

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

COMMONWEALTH OF DOMINICA

3RD TO 6th JUNE 2024

		<u>JUDGMENTS</u>
Case Name:		[1] Greater Sail Limited [2] Li Jianping (also known as Gigi Lee) [3] Mai Fan v [1] Nam Tai Property Inc [2] Nam Tai Group Limited [3] Nam Tai Investment (Shenzhen) Co. Ltd [BVIHCMAP2022/0070] [BVIHCMAP2022/0071] [BVIHCMAP2022/0072] (Territory of the Virgin Islands)
Date:		Tuesday, 4 th June 2024
Coram for delivery:		The Hon. Mde. Margaret Price Findlay, Justice of Appeal The Hon. Mde. Vicki Ann Ellis, Justice of Appeal The Hon. Mr. Trevor Ward, Justice of Appeal
Appearances:		
	Appellant:	Mr. Andrew Emery
	Respondent:	Mr. Rondelle Keller
Issues:		Commercial appeal - Costs - Assessment of costs

Result / Order:		IT IS HEREBY ORDERED THAT: 1. The applicants shall pay the respondents' costs of the Summary Judgment Leave Application and the Injunction Extension Application. 2. The costs of the Contempt Extension Application shall be costs in the Contempt Appeal.
Reason:		The Court found that the applicants should pay the respondents' costs on the Summary Judgment Leave Application and the Injunction Extension Application as they were not successful on those applications. With respect to costs on the Contempt Extension Application, the Court found that they should form part of the costs in the Contempt Appeal. Whilst the applicants were ultimately successful on the application, it was not reasonable for them to await the outcome of this Court's decision on the substantial Contempt Appeal before launching the Contempt Extension Application. As noted in the February Judgment, the applicants should have taken appropriate steps far sooner than they did if they wished to appeal the findings in the contempt application. The February Judgment was critical of the applicants' conduct in relation to all the applications. If the applicants are successful in the appeal they should have their costs of the application, but not otherwise.
Case Name:		1. Jessy James Khouly 2. Sandy- Ann Khouly (Administrators of the Estate of Wafaa Khouly nee Hadeed a.k.a. Waffa Khouly nee Hadid a.k.a Wafaa Khouly) v

		Mount St. John's Medical Centre Board [ANUHCVAP2023/0034] (Antigua and Barbuda)
Date:		Wednesday 5th June 2024
Coram for delivery:		The Hon. Mde. Vicki Ann Ellis, Justice of Appeal The Hon. Mr. Eddy Ventose, Justice of Appeal The Hon. Mde. Esco Henry, Justice of Appeal
Appearances:		
	Appellant:	Mr. Kendrickson Kentish
	Respondent:	Mr. George E. Looby
Issues:		Interlocutory appeal – Default judgment – Appeal against decision to set aside judgment in default – Part 13 of the Civil Procedure Rules (Revised Edition) 2023 – Appellate interference in the judicial discretion of lower courts – Whether the decision of the learned judge exceeded the generous ambit within which reasonable disagreement was possible, such that it was blatantly wrong – Whether the learned trial judge erred in law in finding that there was a good explanation advanced by the respondent for its failure to file a defence – The effect of an application to strike out on the timeline for filing a defence under the CPR –Whether the period for the filing of the defence commenced the day after the order of the Court of Appeal dated 8th March 2023 allowing the appeal of the learned trial judge on the application to strike out
Result / Order:		IT IS HEREBY ORDERED THAT: 1. The appeal against the decision of the learned trial judge is allowed. 2. The orders made by the learned trial judge at paragraph 55 and subparagraphs (a) to (e) are set aside in their entirety and with the result

		that the judgment in default entered on 26th June 2013 is restored. 3. The appellants shall have their costs in the appeal to be paid by the respondent to be assessed if not agreed within 21 days of today's date.
Reason:		1. It is settled law that an appellate court will not interfere with the exercise of a judge's discretion unless it is satisfied that the learned judge erred in principle or he/she has omitted to take into account matters which should have been taken into account or took into account matters which should not have been taken into account and as a result exceeded the generous ambit within which reasonable disagreement is possible or the decision is wholly wrong. This is especially so in case management decisions as the managing judge is usually far more acquainted with the details of the case than the appellate court and is considered to be in a better position to make decisions pertaining to interlocutory issues for the progression of the case. The Marina Village Limited v St. Kitts Urban Development Corporation Limited SKBHCVAP2105/0012 (delivered 19th May 2016, unreported) followed; Yates Association Construction Co. Limited v Brian Quammie BVIHCVAP2014/0005 (delivered 15th May 2015, unreported) followed. 2. The adherence to the timetable provided by the rules of court is essential to the orderly conduct of business and the importance of adherence is reflected in the CPR imposing pre-conditions for setting aside a default judgment. If these pre-conditions are not satisfied the court has no discretion to set aside. With reference to the pre-condition of whether there is a good explanation for the

		failure to file a defence, a full and detailed explanation does not make the explanation one that is good or excusable. Among others set out by this Court in various decisions, misapprehension of the law, mistake of the law by counsel, volume of work and inadvertence do not serve as an excuse for noncompliance with a rule or order. Kenrick Thomas v RBTT Bank Caribbean Limited (formerly Caribbean Banking Limited) Civil Appeal No. 3 of 2005 (delivered 13th October 2005, unreported) followed; Public Works Corporation v Mathew Nelson DOMHCVAP2016 (delivered 27th May 2017, unreported) followed; Attorney General v Universal Projects Limited [2011] UKPC 37 applied. 3. The respondent's explanation in essence is that (1) counsel for the respondent was mistaken in his belief that time began to run from the decision of this Court in the first appeal and was therefore not aware that the defence had to be filed and (2) it was the fault of the court office in not setting a date to file a defence by the court. There is established authority of this Court that an application to strike out automatically stops time from running for the filing of a defence. It follows that when that application is finally determined either by the court below or by this court, time begins to run from the date of the judgment. The timelines in the CPR on the filing of a claim form and statement of claim are automatic. A defence must be filed 28 days after the date of service of the claim form. This timeline occurs automatically, there is nothing required of the court office or anyone else. There is no need for any order of the court for the timeline for filing the defence to be engaged once again when the court finally determines the
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		application. Consequently, when this Court in the first appeal gave its decision allowing the appeal and setting aside the order of the learned master on 8th March 2023, it meant that the respondent had 28 days from 9th March 2023 to file his defence. It cannot be a good explanation that the respondent was awaiting a notice of case management conference and the learned trial judge erred in accepting the respondent's explanation as a good explanation for his failure to file his defence within the 28-day period after the Court handed down its decision on 8th March 2023. St. Kitts Nevis Anguilla National Bank Limited v Caribbean 6/49 Limited Civil Appeal No. 6 of 2002 (delivered 31st March 2003, unreported) followed; Attorney General of Saint Luca v Darrel Montrope SLUHCVP2019/0021 (delivered 9th July 2020, unreported) followed; Reginald Anthony Hull v Attorney General of Saint Christopher and Nevis et al SKBHCVP2012/0029 (delivered 10th June 2013, unreported) followed; Jenny Lindsay v Thomas Aristide Flemming AXAHCVP2015/0002 (delivered 8th December 2016, unreported) considered.
Case Name:		Timothy Abbott v The Attorney General of St. Christopher and Nevis [SKHCVAP2018/0023] (Saint Kitts and Nevis)
Date:		Wednesday 5th June 2024

Coram for delivery:		The Hon. Mde. Vicki Ann Ellis, Justice of Appeal The Hon. Mr. Eddy Ventose, Justice of Appeal The Hon. Mde. Esco Henry, Justice of Appeal
Appearances:		
	Appellant:	Mr. Glenford Hamilton
	Respondent:	Mr. Christopher Forde holding papers for Mrs. SImone Bullen-Thompson
Issues:		Civil appeal – Constitutional law – Section 18 of the Constitution of Saint Christopher and Nevis - Abuse of process – Parallel legal remedy - Whether seeking constitutional relief amounted to an abuse of process – Section 35 of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act – Whether learned judge erred in not dismissing the application by way of originating motion – Whether learned judge erred in not granting further relief by way of damages to the appellant in respect of the infringement of constitutional rights
Result / Order:		IT IS HEREBY ORDERED THAT: 1. The appeal against the decision of the learned trial judge is allowed. 2. The orders made at subparagraphs 1 and 2 of paragraph [30] of the decision of the learned trial judge are set aside and substituted with the following: “The application by way of originating motion is dismissed as an abuse or misuse of the court’s process.” 3. Each party shall bear their own costs in the appeal.
Reason:		1. Section 35(1)(a) of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act empowers the Court of Appeal to make any order which ought to have been made by the

		High Court. Pursuant to section 35(2), this power can be exercised even if no notice of appeal or counter notice was filed in respect of part of the decision of the High Court or that any ground for allowing the appeal or for affirming or varying the decision of that of the High Court is not specified in such notice. This power, however, cannot be exercised in circumstances where it may prejudice either party to the appeal. Sections 35(1) and 35(2) of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act Cap 3.11 of the Revised Laws of Saint Christopher and Nevis 2009; <i>Hannays v Baldeosingh</i> [1992] 1 WLR 395 considered; <i>Caribbean Welding Supplies Ltd v Attorney General of Trinidad and Tobago</i> [2024] UKPC 7 applied. 2. A claim for constitutional relief does not ordinarily offer an alternative means of challenging a conviction or a judicial decision, nor an additional means where such a challenge, based on constitutional grounds, has been made and rejected. In this appeal, the appellant had not raised in his grounds of appeal against his conviction, any constitutional issue. However, one of the issues considered by the Court of Appeal was whether the learned magistrate's decision to proceed in a manner which deprived the appellant of an opportunity to have counsel cross-examine certain prosecution witnesses breached his right to a fair trial. Applying the established principles in this area of constitutional law would have required the learned trial judge to refuse the appellant any constitutional relief on the basis that the remedy for any errors of law (either procedural or substantive) is to appeal to the Court of Appeal, and that errors of procedure (even where they include a failure to observe one (or more) of the fundamental rules of natural justice) did not give the appellant a right to
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		constitutional redress under section 18 of the Constitution. Harrikissoon v Attorney General of Trinidad and Tobago [1980] A.C. 265 considered; Mathew McMillan v Alonzo Carty et al SKBHCV2017/0380 (delivered 20th November 2018, unreported) considered; Jaroo v Attorney General of Trinidad and Tobago [2002] UKPC 5 considered; Chokoling v Attorney General of Trinidad and Tobago [1981] 1 WLR 106 applied; Maharaj v Attorney General of Trinidad and Tobago (No 2) [1979] AC 385 applied; Independent Publishing Co. Ltd. v Attorney General of Trinidad and Tobago [2004] UKPC 26 considered; Hinds v Attorney General of Barbados [2001] UKPC 56 considered; Naidike v Attorney General of Trinidad and Tobago [2004] UKPC 49 considered. 3. To seek constitutional relief where there is a parallel legal remedy will be an abuse of the court's process in the absence of some feature which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. In this case, the learned judge did not find any circumstances of the appellant's case that included any feature which, at least arguably, indicated that the means of legal redress otherwise available would not be adequate. The alternative means available to the appellant (by way of appeal to the Court of Appeal) to challenge his conviction and sentence were already exhausted by the appellant when he filed his application by originating motion. By seeking such relief in the clear absence of such a feature amounted to a clear abuse of the court's process and the learned trial judge ought to have dismissed the application by way of originating motion. Independent Publishing Co. Ltd. v Attorney General of Trinidad and Tobago [2004] UKPC 26 considered; Hinds v Attorney General of Barbados [2001] UKPC 56 considered; Brandt
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		v Commissioner of Police and others [2021] UKPC 12 considered. 4. In any event, the appellant's grounds of appeal have no merit because the learned trial judge exercised her discretion properly in not granting any further relief by way of damages to the appellant in respect of the infringement of his constitutional rights. The learned judge was correct in stating that the exercise by the appellant of his right of appeal would have been sufficient in the circumstances. Consequently, it cannot be said that the learned trial judge erred in the exercise of her discretion to refuse the award of damages to the appellant. R v Piggott (2015) 88 WIR 299 distinguished.
Case Name:		Calvin Ayre v Reuters News & Media Inc. [ANUHCVP2023/0029] (Antigua and Barbuda)
Date:		Wednesday 5th June 2024
Coram for delivery:		The Hon. Mde. Vicki Ann Ellis, Justice of Appeal The Hon. Mr. Eddy Ventose, Justice of Appeal The Hon. Mde. Esco Henry, Justice of Appeal
Appearances:		
	Appellant:	Ms. Claneisha Gomes
	Respondent:	Ms. Cheryl-Lee Bolton

Issues:		Motion for conditional leave to appeal to His Majesty in Council – Sections 122(1)(a) and 122(2)(a) of the Constitution of Antigua and Barbuda – Appeal against decision of the Court of Appeal dismissing the appeal from the decision of the learned master – Whether the decision of the Court of Appeal was a ‘final decision’ – Whether the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council – Service out order – Service of the authorization code generated by the E-Litigation Portal – Rules 13(3)(b) and 13(4) of the Eastern Caribbean Supreme Court (Electronic Litigation Filing and Service Procedure) Rules 2019 – Substitution of defendant – Part 19.4 of the Civil Procedure Rules (Revised Edition) 2023 – Application and order for substitution and service – Valid and effective service of the claim form
Result / Order:		IT IS HEREBY ORDERED THAT: 1. The motion for leave to appeal to His Majesty in Council is dismissed. 2. Costs to the respondent, to be assessed if not agreed within 21 days.
Reason:		1. Section 122(1)(a) of the Constitution states that an appeal lies from a decision of this Court to His Majesty in Council as of right in relation to ‘final decisions in any civil proceedings where the matter in dispute on the appeal to [His] Majesty in Council is of the prescribed value [EC\$1,500] or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value [EC\$1,500] or upwards’. One of the central questions was whether the decision of this Court dated 22nd December 2023 was a ‘final decision’. Applying the application test, the decision of this Court did

		not determine the matter in litigation for either of the parties. Had the decision of this Court been otherwise, the matter in dispute between the parties would have continued. Consequently, the applicant cannot ground his appeal to His Majesty in Council in section 122(1)(a) of the Constitution of Antigua and Barbuda because the order of the Court of Appeal is not a “final decision” which is a necessary condition for the grant of leave under that section. Section 122 (1)(a) of the Constitution of Antigua and Barbuda 1981 Cap 23 of the Revised Laws of Antigua and Barbuda applied; <i>Inderjit Kaur Chhina v Muhammad Nazir Muhammad Ismail and another</i> [2024] UKPC 10 applied; <i>Inderjit Kaur Chhina v Muhammad Nazir Muhammad Ismail et al</i> BVIHCMAP2020/0024 (delivered 23rd March 2023, unreported) followed. 2. There is no issue of great general or public importance relating to the expiry of the claim form because, as the respondent correctly submitted, the mere fact that similar rules have been interpreted differently by the English courts does not mean that there are conflicting dicta or that the rule is unsettled in this jurisdiction, which is the only relevant jurisdiction for considering whether a point of great general or public importance arises on the proposed appeal. Similarly, no issue of great general or public importance arises in relation to jurisdiction, because the question arising is merely the application of settled and clear principles concerning submission to jurisdiction to the facts of this case and whether the judicial discretion was properly exercised. Section 122 (1)(a) of the Constitution of Antigua and Barbuda 1981 Cap 23 of the Revised Laws of Antigua and Barbuda applied; <i>Martinus Francois v The Attorney General Saint Lucia</i> Civil Appeal No. 37 of 2003
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		(delivered 7 th June 2004, unreported) followed; Renaissance Ventures Ltd et al v Comodo Holdings Ltd BVIHCMAP2018/0005 and BVIHCMAP2018/0008 (delivered 8 th October 2018, unreported) followed; Bergan v Evans [2019] UKPC 33 applied; Lux Locations Ltd v Zhang [2023] UKPC 3 applied
Case Name:		1. Attorney General of Antigua and Barbuda 2. David Matthias v HMB Holdings Ltd. [ANUHCVP2021/0021] (Antigua and Barbuda)
Date:		Thursday 6 th June 2024
Coram for delivery:		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. Lennox Lawrence holding for Mr. Anthony Astaphan SC
	Respondent:	Mr. Larry Smith KC with him Mr. Kendrickson Kentish
Issues:		Civil Appeal – Undertaking in relation to shares – Breach of undertaking – Application to discharge undertaking – Whether the judge erred in her application of the principles relating to the discharge of an undertaking -Amended Application – Relation back principle – Appellate review of judge’s discretion - Whether the learned trial judge erred or misdirected herself when she dismissed the

		appellants' amended application – Financial sanction - Whether the judge erred or misdirected herself when she imposed a financial sanction – Whether the judge erred or misdirected herself when she failed to dismiss the respondent's notice of objection
Result / Order:		IT IS HEREBY ORDERED THAT: 1. The appeal is allowed on grounds (i) – (v). 2. The orders of the judge at paragraph 1(b) & (c) of her judgment are set aside. 3. The appellants amended application dated 4th May 2021 is remitted to a judge of the High Court to be heard on an expedited basis. 4. Grounds (vii), (viii) and (ix) are dismissed. 5. The order of the judge at paragraph 1(a) of her judgment is affirmed. 6. Given that each party has enjoyed some measure of success on important issues arising on the appeal, there will be no order as to costs.
Reason:		1. In litigation, it is not uncommon for parties to give an undertaking to the court which represents a promise to the court to perform or refrain from performing certain actions. Such an undertaking usually serves as an alternative to an injunction or a court order, though it is no less binding. It is settled that a court always has the discretion to release a party from an undertaking where the party seeking release can demonstrate good cause. The court's power is limited to either granting or refusing the application for release; it does not extend to varying the undertaking already given. Nonetheless, it is open to the court upon discharging, or as a condition to discharging an undertaking, to replace it with a further undertaking in different terms; whether as offered or on terms different from that offered. The court also has the discretion to discharge an undertaking when it is proved to have been given under a mistake. An undertaking which is accepted by the court can be discharged by the court at any stage if it is just to do so and the

		fact that it is recorded in a consent order does not change its nature from a promise to an order. In approaching the application to discharge the undertaking in the context of the facts of this case, the proper focus of the judge's enquiry ought to have been to ask herself whether the appellants had given an undertaking in terms much wider than intended and, if so, whether it was just in all the circumstances to release the appellants from it and replace it with a further or different undertaking offered by the appellants, or, alternatively, whether there was a significant change of circumstances which made it just to release the appellants from the undertaking and replace it with a further or different undertaking than that offered by the appellants. Birch v Birch [2017] 1 WLR 2959 applied; Stanford International Bank Ltd v Lapps [2006] UKPC 50 applied; Mullins v Howell (1879) 11Ch. D. 763 considered; Kensington Housing Trust v Oliver (1997) 30 HLR 608 applied. 2. Where, as in this case, an application has been amended, an issue often arising is what is the order in which it should be heard where there were prior applications pending before the amended application. Generally, the relation back principle states that an amendment duly made, takes effect from the date of the original document that it amended. The application to discharge the undertaking filed on 12th April 2021 was first in time. When properly analysed, the substance of the application before the judge was to discharge the original undertaking while offering to replace it with a different undertaking. The grounds of the amended application filed on 4th May 2021 were the same, save for the addition of a new ground. The fact that the appellants sought to amend the application by substituting a different replacement undertaking did not alter the nature and substance of the application, which was to discharge the original undertaking, principally on grounds of mistake. The fact that the terms of the replacement undertaking that the appellants were prepared to offer were different from the
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		undertaking offered on 12th April 2021 was also of no moment, since a replacement undertaking can be, and often is, in different terms, even on terms different from the one currently on offer. Birch v Birch [2017] 1 WLR 2959 applied 3. The judge therefore erred in finding that because the amended application offered a different undertaking, the relation back principle did not apply. This error led the judge to treat the application of 12th April, 2021 as a separate and distinct application and resulted in the judge not giving any real or substantive consideration to the reasons advanced by the appellants as to why the undertaking offered with the amended application should be accepted in place of the undertaking that had been breached. Even if, the judge was right to regard the amended application as substantially different and therefore to be considered last, she was nonetheless required to examine the terms of the proposed undertaking and assess whether and to what extent to limit the release to that which was necessary to avoid serious hardship or injustice. The judge therefore erred in principle and misdirected herself when she dismissed the appellants' amended application by failing to take account of relevant matters and considering irrelevant ones. Birch v Birch [2017] 1 WLR 2959 applied; A v A [2018] 4 WLR 66 applied. 4. The question of whether sanctions should have been imposed on the appellants for breach of the undertaking is entirely separate from the question of what an appropriate replacement undertaking would be. It is the intentional breach of an undertaking that renders a party liable to be held in contempt. There is no dispute that the original undertaking had been breached by the appellants. While the judge made no express finding either that the breach was inadvertent or that it was intentional, arguably her finding that
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		there were no mala fides in the publication of the prospectus carries the implication that she found that there was no intention to wilfully breach the undertaking. Whether the breach was intentional or inadvertent, the judge looked to the conduct of the appellants once they were fixed with knowledge that a potential breach of the undertaking loomed large, to determine whether to impose a sanction. There is little difference whether the failure is due to deliberate or reckless dilatoriness in arresting the breach or to half-hearted efforts, mere indifference, or lethargy, in circumstances where the appellants were promptly notified that the course on which they had embarked would breach the undertaking and be in contempt of court. The judge was entitled to take the view that once the breach was communicated to the appellants, it became necessary for them “to do more than file an application to be released from the undertaking and have another substituted” and that the appellants ought to have engaged in action to arrest the breach of the undertaking until such time as the appellants’ application for release of the undertaking was determined. 5. The appellants’ contention that the judge ought not to have imposed a financial sanction amounts essentially to a challenge to the judge’s exercise of discretion in determining that the imposition of a financial sanction for breach of the undertaking was appropriate. This therefore engages the settled principles regarding appellate restraint when reviewing the exercise of a judge’s discretion. Applying this approach, it cannot be said that the appellants have established that appellate intervention is warranted on any of the permissible bases, either in relation to the decision to impose a fine or in determining the quantum. The judge’s formula for arriving at the appropriate fine to be paid was to note that the percentage of shares divested by the sale amounted to 5.3% of the original undertaking and to therefore apply 5% to the proceeds of the sale of the shares which amounted to EC\$17,397,810.94. This formula
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		yielded the sum of EC\$869,890.54 which was the fine imposed. There is nothing irrational or disproportionate about this approach. Accordingly, the judge did not err or misdirect herself when she imposed a financial sanction in the sum of \$ EC\$869,890.54 for the appellants' breach of the undertaking. Green Elite Limited (in liquidation) v Mr. Fang Ankong et al BVIHCMAP2019/0030 (delivered 11th June 2021, unreported) followed; Ming Siu Hung, and others v J F Ming Inc and another [2021] BCC 438 applied; Kwok Kin Kwok v Yao Juan [2022] UKPC 52 applied.
Case Name:		Kelvin Mann v Lorden Warrington [DOMHCVAP2023/0003] (Commonwealth of Dominica)
Date:		Thursday 5th June 2024
Coram for delivery:		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:	Mrs. Heather Felix-Evans
	Respondent:	Mrs. Dawn Yearwood Stewart holding for Mrs. Singoalla Blomqvist-Williams
Issues:		Interlocutory appeal – Relief from sanctions – Extension of time – Whether an application for an extension of time can be treated as an application for relief from sanctions – Case management powers – Appeal against the exercise of judicial discretion – Appellate interference – Rule 26.8 of the Civil

		Procedure Rules 2000 – Non-compliance with court orders – Whether the reasons given for non-compliance with a court order were sufficient
Result / Order:		IT IS HEREBY ORDERED THAT: 1. The appeal is allowed. 2. The learned trial judge's order granting relief from sanctions for failing to file the witness summaries and witness statements on time is set aside. 3. The costs order in the court below remains in place and the appellant will have the costs of this appeal, such costs to be assessed by a Judge or Master of the High Court if not agreed within 14 days of this judgment.
Reason:		1. Applications for extension of time, when made after the time for complying has passed, fall to be treated under CPR 26.8 as applications for relief from sanctions. The learned judge accordingly found that the applications before her were for relief from sanctions and even if she had found that they were merely applications to extend time as the appellant contended, she could have properly considered them under CPR 26.8. She was satisfied that the intention of the documents, though deficient in their averments, was for relief from sanctions and she cannot be faulted for treating with the applications as she did. Rules 26.7(2) and 26.8 of the Civil Procedure Rules 2000 applied; Adam Bilzerian v Gerald Lou Weiner et al SKBHCVAP2015/0015 (delivered 27th January 2016, unreported) followed; Kyle David v Attorney General of the Commonwealth of Dominica DOMHCVAP2013/0004 (delivered 21st January 2014, unreported) distinguished. 2. Part 26 of the CPR gives the court wide powers of case management which allows the court to

		dispense with any aspect of procedure and allows the judge to deal with the case in a manner that ensures fairness to all parties involved in the matter. The learned trial judge employed the case management powers given by Part 26 in dealing with the various applications. The applications before the court in this matter were all of similar nature and the learned trial judge in seeking to deal with the matters fairly and expeditiously made the decision to hear them together. This allowed for the proper use and allocation of judicial time, and she cannot be faulted for adopting this approach. Part 26 of the Civil Procedure Rules 2000 applied. 3. The basis upon which an appellate court will interfere with the exercise of discretion by a trial judge is well established. Such an appeal will not be allowed unless the appellate court is satisfied that in exercising that discretion the trial judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations or by taking into account or being influenced by irrelevant factors and considerations, and that as a result of the error or the degree of error in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong. Nilon Limited & anor v Royal Westminster Investments SA & ors [2015] UKPC 2 applied; Michael Dufour et al v Helenair Corporation Limited et al (1996) 52 WIR 188 followed. 4. All three limbs of CPR 26.8(2) must be satisfied for an applicant to succeed in an application for relief from sanctions. Failure to satisfy any one of the three limbs is fatal. The courts of this jurisdiction have taken a strict approach to ensure compliance with the rules and the
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		preconditions have been applied in an uncompromising fashion. The court must therefore examine the evidence put before it by the applicant in order to determine whether the criteria set out in CPR 26.8(2) have been satisfied. Ferdinand Frampton v Ian Pinard et al Dominica Civil Appeal No. 15 of 2005 (delivered 3rd April 2006, unreported) followed; Inna Gudavadze et al v Ivane Chkhartishvili BVIHCP2016/0037 (delivered 11th January 2017, unreported) followed. 5. What constitutes a good explanation for the purpose of CPR 26.8(2)(b) is fact sensitive. However, this Court has in a number of previous decisions made it clear that where the reasons given for delay in complying with orders of the court are among other things, misapprehension of law, mistake of law by counsel, lack of diligence, volume of work, difficulty in communicating with clients, pressure of work, client impecuniosity, secretarial incompetence or inadvertence, these excuses are not acceptable for the purpose of explaining away the default. The burden to satisfy the court remains on the applicant, and the party who is in default must not take the position that the obligation to provide a good explanation is trifling or treat it with scant regard and expect that a court will accept that approach and grant the relief sought. Attorney General v Universal Products Ltd [2011] UKPC 37 applied; Prudence Robinson v Sagicor General Insurance Inc SLUHCVP2013/0009 (delivered 29th September 2014, unreported) followed; Cecil John Rose v Anne Marie Uralis Rose Saint Lucia Civil Appeal No. 19 of 2003 (delivered 22nd September 2003, unreported) followed; QVT Fund V LP et al v China Zenix Auto International Group Ltd et al BVIHC(COM) No.
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		26 of 2014 (delivered 2nd December 2016, unreported) considered. 6. In the instant case, no particulars were given in the affidavits to explain why an error in the date of the reopening of the Registry was made and what efforts were made to find out if it had reopened for business. These were critical issues which ought to have been addressed in the affidavits. This was clearly an issue of inadvertence, a reason which has long since not sufficed for complying with CPR 26.8(2)(b). It was for the respondent to have shown that there was credible and particularised evidence in order to meet the threshold necessary for the court to grant the relief sought. The respondent here was required to show the court that the failure to file the witness statements or witness summaries was unintentional, that all reasonable steps had been taken to meet the deadline but, despite taking those steps, the deadline was not met. Despite making findings of the explanation being ‘terse’ and ‘bare’, the learned trial judge still found that there was a good explanation. There being no sufficient evidence before the learned trial judge upon which she could properly exercise her discretion, she was blatantly wrong in concluding that the explanation given by the respondent for the delay was good and adequate.
Case Name:		Liana Leanne Prince Charles v Derrickson Charles [DOMHCVAP2013/0023] (Commonwealth of Dominica)
Date:		Thursday 6th June 2024

Coram for delivery:		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:	Mrs. Zena Moore-Dyer
	Respondent:	Ms. Hazel Johnson
Issues:		Civil Appeal – Matrimonial Causes Act 1973 (UK) - Ancillary Relief – Whether the learned trial judge failed to take into account the relevant factors as set out in s. 25 of the Matrimonial Causes Act 1973 (UK) and the evidence which would have supported these factors in concluding as he did that the Appellant had no entitlement to a share in the matrimonial home – Whether the Learned trial judge failed to consider the provisions of s. 23 of the Matrimonial Causes Act 1973 and the evidence which should have been weighed in making an award for the maintenance of the child of the marriage
Type of Order:		Oral Decision
Result / Order:		IT IS HEREBY ORDERED THAT 1. The appeal is allowed. 2. The orders of the learned trial judge are set aside. 3. The matter is remitted to the High Court for hearing before another judge. 4. The appellant will have her costs to be assessed by a judge of the High Court if not agreed within 14 days of the date of this order.
Reason:		The Appellant appealed against the judgment and Order of 27th April 2024 in which the learned trial judge disposed of the appellant's application for ancillary relief making the following orders that:

		1. the matrimonial home is solely that of the respondent; 2. the appellant is not entitled to a share and interest in the matrimonial home; 3. both parties are equally entitled to be responsible for the maintenance of the infant child until he attains the age of 18 years; 4. the 16-month period given to the appellant to stay in the downstairs portion of the matrimonial home would give the appellant sufficient time to complete the building of her own home. Being dissatisfied with the judgment and order of the learned trial judge the appellant appealed citing 10 grounds of appeal. At the outset of the hearing counsel for the appellant indicated that the appellant was no longer pursuing grounds 6 and 7 of the Notice of Appeal. During the hearing, she summarised the remaining 8 grounds which were distilled into two main grounds that is: i. The learned trial judge failed to take into account the relevant factors as set out in s. 25 of the Matrimonial Causes Act 1973 (UK) and the evidence which would have supported these factors in concluding as he did that the Appellant had no entitlement to a share in the matrimonial home and; ii. The Learned trial judge failed to consider the provisions of s. 23 of the Matrimonial Causes Act 1973 and the evidence which should have been weighed in making an award for the maintenance of the child of the marriage. PROPERTY ADJUSTMENT ORDER In the Commonwealth of Dominica, there is an established statutory framework for property division upon the termination of a marriage. Section 24 of the Matrimonial causes Act 1973 gives the court power, <i>inter alia</i>, to make property adjustment orders for the
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		benefit of a party to a marriage or a child of the family. The section provides as follows: “24 Property adjustment orders in connection with divorce proceedings, etc. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say... (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them; Section 25 provides the matters to which a court must have regard in deciding how to exercise its powers under section 24: i. The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future; ii. The financial needs obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; iii. The standard of living enjoyed by the family before the breakdown of the marriage; iv. The age of each party to the marriage and the duration of the marriage; v. The physical or mental disability of either of the parties to the marriage and vi. The contribution made by each of the parties to the welfare of the family including any contribution made by looking after the home or caring for the family.
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		The Matrimonial Causes Act also makes it clear that the Court is to exercise these powers in a manner so as to place the parties so far as is possible having regard to their conduct in the financial position in which they would have been but for the breakdown of the marriage. In exercising this discretion, the Court's objective is always to arrive at a fair and just outcome. In coming to a determination on this issue, a judge is required to conduct an analysis/assessment of the evidence before him and determine whether the relevant criteria have been satisfied bearing in mind that the overriding objective is fairness in the distribution of the matrimonial assets at the time of the dissolution of the marriage. It is important to note that in <u>Miller v Miller</u> [2006] UKHL 24, Lord Nicholls of Birkenhead, at paragraphs 16, 20 and 29 referred to the 'equal sharing principle' and 'sharing entitlement'. This 'equal sharing', Lord Nicholls explained, derives from the basic concept of equality permeating a marriage as understood today. The term yardstick of equality, as developed in <u>White v White</u> [2001] 1 All ER 1, was meant to reflect the 'modern, non-discriminatory conclusion that the proper evaluation under s. 25(2)(f) of the parties' different contributions to the welfare of the family should generally lead to an equal division of their property unless there was good reason for the division to be unequal'. In <u>White</u>, Lord Nicholls of Birkenhead viewed equality as a 'yardstick' against which a judge's tentative views should be checked. However, <u>Miller</u> made it clear that sharing was not required to be checked against the yardstick of equality at the end of the judge's sharing exercise. The appellant submitted that the learned trial judge failed to have regard to the significant evidence before him which spoke to the appellant's contribution to the welfare of the family including any contribution made by looking after the home or caring for the family. She also contended that the learned trial judge failed to consider the financial
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		contribution made by the Appellant to the matrimonial home. Moreover, Counsel for the appellant pointed to the submissions filed by the respondent which appears to acknowledge that the appellant may be entitled to a 1/3 share in the matrimonial home. In responding, counsel for the respondent robustly clarified that this submission was not intended as a concession and that when construed as a whole, the submissions make clear that the respondent's case is that the matrimonial assets should be divided in such as was as to leave each party with the property which is currently registered in their own names. Counsel further submitted that the learned trial judge would have considered the totality of the matrimonial assets and in refusing to make a property adjustment order in respect of the matrimonial home, while making no order with respect to the Wall House property and the 2 motor vehicles, (ostensibly leaving the same to the Appellant) the learned trial judge would essentially have arrived at an equitable division of the matrimonial assets. Having reviewed the brief written reasons provided by the judge the Court was satisfied that the learned judge quite properly, at paragraph 6 of his judgment, listed the factors illustrated in section 25 of the Matrimonial Causes Act 1973 in relation to property adjustment. After conducting a brief assessment which focused primarily on the disparate ages and financial positions/income earning capacities of the parties, the judge concluded that: “Given the state of the financial resources the wife says is available to her, it is clear that she can construct her own home on her land in short order. I therefore decline to make any property adjustment order in favour of the wife as prayed.”
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		The Court noted that it was entirely appropriate for the learned judge to assess the financial positions of the parties. However, the court determined that this should merely be the starting point for a judge considering an application for ancillary relief. The English Court of Appeal in <i>Charman v Charman</i> [2007] EWCA Civ 503 made this clear in prescribing the approach that a court should take to an application for ancillary relief in the following terms: “[T]he starting point of every enquiry in an application of ancillary relief is the financial position of the parties.... Although it may well be convenient for the court to consider some of the matters set out in s.25 (2) other than in the order there set out, a court should first consider, with whatever degree of detail is apt to the case, the matters set out in s.25(2)(a), namely the property, income (including earning capacity) and other financial resources which the parties have and are likely to have in the foreseeable future. Irrespective of whether the assets are substantial, likely future income must always be appraised for, even in a clean break case, such appraisal may well be relevant to the division of property which best achieves the fair overall outcome.” However, the Court of Appeal in <i>Charman</i> went on to state at paragraph 70, that in addition to this starting point, the Judge must proceed to consider: “...the principle of need requires consideration of the financial needs, obligations and responsibilities of the parties (s.25(2)(b)); of the standard of living enjoyed by the family before the breakdown of the marriage (s.25(2)(c));
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		of the age of each party (half of s.25(2)(d)); and of any physical or mental disability of either of them (s.25(2)(e)).” At paragraph 72 of the judgment in Charman, the Court of appeal further noted that: “The enquiry required by the principle of sharing is, as we have shown, dictated by reference to the contributions of each party to the welfare of the family (s.25(2)(f)); and, as we make clear in paragraph 85 below, the duration of the marriage (the other half of s.25(2)(d)) here falls to be considered. Also conveniently assigned to the sharing principle, no doubt dictating departure from equality, is the conduct of a party in the exceptional case in which it would be inequitable to disregard it (s.25(2)(g)). “ Having reviewed the learned trial judge’s reasons, The Court was not satisfied that he carried out the evaluative analysis which would have addressed these factors or considerations. For that reason the Court determined that the appeal must be allowed and the matter remitted to the High Court. MAINTENANCE OF THE CHILD In relation to the issue of the maintenance of the Child, section 23 (1) (d) of the Matrimonial Causes Act requires the court to make an Order that a party to the marriage shall make to such persons as may be specified in the order for the benefit of the child of the family or to such child such periodical payments for such term as may be specified During the course of the hearing counsel for the respondent frankly conceded that the learned trial judge made an order which was not in keeping with
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		the terms of s.23 of the Matrimonial Causes Act, because the order does not: 1. Identify a payor 2. Specify the payee 3. Specify the quantum of the periodical payment 4. Specify the duration or term of the payments Both parties were in agreement that this order was inadequate and not in keeping with the statutory framework, and the matter ought to be remitted to the lower Court for rehearing. In the circumstances, this Court ordered that this matter should also be remitted to the High Court for rehearing by a different judge.
Case Name:		Darryl Frett v The Commissioner of Police [BVIMCRAP2022/0002] (Territory of the Virgin Islands)
Date:		Thursday 6th June 2024
Coram for delivery:		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. Terrence Williams
	Respondent:	Mr. Sherman Mc Nicolls
Issues:		Criminal appeal – Appeal against conviction and sentence – Section 42 of the Eastern Caribbean Supreme Court (Virgin Islands) Act - Application to admit fresh evidence on appeal – Trial in the absence

		of an accused individual - Right of accused to attend trial – Whether the accused received a fair trial – Section 12 of the Firearms Act - Joint enterprise – Possession - Whether the elements of possession were made out against the appellant – Whether the appellant’s conviction is unsafe
Result / Order:		IT IS HEREBY ORDERED THAT: 1. The appeal is allowed on grounds 3, 4 and 5 and the appellant’s conviction and sentence are quashed. 2. Ground 7 of the appeal is dismissed.
Reason:		1. Pursuant to section 42 of Eastern Caribbean Supreme Court (Virgin Islands) Act, the Court of Appeal may receive fresh evidence on an appeal if the evidence is credible and there is a reasonable explanation for the failure to adduce it at trial. However, the Court has a discretionary power to receive fresh evidence when the Court thinks it necessary or expedient to do so in the interest of justice. Where the evidence to be adduced is not credible, that is the end of the matter. However, where the evidence is both credible and fresh it should be admitted unless the court is satisfied that it would not affect the safety of the conviction. Where the evidence is credible but not fresh, the court must make an assessment of its strength and the possible impact on the safety of the conviction. In this case, while the evidence of Detective Constable Ron Augustin is credible and would have been admissible at trial, the evidence cannot be considered as fresh. Evidence is fresh if it is evidence which could not have been obtained for the trial with reasonable diligence. The transcripts show that it was well-known to all parties, including the senior magistrate, that the appellant was incarcerated in St. Martin and that that was the reason for

		his absence from the trial. Furthermore, this information does not possess any strength such that would impact the safety of the appellant's conviction. The application to adduce fresh evidence is therefore dismissed. Section 42 of the Eastern Caribbean Supreme Court (Virgin Islands) Act, Cap 80, Revised Laws of the Virgin Islands, 2013 applied; R v Benedetto [2003] 1 WLR 1545 applied; Lundy v The Queen [2013] UKPC 28 applied. 2. An accused person has the right to be present at his trial, which is a component of the right to a fair trial. However, a judicial officer has a discretion whether to commence or continue a trial in the absence of the accused. In exercising this discretion, fairness to the defendant is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including the nature and the circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear. The critical question on appeals of this nature is whether the appellant received a fair trial. In this case, the appellant was represented by counsel from the outset. At some stage during the course of the trial the High Court granted him bail to travel to Puerto Rico for medical attention but on the resumption of the trial, it was discovered that the appellant was incarcerated in St. Martin. There was no evidence put before the magistrate explaining the circumstances under which the appellant came to be incarcerated in St. Martin despite her requests for, and the opportunities given to provide, same. Further, the magistrate enquired but was given no definitive answer from counsel as to when the appellant was likely to return to the jurisdiction. The appellant was in contact
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		with and giving instructions to his counsel who continued to represent him, even in his absence. There was also full and effective cross-examination of the prosecution's witnesses by his counsel. In all the circumstances, although it could be said that the learned magistrate failed to demonstrate in her reasons that she had considered all the relevant matters before deciding to proceed in the absence of the appellant, there are compelling reasons for finding that the appellant waived his right to be present at the trial and in examining the trial proceedings as a whole, the appellant undoubtedly received a fair trial. Section 16 of the Virgin Islands Constitution Order 2007 applied; R v Hayward [2001] 3 WLR 125 applied; R v Jones (Anthony Williams) [2002] UKHL 5 applied; R v Lopez [2013] EWCA Crim 1744 considered; Czekala v District Court in Bydgoszcz (2010) [2010] EWHC 1895 (Admin) distinguished; Dula v Director of Public Prosecutions of Zwolle Lelystad Holland [2010] EWHC 469 (Admin) considered. 3. Where there is an allegation that two or more persons are in joint possession of an article, the prosecution must prove to the criminal standard that each person had knowledge of the presence of the article and that each had the intention to assist or encourage its possession or control by one or more of them. The prosecution must adduce evidence from which such knowledge and intention can be reasonably inferred. In this case, section 12 of the Firearm Act does not apply to the appellant as there was no evidence that he was the owner or person in charge of the vehicle. Moreover, there was no evidence to support an inference that the appellant had knowledge that the firearm was in Almestica's bag nor behaviour from him from which guilty knowledge could be inferred. The prosecution did not lead evidence from which the inference could be drawn that the appellant assisted or
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		encouraged Almestica in the possession of the firearm. The appellant's mere presence in the vehicle as a passenger cannot without more lead to a conclusion that he is part of a joint enterprise and in possession of any illegal item found in the vehicle. Section 19 of the Criminal Code Act No. 1 of 1997 of the Laws of the Virgin Islands considered; DPP v Brooks (1974) 21 WIR 411 applied; Malcolm Maduro v The Queen Territory of the Virgin Islands HCRAP2007/004 (delivered 19th December 2008, unreported); Tenielle Percival et al v The Chief of Police SKBMCRAP2017/0004 (delivered 10th November 2022, unreported) applied; Levar Brown v The Chief of Police SKBMCRAP2021/0003 (delivered 9th July 2023, unreported); Dial Maharaj & Anor v The State Cr. App. No.30 & 31/2007 applied; Latchmi Bharath v Ferney Bohoroquez Cr. App No. 49 & 50/2008 applied.
		APPLICATIONS AND APPEALS
Case Name:		AO Alfa Bank v Kipford Ventures Limited [BVIHCMAP2024/0007] (Territory of the Virgin Islands)
Date:		Monday 3rd June 2024
Coram:		The Hon. Mr. Mario Michel, Chief Justice [Ag.] The Hon. Mr. Eddy Ventose, Justice of Appeal The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:		
	Applicant:	Mr. Paul Lowenstein KC with him Mr. James Gardner, Mr. Andrew Willins and Ms. Tamara Cameron
	Respondent:	Mr. Alain Choo-Choy KC with him Ms. Jhneil Stewart and Mr. Robert Maxwell Marsh
Issues:		Application for leave to appeal - Whether the proposed appeal has a realistic prospect of success - Whether the proposed appeal raises important questions as to the Court's approach to sanctioned Russian litigants - Whether the delay of the delivery of the judgment in the court below caused the learned judge to err - Whether the judge misunderstood and overlooked relevant evidence or important arguments and thereby failed to apply the relevant legal tests to the totality of the evidence before her Stay of execution application - Whether the judge erred in granting the respondent's application for a stay of the claim or alternatively security for costs Interim Payment - Whether the judge erred in ordering the applicant to make interim payments on account of costs to the respondent Application for a interim injunction - Whether an injunction should be granted pending the hearing of the appeal Risk of dissipation - Whether there is a real risk of dissipation that unless an injunction is granted, the respondent will dissipate its assets so that the appellant is ultimately unable to enforce any judgment against it Good arguable case - Whether there is a good arguable case on the available evidence that the appellant has been the victim of a tortious conspiracy under Russian and—so far as is relevant—BVI law Balance of Convenience - Whether the balance of convenience justifies the exercise of the Court's discretion in favour of the grant of an interim injunction Procedural unfairness

		- Whether the Judge's delay in delivering the judgment caused the Judge to make numerous errors, mis-recall arguments and give the key issues too little analysis
Type of Order:		Oral Decision
Result / Order:		IT IS HEREBY ORDERED THAT: 1. The application for leave to appeal against the order and judgment of Mangatal J dated 29th February 2024 is granted. 2. The notice of appeal is treated as having been validly filed, including insofar as it concerns the grounds of appeal for which leave was sought. 3. The appeal shall be listed for an expedited hearing on a date to be fixed by the Chief Registrar taking account of the availability of both parties' Leading Counsel. 4. Until the appeal is heard and determined, an interim injunction is granted restraining the Respondent from (a) causing or permitting the removal from the BVI of any of its assets in the BVI up to the value of US\$142 million, or (b) the disposal of, or dealing with, encumbrance or diminution of the value of any of its assets, whether they are inside or outside the BVI, up to the value of US\$142 million. 5. The Interim Payment Order made by Mangatal J (Ag.) at para. [135(4)] of the written judgment dated 29th February 2024 is stayed until the appeal is heard and determined. 6. Costs of all of the applications heard on 3rd June 2024 to be costs in the appeal.
Reason:		Before the Court were two applications filed by the applicant AO Alfa Bank ("the Bank") on 5 th March

		2024. By the 1st application, the applicant sought leave to appeal against the judgment and orders of a learned judge of the Commercial Court, Mangatal J, dated 29th February 2024. At the commencement of the hearing, the Court indicated that having read the notice of application, written submissions, affidavits and authorities provided by both sides in relation to the application for leave to appeal, the Court was minded to grant leave to appeal having been satisfied that the threshold test had been met. Accordingly, the Court made an order that leave to appeal was granted to applicant, AO Alfa Bank, to appeal the judgment and order of Mangatal J dated 29th February 2024. The Court also ordered that the appeal should be heard by the Court on an expedited basis on a date to be fixed by the Chief Registrar in consultation with the counsel for the parties. In the 2nd application again by notice of application filed on 5th March 2024, the Bank sought a number of orders as set out in that application. The first was a stay of the part of the order of 29th February 2024 the effect of which was that the undertakings given by the respondent, Kipford Ventures Limited, on 25th January 2022 (“the undertakings”) should expire on 7th March 2024, so that those undertakings would continue in full force and effect. It was now common ground that this first relief had been overtaken. The undertakings expired and were replaced by an interim injunction which was granted by a single judge of the Court on 6th March 2024. The interim injunction was further extended by an order of a single judge of the Court dated 26th March 2024 until the hearing of the leave to appeal and stay applications which took place today. The 2nd relief sought in the notice of application in the alternative, was essentially for an injunction in terms which were similar to the undertakings and in terms similar, if not identical, to the interim injunction order made by a single judge of the Court on 6th March 2024 and extended by a single judge of the Court on 26th March 2024. The 3rd limb of the application was for an order staying the interim payment order and costs orders
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		made by the learned judge. Counsel for the applicant focused his attention in relation to that relief on a stay of the interim payments themselves and not the general costs orders made by the learned judge at paragraph 135(4), which would be the second limb of sub-paragraph 4 of the order made by the learned judge. The Court gave careful consideration to the written and oral submissions made by counsel for both parties in relation to the 2nd application. The Court also considered the test for granting an interim injunction pending the hearing and determination of an appeal. Having considered those matters, the Court was satisfied that the applicant had made out a sufficient case for the grant of an interim injunction pending the hearing and determination of the appeal. The Court was also minded to grant an interim stay of the interim payment order for costs set out at the end of the judgment of the learned judge of the court below. Accordingly, the Court granted those orders essentially in the terms set out in the order of Farara JA dated 6th March 2024. In relation to costs, the Court ordered costs of the application to be in the appeal.
Case Name:		Liana Leanne Prince Charles v Derrickson Charles [DOMHCVAP2013/0023] (Commonwealth of Dominica)
Date:		Tuesday, 4th June 2024

Coram:		The Hon. Mde. Margaret Price Findlay, Justice of Appeal The Hon. Mde. Vicki Ann Ellis, Justice of Appeal The Hon. Mr. Trevor Ward, Justice of Appeal
Appearances:		
	Appellant/Applicant:	Mrs. Gina Dyer-Munro
	Respondent:	Ms. Hazel Johnson and Ms. Lisa de Freitas
Issues:		Application for an extension of time to serve the electronic hearing bundle - Notice of non-opposition - Application to vary, discharge or revoke order of a single judge - Whether the single judge erred in refusing the application to adduce fresh evidence - Whether the single judge erred in failing to take into account a material consideration and/or taking into account an irrelevant consideration - Whether the order is so unreasonable as to suggest that an error has been committed even though it does not appear on the face of the reasoning - Application to adduce fresh evidence - Principles in Ladd v Marshall [1954] 3 All ER 745 - Whether the evidence to be adduced could have been obtained with reasonable diligence for use at the trial - Whether the evidence would probably have an important influence on the result of the case - Whether the evidence is credible
Type of Order:		Oral Decision
Result / Order:		IT IS HEREBY ORDERED THAT:

		1. The application for an extension of time to serve the electronic hearing bundle filed on 27th May 2024 is granted. 2. The application to vary, discharge or revoke the order of the single judge and the application to adduce fresh evidence is withdrawn and hereby dismissed with no order as to costs.
Reason:		Before the Court was an application for extension to time to file and serve an electronic bundle of documents and hard copies thereafter and that the bundle of documents filed and served on 24th May 2024 be deemed validly filed and served. The Court noted that the respondent filed a notice of non-opposition to the extension of time application on 29th May 2024 and was of the view that the application should be granted. The Court also considered the application filed on 6th March 2024 to vary, discharge or revoke the order of a single judge. The court noted that respondent filed a notice of opposition on 14th March 2024. After hearing oral submissions by counsel for the appellant and respondent, the Court accepted the concession by counsel for the appellant that the application to vary, discharge or revoke the order of the single judge and the application to adduce fresh evidence be withdrawn.
Case Name:		Liana Leanne Prince Charles v Derrickson Charles [DOMHCVAP2013/0023] (Commonwealth of Dominica)
Date:		Tuesday 4th June 2024

Coram:		The Hon. Mde. Margaret Price Findlay, Justice of Appeal The Hon. Mde. Vicki Ann Ellis, Justice of Appeal The Hon. Mr. Trevor Ward, Justice of Appeal
Appearances:		
	Appellant:	Mrs. Gina Dyer-Munro
	Respondents:	Ms. Hazel Johnson and Ms. Lisa de Freitas
Issues:		Civil appeal - Matrimonial Causes Act 1973 - Appeal against decision of learned trial to decline the appellant's application for a property adjustment order and an order for maintenance of the child - Ancillary relief upon dissolution of marriage - Property adjustment - Custody and Maintenance of minor child - Whether the learned judge erred in law by failing to consider that the appellant had no home whereas the respondent had at his disposal a house he acquired during the marriage - Whether the learned judge erred when he made an order for the maintenance and upkeep of the child without including a specific amount - Whether the learned judge erred in law when he failed to take into account all the income of the respondent and to consider all circumstances of the case including rent from the matrimonial home - Whether the learned judge erred in considering the appellant's income with the shop without considering the expenses incurring in such income - Whether the learned judge erred in ordering the appellant to live in the downstairs of the matrimonial home for 16 months when the appellant had not started construction on her own home nor did she intend to start - Whether the learned judge unfairly took into account the non disclosure of the appellant's assets but ignored the non disclosure of the respondent
Type of Order:		Adjournment
Result / Order:		[Oral Delivery]

		IT IS HEREBY ORDERED THAT:
		The matter is adjourned to Thursday 5 th June 2024 for delivery of the judgment of the Court.
Reason		The Court heard submissions from the parties and indicated its intention to deliver an oral judgment on Wednesday 5 th June 2024.
Case Name:		[1] Public Works Corporation [2] Elton Darwton v Matthew Nelson [DOMHCVAP2020/0001] (Commonwealth of Dominica)
Date:		Tuesday, 4 th June 2024
Coram:		The Hon. Mde. Margaret Price Findlay, Justice of Appeal The Hon. Mde. Vicki Ann Ellis, Justice of Appeal The Hon. Mr. Trevor Ward, Justice of Appeal
Appearances:		
	Appellants:	Ms. Lisa de Freitas
	Respondent:	Ms. Janae Jackson holding papers for Mrs. Cara Shillingford Marsh
Issues:		Civil appeal - Interest - Whether the learned master erred in ordering that the appellants pay interest on the judgment at a rate of 6% per annum from the date of the judgment until the debt is paid in full in that the law makes provision for the payment of interest on judgments at the rate of 5% per annum
Type of Order:		Oral Judgment

Result / Order:		IT IS HEREBY ORDERED BY CONSENT THAT: 1. The rate of interest on the judgment awarded by the master in the court below at 6% per annum be and is reduced to 5% per annum. 2. Leave is granted to withdraw and discontinue the last ground of appeal. 3. No order as to costs.
Reason:		Upon the appeal coming on for hearing on 4th June 2024, the Court was presented with a consent order in which it was agreed that the rate of interest on the judgment awarded by the master in the court below at 6% per annum be reduced to 5% per annum and that there be no order as to costs. Counsel for the appellant represented that the appellants no longer wished to proceed with ground c of the appeal and that the terms of the consent order were intended to dispose of the entire appeal.
Case Name:		Khamala Adams v Peter Alexander [DOMHCVAP2020/0004] (Commonwealth of Dominica)
Date:		Wednesday 5th June 2024
Coram:		The Hon. Mde. Vicki Ann Ellis, Justice of Appeal The Hon. Mr. Eddy Ventose, Justice of Appeal The Hon. Mde. Esco Henry, Justice of Appeal
Appearances:		
	Appellant/Applicant:	Mrs. Gina Dyer-Munro with Mrs. Zena Moore-Dyer

	Respondent:	Mrs. Heather Felix-Evans with Mr. Jeffrey Douglas-Murdock
Issues:		Application for Solicitor be removed from the Record
Type of Order:		Oral Decision
Result / Order:		IT IS HEREBY ORDERED THAT: The application to be removed from the record is withdrawn and dismissed with no order as to costs.
Reason:		Counsel for the applicant indicated to the Court her intention to no longer pursue her application to be removed from record. The Court heard from both parties and subsequently determined that no order as to costs should be made.
Case Name:		Khamala Adams v Peter Alexander [DOMHCVAP2020/0004] (Commonwealth of Dominica)
Date:		Wednesday 5th June 2024
Coram:		The Hon. Mde. Vicki Ann Ellis, Justice of Appeal The Hon. Mr. Eddy Ventose, Justice of Appeal The Hon. Mde. Esco Henry, Justice of Appeal
Appearances:		
	Appellant:	Mrs. Gina Dyer-Munro and Mrs. Zena Moore-Dyer

	Respondents:	Mrs. Heather Felix-Evans and Mr. Jeffery Douglas-Murdock
Issues:		Interlocutory appeal - Injunction - Whether the Learned Judge erred and was wrong in Law in granting an interim mandatory and prohibitory injunction against the appellant in respect of the vehicle registration number PO675 and failed to properly consider that damages would be an adequate remedy - Agreement by parties that the injunction be discharged
Type of Order:		Consent Order
Result / Order:		[Oral Delivery] IT IS HEREBY ORDERED THAT: 1. The Appeal filed on 2nd November 2020 is withdrawn and dismissed. 2. Each party to bear their own costs.
Reason		The Court heard counsel for the parties who indicated that the parties had agreed by consent that the order of Adrien-Roberts J dated 6th February 2020, granting injunctive relief should be discharged as the relief ordered is now otiose. The parties further agreed that this appeal should consequently be withdrawn and that each party should bear their own costs.
Case Name:		Donald Massicot v The Police [DOMMCRAP2022/0010] (Commonwealth of Dominica)

Date:		Wednesday 5th June 2024
Coram:		The Hon. Mde. Vicki Ann Ellis, Justice of Appeal The Hon. Mr. Eddy Ventose, Justice of Appeal The Hon. Mde. Esco Henry, Justice of Appeal
Appearances:		
	Appellants:	In Person
	Respondent:	Ms. Sherma Dalrymple, DPP with Ms Daina Matthew
Issues:		Magisterial Criminal Appeal - Wounding - Section 53 of the Small Charges Act Chap 10:39 of the Consolidated Laws of Dominica 2017 - Appeal against sentence - Whether the sentence imposed by the magistrate was excessive - Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019
Type of Order:		Oral Decision
Result / Order:		IT IS HEREBY ORDERED THAT: 1. The appeal is allowed. 2. The sentence of the learned magistrate dated 3rd August 2022 is set aside and a sentence of 1 year and 6 months is substituted. 3. Noting that the appellant has served the relevant sentence, the appellant is sentenced to time served. 4. The appellant is to be released from custody forthwith.
Reason:		Before the Court was an appeal against sentence from a decision of the learned magistrate in which he sentenced the appellant to 3 years hard labour in respect of an offence of wounding contrary to section 53 of the Small Charges Act Chap 10:39 of the Consolidated Laws of Dominica 2017. The sentence followed the appellant's guilty plea entered on 3rd August 2022.

		The appellant appealed against the sentence on the ground that the sentence was excessive. The notes reflected in the record of appeal revealed that the learned magistrate did not provide any reasons for his decision and has since left the bench. Although there were no written submissions advanced by the appellant, counsel for the respondent provided written submissions to the Court in which it was submitted that the sentence handed down by the learned magistrate was in fact excessive, as the learned magistrate did not consider the sentencing guidelines to structure his sentence. In the absence of the sentencing remarks setting out the reasons for the sentence the court could not assume that the learned magistrate applied the sentencing guidelines in arriving at a sentence as he was obliged to do. The relevant sentencing guidelines to be applied in this matter are set out in the compendium sentencing guidelines Eastern Caribbean Supreme Court for violent offences, (reissued on 8th November 2021.) Noting that no reasons had been given by the learned magistrate, the court was obliged to consider its position regarding the sentence which was handed down. Having considered the submissions advanced by the learned DPP in which she applied the guidelines appropriately and arrived at a sentence of 1 year 6 months, which she commended to the court for consideration, the Court found no basis to differ from the calculation set out therein and the application of the relevant guidelines. The Court was therefore satisfied that the appropriate sentence which ought to have been handed down by the learned magistrate was a period of 1 year 6 months imprisonment. The Court further noted that as of 3rd June 2024 the appellant has served a period of 1 year 10 months in prison and consequently the appellant had served the time which ought to have been the original sentence handed by the magistrate. Consequently,
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		the appeal was allowed and the decision of the learned magistrate was set aside.
Case Name:		Moses O'Brien v Laurel Esprit [DOMMCVAP2022/0002] (Commonwealth of Dominica)
Date:		Wednesday 5th June 2024
Coram:		The Hon. Mde. Vicki Ann Ellis, Justice of Appeal The Hon. Mr. Eddy Ventose, Justice of Appeal The Hon. Mde. Esco Henry, Justice of Appeal
Appearances:		
	Appellants:	Ms Gina Dyer Munro holding for Mr. David Bruney
	Respondent:	Mr. Darius Jones
Issues:		Civil Appeal - Application for adjournment
Type of Order:		Adjournment
Result / Order:		IT IS HEREBY ORDERED THAT: The matter is adjourned for hearing of the appeal to the next sitting of the Court of Appeal in the state of Dominica scheduled for the week commencing 9th December 2024.
Reason:		The Court was in receipt of an application from counsel for the appellant seeking an adjournment for the hearing of the appeal due to illness. There being no objection from counsel for the respondent, the

		Court was minded to grant the application and adjourned the hearing of the matter to the next sitting of the Court in Dominica scheduled for 9 th December 2024.
Case Name:		Levi Maximea v The Dominica Agricultural Industrial and Development Bank [DOMHCVAP2023/0012] (Commonwealth of Dominica)
Date:		Thursday 6 th June 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/Applicant:	In person
	Respondent:	No appearance
Issues:		Application for leave to appeal - Whether the learned judge failed to take relevant matters into account in coming to the decision - Whether the appeal has reasonable prospects of success -
Type of Order:		Oral Decision
Result / Order:		IT IS HEREBY ORDERED THAT: The application for leave to appeal the decision of Josiah-Graham J dated 8th November 2023 is dismissed.

Reason:		Upon reading the notice of application made on 20th November 2023 along with the written submissions filed on 22nd May 2024 for leave to appeal against the decision of Josiah-Graham J dated 8th November 2023 and having heard the applicant in person and having considered rule 62.2(8) of the Civil Procedure Rules Revised Edition (2023) which provides that leave to appeal may be given only when: a) the Court considered that the appeal will have a realistic prospect of success or b) there is some other compelling reason why the appeal should be heard, the Court was of the view that the application did not meet the threshold for leave to appeal. The Court considered that the applicant failed to articulate any relevant matters that would allow the Court to be of the view that the appeal would have a realistic prospect of success. Upon a review of the judgment of the learned trial judge, the Court was also of the view that it was not demonstrated that that the judge considered irrelevant factors or having considered the relevant factors, made findings of fact which were erroneous in coming to her reasoned decision. The learned judge's decision could not therefore be said to be wrong. Furthermore, the public law issues raised by the appellant on the appeal did not address the substantive issues dealt with by the court and as such were irrelevant to the consideration of the instant application. The Court was therefore of the view that there was no realistic prospect of success on appeal nor any other compelling reason why leave should be granted. The application was accordingly dismissed.
Case Name:		Foued Issa v Sorrell Consulting Ltd. [DOMHCVAP2024/0003] (Commonwealth of Dominica)

Date:		Thursday 6th June 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/Applicant:	Ms. Shanice Henry and Ms. Singoalla Blomqvist-Williams
	Respondent:	No appearance
Issues:		Application for leave to appeal against dismissal of an application for an extension of time to admit evidence of witness - Exercise of judicial discretion - Whether applicant has met the threshold for grant of leave to appeal - Whether the proposed appeal has a realistic chance of success
Type of Order:		Oral Decision
Result / Order:		IT IS HEREBY ORDERED THAT: The application for leave to appeal against the order of the master dated 25th January 2024 is granted.
Reason:		Before the Court was an application filed on 14th February 2024 by the applicant, Foued Issa, for leave to appeal against the decision of the master issued on 25th January 2024 dismissing the applicant's application for an extension of time to file the witness statement of Mr. Vivian Trotter. The applicant advanced 5 grounds in support of the application. The Court considered the application, the evidence filed in support of the application, the written and oral submissions by the applicant and the order of the learned master. The Court noted that the application was in respect to the exercise of judicial discretion by the learned master in refusing the extension of

time. The principles that guide the appellate court when reviewing the exercise of such discretion are well known. One of the most well-known cases is the decision in *Dufour and Others v Helenair Corporation Ltd and Others* (1996) 52 WIR 188 and it is that the appellate court will be slow to interfere with the judge's or master's exercise of discretion unless the applicant can show that the judge erred in principle by failing to take account relevant factors or took into account irrelevant matters and as a result of such error the impugned decision exceeded the generous ambit of reasonable disagreement and was plainly or blatantly wrong.

The substantive issue was whether or not the learned master in exercising her discretion on the application for an extension of time had regard to the relevant factors. The applicant highlighted three main reasons on which he says the learned master erred. They were:

1. the learned master gave reasons that it would be prejudicial with allowing the applicant to compete with the expert witness if the application was granted;
2. that the contents of the proposed witness statement could be viewed as opinion evidence by an expert; and
3. other aspects might be otherwise offensive.

In perusing the order of the learned master it was clear that the learned master gave no indication as to what portion of the draft witness statement constituted such an opinion or inadmissible offensive material and more fundamentally failed to engage with the principles that would have guided her in those circumstances to grant the extension of time. In *Carleen Pemberton v Mark Brantley SKBHCVP2011/0009* (delivered 14th October 2011, unreported), the Court of Appeal outlined the factors that should be taken into consideration when considering an application for an extension of time. Which are: the length and reason for delay; the effect of the delay, the nature of the failure; the prejudice to the parties if the application for extension were granted or denied; and any other matters which arise

		from the surrounding circumstances including any practice directions or rules. The Court was satisfied that the learned master did not engage those factors and she therefore committed an error in principle and as a result the decision is unreasonable and clearly wrong. The Court also took into consideration that it was a matter of record that in an earlier hearing of these proceedings, the respondent had indicated to the learned master that it would have no objections if the applicant wanted to adduce evidence by Mr. Vivian Trotter which did not constitute opinion evidence. For those reasons, the Court was satisfied that because the learned master erred that the appropriate order would be to grant the application for leave to appeal against her decision.
Case Name:		Annette Turney v Josian Nixon Jason Nixon (as the personal representative of the estate of Giraud Nixon) Tutil St. John Rosie St. John [DOMHCVAP2021/1003] (Commonwealth of Dominica)
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. Mark Douglas
	Respondents:	Mrs. Dawn Yearwood-Stewart
Issues:		Application for substitution of a party - Death of appellant
Type of Order:		Oral Decision
Result / Order:		[Oral Delivery] IT IS HEREBY ORDERED THAT: 1. The appellant is to file a certified copy of the death certificate of Annette Turney by close of business on Friday 7th June 2024. 2. The application for substitution of Rosette Turney as appellant in these proceedings for Annette Turney is granted.
Reason		The Court noted that the death announcement was exhibited with the application however the certified death certificate was not exhibited. Counsel for the appellant indicated that the death certificate was available. Consequently, the Court directed that a certified copy of the death certificate be filed. The Respondent also had no objection to the application and had filed a notice of consent on 30th November 2023. Thus, the Court granted the application for the substitution of Rosette Turney as the appellant in place of Annette Turney who was deceased.
Case Name:		Ronaldo Riley v Geoffrey Letang

		[DOMHCVAP2023/0010]
		(Commonwealth of Dominica)
Date:		Thursday 6th June 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:		
	Appellants:	Mrs. Zena Moore- Dyer holding papers for Mrs. Gina Dyer-Munro
	Respondent:	Mr. Lennox Lawrence
Issues:		Civil appeal - Wasted Costs- Consent Order-
Type of Order:		Consent Order
Result / Order:		[Oral Delivery] IT IS HEREBY ORDERED BY CONSENT THAT: 1. The appeal is allowed. 2. The order of the learned master made on 14th June 2023 whereby an order for wasted costs for the day in the sum of \$750.00 to be paid forthwith is hereby varied and an order for costs of the day to the respondent in the sum of \$750.00 is hereby substituted. 3. No order as to costs on the appeal.
Reason:		The Court considered and adopted the terms of a consent order executed between the parties.
Case Name:		Annette Turney

		v Tutil St. John et al [DOMHCVAP2021/1003] (Commonwealth of Dominica)
Date:		Thursday 6th June 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:		
	Appellants:	Mr. Mark Douglas
	Respondent:	Mrs. Dawn Yearwood-Stewart
Issues:		Civil Appeal – Preliminary Objection raised by the respondent – Failure to file documents as required by rules
Type of Order:		Oral Decision
Result / Order:		IT IS HEREBY ORDERED THAT: 1. The appellant is to file the other supporting documents in the appeal which were filed with the notice of appeal on 3rd May 2022, individually, by close of business on Friday 7th June 2024. 2. The hearing of the appeal is adjourned to a date to be fixed by the Chief Registrar.
Reason:		Counsel for the respondent raised the preliminary issue that the documents filed in the bundle by the appellant were not individually filed and thus the appropriate filing fees were not paid. The high court

		registry confirmed that the bundle and notice of appeal was filed on 3 rd May 2022 however the supporting documents were not filed individually as required by the rules. Consequently, the Court gave the appellant time to regularise the filings in this appeal and adjourned the hearing to a date to be fixed by the Chief Registrar.
Case Name:		Alexander Beaupierre v The Commissioner of Police [DOMMCRAP2019/0009] (Commonwealth of Dominica)
Date:		Thursday 6 th June 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. Wayne Norde
	Respondent:	Ms. Sherma Dalrymple, DPP
Issues:		Appeal against sentence - Unlawful possession of a firearm - Sentenced to pay \$15,000.00 forthwith for possession of firearm in default 7 years imprisonment and \$15,000.00 for possession of ammunition in default 7 years imprisonment - Whether magistrate failed to enquire of the appellant and to satisfy himself whether the appellant had the means to pay the fines forthwith - Whether magistrate failed to consider the totality principle when he sentenced the appellant to pay fines for both possession of a firearm and ammunition - Whether the appropriate sentence is a fine for possession of firearm and no separate penalty for ammunition - Whether magistrate failed to award the appellant a 1/3 discount for his early guilty plea - Whether the

		sentence of magistrate was too harsh in the circumstances
Type of Order:		Oral Decision
Result / Order:		IT IS HEREBY ORDERED THAT: 1. The appeal is allowed. 2. The sentence of the learned magistrate is set aside. 3. The appellant is sentenced to time served.
Reason:		The appellant appealed the decision of the learned magistrate made on 6th September 2018 whereby the appellant was sentenced for the following offences: possession of a firearm contrary to section 5(3) of the Firearms Act, and possession of ammunition also contrary to section 5(3) of the Firearms Act. The appellant filed a notice of appeal dated 23rd May 2019 indicating that the sentence was too harsh. The appellant, having pled guilty at the first opportunity was sentenced on both counts to run concurrently to a fine of \$15,000.00 to be paid forthwith and in default, 7 years hard labor. The respondent in its submissions filed on 31st May 2024 conceded the appeal on the ground that the sentence exceeded the time to be given in default of paying a fine, when such fine is in excess of \$1,000.00, that is, contrary to section 105 of the Magistrate's Code of Procedure which provides that the period of imprisonment imposed by a magistrate under that or any other Act in respect of the nonpayment of any sum adjudged to be paid by a conviction or in default of payment of any installment of such sum shall be such period as in his opinion would satisfy the justice of the case, but not in any case exceed the maximum fixed by the scale. Under that scale, where the sum exceeds \$1,000.00, the period shall not exceed 6 months.

		The learned magistrate therefore erred when he set a term of 7 years in default of the nonpayment of the \$15,000.00 fine made on conviction. Further the Court was in possession of the incarceration record filed with the Court which indicated that the appellant had been incarcerated from 6th September 2018 to 31st May 2019, a period 8 months, 3 weeks and 4 days, a period in excess of the legislated 6-month period, to be served in default. The appeal was therefore allowed, and the sentence of the learned magistrate set aside.
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