

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE
ANTIGUA AND BARBUDA
30th September – 4th October 2024

JUDGMENT

Case Name: Hamilton Reserve Bank Limited

v

[1] Greyridge Iron Holdings Incorporated
[2] Redhunt Enterprises Limited
[3] Socratis Christofi

[NEVHCVAP2023/0015]
(Saint Christopher and Nevis)

Date: Monday, 30th September 2024

Coram for
Delivery: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Kurlyn Merchant

Respondents: Mr. Errol Williams and Ms. Maurisha Robinson

Issues: Interlocutory appeal – Arbitration – Stay of proceedings
pending arbitration – Arbitration clauses – Waterfall and
escalation clauses – Whether arbitration clause was
legally valid – Whether master erred in finding that
arbitration clause did not oust the jurisdiction of the
court – Fraud – Whether master erred in finding that the
serious allegations of fraud raised against the
respondents rendered the matter inappropriate for
arbitration – Whether the master erred in failing to stay

the proceedings pending arbitration - Strike out – Summary Judgment – Whether master erred in finding that a prima facie case of breach of contract was raised on the pleadings thus rendering the matter inappropriate for strike out or summary judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The respondents' counter notice of appeal is also dismissed.**
- 3. The Judgment and orders of the learned master are affirmed.**
- 4. The respondents shall have their costs on the appeal; such costs to be assessed by a judge or master of the High Court if not agreed within twenty-one days of the date of this judgment.**
- 5. The appellant shall have its costs on the counter notice of appeal; such costs are to be assessed by a judge or master of the High Court if not agreed within twenty-one days of the date of this judgment.**

Reasons:

- 1. A court's jurisdiction to grant a stay of proceedings pending arbitration is discretionary and depends on the relevant context of the case. In exercising this discretion to grant a stay, a court must conduct a balancing exercise to ensure that cases are dealt with justly. If in the foreseeable future there may be some event likely to have an impact on the way a claim is decided, it may decide to stay the proceedings in the claim until after that event. The starting point, however, must be that a claimant seeks expeditious determination of his claim, and that delay will only be ordered if good reason is shown.**

AB (Sudan) v Secretary of State for the Home Department [2013] EWCA Civ 921 applied.

2. Waterfall or escalation clauses are tiered dispute resolution clauses by which parties agree to engage in a series of steps, usually in the form of one or more alternative dispute resolution procedures, before resorting to the final dispute resolution mechanisms of litigation. Such clauses were determined to be legally binding by English judicial authorities but must be carefully drafted in order to avoid the pitfalls of invalidity. Whether or not such clauses would be held to be enforceable would depend on whether the obligations and/or negative injunctions they impose are sufficiently clear and certain to be given legal effect. On the other hand, Scott v Avery clauses create an obligation to arbitrate and also create a condition precedent to a claimant's right of action that it must have previously arbitrated the dispute. The master's reasoning on the validity of clause 32 quite rightly did not address the issue of Scott v Avery clauses since clause 32 bore little similarity to the clause which had been the focus of Scott v Avery. The master was therefore correct to conclude that clause 32 was clear and unequivocal and the steps to be taken thereunder were clearly defined. Contrary to the respondents' assertions in their counter-notice, the master's reasoning disclosed no misunderstanding of the relevant legal principles, and he did not err in holding that clause 32 was legally valid.

Tang Chung Wah (Aka Alan Tang) and Another v Grant Thornton International Ltd and Others [2012] EWHC 3198 (Ch) applied; Scott v Avery and others [1843-1860] All ER Rep 1 distinguished.

3. Public hearings are consistent with the long-established principle of open justice. While a public hearing constitutes a fundamental part of the constitutional right to a fair trial, the obligation to hold such a hearing is not absolute. A litigant may waive such a right, but it must be made in an unequivocal manner and must not run counter to the public interest. In their counter-notice, the respondents took issue with the portion of clause 32 which stated that the parties contracted to

“waive, to the fullest extent permitted by law, all right to a public trial in any action, proceeding, and with respect to any claim of any kind whatsoever” and argued that this ousted the jurisdiction of the court. However, the qualifying word “public” is critical and the wording did not reflect an intention to waive the right to any and all trials, but rather, only to public trials and only to the extent permitted by law. In these proceedings, the respondents have taken no issue with these issues governing the waiver of a right to a public trial in clause 32 and have therefore failed to demonstrate that the master fell into error. The respondents’ counter-notice of appeal was therefore dismissed.

Section 10(10) of the Saint Christopher and Nevis Constitution Schedule 1 to the Saint Christopher and Nevis Constitution Order, 1983 S.I. No. 881 of 1983 considered; *Le Compte, Van Leuven and De Meyere v Belgium* (Application no. 6878/75; 7238/75) (1981) 4 EHRR 1 considered; *Hakansson and Stureson v Sweden* (Application No. 11855/85) (1990) 13 EHRR 1 considered.

4. Section 2 of the Arbitration Act of St. Christopher and Nevis incorporates the 1950 UK Arbitration Act into the laws of St. Kitts making all the provisions of the UK Act so far as the same are applicable, apply *mutatis mutandis* to all arbitration proceedings in St. Kitts. Section 24(2) of the UK Act provides that the court could revoke the authority of a tribunal to deal with claims involving issues of fraud and determine those claims itself. The UK Act is heavily supplemented by common law principles which clarify how the courts approach staying proceedings involving allegations of fraud. The case law demonstrates that a court will, in general, refuse to send a dispute to arbitration if the party accused of fraud desires a trial in open court. In such instances the court will look at the seriousness of the allegation and the impact on the accused’s reputation since an accused ought not, against his will, be tried otherwise than in open court. However, where the objection to arbitration is by the party charging the fraud, a court will not necessarily accede to the

objection and send the matter to trial. This is because it is not appropriate that the mere making of a charge of fraud should entitle the person making it to avoid his agreement to arbitrate. Consequently, where the party alleging fraud opposes arbitration, an allegation of fraud is not, by itself, sufficient reason for the court to refuse a stay of the proceedings pending arbitration. Instead, a *prima facie* or substantial/serious case of fraud must be made out. A serious case would include matters where the allegations of fraud are capable of invalidating the entire contract or affecting the validity of the arbitration clause or allegations which amount to a criminal offence, or which are complicated and require voluminous evidence or importantly, where allegations include forgery/fabrication of documents. These factors are not exhaustive and ultimately the outcome of each case depends on its own facts.

Section 24(2) of the UK Arbitration Act 1950 applied; Russell v Russell 1880] 14 Ch D 471 applied; Cunningham-Reid and another v Buchanan-Jardine [1988] 2 All ER 438 applied; Leigh v Brooks (1877) 5 Ch. D. 592 applied; Charles Oseinton & Co v Johnston [1941] 2 All ER 245 applied; Abdul Kadir Shamsuddin Bubere vs Madhav Prabhakar Oak [1962] 3 SCR 702 considered; A. Ayyasamy v A. Paramasivam and others (2016) 10 SCC 386 considered; Ameet Lalchand Shah and others v Rishabh Enterprises and another (2018) 15 SCC 678 considered; Rashid Raza v Sadaf Akhtar (2019) 8 SCC 710 considered.

5. On the facts, the Bank was in favour of arbitration, but the respondents opposed asserting that the matter was inappropriate for arbitration as the Bank had advanced serious allegations of fraudulent conduct and misrepresentation rising to the level of illegality or criminal behaviour against them in its defence. It was clear from the judgment that the master described the Bank's pleadings as serious allegations of what amounts to the criminal offence of money laundering, and he thus determined that this made the case inappropriate for arbitration. Given the grave

implications for reputational damage to the respondents and the general rule that a court will, in general, refuse to send a dispute to arbitration if the party accused of fraud desires a trial in open court, it was open to the master to make the findings he did, and he did not err in so doing. Contrary to the appellant's assertions, the allegations were not a mere statement of belief and involved fraudulent conduct which went to the core of the parties' obligations under the contract. Grounds 1-9 & 12 of the appeal were therefore dismissed.

Radford v Hair [1971] 2 All ER 1089 applied;
Russell v Russell 1880] 14 Ch D 471 applied.

6. A court's power to strike out is an example of case management but is regarded as a draconian remedy only to be deployed in clear and obvious cases. The procedure should only be used where it can be seen on the face of the claim that it is obviously unsustainable or in some other way is an abuse of process of the court. A claim will not be struck out if there is a scintilla of a cause of action. The court here is more concerned with the adequacy of the statement of case and whether reasonable grounds exist for bringing the claim. On a summary judgment application, however, the court may look beyond the statement of case and consider the evidence filed in support since this is a judgment on the merits and operates as issue estoppel. Whilst a party may apply for striking out and for summary judgment in the alternative, the two are not to be conflated and are distinct applications with different legal tests and consequences. If a claim is struck out, it does not preclude a party from remedying the faults of their claim and bringing further legal action in relation to the same dispute. On a summary judgment application, the test is one of 'real prospect of success' and the claim or defence must be more than merely arguable. Having regard to the pleadings in the court below, it was evident that there was a complete cause of action for breach of contract pleaded with several disputes of facts. The master himself concluded that these disputes

of facts made the case wholly inappropriate for summary judgment or striking out. It cannot be said that the master was clearly or blatantly wrong to so hold and he thus did not err in dismissing the Bank's applications for striking out/summary judgment. Grounds 10-11 and 13 of the appeal were therefore dismissed.

Cedar Valley Springs Homeowners Association Incorporated v Hyacinth Pestaina; Cedar Valley Springs Homeowners Association Incorporated v Kenneth Meade et al ANUHC VAP2016/0009 and ANUHC VAP2016/0010 (delivered 18th January 2017, unreported) followed; Didier and others v Royal Caribbean Cruises Ltd, Royal Caribbean Cruises Ltd v Medical Associates Ltd and others (2016) 89 WIR 277 followed; Jones v Attorney General of New Zealand (sued on behalf of the New Zealand Police) [2003] UKPC 48 applied; Westpac Banking Corporation v MM Kembla New Zealand Ltd [2001] 2 NZLR 298 considered.

APPLICATIONS AND APPEALS

Case Name:

Omari Phillip

v

The King

**[ANUHC RAP2016/0008]
(Antigua and Barbuda)**

Date:

Monday, 30th September 2024

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal**

Appearances:

Appellant:

Mr. Lawrence Daniels

Respondent: Ms. Rilys Adams

Issues: Criminal appeal - Murder - Appeal against conviction and sentence - Conviction - Whether the conviction is unsafe and unsatisfactory - Whether the learned judge erred in failing to declare a mistrial after certain newspaper publications were made about the evidence against the appellant when no such evidence was led at trial - Whether the learned judge's summation to the jury was unfair - Sentence - Whether the learned judge took irrelevant factors into account in sentencing - Whether the sentence is harsh and excessive

Type of Order: N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: Antigua Commercial Bank

v

Mary E. Prophet

**[ANUHC VAP2021/0026]
(Antigua and Barbuda)**

Date: Monday, 30th September 2024

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal

Appearances:

Appellant: Ms. Safiya Roberts

Respondent: Mr. Justin L. Simon, KC

Issues:

Civil appeal - Appeal from the Industrial Court - Unfair Dismissal - Retirement Age - Whether the Industrial Court erred in determining that the term 'permanent employee' had the effect of employment for an indefinite duration - Whether the Industrial Court erred in holding that the term of the employment contract stipulating the retirement age was null and void as being in conflict with the Collective Bargaining Agreement - Whether the Industrial Court erred in holding that the Appellant required the consent of the Union in order to impose a retirement age policy - Whether the Industrial Court erred in finding that no proper, adequate or reasonable notice was given of the Respondent's retirement for her compulsory retirement when she attained the age of 60 years - Whether the 12 month award in lieu of notice was erroneous - Whether the Industrial Court erred in finding that the Appellant's payment under the Staff Pension Scheme was not contingent on the Respondent's contribution in the Scheme - Whether the Industrial Court erred in finding that the Respondent's participation in the Scheme was automatic - Whether the Industrial Court erred in finding that the Appellant's conduct should attract exemplary damages in the amount of EC\$20,000.00 - Whether the Industrial Court erred in awarding costs in the amount of EC\$5,000.00

Type of Order:

N/A

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Anderson Carty

v

**[1] The Industrial Court of Antigua and Barbuda
[2] The Attorney General**

**[ANUMCVAP2023/0015]
(Antigua and Barbuda)**

Date: Monday, 30th September 2024

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Applicants: Mr. Zachary Phillips, Ms. Joy Dublin-Baptiste and Mr. Deshawn Browne

Respondent: Mr. Wendel Alexander

Issues: Application to strike out appeal - Withdrawal of application - Application to amend the notice of appeal to remove a party to the appeal

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The notice of application to strike out the appeal filed on 17th May 2024 is withdrawn and dismissed.
2. Leave is granted to the appellant to amend the notice of appeal filed on 15th December 2023 to remove the second respondent, the Attorney General, as a party.
3. The amended notice of appeal is to be filed and served within 7 days of the date of this order.
4. No order as to costs.

Reason: Before the Court was a notice of application to strike out the appeal filed on 17th May 2024 along with an affidavit in support. The Court considered the legal submissions

filed in support of the application, in response thereto and in reply filed on 16th August 2024, 3rd September 2024 and 11th September 2024, respectively.

During the course of the hearing, counsel for the applicants indicated that he wished to withdraw and discontinue the application, with no objection by counsel for the respondent. Counsel for the respondent indicated that he wished to advance an oral application to amend his notice of appeal to remove the Attorney General as the second respondent, with no objection by counsel for the respondents to the appeal.

The Court accordingly ordered that the notice of application to strike out the appeal filed on 17th May 2024 be withdrawn and dismissed, and that leave be granted to the appellant to amend the notice of appeal to remove the second respondent, the Attorney General, as a party to the appeal.

Case Name:

BOI Bank Corporation

v

Sodecorp SA

**[ANUHCVAP2023/0038]
(Antigua and Barbuda)**

Date:

Monday, 30th September 2024

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Craig L. Jacas and Ms. Talia Da Costa

Respondent: Dr. David Dorsett

Issues:

Application by legal practitioner to be removed from the record - Short-service of application - Whether the Court should abridge time for service and allow the application

**to be heard - Application for security for costs -
Adjournment**

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The application to be removed as the legal practitioner on record for BOI Bank Corporation is adjourned to 22nd October 2024 and shall be determined by a single judge of the Court in chambers.**
- 2. The notice of application for security for costs filed on 19th March 2024 is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda scheduled for the week commencing 24th February 2025.**
- 3. Counsel for the appellant shall serve notice of the adjourned date on the appellant, BOI Bank Corporation.**
- 4. No order as to costs.**

Reason: Upon considering the application filed by counsel for the appellant on 25th September 2024 to be removed as legal practitioner on record, the Court noted that the application was short-served and ordered that the hearing of the application be adjourned to be determined by a single judge in Chambers on 22nd October 2024. The Court was satisfied that as a consequence, the application for security for costs should be adjourned to the next sitting of the Court of Appeal in Antigua & Barbuda.

Counsel for the appellant indicated that he had no objection to this proposed course.

Case Name:

De Andre Henry

v

The King

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

Date:

Monday, 30th September 2024

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Jason Tiwari

Respondent: Mrs. Shannon Jones-Gittens, DPP (Ag.)

Issues:

Criminal appeal - Appeal against sentence - Whether the sentence of 18 years for aggravated robbery was manifestly excessive in all the circumstances of the case - Whether the learned judge relied too heavily on the mandatory minimum sentence of 25 years set out in section 6 of the Law Revision (Miscellaneous) (Amendments) (No.2) Act, 2000 - Adjournment

Type of Order:

Directions

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The parties shall lodge and exchange written submissions with authorities on or before 22nd October 2024. Those submissions are to address the following questions:
 - (i) What is the mandatory maximum sentence which should have been applied by the sentencing judge in considering the****

sentence of the appellant at the time of sentencing;

(ii) Arising out of question (i), the submissions should address whether the practice developed by the courts in Antigua and Barbuda to utilize 25 years as the mandatory maximum sentence was correct in law;

(iii) Based on the response to question (i), the submissions should address what is the appropriate starting point that the sentencing judge ought to have utilised in constructing her sentence; and

(iv) Based on the response to question (iii), the submissions should address what was the actual sentence which should have been imposed by the sentencing judge in respect of the appellant.

The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Montserrat, during the week commencing 25th November 2024.

Reason:

There were critical issues regarding the appropriate maximum sentence prescribed in respect of the offence of aggravated robbery and the Court determined that further submissions were required to properly dispose of the appeal.

Case Name:

Director of Public Prosecutions

v

[1] Dalianne Richardson

[2] Shanique Dwyer

[3] Shimmea Welsh

[4] Larsheka Gray

[ANUHCRA2020/0002]

(Antigua and Barbuda)

Date:

Tuesday, 1st October 2024

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

Appearances:

Appellant: Ms. Rashida Jonas

Respondents: In person

Issues: Criminal appeal against sentence - Unlawful wounding - Whether the award of compensation in the sum of \$2,400 imposed by the learned judge was too lenient - Whether the learned judge failed to take into account relevant circumstances during sentencing - Whether the aggravating factors outweighed the mitigating factors - Whether a higher award of compensation ought to have been ordered in the circumstances

Type of Order: N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: Jacob James

v

**Rubis West Indies Ltd.
(Formerly TEXACO West Indies Limited)**

**[ANUHLTAP2022/0001]
(Antigua and Barbuda)**

Date: Tuesday, 1st October 2024

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

The Hon. Mr. Eddy D. Ventose, Justice of Appeal

Appearances:

Appellant: Mr. Lawrence Daniels

Respondents: Mr. Clement Bird

Issues:

Industrial appeal - Unfair dismissal - Blameworthy conduct - Whether the appellant was blameworthy and contributed significantly to his unfair dismissal to the extent of 90% - Whether the appellant's contribution to his unfair dismissal, apportioned by the tribunal to be 90%, was excessive and grossly disproportionate to the circumstances of the case - Reduced entitlement to compensation for unfair dismissal - Whether the appellant's contribution to his unfair dismissal entitles him to only 10% of the sums for payment in lieu of notice and loss of protection against unfair dismissal

Type of Order:

Directions

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The parties are to exchange supplemental legal submissions with authorities addressing the question of the court's power to take into account matters not foreshadowed by the employer in dismissing the employee in coming to a conclusion on the blameworthiness of the employee to underpin the apportionment of damages, on or before 23rd October 2024.**
- 2. The parties are to complete the record of appeal by ensuring that the letter of suspension and termination as well as the points of claim, defence and reply before the Industrial Court are filed on the portal on or before 23rd October 2024.**
- 3. Judgment is reserved.**

Reason: Before the Court was an appeal filed on 1st March 2022 challenging the decision of the Industrial Court dated 4th June 2021 in which the Industrial Court found that the employee was blameworthy and contributed significantly to his unfair dismissal. After considering the submissions of counsel for both parties, the Court determined that the certain relevant documents that would assist in the Court's determination were not before the Court. The Court therefore directed that those documents, as well as submissions on the issue of the court's power to take into account matters not foreshadowed by the employer in dismissing the employee in coming to a conclusion on the blameworthiness of the employee to underpin the apportionment of damages, be filed on or before 23rd October 2024. The Court subsequently reserved judgment pending receipt of those submissions and filings with respect to the record of appeal.

Case Name: **Rupert Cadette**

v

**Carden Conliffe Clarke
(Magistrate for District "A" & "B")**

**[ANUMCVAP2022/0001]
(Antigua and Barbuda)**

Date: **Tuesday, 1st October 2024**

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

Appearances:

Appellant:	Mr. Andrew O'Kola
Respondent:	Ms. Rashida Jonas

Issues: **Magisterial civil appeal - Whether the appellant properly engaged the jurisdiction of the Court of Appeal - Whether**

an accused can appeal a committal order to the Court of Appeal - Section 167 of the Magistrate's Code of Procedure Cap. 255 - Section 26 of the Magistrate's Code of Procedure (Amendment) Act, 2004 - Withdrawal of appeal

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

The notice of appeal filed on 22nd February 2022 is withdrawn, discontinued and dismissed.

Reason: The Court, upon considering Section 167 of the Magistrate's Code of Procedure Cap. 255 and Section 26 of the Magistrate's Code of Procedure (Amendment) Act, 2004, noted that it was without jurisdiction to entertain the appeal and counsel for the appellant so conceded. The appeal was accordingly withdrawn and dismissed.

Case Name: George Dexter Tavernier
(trading as Tavernier Construction)

V

[1] Kier Construction Limited
[2] Sundry Workers

[ANUHCVP2022/0009]
(Antigua and Barbuda)

Date: Wednesday, 2nd October 2024

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:
Applicant: Mr. Kendrickson Kentish

Respondents: Ms. Safiya Roberts for the first respondent
Mr. Cosbert Cumberbatch for the second respondent

Issues: Application for conditional leave to appeal to His Majesty
in Council - Adjournment

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The matter is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda or such earlier time as the Chief Registrar may determine.
2. The parties are to file and serve any submissions or affidavits in response to the amended notice of motion on or before 23rd October 2024.
3. Costs to the first respondent as agreed in the sum of \$750.00.

Reason: The applicant filed an amended notice of motion on 30th September 2024 along with an affidavit of the applicant. The respondent, not having had sufficient opportunity to file submissions in response to the amended notice of motion, and the parties having agreed that the matter ought to be adjourned, the Court granted the application for an adjournment. Costs to the first respondent were agreed in the sum of \$750.00. The second respondent however did not seek costs.

Case Name: [1] Akkel Caribbean Properties Limited
[2] David Bond
[3] Ena Bond

v

Carlisle Bay Limited

**[ANUHC VAP2023/0013]
(Antigua and Barbuda)**

Date: Wednesday, 2nd October 2024

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Applicants: Mr. Sandip Patel KC with him Mr. Michael Polak and Ms. Joanne Massiah

Respondent: Mr. David Joseph KC with him Ms. Rose-Mary Reynolds

Issues: Application for conditional leave to appeal to His Majesty in Council - Leave to appeal as of right - Whether the applicants are entitled to appeal to his Majesty in Council as of right pursuant to section 122(1)(a) of the Constitution of Antigua and Barbuda - The application test - Part 62.1 (3)(a) Civil Procedure Rules (Revised Edition) 2023 - Whether the decision of the Court of Appeal was a final decision

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The notice of motion and application for conditional leave to appeal the decision of the Court of Appeal dated 2nd May 2024 to His Majesty in Council is refused.
2. Costs are awarded to the respondent in the sum of \$6000.00 to be paid within 21 days of the date of this order.

Reason: Before the Court was a notice of motion for conditional leave to appeal to His Majesty in Council filed on 24th May 2024. The application was made pursuant to section 122 (1)(a) of the Constitution of Antigua and Barbuda on the

basis that the decision of the Court of Appeal in this matter was a final decision in civil proceedings that involved directly a claim in property dispute and the interpretation and application of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023, more specifically rules 1.1(1), 1.2 (a), 26.1 (1)(k) and (y) and 62.9(2).

The notice of motion was supported by three affidavits. Firstly, the affidavit of David Keith Bond filed on 24th May 2024, secondly the affidavit of Joanne M. Massiah filed on 24th May 2024 and thirdly an affidavit in support of Joanne M. Massiah filed on 3rd September 2024.

The notice of motion was opposed by the respondent on the principal basis that the decision of the Court of Appeal in respect of which leave to appeal was being sought was not a final decision but was an interlocutory decision of the Court of Appeal. Also before the Court as part of the record was the certificate of result of the application which was dealt with and disposed of by the Court of Appeal. This certificate dated 2nd May 2024 stated and certified that on the said date the Court made an order as follows:

1. The application for an extension of time is dismissed.
2. The application to strike out the appeal is granted.
3. The appeal is, therefore, struck out and stands dismissed.
4. Costs to the applicant in the strike out application and the respondent in the extension of time application as agreed between the parties in the sum of \$6,000.00 to be paid within 21 days of the date of this order.

Also before the Court were the written submissions of the applicants filed on 3rd September 2024 and the written submissions of the respondent filed on 6th September 2024 opposing the notice of motion for conditional leave to appeal to His Majesty in Council.

Learned counsel for the applicant submitted orally that the decision of the Court of Appeal was in fact a final decision of the Court applying the application test, which counsel recognised and accepted was the test to be

applied in this jurisdiction as set out in the CPR and has been authoritatively stated by the Privy Council in the decision of *Chinna v Ismail and another* [2024] UKPC 10.

Having considered the arguments by counsel for the parties in this matter, the Court was not satisfied that the applicant met the requirements set out in section 122 (1)(a) of the Constitution of Antigua and Barbuda, in that the decision of the Court of Appeal sought to be appealed was not a final decision but was an interlocutory decision in relation to an application for an extension of time and an application to strike out the appeal. The Court did not accept the argument advanced by counsel for the applicant that the Court of Appeal in disposing of those applications determined the merits of the appeal. While the Court of Appeal may have given some consideration to the merits of the grounds of appeal when determining the application to strike out the appeal, in no way was the determination of those applications a substantive determination of the merits of the matter and therefore it was not a final decision on the merits of the appeal.

Accordingly, the notice of motion, having failed to satisfy the requirements of the Constitution for conditional leave to His Majesty in Council, was dismissed with costs to the respondent.

Case Name:

Dorian Marshall

v

The King

**[ANUHCRA2020/0001]
(Antigua and Barbuda)**

Date:

Wednesday, 2nd October 2024

Coram:

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

Appearances:

Appellant: Mr. Wendel Alexander and Mr. Wayne Benjamin Marsh

Respondent: Mrs. Shannon Jones-Gittens, DPP (Ag.)

Issues: Criminal appeal – Appeal against conviction and sentence - Murder - Joint enterprise - Whether the guilty verdict with respect to the appellant is inconsistent with the not guilty verdicts of the co-accused - Identification evidence - Whether the learned judge gave an adequate Turnbull direction - Whether the evidence at trial was so unreliable and weak that the prosecution's case should have been withdrawn from the jury - Whether the sentence was manifestly excessive - Whether the learned judge provided justification for the sentence imposed

Type of Order: Directions

Result / Order: [Oral Delivery

IT IS HEREBY ORDERED THAT:

1. Counsel for the respondent shall provide the Court with information regarding the time spent on remand by the appellant.
2. Counsel for the appellant shall file supplemental authorities on or before Friday, 4th October 2024.
3. Judgment is reserved.

Reason: Counsel for the appellant undertook to provide the Court with authorities on the topic of sentencing. The Court also requested information from counsel for the respondent regarding the time spent by the appellant on remand. Judgment was reserved pending receipt of these additional filings.

Case Name: BOI Bank Corporation

v

Jose Rafael Padron Salazar

**[ANUHCVAP2023/0039]
(Antigua and Barbuda)**

Date: Thursday, 3rd October 2024

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal

Appearances:

Appellant: Ms. Talia Da Costa

Respondent: Dr. David Dorsett

Issues: Application for counsel to be removed from the record -
Short-service of application - Application to vary an order
of the Court

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The application to be removed from the record as legal practitioner filed on 25th September 2024 and served on 27th September 2024 is adjourned to be determined by a single judge of the Court of Appeal in Chambers on 22nd October 2024.
2. The application to vary or amend the order made on 23rd April 2024 and filed on 8th August 2024 is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda scheduled for the week commencing 24th February 2025.
3. Counsel for the appellant shall serve notice of the adjourned date on the appellant, BOI Bank Corporation.

4. No order as to costs.

Reason:

Upon considering the application filed by counsel for the appellant to be removed as legal practitioner on record, the Court noted that the application was short-served and ordered that it be determined by a single judge in Chambers on 22nd October 2024. The Court was satisfied that as a consequence, the application to vary the order of the court should be adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda.

Counsel for the respondent to the appeal indicated no objection to adjournment of his application to vary the order of the court.

Case Name:

**[1] Clico International Life Insurance Ltd
[2] Wilbur Harrigan
(As Administrator of Clico International Life
Insurance Ltd)**

v

**[1] Eastern Caribbean Baptist Mission
[2] Jeriann George
[3] Hensworth Jonas**

**[ANUHCVP2019/0035]
(Antigua and Barbuda)**

Date:

Thursday, 3rd October 2024

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal**

Appearances:

Appellants: Ms. Talia Da Costa

Respondents: Ms. Chantal Marshall

Issues:

Application for an extension of time to comply with an order of the Court - Application for an extension of time to file record of appeal and skeleton arguments – Whether the delay was inordinate – Whether there were good reasons for the delay – Whether the respondents would be further prejudiced by the grant of an extension of time – Whether the appeal has a realistic prospect of success – Application to strike out the appeal for want of prosecution

Type of Order:

Oral Decision with Written Reasons to Follow

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application for the extension of time filed on 20th September 2024 is granted.**
- 2. The appellants shall file and serve the record of appeal and skeleton arguments on or before 18th October 2024.**
- 3. The respondent shall file and serve submissions in reply on or before 4th November 2024.**
- 4. If the appellant fails to file the record of appeal and skeleton arguments by 18th October 2024 the appeal shall be struck off and stand dismissed with costs to the respondent without further application to the Court.**
- 5. Costs to the respondent on the application for an extension of time to be assessed by a judge or master of the High Court if not agreed within 21 days of the date of this order.**
- 6. The application to strike out the appeal filed on 15th August 2024 falls away.**
- 7. The Court shall provide written reasons for the decision.**

Reason:

Before the Court was an application filed by the respondents on 15th August 2024 to strike out the appeal

for want of prosecution; as well as an application filed by the appellants on 20th September 2024 for an extension of time to file the record of appeal and skeleton arguments. The Court determined that the application for an extension of time should be heard first, as depending on the outcome of that application, the application to strike out the appeal may not need to be heard.

After hearing submissions from counsel for both parties, the Court determined that the application for an extension of time should be granted. Therefore, the application to strike out the appeal fell away. The Court indicated that it would provide written reasons for its decision.

Case Name:

Sylvia O'Mard

v

**[1] ABI Bank Ltd
[2] The Eastern Caribbean Central Bank
[3] The Attorney General**

**[ANUHCVP2021/0010]
(Antigua and Barbuda)**

Date:

Thursday, 3rd October 2024

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal**

Appearances:

Appellant: Dr. David Dorsett

**Respondents: Mr. Justin L. Simon KC with him Ms. Nina Joseph for the first respondent
Mr. Damian Kelsick KC and Ms. E. Ann Henry KC for the second respondent
Mrs. Carla Brookes-Harris for the third respondent**

Issues: Civil appeal - Appeal against dismissal of constitutional motion - Whether the learned judge erred in finding that the limitation on constitutional rights imposed by Article 5C(5)(a) of the Eastern Caribbean Central Bank Agreement 1983 was no more than is necessary to achieve the objectives of the statutory instrument - Whether Article 5C(5)(a) is void as being inconsistent with the constitutional rights to protection of law, against deprivation of property without compensation, of access to the court, and against compulsory acquisition of interest in or right over property

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: [1] Chanel Abbott
[2] Anisha Abbott

v

Larry Abbott

**[ANUMCVAP2020/0003]
(Antigua and Barbuda)**

Date: Friday, 4th October 2024

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Wendel Alexander
Respondent: In person

Issues: Magisterial civil appeal - Application for an adjournment

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

The matter is adjourned to the next sitting of the Court of Appeal for Antigua and Barbuda during the week commencing 24th February 2025, or on an earlier date to be fixed by the Chief Registrar.

Reason: The respondent made a request for an adjournment in order to retain counsel. Counsel for the appellant had no objection to the request. The Court accordingly granted the request and adjourned the hearing of the matter to the next sitting of the Court of Appeal in Antigua and Barbuda.

Case Name: West Indies Oil Company

v

[1] Janis James
[2] Bernadine Henry Hughes

[ANUHCVP2022/0014]
(Antigua and Barbuda)

Date: Friday, 4th October 2024

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Justin L. Simon KC

Respondent: Ms. E. Ann Henry KC

Issues:

Civil appeal - Unfair dismissal - Findings of fact made by Industrial Court - Industrial Court finding that there was a genuine redundancy - Whether Industrial Court erred in finding that despite a situation of genuine redundancy, the respondents' dismissal was so unreasonable in circumstances as to render them unfair - Whether the Industrial Court erred by taking into account irrelevant factors and considerations - Whether the Industrial Court erred in finding that the appellant failed to give the respondents adequate notice of their redundancies - Whether the Industrial Court erred in finding that the appellant failed to hold fair and genuine consultations with the respondents or alternatively their union - Whether the Industrial Court erred in finding that the appellant's failure to carry out bi-annual assessments of the respondents for the period 2007 - 2017 resulted in its lack of valuable information to assist it in determining which of its employees should be made redundant - Whether the Industrial Court erred in finding that the respondents were improperly selected for redundancy, in that, the appellant used an unfair selection process - Whether the Industrial Court erred in finding that the appellant's evidence did not indicate that it had done enough to find alternative employment for the employees - Whether the Industrial Court erred in the assessment of compensation awarded to the respondents - Whether the Industrial Court erred in its award of payment in lieu of notice and fringe benefits to the respondents - Whether the Industrial Court erred in its assessment of immediate loss and future loss

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Financial Services Regulatory Commission

v

Sundry Workers

**[ANUHLTAP2020/0008]
(Antigua and Barbuda)**

Date: Friday, 4th October 2024

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Hugh Marshall and Ms. Lauralee Riley

Respondent: Mr. Cosbert Cumberbatch

Issues: Civil appeal - Adjournment

Type of Order: Adjournment

Result / Order: IT IS HEREBY ORDERED THAT:

The matter is adjourned to the Court of Appeal sitting for the Commonwealth of Dominica during the week commencing 9th December 2024.

Reason: The Court, having considered the time allotted to counsel during the case management conference for presenting their submissions and that the previous matter concluded later than expected, adjourned the hearing of the matter to the next sitting of the Court of Appeal in the Commonwealth of Dominica.