

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE
TERRITORY OF THE VIRGIN ISLANDS
28TH OCTOBER 2024- 1ST NOVEMBER 2024

JUDGMENTS

Case Name:

The Director of Public Prosecutions

v

[1] Dalianne Richardson

[2] Shanique Dwyer

[3] Shimmea Welsh

[4] Larsheka Gray

[ANUHCRA2020/0002]

(Antigua and Barbuda)

Date:

Tuesday, 29th October 2024

Coram for
Delivery

The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of
Appeal [Ag.]

Appearances:

Appellant:

Ms. Rashida Jonas

Respondents:

First and third respondents in person

No appearance for the second and fourth respondents

Issues:

Criminal appeal against sentence – Unlawful
wounding – Whether the award of compensation in the
sum of \$2,400 imposed by the learned judge was
unduly lenient – Whether the learned judge failed to
take into account relevant factors when awarding

and determining the level of compensation – Whether a higher award of compensation ought to have been ordered in the circumstances

Result/Order

IT IS HEREBY ORDERED THAT:

The appeal is dismissed and the decision of the learned trial judge is affirmed.

Reason:

1. On an appeal against sentence the Court of Appeal will not vary a sentence merely because it might have passed a different sentence itself. In practice, the usual terminology used as the basis for the Crown's appeal against a sentence is that the sentence passed is unduly lenient. An unduly lenient sentence is one which falls outside the range of sentences which the judge applying his mind to all the relevant factors could reasonably consider appropriate. The appellant must demonstrate that the judge has committed a gross error of principle that takes the sentence outside the range of reasonable sentences and not merely that it is lenient.

Eastern Caribbean Supreme Court (Antigua) Act Cap.143 of the Revised Laws of Antigua and Barbuda applied; Attorney General's Reference No. 4 of 1989 followed.

2. When a court is contemplating ordering the payment of compensation, a number of factors must be considered which would inform whether a compensation order is appropriate in the first place, and, if so, the quantum. It is usual for the court to have before it, evidence from the VC which would show any loss occasioned as a result of the offence as well as evidence of the financial means of the defendants. The court must therefore satisfy itself on evidence that the offender has the means to pay compensation. Here, while the VC gave evidence of the injuries she sustained and their effects on her, there is no evidence that there was any inquiry directed to ascertaining the means of the respondents, and the appellant has not addressed this issue

at all in its written submissions before this Court. This 'means assessment' was critical because even if the nature and extent of the injuries might prima facie call for a higher level of compensation, that would have been subject to the ability of each respondent to pay more. The prosecution did not point the judge or this Court to the evidence that the respondents had the means to pay more than \$600 each. Therefore, the appellant has not discharged its burden of establishing that the sentence was unduly lenient as they have not been able to point to any evidence which was before the judge as to the financial means of the respondents at the time of sentencing that would have warranted her imposing a higher level of compensation in all the circumstances of the case.

R v Bragga (1989) 11 Cr. App. R(s) 497 followed.

3. The Court considered whether the matter should be remitted to the court below to reconsider the issue of the appropriate level of compensation. However, it has been six years since the offence was committed and four years since the respondents were sentenced. They have each paid the compensation ordered and served out their probation with no indication to this Court that they have re-offended or in any way breached the term of the probation order. Moreover, from the brief oral submissions made by the unrepresented respondents before this Court it would appear that they cannot afford to pay additional compensation should that matter fall to be explored. In these circumstances, it would be unfair to the respondents and not in the interest of justice to remit the matter to the High Court for rehearing on the compensation component of the order.

Case Name:

Sergey Taruta

v

VTB Bank
[BVIHCMAP2021/0029]
Consolidated with:
[BVIHCMAP2021/0043]
(Territory of the Virgin Islands)

Date: Thursday, 31st October 2024

Coram for Delivery: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard St.C Farara, Justice of Appeal [Ag.]
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Scott Tolliss
Respondent:	No appearance

Issues: Commercial appeal – Recognition of foreign judgment – Breach of natural justice in foreign proceedings - Evidential burden in breach of natural justice cases – Curing of breach of natural justice – Substantial justice - Whether the learned judge was correct in finding that there was breach of natural justice at the Russian Court - Whether the judge erred in law in finding that the breach of natural justice was cured by the proceedings before the Russian Appeal Court– Expert evidence on foreign law

Result/Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed in so far as the trial judge concluded that:
 - (i) the Russian appeals had a curative effect on the breach of natural justice; and
 - (ii) in the circumstances of this case, a breach of natural justice was capable of being material or immaterial.
2. The counter appeal is dismissed.

3. The order of the court dated 15th June 2021 for enforcement of the foreign judgment is set aside.
4. The injunction over the appellant granted on 26th May 2014, and continued and amended by orders dated 28th July 2014 and 12th August 2014 and continued until further order of the court, is discharged.
5. The appellant is awarded his costs in the court below and in the Court of Appeal, including the quantum appeal.
6. The respondent is directed to return any monies paid by the appellant pursuant to the order for a payment on account of costs made by the court on 29th June 2021.

Reasons:

1. The general common law rule is that a judgment in personam of a foreign court of competent jurisdiction could be sued on in TVI as creating a debt between the parties provided it is a judgment for a debt or definite sum of money and is final and conclusive. The propriety of the proceedings in the foreign court that are final and conclusive are not usually investigated, unless the proceedings in which the judgment was obtained were opposed to natural justice. Where there has been an allegation of breach of natural justice, the court must ensure that the proceedings align with the English notion of substantial justice. The court is required to evaluate whether the overall process was fair, not just whether the specific procedural rules were followed. In this case, the judge's decision to find a breach of natural justice due to the appellant's lack of notice was justified. The breach rendered the appellant unable to properly defend himself in the Russian proceedings, leading to fundamental unfairness in the process and there is no reason to interfere with the decision on this issue.

Jacobson v Frachon (1927) 72 Sol Jo 121, 138 LT 386, 44 TLR 103 applied; Adams v Cape Industries Plc [1990] Ch. 433 applied;

Pemberton v Hughes [1899] 1Ch 781 applied; Taruta v JSC VTB Bank BVIHCMAP 2021/0002 BVIHCMAP 2021/0008 BVIHCMAP 2021/0012 (delivered 2nd June 2021, unreported) applied.

- 2. There was no obligation on the appellant to pursue an available remedy to the alleged breaches of natural justice in Russia, however as the appellant did pursue a remedy in the appellate court, it was obligatory on the judge to consider all the proceedings conducted in Russia to determine whether in the proceedings that ultimately resulted in the judgment, the appellant received substantial fairness. There was no error of law in the judge's obligation to consider the effect of the appellate process on the fairness of the proceedings.**

Calvin v Carr [1980] AC 574 applied; Adams v Cape Industries Plc [1990] Ch. 433 applied.

- 3. The main focus of the court when faced with a defence to enforcement, should be on whether substantial justice was done in the foreign jurisdiction. The burden on a respondent in such circumstances where curing is alleged, would be to show how the subsequent proceedings effectively cured the breach, such that a TVI court could conclude that substantial justice was done. In this case, the respondent's pleadings, especially the reply to defence, lacked the necessary depth in addressing the specific allegations of a breach of natural justice.**

Halsbury Vol 11(2020) applied; Adams v Cape Industries Plc [1990] Ch. 433 applied.

- 4. A judge does not generally need expert assistance in order to understand and interpret an enactment or decision of a court of another English-speaking country whose law forms part of the common law. Generally however, whether the court will require evidence from an expert witness should depend on the nature of the issue and of the relevant foreign law. Given the**

active disputes over the implications of the appeal, it was inappropriate for the judge to independently interpret the provisions of the Russian Code of Civil Procedure and make conclusions about the appellant's appeal limitations. Independent expert guidance on the application of the Russian Code was essential in this case. This failure to seek such guidance has rendered the judge's conclusions regarding the appeal's curing effect unsafe. Therefore, the appeal on this ground should be allowed.

Macmillan Inc v Bishopsgate Investment Trust Plc (no. 4) [1999] C.L.C 417 applied; R (KV) v Secretary of State for the Home Department [2018] EWCA Civ 2483 applied; FS (Nile Plaza) LLC v Brownlie [2021] UKSC 45 applied; Perry v Lopag Trust [2023] UKPC 16 applied.

APPLICATIONS AND APPEALS

Case Name:

Michael Wilson & Partners Limited

v

**[1] Temujin International Limited
[2] Temujin Services Ltd
[3] Hakkisan Finance Corporation Limited
[4] Myrzaly Limited
[5] Incomeborts Limited
[6] Tigerkhan Limited
[7] Manty Investment Services Limited
[8] Fantara Company, Inc
[9] Diego Production Limited
[10] Aloasgas Holdings
[11] Tocantin Holdings
[12] Fuchs Capital Intertrade Ag**

and

Paul Pretlove
(in his capacity as the Court appointed receiver
of Hakkisan Finance Corp Ltd. and Myrzaly
Ltd.)

[BVIHCVAP2022/0007]
(Territory of the Virgin Islands)

Date: Monday, 28th October 2024

Coram: The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal
[Ag.]
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of
Appeal [Ag.]

Appearances:

Appellant/ Respondent:	Mr. Michael Wilson
Respondent/Applicant:	Mr. Shane Donovan

Issues: Application to strike out appeal for abuse of process and or want of prosecution - Failure by the appellant to file record of appeal and skeleton arguments in accordance with rules 62.11 and 62.12(3) of the Civil Procedure Rules 2000 - Length of delay - Whether the delay of 22 months in filing the record of appeal and skeleton arguments is inordinate - Reasons for delay - Appellant's failure to make an application for an extension of time or to provide any explanation for the default - Failure of appellant's legal counsel to attend CMC hearings in breach of court's order - Rule 22.3(1) of the CPR - Failure to pay receiver's costs pursuant to court's order - Whether appellant's conduct amounts to an abuse of process and or a failure to prosecute the appeal which is sufficiently serious to justify the appeal being struck out - Merits of the appeal - Whether appeal has a strong prospect of success - Prejudice to the applicant/receiver - Security for costs - Whether, in the alternative, the court should make a security for costs order against the appellant on the basis that the appellant does not carry on business in the BVI and does not have any employees

or assets in the jurisdiction - Whether a security for costs order is justified based on the appellant's non engagement with previous costs orders - Unless Order - Application, in the alternative, for an order that appeal be struck out unless the appellant takes certain steps to prosecute the appeal - Representation of appellant - Whether there was an application made to the court and permission received for Mr. Michael Wilson to be appointed as the legal representative of the appellant company in these proceedings - Application for a stay of proceedings

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. Mr. Michael Wilson is not properly authorised to appear today and to represent the appellant/respondent Michael Wilson & Partners Limited, in these proceedings.
2. The notice of appeal filed on 25th July 2022 is struck out for want of prosecution.
3. As a consequence, the application filed on behalf of the appellant for a stay of the proceedings on 28th July 2022 stands dismissed.
4. Costs of the application and costs in the appeal to the applicant, such costs to be assessed by a judge or master of the High Court if not agreed within 21 days from the date of this order.

Reason:

Before the Court was a notice of application filed on behalf of Mr. Paul Pretlove in his capacity as the court appointed receiver of the 3rd and 4th defendants. Mr. Michael Wilson had sought to represent the appellant company, Michael Wilson & Partners Limited, the respondent to the application, who is the appellant in the appeal in these proceedings.

It was clear from the record that the appellant company had not sought or obtained an order of the court for Mr. Michael Wilson to represent it in these proceedings pursuant to the stipulations of rule 22.3

of the Civil Procedure Rules (Revised Edition) 2023 (“the CPR”) which states that:

“a body corporate must be represented by a legal practitioner in all proceedings before the court unless the Court permits it to be represented by a duly authorised director or officer.”

Additionally CPR 22.3(2) states that:

“...permission to represent the body corporate should wherever practicable be sought at a case management conference or pre-trial review.”

The history of this matter disclosed that on several occasions at case management, orders were made for the appellant to satisfy the requirements of CPR 22.3 by making an application for a duly authorised director or officer to represent the appellant company in these proceedings. A number of those orders appeared as part of the hearing bundle in the matter. Notwithstanding the foregoing, no such application was made and there was no record of any order being made by the Court granting permission for Mr. Michael Wilson to represent the appellant company as duly authorised director or other officer of that company. In relation to that issue, it was not sufficient, as Mr Wilson sought to do, to point the Court to correspondence in which he sought to demonstrate that he was authorised to represent the appellant company. In the circumstances the Court ordered that Mr. Michael Wilson was not properly authorised to appear before the Court and to represent the appellant who was the respondent in the strike-out application in the proceedings.

The Court turned to the substantive application and the merits of that application which was filed by notice of application, dated 15th April 2024 by Mr Paul Pretlove in his capacity as the Court appointed receiver of third and fourth defendants. By that application, the applicant sought an order that the appeal be struck out as an abuse of process and/or be dismissed for want of prosecution, and the accompanying grounds were set out in the application. The notice of appeal in question which

sought to appeal against the orders of Jack J dated 18th July 2022 and 21st July 2022 was filed on 25th July 2022.

The Court considered the principles to be applied when determining an application to strike out a notice of appeal, which were set out in the case of Barbuda Council v The Attorney General et al Civil Appeal No. 12 of 1994 (delivered 15th January 2004, unreported) and further addressed in the decision of First Domestic Insurance Co. Ltd. v Industrial Enterprises Limited et al DOMHCVAP2014/0024 (delivered 27th May 2020, unreported). These principles are: i) the length of delay; ii) the reasons for the delay; iii) the merits of the appeal; and iv) the prejudice to the litigant.

The Court considered the written and oral submissions made on behalf of the applicant addressing each of the abovementioned principles. In relation to the length of the delay, the Court noted that the notice that the transcripts were ready for collection was issued, and also subsequent correspondence which indicated that the appellant had not only received the notice, but had also paid for and taken steps to obtain the transcript. Notwithstanding the foregoing, the appellant failed to file the record of appeal or submissions in support of the appeal. Accordingly, the Court was of the view that the length of the delay was inordinate.

As to the reasons for the delay, the Court noted that the sole issue raised on behalf of the appellant was that the transcripts were not available, but this was not supported by the documentary evidence before the Court. Accordingly, the reasons given for the delay were not satisfactory.

As to the merits of the appeal, the Court considered the grounds of appeal and submissions of counsel on behalf of the respondent/applicant and, the Court was not satisfied that the appeal had any merit.

With respect to the prejudice to the litigants, the Court considered the submissions of the respondent/applicant and was of the view that delay in prosecuting the appeal was inherently prejudicial to

the respondent/applicant. Accordingly, the Court determined that the respondent/applicant had made out a good case for the notice of appeal to be struck out.

Case Name:

**[1] Intimere Holdings Limited
[2] Hellicorp Investments Limited**

v

Katina Papanikolaou

**[BVIHCMAP2022/0031]
(Territory of the Virgin Islands)**

Date:

Monday, 28th October 2024

Coram:

**The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal [Ag.]**

Appearances:

Appellants:

Mr. Paul Fradley with him Mr. Andre McKenzie

Respondent:

Mr. Paul Chaisty KC with him Mr. Richard Evans and Ms. Jane Fedotova

Issues:

Commercial appeal - Inspection of company records - Section 100 of the BVI Business Companies Act, Act 16 of 2004, as amended - Appeal against judge's order requiring disclosure of "unredacted copies of the engagement letters provided to Conyers by letter dated 28th February 2022 and contained in the hearing bundle at Tab 20" - Inspection of company records for improper purpose - Whether the judge erred in law in finding that the scheme of section 100 of the Act did not permit the court to refuse to make an order when satisfied that an applicant was acting for an improper purpose in bringing the application - Whether the judge ought to have concluded that in exercising the

court's discretion to order access to a company's documents and records, the court was required to consider whether the director was seeking the information for an improper purpose - Whether the judge ought to have concluded that the power of a director to inspect a company's records is vested in the director to enable them to carry out their duties to exercise reasonable care, skill and diligence – Whether the judge erred as a matter of fact in finding, to the extent that he made such a finding, that the respondent was acting for a proper purpose in bringing the application, in particular in seeking disclosure of the identity of the party funding the appellants and their subsidiaries in the litigation - Whether the judge ought to have considered that the respondent was closely connected to parties engaged in an unlawful means conspiracy against the appellants and their subsidiaries that the respondent was alleged to have played a role in the execution of that conspiracy, and that the respondent had previously sought privileged documentation on the application to which she was not entitled

Type of Order:

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

The King

v

[1] Pamphill Prevost

[2] Simon Power

[BVIHCRA2022/0001]
(Territory of the Virgin Islands)

Date: Monday, 28th October 2024

Coram: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of Appeal [Ag.]

Appearances:

Appellant/Respondent:	Mr. Sandip Patel KC
Respondents/Applicants:	Mr. Terrence Williams KC with him Ms. Kellee Gai-Smith

Issues: 1st respondent's application to dismiss appeal as an abuse of process - 1st respondent's application for unless order - Whether the delay in prosecuting the appeal was an abuse of the court's process and prejudiced the 1st respondent – Whether the delay in prosecuting the appeal infringed the Respondent's right to a fair trial within a reasonable time. Whether the appeal ought to be dismissed as an abuse of process - Whether, in the alternative, unless orders ought to be made to expedite the hearing of the appeal

Type of Order: Directions

Result/Order: IT IS HEREBY ORDERED THAT

1. The Director of Public Prosecutions shall file and serve her skeleton arguments and authorities in the appeal on or before 8th November 2024.
2. The respondents shall file and serve - their skeleton arguments and authorities in response, in the appeal on or before 22nd November 2024.
3. Unless the Director of Public Prosecutions files and serves -- her skeleton arguments and authorities within the timelines specified in paragraph (1) of this order the appeal shall stand dismissed.

Reasons:

Before the Court was the application by the 1st respondent filed on 22nd April 2024 for an order that the appeal filed by the Director of Public Prosecutions on 19th July 2022 against the 1st respondent's acquittal (a) be dismissed as an abuse of the court's process or alternatively that (b) unless the trial transcript is produced on or before 30th April 2024 and the appeal heard - on or before 31st July 2024 that the appeal be dismissed.

The grounds of the application are seven-fold namely that (1) the Honourable Court has an inherent jurisdiction to protect its purposes from abuse of process; (2) the applicant has the right to be afforded a fair hearing within reasonable time pursuant to section 16 of the Constitution; (3) there has been unreasonable delay in the hearing of this appeal and the overall disposal of the matter not attributable to the 1st respondent; (4) the 1st respondent has suffered prejudice; (5) it is within the powers of the Court to grant the reliefs sought; (6) it is just an equitable for the Court to grant the orders as prayed; and (7) the application is one of urgency.

The application was supported by the 1st respondent's affidavit filed on 22nd April 2024 in which he repeated the grounds for the application. He also set out the factual and chronological background to the application. He noted that he was acquitted at the end of two trials which ended, respectively, on 10th April 2019 and 14th March 2022.

The 1st respondent submitted that the delay, which he calculated as 9 years and ultimately 2 and a half years, in the overall disposal of the matter are inordinate, excessive and in breach of his fundamental rights and common law rights. He argued that he has endured financial hardships over the period of delay and has been unable to meet certain financial obligations and to some extent, unable to fund his legal representations. He submitted that by reason of the reduction in his salary which he described in his affidavit, that he has suffered prejudice during the period since he was charged with the offences and acquitted. Citing section 16(1) of the Constitution, the decisions in *R v Pigott* (2015) 88 WIR 299, *Tapper v*

DPP [2012] UKPC 26 and The Attorney General's Reference case [2004] 2 AC 72, he contended that the appellate proceedings have been inordinately and unjustifiably delayed resulting in prejudice to him. He submitted that as a result of the delay, the Court should find that the delay is an abuse of the Court's process and a constitutional breach of his right to due process within a reasonable time.

He initially contended that that would justify a dismissal of the appeal but he has since resiled from that position and is now seeking that the Court grant the declaration indicating what he alleges to be a breach of section 16 of the Constitution and make orders expediting the hearing.

Counsel for the appellant opposed the application and argued that the delay has not been excessive. He accepted that the timelines for filing the skeleton arguments - have elapsed and that the appropriate remedy would be issuance of such timelines to result in an expeditious hearing of the appeal.

Two issues arose for the determination -, namely whether the Crown's delay in prosecuting the appeal has infringed the 1st respondent's constitutionally protected right to a fair hearing within a reasonable time (as per section 16 of the Constitution) or is otherwise an abuse of the Court's process and if so, to what remedy would the applicant be entitled. The Court noted that the 1st respondent was no longer seeking a dismissal of the appeal in light of the filing of the record of the appeal on 19th and 20th June 2024 and has conceded that it is not an appropriate remedy. Therefore the Court does not need to engage with that aspect of the application at - this juncture or at all.

Having considered the factual background, the written and oral submissions and the authorities of R v Pigott (2015) 88 WIR 299, Tapper v DPP [2012] UKPC 26 and The Attorney General's Reference case [2004] 2 AC 72, the Court noted that a case has been made out which is distinguishable on the facts from those precedents. The Court was satisfied that the delay was not inordinate and did not warrant the making of a declaration that the 1st respondent's constitutional

right to a fair trial within a reasonable time under section 16 of the Constitution has been breached or that it has otherwise been an abuse of the Court's process. The Court is further satisfied that the justice of the case warrants only that the hearing of the appeal be expedited by the issuance of timelines for the filing of skeleton arguments.

Case Name:

Vladimir Niyazov
v
[1] Agon Litigation
(a legal entity, partnership or
unincorporated body)
[2] Arabella Di Iorio

[BVIHCMAP2024/0005]
(Territory of the Virgin Islands)

Date:

Monday, 28th October 2024

Coram:

The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of Appeal [Ag.]

Appearances:

Applicant: **In Person**
Respondent: **No appearance**

Issues:

Application for leave to appeal - Application for an order to stay the execution until determination of the proposed appeal - Whether the applicant has good prospects of success on appeal - Scandalous and irrelevant affidavit content

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Unless the applicant submits an amended application for leave to appeal and an amended affidavit in support in which all scandalous, offensive and irrelevant references and**

allegations against the judge are entirely excised therefrom on or before the 4th November 2024, the application for leave shall stand dismissed.

2. The Chief Registrar shall list the application for leave to appeal for review before a single judge of the Court of Appeal to determine whether it is compliant with the order made at paragraph 1 of this Order.

Reason

Before the Court was an application for leave to appeal filed on the 19th February 2024 against the Order of Wallbank J dated 1st February 2024 for costs assessment pursuant to two orders of the Court of Appeal dated 12th October 2022 and 26th May 2023 in BVIHCMAP2021/0038 and BVIHCMAP2016/0187. In the event the Court grants leave to appeal, the applicant seeks a stay of execution of the 1st February 2024 Order. The application is supported by an affidavit.

In perusing the application and supporting affidavit, the Court could not ignore the fact that both documents contain extremely scandalous and salacious allegations and assertions which impugn the character and integrity of the learned High Court Judge who is accused of dishonesty, judicial misconduct, criminal fraud and misfeasance in public office. The court regarded these matters as exceedingly abusive of the court's process. The court decided that it will not entertain the application in its current form unless and until the applicant removes each and every scandalous and offensive allegation against the learned judge contained in the application for leave and supporting affidavit and where so ever else they occur in any documents filed in support of the application.

Case Name:

**Ikon Shina Ltd. (formerly Nokian Shina
LLC)**

v

Olga Borisonvna Symshliaeva

**[BVIHCMAP2022/0073]
(Territory of the Virgin Islands)**

Date: Monday, 28th October 2024

Coram: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Andrew McCleod with him Mr. Iain Tucker and Ms. Cate Barbour

Respondent: No appearance

Issues: Commercial appeal - Enforcement of foreign judgment – Whether the court erred in concluding that he was required to evaluate the two rulings of the Russian Court separately - Whether the court erred in concluding that the Russian ruling of June 2019, did not constitute a judgment enforceable by the appellant against the respondent - Whether the learned judge conflated the concept of a foreign judgment that gives rise to a debt enforceable by a claim in the domestic court with instrument recording such judgment - Whether the learned judge erred in finding that the appellant’s claim could only succeed if both the March and June Rulings were found to have ordered the respondent to pay the appellant a definite and ascertainable sum of money - Assignment of debt - Whether the learned judge failed to give sufficient consideration to the appellant’s case that the June Ruling had the effect of assigning the debt created under the March Ruling to the appellant

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Ng Min Hong

v

Somarli Lie

**[BVIHCMAP2023/0028]
(Territory of the Virgin Islands)**

Date:

Monday, 28th July 2024

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]
The Hon. Mr. Darshan Ramdhani, Justice of Appeal [Ag.]**

Appearances:

Appellant:

**Mr. Hermann Boeddinghaus KC with him Ms. Kate Lan
and Mr. James Noble**

Respondent:

**Mr. Mathew Hardwick KC with him Mr. André
Sheckleford, Mr. Richard Evans and Ms. Alecia George**

Issues:

Commercial Appeal - Appeal against the order of the learned judge that the appellant should buy out the respondent's shares and to make an interim payment on account of the respondent's costs - Whether the learned judge impermissibly fettered his core judicial responsibility in the context of the valuation exercise - Whether the learned judge impermissibly constrained the scope of his judicial mandate by addressing solely the limited question of where within the range of US\$114 million to US\$154 million it would be appropriate to determine the price of the shares - Whether the learned judge failed to consider whether the Range of US\$114 million to US\$154 million was appropriate in the first place by ignoring the remaining steps of the valuation process - Whether the learned judge failed to critically scrutinize the expert valuation evidence, particularly the credibility of the expert witness - Whether the learned judge erred by directing technical questions as it relates to the valuation process at counsel for the respondent instead of the expert - Whether the learned judge inappropriately

applied adverse inferences in the valuation trial -
Whether the learned judge gave inadequate and
incomplete reasons for his findings when he issued
his ex tempore judgment

Type of Order:

N/A

Result / Order

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

**Golden Meditech Stem Cells (BVI) Company
Limited**

v

**[1] Blue Ocean Creation Investment Hong
Kong Limited**

**[2] Blue Ocean Structure Investment
Company Ltd**

**[BVIHCMAP2023/0022]
(Territory of the Virgin Islands)**

Date:

Tuesday 29th - Wednesday, 30th October 2024

Coram:

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

**The Hon. Mde. Petra Nicola Byer, Justice of Appeal
[Ag.]**

**The Hon. Mr. Darshan Ramdhani, Justice of Appeal
[Ag.]**

Appearances:

Appellant/Respondent:

**Mr. Ben Valentin KC with him Mr. John Carrington KC
and Ms. Reisa Singh**

Respondents/Applicants:

Mr. David Chivers KC with him Ms. Hilary Stonefrost

Issues: Application to adduce fresh evidence - Whether the the Judgment of Justice Linda Chan in China Stem Cells Holdings Limited v Zheng Ting & Ors [2024] HKCFI 481 dated 8th February 2024 (the “HK Judgment”) should be admitted as evidence in the appeal in accordance with the principles in Ladd v Marshall [1954] 1 WLR 1489 and/or in the exercise of the Court’s discretion in its inherent jurisdiction - Whether evidence that did not exist at the time of the trial or a change in circumstance post- trial could be evidence adduced before the Court of Appeal - Whether the New Evidence Application falls foul of the well-established principles derived from Hollington v F Hewthorn & Co Ltd [1943] KB 587 - Whether the relevant “finding” in the HK Judgment is admissible in these proceedings as a matter of law - Whether the HK Judgment can be regarded as cogent evidence - Whether the HK Judgment provides findings from which an issue of estoppel arises

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: Golden Meditech Stem Cells (BVI) Company Limited
v
[1] Blue Ocean Creation Investment Hong Kong Limited
[2] Blue Ocean Structure Investment LTD

**[BVIHCMAP2023/0022]
(Territory of the Virgin Islands)**

Date: Tuesday 29th - Wednesday, 30th October 2024

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Petra Nicola Byer, Justice of Appeal [Ag.]
The Hon. Mr. Darshan Ramdhani, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Ben Valentin KC with him Mr. John Carrington KC and Ms. Reisa Singh

Respondents: Mr. David Chivers KC with him Ms. Hilary Stonefrost

Issues: Commercial appeal - Appeal against grant of summary judgment application and dismissal of Re-Amendment application - Apparent authority - Test for summary judgment - Whether the learned judge failed to apply the correct test for summary judgment - Whether the learned judge erred in reaching his decision that the defence did not disclose any proper ground for defending the claim - Whether the learned judge applied a rigid assessment as to whether there was actual authority without any regard to the parties' prior dealings and insufficient regard to the terms of the Partnership Agreement governing Ying Peng - Whether the learned judge failed to adequately render qualitative assessment to each of the 4 principles in finding apparent authority application per Freeman & Lockyer v Buckhurst Part Properties (Mangal) Ltd [1964] QBD 480 at 503 in the context of a summary judgment

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: [1] Amstel Investment Holdings Limited
[2] Christopher Stuart McKenzie

**[3] Cavendish Management Enterprises
Limited**

v

[1] AMS Holdings Limited

[2] Circle Capital Limited

[3] Sukru Evrengun

[BVIHCMAP2024/0002]

(Territory of the Virgin Islands)

Date: Tuesday, 29th- Wednesday, 30th October 2024

Coram: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Alex Hall Taylor KC with him Mr. Simon Hall and Mr. Tom Roscoe

Respondents: Mr. Ben Woolgar with him Ms. Tameka Davis and Mr. Andre Sheckleford

Issues: Commercial Appeal – Appeal against the order of the learned judge granting fixed date claim and dismissing ancillary claim – Whether the learned judge erred in granting the fixed date claim disregarding the agreed expert evidence that the debt-for-equity swap was at an undervalue – Whether the learned judge failed to decide what the proper value of the company was at the date of the debt-for-equity swap – Whether the learned judge erred in holding that the debt-for-equity swap caused by Mr. Evrengun to the company was for a proper purpose – Fiduciary duty - Whether the learned judge erred in finding that the granting by Mr. Evrengun of retrospective increases on the interest payable on loans made for his benefit in breach of his fiduciary duties - Whether the learned judge erred in failing to find that there had been unfair prejudice to Amstel by Mr. Evrengun on 31st May 2018 unilaterally and retrospectively causing the company to increase the interest payable on the debts – Whether the learned judge erred in law by assessing what could be deemed

commercially "reasonable" in a general sense, rather than specifically evaluating whether Mr. Evrengum breached his fiduciary duties to the company

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: [1] Mark Byers
[2] Matthew Richardson
(as Joint Liquidators of the below-named company)
[3] Pioneer Freight Futures Company Limited
(in liquidation)
v
Chen Ningning (also known as Diana Chen)

[BVIHCMAP2024/0009]
(Territory of the Virgin Islands)

Date: Tuesday, 29th October 2024

Coram: The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellants:	Mr. Tom Smith KC, with him Mr. Ben Griffiths
Respondent:	Mr. Victor Joffe KC, with him Ms. Marcia McFarlane

Issues: Commercial appeal - Insolvency - Director's duties upon insolvency - Common law creditor interest duty - Director's fiduciary duty to take into account the interests of a company's creditors when considering a

company's acts once the company is in the 'zone of insolvency' - Breach of fiduciary duty by director - Determination by the Judicial Committee of the Privy Council (the "Privy Council") of the issue whether the respondent, as director, acted in breach of any fiduciary duty when US\$13 million was transferred from Pioneer Freight Futures Company Limited (the "company" or "PFF") to a third party, Zenato Investments Ltd, (the "Zenato loan" or "Zenato payments") shortly before the company entered into provisional liquidation - Finding by Privy Council that the respondent owed fiduciary duties to PFF at the time of the repayment of the Zenato loan and her failure to intervene to prevent that repayment amounted to a breach of those duties - Further finding by the Privy Council that all issues concerning what sums, if any, the respondent must pay to the appellants in respect of or arising from her breaches of fiduciary duty to PFF in relation to the Zenato payments be remitted to the High Court for decision - Application by appellants in lower court to determine outstanding issues of quantum, including an order that the respondent pay sums totaling USD 13 million, plus interest (the "quantum application") - Dismissal of the quantum application by the judge - Whether the judge erred in finding that PFF was not entitled to an order for payment by the respondent on the basis that: (a) PFF suffered no loss by reason of the Zenato payments; and (b) there was no basis for the imposition of liability on the respondent - Alternatively, whether the judge erred in finding that the Privy Council excluded the need to address the question of whether the respondent derived a reputational benefit from the making of the Zenato payments and consequently it was not necessary for the judge to investigate that issue (the "reputational benefit issue") - Whether the Privy Council's ruling did not preclude the reputational benefit issue from being relevant to any further determination in the proceedings or from being determined at a future stage in the proceedings - Whether the decision of the judge in relation to the reputational benefit issue was manifestly unfair to the appellants as it precluded them from pursuing an alternative avenue towards substantive relief

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: **Victorija Fetaimia**
v
[1] Albert Court (Westminster) Management
Company Limited

[2] Dondore Incorporated (In Liquidation)

[BVIHCMAP2020/0018]
(Territory of the Virgin Islands)

Date: Thursday, 31st October 2024

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard St.C Farara, Justice of Appeal
[Ag.]
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of Appeal [Ag.]

Appearances:

Appellant/Respondent: In person

Respondents/Applicant: Mr. Jonathan Addo with him Mr. Mark Wells and Mr. Gerrard Tim for the first respondent/applicant

Ms. Chassidy Leonard holding a watching brief for the second respondent

Mr. Andrew Emery holding a watching brief for the trustee in bankruptcy

Issues:

Application for stay - Application for security for costs - Application for Unless Order - Application to clarify the locus standi of the appellant - Application for striking out notice of appeal - Application for adjournment - Whether the application to strike out the notice of appeal was necessary in light of the order of the Court dated 31st July 2024 where Court found that the appellant lacked the relevant locus standi to pursue the appeal

Type of Order:

Oral Decision

Result/Order:

IT IS HEREBY ORDERED THAT:

Consequent upon the Court's determination made in the order made on 31st July 2024:

- 1. The appeal filed on 1st December 2020 is struck out and dismissed.**
- 2. The counter-appeal filed on 4th August 2022 is withdrawn and dismissed.**
- 3. The issue of costs consequent upon this order is adjourned for determination by this Court on papers following a review and consideration of submissions filed by the parties in the following manner:**
 - i. The first respondent/applicant shall file and serve legal submissions addressing the issue of costs on or before 22nd November 2024.**
 - ii. The appellant/respondent shall file and serve legal submissions in response on or before 31st December 2024.**
 - iii. The first respondent/applicant shall file and serve submissions in reply, if necessary, on or before 15th January 2024.**
- 4. The application for adjournment filed on 29th October 2024 and the application seeking a stay and/or clarification of the locus standi order filed on 22nd October 2024 stand dismissed.**

5. All the other applications listed for determination equally fall away.
6. Reasons will be provided in a formal order to be issued by the Court.

Reasons:

Before the Court were several applications for determination in relation to the notice of appeal filed by the appellant/respondent on 1st December 2019, particularly: (i) an application filed by the first respondent/applicant to stay the appeal dated 1st December 2020 until the appellant/respondent satisfies in full the costs orders owed to the first respondent/applicant in the sum of \$571,439.70 plus interest, security for costs in respect of the appeal in the sum of \$100,000.00 and an unless order that the appellant/respondent be debarred from being heard unless the appellant/respondent pays the outstanding costs orders, (ii) an application filed on 28th October 2024 by the first respondent/applicant to strike out the notice of appeal filed by the appellant/respondent on 1st December 2019 on the basis that pursuant to the order of this Court dated 31st July 2024 the appellant/respondent does not have any standing to bring the appeal and (iii) an application filed by the appellant/respondent on 22nd October 2024 to clarify the locus standi of the appellant/respondent and essentially, to appeal the order of 31st July 2024 where the Court found that the appellant/respondent lacked the relevant locus standi to pursue the appeal.

The Court noted the order of this Court dated 31st July 2024 in which the Court found that the appellant did not have the relevant locus standi to pursue the appeal against the order of the High Court dated 19th November 2024 and therefore as it stood, the appellant did not have standing proceed with the appeal. Having heard submissions from both parties, and upon noting that the Trustee had no interest in pursuing the appeal, the Court determined that consequent to the Court's determination made in the order of this Court dated 31st July 2024, the appeal filed on 1st December 2020 should be struck out and dismissed.

The application for adjournment filed on 29th October 2024 and the application seeking a stay and/or clarification of the locus standi order filed on 22nd October 2024 stood dismissed. As a result, all the other applications listed for determination fell away.

Counsel for the respondent/applicant indicating that his client was prepared to withdraw and discontinue the counter appeal filed on 4th August 2022, the Court determined that the counter appeal should be withdrawn and dismissed.

The issue of costs on the application was adjourned to be determined on papers with directions that the parties file submissions on the issue.

The Court indicated that a formal order with elaborated reasons for the Court's decision will be issued at a later date.

Case Name:

Charlotte Brodie

v

Henry Brodie

[BVIHCVAP2024/0006]

(Territory of the Virgin Islands)

Date:

Thursday, 31st October 2024

Coram:

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

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

**The Hon. Mde. V. Georgis Taylor-Alexander, Justice of
Appeal [Ag.]**

Appearances:

Appellant:

Mr. Teertha Gupta KC with him Ms. Marie Lou Creque

Respondent:

**Mr. Alex Verdan KC with him Mrs. Asha Johnson-
Willins**

Issues:

Civil Appeal - Application to remove children from jurisdiction to the United Kingdom - Whether judge erred in treating the application as an application to remove the children to the UK permanently rather than for the limited purpose of education - Whether there was insufficient factual details upon which the judge could base her decision to treat the application as one concerning international relocation - Whether the judge accorded too much weight to the previous parenting agreement between the parties - Whether judge failed to consider the best interests of the children at the time of her decision - Whether the learned judge's decision interferes with the appellant's right to family and private life and right to freedom of movement pursuant to the European Convention of Human Rights and sections 9(c) and 18 of the Constitution

Type of Order:

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Geminis Investors Limited

v

**Goods Technology Starting International
Limited**

[BVIHCMAP2022/0020]

Consolidated with

Geminis Investors Limited

v

**[1] Goods Technology Starting International
Limited**

[2] G-Force International Co. Ltd.

[BVIHCMAP2022/0043]

(Territory of the Virgin Islands)

Date: Thursday, 31st October 2024

Coram: The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mde. Petra Nicola Byer, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Oliver Clifton with Ms. Colleen Farrington and Ms McKay Drigo

Respondents: Ms. Angeline Welsh KC with Ms. Sophia Hurst and Ms. Sara-Jane Knock

Issues: Commercial Appeal - “Statutory Demand Appeal” - Insolvency - Liquidation - Statutory Demand - Application to set aside statutory demand - Section 156 of the Insolvency Act, 2003 (“the Act”) - Whether the judge erred in dismissing the application to set aside the statutory demand finding that there was no substantial dispute within the meaning of section 157(1) of the Act - Judge’s interpretation of the Notes - Whether the judge erred in finding that the statutory demand did not act as a default notice within the definition specified in the Default Repayment provision under the Events of Default section in the Notes - Whether the judge erred in finding that the definition of a Non-payment Event of Default applied only to non-payment of ongoing principal and interest, and that the Events of Default provisions (and any other relevant provisions) under the Notes ceased to have any effect upon the maturity of the Notes - Whether the judge erred in his interpretation of the Notes as the Notes were governed by the law of the state of New York and the judge did not have before him the benefit of foreign law evidence - Whether the judge erred in failing to conduct an adequate inquiry into the appellant’s payment of US \$744,000 in principal and interest payments to the respondent as well as the *in specie* transfer of the Evenstar Shares valued at a net asset value (NAV) of US\$4,945,801 which collectively should have equaled or exceeded the amount specified in the statutory demand

Commercial appeal - “Substantive appeal” - Extension of time to file defence - Default judgment - Whether the judge erred in dismissing the appellant’s application for an extension of time to file and serve its defence - Whether the judge erred in entering default judgment against the appellant - Principles governing the grant of default judgment - Reasonable prospects of success - Whether the judge erred in finding that the appellant did not have a reasonable prospect of success in defending against the claim and therefore there was no purpose in granting the extension of time application unless this Court allowed the appeal against the judge’s refusal to set aside the statutory demand

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment reserved.

Case Name: [1] Sancus Financial Holdings Limited
[2] Carson Wen
[3] Julia Yuet Shan Fung
v
Chad Christopher Holm
[BVIHCMAP2023/0025]
(Territory of the Virgin Islands)

Date: Friday, 1st November 2024

Before: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. V. Georgis Taylor Alexander, Justice of Appeal [Ag.]
The Hon. Mr. Darshan Ramdhani, Justice of Appeal [Ag.]

Appearances:

Appellants: No appearance for the first appellant

**Second appellant in person
Third appellant in person**

Respondent: Mr. Robert Levy KC with him Mr. Oliver Clifton and Ms. Colleen Farrington

Issues: Commercial appeal - Damages - Assessment of interim damages to be paid to respondent - Whether the judge erred in law in 'working backwards' when analyzing whether the interim payment sought was a reasonable proportion of the overall amount of damages which the respondent is likely to obtain at trial - Whether the judge erred by failing to take into account as relevant to the exercise of determining whether an interim payment of damages should be made and could be assessed, the respondent's refusal to plead or state his case on loss - Whether the judge erred by disregarding the need for the respondent to show (as at the date of hearing) that he had already suffered loss as a matter of causation - Whether the judge erred by failing to consider the evidence by the appellants that they could not afford to pay damages in the amount sought - Whether the judge erred by failing to consider the prejudice to the appellants in making the interim damages order - Whether the judge's award of interim damages to the respondent was blatantly wrong –

Application to lift stay of execution short served on litigants in person - Court adjourning the application to be heard before a single judge

Type of Order: N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The appeal by the first appellant against the respondent is withdrawn and discontinued.**
- 2. The first appellant shall pay the costs of the appeal to the respondent to be assessed by a**

judge of the Commercial Court if not agreed within 21 days of the date of this order.

- 3. The application to lift the stay of execution filed on 30th October 2024 is adjourned for hearing before a single judge of the Court in Chambers on 19th November 2024.**
- 4. The parties shall file and serve written submissions with authorities in relation to the application on or before 12th November 2024.**
- 5. Judgment in respect of the appeal by the second and third appellants is reserved.**

Reason:

The appellants on 14th February 2024 lodged an interlocutory appeal against the commercial judge's order of 20th September 2023 in which he ordered the appellants to make an interim payment on the amount of damages due in the sum of \$16.5 million within 21 days of the date of the order.

By order dated 23rd January 2023 this court granted stay of execution of the commercial judge's order.

The respondents filed an application to lift that stay of execution on 29th October 2024.

The Court noted that the first appellant filed a notice of discontinuance of the appeal on 31st October 2024. The appeal by the first appellant was therefore withdrawn and discontinued against the respondent with costs to the respondent.

The second and third appellants, however, continued with their appeal against the respondent.

The Court noted that the application to lift the stay was short served on the appellants who appeared as litigants in person.

The Court was of the view that the application should therefore be adjourned and listed for hearing before a single judge.

Case Name:

**Elmo Conner Jr.
v
Anyelina Mejia Villa**

**[BVIHCVAP2022/0014]
(Territory of the Virgin Islands)**

Date:

Friday, 1st November 2024

Coram:

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

Appearances:

Appellant/Respondent: Mr. Daniel Fligelstone Davis

Respondent/Applicant: Ms. Ruthilia Maximea

Issues:

Application to strike out appeal - Failure of the appellant to comply with rules 62.7(2) and 62.5(1)(c) of the Civil Procedure Rules, 2000 - Notice of appeal not served on respondent within 14 days as per CPR 62.7 - Whether appeal should be struck out due to the appellant's failure to file the notice of appeal within 42 days - Notice of appeal filed one day out of time - Reason for delay - Failure of appellant to seek an extension of time to file the notice of appeal or for notice of appeal to be deemed properly served - Whether appeal should be struck out for want of prosecution

Application deeming notice of appeal duly served - Delay of 5 months in serving notice of appeal - No explanation why notice of appeal was not served on the respondent - Whether appeal likely to succeed - Prejudice to the appellant- Whether appellant would suffer great prejudice if the application is not granted - Application for an order granting extension of time to file record of appeal - Whether, in the alternative, parts of the affidavit in support of the application to strike out appeal should be struck out for abuse of

process - Rule 30.4(4) of the CPR - Whether paragraph 8 of the affidavit in support of the application to strike out the appeal is legal argument and should be struck out - Whether court should exercise its powers under CPR 26.9 to set matters right

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application to strike out the notice of appeal is granted.**
- 2. The notice of appeal is accordingly struck out.**
- 3. Costs awarded to the respondent/applicant in the sum of \$2000.00 to be paid within 21 days of today's date.**

Reason:

The notice of appeal filed on 13th December 2022 against the judgment of Jack J delivered on 31st October 2022, was one day out of time. There was no application for extension of time until 1st November 2024 where during the hearing of the matter an oral application for extension of time was made, which was 1 year, 10 months after the date on which the notice of appeal ought to have been filed. Accordingly, the Court dismissed that oral application and the notice of appeal was deemed to have been filed out of time.

Additionally, the notice of appeal was not served on the respondent within the requisite 14 day period in accordance with rule 62.7 of the Civil Procedure Rules 2000. The appellant did not satisfy the court with any of the criteria as set out in C O Williams Construction (St. Lucia) Ltd. v Inter-Island Dredging Co. Ltd SLUHCVAP 2011/0017, consequently the Court was of the view that the notice of appeal was not properly served and therefore the appeal was struck out.

The Court was also satisfied that the affidavit in support of the application to strike out appeal deposed by Shawn Smith and exhibits mentioned therein was properly filed.

Case Name:

[1] Elvin Hodge
[2] Ethelyne Hodge King
v
The Registrar of the High Court

[BVIHCVAP2024/0002]
(Territory of the Virgin Islands)

Date:

Friday, 1st November 2024

Coram:

The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Gerard St.C Farara, Justice of Appeal [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Applicants: Ms. Marie-Lou Creque and Ms. Nia Belgrave

Respondent: Ms. Shonice Warner and Ms. J’Nae Hopkins

Issues:

Application for order to direct Registrar to state a case
- Rules 61.2(1) and (2) (b) Civil Procedure Rules (Revised Edition) (2023) (“CPR”) - Whether the respondent ought to be directed to state a case in relation to her decision made in probate proceedings by the applicants - Whether the Court of Appeal has the requisite jurisdiction to hear and determine matters in probate proceedings by way of case stated under part 61 of the CPR - Grant de bonis non administratus - Notice to caveator - Rules 61 and 62 Eastern Caribbean Supreme Court (Non-Contentious Probate and Administration of Estates) Rules, 2017 (“Probate Rules”) - Whether a caveator ought to be placed on full notice where the caveat has expired - Whether a court application is required to strike out the acknowledgement of service in order for the probate application to continue - Whether an advertisement is to be placed in a newspaper prior to the issuance of a grant de bonis non administratus

Type of Order:

Directions

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The Notice of Appeal filed on 30th January 2024 to be amended, filed and served on or before the 8th November, 2024.**
- 2. The appellants to file and serve amended submissions on or before 15th November, 2024.**
- 3. The respondent to file and serve amended submissions in reply on or before the 29th November, 2024.**
- 4. The matter is adjourned to the next sitting of the Court of Appeal for the Territory of the Virgin Islands scheduled in the week commencing 24th March 2025 or on in the alternative a date to be fixed by the Chief Registrar.**

Reason:

The Court was cognizant of rules 61 and 62 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 (“CPR”) as well rules 61, 62 and 63 of the Eastern Caribbean Supreme Court (Non-Contentious Probate and Administration of Estates) Rules, 2017. The court was of the view that an application by way of case stated addresses ambiguous legal issues that are central to the case , and it considered whether the matter before it warranted such an application. The Court was of the view that the matter before the Court should be heard as a substantive appeal under part 62 of the CPR. Counsel for the appellants indicated her willingness to file an amended Notice of Appeal in accordance with Part 62 of the CPR.