

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE
MONTSERRAT

Monday 25th November 2024 – Thursday 28th November 2024

		<u>JUDGMENTS</u>
Case Name:		Allen Chastanet v [1] Comptroller of Customs [2] Paul Noel [SLUHCVAP2023/0025] (Saint Lucia)
Date:		Tuesday, 26th November 2024
Coram for delivery:		The Hon. Mr. Trevor M. Ward, Justice of Appeal The Hon. Mr. Eddy D. Ventose, Justice of Appeal The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. Garth Patterson KC with Ms. Tanya Alexis Francis
	Respondents:	Mr. Seryozah Cenac
Issues:		Application for conditional leave to appeal to the Caribbean Court of Justice – Section 108(1)(c) of the Constitution of Saint Lucia – Appeal as of right – Whether leave to appeal ought to be granted as of right to the CCJ – Application test - Whether decision sought to be appealed is a final decision - Section 108(2)(a) of the Constitution – Great general or public importance or otherwise – Whether the intended appeal raises questions of great general or public importance or otherwise ought to be submitted to the CCJ for determination

Type of order:		Judgment
Result/Order:		IT IS HEREBY ORDERED THAT: 1. The application filed 17th May 2024 for leave to appeal to the Caribbean Court of Justice pursuant to section 108(2)(a) of the Constitution of Saint Lucia from the decision of the Court of Appeal dated 17th April 2024 is granted on the following conditions: (a) The applicant shall, within a period not exceeding ninety (90) days of the date of this judgment provide security for costs which the applicant may become liable or be ordered to pay in an amount not exceeding EC\$7,500.00; and (b) The applicant shall provide to the Chief Registrar within a period not exceeding ninety (90) days of the date of this judgment a list proposing the documents which should be included in the record of appeal. 2. Upon compliance with the conditions herein stated, the Chief Registrar shall issue a Certificate of Compliance in conformity with Form 2A, Schedule 5 of the Caribbean Court of Justice (Appellate Jurisdiction Rules), 2024 and within 7 days of its issue serve copies of the said Certificate on the applicant and the intended respondents and shall notify the Registrar of the Caribbean Court of Justice. 3. Costs of the application to be in the appeal to the Caribbean Court of Justice.
Result:		1. Section 108(1)(c) provides for appeals as of right from decisions of the Court of Appeal to the CCJ. To qualify as an appeal as of right, the decision of the Court of Appeal sought to be appealed must be a 'final' decision in a civil or criminal matter. In the instant matter, the decision of the High Court refusing the application to commence judicial

review proceedings was clearly interlocutory, as it concerned an application under Part 56.3 of CPR 2000 for leave to commence judicial review proceedings. It is not a substantive claim or proceeding to decide upon the merits of a claim for judicial review under rule 56.7 of the CPR 2000. It did not determine and could not have been determinative of the underlying merits of the dispute or judicial review claim. The said application below dealt with the question of whether the applicant had met the threshold test for the grant of permission to commence judicial review proceedings and to have the merits of that claim determined after a full hearing of the matter. Likewise, what was before the Court of Appeal was an appeal from the refusal of the decision of the lower court on the said interlocutory application. Applying the application test, the COA Judgment was not determinative of the merits of the substantive dispute between the parties. The decision of the Court of Appeal was a decision from an interlocutory judgment, which, if it had been decided in favour of the applicant, would have resulted in leave being granted for the substantive issues to be heard and determined by the lower court. This matter was therefore distinguishable from the issues which arose in decisions of the Judicial Committee in such cases as *Chhina v Ismail and another*, *Jacpot Ltd v Gambling Regulatory Authority* and *Meyer v Baynes*. Consequently, the COA Judgment was an interlocutory decision, and not a final decision giving rise to the applicant having an appeal as of right to the CCJ under section 108(1)(c) of the Constitution.

Wycliffe H. Baird v David Goldgar et al SKBHCVAP2019/0038 (delivered 15th April 2024, unreported) distinguished; *Meyer v Baynes* [2019] UKPC 3 distinguished; *Chhina v Ismail and another* [2024] 1 WLR 2459 distinguished; *Jacpot Ltd v Gambling Regulatory Authority* [2018] UKPC 16 distinguished.

2. The phrase 'great general or public importance' in section 108(2)(a) of the Constitution refers to

serious issues 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. Thus, leave to appeal should not be granted where, upon a proper analysis, there is no genuine dispute or uncertainty as to the applicable principles of law or as to the correct interpretation of an applicable constitutional or statutory provision. In such circumstances, a question of great general or public importance does not ordinarily arise, and the application ought to be refused by the Court of Appeal. Furthermore, where the real question on the proposed appeal concerns the way the Court of Appeal has applied settled law or principles to the particular facts of the case, or whether the lower court's judicial discretion was properly exercised when applying such settled and clear principles, leave to appeal would not ordinarily be granted.

Renaissance Ventures Ltd et al v Comodo Holdings Ltd BVIHCMAP2018/0005 and BVIHCMAP2018/0008 (delivered 8th October 2018, unreported) followed; Siddiqui and others v Athene Holding Ltd (2019) 95 WIR 342 considered; Matalulu v DPP [2003] 4 LRC 712 considered; The Landings Proprietors Unit Plan No. 2 of 2007 v The Development Control Authority et al SLUHCVAP2019/0019 (delivered 6th October 2023, unreported) followed; Martinus Francois v The Attorney General Saint Lucia Civil Appeal No. 37 of 2003 (delivered 7th June 2004, unreported) followed; Emmerson International Corporation v Viktor Vekselberg et al BVIHCMAP2019/0020 (delivered 27th July 2023, unreported) followed.

3. In the instant matter, the proposed appeal and the decision of the Court of Appeal raised several serious legal and constitutional issues which have not had, but which could benefit from, the highest judicial pronouncement. It is not correct to say that the matter purely concerned whether the evidence adduced by the applicant in support of his application to the High Court for leave to commence judicial review proceedings met the threshold of an arguable case with some realistic

		prospect of success, or to say that the appeal was purely a challenge to the way in which the judge below exercised the discretion in determining the said application. While these were all important issues, interconnected with them were several serious issues of law or of mixed law and fact relevant to the determination of the said application and to the appeal itself. Examples of these issues included: the correctness in holding that the power of discontinuance can be implied under section 119 of the Act by virtue of the provisions of the Interpretation Act and/or the proviso to section 73(4) of the Constitution; the legal standard applicable to a review by the courts of the exercise of prosecutorial discretion by statutory functionaries such as the Comptroller of Customs, and whether such reviews ought to be circumscribed in the same way and to the same standard applicable to a review of such powers imbued in the constitutional office of the DPP; whether the Court of Appeal was wrong in concluding, as did the judge below, that, on the evidence the DPP had not taken over the prosecution of Dr. Hilaire; and whether it was not at least arguable that the DPP had taken over, in exercise of his constitutional powers, the prosecution of Dr. Hilaire, such that any exercise of such power, to the extent that it was or had been reposed in the Comptroller, had been completely foreclosed in relation to the said charges and prosecution, including any power to discontinue or to withdraw the charges. These are all issues of great general or public importance which ought to be submitted to the CCJ for its consideration and determination as to the correctness of the decision of the Court of Appeal. Consequently, the applicant has met the requirement for the grant of leave to appeal to the CCJ under section 108(2)(a) of the Constitution. Accordingly, it was unnecessary for the Court to go on to consider the 'or otherwise' limb of section 108(2)(a).
Case Name:		[1] The Development Control Authority [2] The Attorney General

		v Mondesir Estates Limited [SLUHCVAP2023/0020] Saint Lucia
Date:		Wednesday, 27th November 2024
Coram for delivery:		The Hon. Mr. Mario Michel, Chief Justice [Ag.] The Hon. Mr. Eddy D. Ventose, Justice of Appeal The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:		
	Appellants:	Mr. Anand Ramlogan SC with Mr. Jared Jagroo and Ms. Tia Austin
	Respondent:	Ms. Renee St. Rose
Issues:		Application to strike out the appeal – Appellants’ failure to file the record of appeal and skeleton arguments within 42 and 52 days respectively of receiving notice of the availability of the transcript - Application for an extension of time to file the record of appeal and skeleton arguments – Length of delay in filing the record of appeal and skeleton arguments – Reasons for the delay – Prospects of success of the appeal – Prejudice – Whether the appeal ought to be struck out owing to the appellants’ delay in filing the record of appeal and skeleton arguments – Whether an extension of time ought to be granted for the appellant to file the record of appeal and skeleton arguments - Costs – Departure from general rule that successful party shall have its costs
Type of Order:		Judgment
Result/Order:		IT IS HEREBY ORDERED THAT: 1. The application to strike out the notice of appeal filed by the respondent on 11th January 2024 is refused.

		2. The application by the appellants for an extension of time to file the record of appeal and the skeleton arguments is granted. 3. The record of appeal filed on 15th January 2024 and the skeleton arguments filed on 11th March 2024 are deemed properly filed. 4. The respondent shall have its costs on the application to strike out the notice of appeal and the application for an extension of time, such costs to be assessed by a judge or master of the High Court, unless agreed within 21 days of the date of this judgment.
Reason:		1. The Court has an inherent jurisdiction to guard against abuse by striking out appeals when litigants flout the rules or fail to pursue their appeals expeditiously, as well as the jurisdiction to grant an extension of time and put matters right. In determining concurrent applications to strike out an appeal and an extension of time to file the record of appeal and skeleton arguments, the court will consider the length of delay, the reasons for delay, the merits of the appeal and the prejudice to the litigants. The Barbuda Council v The Attorney General et al Antigua and Barbuda Civil Appeal No. 12 of 1994 (delivered 15th January 2004, unreported) followed; Wycliffe Baird v David Goldgar et al SKBHCVAP2019/0038 (delivered 22nd December 2023, unreported) followed. 2. What constitutes an inordinate delay is fact sensitive and differs from case to case. On the facts, there was a delay of 32 days in filing the record of appeal. This delay in and of itself was not inordinate. However, there was inordinate delay in the filing of the skeleton arguments, which were filed 74 days out of time. Contrary to counsel for the appellants' assertions, it would not be the proper approach to file the record of appeal only if an application for extension of time is granted. Even

though the appellants filed the record of appeal, they remained delinquent for another 42 days until their skeleton arguments were filed. The stipulations of rules 62.15 and 62.14 of the Civil Procedure Rules (Revised Edition) 2023 (the “CPR”) to file the record of appeal and the skeleton arguments are separate and distinct, and the appellants ought to have made every effort to file both with haste.

First Domestic Insurance Co. Ltd. v Industrial Enterprises Ltd et al DOMHCVAP2014/0024 (delivered 27th May 2020, unreported) followed.

3. The onus of preparing and filing the record of appeal rests solely on the appellant and the only obligation on the other parties is to inform the appellant of the documents they wish to have included in the record. A party’s duty to inform the appellant of documents to be included in the record (CPR 62.15(2)) and the appellant’s duty to file the record (CPR 62.15(3)) are separate provisions which impose separate responsibilities on the different parties to an appeal. They are not conjunctive and are simply listed chronologically in the order in which the drafters envisioned the actions would take place. The appellants’ contention that the delay in filing the record was due, in part, to the respondent’s failure to indicate the documents they wished to have included in the record was therefore not a cogent reason for the delay in filing the record. If the appellants were, as they claim, awaiting input from the respondent to compile the record, it was always open to them to reach out to counsel opposite, and there was no evidence that they did so.

First Domestic Insurance Co. Ltd. v Industrial Enterprises Ltd et al DOMHCVAP2014/0024 (delivered 27th May 2020, unreported) followed.

4. Where the reasons given for a delay in complying with orders of the court are, among other things, misapprehension of law, mistake of law by counsel, lack of diligence, volume of work, difficulty in communicating with clients, pressure of work,

client impecuniosity, secretarial incompetence or inadvertence, these excuses are not acceptable for the purpose of explaining away the default. Consequently, counsel for the appellants' argument regarding the heavy workload of the State and what he says is a preponderance of litigation initiated by the respondent, would not amount to a cogent reason for the delay in filing the record and skeleton arguments.

Kelvin Mann v Lorden Warrington DOMHCVAP2023/0003 (delivered 6th June 2024, unreported) followed.

5. It is not the role of the Court to embark on a mini trial of the issues on appeal when determining an application to strike out the appeal. However, an evaluation of the merits is necessary to determine whether the Court ought to exercise its discretion to strike out the appeal. On the facts, there is merit in the appellants' argument that there were other seemingly appropriate avenues for redress open to the respondent, including judicial review and the Appeals Tribunal. Moreover, the respondent's contention that, since the DCA has neglected to rehear its application within 90 days pursuant to the order of the learned judge, the respondent has effectively been granted unconditional approval by virtue of section 24 of the Physical Planning and Development Act. Though not a ground canvassed in the notice of appeal, having only come into play following the initiation of the appeal, this issue may be particularly worrisome if the learned judge is found not to have had the requisite jurisdiction to entertain a constitutional claim. The appeal therefore is not without merit and raises several important issues which would benefit from ventilation before the Court.
6. The prejudice to the parties is to be weighed before determining an application to strike out the appeal. On the facts, the respondent made a bald assertion that the delay caused them to lose \$20,000.00 per day. This was not elaborated on and no evidence in support of this assertion was put before the Court. The appellants, however, argued that the appeal

		ought to be heard on the basis that it is a matter of fundamental public importance since the litigation concerns the Pitons and proposed developments thereon. Given these factors, the greater prejudice would lie in terminating the appeal prematurely. Thus, although the delay in filing the skeleton submissions was inordinate and there were no cogent reasons for the delay, the appeal had merit and striking out the appeal would have been more prejudicial. The application to strike out the appeal was therefore dismissed, and the extension of time application was granted. 7. Although the normal rule as to costs is that the unsuccessful party must pay the costs of the successful party, the Court has a wide discretionary power to vary the application of the general rule. This includes the power to order a successful party to pay all or part of the costs of an unsuccessful party or an order for one party to pay only certain portions of another party's costs or to make no order as to costs. In exercising this discretion, the Court must consider all the circumstances, including the conduct of the parties both before and during the proceedings and the way a party has pursued the case in general and issues within the case. On the facts, whilst the CPR does not provide an express sanction for the failure to file the record of appeal and skeleton arguments on time, such breaches are not to be taken lightly, and extensions of time are not to be granted as a matter of course. It is the appellants' delay which brought the parties before the Court, and this therefore is an appropriate case to depart from the general rule as to costs. The appellants therefore were ordered to pay the respondent's costs on both applications. Rochamel Construction Limited v National Insurance Corporation Saint Lucia Civil Appeal No. 10 of 2003 (delivered 24th November 2023, unreported) followed.

		<u>APPLICATIONS AND APPEALS</u>
Case Name:		Lloyd Rhenford Ryan Applicant/Appellant v Neville Blake Agnes Ryan Applicant Respondent [MNIHCVAP2022/0003] (Montserrat)
Date:		Monday, 25th November 2024
Coram		The Hon. Mr. Trevor M. Ward, Justice of Appeal The Hon. Mr. Eddy D. Ventose, Justice of Appeal The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:		
	Applicant:	Mr. Jean Kelsick
	Respondent:	In person
Issues:		Application to be appointed as representative of the Estate of Agnes Ryan, deceased – Rules 21.2(2)(b) and 21.8 of the Civil Procedure Rules (Revised Edition) 2023 – Whether applicant is a fit and proper person to represent the Estate of Agnes Ryan, deceased Application for an extension of time to file application for leave to appeal – Length of delay – Whether length of delay was inordinate – Whether there was a good explanation for delay – Evidence of reasons for delay not captured in an affidavit – Whether the intended appeal has a realistic prospect of success – Whether there was material non-disclosure at ex parte hearing – Degree of prejudice if application is granted

		Application to strike out appeal – Appeal brought 9 ½ years late – Whether there is a valid appeal before the Court – Whether the appeal should be struck out as being an abuse of process Application to adduce fresh evidence on appeal – Whether evidence exhibited in the affidavit of support should be allowed in the appeal – Whether evidence could not have been obtained with reasonable diligence for use at trial – Whether, if allowed, the evidence would have influenced the outcome of the trial – Whether the evidence is credible – Prejudice to the applicant if evidence is not allowed to be adduced
Type of order:		N/A
Result/Order:		[Oral Delivery] IT IS HEREBY ORDERED THAT: 1. The application by Mr. Neville Blake to be appointed as the representative of the Estate of the deceased, Agnes Ryan is granted. Mr. Neville Blake's name shall, therefore, be substituted as the respondent to the appeal. 2. Judgment is reserved.
Reason:		The Court heard the application by Mr. Neville Blake for an order that he be appointed as representative of the Estate of Agnes Ryan in these proceedings who had since become deceased. The respondent to the application, Mr. Lloyd Ryan, indicated that he had no objection to the application for the purpose of allowing the matter to proceed. Accordingly, the application was granted. The Court proceeded to hear the application for an extension of time and the application to strike out the notice of appeal together. The Court advised the parties that it would reserve its judgment in the matter and that the parties would be notified when the written reasons are ready.
Case Name:		David Brandt

		V The King [MNIHCRAP2021/0004] (Montserrat)
Date:		Monday, 25th November 2024
Coram:		The Hon. Mr. Trevor M. Ward, Justice of Appeal The Hon. Mr. Eddy D. Ventose, Justice of Appeal The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Dr. David Dorsett
	Respondent:	Ms. Anesta Weekes KC with Mr. Paul Mylvaganam
Issues:		Criminal appeal against conviction and sentence – Sexual Exploitation – Section 141(1)(a) of the Penal Code Cap 4:02 – Perverting the course of justice contrary to common law – Directions – Matter not ready for hearing before the Court of Appeal owing to the parties’ failure to comply with the Court’s rules and prior directions on the filing of necessary appeal documents – Directions given to the parties for the filing of necessary appeal documents before the matter can be heard by the Full Court
Type of Order:		Directions
Result/Order:		[Oral Delivery] IT IS HEREBY ORDERED THAT: 1. The parties are to file revised and comprehensive written submissions (to include cross-references to the record of appeal as necessary) encompassing all grounds of appeal, including those sought to be added as additional grounds, by 13th December 2024. 2. The parties are to file an agreed hearing bundle containing a master index, broken down by volume, and each volume is to have its own index.

		3. The parties are to include the written decision of the trial judge on the admissibility of the WhatsApp messages in the abovementioned hearing bundle. 4. The parties are to file a consolidated authorities bundle. 5. The matter shall be listed for case management on a date in January 2025 to be fixed by the Chief Registrar, to ascertain whether these directions have been fully complied with. 6. The matter shall not be listed for the hearing of the appeal unless there has been full compliance with the abovementioned directions. 7. Provided that the Chief Registrar is satisfied that there has been full compliance with these directions, the matter shall be listed for the next sitting of the Court of Appeal for the Territory of Montserrat commencing the week of 5th May 2025.
Reason:		The Court expressed its dissatisfaction with the parties' failure to file an agreed hearing bundle and the parties' failure to comply with previous directions of the Court concerning the filing of necessary appeal documents on time. Owing to the current state of the filings, the Court was of the view that the matter was not ready for hearing. Consequently, the Court gave the necessary directions for further filings so that the matter could be ready for hearing at the next sitting of the Court of Appeal for the Territory of Montserrat, commencing the week of 5th May 2025.
Case Name:		Heskeith Raymond v Ann Bynoe [MNIMCVAP2022/0001] (Montserrat)

Date:		Tuesday, 26th November 2024
Coram:		The Hon. Mr. Trevor M. Ward, Justice of Appeal The Hon. Mr. Eddy D. Ventose, Justice of Appeal The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:		
	Appellant/Respondent:	Ms. Lovetta Silcott
	Respondent/Applicant:	Ms. Chivone Gerald
Issues:		Application to strike out appeal – Section 111(1) of Magistrate’s Court Act Cap 2:02 – Notice of appeal filed out of time – Failure to comply with rule 62.11(1) of the Civil Procedure Rules (Revised Edition) 2023 (“CPR”) – No skeleton arguments filed by the appellant after service of the record of appeal on the parties by the Magistrate’s Court – Failure to comply with case management orders wherein directions were given for the appellant to file skeleton arguments in order to progress the appeal – Whether the appeal should be struck out for failure of the appellant to prosecute the appeal – Whether the appeal fails to disclose any reasonable grounds and therefore lacks any reasonable prospect of success
Type of order:		Oral Decision
Result/Order:		IT IS HEREBY ORDERED THAT: 1. The notice of appeal filed on 11th April 2022 is a nullity and is struck out. 2. The applicant shall have her costs in the sum of \$500.00 to be paid within 14 days of today’s date.
Reason:		Before the Court was an application to strike out a notice of appeal filed on 11th April 2022 against the decision of the learned Chief Magistrate dated 8th March 2022. The essential ground of the application was that in breach of the provisions of Section 111(1) of the Magistrate’s Court Act Cap 2:02 (“the Act”), the appellant failed to file the notice of appeal within the time prescribed, that is, 14 days.

		The appellant in response, referred to the provisions of rule 62.6 of the Civil Procedure Rules (Revised Edition) 2023 (“CPR”) which provides that in the case of any other appeal, this not being an interlocutory appeal, the appeal shall be filed within 42 days of the date when judgment is delivered or the order is made, whichever is earlier. It was submitted by counsel that, that provision of the CPR overrode the provisions of the Act. Following exchanges with the Bench, counsel for the appellant/respondent, Ms. Silcott, properly conceded that, that proposition could not be maintained. She then sought to invite the Court to extend time notwithstanding that there was no application pursuant to section 111(1) of the Act which provides that, “the Magistrate’s Court or the Court of Appeal, upon application made by the intended appellant and upon being satisfied that there are sufficient grounds for so doing, may extend the time within which notice of appeal may be given for such period, not exceeding thirty days and upon such conditions (if any) as the Court granting the extension of time considers to be reasonable.” In this case, the Court noted that more than thirty days had passed and there was no application pursuant to section 30 of the Supreme Court (Montserrat) Act Cap 2:01, which does not so limit the time for seeking an extension of time. In the Court’s view, the position was that the time prescribed by the aforementioned section 111(1) of the Act, i.e., 14 days from the date of judgment, had not been met and in accordance with the consistent jurisprudence of the Court, where a notice of appeal has been filed out of time and there is no application for an extension of time, the notice of appeal is a nullity. This was the situation applicable to this case. Accordingly, the notice of appeal was deemed a nullity and accordingly, struck out.
Case Name:		Clarivel Vargas Mateo v

		[1] Geran Philips [2] Clinton Lindsey [MNIHCVAP2024/0001] (Montserrat)
Date:		Tuesday, 26th November 2024
Coram:		The Hon. Mr. Trevor M. Ward, Justice of Appeal The Hon. Mr. Eddy D. Ventose, Justice of Appeal The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:		
	Applicant:	Mr. Sylvester Carrott
	Respondents:	No appearance
Issues:		Application for leave to appeal – Ex-parte application - Application for leave to appeal against the judge’s decision dismissing the applicant’s application to extend time for filing witness statements – Delay in filing witness statements – Length of delay – Whether there was a good explanation for the delay – Rule 26.8 of the Civil Procedure Rules (Revised Edition) 2023 (“CPR”) – Rule 62.2(8) of the CPR – Whether leave to appeal ought to be granted – Whether the intended appeal has a reasonable prospect of success
Type of Order:		Oral Decision
Result/Order:		IT IS HEREBY ORDERED THAT: 1. Leave to appeal is granted. 2. The notice of appeal shall be filed within 21 days of today’s date.
Reason:		Upon hearing the oral submissions of counsel for the applicant, the Court was satisfied that the applicant had met the requisite threshold for the grant of leave to appeal. Accordingly, the Court granted leave to appeal and made the necessary orders for the progress of the appeal in accordance with the applicable Rules of Court.

Case Name:		Wycliffe Baird v [1] David Goldgar [2] Paul B. Coburn [3] Caribe (Realties) Canada Limited [4] Immeubles Caribe Canada Ltee [5] Betts Realty Limited [SKBHCVAP2019/0038] (Saint Christopher and Nevis)
Date:		Tuesday, 26th November 2024
Coram:		The Hon. Mr. Trevor M. Ward, Justice of Appeal The Hon. Mr. Eddy D. Ventose, Justice of Appeal The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:		
	Applicant:	Ms. Talibah Byron with Mr. Terence Byron
	Respondents:	Ms. Midge Morton
Issues:		Notice of motion for final leave to appeal to His Majesty in Council (“the Privy Council”) – Appeals as of right to the Privy Council – Section 99(2)(a) of the Constitution of Saint Christopher and Nevis – Whether the applicant has satisfied the conditions stipulated in the previous order of the Court dated 15th April 2024 granting conditional leave to appeal to the Privy Council
Type of Order:		Oral Decision
Result/Order:		IT IS HEREBY ORDERED THAT:

		1. The applicant is granted final leave to appeal to His Majesty in Council against the judgment of the Court of Appeal dated 22nd December 2023. 2. The record of appeal shall be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay. 3. Costs of the motion shall be costs in the appeal to His Majesty in Council.
Reason:		The Court noted in particular the following: (1) the notice of motion for final leave to appeal to His Majesty in Council filed by the applicant on 24th July 2024 against the decision of the Court of Appeal dated 22nd December 2023 (“the notice of motion”); (2) the affidavit of Wycliffe Baird in support of the notice of motion filed on 24th July 2024 together with the exhibits attached thereto; and (3) the certificate of the order of this Court, granting conditional leave to appeal to His Majesty in Council dated 15th April 2024. It appeared to the satisfaction of the Court that the applicant by virtue of the provisions of section 99(2)(a) of the Saint Christopher and Nevis Constitution Order 1983, was entitled to leave to appeal to His Majesty in Council and had duly complied with the conditions that were ordered by the Court on 15th April 2024. Accordingly, the Court granted final leave to appeal to His Majesty in Council.
Case Name:		De Andre Henry v The King [ANUHCRA2022/0004] (Antigua and Barbuda)
Date:		Tuesday, 26th November 2024
Coram:		The Hon. Mr. Trevor M. Ward, Justice of Appeal

		The Hon. Mr. Eddy D. Ventose, Justice of Appeal The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. Jason Tiwari
	Respondent:	Ms. Shannon Jones-Gittens, Director of Public Prosecutions [Ag.]
Issues:		Criminal appeal against sentence – Aggravated robbery – Section 33(1) of the Larceny Act Cap 241 – Appellant convicted of two counts of aggravated robbery and sentenced to 18 years imprisonment, time spent on remand to be deducted, and entitled for remission after serving 2/3rds of his sentence – Whether the sentence imposed by the judge was manifestly excessive – Sentencing starting points – Whether the judge utilised the appropriate starting point in constructing the sentence for the offence – Whether the jurisprudence in the region demonstrates that the appropriate starting point ought to have in fact been lower, that is, one within the range of 10-15 years – Maximum sentences – Whether the maximum sentence ought to be considered in constructing the starting point of the sentence – Whether the practice developed by the courts in Antigua and Barbuda to utilise 25 years as the maximum sentence is correct in law – Judge’s assessment of the offender in sentencing – Mitigating factors in relation to the offender – Whether the judge in conducting the sentencing exercise erred in failing to have adequate regard to the relevant mitigating factors that would have been beneficial to attaining a fair and reasonable sentence – R v Sargeant 60 Cr App R 74 – Desmond Baptiste v R Criminal Appeal No. 8 of 2003
Type of Order:		N/A
Result/Order:		[Oral Delivery] IT IS HEREBY ORDERED THAT: Judgment is reserved
Case Name:		Loriann Williams-Warner

		V The King [MNIHCRAP2024/0001] (Montserrat)
Date:		Tuesday, 26th November 2024
Coram:		The Hon. Mr. Trevor M. Ward, Justice of Appeal The Hon. Mr. Eddy D. Ventose, Justice of Appeal The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Ms. Lovetta Silcott
	Respondent:	Mr. Oris Sullivan, Director of Public Prosecutions
Issues:		Criminal appeal against sentence – Theft – Section 238(b) of the Penal Code Cap 4:02 – Appellant sentenced to 28 months’ imprisonment and ordered to repay the sum of \$15,204.92 to the Montserrat Port Authority with the sum of \$5,500 to be paid forthwith on 16th February 2024 and the balance of \$9,704.92 to be paid within fifteen monthly instalments in default 6 months’ imprisonment – Whether the sentence imposed is manifestly excessive – Principles on sentencing – Whether the trial judge erred in imposing a custodial sentence when there were alternative sentencing options that could have been imposed in lieu of imprisonment in accordance with section 22 of the Penal Code – Whether the trial judge failed to adequately factor into the sentencing exercise, the fact that the appellant is a mother with three young children – Whether the trial judge erred in principle in making a compensatory order against the appellant in addition to the custodial sentence imposed
Type of Order:		Oral Judgment
Result/Order:		IT IS HEREBY ORDERED THAT: 1. The sentence of a term of imprisonment of 28 months’ is set aside.

		2. The sentence of time served is substituted on the appellant, meaning that the appellant is to be released from detention and custody. 3. The second limb of the compensation order relating to the payment of \$9,704.92 is set aside.
Reason:		The Court considered the written and oral submissions on behalf of the parties. The Court found that in passing the sentence, the learned judge committed errors of principle. In particular, the learned judge did not go on to consider the impact of a custodial sentence on the young children of the appellant, such children being of the ages 8, 6 and 2 years old respectively. Specifically, the Court also noted the submission of counsel for the appellant that the appellant recently gave birth to a child, who was still breast-feeding. The Court also considered that as a matter of principle, the imposition of a compensation order was made by the learned judge without embarking upon an examination of the means of the appellant, bearing in mind that the learned judge was going to impose a compensation order as part of a sentence which also included a term of imprisonment. Consequently, the Court was of the view that the term of imprisonment of 28 months was manifestly excessive and wrong in principle, and therefore, ought to be set aside. The Court also came to the conclusion that the imposition of the compensation order, particularly, the second limb of the compensation order which required the appellant to pay the balance of the sum, that is \$9,704.92, by monthly instalments after she has been released from prison, failing which she would serve an additional 6 months' imprisonment, was wrong in principle and ought to be set aside.
Case Name:		George Leonard v The Crown

		[MNIMCRAP2021/0003] (Montserrat)
Date:		Tuesday, 26th November 2024
Coram:		The Hon. Mr. Trevor M. Ward, Justice of Appeal The Hon. Mr. Eddy D. Ventose, Justice of Appeal The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	In person
	Respondent:	Ms. Kristen Taylor-Hilton
Issues:		Magisterial criminal appeal against conviction and sentence – Appellant found guilty of committing an unreasonable act thereby causing suffering to an animal and sentenced to 3 months’ imprisonment – Appellant also found guilty of resisting arrest and ordered to pay a \$400 fine to be paid within 30 days of being released or 7 days imprisonment in default of payment
Type of Order:		Adjournment
Result/Order:		[Oral Delivery] IT IS HEREBY ORDERED THAT: 1. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal for the Territory of Montserrat commencing the week of 5th May 2025. 2. The Chief Registrar shall make the necessary enquiries to ascertain whether Mr. Kenroy Hyman is still on record for the appellant in the matter.
Reason:		The appellant, appearing in person, indicated to the Court that Mr. Kenroy Hyman was his attorney in the appeal. However, upon perusal of the case management conference notes for the Territory of Montserrat dated 22nd October 2024, the Court noted that the appellant had appeared in person on that occasion. The Court decided that, in the circumstances, it would be prudent to adjourn the matter, so that the Chief Registrar can make the

		necessary inquiries to ascertain whether Mr. Hyman is still on record for the appellant.
Case Name:		Angela Estwick v [1] The Deputy Governor [2] The Attorney General of Montserrat [MNIHCVAP2023/0009] (Montserrat)
Date:		Wednesday, 27th November 2024
Before:		The Hon. Mr. Mario Michel, Chief Justice [Ag.] The Hon. Mr. Eddy D. Ventose, Justice of Appeal The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Ms. Jean Dyer
	Respondents:	Ms. Renee Morgan
Issues:		Civil appeal – Pension eligibility – Whether the appellant eligible for pension under section 21 of the 2011 Pensions Act – Whether the judge erred in finding that the appellant was not eligible for early retirement benefit under sections 8 and 21 of the said 2011 Pensions Act - Statutory interpretation – The presumption against retrospectivity – Whether the 2011 Pensions Act was not intended to have retrospective effect – Purposive interpretation of legislation – Purposive construction of section 21 of the 2011 Pensions Act – Whether on a purposive construction of section 21 the word “in” can be replaced with the word “before” – Whether a literal interpretation of section 21 deprived public officers who had already served 20 years under the 1947 Pensions Act of any protection and in any case ran afoul of section 71(c) of the Interpretation Act Cap 1:02 – Judge’s interpretation of the Public Service Regulations S.R.O. 37/1980 (“the

		Public Service Regulations”) – Whether the judge erred in law in finding that permission is required under regulation 33 of the Public Service Regulations to retire early by reason of age or years of service (“the permission decision”) – Whether the judge erred in finding that the appellant resigned to retire without due notice, thereby forfeiting her 70 days accumulated vacation leave – Costs – Whether the judge erred in directing that each party shall bear their own costs
Type of Order:		Directions
Result/Order:		[Oral Delivery] IT IS HEREBY ORDERED THAT: 1. Permission is granted to the respondents to file and serve brief written submissions not exceeding 5 pages on or before 4th December 2024 with respect to the cases of <u>Kostal UK Ltd. v Dale Dunkley et al [2021] UKSC 47</u> and <u>Seaford Court Estates Ltd. v Asher [1949] 2 KB 481</u>. 2. Judgment is reserved.
Reason:		Having heard submissions from counsel for both sides on the appeal, the Court was of the view that further submissions addressing the decisions in <u>Kostal UK Ltd. v Dale Dunkley et al [2021] UKSC 47</u> and <u>Seaford Court Estates Ltd. v Asher [1949] 2 KB 481</u> and its applicability to the appeal were needed. The Court therefore gave directions for the filing and serving of further written submissions by the respondents and reserved judgment in the matter.
Case Name:		[1] WWRT Limited [2] Olga Gutovska v [1] Carosan Trading Limited

		[2] Boris Kaufman
		[BVIHCMAP2024/0015] (Territory of the Virgin Islands)
Date:		Thursday, 28th November 2024
Coram:		The Hon. Mr. Trevor M. Ward, Justice of Appeal The Hon. Mr. Eddy D. Ventose, Justice of Appeal The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:		
	Appellants:	Mr. Nathan Pillow KC
	Respondents:	Mr. Richard Morgan KC with Mr. Christopher McCarthy
Issues:		Civil appeal – Judge’s dismissal of an application of no case to answer – On application of the first appellant the commercial court granted a worldwide freezing order (“WFO”) against the respondents – WFO stipulated among others that the second respondent provide disclosure of his assets worldwide if they exceeded GBP\$50,000.00 in value (excluding certain assets) – Schedule to the WFO included an undertaking provided by the first appellant that they would not, without the permission of the court, use any information obtained as a result of the WFO for the purpose of any civil or criminal proceedings either in the BVI or in any other jurisdiction (“the collateral use undertaking”) – Second respondent commenced contempt proceedings seeking among others a declaration that the appellants were in contempt of court, by reason of their breach of the collateral use undertaking on at least two occasions – Appellants submitted that there was no case to answer – Judge dismissed the appellants’ submission of no case to answer in an ex tempore judgment – Burden of proof - Whether the judge wrongly shifted the burden of proof from the second respondent to the appellants and/or considered the potential presence or absence of evidence from the appellants that did not form any part of the evidence before the court when considering the no case application – The right to silence in committal proceedings – Whether the judge made assumptions and speculated as to the possible content of the appellants’

		evidence before they were required to elect whether to call any evidence in the first place, and in so doing, wrongly trespassed on the appellants' right to silence – Judge's assessment of the evidence – Whether the judge failed to give adequate weight to the evidential deficiencies which he had highlighted during the course of the hearing – Whether, overall, the judge was plainly wrong to conclude that there was a case to answer on the evidence before him
Type of Order:		N/A
Result/Order:		[Oral Delivery] IT IS HEREBY ORDERED THAT: Judgment is reserved.