

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

CHAMBER HEARING
Tuesday 17th December 2024

MATTERS DEALT WITH ON PAPER

Case Name:

Lawten Forbes

v

[1] Commissioner of Corrections
[2] Director of Public Prosecution
[3] Commissioner of Police

[SKBHCVAP2024/0014]
(Saint Christopher and Nevis)

Date:

Tuesday 17th December 2024

Before:

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

On paper:

Applicant:

Mr. Craig Tuckett

Respondents:

No appearance

Issues:

Application seeking bail pending appeal

Result /
Order:

IT IS HEREBY ORDERED THAT:

- 1. The application for bail pending appeal filed on 31st October 2024 is refused.**

2. The Registrar of the High Court shall serve a copy of this order on the applicant within 14 days of the date of this order and provide proof of service thereafter.
3. The Chief Registrar is directed to set this appeal down for status hearing on a date to be fixed in consultation with the parties.

Reason:

The Court considered that section 52 of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act which prescribes that where a person who is convicted desires to appeal to the Court of Appeal or to obtain the leave of the Court of Appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of court within 15 days of the date of conviction.

The Court also considered that the appellant's notice of appeal was filed outside the time prescribed and that there has been no order extending the time for appealing or granting leave to appeal. There was therefore no valid extant appeal pending before the Court. Nonetheless the Court considered the principles set out in *Warren Cassel v The King* MNIHCRAP2022/0003 (delivered 20th December 2022, unreported) and *The State v Lynette Scantlebury* (1976) 27 WIR 103 and determined that the applicant had not provided cogent evidence which, on these authorities supports the view that there were any exceptional circumstances which have arisen for granting bail pending the hearing and determination of the appeal

Case Name:

Alexandra Amorsingh

v

Germain Denbow

**[SLUHCVAP2024/0007]
(Saint Lucia)**

Date: Tuesday 17th December 2024

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

On paper:

Applicant: Ms. Maureen John-Xavier

Respondent: Ms. Esther Greene-Ernest

Issues: Application seeking (i) an extension of time to file a notice of appeal, (ii) an extension of time to file skeleton arguments, (iii) relief from sanctions and (iv) that the applicant be granted leave to rely on fresh evidence in the form of the death certificate and autopsy report

Result / Order: **IT IS HEREBY ORDERED THAT:**

4. The application for (1.) an extension of time to file a notice of appeal and (2.) an extension of time to file skeleton arguments is granted.
5. The applicant shall file her notice of appeal within 7 days of the date of this order and file her skeleton arguments 42 days thereafter.
6. The application seeking permission to rely on the Fresh Evidence is dismissed.

Reason: The Court considered:

- i. the principles on which an extension of time should be granted as enunciated in Lindsay F.P. Grant et al v Tanzania

Tobin Tanzil SKBHCVAP2020/0004
(delivered 6th July 2020, unreported)
including (i) the nature of the failure and the consequential effect; (ii) the length of the delay and whether any good explanation has been put forward for excusing it, (iii) weighing the prejudice to the parties in the context of the failure and the delay, and (iv) whether the appeal has a realistic prospect of success;

- ii. the principles which the Court should examine when determining an application to adduce fresh evidence as stated in **Lam Wo Ping et al v Chen Jian Yun et al BVIHCMAP2023/0006** (delivered August 20th 2024 ,unreported) that: (i) it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; (ii) the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; and (iii) the evidence must be such as is presumably to be believed, or in other words it must be credible, though it need not be incontrovertible;
- iii. the judgment in **Chia Hsing Wang v XY and Others BVIHCMAP2022/0055** (delivered 6th June 2023, unreported) in which this Court held the first limb of the **Ladd v Marshall** criteria is that the fresh evidence sought to be relied on in an appeal must have existed at the time of the trial or hearing in the court below, but which could not have been obtained with reasonable diligence by the applicant. However, in exceptional circumstances, the court has a discretion to admit, at the appellate stage, evidence which did not exist (essentially ‘new’ evidence) at the hearing of an interlocutory application, where such evidence is capable of further strengthening the court’s

determination of an issue or finding. Such circumstances are exceptional, and there must be compelling reasons why 'new' evidence ought to be admitted;

and determined that the applicant had provided good reason for the late filing of the application, that the delay was not inordinate and that the respondent is unlikely to suffer prejudice. However, the Court was not satisfied that the applicant had met the threshold for the test to adduce fresh evidence. The application for an extension of time was therefore granted but the application to rely on fresh evidence was dismissed.

Case Name:

The King

v

**[1] Dajshon Benjamin
[2] Edward Crooke
[3] Micah Ormond
[4] K'vawn Choucoutou**

**[BVIHCRA2024/0003]
(Territory of the Virgin Islands)**

Date:

Tuesday 17th December 2024

Before:

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

On paper:

Applicant:

Ms. Tiffany R. Scatliffe, Director of Public Prosecutions

Respondent:

No appearance

Issues:

Application for leave to appeal

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The application for leave to appeal filed on 15th October 2024 challenging the decisions of Persad J dated 15th October and 23rd September 2024 is granted.**
- 2. The applicant shall file and serve their notice of appeal within 21 days of the date of this order.**
- 3. Thereafter, the appeal shall proceed in accordance with Part 62 of the Civil Procedure Rules 2023.**

Reason:

The Court considered rule 62.2(8) of the Civil Procedure Rules (Revised Edition) 2023 which provides that leave to appeal may be given only where (a) the court considers that the appeal would have a realistic prospect of success; or (b) there is some other compelling reason why the appeal should be heard and determined that the applicant should be granted leave to appeal.

Case Name:

**[1] Sancus Financial Holdings Limited (in
liquidation
[2] Carson Wen
[3] Julia Yuet Shan Fung**

v

Chad Holm

**[BVIHCMAP2023/0025]
(Territory of the Virgin Islands)**

Date: Tuesday 17th December 2024

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

On paper:

Applicant: Ms. Colleen Farrington

Respondents: In person

Issues: Application seeking permission to lift the stay of the order of Wallbank J

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application to lift the stay grant under the order of Price-Findlay JA dated 23rd January 2024 in favour of the 1st respondent is granted.
2. The application to lift the stay grant under the order of Price-Findlay JA dated 23rd January 2024 in favour of the 2nd and 3rd respondents is refused.
3. No order as to costs.

Reason: The Court considered the follow:

- i. the principles upon which a stay pending the determination of the appeal is granted as established by this Court in the case of C-Mobile Services Ltd v Huawei Technologies Co. Ltd BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported) including all the circumstances of the case, that a stay is the exception rather than the general rule, that the party seeking a stay must provide cogent evidence that the appeal will be stifled or rendered

nugatory unless a stay is granted, the likely prejudice to the successful party, the prospect of the appeal succeeding where strong grounds of appeal or a strong likelihood the appeal will succeed is shown;

- ii. the principles on which the discretion of a court on a reconsideration of the issue of a stay should proceed set out in *North Shore Ventures Ltd v Anstead Holdings Inc & ors* (2010) [2010] EWCA Civ 1634 in which the English Court of Appeal reiterated that the court in deciding whether or not to stay execution of the judgment pending the outcome of an appeal, or conversely in deciding whether or not to lift a stay that has been granted on a consideration of the papers has to consider which of the two possible orders -- that is to say, either the grant of a stay of execution or its refusal -- would cause the least injustice to the parties affected by the order;
- iii. that two critical issues to be considered and determined are whether the immediate execution of the judgment (in this case the immediate payment of the interim damages awarded to the applicant/respondent in the amount of \$16.5 million) would stifle the prosecution of the appeal or whether the refusal of a stay of execution would make it more difficult for the successful party to enforce his judgment were the appeal to fail;
- iv. that in considering the two critical issues, the court must consider whether the 2nd and 3rd respondents/appellants are able to pay or whether themselves or with the assistance of others, and

whether there is any impediment in them so doing;

- v. in evidence filed in support of the application for the stay it is represented that the respondents/appellants could not afford to pay and would not be in apposition to satisfy the interim damages order. Moreover, it appears that the applicant/respondent has accepted that the 2nd and 3rd respondents/appellants are bankrupt and have commenced proceedings to secure that declaration;
- vi. the court therefore could not be satisfied on the evidence that the 2nd and 3rd respondents/appellants have the means to satisfy interim damages order. In these circumstances, the evidence does indicate that there is a real prospect, certainly a real possibility; of the appeal being stifled were the court to lift the stay;
- vii. the sense of frustration which the applicant/respondent would have in seeking to secure satisfaction of the fruits of his judgment, the court cannot ignore the fact that there is an extant worldwide freezing injunction in place since upon the respondents'/appellants' assets in the sum of USD 95 million and therefore, in relation to other assets of the respondents/appellants that will in due course become available for execution, that order does provide the applicant/respondent with an element of security;
- viii. moreover that although the quantum trial (originally scheduled for November 2024) had to be adjourned on account of the 2nd respondent's/appellant's illness, a status hearing of the said trial is

imminent which should fix a adjourned trial date;

The Court determined that there being no extant appeal advanced by the first respondent, that the stay of execution should be lifted in respect of the first respondent. However, notwithstanding the purported change in circumstances, in respect of the second and third respondent, the balance of harm weighed in favour of maintaining the stay. The application to lift the stay was therefore dismissed.