

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE

SAINT VINCENT AND THE GRENADINES
Monday 16th – Wednesday 18th September 2024

JUDGMENT

Case Name:

Caldicott Worldwide Ltd.

v

[1] Siong Beng Seng

[2] Ching Hui Huat

**[3] Springfield Investment & Nominees PTE
Ltd**

[BVIHCMAP2023/0009]

(Territory of the Virgin Islands)

Date:

Wednesday 18th September 2024

**Coram for
delivery:**

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

The Hon. Mde. Esco Henry, Justice of Appeal

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

Appearances:

Appellant:

Mr. Stephen Moverley Smith KC

Respondents:

Mr. Iain Tucker

Issues:

**Commercial appeal – Section 184I of the Business
Companies Act of the Territory of the Virgin Islands –
Unfair prejudice - Arbitration agreement – Whether the
learned judge erred in understanding the scope of the
Second Appeal Judgment – Whether the learned judge
erred in law in deciding that the issue in the
proceedings of whether dividends were improperly
withheld from Caldicott was required to be stayed**

Result/Order:

IT IS HEREBY ORDERED THAT:

The appeal is dismissed.

Reason:

- 1. The issue before the court related to the preliminary issue concerning the nominee ship alleged in the defence which the learned judge described as a fundamental part of the dispute between the Company and Caldicott. However, the Second Appeal Judgment was clear. The Court allowed the appeal and set aside the order of Wallbank J permitting the seeking of a declaration that the November Resolution was unlawful, void and of no effect and stayed that head of relief. The Court also set aside the order of the learned judge permitting the seeking of a declaration that the dividends were properly due and owing, and stayed that head of relief. It is difficult to construe another conclusion other than that any heads of relief relating to the dividends (whether they relate to the resolution by which it was passed or whether they are owing) have been stayed by the Second Appeal Judgment and neither the appellant nor the respondents through their respective legal practitioners Mr. Moverley Smith KC and Mr. Collingwood KC has suggested that the Court is not bound by that decision.**
- 2. The Shareholder Defendants' notice of appeal for the second appeal sought an order staying Caldicott's claim against them in their entirety, or in the alternative an order staying Caldicott's claims for declarations relating to the unlawfulness etc. or voidability of the November Resolution, and that the dividends were properly due and owing to Caldicott. This is the relief that was granted in paragraph 143 of the Second Appeal Judgment. By order dated 28th April 2020, Wallbank J had stayed the proceedings against Hector in favour of arbitration and there was no appeal from that order. Thus, the argument that the Second Appeal Judgment did not make any orders to**

stay the heads of relief as against the Shareholder Defendants is unsustainable. The order set out in paragraph 143 of the Second Appeal Judgment plainly relates to the heads of relief sought against the Shareholder Defendants.

3. Section 11 of the Companies Act provides that the articles of association of a company are binding as between: (a) the company and each member of the company; and (b) each member of the company. Section 11(1)(b) does not have the effect that an arbitration agreement in a company's articles providing for the arbitration of differences between the company and its members requires that differences between members themselves, even those that may turn upon the acts of the company, are to be so determined.

Section 11 of the Business Companies Act No. 16 of 2004 amended by 26/2005, Laws of the Virgin Islands considered.

APPLICATIONS AND APPEALS

Case Name:

Augustine J. C. Miguel

v

[1] Natalie Miguel nee Sardine

[2] Jason Sardine

[3] Noel Sardine

[4] Magdaline Sardine

[SVGHCVAP2015/0012]

(Saint Vincent and the Grenadines)

Date:

Monday 16th September 2024

Before:

The Hon. Mr. Mario Michel, Chief Justice [Ag.]

The Hon. Mr. Eddy Ventose, Justice of Appeal

The Hon. Mde. Esco Henry, Justice of Appeal

Appearances:

Appellant/Respondent: Mr. Lyndon George

Respondents/Applicants: Ms. Tonya Da Silva

Issues:

Application by respondents to strike out the notice of appeal for want of prosecution - Notice of Appeal filed in 2015 - Notice of availability of transcript sent to appellant in 2019 - Record of Appeal and submissions in support of appeal not filed - Delay in prosecuting appeal - Application by appellant to adjourn hearing of the strike out application - Counsel for the appellant indicating that when the strike out application had been served on him he was ill and unable to respond to the application

Type of Order:

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application for an adjournment of the hearing of the application to strike out the appeal is granted.
2. The appellant shall file and serve any affidavit in response to the application to strike out the appeal and submissions in opposition to the strike out application on or before 8th October 2024.
3. Liberty to the respondents to file and serve an affidavit in reply and/or submissions in reply to the filing of any affidavit or submissions filed by the appellant on or before 23rd October 2024.
4. The application to strike out the appeal shall be heard at the next sitting of the Court for Saint Vincent and the Grenadines during the week commencing 10th February 2025.
5. Costs are awarded to the respondents in the amount of \$1,500.00 to be paid by the appellant on or before 8th October 2024.

Reason: After careful consideration of the oral arguments advanced by counsel on both sides, the Court came to the determination that the appellant's application for an adjournment of the hearing of the application to strike out the appeal should be granted.

Case Name: [1] Michael Luik
[2] Mark Luik
[3] Timothy Luik
v
Sheila George

[SVGHCVAP2019/0018]
(Saint Vincent and the Grenadines)

Date: Monday 16th September 2024

Before: The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal

Appearances:
Appellants: Mr. Roderick Jones and Mr. Chrislon Fraser
Respondent: Ms. Tonya Da Silva

Issues: Application to strike out appeal - Whether the appeal ought to be struck out for want of prosecution – Application for an extension of time - Whether a notice of availability of transcript was issued by the court office to trigger the timelines for filing the record of appeal and skeleton arguments - Whether the application to strike out the appeal was premature - Whether the appeal has a realistic prospect of success

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application filed by the respondent on 13th June 2023 to strike out the notice of appeal is dismissed.

2. The application filed by the appellants for an extension of time to file the record of appeal and skeleton arguments filed on 5th August 2024 is dismissed.
3. No order as to costs.

Reason:

There were two applications before the Court: an application filed by the respondent on 13th June 2023 for an order that the notice of appeal filed by the appellants on 8th August 2019 be struck out for want of prosecution; and an application filed by the appellants on 5th August 2024 for an extension of time to file the record of appeal and skeleton arguments filed on even date and an order that they be deemed properly filed.

Reasons for Decision were handed down by the Registrar on 16th February 2023. The timelines as set out in the CPR for filing skeleton arguments and the record of appeal are as follows: Once the parties receive notice from the court office that the transcript of proceedings is available upon payment of the prescribed fee, pursuant to CPR 62.9(1)(a)(ii), the appellant must, pursuant to CPR 62.11(1) within 52 days of receipt of that notice file at the court office and serve on all other parties the skeleton arguments. No such notice was sent by the court office. CPR 62.12(3) states that subject to paragraph (4), within 42 days of receipt of such notice under rule 62.9(1)(a), the appellant must prepare and file with the court office 6 sets of the record of appeal for the use of the Court. No such notice was sent by the court office.

The record of appeal and skeleton arguments were filed by the appellants on 5th August 2024. The Court noted that the application filed by the respondent to strike out the appeal was premature as the timelines established by the CPR for the appellants to file the record of appeal and skeleton arguments had not been engaged as no notice of the availability of the transcript has been sent to the parties by the court office. When this Court is being asked to exercise its nuclear power to strike out an appeal, the applicant must first identify the relevant CPR rule it alleges has been breached and apply the factors considered by this Court in relation to an application to strike out. The

respondent failed to identify whether any notice was issued by the court office indicating that the transcript of proceedings was available. This is a critical date, 52 days from which the appellant is to file its skeleton arguments pursuant to CPR 62.11(1) and 42 days from which the appellant is to file the record of appeal pursuant to CPR 62.12(3). These time periods were not engaged in this case as there was no evidence that any notice was issued by the court office indicating that the transcript of proceedings was available.

Consequently, there was no need for this Court to consider the factors to be looked at in determining whether to dismiss an appeal as were set out in The Barbuda Council v The Attorney General et al (delivered 15th January 2004, unreported). The record of appeal and skeleton arguments filed by the appellants on 5th August 2024 were therefore not filed out of time and there was no need for them to file an application for an extension of time. Based on the foregoing, the Court dismissed the application to strike out the appeal as well as the application for an extension of time.

Case Name:

**Vynnette Frederick
v
The Commissioner of Police

[SVGMCRAP2014/0009]
(Saint Vincent and the Grenadines)**

Date:

Monday 16th September 2024

Before:

**The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal**

Appearances:

Appellant:	Ms. Chelsea Alexander and Mr. Maxron Holder
Respondent:	Mr. Richie Maitland

Issues: Application for assessment of costs - Rules 65.11 and 65.12 of the Civil Procedure Rules (Revised Edition) 2023 - Appeal allowed with costs to the appellant on 3rd August 2017 - Parties unable to reach an agreement on the costs to be paid within the stipulated 30 days timeline - Respondent disputes items 7 - 13 on the bill of costs - Whether the corresponding sums for items 8-10 were excessive in the circumstances - Whether items 7 and 11-13 ought to be included in the bill of costs - Whether the appellant was required to furnish documentary proof to justify the placement of items 12 and 13 on the bill of costs - Whether the items and corresponding sums on the bill of costs are overall reasonable and proportionate

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

The parties have agreed to an award of costs of \$24,860 to be paid by the respondent to the appellant on or before February 17th 2025.

Reason: The Court considered the parties' written submissions and oral submissions. The Court also noted the efforts made by counsel to reach an agreement on issues significant to both parties.

The areas of contention centered around items 7-13 on the bill of costs in relation to Mr. Keith Scotland SC, having established that Mr. Andrew Pilgrim KC was not present at the appellate proceedings for which costs were awarded.

With respect to item 7, the Court noted that the respondent indicated that they were not prepared to agree to any award, and the appellant initially persisted with their claim for \$10,000. The Court considered that item 7 concerned Status Hearings, and as such, there was no conceivable reason why attending Status Hearings would attract legal fees on the bill of costs. As such, the Court agreed with the respondent that no award should be made under this head.

With respect to item 8 which concerned legal research for the preparation and filing of submissions in relation to the appeal, the original request of the appellant was \$54,000 and the respondent counter offered \$4000. The Court noted that the parties eventually agreed on the sum of \$4000.

With respect to item 9 which concerned review and preparation for the appeal hearing, the appellant requested \$4050 on the bill of costs, however the respondent suggested the sum of \$2000. The Court was of the view that the sum of \$2000 was more reasonable and proportionate in the circumstances.

With respect to item 10, the Court noted that both parties were in agreement to the sum of \$15,000.

With respect to item 11, the Court noted that the meetings under this head were those which occurred after the hearing of the appeal. The Court accordingly found that it would not award costs in respect of matters which took place after the determination of the appeal.

With respect to items 12 and 13, which concerned airfare and accommodation, the Court noted the respondent's objection to the placement of these items on the bill of costs. However, the Court agreed with the appellant's revised submission that the appropriate sum in respect of items 12 and 13 should be \$1810.

Accordingly, the total figure arrived at was \$24,860, and both parties agreed that this was the appropriate sum of costs to be paid within a 5 month time frame, i.e. on or before 17th February 2025.

Case Name:

Therdio McKie

v

The King

[SVGHCRAP2018/0007]

(Saint Vincent and the Grenadines)

Date: Monday 16th September 2024

Before: The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Ms. Renee Simmons

Issues: Criminal appeal against sentence - Whether the sentence was excessive

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The sentence of the learned judge dated 28th February 2018 is affirmed.

Reason:

Before the Court was an appeal against sentence from a decision of the learned judge in which he sentenced the appellant on 28th February 2028 to 15 years imprisonment for the offence of rape contrary to section 123(1) of the Criminal Code Cap 171 of the Laws of Saint Vincent and the Grenadines and to 10 years imprisonment for aggravated burglary contrary to section 128(1) of the Criminal Code less the time spent on remand of 1 year 4 months resulting in a total imprisonment term of 13 years 8 months. A restitution order was also made as part of the sentencing.

The Court noted that both offences had been committed on 17th October 2014 and that the sentences followed on after the appellant changed his not guilty plea to guilty after the Prosecution had closed its case, he having indicated that he did not wish to testify and closed his case, at which point one of his co-accused gave sworn testimony in which he admitted to committing the offence in answer to the

questions posed under cross examination and, in his oral testimony, implicated the appellant in the commission of the same by placing him at the scene as an active participant in the offences.

The appellant appealed against the sentences on the ground that they were excessive. For reasons which were not entirely clear, the Court did not have before it a complete record of the proceedings or transcript and apart from brief notes from the learned judge's notebook, no sentencing remarks from the trial judge were made available.

The Court noted that the appellant had not filed written submissions and made very limited oral submissions. The Court also noted that counsel for the respondent submitted that the sentences handed down by the learned judge were not excessive.

The Court was of the view that, without the learned judge's sentencing remarks, it cannot be sure what matters were taken into account by him in arriving at the sentences and it therefore fell to the Court to consider the evidence and formulate an appropriate sentence to determine whether or not the sentences were excessive as contended by the appellant.

Having considered the submissions advanced by counsel for the respondent including the legal authorities relied on by her and having taken the relevant law into consideration, the Court reminded itself of the principles guiding the Court when considering an appeal against sentence as enunciated in *DPP v Shaunlee Fahie* BVIHCRA2008/0003 (delivered 11th January 2011, unreported) which is that, an appellate court would only interfere with a sentence imposed by a sentencing court if it is not justified in the law, if it passed the wrong factual basis, if some matters were improperly taken into account or where the sentence was wrong in principle or manifestly excessive. Other relevant considerations are the aims of sentencing as articulated in *Desmond Baptiste v The Queen* SVG High Court Criminal Appeal No. 8 of 2003 (delivered on 6th December 2004, unreported) being retribution, rehabilitation, deterrence and prevention. The Court in that decision further

summarised the principles of sentencing which may guide the Court.

In the case of *Winston Joseph v R* SLU High Court Criminal Appeal No. 4 of 2000, guidance was provided on the sentencing for rape committed on an adult with aggravating features.

The Court took into consideration the starting as suggested in *Winston Joseph v R* in a contested rape case being 8 years with a minimum of 3 years in the case of a guilty plea. The starting point if the act was committed by two or more men in concert or where one has broken in or gained access to the virtual complainant's residence or where the appellant has abducted the virtual complainant is 10 years.

The Court considered the mitigating factors in the case, namely the appellant's youthfulness, he being 27 years at the time of the incident and that he expressed remorse. The Court also considered the aggravating factors identified as being the premeditated nature of the offences, the commission by three persons including the appellant, the appellant's previous conviction for burglary, the evidence in the case that the virtual complainant was physically and psychologically traumatised, the virtual complainant's age, the prevalence of the offences, the time of the commission of the offences being late in the night and the use of a firearm in the commission of the offences.

The Court was satisfied that the sentence imposed by the learned judge is well within the acceptable and reasonable range for such offences in view of the surrounding factual and other circumstances and it is justified in law. There was no legal basis to conclude that it was wrong in principle or manifestly excessive. The Court was of the same view in relation to the offence of and the sentence imposed for aggravated burglary. The appeal was accordingly dismissed and the sentence affirmed.

Case Name:

**Alistair Gordon
v
The King**

**[SVGHCRA2018/0025]
(Saint Vincent and the Grenadines)**

Date: Monday 16th September 2024

Before: The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Ms. Allana Cumberbatch

Issues: Criminal appeal against sentence - Appellant indicating he no longer intended to prosecute the appeal - Appellant serving his time already - No objection by the respondent

Type of Order: Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal is withdrawn.

Reason: The appellant informed the Court that he had served out his sentence in full and wished to withdraw his appeal.

Case Name: Warren Cassell
v
The King

**[MNIHCRA2022/0003]
(Montserrat)**

Date: Tuesday 17th September 2024

Before: The Hon. Mde. Margaret Price Findlay, Justice of Appeal

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

Appearances:

Appellant: In person
Respondent: Mr. Richard Jory KC with him, Mr. Henry Gordon

Issues:

Application for leave to add additional grounds of appeal - Whether leave should be granted - No objection by counsel for the respondent

Type of Order:

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application filed by the appellant on 21st July 2024 for leave to add further grounds of appeal against his conviction and sentence is hereby granted.**
- 2. The submissions filed in support of that application are deemed to be properly filed in the matter.**
- 3. The appellant is to file an amended notice of appeal including the additional grounds pursuant to the order of the Court which allowed him to argue and proceed with those additional 6 grounds by the end of the business day.**

Reason:

The Court read the application filed by the appellant seeking leave to add further grounds of appeal and noted that there was no objection to the application by counsel for the respondent. In the circumstances, leave was granted and the appellant was directed to file an amended notice of appeal by the end of business today.

Case Name:

**Warren Cassell
v
The King**

**[MNIHCRAP2022/0003]
(Montserrat)**

Date: Tuesday 17th September 2024

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

Appearances:

Appellant: In person

Respondent: Mr. Richard Jory KC with him, Mr. Henry Gordon

Issues: Criminal Appeal - Appeal against conviction and sentence - Concealing the proceeds of criminal conduct, contrary to section 33(1)(a) Proceeds of Crime Act 1999, Cap 4.04 Laws of Montserrat - Whether the appellant's constitutional right to a public hearing was infringed - Whether the trial proceedings were a nullity as the trial proceeded on an indictment that was duplicitous - Whether the judge erred in rejecting the no case submission - Whether the conviction of the appellant is unsafe and unsatisfactory on account of errors in the summing up by the learned trial judge - Whether the learned trial judge erred in his summing up to direct the jury that the Virginia judgment was null and void for the purposes of determining that the share transfers in Providence Estate Limited were null and void - Whether the sentence of three years six months imprisonment was manifestly excessive and was not properly constructed – Whether the adoption of the directions in the route to verdict by the trial judge was proper

Type of Order: N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Magavon Toby

V

Barrow Toby

[SVGHCVAP2020/0005]

(Saint Vincent and the Grenadines)

Date:

Tuesday 17th September 2024

Before:

The Hon. Mde. Margaret Price Findlay, Justice of Appeal

The Hon. Mr. Trevor Ward, Justice of Appeal

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

Appearances:

Appellant:

Ms. Tonya Da Silva and Mr. Duane Daniel

Respondent:

Mr. Michael Wyllie

Issues:

Interlocutory Appeal - Report on the status of settlement discussions - Withdrawal of Appeal

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The notice of appeal filed on 2nd March 2021 is hereby withdrawn.**
- 2. No order as to costs**

Reason:

The matter came on for hearing before the Court for report on the status of settlement discussions. The matter had been previously adjourned by the consent of both parties who indicated that they wished to engage in settlement discussions. At today's hearing counsel for the appellant indicated that they had

received correspondence from the respondent's counsel indicating that his client wished to withdraw the matter in the High Court, therefore the appeal would be rendered nugatory. Counsel for the appellant therefore indicated that they wished to withdraw the appeal.

Case Name:

**Joseph Brice
v
The Attorney General**

**[AXAHCVAP2022/0002]
(Anguilla)**

Date:

Wednesday 18th September 2024

Before:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mde. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

In person

Respondent:

Mr. Anthony Bullock and Mr. Theon Tross

Issues:

Preliminary issue - Whether the claim ought to have been dismissed in the lower court as an abuse of process - Alternative remedies - Whether a constitutional claim was an inappropriate course of action to obtain relief from the court

Type of order:

Directions

Result/Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The parties are to consider the judgment of this Court in Timothy Abott v Attorney General of St. Christopher and Nevis [SKBHCVAP2018/0023]**

(delivered 5th June 2024, unreported) and file and exchange written submissions not to exceed 10-15 pages, on or before 18th October 2024 addressing the following questions: (1) Whether the learned trial judge erred in not striking out [or dismissing] the appellant's constitutional motion as an abuse of process, because the appellant had not successfully availed himself of the collateral remedies in the private law or in the context of criminal proceedings, and (2) If the answer to question 1 is yes, whether the Court of Appeal should exercise its powers under section 30(2) of the Eastern Caribbean Supreme Court (Anguilla) Act in respect of the decision of the learned trial judge.

2. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal for the territory of Anguilla scheduled for the week commencing 25th November 2024.

Reason:

The Court observed that in the submissions by counsel for the respondent, a preliminary issue was raised as to whether or not the claim ought to have been dismissed in the lower court as an abuse of process. This issue was addressed by the appellant in his reply submissions. Despite no counter-notice of appeal being filed by the respondent, the Court raised the issue before the parties at the hearing. The Court observed that, following this Court's decision in *Timothy Abbott v Attorney General of St. Christopher and Nevis* [SKBHCVAP2018/0023] (delivered 5th June 2024, unreported) the Court of Appeal was empowered (as per section 30(2) Eastern Caribbean Supreme Court (Anguilla) Act) to make any order which ought to have been made by the High Court. This power may 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. The court noted that before considering this issue however, the parties must be heard in circumstances where the court's determination of the issue may prejudice either party to the appeal.

The Court was of the view that it would be in accordance with the overriding objective to allow the parties to make submissions on the preliminary issue before treating with the substantive merits of the appeal. Directions were therefore given for the filing and exchanging of written submissions and the hearing of the appeal was therefore adjourned.

Case Name:

**Ronnie Williams
v
Commissioner of Police**

**[SVGMCRAP2023/0026]
(Saint Vincent and the Grenadines)**

Date:

Wednesday 18th September 2024

Before:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mde. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Ms. Shirlan Barnwell and Mr. Jomo Thomas

Respondent: Ms. Maria Jackson-Richards

Issues:

Preliminary issue - Burglary - Section 217 of the Criminal Code - Sentence of 14 years for burglary - Section 17(2)(a) of the Criminal Procedure Code - 7 year maximum sentence a magistrate can pass - Section 17(3) of the Criminal Procedure Code - Provision for magistrate, notwithstanding anything in 17(2), to impose such sentence of imprisonment, notwithstanding that such imprisonment exceeds the limits laid down in section 17(2) - Magisterial criminal appeal against sentence - Failure of magistrate to take into account time spent on remand - Failure of magistrate to consider whether a non-custodial sentence would have been appropriate in the circumstances - Whether the sentence imposed was excessive

Type of order:

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The sentence imposed by the learned magistrate is set aside and substituted with a sentence of 1 year less 3 days, taking into account the period of time served while on remand. That period would be suspended for a period of 1 year, with the suspension to run from 2nd October 2023.**

Reason:

Before the Court was an appeal against sentence, for which the accused was given a sentence of 1 year imprisonment by the learned magistrate on 2nd October 2023. The Court considered the record of appeal, the submissions of the appellant as well as the submissions of the office of the Director of Public Prosecutions. The Court also noted the concessions made by the Director of Public Prosecutions with regard to two central issues (1) that the magistrate in constructing his sentence, failed to take into account the time spent on remand by the appellant, it having been agreed that that period is now 3 days, and (2) that the magistrate failed to consider his obligations under the Practice Direction 8C. The Court noted that the appellant, having considered the submissions by the DPP, has indicated no opposition to the proposal set out at paragraph 40 of the submissions. Having considered the submissions and having heard counsel for both sides, the Court was satisfied that the submissions of the DPP carried much force. The Court was also satisfied that there had been errors of principle on the part of the learned magistrate in constructing the sentence which warranted the interference of this Court. The Court therefore set aside the sentence, allowed the appeal, and substituted the following sentence in respect of the appellant: 1 year less 3 days [taking into account the period of time served while on remand]-, that period would be suspended for a period of 1 year. The 1 year

suspension began to run from the date of sentencing in the court below, that is, 2nd October 2023.

Case Name:

Ozar Findlay

V

The Commissioner of Police

[SVGMCRAP2023/0023]

(Saint Vincent and the Grenadines)

Date:

Wednesday 18th September 2024

Before:

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

The Hon. Mde. Esco Henry, Justice of Appeal

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

Appearances:

Appellant:

In person

Respondent:

Mr. Allana Cumberbatch

Issues:

**Magisterial criminal appeal - Appeal against sentence
- Whether the sentence imposed was manifestly
excessive in the circumstances of the case**

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

**The appeal filed on 4th October 2023 is withdrawn and
dismissed.**

Reason:

**The appellant indicated that he wished to withdraw his
appeal as he had already served his term of
imprisonment. There was no objection by the office of
the Director of Public Prosecutions. The matter was
consequently withdrawn and dismissed.**

Case Name:

Oran Bute

V
The Commissioner of Police
[SVGMCRAP2023/0024]
(Saint Vincent and the Grenadines)

Date: Wednesday 18th September 2024

Before: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mde. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Jomo Thomas appearing amicus

Respondent: Mrs. Maria Jackson-Richards

Issues: Magisterial criminal appeal - Competence of appellant

Type of Order: Directions

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. Leave is granted to the appellant to amend the notice of appeal filed on 5th September 2023 to include a ground or grounds challenging the conviction.
2. The appellant shall file and serve this amended notice of appeal on or before the 18th October 2024.
3. Thereafter the appeal shall proceed in accordance with the Criminal Procedure Rules with the filing of an amended record of appeal which should include fulsome notes of evidence from the Magistrate on the proceedings before him including notes recorded before taking the appellant's plea.
4. The parties are to file and exchange submissions on or before 10th January 2025.

5. The hearing of the appeal is adjourned to the next sitting of the Court in the state of Saint Vincent and the Grenadines scheduled for the week commencing 10th February 2025.

Reason:

Having heard counsel for the appellant and the respondent, the Court concluded that though the appellant's notice of appeal initially challenged only his sentence, there were issues concerning the safety of the conviction. The Court was therefore minded to grant leave to the appellant to amend his notice of appeal to include a ground challenging his conviction.

Case Name:

Cornelia Thomas

v

Frances Layne

[SVGMCVAP2023/0003]

(Saint Vincent and the Grenadines)

Date:

Wednesday 18th September 2024

Before:

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

The Hon. Mde. Esco Henry, Justice of Appeal

The Hon. Mde. Gerard St. C. Farara, Justice of Appeal

[Ag.]

Appearances:

Appellant:

In person

Respondent:

In person

Issues:

Magisterial Civil Appeal - Appeal against award of damages for slander - Whether magistrate should have heard the matter ex parte - Whether sum awarded was excessive

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. Ground 1 of the appeal is dismissed.
2. The award of \$5000.00 in damages and statutory costs of \$12.00 is set aside.
3. On ground 2 of the appeal - on the issue of whether the damages awarded were excessive, the matter is remitted for determination by another magistrate as to whether the words spoken are defamatory and if so, what damages would be appropriate.
4. No order as to costs.

Reason:

This was an appeal by the appellant against the decision of the learned Magistrate made on 26th May 2023 in which judgment was entered against her in the sum of \$5,000.00 as damages for slander of the respondent, plus statutory costs of \$12.00. The grounds of appeal were twofold:

- 1) that the trial proceeded ex parte, the appellant having arrived late for court having fallen ill on the morning of the trial by reason of being a diabetic and asthmatic; and although she had attempted to contact the court officer prior to commencement of court she was unsuccessful he having already left the Mesopotamia Police Station for court; and
- 2) the judgment was excessive.

The Court considered the claim and statement of claim, the evidence recorded by the Magistrate, the submissions by the litigants who were both unrepresented, the learned Magistrate's reasons for decision and the applicable legal principles.

Absence of appellant from trial:

On 14th April 2023 both parties were present. In the appellant's presence the matter was adjourned for trial to 26th May 2023. On 26th May 2023 when the matter was called, only the respondent was present. The learned Magistrate indicated that when it was called on 26th May 2023 the case was stood down to allow for any tardiness by the appellant and then proceeded in her absence. The appellant produced no evidence regarding her illness on the date although she made representations to that effect before the Court. In the

circumstances, it was open to the learned Magistrate to deal with the matter ex parte. No basis had been advanced on which to interfere with the learned Magistrate's exercise of his discretion to proceed to hear the matter ex parte. Accordingly, that ground of appeal was dismissed.

Judgment excessive

In the claim, the respondent pleaded in her Statement of Claim dated 7th November 2022:

“Andrew Simmons – Cordelia Thomas told Mr. Simmons that I Frances Layne changes multiple men in my life since we ended our relationship.

Horlan Phillips – Cordelia Thomas told Mr. Phillips that I Frances Layne with a man who she allege that I keep leaving and go back for and that man will kill me.

On 5th Nov. 2022, Cordelia Thomas said to me how my daughter and myself are whores and my daughter is a whore.

Couple years ago Cordelia Thomas said to me, cursing me and said my two sons going on my daughter.”

At the trial, the respondent averred that she brought the action against the appellant for slander which took place one Saturday in 2022. She continued that on 5th November 2023 she passed where the appellant has a shop and complained to the appellant's boyfriend about the appellant's conduct towards her. She explained that when she got to her yard the appellant started to curse her in her son's presence saying that she went with man for \$150.00, that she and her daughter are whores, that she was in Arnos Vale sitting in a man's lap. She stated that she felt bad and ashamed. She asked for compensation of \$5000.00.

Her son Darron Layne also testified. He asserted that on 5th November 2022 he was at home when the appellant cursed his mother saying to her that she did not know her children's fathers and that his mother and sisters are whores. It is noteworthy that his mother

indicated that the incident had happened in November 2023 (a date which had not yet arrived when her claim was filed) while he gave the date as November 2022.

There were differences in terms of what was pleaded and what was given in evidence. The learned Magistrate failed to address his mind to those differences.

In his reasons for decision, the learned magistrate alluded to no factors which led him to hold that the appellant was liable for slander or the basis on which he arrived at the award of \$5000.00 damages or to any other factors taken into account in that regard.

The Court noted that there are four categories of slander at common law, namely allegations a) imputing the commission of a crime by the claimant, b) imputation of certain diseases; c) imputation of adultery or unchastity or d) imputation relating to professional or business reputation – See Myrna SKBHCVP2014/0023 Liburd v Lorna Hunkins delivered 19th July 2019, unreported).

The Court noted that to establish a claim for slander the claimant must prove on a balance of probabilities that the defendant made one or more statements to one or more third parties tending to lower the claimant in the estimation of right-thinking members of the society. The words must be construed in their natural and ordinary meaning. This may include any implication or inference which a reasonable person guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words. In resolving this issue the judicial officer was required to analyse the words to determine if they are defamatory.

In all the circumstances, the Court was of the considered view that this matter should be remitted for determination by another Magistrate on the issue of whether the words spoken were defamatory and if so, what damages would be appropriate.

