

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

CHAMBER HEARING
Tuesday 19th November 2024

MATTERS DEALT WITH ON PAPER

Case Name:

Jacob James

v

RUBIS West Indies
(Formerly TEXACO West Indies Limited)

[ANUHLTAP2022/0001]
(Antigua and Barbuda)

Date:

Tuesday 19th November 2024

Before:

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

On paper:

Applicants:

Mr. Clement E. M. Bird

Respondent:

No appearance

Issues:

**Application for an extension of time to file
submissions**

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The application for an extension of time
filed on 23rd October 2024 is granted.**

2. The supplemental bundle filed on 24th October 2024 is deemed to have been properly filed.

Reason:

The Court considered 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.

The Court therefore determined that the applicant should be granted an extension of time to file legal submissions and the completed record of appeal to comply with the Order dated 1st October 2024.

Case Name:

De Andre Henry

v

The King

**[ANUHCRA2022/0004]
(Antigua and Barbuda)**

Date:

Tuesday 19th November 2024

Before:

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

On paper:

Applicant:

Mr. Jason S. Tiwari

Respondent:

No appearance

Issues: Application seeking bail pending the determination of the 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.

Reason: The Court considered the sentence imposed on the applicant, the length of time the applicant has serve in custody and that it is not likely that the applicant would have served his sentence before the hearing of the appeal nor has the applicant demonstrated any exception circumstances that would warrant the grant of bail pending the determination of the appeal.

Therefore, the Court determined that the applicant should not be granted bail having regard to the principles set out in *The State v Lynette Scantlebury* (1976) 27 WIR 103.

Case Name: Whitney Sommers

v

FirstCaribbean International Bank (B'dos)

[DOMHCVAP2024/0017]
(Commonwealth of Dominica)

Date: Tuesday 19th November 2024

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

On paper:

Applicant: Mr. Mark Douglas

Respondent: No appearance

Issues:

Application for an extension of time to serve the respondent the notice of appeal outside of the jurisdiction

**Result
Order:** /

IT IS HEREBY ORDERED THAT:

1. The application filed by the applicant on 4th October 2024 for an extension of time to serve the respondent the notice of appeal filed 2nd August 2024 is granted.
2. The applicant shall serve the notice of appeal filed on 2nd August 2024 on the respondent within 21 days of the date of this order.

Reason:

The Court noted that; (i) pursuant to CPR Part 62.9 the applicant is mandated to serve the notice of appeal on the respondent within 14 days after the notice was filed, (ii) that the applicant filed her notice of appeal on 2nd August 2024 and attempted to serve a copy of the notice of appeal and authorization code on the respondent on 6th August 2024 via pre-paid post at the registered office of the respondent in Dominica, (iii) that the applicant emailed a courtesy copy of the Notice of Appeal to the respondent's legal practitioner on record in the court below to advise that an appeal had been initiated and no opposition has been filed on behalf of the respondent. In response, the legal practitioner indicated that the bank no longer operation in Dominica and there was no one there for service, (iv) that the applicant seeks an extension of time to complete service of the

notice of appeal to complete service and (v) that the respondent is unlikely to suffer any prejudice.

The Court therefore determined that the applicant had met the threshold for the grant of an extension of time to effect service of the notice of appeal and subsequently granted the application.

Case Name:

Olan Vigille

v

**[1] Attorney General of the
Commonwealth of Dominica
[2] Director of Public Prosecution
[3] Mathew Cuffy**

**[DOMHCVAP2024/0021]
(Commonwealth of Dominica)**

Date:

Tuesday 19th November 2024

Before:

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

On paper:

Applicant

Ms. Gina Dyer Munro

Respondents:

No appearance

Issues:

Application for leaving to appeal

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The Application filed on 22nd October 2024 against the decision of Alami J delivered on 3rd October 2024 is granted.**

2. The applicant shall file and serve his 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.
4. Costs of the Application be costs in the appeal.

Reason:

The Court noted rule 62.2(8) of the Eastern Caribbean Supreme Court Civil Procedure Rules (2023) which states that leave to appeal may be given only where (1) the court considers that the appeal would have a realistic prospect of success or (2) there is some other compelling reason why the appeal should be heard.

The Court also noted the principles for the grant of leave to appeal as stated in Othneil Sylvester v Faelleseje Civil Appeal No. 5 of 2005 (delivered 20th February 2006, unreported) and in Cage St. Lucia Limited Treasure Bay (St. Lucia) Limited Saint Lucia Civil Appeal No. 45 of 2011 (delivered on 23rd January 2012, unreported).

The Court therefore determined that the applicant had met the threshold test for the grant of leave to appeal.

Case Name:

Tamika Morancie

v

The King

[DOMHCVAP2024/0022]

(Commonwealth of Dominica

Date: Tuesday 19th November 2024

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

On paper:

Applicant: Ms. Gina Dyer Munro

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 25th October against the decision of Alami J delivered on 4th October 2024 is granted.
2. The notice of appeal filed on 25th October 2024 is deemed properly filed.
3. The appeal shall proceed in accordance with Part 62 of the Civil Procedure Rules 2023.
4. Costs of the Application be costs in the appeal.

Reason: The Court noted rule 62.2(8) of the Eastern Caribbean Supreme Court Civil Procedure Rules (2023) which states that leave to appeal may be given only where (1) the court considers that the appeal would have a realistic prospect of success or (2) there is some other compelling reason why the appeal should be heard.

The Court also noted the principles for the grant of leave to appeal as stated in Othneil Sylvester v Faelleseje Civil Appeal No. 5 of 2005 (delivered 20th February 2006, unreported) and in Cage St. Lucia Limited Treasure Bay (St. Lucia) Limited Saint Lucia Civil Appeal No. 45 of 2011 (delivered on 23rd January 2012, unreported).

The Court therefore determined that the applicant had met the threshold test for the grant of leave to appeal.

Case Name:

[1] Joanne Waldron
[2] Gregory Waldron
[3] Hannah Waldron
[4] Shakira Phillip
[5] Jermaine Phillip

v

Justin Waldron

**[GDAHCVAP2024/0017]
(Grenada)**

Date:

Tuesday 19th November 2024

Before:

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

On paper:

Applicants:

Ms. Rena L. Banfield

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 11th October 2024 against the decision of Actie J entered on 2nd October 2024 is granted.
2. The applicants 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.
4. Costs of the Application be costs in the appeal.

Reason:

The Court noted rule 62.2(8) of the Eastern Caribbean Supreme Court Civil Procedure Rules (2023) which states that leave to appeal may be given only where (1) the court considers that the appeal would have a realistic prospect of success or (2) there is some other compelling reason why the appeal should be heard.

The Court also noted the principles for the grant of leave to appeal as stated in Othneil Sylvester v Faellleseje Civil Appeal No. 5 of 2005 (delivered 20th February 2006, unreported) and in Cage St. Lucia Limited Treasure Bay (St. Lucia) Limited Saint Lucia Civil Appeal No. 45 of 2011 (delivered on 23rd January 2012, unreported).

The Court therefore determined that the applicants demonstrated that there is a realistic prospect of success on appeal and have met the threshold for the grant of leave to appeal.

Case Name:

[1] The Attorney General

**[2] Judicial and Legal Services
Commission**

v

Laren Kay Simon

**[GDAHCVAP2024/0014]
(Grenada)**

Date:	Tuesday 19th November 2024
Before:	The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
On paper:	
Applicants:	Mr. Adebayo Olowu
Respondent:	No appearance
Issues:	Application for an extension of time to file the notice of appeal – Application to deem the notice of appeal filed on 11th September 2024 properly filed
Result / Order:	IT IS HEREBY ORDERED THAT: 1. The application for extension of time to appeal the judgment of Actie J dated 29th July 2024 is granted. 2. The notice of appeal filed on 11th September 2024 is deemed properly filed. 3. The appeal shall proceed in accordance with the Civil Procedure Rules (Revised Edition) 2023
Reason:	The Court considered 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.

The Court was therefore of the view that the applicants had met the threshold for the grant of an extension of time.

Case Name:

Michael Anthony Saunders

V

The King

**[SKBHCRA2024/0006]
(Saint Christopher and Nevis)**

Date:

Tuesday 19th November 2024

Before:

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

On paper:

Applicant:

In person

Respondent:

No appearance

Issues:

Application for leave to appeal sentence

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The Application for leave to appeal sentence is granted.**

2. The notice of application filed on 2nd August 2024 is deemed to be the notice of appeal.
3. The Registrar of the High Court shall serve a copy of this order on the application and the Director of Public Prosecutions within 7 days of the date of this order and provide proof of service thereof.

Reason:

The Court was of the view that the applicant had met the threshold for the grant of leave to appeal. The Court also noted rule 55 of the Eastern Caribbean Supreme Court, Court of Appeal Rules which empowers the Court, when it is minded to grant leave to appeal, to deem the application for leave to appeal as the notice of appeal. The Court therefore granted leave and deemed the application for leave to appeal as the notice of appeal.

Case Name:

Adrienne Denise Kearney

v

**Michael Leslie Winter
(acting and represented by his
receiver/curator Lolita Sergio Winter)**

**[SLUHCVAP2024/0022]
(Saint Lucia)**

Date:

Tuesday 19th November 2024

Before:

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

On paper:

Applicant:

Mr. Fidel Michel

Respondent:

Ms. Wauneen Louis-Harris

Issues:

Application for a stay of execution pending the hearing and determination of the appeal

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The application for a stay of the judgment of Innocent J dated 31st July 2024 is granted.**
- 2. Costs of the Application will be in the appeal.**

Reason:

The Court considered the relevant principles which a court should apply when deciding whether to exercise its discretion to grant a stay adumbrated in Hammond Suddard Solicitors v Agrichem International Holdings Limited [2001] EWCA Civ 2065 applied in C-Mobile Service Limited v Huawei Technologies Co Limited BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported) and which include the following: “The first is that the Court should take into account all the circumstances of the case. Second a stay is the exception rather than the general rule. Third, the party seeking a stay must provide cogent evidence that the appeal will be stifled or rendered nugatory unless a stay is granted. Fourth, in exercising its discretion, the court applies what is in effect a balance of harm test in which the likely prejudice to the successful party must be carefully considered. The fifth is that the court should also take into account the prospect of the appeal succeeding, but only where strong grounds of appeal or a strong likelihood the appeal will succeed is shown (which would usually enable a stay to be granted)”.

The Court then determined that taking into consideration the totality of circumstances, the justice of the application demanded that a stay of

Innocent J's judgment be granted pending the hearing and determination of the appeal.

Case Name:

Alexandra Amorsingh

v

Germain Denbow

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

Date:

Tuesday 19th November 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:

- 1. The applicant shall furnish the Court with a copy of the order or judgment of Innocent J dated 7th March 2024 within 7 days of the date of this order.**
- 2. The application is adjourned for further consideration at the next Chamber Hearing scheduled for 17th December 2024.**

Reason: The Court noted that the applicant had failed to furnish the Court with a copy of the order or judgment of Innocent J which is the intended subject of this appeal. The Court therefore adjourned the matter to the next Chamber Hearing to allow the applicant to file the order or judgment being appealed.

Case Name: Leroyson Gilbert

v

The King

**[SLUHCRA2021/0005]
(Saint Lucia)**

Date: Tuesday 19th November 2024

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

On paper:

Applicant: Mr. Alberton Richelieu

Respondent: No appearance

Issues: Application seeking orders that; (i) the Registrar of the Supreme Court takes the necessary action to lay before the Court of Appeal a transcript of the proceedings in Case No. SLUCRD2014/0494 A; (ii) a copy of the transcript in Case No. SLUCRD2014/0094 A be provided to Counsel for the applicant pursuant to section 51 (c) of the Eastern Caribbean Supreme Court (Saint Lucia) Act; (iii) the cost of the said transcripts be defrayed out of the monies up to an amount allowed by the Court in respect of expenses of Counsel assigned to the applicant

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The transcript fees in respect of Case No. SLUCRD2014/0494 are waived.**
- 2. The Registrar of the High Court shall provide a copy of the transcript in Case No. SLUCRD2014/0494 A to counsel for the applicant.**
- 3. The Registrar of the high Court shall provide a copy of this order on the parties within 7 days of the date of this order.**

Reason:

The Court considered rule 48 (10) of the Eastern Caribbean Supreme Court, Court of Appeal Rules which empowers the court to waive the transcript fees. The Court further noted that the applicant did not have the mean to pay the costs of the transcript. The Court therefore granted the applicant's application for a waiver of transcript fees.

Case Name:

Jeromine Jones

v

The King

**[SLUHCRA2021/0001]
(Saint Lucia)**

Date:

Tuesday 19th November 2024

Before:

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

On paper:

Applicant: Mr. Alberton Richelieu

Respondent: No appearance

Issues: Application seeking (i) legal aid, (ii) the waiver of the transcript fees and (iii) that the Registrar of the High Court takes the necessary steps to provide a copy of the transcript to counsel and to this Court

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appellant's application for the grant of legal aid and the waiver of the transcript fees is granted.
2. Mr. Alberton Richelieu shall be assigned as counsel to assist the appellant in the conduct of hearing of the appeal.

Reason: The Court considered that a judge of the Court is empowered under sections 56 and 51 (c) of the Eastern Caribbean Supreme Court (Saint Lucia) Act to assign legal aid to an appellant and that the applicant had been previously assigned legal aid in the court below.

The Court therefore determined that the applicant had satisfied the Court that he did not have the means to fund his legal representation and it was desirable in the interest of justice that the applicant should have legal aid. The Court subsequently granted the application.

Case Name: [1] Jerome Corbion
[2] Elida Corbion

v

Mathew Emmanuel

**[SLUHCVAP2024/0024]
(Saint Lucia)**

Date: Tuesday 19th November 2024

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

On paper:

Applicants: Mr. Horace Fraser

Respondent: No appearance

Issues: Application seeking an extension of time within which to seek leave to appeal – Application for leave to appeal

Result / Order: IT IS HEREBY ORDERED THAT:

The Application is dismissed.

Reason: The Court considered rule 26.1(2)(k) of the Civil Procedure Rules (Revised Edition) 2023 (the “CPR”) which provides that court may extend or shorten the time for compliance with any rule, practice direction, order or direction of the court even if the application for an extension is made after the time for compliance has passed and CPR 62.16(1)(c).

The Court also considered the principles upon which an extension of time is granted as enunciated in Carleen Pemberton v Mark Brantley SKBHCVAP2011/0009 (delivered 14th October 2011, unreported) and John Cecil Rose v Anne Marie Uralis Rose SLUHCVAP2011/0013

(delivered 22nd September 2003, unreported) which are the length of the delay; the reasons for delay; the chances of the appeal succeeding if the extension is granted and the degree of prejudice if the application is granted.

The Court was of the view that the evidence advanced to explain the delay in filing is not sufficiently cogent as it is wholly unsupported with appropriate documentary evidence and does not sufficiently condescend to particulars. The length of delay was accordingly inordinate and the applicant had not demonstrated that the appeal has a realistic prospect of success. The application for an extension of time fails then the application for leave to appeal therefore fell away.

Case Name:

Frederick Henry

v

**[1] Phillipa Regis executrix of the estate
of Carrington Regis
[2] Marcella Edwards**

**[SLUHCVP2024/0016]
(Saint Lucia)**

Date:

Tuesday 19th November 2024

Before:

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

On paper:

Appellant/Applicant:

Mr. Horace Fraser

Respondent:

No appearance

Issues:

**Application for an extension of time to file the
record of appeal**

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The Application filed on 24th October 2024 seeking an extension of time to file the Record of Appeal is granted.**
- 2. The Record of Appeal is deemed to have been properly filed on 24th October 2024.**

Reason:

The Court considered 62.19(1)(c) of Civil Procedure Rules (Revised Edition) 2023 which empowers a single judge to extend or abridge any time limit prescribed in Part 62 and the overriding objective of the CPR to enable the court to deal with cases justly and that the appeal is in the final stages of its preparation for hearing. The Court therefore determined, having regard to all the circumstances that the Application should be granted.

Case Name:

Paige Baptiste

v

The King

**[SVGHCRA2024/0016]
(Saint Vincent and The Grenadines)**

Date:

Tuesday 19th November 2024

Before:

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

On paper:

Applicant:

In person

Respondent:

No appearance

Issues: Application for leave to appeal against conviction and sentence – Application for bail pending appeal

Result /
Order: IT IS HEREBY ORDERED THAT:

1. The Leave Application filed on 20th June 2024 is granted.
2. The Criminal Form 1 – Notice of Application is deemed to be the notice of appeal.
3. The Bail Application filed on 3rd October 2024 is denied.
4. The Registrar of the High Court shall serve a copy of this order on the applicant and the Director of Public Prosecutions and provide proof of service within 7 days of the date of this order.
5. The parties shall comply with the practice and procedures prescribed by the Court of Appeal Rules as well as the relevant Practice Directions in advancing this appeal.

Reason: The Court noted the principles in *Warren Cassell v The King* MNIHCRA2022/0003 (delivered 20th December 2022, unreported) which reiterated that bail is granted to a person who is serving a sentence, having been convicted, only in exceptional circumstances and which further observed that the two most common examples of exceptional circumstances are where the convicted person is likely to serve his sentence before the appeal is heard or where the grounds of appeal are so strong that prima facie the appeal is likely to succeed.

The Court also considered the judgment in *The State v Lynette Scantlebury* (1976) 27 WIR 103

which states that an exceptional circumstance for granting bail pending appeal would include the case where the sentence is a short one and it is administratively impossible to hear the appeal or there is not much hope of doing so before the appellant's sentence terminates.

The Court determined that while unfortunate, the reasons provided do not amount to an exceptional circumstance which would justify the applicant being released on bail pending appeal and that in any event, the likelihood of succeeding is not such that it would create an exceptional circumstance that would drive the court to conclude that justice can only be done by granting bail to the applicant.

The Court was however of the view that the applicant had met the threshold for the granting of leave to appeal her conviction and sentence.

Case Name:

Delcon Glasgow

v

The King

**[SVGHCRA2022/0005]
(Saint Vincent and The Grenadines)**

Date:

Tuesday 19th November 2024

Before:

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

On paper:

Applicants:

In person

Respondent:

No appearance

Issues:

Application for an extension of time to appeal

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The Extension of Time Application is dismissed.**
- 2. The Registrar of the High Court shall serve a copy of this order on the applicant.**

Reason:

The Court considered rule 46 of the Court of Appeal Rules which states that every person making an application for such extension of time, shall send to the Registrar together with the proper form of such application, a form duly filled up of notice of appeal, or notice of application for leave to appeal, appropriate to the ground or grounds upon which he desires to question his conviction or sentence, as the case may be.

The Court noted that a copy of Criminal Form 1-notice of appeal or notice of application for leave to appeal did not accompany the application nor the did the applicant disclose cogent reasons which explains or justify the delay and moreover did not provide an appropriate basis upon which the Court could exercise its discretion. The application was therefore dismissed.

Case Name:

Joel Stapleton

v

The King

**[SVGHCRA2024/0023]
(Saint Vincent and The Grenadines)**

Date:

Tuesday 19th November 2024

Before:

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

On paper:

Applicant:

In person

Respondents:

No appearance

Issues:

Application for leave to appeal – Application for an extension of time to appeal

**Result
Order:**

/

IT IS HEREBY ORDERED THAT:

- 1. The Extension of Time Application filed on 12th August 2024 is granted.**
- 2. The Leave Application filed on 12th August 2024 is granted and deemed properly filed.**
- 3. The Criminal Form 1- Notice of Application for leave to appeal is deemed to be the notice of appeal.**
- 4. The Registrar of the High Court shall serve a copy of this order on the applicant and the Director of Public Prosecutions and provide proof of service within 7 days of the date of this order.**
- 5. The parties shall comply with the practice and procedures prescribed by the Court of Appeal Rules as well as the relevant Practice Directions in advancing this appeal.**

Reason:

The Court considered rule 9 of the Eastern Caribbean Supreme Court Court of Appeal Rules 1968 which provides, inter alia, that the Court may enlarge or abridge the time appointed by these Rules, or fixed by an order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointment or allowed, or the Court may direct a

departure from these Rules in any other way where this is required in the interests of justice.

The Court also considered rule 55 of the Court of Appeal Rules which empowers the court, when it is minded to grant leave to appeal, deem the application for leave to appeal as the notice of appeal.

The Court determined that it is in the interest of justice that the applicant should be allowed to present his appeal and that the applicant had met the threshold for the grant of an extension of time and for leave to appeal.

Case Name:

**[1] Fang Ankong
[2] HWH Holdings Limited**

v

Green Elite Limited (in liquidation)

**[BVIHCMAP2024/0024]
(Territory of the Virgin Islands)**

Date:

Tuesday 19th November 2024

Before:

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

On paper:

Applicants:

Ms. Reisa L. Singh

Respondent:

Mr. Christopher Pease and Mr. Robert Maxwell Marsh

Issues:

**Application for extension of time to appeal –
Application for leave to appeal – Application for a
stay of execution**

Result /
Order:

IT IS HEREBY ORDERED THAT:

The Applications are adjourned for an oral hearing to be conducted before the Full Court on a date to be fixed by the Registrar.

Reason:

The Court considered the principles upon which an extension of time is granted as enunciated in *Carleen Pemberton v Mark Brantley* SKBHCVAP2011/0009 (delivered 14th October 2011, unreported) and *John Cecil Rose v Anne Marie Uralis Rose* SLUHCVAP2011/0013 (delivered 22nd September 2003, unreported) which are the length of the delay; the reasons for delay; the chances of the appeal succeeding if the extension is granted and the degree of prejudice if the application is granted.

The Court also 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 rule 62.2(7) which states that if the judge considering an application under rule 62.2(5) is minded to refuse the application for leave, the judge must direct (a) that an oral hearing be fixed and (b) whether that oral hearing is to be by a single judge or the court.

The Court determined that although the length of the delay was not inordinate, there was no merit to the intended appeal and was therefore minded to refuse the amended leave to appeal application. The matter was therefore ordered to be conducted before the Full Court on a date to be determined by the Chief Registrar.

Case Name:

Bridge Holdings International Corp.

V

Kiran Taneja

**[BVIHCMAP2024/0025]
(Territory of the Virgin Islands)**

Date: Tuesday 19th November 2024

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

On paper:

Applicant: Ms. Simonette Lewis

Respondent: No appearance

Issues: Application for leave to appeal

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

The Application is adjourned for an oral hearing to be conducted before the Full Court on a date to be fixed by the Chief Registrar.

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 rule 62.2(7) which states that if the judge considering an application under rule 62.2(5) is minded to refuse the application for leave, the judge must direct (a) that an oral hearing be fixed and (b) whether that oral hearing is to be by a single judge or the court.

The Court was minded to refuse the amended leave to appeal application and the matter was therefore ordered to be conducted before the Full

Court on a date to be determined by the Chief Registrar.

Case Name:

[1] Lau Man Sang, James
[2] Lung Hung Cheuk
[3] Cheung Wing Sum, Albert
[4] Ngai Hin Kwan, Albert
[5] Yeung Yiu Chong
[6] Zhang Guo Wei

v

[1] King Bun Limited
[2] Kency Ltd
[3] Kar Kwong Development Limited
Trading as Kai Kwong Trading Company
[4] Khi Capital Limited
[5] Kentrue Company Limited
[6] Hui Pak Kong
(Suing in the name and on behalf of
themselves and all other shareholders in
Vanway International Ground Limited,
except the first and second defendants)

[1] Chau Cheuk Wah, Angus
[2] Vanway International Group Limited

[BVIHCMAP2023/0031]
(Territory of the Virgin Islands)

Date:

Tuesday 19th November 2024

Before:

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

On paper:

Applicants:

Mr. Iain Tucker

Respondent:

Mr. Jerry Samuel

Issues: Application for an order for directions in relation to the procedural timetable for the appellant's appeal

Result /
Order: IT IS HEREBY ORDERED THAT:

The matter shall be set down for an oral hearing before a single judge in Chambers on a date to be fixed by the Chief Registrar.

Reason: Upon considering the application made by the first to sixth respondents, the Court determined that this matter and the appropriate directions may be best resolved in an oral hearing before a single judge in Chambers. The Court therefore ordered that the matter be set down for such oral hearing on a date to be fixed by the Chief Registrar.

Case Name: [1] Mary Elizabeth Smith Vanterpool
[2] Wilbert Owen Smith
[3] Eleanor Melvina Smith
[4] Elvia Eugenie Merryman
[5] Teddy Louis Smith
[6] Creighton Antonio Smith
[7] Daniel Marvin Smith
[8] Dave Brubeck Smith
[9] Shania Mary Ann Smith
[10] Oraal Dwayne Smith
[11] Doran Martinez Smith

v

[1] Turquoise Waters Limited
[2] Attorney General
[3] As successor in title to the assets, if any, of Turquoise Waters Limited pursuant to section 220 Companies Act)

**[BVIHCVAP2024/0004]
(Territory of the Virgin Islands)**

Date: Tuesday 19th November 2024

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

On paper:

Applicants: Mr. Michael Fay KC

Respondent: No appearance

Issues: Application for leave to appeal

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

1. The application for leave to appeal the decision of Young J dated 8th February 2024 is granted.
2. The applicant shall file and serve the Notice of Appeal within 21 days of the date of this order.
3. The appeal shall proceed in accordance with the Civil Procedure Rules (Revised Edition) 2023.
4. Costs of the application be costs in the appeal.

Reason: The Court considered rule 62.2(8) of the Eastern Caribbean Supreme Court Civil Procedure Rules (2023) which states that leave to appeal may be given only where (1) the court considers that the appeal would have a realistic prospect of success or (2) there is some other compelling reason why the appeal should be heard and determined that

the applicants had met the threshold for the grant of leave to appeal.

Case Name:

**[1] Carlos Ghosn
[2] Beauty Yachts Pty Ltd**

v

**[1] Nissan Motor Co. Ltd
[2] Nissan Middle East Fze**

**[BVIHCMAP2024/0023]
(Territory of the Virgin Islands)**

Date:

Tuesday 19th November 2024

Before:

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

On paper:

Applicants:

In person

Respondent:

Mr. George Spalton KC with him Mr. Joshua Folkard and Mr. Andrew Gililand

Issues:

Application for a stay of execution pending the appeal

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

The application filed on 20th September 2024 for a stay of execution of the judgment of the Honourable Wallbank J dated 9th August 2024 pending the appeal is dismissed.

Reason:

The Court considered the principles set out in C-Mobile Services Limited v Huawei Technologies Co. Limited BVIHCMAP2014/0017 (delivered 2nd

October 2014, unreported), that; (i) a stay is the exception rather than the general rule, (ii) the Court should take into account all the circumstances of the case, (iii) the party seeking a stay must provide cogent evidence that the appeal will be stifled or rendered nugatory unless a stay is granted, (iv) in exercising its discretion the court applies what is in effect a balance of harm test in which the likely prejudice to the successful party must be carefully considered and (v) the prospect of the appeal succeeding but only where strong grounds of appeal or a strong likelihood of the appeal will succeed is shown.

The Court then noted that there is no proof evidencing service of the notice of appeal on the respondents and if the service of the notice of appeal was out of time, there is no appeal properly before the court and the application for a stay falls away. Therefore having regard to all the circumstances of the case no limb of the threshold for the grant of a stay had been satisfied and the application was accordingly 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 19th November 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 applicant shall file a copy of the decision of Pursuad J that is the subject of this appeal within 14 days of the date of this order. 2. The determination of the application for leave to appeal is adjourned to the next Chamber Hearing of the Court scheduled 17th December 2024.
Reason:		The Court noted that the applicant had not furnished the Court with the decision that is the intended subject of the appeal. The matter was therefore adjourned to the next Chamber Hearing to allow the applicant to provide said decision.
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 19th November 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 respondent shall file submissions in response to the application to lift the stay filed by the applicant on 29th October 2024 within 14 days of the date of this order. 2. The application to lift the stay is adjourned to the next Chamber Hearing of this Court dated 17th December 2024.	
Reason:	The Court noted correspondence from the first respondent to the Court together with the letter from the British Virgin Islands Health Services Authority dated 18th Novembre 2024 and 11th November 2024 respectively indicating that the first respondent was seriously ill and was not fit to resume appearance in Court and that he would require an adjournment of the hearing of the application. The Court determined that consistent with the overriding objective that the application should be adjourned and that the respondent should be afforded an opportunity to provide a fulsome respondent to the application to lift the stay. The matter was therefore adjourned.		

Case Name:

Vladimir Niyazov

v

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

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

Date:

Tuesday 19th November 2024

Before:

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

On paper:

Applicant:

In person

Respondent:

No appearance

Issues:

Review of amended leave to appeal application

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

The amended application for leave to appeal filed on 4th November is adjourned for an oral hearing to be conducted before the Full Court on a date to be fixed by the Chief Registrar

Reason:

Upon review of the applicant's leave to appeal application, the Court considered CPR rule 62.2(7) which states that if the judge considering an application under rule 62.2(5) is minded to refuse the application for leave, the judge must direct (a) that an oral hearing be fixed and (b) whether the oral hearing is to be by a single judge or the court and was minded to refuse the amended leave application.

The Court therefore ordered that the application be conducted before the Full Court on a date to be fixed by the Chief Registrar