied.

Case Name:

Barnes Bay Development Limited (in Liquidation)

v

[1] Starwood Capital Group (Starwood Capital Group Global L.P.)

[2] SOF-VIII Hotel II Anguilla Holdings L.L.C.

[3] Bradford Korzen

[4] Kor Duo Investment Partners L.P.

[5] Kor Duo II L.L.C

[AXAHCVAP2022/0004]

(Anguilla)

Date: Wednesday 9th April 2025

Coram for delivery: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Reginald Armour, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Alex Richardson

Respondent: Ms. Tana’ania Small KC with her Mr. D. Michael Bourne

Issues: Interlocutory appeal – Strike out of claim- Amendment
– Abuse of court process – Sale of property by auction
– Breach of fiduciary duty - Equitable lien over the Property - Rescission or avoidance of the sale of the Property - Whether the learned trial judge erred in law by finding that any claim based on a critique of the suitability of the sale procedures sanctioned by the U.S. proceedings was an abuse of process and whether in arriving at that conclusion he erred in principle - Whether the learned judge erred in the exercise of his judicial discretion by striking out the a) claims against the fourth and fifth respondents; b) equitable lien claims; and/or c) rescission or avoidance of sale claims - Whether the learned judge erred by finding that there are serious issues to be tried on the claims for breach of fiduciary duty, dishonest assistance and conspiracy to injury since he made other findings that according to the respondents are inconsistent with such a determination - Whether the learned judge erred in law

by allowing the claims for breach of fiduciary duty, dishonest assistance and conspiracy to injure by unlawful means to proceed to trial, notwithstanding the respondents' contentions that: a) on the facts, there was no injury or damage to the appellant company caused by the Chapter 11 Bankruptcy proceedings; and/or b) no steps had been taken to amend the - claim during the protracted period of eleven years since the occurrence of the events giving rise to the claim

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The interlocutory appeal against the decision of the learned judge delivered on 19th August 2022 is dismissed and the orders made at paragraph 179 of his decision are affirmed.
2. The respondents' counter notice of appeal is dismissed.
3. The respondents are awarded 75% of their costs on appeal and the appellant 25% of costs to be assessed if not agreed within 21 days.

Reason:

1. The fresh evidence that was admitted for purposes of the appeal was germane to the resolution of the abuse of process issue. It diverges from the learned judge's finding that the Board comprised three directors when the decision was made to proceed in the US Bankruptcy Court to secure the approval of a plan for sale of the Property. Mr. Duva's resignation from serving on the Board meant that only Mr. Smith and Mr. Korzen were directors when the impugned decisions were made. In fact, this new evidence compellingly supports such a finding because there is no evidence that any other directors were appointed or served during the material times. The learned judge therefore erred by finding that there were three directors at the time.

2. Breach of fiduciary duty by a company's director arises in a number of circumstances at common law or in contravention of a statutory duty. Broadly speaking, it occurs where a director fails to act in the company's best interest; acts for an improper purpose or fails to act in good faith. A director of a company is duty bound to use his best efforts for the benefit of the company and disregard his own private interests in favour of the company's, whenever a conflict arises between the two. If, contrary to this duty a director nonetheless makes a decision in furtherance of his private interests in preference to those of the company without the company's informed consent and/or approval such conduct constitutes a breach of fiduciary duty. Informed consent as a concept affords a defence to a director who, before voting at a board of director's meeting on a matter involving such conflict of interests, makes full and frank disclosure to the Board and/or the Company's shareholders and receives their consent to the proposed decision. It cannot be said that the learned judge made findings anywhere in the judgment that the appellant had given informed consent to the US proceedings or had not engaged in them in a proper manner despite the appellant's criticism that the judge made such findings on the abuse of process point.

Section 97 of the Companies Act Cap. C65 of the Laws of Anguilla, Revised Edition 2010 applied; Imperial Mercantile Credit Association (Liquidators) v Coleman (1870) 6 Ch. App. 563 applied; Regal (Hastings) Ltd. v Gulliver [1967] 2 A.C. 134 applied.

3. There was no evidence before this Court on which to determine the quorum set by the articles or by-laws of the appellant. In the absence of this and other salient pieces of evidence, the court below and this Court are hampered in making any determination about the effectiveness or validity of the impugned

resolution to initiate the US proceedings. It cannot be said that the learned judge erred by finding that he did not consider it to be a determinative factor that the subject motion was procured by a board that was improperly influenced by a conflicted director. More importantly, he made no ruling that it was not arguable that the Company had properly submitted to and engaged in the US proceedings. He concluded merely that the impugned decisions and actions about which the appellant complains, were not shown to be invalid or ineffective. On the materials before him and the law, it was open to him to so find. He was entitled to so find and these appear to be matters which are properly reserved for the trial.

Cavendish-Bentinck v Fenn (1887) 12 App. Cas 652 considered; Sections 77, 80 and 84 of the Companies Act Cap. C65 of the Laws of Anguilla, Revised Edition 2010 applied.

4. With respect to the appellant's contention that the board of directors were hopelessly conflicted, having all received inducements and failed to disclose them or have independent directors appointed to vote on the resolution in their place, the learned judge at paragraph 71 of the judgment dealt succinctly with the appellant's argument and rejected it as having not been pleaded. This Court agrees that absence of pleadings on this issue is a complete rebuttal to such claim.
5. The learned judge was not required to conclude that the evidence supports a finding that Mr. Korzen and the other directors did not disclose the benefits they received to the Board or the US Court in order to judicially resolve the applications under consideration. No reasons have been advanced why it was necessary for him to have done so. It was sufficient for him to note that those are factual concerns which are properly reserved for determination at the trial when more fulsome particulars and testimony

tested by cross-examination would better assist the court in its deliberations and thus the learned judge did not err in this regard.

6. As for the appellant's contention that the learned judge erred by not considering the breadth and impact of the inducements which affected all members of the Board, particularly Mr. Korzen, it ignores the fact that the appellant's pleadings did not allege that all three directors benefited from the inducements. The learned judge's analysis demonstrated that as far as Mr. Korzen was concerned, he had regard to the possibility that Mr. Korzen might have been conflicted as alleged but chose to reserve for trial the full issue of whether he was liable for breach of fiduciary duty, the consideration of which would interrogate and determine those related concerns. For those reasons, it was therefore not necessary for the learned judge to consider the breadth and impact of the inducements in relation to any of the directors for purposes of disposing of the applications before him thus he did not err on this issue as contended by the appellant.
7. As regards the appellant's argument that the court erred by not finding that directors other than Mr. Korzen were implicated and chargeable with allegations of breach of fiduciary duty, it is noted that this was not pleaded and need not have troubled the learned judge. Additionally, the learned judge properly deferred for consideration at trial whether Mr. Korzen is liable for breach of fiduciary duty which would entail an analysis of the evidence and law to determine if he had a duty to recuse himself from company decisions in respect of which he was conflicted. Therefore, the appellant's - criticism that the learned judge erred by failing to make a finding on that issue is not borne out.
8. *Res judicata* only arises if the same claim or the same issue has previously been decided by a

court in proceedings between the same parties or their privies. In Henderson estoppel a party is precluded from raising in subsequent proceedings matters which were not but could and should have been raised in the earlier ones. In relation to the appellant's argument that the learned judge misunderstood and misapplied the legal principles relative to *res judicata* and Henderson abuse of process in failing to appreciate that they were identical legal constructs, the learned judge identified and outlined the correct principles of law vis-à-vis *res judicata* and Henderson estoppel. The judge's application of the circumstances of this case to the legal principles is impeccable and affords no legitimate basis for interference by this Court.

Henderson v Henderson (1843) 67 ER 313 applied; Norsk Tillitsmann ASA v Norinvest Ltd BVIHC(COM) 48 of 2011 (delivered 27th July 2011, unreported) applied; OJSC Oil Company Yugraneft (In Liquidation) v Abramovich and Others [2008] EWHC 2613 applied.

9. It is trite law that inherent in the power of sale conferred on a chargee is the recognition that in law the chargee's right, title and interest in the charged property corresponds to the chargee's equity by virtue of and by reference to the outstanding amount of the debt under the charge. In practical terms, although the registered title is recorded in the name of the chargor, the sale of the property by a chargee in exercise of its power of sale being as it is at the chargee's election does not involve the chargor as an active participant. In such circumstances, it is fallacious to say that the chargor is a party to the agreement for sale, except as required in the formal sense to effectuate the transfer of title from the chargor to the new owner. At paragraph A of the Bids Procedure Order, it is noted that the sale by auction is to be conducted under Anguilla law including sections 72 and 75 of the Registered Lands Act

(“RLA”) and that SOF was thereby exercising its power of sale pursuant to section 75 of the RLA. For these reasons, to the extent that the learned judge’s determination may be interpreted as conveying the notion that the appellant is not a party to the agreement for sale, he did not thereby err in law or in fact.

Sections 72 and 75 of the Registered Land Act Cap. R.30 of the Laws of Anguilla, Revised Edition 2010 applied.

- 10. As to the propriety and legality of SOF being permitted to credit bid at the auction, section 75(1) of the RLA expressly permits a chargee to make a credit bid. The practice of credit-bidding, governed in Anguilla as it is by statute is not objectionable in law. It is evident that the learned judge did not err in his consideration of this issue.**

Section 75 of the Registered Land Act Cap. R.30 of the Laws of Anguilla, Revised Edition 2010 applied.

- 11. A court that is called on after the fact to determine whether procedures for sale were compliant with the law or in breach of a duty of care to take reasonable steps to obtain a proper price conducts an exercise which is different from that undertaken by a court that is examining and approving procedures for sale by auction. The issue of whether the overall marketing efforts for the sale of the Property were reasonable, adequate or deficient were properly to be made to the US Bankruptcy Court to which the Company had submitted itself for such purposes. The appellant was therefore precluded from contending otherwise in the Anguilla Courts and the learned judge correctly found that this aspect of its claim is therefore an abuse of the court’s process. Contrary to the appellant’s contention, the learned judge made no finding as to the appropriateness, completeness or legality of the procedures for**

sale that were approved by the US Bankruptcy Court, specifically as it relates to the duty to take reasonable care to obtain a proper price. The argument that he erred in doing so is therefore not sustainable.

12. It is settled law and well-known that when interpreting a statute, a court must give effect to the natural and ordinary meaning of the words used in the statute unless to do so would lead to absurdity and a result contrary to the legislature's intent. The words used by the legislative drafter in subsection (3) of section 75 of the RLA are not ambiguous and must therefore be accorded their ordinary and natural meaning. It follows that it is properly interpreted to mean that in any case where a claimant alleges that he has suffered damage as a consequence of the irregular exercise of a power of sale, such a claimant's remedy is limited to damages against the chargee. This seems reasonable in view of the fact that sale of property pursuant to the exercise of a power of sale quite often results in the property being transferred to a third party and not to a chargee. The subsection under contemplation makes no exception even in such instances. The learned judge's determination that in light of section 75(3) the appellant is not entitled to have the sale rescinded or avoided is sound.

Section 75(3) of the Registered Land Act Cap. R.30 of the Laws of Anguilla, Revised Edition 2010 applied; *Joseph Cadette v St. Lucia Motor v. General Insurance Company Limited* SLUHCV2018/0039 (delivered 22nd February 2021, unreported) applied.

13. The court is empowered by the Civil Procedure Rules (Revised Edition) 2023 ("CPR") 26.3(1)(b) to strike out a statement of case or part of it, if it discloses no reasonable ground for bringing a claim. It is well-established that the discretionary power conferred on the court

pursuant to CPR 26.3(1)(b) must be exercised judicially. A judicial officer charged with this function is enjoined by CPR 1.2 to have regard to the overriding objective to do justice between the parties. It is settled that the authority vested in the court to strike out a claim must be deployed sparingly and only in the most obvious of cases where the court is satisfied that the claimant has not advanced a viable claim on the pleadings, whether because the claim is incurably bad, has no real prospect of succeeding, is an abuse of the court's process or is otherwise unsustainable. If, however, the statement of case raises a serious issue of fact which may be properly determined at trial on receipt of evidence, it would not be just to strike out such a pleading.

Rule 26.3 of the Civil Procedure Rules (Revised Edition) 2023 applied; *Tawney Assets Limited v East Pine Management Limited and others* BVIHCVAP2012/007 (delivered 17th September 2012, unreported) considered.

14. In a claim involving some element of dishonesty, the facts pleaded must support a finding of dishonesty and not some other unrelated tort or wrong. Likewise, in the claim alleging the commission of the torts of a) knowingly and dishonestly assisting and inducing breaches of fiduciary duty by Mr. Korzen; and b) conspiring by Mr. Korzen with the other three respondents to injure the appellant by the unlawful means of breach of fiduciary duties by entering into the inducements, the appellant had to include any factual assertions as to what conduct was allegedly engaged in that amounted to such knowing and dishonest assistance or conspiracy to injure by unlawful means. Contrary to the prescriptions of CPR rules 8.7 and 8.7A the appellant did not include a concise statement of the facts relied on or annex supporting documentation from which such particulars could be ascertained. The judge

therefore did not err when he ruled that the appellant's case against the fourth and fifth respondents was not particularised and as a consequence those claims disclosed no reasonable case or serious issue to be tried against them on the merits and by extension that the claims against them ought to be struck out. The learned judge applied the relevant legal principles in arriving at his determination and did not err by considering irrelevant matters or by not considering pertinent factors. His decision falls within the generous ambit within which reasonable disagreement is permissible, is defensible and is not palpably wrong and thus this Court will not interfere with his ruling.

Rules 8.7 and 8.7A of the Civil Procedure Rules (Revised Edition) 2023 applied; Belmont Finance Corp Ltd. v Williams Furniture Ltd. [1979] Ch. 250 applied; East Caribbean Flour Mills Limited v Ormiston Ken Boyea SVGHCVP2006/0012 (delivered 16th July 2007, unreported) applied.

15. It is trite law that a court is empowered to order the repayment by a vendor to a purchaser of land, the deposit paid directly to the vendor towards the purchase. However, the court may only do so having regard to the terms of the contract and all other circumstances. Without pleadings or evidence as to the terms of the sale and purchase agreements between the appellant and the purchasers/investors, it is highly doubtful that the appellant's case to enforce an equitable lien against the respondents on the investors' behalf is a reasonable ground for bringing this claim. It is now settled law that while a lien is created against the subject property, in the purchaser's favour where he pays a deposit to the vendor towards the purchase price, no such lien is created in respect of such deposits paid to a stakeholder. The necessary corollary is that the lien arises in contract as held in Gribbon v Lutton; is personal to the purchaser and does

not transfer to and cannot be exercised by the vendor. In the instant case, the appellant is not in a position to proceed on the basis articulated in its statement of case. Consequently, the judge applied the correct principles of law to the circumstances of this case and cannot be said to have made a blatantly wrong decision consequent on considering and applying incorrect principles or by misapplying correct principles of law.

Gribbon v Lutton [2002] QB 902 applied; Combe v Swaythling [1947] Ch. 625 considered.

16. Despite the respondents' claim that the learned judge erred by finding that there are serious issues to be tried on the claims for breach of fiduciary duty, dishonest assistance and conspiracy to injury since he made other findings that according to the respondents are inconsistent with such a determination, this Court finds that in all of those instances, the learned judge quite carefully explained either what is required to plead a particular cause of action (e.g. paragraphs 110 and 111) or that the pleading is not fully particularised (e.g. in paragraph 113), but nonetheless noted (e.g. in paragraph 124) that there is room and opportunity for amendment to supply the flagged details. Thus, those statements by the learned judge are not inconsistent with his ultimate determination that there are serious issues to be tried. Accordingly, this ground of appeal in the respondents' cross appeal fails.

17. On the authority of Regal Hastings, it is settled that a claimant with a claim for breach of fiduciary duty need not plead or prove that he has been injured or benefitted from the actions of the fiduciary. It suffices if he simply pleads and establishes that the fiduciary used his position to make a profit for which he is liable to account, irrespective of whether he was well-intentioned or held an honest belief in the bona fides of the impugned transaction.

Regal (Hastings) Ltd. v Gulliver [1967] 2 A.C. 134 applied.

- 18. It is a matter of jurisdiction and procedure that a decision of whether to permit amendment to pleadings is governed by the CPR and relevant Practice Directions and involves the exercise of a discretion on consideration of an application and affidavit evidence. As to the respondents' contention that the learned judge erred by permitting the claims against the first, second and third respondents to proceed even though they opposed that decision on the ground that no attempts had been made to amend the claim notwithstanding the passage of eleven years since the events giving rise to the claim had arisen, it is a matter of record that the learned judge did not have before him any application to amend the pleadings, and he did not purport to exercise the discretion to allow any such amendment. In those circumstances, it would have been pre-emptive for the learned judge to consider whether, in all the circumstances, it would be just and in furtherance of the overriding objective to grant leave for unspecified and unrequested amendments to the statement of claim. He was entitled to simply note that the option existed and to conclude that in the event that it was explored and resulted in success, further particulars might be forthcoming. By doing so, he did not overstep his remit, and he thereby committed no error of principle which made his decision plainly wrong.**

The Civil Procedure Rules (Revised Edition) 2023 applied.

Case Name:

**Angela Estwick
v
The Deputy Governor and**

The Attorney General of Montserrat

**[MNIHCVAP2023/0009]
(Montserrat)**

Date: Thursday, 10th April 2025

Coram for delivery: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal

Appearances:

Appellant: Mr. Wayne Norde holding papers for Ms. Jean Dyer

Respondent: Ms. Amelia Daley holding papers for Mrs. Sheree Jemmotte-Rodney, Attorney General of Montserrat

Issues: Civil Appeal – Entitlement to pension benefits - Pensions Act of Montserrat – Voluntary retirement – Transitional provisions – Statutory interpretation – Section 21 of the Pensions Act 2011 – Whether section 21 of the Pensions Act 2011 has the effect of preserving the application section 6(1)(h) of the Pensions Act 1947 – Whether applying the strict literal interpretation of section 21 would cause an absurd and unfair result – Whether the appellant was entitled to early retirement under the Pensions Act 2011 – Regulation 33 of the Public Service Regulations – Whether appellant needed permission of the Deputy Governor to voluntary retire – Whether the appellant resigned to retire without due notice thereby forfeiting her accumulated leave days and owes the Government one month's salary - Whether there were disciplinary proceedings pending against the appellant when she terminated her employment – Legitimate expectations – Whether the Government of Montserrat had by practice and/or promise committed itself to a consistent practice that continued under the Pensions Act 2011 of allowing pensionable officers who had served for 20 or more years but had not attained the age of 55 to retire pursuant to section 6(1)(h) of the Pensions Act 1947 with an immediate gratuity and

pension in the same manner under the Pensions Act 1947 – Whether the Deputy Governor acted in excess of her powers in withholding the appellant’s pension benefits as she did not consult the Public Service Commission as mandated by section 88(1) of the Constitution of Montserrat – Early exit benefit – Whether the judge was wrong to consider early exit under section 13 of the Pensions Act 2011 when the appellant had not pled any such entitlement

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against the decision of the learned trial judge is allowed in part.**
- 2. The counter notice of appeal is dismissed.**
- 3. The orders made at paragraph [70] of the judgment in the court below are set aside and the following orders made:**
 - i. A declaration is granted that the appellant is entitled to be paid a gratuity and pension in accordance with section 21 (as amended) of the Pensions Act 2011.**
 - ii. Interest of 4% is payable on the total sum representing gratuity and pension that is due to the appellant under paragraph (1) from 12th November 2018 to the date of payment.**
 - iii. The appellant shall have her costs in the court below and in this Court to be assessed if not agreed within 21 days of today’s date.**
- 4. The coercive remedies sought by the appellant in the court below are not granted.**

Reason:

- 1. Section 21 of the Pensions Act 2011 is a transitional provision as its overall heading makes clear. It was meant to make special provision for persons, namely the protection of pensionable officers with twenty years**

continuous service who had not yet reached the age of 55, who would have qualified for pension benefits under section 6(1)(h) of the Pensions Act 1947. This is made clear from an examination of the heading of section 21 as well as the explanatory memorandum that accompanied the Pensions Bill. Headings and explanatory notes are relevant to the extent that they can assist with understanding the context of or the mischief at which legislation, such as section 21, is aimed. The learned trial judge was therefore wrong not to construe the explanatory memorandum as providing appropriate and relevant context for section 21 or assisting with ascertaining the mischief to which it is aimed.

Britnell v Secretary of State for Social Security [1991] 1 WLR 198 applied; Bennion, Bailey and Norbury on Statutory Interpretation 8th Edition, 2020 considered; Regina v Montila and others [2004] 1 WLR 3141 applied; Project Blue Ltd (formerly Project Blue (Guernsey) Ltd) v Revenue and Customs Commissioners [2018] 1 WLR 3169 considered; Regina (Westminster City Council) v National Asylum Support Service [2002] 1 WLR 2956 applied; Flora v Wakom (Heathrow) Ltd [2007] 1 WLR 482 applied.

2. As to the interpretation of section 21 of the Pensions Act 2011, the question is whether the reference to an existing officer born 'in 1961' properly reflects the purpose of section 21. Having determined that in enacting section 21 of the Pensions Act 2011, Parliament intended to protect pensionable officers to whom section 6(1)(h) of the Pensions Act 1947 applies from the application of the provisions of the Pensions Act 2011, it was an obvious mistake by Parliament in including the words 'in 1961' in section 21 of the Pensions Act 2011. If section 21 were to be read as is, it would have the result that such a pensionable officer would have to wait until 60 years of age to be able to take normal retirement and would have to serve for

30 years to obtain any pension benefit. This would defeat a claim under section 6(1)(h) of the Pensions Act 1947 which applies to a person who has not yet reached the age of 55 and who had acquired 20 years' continuous service. In summary, any protection that section 21 was intended to provide to such pensionable officers from the new pension regime established by the Pensions Act 2011 would be eviscerated and eligible officers would suffer the harm or injury that section 21 of the Pensions Act 2011 was intended to shield them from, and consequently they would not be able to continue to benefit from section 6(1)(h) of the Pensions Act 1947. To correct this error, the word 'in' appearing before '1961' as it appears in section 21 of the Pensions Act 2011 should be deleted and substituted with the word 'before'.

Bank of Nova Scotia v Comptroller of Inland Revenue (SLUHCVP2022/0007 delivered 24th May 2024, unreported) followed.

3. The Court having accepted that it is correct as a matter of principle and of statutory interpretation for section 21 to be amended by replacing the word 'in' as it appears before '1961' with the word 'before', the learned trial judge erred in finding that the appellant was not entitled to early retirement under the Pensions Act 2011. Albeit, the appellant's eligibility for early retirement accrued pursuant to section 21 and not section 8 of the Pensions Act 2011. Under section 8 of the Pensions Act 2011 the appellant would not be eligible for a pension benefit if only that section were applied to her case. Consequently, the appellant is entitled to a declaration that she is entitled to be paid a gratuity and pension in accordance with the Pensions Act 2011.
4. Pursuant to regulation 33 of the Public Service Regulations an officer may at any time after he or she has attained the minimum age specified

in the pensions law for retirement, apply to the Deputy Governor for permission to retire and state the grounds on which his or her application for retirement is based. Regulation 33, however, is plainly not applicable to pensionable officers to which section 21 of the Pensions Act 2011 applies. There is no minimum age requirement under section 6(1)(h) of the Pensions Act 1947 which an eligible officer would have to attain before being able to retire pursuant to section 21 of the Pensions Act 2011. Consequently, the permission of the Deputy Governor to retire is not required in respect of persons to whom section 21 of the Pensions Act 2011 applies.

5. Under section 21 a pensionable officer to whom the section applies may elect to receive pensions benefits under Part 2 of the Pensions Act 2011. Under Part 2, section 6 states that a pensionable officer is eligible for pension benefits upon: a) normal retirement (section 7); b) early retirement (section 8); c) retirement of medical grounds (section 9); and d) termination to the extent that the public service law provides that he is so eligible. None of the other criteria apply to the appellant except section 6(d), i.e termination of employment. The appellant's eligibility for pension according to the law is section 21 of the Pensions Act 2011. Regulation 31(a)(vi) states that one of the ways in which the services of an officer who is confirmed in a permanent appointment may be terminated is on resignation. Therefore, the appellant's letter dated 12th November 2018 in which she elected to take voluntary retirement with immediate effect can only be construed as a termination of her employment by resignation. It follows that pursuant to regulation 32 the appellant had to give due notice in writing of her intention to resign to the Deputy Governor. General Orders 701(2) and 701(4) also state that this notice was to be not less than three months' notice (exclusive of leave) in writing and that the officer

may instead of giving due notice, resign his appointment at any time after paying to the government one month's salary in lieu of notice, and that in such cases the officer will forfeit all leave for which he might be eligible. The learned trial judge was correct in finding that the appellant resigned to retire without due notice and as such forfeited her 70 days' leave and owes the Government a month's salary.

6. A distinction must be made between the concepts of retirement and resignation because they are treated differently in the Public Service Regulations. Resignation is where a person chooses voluntarily to terminate their employment. Retirement usually occurs at an age stipulated by the employer or legislation. Once a person reaches that age, the employee's employment comes to a natural end. An employer may also stipulate other requirements that an employee must satisfy for them to 'retire'. In such cases, such as those under section 6(1)(h) of the Pensions Act 1947, the employee is not obligated to 'retire' but if he or she wishes they have the option of so doing. It is clear that the appellant 'retired' since she met the requirements for so doing and terminated her employment with the Government by 'resigning'. The learned trial judge was not correct in holding that the appellant had to resign to obtain the benefit of early retirement. A person does not lose their pension benefits by resigning. A resignation, whether it complies with the notice period or other requirements of regulation 32, is a termination of employment. An employee whose employment is terminated is still entitled to pensions benefits in accordance with section 6(d) of the Pensions Act 2011. Resignation was merely a lawful option available to the appellant.
7. When disciplinary proceedings were instituted against the appellant under regulation 48 of the Public Service Regulations, it was the duty of

the authorised officer to conduct an inquiry into the matter and if after the inquiry the authorised officer was of the opinion that the alleged misconduct was proved, may recommend to the Deputy Governor such punishment other than dismissal as may seem just. Therefore, the authorized officer can either find that the alleged misconduct was proved or not proved. In this case, since the Commission did not find the charges proved against the appellant and made no recommendations in respect of any punishment of the appellant, there was nothing else for the Governor to do on receiving the report of the Commission. Consequently, there were no pending disciplinary proceedings against the appellant when she applied to retire on 3rd October 2018 or when she resigned on 12th November 2018. The learned trial judge was correct in not considering this issue since there were no open disciplinary proceedings against the appellant that would warrant the refusal of her resignation in accordance with General Order 702(c) which provides that notice of resignation may be refused if disciplinary proceedings against the officer are contemplated or pending.

8. The doctrine of legitimate expectations does not arise on the facts of this case. Legitimate expectations begin where rights end; so, having found that the appellant was eligible for pension benefits pursuant to section 21 of the Pensions Act 2011, it is not necessary to decide this issue. Second, it is doubtful that there was any established practice by the Government of allowing pensionable officers to retire pursuant to section 6(1)(h) of the Pensions Act 1947 with an immediate gratuity and a deferred pension as they did under the 1947 Act. Third, the personnel files referred to by the appellant in the court below do not establish any consistent practice. Fourth, the eligibility to a pension is to be determined based on the interpretation of the Pensions Act 2011. It is unlikely that any such legitimate expectation could arise (from the

actions of the Executive) which would have the effect of supplementing or overriding the will of Parliament expressed in the provisions of the Pensions Act 2011. This ground of appeal therefore has no merit.

9. As to whether the Deputy Governor acted in excess of her powers in withholding the appellant's pension benefits as she did not consult the Commission as mandated by section 88(1) of the Constitution, the Court is of the view that the Deputy Governor was under the mistaken belief that the appellant was not entitled to any pension benefits under section 21 of the Pensions Act 2011 based on advice she received from the Attorney General (Ag.). The Deputy Governor was therefore not withholding a pension from the appellant.
10. The learned trial judge was wrong to decide the appellant's case on a section in the Pensions Act 2011 without first inviting the parties to file submissions or to otherwise comment thereon. The appellant did not plead any such entitlement to early exit under section 13 of the Pensions Act 2011 and had plainly grounded her entitlement to pension benefits under section 21 of the Pensions Act 2011. Given the findings above and the entitlement of the appellant to claim pension benefits under section 21 of the Pensions Act 2011, that order of the trial judge ought to be set aside.

Case Name:

Michael J. Prest

v

[1] Magistrate District "C"

[2] Corporal Randolph Diamond

[3] The Director of Public Prosecutions

[NEVHCVAP2022/0003]

(Saint Christopher and Nevis)

Date: Thursday, 10th April 2025

Coram for delivery: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal

Appearances:

Appellant: Ms. Shari-Ann Walker holding papers for Mr. Peter Foster, KC

Respondent: Mr. Garth Wilkin, Attorney General of Saint Christopher and Nevis and Mrs. Simone Bullen Thompson for the 1st respondent

Mr. Leon Charles for the 2nd and 3rd respondents

Issues: Application for leave to appeal to his Majesty in Council – Leave as of right - Section 99(1)(c) of the Constitution of Saint Christopher and Nevis – Whether the proposed appeal involves an issue of constitutional interpretation of section 10 of the Constitution – Section 99 (2)(a) of the Constitution of Saint Christopher and Nevis – Whether appeal is of great general or public importance – Section 33(3)(a) of the Eastern Caribbean Supreme Court (St. Christopher and Nevis) Act – Whether the appeal is in a criminal cause or matter – Whether section 33(3)(a) of the Eastern Caribbean Supreme Court (St. Christopher and Nevis) Act contravenes section 10 of the Constitution

Result / Order: IT IS HEREBY ORDERED THAT:

The application for Leave to Appeal to his Majesty in Council is dismissed with no order as to costs.

Reason:

1. Where leave is sought under section 99(1)(C) of the Constitution as of right, the Court of Appeal’s gate-keeping role is to determine

whether the intended appeal raises a genuinely disputable question of the interpretation of the constitution. The Court of Appeal's role is to establish whether the asserted right to appeal exists. It is not to consider or determine the merits of the appeal. The issue must have arisen in the appeal, thus making it necessary to focus on the issue on which the Court of Appeal's decision turned. Therefore, this Court must assess whether the Court of Appeal was engaged in interpreting section 10(1) of the Constitution. If the question involved in the appeal is really one of the application of a provision of the Constitution to the facts of a particular case, then the question does not involve the interpretation of the Constitution.

Alleyne-Forte v The Attorney General of Trinidad and Tobago and others [1997] UKPC 49 applied; William Martin v Ursil Peters ANUHCVP2004/0036 (delivered 17th September 2007, unreported) followed; R v Lewis (Mitchell) [2007] CCJ (3) AJ. applied; Frater v R [1981] 1 WLR 1470 followed; Joseph v The State of Dominica (1988) 36 WIR 216 followed.

2. This Court must be astute to ensure that applications for leave to appeal to his Majesty in Council really do involve a genuinely disputable question of interpretation of the Constitution and not one which has merely been contrived for the purpose of obtaining leave to appeal as of right. The Court of Appeal was not engaged in interpreting section 10(1) of the Constitution but with determining whether the underlying proceedings which gave rise to the appeal was from an order in a criminal cause or matter. That issue involved in the appeal was not resolved by, nor did it call for or require the Court of Appeal to engage in, an interpretation of section 10(1) as the Court of Appeal accepted the principles as enunciated in the authorities cited by the Petitioner on the breadth and scope of the due process provisions. To that extent, there is no disputed interpretation of section 10(1) of the constitution.

Frater v R [1981] 1 WLR 1470 followed.

- 3. The Petitioner's case was that the Court should not apply section 33(3)(a) as to do so would contravene section 10(1) of the Constitution. This concerns the impact that section 10(1) should have on the application of section 33(3)(a) to the circumstances of the case. On a proper analysis, the real issue engaged on the appeal has to do with the application of a constitutional provision to the particular facts of the case. This does not amount to a question involving the interpretation of the constitution.**
- 4. In relation to the issue whether the question involved in the appeal is of great general or public importance, section 99(2)(a) vests a discretion in the Court to grant conditional leave to appeal to the Privy Council in civil matters on one of two bases. The first is where the Court is of the opinion that the question involved in the appeal is one that by reason of its great general or public importance ought to be submitted to His Majesty in Council; the second is where the matter, though not of great general or public importance, ought otherwise to be submitted to His Majesty in Council. The phrase 'great general or public importance' denotes cases where 'there is a really serious issue of law; a constitutional provision that has not been settled; an area of law in dispute, or a legal question the resolution of which poses dire consequences for the public or has far reaching effect.' Furthermore, the phrase 'or otherwise', caters to the situation where a matter may not qualify as one of great general or public importance, but which, in the opinion of the Court, might require some definitive statement of the law from the apex court.**

Martinus Francois v The Attorney General SLUHCVP2003/0007 (delivered 7th June 2004, unreported) followed; Renaissance Ventures Ltd et al v Comodo Holdings Ltd BVIHCP2014/0032 (delivered 3rd My, 2016,

unreported) followed; *Multibank FX Corporation v Von De Heydt Invest* BVIHCMAP2022/0061 (delivered 5th July 2023, unreported) applied.

5. The issue involved in the appeal was identified as whether the appeal is in ‘a criminal cause or matter.’ The principles relating to the test for determining whether an appeal is in a criminal cause or matter are well settled within this jurisdiction and by highest authority, including the apex court. A ‘criminal cause or matter’ is one which requires judicial determination at any stage of the proceedings where the subject matter was criminal, and if the cause or matter were carried to its conclusion, might result in a conviction. The Petitioner’s complaint concerns the application of these well-established principles to the facts of the case, which does not make the issue one of great general or public importance. There is therefore no genuine dispute on the applicable principles of law underlying the question which the Petitioner wishes to pursue on his proposed appeal as there are no differing views or conflicting dicta from this Court on this issue nor is there any genuine uncertainty surrounding the principle itself. Furthermore, it cannot be said that this issue requires some definitive statement of the law from the apex court.

Hapgood v Commissioner of Police AXAHCVP2020/0003 (delivered 24th June 2020, unreported) followed.

6. The appellant has also failed to establish that the appeal ought otherwise to be submitted to His Majesty in Council because the appeal raises a novel point about the constitutionality of section 33(3)(a). It is settled that a decision in a criminal cause or matter is appealable if the decision was given by the High Court in the exercise of its constitutional jurisdiction to hear an application for judicial enforcement or protection of a fundamental right or freedom which was alleged to have been contravened or to have been under threat of contravention.

Such a decision is appealable, notwithstanding section 33(3)(a) of the Supreme Court Act which is required to be construed to conform with section 98(b) of the Constitution. It is clear that the issue of the constitutionality of section 33(3)(a) has been previously ventilated and settled by the Court of Appeal, and there is no novelty in the present challenge, nor any uncertainty as to the constitutional validity of section 33(3)(a) of the Supreme Court Act.

Michael Glasford and Others v Commissioner of Police and Another (1995) 48 WIR 117 applied.

Case Name:

Athene Shillingford
As the personal representative of the estate
of Idiline Johnson
V
[1] Infrastructure Services Ltd. A firm
[2] Attorney General of Commonwealth of
Dominica

[DOMHCVAP2024/0027]
(Commonwealth of Dominica)

Date:

Monday, 7th April 2025

Coram:

The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Reginald T.A. Armour, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Ms. Cara Shillingford
Respondent:	No appearance

Issues: Application for leave to appeal - Rule 62.2(8) of the Civil Procedure Rules (Revised Edition) 2023 - The principles for the grant of leave to appeal - Prospects of success of intended appeal - Norwich Pharmacal order - Disclosure - Whether the learned judge erred by not ordering that the Second respondent disclose the requested documents to the Applicant - CPR 28.5 of the Civil Procedure Rules (Revised Edition) 2023

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The applicant is granted leave to appeal the learned judge's order made on 4th December 2024.
2. The applicant is required to file and serve the notice of appeal within 21 days of this order.
3. Thereafter, the appeal will proceed in accordance with Part 62 of the CPR (Revised Edition) 2023.

Reason: Before the Court was a notice of application filed on 27th December 2024 by the applicant/intended appellant for leave to appeal the judgment of the learned judge made on 4th December 2024, refusing the applicant's application, made pursuant to part 28 of the Civil Procedure Rules (Revised Edition) 2023 ("CPR") for a specific disclosure order to compel the second defendant/ respondent to supply information and documents to enable the claimant/applicant to identify the 1st named defendant. The application for leave was supported by the 1st affidavit of Damian Shillingford the claimant/applicant's lawful attorney filed on 30th December 2024.

The learned judge provided two reasons for her decision, namely, that (1) she did not see the relevance of the requested documents to the determination of the issues in the case, or improving the cause of action, of trespass, or establishing facts in contention,

and, (2) that the claimant applicant failed to give any explanation as to why the documents are necessary to deal with the matter fairly.

CPR 62.2 (8) provides that leave to appeal will be granted only when (a) The court considers that the appeal has a realistic prospect of success, and not merely a fanciful prospect of success; or (b) If there is some other compelling reason why the appeal should be heard.

The Court considered among other authorities, *Swain v Hillman* and another [2001] 1 All ER 91 in which Lord Wooff, MR underscored those principles. In determining whether the proposed appeal has a realistic prospect of success, the court examines the evidence to evaluate whether it discloses that the applicant has advanced an argument which leads to such a conclusion.

The applicant based the application for leave to appeal on four (4) proposed grounds of appeal, namely:

- (1) The learned judge erred in law and in her finding of facts by failing to find that the specific disclosure is necessary in order to fairly dispose of the claim, save costs, and that the documents requested are directly relevant to the issues in this case.
- (2) The learned judge erred in law by failing to consider the principles in the *Norwich Pharmacal* case which allows the court to order disclosure against a 3rd party, in circumstances where the 3rd party has information which can enable the applicant to identify a wrongdoer, and or to support its claim against the wrong doer. The learned judge failed to consider that the requested documents are necessary to enable the claimant to properly identify the 1st defendant, and to pursue the case against the 1st defendant, which was registered by the second defendant as the owner of the motor vehicles.
- (3) The learned judge erred in law, and in her finding of facts by failing to consider the second defendant is sued in his capacity as a representative of the State, and that the State is

not a physical person, and so must act through agents. The learned judge failed to consider that the requested documents are relevant to the issue of agency, and

- (4) The learned judge failed to consider that the requested information concerned matters of public interest, and that principles of good governance and transparency require their disclosure.

The applicant, among other things, contended that:-
The Claimant is the registered proprietor of a parcel of land at Check Hall. The 2nd Defendant represents the Government of the Commonwealth of Dominica and - in 2018 the Government of Dominica registered through the Traffic Department and Inland Revenue Division (IRD) a fleet of vehicles in the name of 'Infrastructure Services Ltd'. and proceeded to use these vehicles to provide services such as the carriage of material and paid a 'person' (whether legal or natural) for the said services. Further, that the vehicles were marked 'Infrastructure Services Ltd.' and at times when said vehicles were involved in the commission of certain torts the Government undertook to compensate the injured party. They contended further that there is no record of 'Infrastructure Services Ltd' being registered in the Commonwealth of Dominica as a legal entity and they contend that it is necessary for an order as to specific disclosure of certain documents to be made to them.

They have referenced Section 4 of the Vehicles and Road Traffic Act, Chapter 46:50 of the Laws of Dominica (the "Act") by which they say that the Commissioner of Police, as licensing authority, is charged with responsibility for the registration, licensing, and inspection of all vehicles, the issue of driving permits, and such matters as are assigned to him by the Act and regulations made under it, including the maintenance of a register of motor vehicles in the prescribed forms and in separate registers.

The court noted that as submitted by the applicant, the respondents' witness evidence shows that the Government of Dominica contracted with the owner of the said vehicles to do post-hurricane relief work, in which they allegedly utilised the said vehicles, which were arguably licensed by the Government's servant or agent, and that the Government allegedly paid them for certain services. In those circumstances it is arguable that the second respondent's servants or agents are somehow mixed up in the 1st respondent's alleged wrong, arising from its statutory and or contractual obligations.

The Court considered the application and supporting affidavit, the learned judge's impugned order and the applicant's written submissions, in particular the referenced cases *Norwich Pharmacal Co. v Customs and Excise Commissioners* [1974] AC 133 and *JSC BTA Bank v Fidelity Corporate Services Limited* at al BVIHCVAP 2010/035 (delivered 21st February 2011) and was of the view that the applicant/intended appellant had met the threshold of a realistic prospect of success on appeal and was minded to grant the applicant leave to appeal.

Case Name:

**Foued Issa
v
Sorrel Consulting Ltd**

**[DOMHCVAP2024/0003]
(Commonwealth of Dominica)**

Date:

Monday, 7th April 2025

Coram:

**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Reginald T.A. Armour, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Ronald Charles, holding papers for Ms. Shanice Henry

Respondent: Ms. Noelize Knight Didier

Issues: Interlocutory appeal - Oral Application for adjournment - Non opposition to appeal - Consent order

Type of Order: Directions

Result / Order: IT IS HEREBY ORDERED THAT:

1. The parties are to attempt to arrive at a consent order and such consent order is to be submitted to the Court for approval.
2. Should the parties be unable to arrive at a consent position, the matter will be listed for hearing at the next sitting of the Court of Appeal for the Commonwealth of Dominica commencing the week of 15th September 2025.

Reason: Counsel Mr. Ronald Charles, who was holding papers for Ms. Shanice Henry informed the Court that Ms. Henry was unwell and unable to attend Court. Counsel for the respondent further indicated to the Court that the appeal is unopposed, and the parties wish to submit a consent order which would determine the appeal. In the circumstances, the Court gave directions for the parties to file a consent order and in the alternative ordered that the matter be listed for hearing at the next sitting of the Court of Appeal for the Commonwealth of Dominica during the week commencing 15th September 2025.

Case Name: Darwin Blyden
v
Benedicta Samuels
Administratrix of the Estate of Abraham Blyden, deceased

**Estelle Wheatley
[BVIHCVAP2023/0005]**

(Territory of The Virgin Islands)

Date: Monday, 7th April 2025

Coram: The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Reginald T.A. Armour, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Sydney A. Bennett KC with him Ms. Anthea L. Smith

Respondents: Ms. Akilah Anderson for the first respondent
No appearance for the second respondent

Issues: Interlocutory appeal - Amendment to statement of claim - Whether the learned Master erred in finding that the proposed amendments to the Claim Form and Statement of Claim were superfluous - General principles for grant of permission to amend - Whether the delay if any, in making the application to further amend the Statement of Case did not cause any material disadvantage to the respondents nor harm the public interest in the efficient administration of justice - Whether the proposed amendment caused no prejudice to the respondents - Whether the refusal of the proposed amendment caused great prejudice to the Claimant - CPR 8.7 (1) of the Civil Procedure Rules 2023 (“CPR”)

Type of Order N/A

Result / Order: IT IS HEREBY ORDERED THAT:

1. The submissions filed initially on 17th March 2025 in the High Court and refiled with the authorities bundle on 20th March 2025 is hereby deemed properly filed.
2. Judgment reserved.

Case Name:

**Ming, Bo Ting Alice (Personal Representative
of the Estate of the Late Ming Shui Sum)**

v

Ming Siu Hung, Ronald (Deceased)

**[BVIHCMAP2024/0019]
(Territory of Virgin Islands)**

Date:

Tuesday, 8th April 2025

Coram:

**The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal
[Ag.]**

Appearances:

Applicant:

Ms. Blair Leahy KC with her Ms. Sophie Christodoulou

Respondent:

**Mr. Joshua Folkard with him Mr. Andrew Gilliland and
Mr. Malcolm Arthurs**

Issues:

**Application for stay pending determination of the
appeal - Rule 62.19(1)(b) and Rule 26.1(2)(q) of the Civil
Procedure Rules (Revised Edition) 2023 - Whether the
balance of harm lies in favour of staying execution of
the Judgment - Whether there are cogent, strong
grounds to show that the appeal will if successful, be
rendered nugatory if a stay is not granted - Whether
there are strong grounds of appeal - Whether there are
exceptional circumstances to warrant the grant of a
stay - Variation of consent order - Jurisdiction of the
court to extend time for payment**

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

**ICM SPC on behalf of Ancile Special
Opportunity and Recovery Fund Segregated
Portfolio
v
(1) Ryan Jarvis
(2) Rachelle Frisby
(as joint liquidators of Phoenix
Commodities Pvt Ltd (in liquidation)**

**[BVIHCMAP2025/0001]
(Territory of The Virgin Islands)**

Date: Wednesday, 9th April 2025

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Reginald Armour, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. David Alexander, KC, with him Mr. Alexander Bryant and Ms Emily Rivett

Respondent: Mr. David Chivers KC with him Mr. Jeremy Child

Issues: Application for stay of execution pending the determination of the substantive ongoing appeal - Whether there are strong grounds of appeal or a strong likelihood of the appeal succeeding - The legal effect” that would result from a stay of the Mangatal Judgment or the Webster Order - Whether the applicant has provided full, frank and clear evidence to support the application for a stay - Whether the

appeal will be stifled or rendered nugatory if a stay is not granted - Whether the grant of a stay will cause severe harm to the respondents - Whether the Court should exercise its discretion to grant a stay of execution

Type of Order

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Moses O'Brien

v

Laurel Esprit

[DOMMCVAP2022/0002]
(Commonwealth of Dominica)

Date:

Wednesday, 9th April 2025

Coram:

The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Reginald Armour, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Darius Jones

Issues:

Magisterial appeal - Application for adjournment

Type of Order

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The appeal is adjourned for hearing to a date to be fixed by the Chief Registrar.
2. The appellant is to ensure that at the next hearing of the appeal, he is represented by counsel who is capable of prosecuting his appeal.
3. There will be no further adjournments in the matter.
4. The Registrar of the High Court is directed to serve a copy of this Order on Counsel for the appellant and on the appellant personally.

Reason:

The Court was in receipt of communication from counsel for the appellant in which counsel indicated that he was unwell and ostensibly sought an adjournment of the hearing of the appeal.

The Court noted that the appellant was also absent from the hearing and was therefore unable to give account for his absence. The Court also, noted that there were a number of previous adjournments in the matter largely at the instance of the appellant.

The Court was satisfied that in light of the medical evidence provided by Counsel for the appellant, that a further adjournment should be granted . However, the Court also determined that this adjournment should be a final one. Given this finding, the Court also ordered that the appellant ensures that he is represented by counsel who is able to prosecute the appeal, at the next hearing of the appeal.

The Court also placed on record its dissatisfaction with the way the adjournment was sought and reiterated the proper procedure for the seeking of an adjournment.

Case Name:

Emerson Ricardo Machado Campos

v

The Commissioner of Police

[DOMMCRAP2024/0003]
(Commonwealth of Dominica)

Date: Thursday, 10th April 2025

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal

Appearances:

Appellant: Mr. Wayne Norde

Respondent: Ms. Marie Louise Pierre-Louis and Ms. Ellisianne Wilkins

Issues: Magisterial criminal appeal - Appeal against sentence
- Section 16(1) of the Drug (Prevention of Misuse Act) Cap. 40:07 of the Revised Laws of Dominica - Sentence of 7 years for the offence of drug trafficking and further 7 years for importation of cocaine to run consecutively
- Unconstitutionality of minimum sentence - Whether the mandatory minimum sentence imposed under section 16 of the drug (Prevention of Misuse) Act is unconstitutional as it violates section 5 of the Constitution by amounting to cruel and inhumane punishment, infringes the doctrine of separation of powers by depriving judicial officers of discretion, and results in disproportionate sentencing that faults to consider the gravity of the offence and the offender's culpability, necessitating its severance to the extent of its unconstitutionality - Whether the sentence of 7 years given by the learned magistrate was excessive - Mitigating factor of no previous offences to be taken into account in discounting sentence - Whether the sentence in the circumstances should be reduced to time served

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:
1. The appeal against sentence is allowed.

2. The sentence imposed by the learned magistrate is deemed to be excessive and is set aside.
3. The sentence of the magistrate is quashed.
4. The appellants are sentenced to time served and are eligible for immediate release.
5. The full written reasons with respect to the appeal will follow.

Reason:

Before the Court was a Magisterial Criminal Appeal against sentence. The notice of appeal filed on 13th November 2024 contained identical grounds for 5 out of the 6 appellants. The appellants sought to rely on 5 grounds of appeal, however at the hearing of the appeal, counsel for the appellants indicated that he wished to withdraw the first ground of appeal. The nub of counsel for the appellants' submissions was that the sentence of 7 years imposed by the learned magistrate was excessive and disproportionate. Counsel for the respondent agreed with this submission and conceded that the sentence imposed was disproportionate in the circumstances. Counsel for the respondent submitted that the appropriate sentence should be 1 year and 6 months and taking into account a discount for no previous offences, the sentence should be reduced by a further 3 months such that the appropriate sentence should now be 1 year and 3 months. Accordingly, the Court allowed the appeal against sentence and quashed the sentence imposed by the learned magistrate. The Court also had regard to the time served by the appellants and ordered that the sentences of each of the appellants should be reduced to time served and the appellants released. The Court was of the view that a written decision should be rendered in respect of the constitutional aspect of the appeal.

Case Name:

Jose-Del Carmen Serrada Cassero

v

The Commissioner of Police

[DOMMCRAP2024/0004]

(Commonwealth of Dominica)

Date: Thursday, 10th April 2025

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal

Appearances:

Appellant: Mr. Wayne Norde

Respondent: Ms. Marie Louise Pierre-Louis and Ms. Ellisianne Wilkins

Issues: Magisterial criminal appeal - Appeal against sentence
- Section 16(1) of the Drug (Prevention of Misuse Act) Cap. 40:07 of the Revised Laws of Dominica - Sentence of 7 years for the offence of drug trafficking and further 7 years for importation of cocaine to run consecutively
- Unconstitutionality of minimum sentence - Whether the mandatory minimum sentence imposed under section 16 of the drug (Prevention of Misuse) Act is unconstitutional as it violates section 5 of the Constitution by amounting to cruel and inhumane punishment, infringes the doctrine of separation of powers by depriving judicial officers of discretion, and results in disproportionate sentencing that faults to consider the gravity of the offence and the offender's culpability, necessitating its severance to the extent of its unconstitutionality - Whether the sentence of 7 years given by the learned magistrate was excessive - Mitigating factor of no previous offences to be taken into account in discounting sentence - Whether the sentence in the circumstances should be reduced to time served

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against sentence is allowed.

2. The sentence imposed by the learned magistrate is deemed to be excessive and is set aside.
3. The sentence of the magistrate is quashed.
4. The appellants are sentenced to time served and are eligible for immediate release.
5. The full written reasons with respect to the appeal will follow.

Reason:

Before the Court was a Magisterial Criminal Appeal against sentence. The notice of appeal filed on 13th November 2024 contained identical grounds for 5 out of the 6 appellants. The appellants sought to rely on 5 grounds of appeal, however at the hearing of the appeal, counsel for the appellants indicated that he wished to withdraw the first ground of appeal. The nub of counsel for the appellants' submissions was that the sentence of 7 years imposed by the learned magistrate was excessive and disproportionate. Counsel for the respondent agreed with this submission and conceded that the sentence imposed was disproportionate in the circumstances. Counsel for the respondent submitted that the appropriate sentence should be 1 year and 6 months and taking into account a discount for no previous offences, the sentence should be reduced by a further 3 months such that the appropriate sentence should now be 1 year and 3 months. Accordingly, the Court allowed the appeal against sentence and quashed the sentence imposed by the learned magistrate. The Court also had regard to the time served by the appellants and ordered that the sentences of each of the appellants should be reduced to time served and the appellants released. The Court was of the view that a written decision should be rendered in respect of the constitutional aspect of the appeal.

Case Name:

Wilber Oliveros

v

The Commissioner of Police

[DOMMCRAP2024/0005]

(Commonwealth of Dominica)

Date: Thursday, 10th April 2025

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal

Appearances:

Appellant: Mr. Wayne Norde

Respondent: Ms. Marie Louise Pierre-Louis and Ms. Ellisianne Wilkins

Issues: Magisterial criminal appeal - Appeal against sentence - Section 16(1) of the Drug (Prevention of Misuse Act) Cap. 40:07 of the Revised Laws of Dominica - Sentence of 7 years for the offence of drug trafficking and further 7 years for importation of cocaine to run consecutively - Unconstitutionality of minimum sentence - Whether the mandatory minimum sentence imposed under section 16 of the drug (Prevention of Misuse) Act is unconstitutional as it violates section 5 of the Constitution by amounting to cruel and inhumane punishment, infringes the doctrine of separation of powers by depriving judicial officers of discretion, and results in disproportionate sentencing that faults to consider the gravity of the offence and the offender's culpability, necessitating its severance to the extent of its unconstitutionality - Whether the sentence of 7 years given by the learned magistrate was excessive - Mitigating factor of no previous offences to be taken into account in discounting sentence - Whether the sentence in the circumstances should be reduced to time served

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against sentence is allowed.

2. The sentence imposed by the learned magistrate is deemed to be excessive and is set aside.
3. The sentence of the magistrate is quashed.
4. The appellants are sentenced to time served and are eligible for immediate release.
5. The full written reasons with respect to the appeal will follow.

Reason

Before the Court was a Magisterial Criminal Appeal against sentence. The notice of appeal filed on 13th November 2024 contained identical grounds for 5 out of the 6 appellants. The appellants sought to rely on 5 grounds of appeal, however at the hearing of the appeal, counsel for the appellants indicated that he wished to withdraw the first ground of appeal. The nub of counsel for the appellants' submissions was that the sentence of 7 years imposed by the learned magistrate was excessive and disproportionate. Counsel for the respondent agreed with this submission and conceded that the sentence imposed was disproportionate in the circumstances. Counsel for the respondent submitted that the appropriate sentence should be 1 year and 6 months and taking into account a discount for no previous offences, the sentence should be reduced by a further 3 months such that the appropriate sentence should now be 1 year and 3 months. Accordingly, the Court allowed the appeal against sentence and quashed the sentence imposed by the learned magistrate. The Court also had regard to the time served by the appellants and ordered that the sentences of each of the appellants should be reduced to time served and the appellants released. The Court was of the view that a written decision should be rendered in respect of the constitutional aspect of the appeal.

Case Name:

Yofran Alexander Martinez

v

The Commissioner of Police

[DOMMCRAP2024/0006]

(Commonwealth of Dominica)

Date: Thursday, 10th April 2025

Coram: The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard Farara, KC, Justice of Appeal

Appearances:

Appellant: Mr. Wayne Norde

Respondent: Ms. Marie Louise Pierre-Louis and Ms. Ellisianne Wilkins

Issues: Magisterial criminal appeal - Appeal against sentence - Section 16(1) of the Drug (Prevention of Misuse Act) Cap. 40:07 of the Revised Laws of Dominica - Sentence of 7 years for the offence of drug trafficking and further 7 years for importation of cocaine to run consecutively - Unconstitutionality of minimum sentence - Whether the mandatory minimum sentence imposed under section 16 of the drug (Prevention of Misuse) Act is unconstitutional as it violates section 5 of the Constitution by amounting to cruel and inhumane punishment, infringes the doctrine of separation of powers by depriving judicial officers of discretion, and results in disproportionate sentencing that faults to consider the gravity of the offence and the offender's culpability, necessitating its severance to the extent of its unconstitutionality - Whether the sentence of 7 years given by the learned magistrate was excessive - Mitigating factor of no previous offences to be taken into account in discounting sentence - Whether the sentence in the circumstances should be reduced to time served

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against sentence is allowed.

2. The sentence imposed by the learned magistrate is deemed to be excessive and is set aside.
3. The sentence of the magistrate is quashed.
4. The appellants are sentenced to time served and are eligible for immediate release.
5. The full written reasons with respect to the appeal will follow.

Reason:

Before the Court was a Magisterial Criminal Appeal against sentence. The notice of appeal filed on 13th November 2024 contained identical grounds for 5 out of the 6 appellants. The appellants sought to rely on 5 grounds of appeal, however at the hearing of the appeal, counsel for the appellants indicated that he wished to withdraw the first ground of appeal. The nub of counsel for the appellants' submissions was that the sentence of 7 years imposed by the learned magistrate was excessive and disproportionate. Counsel for the respondent agreed with this submission and conceded that the sentence imposed was disproportionate in the circumstances. Counsel for the respondent submitted that the appropriate sentence should be 1 year and 6 months and taking into account a discount for no previous offences, the sentence should be reduced by a further 3 months such that the appropriate sentence should now be 1 year and 3 months. Accordingly, the Court allowed the appeal against sentence and quashed the sentence imposed by the learned magistrate. The Court also had regard to the time served by the appellants and ordered that the sentences of each of the appellants should be reduced to time served and the appellants released. The Court was of the view that a written decision should be rendered in respect of the constitutional aspect of the appeal.

Case Name:

Luis Alfredo Machado Campos

v

The Commissioner of Police

[DOMMCRAP2024/0007]

(Commonwealth of Dominica)

Date: Thursday, 10th April 2025

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal

Appearances:

Appellant: Mr. Wayne Norde

Respondent: Ms. Marie Louise Pierre-Louis and Ms. Ellisianne Wilkins

Issues: Magisterial criminal appeal - Appeal against sentence
- Section 16(1) of the Drug (Prevention of Misuse Act) Cap. 40:07 of the Revised Laws of Dominica - Sentence of 7 years for the offence of drug trafficking and further 7 years for importation of cocaine to run consecutively
- Unconstitutionality of minimum sentence - Whether the mandatory minimum sentence imposed under section 16 of the drug (Prevention of Misuse) Act is unconstitutional as it violates section 5 of the Constitution by amounting to cruel and inhumane punishment, infringes the doctrine of separation of powers by depriving judicial officers of discretion, and results in disproportionate sentencing that faults to consider the gravity of the offence and the offender's culpability, necessitating its severance to the extent of its unconstitutionality - Whether the sentence of 7 years given by the learned magistrate was excessive - Mitigating factor of no previous offences to be taken into account in discounting sentence - Whether the sentence in the circumstances should be reduced to time served

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against sentence is allowed.
2. The sentence imposed by the learned magistrate is deemed to be excessive and is set aside.

3. The sentence of the magistrate is quashed.
4. The appellants are sentenced to time served and are eligible for immediate release.
5. The full written reasons with respect to the appeal will follow.

Reason:

Before the Court was a Magisterial Criminal Appeal against sentence. The notice of appeal filed on 13th November 2024 contained identical grounds for 5 out of the 6 appellants. The appellants sought to rely on 5 grounds of appeal, however at the hearing of the appeal, counsel for the appellants indicated that he wished to withdraw the first ground of appeal. The nub of counsel for the appellants' submissions was that the sentence of 7 years imposed by the learned magistrate was excessive and disproportionate. Counsel for the respondent agreed with this submission and conceded that the sentence imposed was disproportionate in the circumstances. Counsel for the respondent submitted that the appropriate sentence should be 1 year and 6 months and taking into account a discount for no previous offences, the sentence should be reduced by a further 3 months such that the appropriate sentence should now be 1 year and 3 months. Accordingly, the Court allowed the appeal against sentence and quashed the sentence imposed by the learned magistrate. The Court also had regard to the time served by the appellants and ordered that the sentences of each of the appellants should be reduced to time served and the appellants released. The Court was of the view that a written decision should be rendered in respect of the constitutional aspect of the appeal.

Case Name:

Osarumwense Barrecy Ibuze

v

The Police

[DOMMCRAP2023/0005]

(Commonwealth of Dominica)

Date:

Thursday, 10th April 2025

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal

Appearances:

Appellant:	Mr. Wayne Norde
Respondent:	Ms. Marie Louise Pierre-Louis and Ms. Ellisianne Wilkins

Issues: Magisterial criminal appeal - Appeal against sentence - Section 16(1) of the Drug (Prevention of Misuse Act) Cap. 40:07 of the Revised Laws of Dominica - Sentence of 7 years for the offence of drug trafficking and further 7 years for importation of cocaine to run consecutively - Unconstitutionality of minimum sentence - Whether the mandatory minimum sentence imposed under section 16 of the drug (Prevention of Misuse) Act is unconstitutional as it violates section 5 of the Constitution by amounting to cruel and inhumane punishment, infringes the doctrine of separation of powers by depriving judicial officers of discretion, and results in disproportionate sentencing that faults to consider the gravity of the offence and the offender's culpability, necessitating its severance to the extent of its unconstitutionality - Whether the sentence of 7 years given by the learned magistrate was excessive - Mitigating factor of no previous offences to be taken into account in discounting sentence - Whether the sentence in the circumstances should be reduced to time served

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against sentence is allowed.
2. The sentence imposed by the learned magistrate is deemed to be excessive and is set aside.
3. The sentence of the magistrate is quashed.

4. The appellants are sentenced to time served and are eligible for immediate release
5. The full written reasons with respect to the appeal will follow.

Reason:

Before the Court was a Magisterial Criminal Appeal against sentence. The notice of appeal filed on 13th November 2024 contained identical grounds for 5 out of the 6 appellants. The appellants sought to rely on 5 grounds of appeal, however at the hearing of the appeal, counsel for the appellants indicated that he wished to withdraw the first ground of appeal. The nub of counsel for the appellants' submissions was that the sentence of 7 years imposed by the learned magistrate was excessive and disproportionate. Counsel for the respondent agreed with this submission and conceded that the sentence imposed was disproportionate in the circumstances. Counsel for the respondent submitted that the appropriate sentence should be 1 year and 6 months and taking into account a discount for no previous offences, the sentence should be reduced by a further 3 months such that the appropriate sentence should now be 1 year and 3 months. Accordingly, the Court allowed the appeal against sentence and quashed the sentence imposed by the learned magistrate. The Court also had regard to the time served by the appellants and ordered that the sentences of each of the appellants should be reduced to time served and the appellants released. The Court was of the view that a written decision should be rendered in respect of the constitutional aspect of the appeal.