

EASTERN CARIBBEAN SUPREME COURT

COURT OF APPEAL SITTING

SAINT LUCIA

Monday, 13th January 2025 – Thursday, 16th January 2025

JUDGMENTS

Case Name:

**[1] WWRT Limited
[2] Olga Gutovska
v
Boris Kaufman
[BVIHCMAP2024/0015]
Territory of the Virgin Islands**

Date:

Monday, 13th January 2025

Coram for delivery:

**The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellants: Dr. Alicia Johns via Zoom

Respondents: Mr. Richard Morgan via Zoom

Issues:

Commercial Appeal – Appeal against the decision of the learned trial judge to dismiss a no case to answer submission with costs reserved – Shifting the burden of proof - Whether the learned trial judge erred in wrongly shifting the burden of proof from the committal applicant/respondent to the committal respondents/appellants – Right to Silence – Whether the learned trial judge erred in failing to recognize and apply the procedural and substantive consequences which properly flowed from the appellants’ acknowledged right to silence Evidential Deficiencies - Whether the learned trial judge erred in ruling that there was a case to answer on the evidence filed in support of the committal application – Whether the learned trial judge failed to give any weight, or any adequate weight, to key evidential deficiencies which the judge himself had identified – Whether the learned trial judge incorrectly gave weight to irrelevant considerations such as the lack of evidence from the appellants showing that the documents were inaccurate

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed and the order of the judge below dismissing the submission of no case to answer is set aside.**
- 2. The Respondent’s Notice filed 16th August 2024 is dismissed.**
- 3. The submission of no case to answer in the court below is upheld and the Committal Application filed 20th December 2023 is dismissed.**
- 4. The appellants/committal respondents shall have their costs of the committal proceedings**

below and cost of the appeal and respondent's notice, to be assessed by a judge of the Commercial Court, if not agreed within 21 days of the date of delivery of this decision, and paid by the respondent, Mr. Kaufman.

Reason:

1. The duty and parameters of a judge when considering a no case submission is to first and foremost bear in mind continuously that the committal respondent does not have to prove or disprove any of the allegations of breaches of a court order made against him or her by a committal applicant; and that it is imperative to consider only the admissible evidence adduced or deployed by the committal applicant in the committal proceedings and to ask himself and to answer the question whether that evidence was such that if left uncontradicted or unanswered was capable of proving the specific and particularized contemptuous allegations against the contemnor to the criminal standard of proof beyond reasonable doubt. This the learned judge, with the greatest respect, did not do. Instead, he allowed himself to be infected with irrelevant considerations and to use such considerations in reasoning his decision in a way which smack of shifting or eroding the burden of proof from the committal applicant Mr. Kaufman, onto the appellants/committal respondents, when determining the no case submission. Moreover, the objective of a ruling on a submission of no case to answer is not to force or coerce the respondent into putting in or deploying evidence or to answer the allegations, but to assess whether on the admissible evidence before the court at that stage of the contempt proceedings, there is properly a case to answer or whether he ought to stop the proceedings and dismiss the application for

committal for contempt. For these reasons ground 1 succeeds.

Regina v Galbraith [1981] 1 WLR 1039 applied; Edwin Gomez and Isaiah Benjamin v The Queen ANUHCRA2014/0012 & ANUHCRA2014/0013 (delivered 17th August 2022, unreported) followed; Director of Public Prosecutions (British Virgin Islands) v Varlack [2008] UKPC 56 applied; Templeton Insurance Limited v Motorcare Warranties Limited & Ors [2012] EWHC 795 (Comm) applied; R v McLeod and others [2017] EWCA Crim 800 applied; Munib Masri v Consolidated Contractors International and ors [2011] EWHC 1024 (Comm) applied; Comet Products UK Ltd v Hawtex Plastics Ltd [1971] 2 QB 67 applied.

- 2. During the hearing of the Contempt Application, the appellants/committal respondents did not by their legal counsel seek to rely on some of their response evidence which was subject to their right to silence, such that parts or portions of their response evidence filed in compliance with the directions of the judge thereby became no longer caught by that right to silence and thereby became evidence before the learned judge to take into account in deciding on the submission of no case to answer; or evidence upon which this Court can and should take into account should it have to de novo properly assess the evidence and decide whether the no case submission ought to have been upheld or dismissed. The upshot of all this is that the only evidence before the learned judge at that stage of the contempt proceedings was the evidence adduced by the respondent in the first affidavit of Richard Brown (“Brown 1”) and the documents exhibited thereto. Accordingly, the appellants/committal respondents were fully entitled throughout the committal proceedings before the learned judge to rely on their right to silence, and to the extent that the learned judge alluded to what evidence they may give or have not yet given in response to the allegations of contempt, this was an incorrect and**

impermissible derogation from, or erosion of their right to silence. Accordingly, ground 2 also succeeds.

3. The standard of proof in contempt proceedings is the criminal standard of proof beyond a reasonable doubt. In this Court's judgment, the extract from the learned judge's decision (at page 228 of the transcript (lines 19 onwards) is not only indicative of him having strayed from the test in *Galbraith* and an impermissible indulgence in speculation, but is demonstrative of a shifting of or, at minimum, confusing, where the burden of proof lies, and improperly undermines the appellants'/committal respondents' right to silence. Moreover, the learned judge's characterization of the appellants'/committal respondents' attacks on the two main documents as "peripheral" and an "attack on the fringes" is wholly misplaced, incorrect, and wrong as a matter of principle. These attacks were justified, substantive, and not peripheral. They were profound, as the learned judge himself acknowledged and bore the makings of a knockout point evidentially and substantively.
4. Apart from seeming to improperly shift an evidential burden onto the appellants/committal respondents and applying an incorrect analysis of the evidence adduced and of the burden of proof, the extract from the learned judge's decision (at page 228 line 25 & page 229 lines 1-6) also incorrectly characterize the appellants'/committal respondents' criticism of the evidence adduced as simply the "provenance" of the key documents exhibited to Brown 1. The objection to these key documents evidentially was also (and more fundamentally) that they were incapable of proving, to the criminal standard, what they purported to show, as no reliance could be placed upon such documents in the absence of other cogent evidence speaking to their provenance,

authenticity, and accuracy. In the Court's judgment, for the same reasons already given, it was also not permissible for the learned judge, in reasoning to his decision, to have speculated in the following ways: - (a) that Ms. Gutovska "may very well have said these things, and nobody is pointing to any evidence that she didn't"; (b) "there has to be further argument on a number of things"; (c) "... but I get the sense that all these points really do need to be argued out further, because I am not sure that this is the entire story on either side"; (d) "I don't think it is the end of the story for the simple reason is that there is, in fact, no evidence yet before the Court that Ms. Gutovska didn't say these things, and I think that's important"; and (e) "I think you have to balance what the document says with what people are not saying, balance that."

Regina v Galbraith [1981] 1 WLR 1039 applied.

Case Name:

West Indies Oil Company Limited

v

[1] Janis James

[2] Bernadine Henry Hughes

**[ANUHCVP2022/0014]
Antigua and Barbuda**

Date:

Tuesday, 14th January 2025

Coram for delivery:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal**

Appearances:

Appellant:

Ms. Mtonya Deterville holding papers for Mr. Justin L. Simon, KC via Zoom

Respondents: Ms. E. Ann Henry, KC via Zoom

Issues:

Civil Appeal – Employment Law - Redundancy – Unfair dismissal – Sections C58(1) and (2) of the Antigua and Barbuda Labour Code – Reasonableness of dismissal – Whether the Industrial Court erred in finding that despite there being a genuine redundancy situation the respondents’ dismissal was so unreasonable in the circumstances to be unfair - Whether the Industrial Court took into account irrelevant matters in considering whether the appellant’s actions in dismissing the respondents were reasonable or not – Whether the Industrial Court misconstrued pertinent facts – Whether there had been adequate warning and notice of redundancy – Timing and adequacy of consultation process – Selection of the respondents for redundancy – Whether the appellant sufficiently considered alternative employment for the respondents prior to dismissal – Awards of compensation – Whether the Industrial Court erred in its assessment of the compensation awarded to the respondents - Notice pay – Immediate loss - Future loss of earnings – Fringe benefits

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against the compensation awards in part is allowed.**
- 2. The awards made at sub-paragraphs 60C (iv), (v), (vi), (vii) and (viii) are varied by substituting an award for immediate loss equivalent to 6 months wages as follows: Janis James (\$4,734 x 6) = \$28,404.00; Bernadine Henry-Hughes (\$8,210 x 6) = \$49,260.00.**

3. The award of future loss in the sum of \$41,112.00 to Mrs. Henry-Hughes is set aside.
4. All other awards made by the Industrial Court are affirmed.
5. There is no order as to costs.

Reason:

1. Even where a genuine redundancy situation exists, the employer must still satisfy the test of reasonableness in terminating the employee; in other words, the subsequent dismissal must be fair. This is the conjunctive effect of sections C58(1) and (2) of the Antigua and Barbuda Labour Code (the “Code”). They impose an obligation on the court to consider the reasons assigned for the dismissal of the employee, to determine whether there is a factual basis for it, and to assess whether the employer acted reasonably or unreasonably in dismissing the employee for the assigned reason. Furthermore, section 10(3) of the Industrial Court Act (“ICA”) enjoins the Industrial Court to act fairly and justly and with regard to the interests of the parties immediately concerned and the community as a whole when making orders or awards. It must also do so in accordance with equity, good conscience, and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations and, in particular, the Antigua and Barbuda Labour Code.

Section C58(1) and (2) of the Antigua and Barbuda Labour Code Cap 27 of the Laws of Antigua and Barbuda applied; Sec 10(3) of the Industrial Court Act Cap 214 of the Laws of Antigua and Barbuda

applied; *Antigua Workers' Union v Antigua Gases* Industrial Court Reference No. 20 of 1988 applied; *Sundry Workers [Veronica Joseph & Others] v Kings Casino Ltd* ANUHCVP2001/0028 (delivered 3rd April 2003, unreported) followed.

2. Section 17 of the ICA restricts appeals from decisions of the Industrial Court to those disputing points of law. This provision would seem to preclude the appellate court from entertaining an appeal where what is being challenged are findings of fact made by the Industrial Court. Whether or not an employer has acted reasonably in terminating an employee is a question of fact. However, where the Industrial Court finds facts or draws inferences which are not supported by the evidence, particularly where the facts so found substantially affect the merits of the matter, or where the court does not consider the facts in light of applicable principles or statutory provisions, then this would fall within the ambit of an 'illegality' described in section 17(1)(e) of the ICA, and therefore subject to appeal.

Sections 10(6) and 17 of the Industrial Court Act Cap 214 of the Laws of Antigua and Barbuda applied; *Leonart Matthias v Antigua Commercial Bank* ANULTAP2017/0002 (delivered 28th May 2020, unreported) followed; *Blackburn v LIAT (1974) Ltd* [2020] UKPC 9 followed; *Williams and Others v Compair Maxam Ltd* [1982] ICR 156 applied.

3. As it relates to the adequacy of the warning or notice of redundancy given to the respondents, the opinion of the Industrial Court that the notice provided to the respondents of their impending redundancy was inadequate is immunised from appeal by virtue of section 10(6) of the ICA. The

Industrial Court's opinion on the inadequacy of the notice of redundancy given to the respondents and the late stage at which the appellant engaged the respondents' Union representative must be accorded due deference by this Court, given the specialised knowledge and expertise of the Industrial Court in relation to such matters, therefore it is not open to this Court to substitute its view as to what would have constituted reasonable notice to the respondents.

Sections 10(6) and 17 of the Industrial Court Act Cap 214 of the Laws of Antigua and Barbuda applied; *Blackburn v LIAT (1974) Ltd* [2020] UKPC 9 followed; *Williams and Others v Compair Maxam Ltd* [1982] ICR 156 applied.

4. However, to the extent that the decision of the court is being challenged on the basis that the factual basis upon which the Industrial Court concluded that the respondents received no clear and unequivocal warning or notice of the redundancies from the appellant until 30th April 2018, was incorrect, the Court agrees that the Industrial Court committed a partial error. Contrary to what the Industrial Court stated, the email of 9th February 2018 clearly communicated to the respondents' Union representative that their positions were to be made redundant. However, the Industrial Court's conclusion was not entirely incorrect because the email gave no date when these redundancies would be effective. The date of the redundancy is of critical importance if the respondents were to have sufficient time to put their house in order to face the uncertain future. Nevertheless, the Industrial Court's partial error does not vitiate the core reason why the court concluded that the appellant had acted unreasonably in relation to the provision of notice, which was that the appellant

should have given notice of the possibility of redundancy as early as 2015 or, at the latest, the beginning of January 2018 when, as they found, the appellant was in a clear position to issue unequivocal notices to the respondents of the date or approximate date when their positions would become redundant.

5. In relation to the adequacy of the consultation process, there is no rule of law that lack of proper consultation necessarily renders the dismissal unfair. However, fair consultation is an important consideration in determining whether an employee has acted reasonably when dismissing an employee. Fair consultation means: (a) consultation when the proposals are at a formative stage; (b) adequate information on which to respond; (c) adequate time in which to respond; (d) conscientious consideration by an authority of the response to consultation. In so far as the appellant submitted that there was no obligation to consult with the respondents or their Union at the formative stage, as the Industrial Court has held, that submission is contradicted by the case law. The appellant's submissions merely invite this Court to come to a different view as to the adequacy of the consultation process between the appellant and the Union to that taken by the Industrial Court. The Industrial Court assessed the evidence before it and determined that as a matter of good industrial relations practices, the period of consultation and the content of the discussions that occurred between 19th January and 18th April 2018 did not comport with its notion of good industrial relations practices and was inadequate. This opinion was one properly open to the Industrial Court to make on the evidence and is therefore not amenable to appeal.

Hollister v National Farmers & Union [1979] ICR 542 applied; R v British Coal Corporation and Secretary of State for Trade and Industry ex parte Price and others [1994] IRLR 72 applied.

- 6. In relation to the selection of the respondents for termination, a very relevant consideration, even in a genuine situation of redundancy, is the means whereby the employee is selected to be dismissed and the reasonableness of the steps taken by the employer to choose that employee, rather than some other employee, for dismissal. Timely and meaningful consultation is also important in this regard as it affords an opportunity for discussion between the employer and the union aimed at achieving an outcome that is fair and with as little hardship to the employees as possible. Attempting to secure agreement on the criteria to be applied in selecting the employees to be made redundant is an important facet of the consultation process. In this case, the Industrial Court, in their assessment, found that the reasons advanced by the appellant for selecting these employees were unsatisfactory. Admittedly, the Industrial Court may have strayed beyond its proper remit in venturing to suggest what the appellant should have done in going about the restructuring of its business. The proper role of the court is to assess whether the actions taken by the employer were reasonable; it is not to proffer its views on what should have been done. Nonetheless, on the evidence, there is no basis for impugning the Industrial Court's conclusions on this aspect. The Industrial Court did not misunderstand or misdirect itself on the evidence. Furthermore, there was no evidence that the appellant had consulted the Union or invited them to make representations in relation to the selection of the respondents for redundancy. In the circumstances, there is no**

basis to interfere with the Industrial Court's conclusion on this issue. *Williams and Others v Compair Maxam Ltd.* [1982] ICR 156 applied.

7. In so far as there is a duty on an employer to consider the question of alternative employment, the guidelines which have been consistently applied and followed in *Antigua and Barbuda* mandate an employer to consider the question of alternative employment. When a claim for unfair dismissal comes before the Industrial Court the court is obliged to consider whether the employer did so. If there is no evidence that the employer did so, the burden being on them, then that is a matter the Industrial Court is entitled to take into account. Indeed, the Industrial Court would have fallen into error had it failed to address its mind to this question. With this in mind, this Court finds that the Industrial Court made no error in law in considering the issue of alternative employment. The appellant's argument that the issue of alternative employment did not arise at trial so that there was no evidence on which the court could conclude that the appellant made no, or no sufficient attempts, to secure alternative employment is contradicted by the evidence. The issue of alternative employment did arise during the examination-in-chief of the appellant's Chief Financial Officer and its Human Resources Manager. This demonstrates that the issue of alternative employment was canvassed and was in issue. Furthermore, the Industrial Court found that on the evidence, the respondents had exposure across various departments over their respective 27 and 41 years' employment with the appellant. The Industrial Court was entitled to conclude that on the sparse evidence before it, the appellant had not done enough to find alternative employment for the respondents and did not sufficiently explore whether there were

any other suitable roles in other departments which the respondents might fill. That was a question of fact for their assessment.

Bugden v Royal Mail Group Ltd [2024] ICR D39 applied.

8. In coming to its conclusion that the actions of the appellant were unreasonable, the Industrial Court considered an ex gratia payment which was made to Ms. James as part of her payment package but made not to Mrs. Henry-Hughes; the release agreement which was amended to remove the word 'final'; and anniversary magazine issued by the appellant which described the respondents as 'retired' as further matters which in its view evinced unreasonable conduct on the part of the appellant. These three matters do not appear to have the same nexus with the decision to dismiss as the standard factors identified in the authorities. In the Court's view, the Industrial Court erred by taking these irrelevant matters into consideration when assessing whether the appellant acted reasonably in dismissing the respondents. Firstly, an ex gratia payment is discretionary. Whether an ex gratia payment should be made to the respondents was entirely within the discretion of the employer and thus, cannot be seen to be unreasonable simply on the basis that it chose to make payment to one but not the other respondent. Secondly, in relation to the release, it is hard to appreciate why the amendment which was made at the request of the Union should be seen as indicative of equivocal and unreasonable conduct on the part of the appellant; especially where the amendment was more favourable to the respondents in safeguarding their options to pursue their claim in the Industrial Court. Thirdly, nothing turns on the respondents being described as 'retired' in

the appellant's anniversary magazine or that this is reflective of equivocal conduct of the appellant. Notwithstanding the foregoing finding that the Industrial Court erred in considering the ex gratia payment, the release, and the anniversary magazine as factors in concluding that the appellant acted unreasonably in dismissing the respondents, having considered matters in the round, the Court is of the view that the Industrial Court's conclusions on the core factors identified in the guideline cases are unimpeachable and there is no basis to set aside its conclusion that the appellant acted unreasonably.

9. As to the award of compensation made by the Industrial Court for payment in lieu of notice, section C9(3)(c) of the Code prescribes only the period of notice required to be given by an employer of its intention to terminate an employee's employment. It does not preclude an employer from giving a longer period of notice and does not say that in the exercise of its discretion the Industrial Court may not award compensation in lieu of notice for any period beyond the 30-day notice period prescribed. It can properly be read as setting a minimum standard for the notice period and not a ceiling. Therefore, the Industrial Court's decision to award compensation based on notice periods of 5 and 6 months on the particular facts and circumstances of this case cannot be impugned on the basis that it applied any wrong principle or took into account matters which it should not have taken into account or failed to take account of matters which it should have or was plainly wrong.

Cable & Wireless (West Indies) Limited v Conrad Tonge (deceased) and others [2010] UKPC 25 followed.

10. An employee is entitled to immediate loss of earnings or benefits from the date of dismissal to the date of assessment, subject to the employee's duty to mitigate. This award is usually made to compensate an employee for financial loss for the period between their dismissal and the date of judgment. This entitlement accrues whether or not a claim is made in the Memorandum submitted in the Industrial Court. However, the employee has a duty to mitigate which entails making reasonably diligent efforts to find employment at a comparable standard to reduce or extinguish the loss suffered from the employer's wrongful act through the income earned from the new job. Undoubtedly, the failure of an employee to mitigate is a highly relevant factor when considering whether to make an award under the head of immediate loss. However, the authorities do not go as far as saying that the failure to mitigate will ineluctably lead to no award being made.

LIAT (1974) Ltd v Novella Sheppard Antigua Civil Appeal No. 6 of 1991 (delivered 22nd November 1993, unreported) followed; Antigua and Barbuda Transport Board v Anderson Carty ANUHLTAP2020/0005 (delivered 27th July 2023, unreported) followed; Jennifer Simpson-Edwards v Digicel Antigua Limited et al Industrial Court Reference C/98 of 2017 considered; Antigua Village Condo Corporation v Jennifer Watt Antigua Civil Appeal No. 6 of 1992 (delivered 7th February 1994, unreported) followed; Tidman v Aveling Marshall Ltd [1977] ICR 506 considered; Gardiner-Hill v Roland Beiger Technics Ltd [1982] IRLR 498 considered; LIAT (1974) Ltd v Novella Sheppard Antigua Civil Appeal No. 6 of 1991 (delivered 22nd November 1993, unreported) applied; Norton Tool Co. Ltd v Tewson [1973] 1 All ER183 considered.

11. In the case at hand, the respondents gave no evidence of efforts to mitigate their loss. The Industrial Court nonetheless awarded them the equivalent of their full monthly salaries for the first year after their dismissal. The court also awarded the respondents further sums equivalent to the difference between the respondents' actual salary and prospective earnings based on its assessment of the respondents' prospective earnings in the 2nd, 3rd and 4th years after their dismissal. Again, no deduction was made on account of the absence of evidence in mitigation. Such an approach is not aligned with the traditional jurisprudence of the Industrial Court which treats the failure to mitigate as a factor that diminishes the award made under this head. The approach taken by the Industrial Court here has the effect of rewarding or conferring a bonus and windfall upon an employee who has absolutely failed to mitigate, instead of penalising their failure. This undermines the important policy reasons underlying the emphasis consistently placed by the Industrial Court on the employee's duty to mitigate. Furthermore, no reasons were advanced nor basis stated for determining what sums the respondents were likely to earn in their 2nd, 3rd and 4th year after dismissal. Accordingly, the Court finds that the Industrial Court erred in law such that the award made under the head of immediate loss should be varied.

12. In relation to an award for loss of future earnings, Sir Vincent Floissac CJ identified four basic rules that must govern such an award: (i) future loss of earnings should be predicated on the probability that the earnings from future employment or self-employment will be less than what was earned prior to termination and that the loss is the difference between the two earnings; (ii) there is a limit to be placed on the number of years over

which such loss is calculated and on the amount of future loss recoverable; (iii) there must be a significant discount for the fact that the award is an accelerated lump sum payment in realisation of a mere expectation and; (iv) the onus is on the employee to prove the probability of loss upon which an award of compensation is made and to prove the probable duration of that probability. This last requirement is of critical importance as failure by an employee to discharge this burden can result in no award being made under this head.

Antigua Village Condo Corporation v Jennifer Watt Antigua Civil Appeal No. 6 of 1992 (delivered 7th February 1994, unreported) followed; *Adda International Ltd. v Curcio* [1976] 3 All ER 620 considered.

13. The Industrial Court granted an award for future loss of earnings to Mrs. Henry-Hughes when there was simply no evidence from her to prove any of the matters required to secure an award under this head. Having already made awards to her for immediate loss for 4 years after her dismissal, the Industrial Court made an award for the remaining 9 months until she reached her retirement age of 65. While on its own an award of the equivalent of 9 months earnings for future loss might not be objectionable, on the facts of this case, the approach taken by the Industrial Court violates and circumvents the requirement to limit the duration and quantity of compensation for loss of future earnings as the awards made for immediate loss were calculated using the same formula employed to calculate future loss. The substantive effect of the combined awards for immediate loss and future loss using the same formula is that Mrs. Henry- Hughes was effectively given awards for a period of 4 years

and 9 months, in circumstances where she provided no evidence of loss. The award for loss of future earnings is therefore set aside.

14. In assessing the appropriate award for the loss of fringe benefits as a head of loss, the court looks to the employment contract or the Collective Bargaining Agreement to ascertain what fringe benefits the employee would have enjoyed had his or her employment not been terminated. The fringe benefits for which the Industrial Court made awards, which were challenged, were Cooking Gas Concession; Thrift Fund; and Health Insurance Coverage. Having considered the Collective Bargaining Agreement and having regard to the finding that the appellant acted unreasonably in terminating the respondents' employment, and that the sums awarded under these heads were consistent with the respondents' entitlements under the Collective Bargaining Agreement, this Court finds no basis to interfere with these awards.

Cable & Wireless (West Indies) Ltd v Hill (1982) 30 WIR 120 followed.

Case Name:

Rayley Company Ltd.
v
Kathryn Ma Wai Fong
(as Executrix of the Estate of the late Wong Kie Nai and
Derivatively on behalf of Rayley Company Limited)
[BVIHCMAP2022/0014]

[1] Wong Kie Yik
[2] Wong Kie Chie
v
Kathryn Ma Wai Fong

**(as Executrix of the Estate of the late Wong Kie Nai and
Derivatively on behalf of Rayley Company Limited)
[BVIHCMAP2022/0015]**

[1] Incredible Powers Limited

[2] Esben Finance Limited

v

Kathryn Ma Wai Fong

**(as Executrix of the Estate of the late Wong Kie Nai and
Derivatively on behalf of Rayley Company Limited)**

[BVIHCMAP2022/0016]

Territory of the Virgin Islands

Date: Wednesday, 15th January 2025

**Coram for delivery: The Hon. Mde. Margaret Price-Findlay, Justice of
Appeal
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellants:	Mr. Andrew Westwood, KC for the 1st and 5th appellants via Zoom Mr. Scott Tollis with Ms. Colleen Farrington for the 2nd and 3rd appellants via Zoom Ms. Colleen Farrington for the 4th appellant via Zoom
Respondent:	Mr. Orlando Fraser, KC with Mr. Herman Boeddinghaus, KC and Ms. Eleanor Holland via Zoom

Issues:

Commercial appeal – Wholesale adoption of one party’s submissions - Whether the learned trial judge failed to have proper regard to the submissions of the appellant – Discharge of judicial duties - Whether the learned judge failed to discharge his judicial duties by adopting the submissions of the respondent - Apparent Bias - Natural justice - Whether the orders subject to appeal should be set aside on the grounds that there has been a breach of the duty to act fairly and/or a breach of the requirements of fairness and/or procedural unfairness and/or a breach of natural justice

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The judgment and the consequential orders of the learned judge are set aside.**
- 3. The matter is remitted to the Commercial Court for retrial before another judge.**
- 4. Costs to the appellants to be assessed by a judge in the Commercial Division within 21 days hereof if not agreed.**

Reason:

- 1. A judge has a duty to make sure that he or she has given due consideration to the arguments of all parties involved in proceedings in arriving at a reasoned decision in the matter. It is expected that a judge, having heard the various arguments would consider and address the salient points raised by the parties in arriving at a decision. Judicial decisions have the benefit of the presumption of integrity and impartiality and a party who seeks to set aside the decision of a judge due to the incorporation of the material of others has the burden of rebutting that presumption.**

Cojocaru v British Columbia Women's Hospital and Health Center (2013) 2 SCR 357 followed.

- 2. It has generally been accepted that the wholesale adoption of counsel's submissions by a judge is not offensive. Where a judicial officer adopts wholesale or substantially wholesale in the judgment passages of one side's submissions, the issue which falls to be determined, is whether the judicial officer has properly discharged his duty. Where there is extensive copying of submissions by a judge, however, it creates a substantive risk of the suspicion of bias on the part of the judge. There is nothing wrong with a judge making extensive use of submissions of one party provided that there is proper acknowledgement, whether in setting out the factual matrix or when analysing the issues and applicable legal principles or even in the actual dispositive reasoning. Where this occurs, however, the judge should be careful to make it clear on the face of the judgment that he has considered the contrary submissions and has brought his own reasoning to bear on the decision of the court.**

Ng Min Hong v Soemarli Lie and Another BVIHCMAP2022/0068 (delivered 28th July 2023, unreported) followed.

- 3. It is accepted that in producing a judgment, a judge will favour one side's argument over another, however, it is the judicial function to arrive at a clear decision. No set formula has been laid down as to whether a judge has demonstrated sufficient consideration and deliberation in coming to a given conclusion. It is a matter for the appellate court upon careful consideration of the judgment to decide whether the learned trial judge has fallen short of what is**

to be expected having observed the substantial similarities between one party's submissions and the judgment itself.

4. When comparing the submissions of the respondent in the court below and the judgment of the learned trial judge, it is clear that the judgment adopts approximately ninety percent plus of the respondent's submissions. In adopting the respondent's submissions almost wholesale, it is not apparent that the learned trial judge addressed his mind to the submissions of the appellant. This may lead to the impression that the learned trial judge has abdicated his main judicial responsibility, that is, to exercise independent thought on the relevant issues and arrive at a conclusion. A judge must give some explanation as to why he has arrived at a particular decision. Justice will not be achieved if it is not apparent to the parties why one party has succeeded and the other has not.

Crinion v IG Markets Ltd 2013 EWCA Civ 587 followed; Amaca Pty Ltd v Werfel [2020] SASFC 125 followed; Ramnarine v Ramnarine [2013] UKPC 27 applied; Newton v Public Prosecutor 2024 2 LRC 151 considered.

5. When copying on a large scale, to such a degree and in the manner seen in this case, serious questions arise about whether the judge has abdicated his judicial function or, at the very least, whether his or her conduct is such that justice has not been seen to be done by an independent tribunal. In such cases, it is the role of the appellate court to review and analyse the questioned judgment and determine whether it ought to stand. Having reviewed the judgment of the learned trial judge this Court finds that the extensive copying of the respondent's

submissions, even with the minor additions made by the learned trial judge, when viewed as a whole, would lead a reasonable observer to be satisfied that the learned trial judge failed to impartially and independently examine all of the evidence and submissions and arrive at his own conclusions.

6. It therefore cannot be said that on a reading of the judgment of the trial judge that this Court is in a position to conclude that the learned trial judge properly brought to bear independent judicial reasoning to all the issues canvassed before him by both parties.

APPLICATIONS AND APPEALS

Case Name:

[1] Gertha Belmar
[2] Mary Laypet Belmar-Clarke
[3] Veronique Belmar
(as representatives of the Estate of George Belmar)
v
The Attorney General of Saint Lucia
[SLUHCVP2024/0006]
Saint Lucia

Date:

Monday, 13th January 2025

Coram:

The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal [Ag.]

Appearances:

Applicant: Ms. Ann-Alicia Fagan
Respondent: Mrs. Rochelle John-Charles

Issues:

Application to set aside or vary order of a single judge refusing application for extension of time to file notice of appeal - Rule 62.20 Civil Procedure Rules (Revised Edition) 2023 - Whether the learned judge failed to provide adequate reasons for the refusal of the application for an extension of time - Rule 26.1 (2)(k) of the Civil Procedure Rules (Revised Edition) 2023 - Whether the applicant's evidence satisfied the requirements for the grant of an extension of time - Whether the delay in applying for the extension of time was inordinate - Whether the proposed appeal has a realistic prospect of success

Type of order:

Oral Decision

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The application to set aside or revoke the order of the single judge dated 23rd April 2024 is dismissed.
2. Costs to the applicant agreed in the sum of \$750.00 to be paid by the applicant within 30 days of the date of this order.

Reason:

This matter is of some vintage commencing in 1997 when the Government signaled its intention to acquire a parcel of land situated in Dennery owned by George Belmar for the purpose of undertaking a low-cost housing project on the land.

By Cabinet Conclusion No. 637 of 2002 dated 24th June 2002, the Cabinet of Ministers approved the declaration of the acquisition of the land consisting of 16.26 acres.

The Notice of Acquisition was published in the Gazette on 12th August 2002.

A Board of Assessment was appointed to determine the quantum of compensation to be paid by the Government to the owner of the land. The Board (under the chairmanship of Mr. Dexter Theodore) delivered its decision on 4th July 2008, which decision was appealed by the applicants by notice of appeal filed on 18th August 2008.

Meanwhile though, on 5th September 2008, Ms. Gertha Belmar as a representative of Mr. Belmar was paid the sum of \$966,412.04 by way of compensation for the land compulsorily acquired, by virtue of the judgment of the Board of Assessment.

By Order of the Court of Appeal dated 17th May 2026, the Court of Appeal remitted the assessment of compensation to a new Board of Assessment, because one of the members of the Board, Mr. Herman Phillips, was a valuer for the applicant.

On 7th December 2021, the new Board of Assessment (under the chairmanship of Mr. Alberton Richelieu) determined that the payment of \$966,412.04 made by the Government to the Estate of Mr. Belmar, in accordance with the award of the Theodore Board, was more than sufficient to compensate Mr. Belmar for the land acquired.

Meanwhile, the land became the property of the Government upon the second publication of the Notice of Acquisition in the Gazette on 29th July 2020.

According to Ms. Shahida Charlemagne (of Counsel for the applicant) the applicant was never personally served with the decision of the Board, but counsel for the applicant received the decision via email on 5th April 2023.

On 8th March 2024, the applicant applied for an extension of time to file a notice of appeal against the decision of the Board of Assessment. According to paragraph 18 of the notice of application and paragraph 17 of the affidavit of Shahida Charlemagne in support of the application- “The appeal concerns basic principles of natural justice. It would be an

affront to justice if the award was made to stand, having been made without any representations by the applicant, when the applicant has been actively engaged in the matter to date.”

On 26th March 2024, the respondent filed a notice of opposition to the application for an extension of time, together with an affidavit in response sworn to by Mr. Seryozha Cenac, Senior Crown Counsel, opposing the application for an extension of time. In his affidavit, Mr. Cenac avers that the applicant was represented at the hearing of the Board of Assessment. He avers that, based on the applicant’s statement in the notice of application and affidavit in support, counsel received the decision of the Board on 5th April 2023, but it was not until 8th March 2024 (nearly one year later) that an application was made for an extension of time to file a notice of appeal. This delay, he avers, is inordinate. He also avers that the applicant has advanced no, or no sufficient reason for the length of the delay in filing the notice of appeal and no, or no sufficient reason to warrant an extension of time to file a notice of appeal against the decision of the Board. He also avers that there is no realistic prospect of the applicant succeeding on an appeal against the decision of the Board.

On 23rd April 2024, the notice of application for the extension of time came before Justice of Appeal, Price-Findlay, sitting as a single judge of the Court of Appeal. In her order made on the same day, the learned Justice of Appeal recited various documents filed by the parties and read by her and stated that she considered the factors to be considered by the Court on an application for extension of time, namely, the length of the delay, the reasons for the delay, the chances of the appeal succeeding if the extension is granted and degree of prejudice if the application is granted. She also stated that she considered rule 26.1(2)(k) of the Civil Procedure Rules (Revised Edition) 2023. She dismissed the application for an extension of time.

The question of when an order of a single judge ought to be varied, discharged, or revoked is essentially dependent on the application dealt with by the judge and the order made by him or her. The Court of Appeal ought to consider the substantive application that was

determined by the single judge and consider whether the test for that particular application was properly satisfied.

The particular application which was before the judge was an application for an extension of time to file a notice of appeal.

In the St. Lucian case of SLUHCVAP2021/0005 Francis Maurice et al v Juliana Joseph et al, the applicants sought a revocation of the order of a single judge refusing an application for an extension of time to make an application for leave to appeal. The Court of Appeal in that case considered the submissions of both parties, reviewed the entirety of the order of the single judge, and determined that the single judge had taken into account all of the relevant factors in exercising his decision in dismissing the application and had referred to the relevant principles in SKBHCVAP2011/0009 Carleen Pemberton v Mark Brantley as well as GDAHCVAP2015/0025 Joseph Hyacinth and Allan Joseph. The Court of Appeal determined that the judge gave deliberate consideration to all of the relevant principles, examined the affidavit evidence, and held that there was no basis upon which, they could have come to the conclusion that the single judge's exercise of discretion was plainly wrong as per the principles laid down in Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR. The application to revoke the order of the single judge was accordingly refused.

In the Grenadian case of GDAHCVAP2022/0025 Natasha Beharry v Gren-Mac Construction Inc., Court of Appeal was tasked with determining an application to revoke an order of a single judge dismissing an application for a stay pending appeal. The Court considered the case of BVIHCMAP 2014/0017 C. Mobile Services Limited v Huawei Technologies Co. Limited and determined that it was satisfied that the applicant had demonstrated a realistic prospect of success on the appeal and that stay should be granted. The application to revoke the order of a single judge was granted.

In the case before us, the particular application which was before the single judge was an application to

extend the time to file a notice of appeal. The factors to be considered by the court in determining whether an extension of time should be granted are the following: (1) the length of the delay in filing the application for an extension of time, (2) the reason(s), (3) the chances of the appeal succeeding if the extension is granted and (4) the degree of prejudice to the respondent if the application is granted and to the applicant if the application is not granted.

The single judge stated in the recitals in her order that she had read the notice of application for the extension of time and all of the affidavits filed by the parties, and that she had considered all of the factors required to be considered by the Court in determining an application for an extension of time, and she had considered too the relevant rule in the CPR.

We consider that the single judge ought properly to have articulated how she arrived at the conclusions which she did, but although she did not do so, she clearly stated in her order that she had considered all of the relevant factors in arriving at her decision. We can and will nonetheless consider the factors ourselves to see if the single judge got it right.

When one considers the factors which the Court is required to consider; it is inarguable that the nearly one year delay between the time when the applicant indicated that counsel had received the decision of the Board of Assessment and when the extension of time application was filed was inordinate. It is inarguable as well that the reason given for the nearly one-year delay was not a good one. It is difficult to argue that the applicant, having received nearly one million dollars since September 2008 as compensation for the compulsory acquisition of the land, which amount was awarded to them by the first Board of Assessment in July 2008 and collected by them in September 2008, and which award was agreed with by the second Board of Assessment over 13 years later, will be more prejudiced than the respondent which paid compensation for the land 12 years before the land became vested in it in July 2020 and which, if the extension of time is granted, will likely continue to be

‘under the gun’ for another 5 years after the vesting of the land.

As to the prospects of success in the appeal, if the extension of time to file the notice of appeal is granted and the applicant files the notice of appeal which was exhibited with the application seeking the extension of time to file the notice, it does not appear that the applicant will have a good chance of success in the appeal.

The applicant’s first ground of appeal is that the Board erred in law and misdirected themselves when they proceeded to consider the Report of Herman Phillip even though the Board noted that the report was deemed to be biased by the Court of Appeal. This, though, is incorrect, because what the Board of Assessment noted at paragraph 3 of its decision was that the Court of Appeal remitted the assessment to a new Board (the Richelieu Board) because the decision of the Theodore Board was tainted with bias since Mr. Phillip, who was a member of that Board, was a valuer of the applicant (George Belmar). It is also to be noted that Mr. Phillip’s valuation is by far the one most favourable to the applicant. In fact, it was over \$2.7M more than the one closest to it.

The applicant’s other 3 grounds of appeal all relate to the applicant not having been informed of the intended date of the hearing and the Board proceeding without any representative of the applicant, when the evidence is that the applicant’s nominated representative on the Board, their Quantity Surveyor Mr. Andre Mathurin, was present and participated in the proceedings of the Board of Assessment as the person selected by the applicant to represent his interest on the Board.

It is also significant that the applicant – in their draft notice of appeal – never challenged the findings or conclusions of the Board on the only matter which its decision concerned, which is the amount of compensation to be paid to the applicant for the compulsory acquisition of his land. The applicant

cannot therefore be said to have a good chance of success on their appeal.

In these circumstances, there is no basis upon which to conclude that the single judge's decision was plainly wrong in accordance with the principles laid down in Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR. The application to revoke the order of Price-Findlay JA is accordingly dismissed.

Case Name:

**The Estate of Cecil Toussaint
(Represented by his legal personal representative
Victoria Toussaint)
v
[1] Troy Lamontagne and
[2] The Attorney General
[SLUHCVAP2024/0009]
Saint Lucia**

Date:

Tuesday, 14th January 2025

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal**

Appearances:

Applicant:

Mr. David Francis

Respondents:

Mr. George K. Charlemagne with Ms. Kimberly Williams

Issues:

Application for leave to appeal - Whether leave to appeal was required in this matter - Application for extension of time to file notice of appeal - Whether the length of the delay was inordinate and whether a good explanation has been put forward for excusing it - Whether the application to extend time within which to appeal should be granted upon weighing the likely prejudice to be suffered by the parties if the application is granted - Whether the applicant has good prospects of success on the proposed appeal

Type of order:

N/A

Result/Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason:

N/A

Case Name:

**1] Outdoor Living, Inc.
[2] Cosmo Import and Export, LLC**

v

**Reliant Group and Casualty Insurance ICC Ltd.
[SLUHCMAP2023/0002]
Saint Lucia**

Date: Tuesday, 14th January 2025

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal

Appearances:

Appellants:	Mr. Sahleem Charles with Mrs. Esther Greene-Ernest
Respondents:	Ms. Eugenia Dickson with Ms. Kayla Theeuwen

Issues: Commercial appeal - Appeal against the order of the learned judge in ordering prescribed costs for discontinuance and a consolidation - Assessment of costs in a commercial claim - Rule 71.13 Civil Procedure Rules (Revised Edition) 2023- Assessment of costs on discontinuance - Part 37 Civil Procedure Rules (Revised Edition) 2023 - Whether the learned judge erred in law and or misdirected herself in finding that Part 37 CPR (Revised Edition) 2023 is in mandatory language - Whether the learned judge erred in law by adopting an inapplicable rule for the cost assessment in the Commercial Court - Whether the learned judge erred in law and or misdirected herself when she summarily assessed costs on the appellants' application to consolidate, in circumstances where the respondent did not file any documents in response to the appellants' application to consolidate

Type of order: N/A

Result/Order:	IT IS HEREBY ORDERED THAT: Judgment is reserved.
Reason:	N/A
Case Name:	Christopher Kelvin Hyacinth v Christianna Gibbs [GDAHCVAP2024/0011] Grenada
Date:	Wednesday, 15 th January 2025
Coram:	The Hon. Mde. Margaret Price-Findlay, Justice of Appeal The Hon. Mde. Esco Henry, Justice of Appeal The Hon. Mr. Gerard St. C Farara, Justice of Appeal [Ag.]
Appearances:	
Applicant:	Mr. Dwight Horsford holding papers for Mr Ian Sandy via Zoom
Respondent:	Mr. Ruggles Ferguson, KC with him Ms. Danyish Harford via Zoom

Issues: Application for extension of time to file notice of appeal - Length of delay in filing notice of appeal - Reasons for the delay - Chances of the appeal succeeding if an extension of time is granted - Degree of prejudice - Application for stay of execution - Degree of harm to the respondent - Risk of injustice to one party if stay is granted

Type of order: Oral Decision

Result/Order: IT IS HEREBY ORDERED THAT:

1. The application for an extension of time to appeal is granted.
2. The applicant shall file the proper and correct notice of appeal on or before the 17th of January 2025.
3. Thereafter, the matter shall proceed in accordance with the Civil Procedure Rules (Revised Edition) 2023.
4. The application for a stay of execution of the order of Glasgow J dated 15th July 2024 is refused.
5. The interim stay granted by this Court on 31st December 2024 is hereby revoked.
6. Costs to the respondent in the sum of \$2500.00 to be paid on or before the 6th February 2025.

Reason: The Court first heard an application by the applicant for an extension of time to file his notice of appeal. Having considered the submissions made by counsel for both parties and the principles on which an extension of time is granted, the Court was satisfied that the applicant met the threshold for the grant of an extension of time to file its notice of appeal.

Having considered all of the principles in which an application for a stay may be granted as pronounced in C-Mobile Services Limited v Huawei Technologies Co. Ltd BVIHCMAP2014/0017) (delivered 2nd October 2014, unreported), and bearing in mind that a stay is the exception rather than the rule, the Court having considered the arguments proffered by the applicant, was not of the view that the appeal would be stifled or rendered nugatory if a stay was not granted. Further, the Court was not satisfied that the prejudice to the applicant is sufficient to grant a stay. The application for a stay of the order of Glasgow J dated 15th July 2024 was therefore refused.

Case Name:

**Lisa Vernita Alexander
v
Neil Noel
[SLUHCVAP2024/0012]
Saint Lucia**

Date:

Wednesday, 15th January 2025

Coram:

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

Appearances:

Appellant: Mr. Sahleem Charles

Respondent: Mrs. Maureen John Xavier

Issues: Civil appeal - Personal injury - Appeal against apportionment of liability and damages awarded - Whether the learned judge erred in the exercise of her discretion in apportioning liability and awarding damages at 75% to the appellant and 25% to the respondent - Whether judge failed to take into account or gave too little weight to the appellant's evidence as to the manner in which the accident occurred - Contributory negligence - Whether the judge erred by failing to give sufficient reasons for the apportionment of liability - Whether the judge erred in finding that the appellant was negligent in causing the accident

Type of order: N/A

Result/Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason: N/A

Case Name: Avice Charles Inglis
v
Corporal of Police 618
[SLUMCRAP2020/0003]
Saint Lucia

Date: Wednesday, 15th January 2025

Coram: The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal

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

Appearances:

Appellant: Mr. Leslie Prospere with Ms. Joelle Greene

Respondent: Ms. Kelly Thomson

Issues:

Magisterial criminal appeal - Appeal against conviction of the appellant for the offence of driving without due care and attention - Section 74(1) (a) Motor Vehicles and Road Traffic Act Cap. 8:01 of the 2013 Revised Laws of Saint Lucia - Whether the learned magistrate erred by not seeking clarification from the appellant of her use of the term “proceed cautiously” - Whether the learned magistrate erred when he determined that the appellant delegated her driving responsibility to other drivers on the road - Whether the learned magistrate erred when he convicted the appellant despite finding that the virtual complainant was overtaking in slow-moving traffic immediately before the collision - Whether the learned magistrate erred in finding that the virtual complainant was not speeding immediately before the collision

Type of order:

Oral Decision

Result/Order:

IT IS HEREBY ORDERED THAT:

The appeal is dismissed.

Reason: The Court noted that on the evidence before him, the learned Magistrate was entitled to find the appellant guilty of driving without due care and attention and there was no factual or legal basis to overturn the conviction.

Case Name: [1] Peter Toussaint
[2] Terentia Nigel Toussaint-Carroll
[3] The Heirs of Thelma Toussaint
v
Peter Michael Barnard
[SLUHCVAP2024/0005]
Saint Lucia

Date: Thursday, 16th January 2025

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal

Appearances:

Applicants: Mr. Claudius Toussaint in person
Mr. Peter Toussaint in person
Ms. Linda Toussaint in person
Mr. John Toussaint in person

Respondents: Mr. Dexter Theodore, KC

Issues: Application for an extension of time and relief from sanctions - Adjournment

Type of order:

Adjournment

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The application is adjourned to the next sitting of the Court of Appeal for Saint Lucia during the week commencing 19th May 2025.**
- 2. The 2nd appellant, Terentia Nigel Toussaint-Carroll, is to provide proof via medical certificate, evidencing her inability to attend court. Such certificate to be provided no less than 14 days before the next adjourned date.**

Reason:

The Court was informed that the 2nd appellant Terentia Nigel Toussaint-Carroll had suddenly taken ill and was unable to attend court to prosecute the appeal today. The Court noted that all of the other appellants in the matter unrepresented and appeared *Pro Se*. With no objection levied by counsel for the respondent, the matter was adjourned to the next sitting of the Court of Appeal for Saint Lucia commencing 19th May 2025.

The Court further ordered that the 2nd appellant shall provide proof via medical certificate evidencing her illness to be filed within 14 days prior to the next adjourned day.

Case Name:

**[1] Peter Toussaint
[2] Terentia Nigel Toussaint-Carroll
[3] The Heirs of Thelma Toussaint
v
Peter Michael Barnard**

[SLUHCVAP2024/0005]
Saint Lucia

Date: Thursday, 16th January 2025

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal

Appearances:

Appellants:	Mr. Claudius Toussaint in person Mr. Peter Toussaint in person Ms. Linda Toussaint in person Mr. John Toussaint in person
Respondent:	Mr. Dexter Theodore KC

Issues: Civil appeal - Adjournment

Type of order: Oral Decision

Result/Order: IT IS HEREBY ORDERED THAT:

1. The appeal is adjourned to the next sitting of the Court of Appeal for Saint Lucia during the week commencing 19th May 2025.

2. The 2nd appellant, Terentia Nigel Toussaint-Carroll, is to provide proof via medical certificate evidencing her inability to attend court, such certificate to be provided no less than 14 days before the next adjourned date.

Reason:

The Court was informed that the 2nd appellant Terentia Nigel Toussaint-Carroll had suddenly taken ill and was unable to attend court to prosecute the appeal today. The Court noted that all of the other appellants in the matter were unrepresented and appeared *Pro Se*. With no objection levied by counsel for the respondent, the matter was adjourned to the next sitting of the Court of Appeal for Saint Lucia commencing 19th May 2025.

The Court further ordered that the 2nd appellant shall provide proof via medical certificate evidencing her illness to be filed within 14 days prior to the next adjourned day.

Case Name:

Kurtly Garvey Cadette
v
The King
[SLUHCRA2023/0001]
Saint Lucia

Date:

Thursday, 16th January 2025

Coram:

The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal

Appearances:

Appellant: Mr. Al C. Elliot with him Ms. Mercaira Malaykhan

Respondent: Mr. Linton Robinson with him Mr. Kurtis Raphael and Mr. Peter Moyston

Issues:

Criminal Appeal against sentence - Sentence of 25 years for the offense of murder - Whether the learned judge erred by not giving the appellant the benefit of a sentence indication although one had been requested by the appellant prior to sentencing - Whether the sentence given by the learned judge was excessive and disproportionate in the circumstances of the case - Whether the learned judge gave adequate consideration to the sentencing guidelines including the relevant aggravating and mitigating factors before sentencing

Type of order:

N/A

Result/Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason:

N/A

Case Name:

**Yannick Pelage
v
PC 785 Mario Chiquot
[SLUMCRAP2023/0002]
Saint Lucia**

Date: Thursday, 16th January 2025

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal

Appearances:

Appellant:	Mr. Horace Fraser
Respondent:	Ms. Kelly Thomson

Type of order: Appeal against conviction and sentence - Offences against the Customs (Control and Management) Act - Offences against the Fisheries Regulations - No case submission - Whether a material procedural irregularity took place in the trial process resulting in an injustice when the learned magistrate wrote her decision in relation to the written no case submission made on behalf of the appellant without seeing or considering the written no case submission - Whether a procedural material irregularity took place in the trial process when the learned magistrate found that the charges laid against the appellant are strict liability offences and thus pointed to no evidence upon which the guilty verdicts could rest - Whether the convictions entered against the appellant go against the weight of the evidence and were entered in the absence of cogent evidence pointing to the guilt of the appellant - Whether a material procedural irregularity took place in the trial when the learned magistrate entered the convictions against the appellant and proceeded to sentence him without inviting his counsel to enter a plea in mitigation

Type of order:

N/A

Result/Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason:

N/A