

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT LUCIA
Tuesday, 2nd July 2024 – Friday, 5th July 2024

APPLICATIONS AND APPEALS

Panel 1

Case Name: **Shaheel Jagroop**

v

Lucretia Johnny

[SLUHCVAP2023/0023]
(Saint Lucia)

Date: **Tuesday, 2nd July 2024**

Coram: **The Hon. Mde. Vicki Ann Ellis, Justice of Appeal**
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal

Appearances:

Appellant: **In person**

Respondent: **Mr. Dexter Theodore KC**

Issues: **Civil Appeal – Administration claim – Costs – Judge ordering prescribed costs to be paid out of the estate of the deceased – Judge subsequently ordering prescribed costs to be paid by the administratrix personally – Whether the judge has the power or jurisdiction to vary her own initial costs order – Whether a judge can set**

aside a decision of a judge of co-ordinate jurisdiction –
General rule that costs follow the event – Circumstances
in which the court can depart from the general rule –
Prescribed costs – Unvalued claim – Whether the court
ought to have the valued claim on the basis of the value
of the estate – Whether the learned judge’s decision is
against the weight of the evidence – Whether the
decision is contrary to the weight of the legal arguments
and conclusions advanced and made by the learned trial
judge

Type of order:

N/A

Result/Order

[Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment reserved.

Case Name:

Kenty Williams

v

Martin Cadette PC147

**[SLUMCRAP2020/0002]
(Saint Lucia)**

Date:

Tuesday, 2nd July 2024

Coram:

The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal

Appearances:

Appellant:

Mr. Leslie Prospere

Respondent:

Ms. Kelly Thomson

Issues:

Magisterial criminal appeal – Appeal against conviction
– Driving without due care and attention – Whether the
learned magistrate erred in finding that the appellant

ought to have done more to avoid making contact with the virtual complainant's motor vehicle – Whether the learned magistrate erred in failing to pay adequate regard to the evidence that the virtual complainant attempted to overtake the appellant's truck – Whether the learned magistrate erred in failing to direct his mind to legal principles that prevented the virtual complainant from benefiting from his own wrongdoing or illegal conduct – Whether the learned magistrate erred in finding that the appellant had failed to drive his truck consistently with the standard of a reasonably prudent and competent driver in the circumstances

Type of Order:

N/A

Result/Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved until Thursday, 4th July 2024.

Case Name:

Ian Paul

v

SPC 144 Leon

**[SLUMCRAP2018/0003]
(Saint Lucia)**

Date:

Tuesday, 2nd July 2024

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal**

Appearances:

Appellant:

Mr. Jeannot-Michel Walters

Respondent:

Ms. Kelly Thomson

Issues: Criminal appeal – Failure to prosecute appeal – Withdrawal of appeal

Type of Order: Oral Decision

Result/Order: IT IS HEREBY ORDERED THAT:

1. Leave is granted to the appellant to withdraw the appeal.
2. The notice of appeal filed on 18th December 2017 is withdrawn and dismissed.

Reason: The Court noted that by status hearing order dated 4th March 2024, the appellant was required to file submissions on or before 30th April 2024. However, no submissions were filed by that date as required. The Court also noted that there was no satisfactory explanation for the failure to comply with the said order. Counsel for the appellant thereafter sought leave to withdraw the appeal in the circumstances and the Court was minded to grant such leave.

Panel 2

Case Name: Flavia Cherry

v

Ezekiel Mason

[SLUMCVAP2021/0004]
(Saint Lucia)

Date: Tuesday, 2nd July 2024

Coram: The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal [Ag.]

Appearances:

Appellant/Respondent: Mr. Dexter Theodore KC

Respondent/Applicant In person

Issues: Application to strike out notice of appeal – Delay – Whether the appeal ought to be struck out owing to the appellant’s failure to file skeleton arguments within the required 52 days upon being notified that the transcript of proceedings in the Magistrate’s Court was available – Rules 62.9(1)(a)(ii) and 62.11(1) of the Civil Procedure Rules 2000 – Factors the Court will consider in determining whether to exercise its discretion to strike out an appeal – Whether attorney error amounts to a good and sufficient reason for delay in filing skeleton arguments – Whether, in circumstances where there is no good explanation for the delay, the Court will consider the strength of the grounds of appeal and the prospects of the appeal succeeding

Type of Order: Oral Decision

Result/Order: IT IS HEREBY ORDERED THAT:

1. The application to strike out the notice of appeal is dismissed.
2. No order as to costs.

Reason: This was an application filed by the respondent on 27th July 2022 to strike out the notice of appeal filed by the appellant on 10th December 2021. The appeal was against the decision of the learned magistrate dated 11th July 2019 wherein judgment was entered against the appellant in the sum of: (1) \$10,000.00 in respect of special damages; (2) \$5000.00 in respect of general damages; and (3) \$1000.00 in respect of costs. Leave having been granted as noted the appellant filed the notice of appeal on 10th December 2021.

The Court noted that once parties receive from the court office, notice that the transcript of the proceedings are available on 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 with

the court and serve on all other parties, their skeleton arguments. Accordingly, the court office in the present case, gave notice to the parties on 7th June 2022. Therefore, the skeleton arguments ought to have been filed by the appellant on or before 25th July 2022. The appellant filed an application on 11th November 2022, seeking that the skeleton arguments filed on 29th August 2022 be deemed properly filed.

The factors that the court will consider in determining whether to strike out an appeal was set out in the decision of this Court in *The Barbuda Council v The Attorney General et al Civil Appeal No. 12 of 1994* (delivered 15th January 2004, unreported), namely: (1) the length of the delay; (2) the reasons for the delay; (3) the merits of the appeal; and (4) the prejudice to the litigants.

In respect of the length of the delay, considering the date of the notice sent by the court office on 7th June 2022 as a starting point, the delay of the appellant of 35 days in filing the skeleton arguments could not be considered as inordinate. In respect of the reasons for the delay, the appellant stated that attorney error resulted in the appellant not realising that the reasons for the decision of the magistrate was uploaded by the court on 23rd May 2022. This was not a good explanation or a good reason for the delay. In respect of the merits of the appeal, the appellant submitted that the bailiff served the notice of hearing at the wrong address of the appellant, and in any event, the notice was two days before the hearing of the learned magistrate. The appellant submitted that the magistrate should not have given judgment in her absence. Having considered the two main grounds of the appeal, the Court was satisfied that the appeal had strong merits. In respect of the prejudice to the litigant, the appellant stated that the respondent was not prejudiced because the filing of the skeleton arguments did not cause him to miss the first available sitting after the expiration of the deadline for filing the skeleton arguments, which was December 2022. In the Court's view, there was prejudice to the respondent as he would continue to be denied the benefit of the judgment he obtained from the learned magistrate, five years ago in July 2019.

Based on the foregoing and considering all the abovementioned factors, in particular the merits of the

appeal, the Court decided to dismiss the application to strike out the appeal and make no order as to costs.

Case Name:

Faith Stanislaus

v

**National Farmers and General Workers
Co-operative Credit Union Society Limited**

**[SLUHCVAP2023/0022]
(Saint Lucia)**

Date:

Tuesday, 2nd July 2024

Coram:

**The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mrs. Wauneen Louis-Harris

Respondent:

Mrs. Lydia Faisal

Issues:

Interlocutory appeal – Interim injunction – Bill of sale – Whether the learned judge erred in failing to issue mandatory injunction directing respondent to relinquish possession of motor vehicle to the appellant – Whether the learned judge erred in failing to find that respondent illegally seized and repossessed motor vehicle as bill of sale was void and unenforceable pursuant to section 17 Bills of Sale Act – Whether the learned judge erred in failing to find the bill of sale void and of no effect by virtue of the fact that appellant was not the true owner or grantor within the meaning of the bill of sale – Whether doubts cast by respondent about appellant's true ownership of the motor vehicle when the bill of sale was entered into bars appellant from equitable relief and requires the conservation of the status quo – Constructive notice – Whether respondent had

constructive notice about the true ownership of the motor vehicle

Type of Order:

Oral Judgment

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. Paragraphs 1-4 of the order made by the trial judge on 16th August 2023 are set aside.
3. The application for an interim injunction filed by the appellant on 21st July 2023 is hereby granted and the following orders made:
 - i. A mandatory injunction is hereby granted directing the respondent to forthwith deliver the motor vehicle registration number PD 8720 to the appellant.
 - ii. The appellant is hereby restrained whether by himself, his servants and/or agents or any other person acting on his behalf from selling, conveying, transferring or otherwise conferring title on any person, disposing of or parting with the possession of the motor vehicle until the final determination of the substantive claim.
4. The respondent shall pay costs to the appellant in the sum of \$3,000.00 within 21 days of the date of this order.

Reason:

This was an appeal filed by the appellant on 15th December 2023 against the decision of the learned trial judge dated 16th August 2023 where he made the following orders in summary: (1) the respondent be restrained from enforcing the bill of sale by selling conveying, transferring or otherwise conferring title on any person, disposing of or parting with possession of the motor vehicle until the final determination of the substantive claim; (2) the property shall remain in the detention and custody of the respondent until determination of the substantive claim or further order

of the court; (3) the appellant shall have the right to inspect the property while in the respondent's possession; and (4) no order as to costs.

In his first ground of appeal, the appellant contended that the learned trial judge erred in law in failing and/or refusing to issue a mandatory injunction directing the respondent to relinquish possession of the motor vehicle registration number PD8720 and transferring possession of the said motor vehicle to the appellant. Notwithstanding the three grounds of appeal, the learned trial judge did not and could not come to any conclusion in an application for an interim injunction as contended by the appellant in his second and third grounds of appeal. The central ground of appeal was the first one and raised the sole issue in this appeal of whether the learned trial judge erred in the exercise of his discretion not to grant the mandatory injunction sought by the appellant, in making the orders he made.

The Court in *Sol Aviation Services Limited v Rubis West Indies Limited ANUHCVP2019/0016* (delivered 23rd October 2019, unreported) following the learning in its previous decision of *Michel Dufour and Others v Helenair Corporation Ltd* (1996) 52 WIR 188 explained that an application for an interlocutory injunction is one for discretionary leave and an appellate court would not disturb the decision of the court below on such an application, unless it is shown that the judge's exercise of discretion exceeded the generous ambit within which reasonable disagreement is possible and therefore may be said to be clearly or blatantly wrong. There was no doubt that this appeal concerned the exercise by the trial judge of his judicial discretion. It was unquestionable that an appeal challenging the exercise of judicial discretion gave rise to a high threshold upon an appellant to meet. These important principles of judicial restraint have been tried, stated and restated in several decisions of this Court, including *Sol v Rubis* as mentioned earlier. Accordingly, an appellate court will rarely interfere with the exercise of judicial discretion unless it is shown that the judge erred in principle by failing to take account of relevant factors or giving too much or too little weight to relevant factors or took into account irrelevant factors and considerations or that as a result of the error of principle committed by the judge,

his discretion was plainly or blatantly wrong, such that it exceeded the generous ambit within which reasonable disagreement is possible. Furthermore, an appellate court when considering whether a judge got it plainly wrong must caution itself and it is impermissible to come to such a conclusion on the basis that the appellate judge would, on the evidence in the court below, come to a different conclusion or would have exercised the discretion differently.

The learned trial judge provided no reasons for his decision to grant the interim injunction. The Court could not determine the factors that led the learned trial judge to grant the interim injunction in the way he did. The Privy Council in *Smith (Personal Representative of Hugh Smith (Deceased)) and others (Appellants) v Molyneaux* [2016] UKPC 35 stated at paragraph 36 that it is an important duty of a judge to give at least one adequate reason for his material conclusions, that is, a reason which is sufficient to explain to the reader and the appeal court why one party has lost and the other has succeeded. The Privy Council also noted at paragraph 37 that if an appellate court cannot deduce a judge's reasons for his conclusion in a case, the court must set aside the conclusion and either direct a re-trial or make findings of fact itself. In the circumstances, the Court was unable to determine properly the reasons for the learned trial judge's conclusions and orders. Consequently, in that case, the injunction granted by the learned trial judge was set aside and the determination of the matter afresh.

In determining whether to grant an interim injunction the authorities make it clear, such as *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, that a court should consider firstly whether there is serious question to be tried, secondly whether an award of damages would not be an adequate remedy, and thirdly, whether the balance of convenience lies in favour of granting the injunction. There was no doubt that there was a serious question to be tried. The appellant alleged that he was the owner of a vehicle that was seized by the respondent and remained in the possession and custody of the respondent. The respondent's seizure of the motor vehicle was based on a bill of sale dated 15th December 2015 and registered on 21st December 2015. The motor

vehicle was seized by the respondent on 3rd June 2023. The bill of sale was not renewed within five years of the first registration as required by section 17 of the Bills of Sale Act. The five - year period having lapsed, the bill of sale was therefore void pursuant to section 17 of the Bills of Sale Act. Accordingly, it was not in dispute that the respondent had no lawful authority to seize or take custody or possession of the motor vehicle. There was no basis on which the respondent should retain custody and possession of the motor vehicle. The evidence before the learned trial judge included the official document entitled, 'certificate of vehicle registration' dated 14th March 2008, naming the appellant as the owner. The Court did not need at this stage to resolve issues concerning actual ownership of the motor vehicle, as this was a matter which would be determined at the trial of the substantive claim. In *Sol v Rubis*, the Court stated that an applicant seeking injunctive relief must establish that damages would not be an adequate remedy. In the circumstances of the case, the Court was not satisfied that damages would be an adequate remedy to compensate the appellant if he were to succeed in the substantive claim. In *Sol v Rubis*, the Court stated at paragraph 36 that on assessing the balance of convenience, the question to be answered was which cause of action, whether granting or refusing injunctive relief is likely to cause the least irremediable harm. In *National Commercial Bank Jamaica Ltd v Olint Corporation Ltd [2009] UKPC 16*, the Privy Council explained at paragraph 16 that first, the purpose of an injunction is to improve the chances of the court being able to do justice after a determination of the merits of a trial and second, at an interlocutory stage, the court must assess whether granting or withholding an injunction is more than likely to produce a just result. The Privy Council also accepted at paragraph 17 that the basic principle is that the court should take whichever course is likely to cause the least irremediable prejudice to one party or another. The appellant averred that the vehicle was required for his trade as a building contractor and other business and for his personal use. The respondent stated that if the injunction was granted in the terms sought by the appellant, the matter would end. The injunction granted by the learned trial judge meant that the appellant had no access to the vehicle which he averred was important to his business as a

building contractor. It was not yet known when the trial of the substantive claim would take place. The balance of convenience therefore laid in favour of granting the injunction in the terms sought by the appellant pending the trial of the substantive claim.

Considering the findings above, the Court allowed the appeal against the decision of the learned trial judge and in considering the discretion afresh, the Court granted the interim injunction sought by the appellant in his application dated 21st July 2023.

Case Name:

Frederick Henry

V

Marie Ketra Albert

**[SLUHCVP2023/0012]
(Saint Lucia)**

Date:

Wednesday, 3rd July 2024

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mr. Henry Joseph

Issues:

Civil appeal – Equitable interest in property – Dismissal of respondent’s proprietary estoppel claim – Whether it was appropriate for the learned judge to make an order for restitution to the respondent in light of the relief sought and the evidence presented – Whether the learned judge erred in ordering that the respondent be reimbursed the sums expended for renovation works in the absence of pleadings in accordance with article 372 of the Civil Code – Whether it was appropriate for the learned judge to make an order for compensation in the absence of evidence on quantum – Whether a breach of

natural justice occurred when the learned judge made an order for compensation without submissions by both parties on the matter – Whether the learned judge failed to make findings of good faith and necessity in accordance with the strict criteria under article 372 of the Civil Code – Whether the learned judge’s restitution order in effect re-opened the dismissed proprietary estoppel claim – Whether the appellant suffered any prejudice as a result of the restitution order to the respondent

Type of order:

N/A

Result/Order

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment reserved.

Case Name:

[1] The Roserie Company Limited
[2] Thomas Roserie
[3] Sonia Roserie
[4] Chemical Manufacturing and Investment
Company Limited

v

First Caribbean International Bank (Barbados)
Limited

[SLUHCVAP2021/0012]
(Saint Lucia)

Date:

Wednesday, 3rd July 2024

Coram:

The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

Appearances:

Appellants: Mrs. Cynthia Hinkson-Ouhla

Respondent: Mr. Bota McNamara and Ms. Zinaida McNamara

Issues: Civil appeal – Debt – Breach of contractual rights and obligations – Whether the learned judge failed to properly consider and apply the legal principles concerning breach and abuse of contractual rights in evaluating the evidence – Conflict of interest – Whether the learned judge failed to consider the nature of the relationship between the Comptroller of Customs and respondent's Corporate Manager raised in appellants disclosure application – Whether the learned judge erred in upholding the respondent's objection that the inference of collusion on the customs debt between the Comptroller of Customs and respondent's Corporate Manager was a sufficient basis to strike out evidence in the second appellant's statement – Whether a basis existed for the respondent to debit the appellants' operating account to pay the customs debt and discharge the respondent's obligations under the bond – Overdraft facility – Whether the respondent was entitled to treat any payment made to the Comptroller of Customs over the sums contained in the Appellant's current account as an overdraft facility subject to an overdraft rate of interest – Fiduciary duty – Whether the learned judge failed to consider that a fiduciary relationship existed between the parties – Duty of care – Whether the learned judge erred in ruling that the respondent did not owe a duty of care to the appellants – Whether all of the guarantees were valid – Whether the third appellant's waiver sufficiently met the requirement of independent legal advice

Type of Order: N/A

Result/Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

**[1] Terentia N. Toussaint-Carroll as
representative for and on behalf of the
executors of the estate of Thelma Toussaint
[2] Linda Toussaint**

v

**[1] Brian Leonce
[2] Glen Joseph
[3] Melvin Felicien
[4] Sylvienne Joseph
[5] One Theodore
[6] Lucy J.N. Charles
[7] Does I-IV (whose names are unascertained)**

**[SLUHCVP2022/0020]
(Saint Lucia)**

Date:

Wednesday, 3rd July 2024

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal [Ag.]**

Appearances:

Appellants: In Person

**Respondents: Mr. Horace Fraser for the 2nd and 3rd respondents
Ms. Alberta Richelieu for the 6th respondent
No appearance for the 1st, 4th and 5th respondents**

Issues:

**Civil appeal – Dismissal by consent – Whether the whole
of the appellants’ claim and application for injunction
was discontinued when the appellants agreed to
withdraw the matter by consent – Whether the judge
erred in dismissing the appellants’ claim in its entirety –
Whether the Court has the jurisdiction to preside over
the appeal**

Type of Order:

Oral Decision

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The notice of appeal filed on 14th December 2022 is dismissed.**
- 2. No order as to costs.**

Reason:

The Court noted the notice of appeal filed on 14th December 2022 with several grounds of appeal along with the written submissions filed on behalf of the appellants on 14th March 2024. The Court also had sight of the written submissions filed on behalf of the 2nd and 3rd respondents on 5th April 2024 and those on behalf of the 6th respondent filed on 9th April 2024. In the submissions of the 6th respondent, it was clearly stated that the appellant sought to withdraw, and the court below ordered, that the claim and the injunction were dismissed with the court making no order as to costs.

The formal order of the court below reflects that the claim form and interim injunction application were dismissed by consent. Before this Court, the appellant argued that she did not intend to withdraw the entire claim that was before the court below but only the application that was for the interim injunction. However, it was clear from a reading of the transcript of the proceedings below, in particular, page 61, line 5 and lines 12 and 17, that the appellants represented by Ms. Toussaint-Carroll agreed to withdraw the claim and to do so by consent.

Accordingly, the learned trial judge made the formal consent order dismissing the claim in its entirety along with the interim injunction application, making no order as to costs. The claim having been dismissed with the consent of the appellants, no appeal could lie therefrom. Accordingly, the Court had no alternative but to dismiss the notice of appeal filed on 14th December 2022. The Court, considering the peculiar circumstances of the matter, made no order as to costs.

Case Name:

Kenty Williams

v

Martin Cadette PC147

**[SLUMCRAP2020/0002]
(Saint Lucia)**

Date: Thursday, 4th July 2024

Coram for delivery: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal

Appearances:

Appellant: Mr. Leslie Prospere

Respondent: Mr. Peter Moyston and Mr. Linton Robinson holding for
Ms. Kelly Thomson

Issues: Magisterial criminal appeal – Appeal against conviction – Driving without due care and attention – Whether the learned magistrate erred in finding that the appellant ought to have done more to avoid making contact with the virtual complainant’s motor vehicle – Whether the learned magistrate erred in failing to pay adequate regard to the evidence that the virtual complainant attempted to overtake the appellant’s truck – Whether the learned magistrate erred in failing to direct his mind to the legal principles that prevented the virtual complainant from benefiting from his own wrongdoing or illegal conduct – Whether the learned magistrate erred in finding that the appellant had failed to drive his truck consistently with the standard of a reasonably prudent and competent driver in the circumstances

Type of Order: Oral Judgment

Result/Order: IT IS HEREBY ORDERED THAT:

The appeal is dismissed.

Reason:

The Court noted that an appellate court should not interfere with a judge's findings of primary fact or his evaluation of those facts and inferences to be drawn from them unless they are "plainly wrong", which in this context connotes that either there was no evidence to support the finding, or the finding was based on a misunderstanding of the evidence, or the finding was one that no reasonable judge could have reached. The appellate court would be rarely justified in overturning a finding of fact which turns on the credibility of the witnesses, taking into account that the judge had the advantage of seeing the witnesses give their oral evidence, which is not available to the appellate court. It should not therefore disturb a judge's findings of fact unless it is satisfied that any advantage enjoyed by the trial judge by having seen and heard the witnesses could not be sufficient to explain or justify his conclusions.

The appellant challenged the magistrate's conclusion that the appellant executed his manoeuvre unmindfully and uncaringly that the vehicle of the virtual complainant ("VC") could have been in his blind spot. The appellant contended that there was no evidence to ground the magistrate's finding that that VCs' car was in a blind spot at the time of merging.

The context giving rise to this inference was the magistrate's finding that both vehicles were driving alongside each other in the dual carriageway just before the merger point. The appellant testified that when he entered the single lane he looked in his mirror but did not see anything. However, under cross-examination he had testified that his truck was a left-hand drive. His side mirror permitted him to see towards the back of the truck but not anything to the right front of the truck that was under the mirror, and he added: "so that means I hardly see them because they underneath."

There was therefore an evidential basis for the inference drawn by the magistrate that the appellant did not see the VC's vehicle because it was in his blind spot at the time of the collision, that is to the right front of the truck under the mirror. Such a finding was entirely open to the magistrate. There is therefore no merit in this complaint.

In relation to the challenge to the magistrate's finding that the VC was not attempting to overtake the

appellant's truck, the magistrate was faced with two competing versions of how the accident occurred. He explained why he preferred the VC's account. In particular, he attached much weight to the fact that the traffic signal mandated the appellant, who was in the left lane, to yield to the VC's vehicle when merging. The appellant testified that he was aware that he was obliged to yield. Further, the magistrate considered the fact that the damage to the VC's vehicle was to the left rear door and fender. From this fact he drew the inference that at the time of collision the VC's vehicle was ahead of the appellant's truck. This was a reasonable inference for him to draw. Additionally, in his assessment of the reliability of the VC, he found him a credible and reliable witness who had denied the suggestion made to him in cross-examination that he was attempting to overtake the appellant's vehicle. It was therefore quite properly open to the magistrate to reject the appellant's case that the VC was attempting to overtake him at the time of collision and to accept the prosecution's case.

In so far as complaint is made that there was no evidence to support the magistrate's finding that the vehicles were jostling each other as they entered into the single lane, it is well to bear in mind that challenge to findings of fact must be to substantial factual matters. In the first place this finding by the magistrate was directed at both the appellant and the VC and was therefore a neutral observation and was not a basis on which the magistrate ascribed carelessness to the appellant. It seems to this court that all that the magistrate was seeking to convey was that both vehicles were seeking to enter the single lane at the merger point about the same time. In the larger scheme of things this finding is less important because, as the magistrate found, the collision between the vehicles occurred some 63 feet 10 inches past this point. There is therefore nothing to this ground.

The Court was satisfied that on the evidence as a whole it was open to the magistrate to make each of the findings of fact which he did and there is no basis upon which this Court should interfere with any of them as it has not been shown, either that there was no evidence to support the findings, or that the findings were based on a misunderstanding of the evidence, or that the

findings were findings that no reasonable magistrate could have reached.

In so far as ground 4 is concerned, the magistrate correctly directed himself on the test of what constitutes driving without due care and attention and applied it to the facts of the case. The assertion that the magistrate confined his analysis of the appellant's manner of driving to the manner in which he drove at the merger point on the highway is misconceived. On a proper reading of the magistrate's reasons it was plain that he regarded the merger transaction as commencing at the point where the dual lanes of the northbound carriageway merge into a single lane and ending when the appellant's truck impacted the VC's car. It is that continuous transaction or merger maneuver which the magistrate assessed when he concluded and found as a fact that the appellant had entered the single lane at a time when it was both unsafe and unlawful to do so and thereby drove without due care and attention. The Court found that this ground was also without merit.

Case Name:

Lucien Joseph

v

Delia Daniel

**[SLUHCVAP2023/0026]
(Saint Lucia)**

Date:

Thursday, 4th July 2024

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal**

Appearances:

Appellant:

Mr. Eghan Modeste and Ms. Alberta Richelieu

Respondent: Ms. Cynthia Hinkson-Ouhla

Issues: Civil appeal – Access and inspection of wills – Notarial wills – Section 782 of the Civil Code – Right of inspection of the original will – Whether the learned judge erred in finding that the appellant was not entitled to inspect the original will in his capacity as a beneficiary under that will – Whether the learned judge failed to apply key legal principles of interpretation in considering the purpose of section 978 of the Civil Code – Whether the learned judge erred in finding that the probated will was not a deed for the purposes of section 978 of the Civil Code, and thus not a public document – Whether the learned judge erred in finding that the said probated will was not a deed thereby failing to consider the expansive meaning of section 2141 of the Civil Code – Prejudice – Whether the learned judge failed to consider any prejudice to the parties in permitting the inspection of the original will

Type of Order: N/A

Result/Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment reserved.

Case Name: Michael Joseph

v

[1] Indra Hariprashad Charles

[2] William Charles

**[3] 1st National Bank formerly RBTT Bank
Caribbean Limited**

**[SLUHCVP2023/0028]
(Saint Lucia)**

Date: Thursday, 4th July 2024

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

Appearances:

Appellant: Mr. Horace Fraser

Respondents: Mr. Dexter Theodore KC for the first and second respondents

Mr. Mark Maragh and Ms. Vanessa Pinnock for the third respondent

Issues: Civil appeal – Agreement for sale of land – Payment of balance of purchase price – Time being of the essence - Whether the learned judge erred in finding that the appellant was in breach of the agreement for sale – Judge’s evaluation of the evidence – Agency – Bank acting as agent for the principals/mortgagors under an irrevocable power of attorney authorising it to sell the land – Bank entering into an agreement to sell land at a price lower than anticipated by the principals/mortgagors – Conflicting expert valuations – Court’s approach – Whether the learned judge erred in finding that the Bank had not acted outside the scope of the agency agreement

Type of Order: N/A

Result/Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment reserved.

Panel 1

Case Name: [1] Magistrate Bertlyn Reynolds
[2] Financial Intelligence Authority

V

**[1] Peter Hippolyte
[2] Michael Augustin
[3] Martinus Alexander**

**[SLUHCVAP2022/0019]
(Saint Lucia)**

Date: Friday, 5th July 2024

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

Appearances:

Applicants: Mr. Horace Fraser

Respondents: Mr. Seryozha Cenac and Mr. George K. Charlamagne

Issues: Application for leave to appeal to the Caribbean Court of Justice (“CCJ”) – Appeals as of right to the CCJ - Appeals as of right against final decisions in civil proceedings where the matter in dispute on the appeal is of the prescribed value – Section 108(1)(a) of the Constitution of Saint Lucia

Type of order: Oral Decision

Result/Order: IT IS HEREBY ORDERED THAT:

1. The applicants are granted leave to appeal to the Caribbean Court of Justice pursuant to section 108(1)(a) of the Constitution of Saint Lucia against the decision of the Court of Appeal dated 16th April 2024 on the following conditions:
 - i. the applicants do lodge with the Registrar of the Supreme Court of Saint Lucia security for costs in the sum of EC\$7500.00 within 90 days of today’s date;
 - ii. the applicants within 90 days of the date hereof shall furnish the Registrar of the Supreme Court of Saint Lucia with a list of

documents which they propose should be included in the Record of Appeal; and

- iii. upon compliance with the conditions herein stated, the Registrar of the Supreme Court of Saint Lucia shall issue a Certificate of Compliance in conformity with Form 2(a), Schedule 5 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2024 and within 7 days of its issue serve copies of the said Certificate on the applicants and the intended respondent and shall notify the Registrar of the Caribbean Court of Justice.

2. Costs in the matter shall be costs in the appeal.

Reason:

The applicants, by notice of application filed on 26th June 2024, sought leave pursuant to section 108(1)(a) of the Constitution of Saint Lucia Cap. 1.01 of the Revised Laws of Saint Lucia 2015 to appeal to the Caribbean Court of Justice against the judgment of the Court delivered on 16th April 2024 in SLUHCVAP2022/0019.

The respondents conceded that the applicants were entitled to appeal as of right but submitted that the application ought to have properly been brought not on the basis that the matter in dispute is of a prescribed value (it being an administrative law claim) but rather on the basis that the appeal involved directly or indirectly a claim to or question respecting property.

The Court noted the objection but determined that the applicants were entitled to appeal as of right under section 108(1)(a) of the Constitution and granted leave to appeal with the imposition of certain conditions including *inter alia* the payment of security for costs and to provide the Registrar of the Supreme Court of Saint Lucia with a list of documents which they propose should be in the record of appeal.

Panel 2

Case Name:

Exquisite Homes Limited

v

Geest Industries (Estate) Limited

**[SLUHCMAP2023/0001]
(Saint Lucia)**

Date: Friday, 5th July 2024

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

Appearances:

Applicant: Mr. Horace Fraser

Respondent: Mrs. Cynthia Hinkson-Ouhla

Issues: Application for leave to appeal to the Caribbean Court of Justice (“CCJ”) – Leave to appeal as of right – Section 108 (1)(a) of the Constitution of Saint Lucia – Whether the intended appeal meets the criteria for the grant of leave to appeal as of right to the CCJ – Whether the proposed appeal involves directly or indirectly a question respecting its property or a right of the prescribed value or more - Whether the intended appeal is from a judgment in civil proceedings of the Court of Appeal which is final

Type of order: Oral Decision

Result/Order: IT IS HEREBY ORDERED THAT:

1. The applicant is granted leave to appeal the judgment of this Court delivered on 28th February 2024 in Civil Appeal No. 1 of 2023 pursuant to section 108(1)(a) of the Constitution of Saint Lucia.
2. The appellant is to provide security for costs pursuant to rule 10.7 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2021 in the sum of \$7,500.00 within 90 days of the date of this order.

3. The appellant is to comply with the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2021 rule 10.7(2)(b) for leave to appeal.
4. Upon compliance with the conditions herein stated, the registrar of the Supreme Court shall issue a certificate of compliance in conformity with Form 2A, Schedule 3 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2021 and within 7 days of its issue, serve copies of the said certificate on the intended appellant and the intended respondent and shall notify the registrar of the Caribbean Court of Justice.
5. Costs in this matter shall be costs in the appeal.

Reason:

The Court, upon reading the notice of application together with an affidavit in support filed by the applicant on 13th March 2024 for leave to appeal to the Caribbean Court of Justice (“CCJ”) against the judgment of this Court delivered on 28th February 2024 in Civil Appeal No. 1 of 2023; and upon hearing counsel, Mr. Horace Fraser for the applicant with counsel for the respondent, Mrs. Cynthia Hinkson-Ouhla being present; and being of the view that the applicant had met the threshold for the grant of leave as of right to the CCJ pursuant to section 108(1)(a) of the Constitution of Saint Lucia; and upon considering rule 10.7 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2021 and Practice Direction No 1 of 2023; and upon further consideration of rule 10.9(1) of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2021, the Court granted the application for leave to appeal and made the orders above.

Case Name:

Eghan Modeste

v

Nagico (St. Lucia) Limited

**[SLUHCMAP2023/0004]
(Saint Lucia)**

Date: Friday, 5th July 2024

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

Appearances:

Appellant: In person

Respondent: Mr. Duane Jean Baptiste

Issues: Commercial appeal – Medical insurance policy – Termination of policy without cause before expiry date and increase of premium – Whether the learned judge erred in finding that the grace period at clause 3 of the policy permitted the respondent to terminate the policy without cause – Whether clause 3 of the policy provided an expressed or implied entitlement to the respondent to unilaterally terminate the policy before the expiry date – Whether the policy was commercially impracticable at the 2008 premium and other terms – Whether clause 10 of the policy enabled the respondent to unilaterally vary the premium – Whether the policy permitted the respondent to unilaterally vary other terms – Whether the policy for an agreed term is renewed on a monthly basis by virtue of monthly premium payments

Type of Order: N/A

Result/Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment reserved.