

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE

GRENADA
4th – 8th April 2022

JUDGMENT

Case Name:

[1]Digital Security Services Ltd
[2]Michael Peets

V

Nevis International Bank & Trust Limited

[NEVHCVAP2021/0003]
(SAINT CHRISTOPHER AND NEVIS)

Date:

Thursday, 7th April 2022

**Coram for
delivery of
judgment:**

**The Hon. Mde. Louise Esther Blenman, Justice of
Appeal**
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellants: **Ms. Angela Cozier**

Respondent: **Ms. Asha Joseph**

Issues:

Interlocutory appeal — Default judgment — Rules 13.3(1) and 13.3(2) of the Civil Procedure Rules 2000 — Whether judge applied a subjective test in assessing the reasons for the short delay and should have applied an objective test as set out in the case of Attorney General v Universal Projects Ltd — Whether judge failed to take into account or proper account that the evidence discloses a good and substantial reason for the failure to file defence on time — Whether judge failed to take account of relevant considerations and took into account irrelevant considerations — Extension of time — Whether the judge failed to pay

due regard to the application for an extension of time to file the defence and misapplied the test for such an application, thereby wrongly denying the appellants' extension application

Result and Reason:

Held: dismissing the appeal and awarding the costs of the appeal of \$1,000.00 to the Bank, being two-thirds of the amount awarded in the lower court, that:

1. In considering the evidence and deciding whether there is a good or substantial explanation for the delay in filing a defence, the approach is not whether the judge is applying a subjective or objective test. The correct approach is that the judge must consider the evidence and decide whether it amounts to a good or substantial reason for the delay.

Attorney General v Universal Projects Ltd [2011] UKPC 37 considered.

2. The judge did not rely on irrelevant matters in coming to his decision. He was entitled to rely on the cases *America 2030 Capital Limited et al v Sunpower Business Group PTE Ltd et al* and *The Marina Village Limited v St. Kitts Urban Development Corporation Limited* as relevant matters in coming to his decision. Moreover, the Appellants failed to give satisfactory answers for their failure to explore alternative options to file their defence on time. Accordingly, the judge's finding that there was no good explanation for the delay in filing the defence is unimpeachable and the finding is affirmed.

America 2030 Capital Limited et al v Sunpower Business Group PTE Ltd et al SKBCVAP2020/0015 (delivered 30th October 2020, unreported) considered; The Marina Village Limited v St. Kitts Urban Development Corporation Limited SKBHCVAP2015/0012 (delivered 19th May 2016, unreported) considered.

3. The requirements in sub-rules (a) to (c) of CPR 13.3(1) are conjunctive and an application for relief under this rule must satisfy all three conditions. A failure to satisfy any one of the three conditions means that the judge or master hearing the application should not set aside the default judgment unless he or she is satisfied that there are exceptional circumstances within the meaning of CPR 13.3(2). The finding that the Appellants had not satisfied sub-rule (b) of rule 13.3(1) means that the judge was not required to consider conditions (a) and (c), and he did not make a finding, by implication or otherwise, that the Appellants have a reasonable prospect of defending the claim.

Rule 13.3(1) of the Civil Procedure Rules 2000 applied; Kenrick Thomas v RBTT Caribbean Bank Limited SVGHCVAP2005/0003 (delivered 13th October 2005, unreported) followed; Public Works v Matthew Nelson; Elton Darwton et al v Matthew Nelson DOMHCVAP2016/0007 & DOMHCVAP2016/0008 (delivered 29th May 2017, unreported) followed.

4. The defence, viewed in its best light, creates no more than a triable issue in relation to Mr. Wey's authority to make binding contracts on behalf of the Bank. The issue falls far short of the standard required to satisfy the requirement for exceptional circumstances within the meaning of CPR 13.3(2) and the test in Carl Baynes v Ed Meyer.

Rule 13.3(2) of the Civil Procedure Rules 2000 applied; Carl Baynes v Ed Meyer ANUHCVAP2015/0026 (delivered 30th May 2016, unreported) followed; Meyer v Baynes [2019] UKPC 3 followed.

5. The application to set aside the default judgment was filed before the extension application and the court's usual practice is to deal with applications in the order in which they are filed. Furthermore, the court cannot

deal with an application for an extension of time to file a defence in the face of a regularly entered default judgment. As long as the default judgment remains on record the court does not have jurisdiction to extend the time for filing a defence. It is only if the judgment is set aside that the court can go on to consider whether the defendant should be given an extension of time to file a defence.

APPLICATIONS AND APPEALS

Case Name:

Alexander Clack

v

The Queen

[GDAHCRAP2016/0004]

(Grenada)

Date:

Monday, 4th April 2022

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mde. Louise Esther Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Applicant:

Mr. Anslem Clouden

Respondent:

Mr. Christopher Nelson QC, Director of Public Prosecution

Issues:

Application to withdraw the application for bail pending appeal - Transcript not produced in over 6 years - Computer containing audio recording of proceedings stolen with no likelihood of recovering same - Whether a retrial of the matter is a more appropriate course of action

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The bail application is withdrawn and accordingly dismissed.**

Reason:

The application for bail was premised on the ground that the transcript of the proceedings had not been produced for over 6 years. The information from the court office was that the computer containing the audio recording of the proceedings had been stolen and there was little to no likelihood of retrieving same in order to produce the transcript.

The Court was therefore of the view that the appropriate course of action would be a retrial of the matter however, such an order could not be made in circumstances where the application before the Court was one for bail. Counsel for the appellant consequently sought leave to withdraw the application for bail and the Court granted the request.

Case Name:

**[1] Dolette Cyr Bartholomew
[2] Shem Pierre (In their capacity as
administrators in the estate of Peter Oscar
Bartholomew, deceased)**

v

**[1] Kenton Hazzard
[2] Edward Gibson
[3] Shaun Gannes
[4] Roddy Felix
[5] Wendel Sylvester
[6] Attorney General**

**[GDAHCVAP2021/0020]
(Grenada)**

Date:

Monday, 4th April 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellants: Mr. Derick Sylvester with him, Ms. Alicia Lawrence

Respondents: Mr. Adebayo Olowu for the 6th respondent
No appearance for the 1st - 5th respondents

Issues: Civil appeal - Assessment of damages - Whether learned master erred in her assessment of damages - Aggravated damages - Injury to feelings - Whether the learned master erred in determining whether an award for aggravated damages was appropriate - Special damages - Whether the learned master erred in failing to make an award for special damages for the autopsy report - Whether the learned master erred in awarding only a nominal sum for the funeral expenses

Type of Order: Oral judgment with written reasons to follow

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed to the extent that the damages awarded by the learned master are expanded to include an award of aggravated damages in the amount of \$60,000.00 together with an amount \$53,400.00 for the autopsy report as special damages.
2. The Court affirms the award of the court below in respect of the funeral expenses of \$4,000.00.
3. Prescribed costs on the total damages awarded in the court below as varied by this Court and two-thirds of the prescribed costs in the court below as varied by this Court on the appeal to the appellant.
4. Written reasons for the decision will follow.

Reason:

N/A

Case Name:

LIAT (1974) Limited

v

- [1] Allyson Francis**
- [2] Michael Haywood**
- [3] Delarita Fletcher**
- [4] Ceri Budhlall**
- [5] Roslyn Campbell**
(Also known as Roslyn Teka)
- [6] Brendon La Grenade**
- [7] Brian Sylvester**
- [8] Deidree Sylvester**
- [9] Samuel Smith**
- [10] Michael Frederick**
- [11] Elias Williams**
- [12] Edmond Stroude**
- [13] Michael Grant**
- [14] Glenroy Grey**
- [15] John Francis**
- [16] Wendell Redhead**
- [17] Heston St. Bernard**
- [18] Richardson Roberts**
- [19] Debbie Seales**
- [20] Christopher Joseph**
- [21] Joseph Theodore**
- [22] Lennox Joseph**
- [23] David Welsh**
- [24] Lewis Davis**
- [25] Ronald Campbell**
- [26] Oscar McDonald**
- [27] Derek Charles**
- [28] Marlon Renwick**
- [29] Daniel Dubisette**
- [30] Angus Campbell**
- [31] Leslie Scott**
- [32] Cecil Wilkinson**
- [33] Anthony Duncan**

**[GDAHCVAP2021/0040]
(GRENADA)**

Date: Monday, 4th April 2022

Coram: The Hon. Dame Janice M. Pereira DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. James Bristol, QC with him Mrs. Melissa Modeste-Singh

Respondents: Ms. Celia Edwards, QC with her Ms. Celene Edwards

Issues: Application to vary the order of a single judge - Section 223 of the Bankruptcy and Insolvency Act, No. 15 of 2016 - Stay of all proceedings until further order of the court

Type of Order Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

Upon the application to the full court to revoke the order of a single judge and pursuant to section 223, Grenada Bankruptcy and Insolvency Act No. 15 of 2016, all further proceedings in this action shall be stayed until further order of the court.

Reason: The Court considered counsel for the applicant's indication that a recognition order dated 24th February 2022 and filed on 2nd March 2022 was obtained in the matter pursuant to section 223 of the Bankruptcy and Insolvency Act, No. 15 of 2016 which had the effect of staying all proceedings in the matter. Counsel for the respondents were of similar view. In the circumstances, counsel for the applicant requested

that this application be stayed until further order of the court. Accordingly, the Court stayed the application.

Case Name:

**Ashok Bhawnani
v
Christine Brathwaite**

**[GDAHCVAP2021/0042]
(GRENADA)**

Date:

Monday, 4th April 2022

Coram:

**The Hon. Dame Janice M. Pereira DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Dickon Mitchell with him Ms. Crystal Braveboy-Chetram

Respondent: Mr. James Bristol, QC with him Mrs. Melissa Modeste-Singh

Issues:

Interlocutory Appeal- Whether judge erred in striking out claim against the respondent and awarding her costs- Whether judge failed to consider the applicable principles for striking out a claim in *Cedar Valley Springs Homeowners Association Incorporated et al v Kenneth Meade et al* – Whether the judge erred in finding that by the sale of land the respondent was absolved of the duty to not derogate from the grant of the easement alleged by the appellant- Whether judge erred in finding that subsequent to the sale of the land, the appellant had no cause of action against the respondent for derogation from grant and/or unlawful interference with use and enjoyment of the easements claimed by the appellant - Counter Notice of Appeal – Whether costs should be prescribed costs based on the value of the claim

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The counter appeal is dismissed.**
- 3. Costs in the court below as ordered by the learned trial judge to be paid within 28 days.**
- 4. Costs on the appeal to the respondent and costs of the counter notice of appeal to the appellant, the net sum of \$800.00 to be paid to the respondent within 7 days.**

Reason:

This is an interlocutory appeal against the decision of the learned trial judge in which he struck out the claim against the respondent based on an application brought by the respondent pursuant to 26.3(1)(b) of the Civil Procedure Rules 2000 which gives the court power to strike out a statement of case or part of a statement of case if it appears to the court that the statement of case or the part to be struck out does not disclose any reasonable ground for bringing the claim, as in this case, or defending the claim.

The Court read the submissions and heard the oral submissions of the appellant and reviewed the pleaded case brought by the appellant against the respondent. The Court considered the decision of the Court in *Cedar Valley et al v Kenneth Meade et al* (delivered 18th January 2017, unreported), relied on by the appellant which outlined the following principles at paragraph 6 in respect of strike out applications:

- (a) This summary procedure which calls for the exercise of a discretionary power, should only be used in clear and obvious cases as it is a drastic step. The result of such a measure is that it deprives a party of his right to a trial and his ability to strengthen his case through the process of disclosure and other procedures such as requests for information.**
- (b) This procedure should only be used where it can be seen on the face of the claim that it is obviously unsustainable, cannot proceed or in**

some other way is an abuse of process of the court. This has been expressed in terms that the claim should not be struck out if there is a 'scintilla' of a cause of action.

(c) In treating with an application to strike out made pursuant to CPR 26.3(1)(b), the trier of the application should proceed on the assumption that the facts alleged in the statement of case are true.

(d) The employment of this procedure is appropriate in the following instances: where the claim sets out no facts indicating what the claim is about, or if it is incoherent and makes no sense, or if the facts it states, even if true, do not disclose a legally recognisable claim against the defendant.

The Court was of the view that this was not a claim, even assuming that the pleaded facts were true, which discloses a reasonable ground for bringing the claim.

The Court then considered the decision of *Baldwin Spencer v The Attorney General of Antigua and Barbuda et al* Civ. App. No. 20A of 1997 (delivered 8th April 1998, unreported) in which the then Chief Justice Sir Dennis Byron stated:

“If the pleadings disclose any viable issue for trial then we should order the trial to proceed but if there is no cause of action we should be equally resolute in making that declaration and dismissing the appeal.”

The Court was of the view that no cause of action was made out as against the respondent in respect of the pleaded facts of the case, assuming that they are true on the face of the pleadings. The Court dismissed both the appeal and the counter appeal, affirming with the costs in the court below as ordered by the learned trial judge and awarding the costs of the appeal to the respondent and of the counter notice of appeal to the appellant, the net sum of \$800.00 to be paid to the respondent within 7 days.

Case Name:

Gabriel Pestana

v

The Queen

**[GDAHCVAP2019/0018]
(GRENADA)**

Date:

Tuesday, 5th April 2022

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Derick F. Sylvester

Respondent:

Mr. Howard Pinnock

Issues:

Criminal appeal - Appeal against sentence - Consent to appeal

Type of Order

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal of Mr. Pestana against sentence is allowed.**
- 2. The sentence of 11 years and 9 months is reduced to 8 years and 6 months, the sentence to commence from the date of sentencing.**

Reason:

The appellant, Mr. Gabriel Pestana pleaded guilty to the offence of manslaughter and was sentenced to 11 years and 9 months by the learned trial judge.

In a related appeal by his co-accused, Mr. Arturo Rodriguez who was also sentenced to 11 years and 9 months, the Court reduced the sentence to 8 years and

6 months. Learned Senior Crown Counsel acceded that because both charges and both appeals arose out of similar facts and circumstances, a similar sentence should be ordered in the instant matter. The Court accepted the position of learned Crown Counsel.

Case Name:

**Steve Gurrie
v
The Queen**

**[GDAHCVAP2013/0004]
(GRENADA)**

Date:

Tuesday, 5th April 2022

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Ruggles Ferguson with him, Ms. Danyish Harford

Respondent:

Mr. Christopher Nelson, QC Director of Public Prosecutions

Issues:

Criminal appeal - Appeal against sentence - Murder- Whether sentence manifestly excessive - Whether learned judge failed to take proper account of the three medical reports - Whether learned judge gave sufficient weight to social inquiry report - Whether learned judge gave sufficient weight to affidavits in support of the appellant's mitigation - Whether learned judge gave sufficient weight to the behaviour of the appellant immediately after the commission of the offence - Whether learned judge failed to balance properly the mitigating and aggravating factors - Whether learned judge disproportionately focused on the preventative and retributive aspects of sentencing

- Whether the sentencing of the appellant to 35 years imprisonment by the learned judge is effectively life imprisonment - Application to adduce fresh evidence

Type of Order:

Oral Judgment with Written Reasons to follow

Result / Order:

IT IS HEREBY ORDERED THAT:

1. Leave is granted to the appellant to adduce and rely on the fresh evidence contained in the report of Dr. Dirk Burkhardt dated 15th March 2022.
2. The appeal against sentence is dismissed.
3. The sentence of the trial judge is affirmed.
4. The court shall give reasons for its decision at a later date.

Reason:

The Court considered that the appellant wished to adduce fresh evidence in the appeal. The Court was satisfied that the provisions section 46 of the West Indies Associated States Supreme Court (Grenada) Act, Cap 336 of the Laws of Grenada had been satisfied and further that there was no objection from the Director of Public Prosecutions. Accordingly, leave was granted for the fresh evidence to be adduced.

In regard to the appeal, the Court was of the view that the appeal against sentence ought to be dismissed with reasons to follow.

Case Name:

Finbar Browne

v

Ceilia Phillip

[GDAHCVAP2021/0022]
(GRENADA)

Date:

Tuesday, 5th April 2022

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Ian Sandy

Respondent: Mr. Derick Sylvester

Issues: Civil Appeal - Consent Order - Costs

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED BY CONSENT THAT:
1. By consent the appeal is allowed.
2. Costs to the appellant to be paid by the respondent fixed in the sum of \$1,000.00 to be paid on or before 29th April 2022.

Reason: The Court noted the consent order signed by counsel for the parties agreeing that the appeal should be allowed.

Consequently, the only matter remaining for the determination of the Court was the issue of costs. Counsel for the appellant proposed costs in the sum of \$2,000.00 whereas counsel for the respondent would have suggested \$750.00 as a more appropriate sum.

Having considered the oral submissions of both parties, and the fact that no costs order had been made in lower court, the Court awarded costs in the sum of \$1,000.00 to the appellant.

Case Name:

**Catherine Majorie Jessamy
(By her duly appointed Attorney Augustine
Jessamy)**

**v
Dexter St. Louis**

**[GDAHCVAP2021/0036]
(GRENADA)**

Date: Tuesday, 5th April 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Darshan Ramdhani QC with him, Ms Sabrita Ramdhani

Respondent: Mr. Henry C. Paryag

Issues: Application for adjournment

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The appellant is granted leave to file and serve written submissions together with authorities on or before the 17th May 2022.
2. The respondent is granted leave to file and serve written submissions together with authorities on or before 21st June 2022.
3. The hearing of this appeal is adjourned and traversed to the next sitting of this Court in Grenada during the week which commences on 19th September 2022.

Reason: The Court considered an application made by counsel for the appellant for an adjournment of the matter due to the unavailability of the transcripts which were very

recently received from the High Court. There was no objection from counsel for the respondent on the application for adjournment.

Counsel for the appellant requested six weeks to file and serve written submissions to the Court while counsel for the respondent requested four weeks to file and serve written submissions in response.

Given the circumstances, the Court was of the view that the application for adjournment should be granted.

Case Name:

Jeffrey Derick Christopher Aban

V

Enid Bissoon Aban

**[GDAHCVAP2019/0018]
(GRENADA)**

Date:

Tuesday, 5th April 2022

Coram:

The Hon. Mde. Louise Esther Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellant:

Mr. Alban John holding papers for Ms. Georgell George

Respondent:

Ms. Celia Edwards, QC with her Mr. Zuriel Francique

Issues:

Application for adjournment

Type of Order:

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

The hearing of the appeal is adjourned and traversed to a sitting of the Court to be determined by the Chief Registrar in consultation with both counsel for the appellant and counsel for the respondent, preferably before the next sitting of this Court in Grenada which commences on 19th September 2022.

Reason:

The Court considered an application made by Mr. Alban John for an adjournment of the matter. The application was made due to a medical condition which occasioned learned counsel for the appellant Ms. Georgell George, to seek medical attention and for which sick leave was subsequently granted. Ms. George was therefore unable to appear before the Court. A medical certificate from a doctor, Dr. Anthony Davis, who attended to Ms. George was produced before the Court indicating that learned counsel had a bronchial asthmatic attack and palpitations. The Court, having heard the objections from learned Queen's Counsel based on her client's instructions to object to the adjournment, unanimously ruled that the hearing of the appeal was adjourned as a consequence of learned counsel for the appellant being indisposed due to ill-health as indicated in the medical certificate.

Case Name:

**Augustine Pascall
v
Public Service Commissioner
[GDAHCVAP2021/0024]
(GRENADA)**

Date:

Wednesday, 6th April 2022

Coram:

**The Hon. Dame Janice M. Pereira DBE, Chief Justice
The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Applicant:

Dr. Francis Alexis, QC with him Mr. Anslem Clouden

Respondent: Ms. Karen Samuel

Issues: Application for leave to appeal - Stay of proceedings-
Whether leave to appeal required in the circumstances

Type of Order: Adjournment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The hearing of this appeal is adjourned to a date to be fixed by the Chief Registrar following the filing of a hearing bundle by the appellant with all of the relevant documents in respect of the appeal, properly paginated and indexed, in accordance with the rules of court.
2. The hearing bundle shall be filed on or before Friday, 8th April 2022.
3. A stay of the proceedings in the court below is granted pending the hearing and determination of the appeal.

Reason: The Court was of the view that leave to appeal the judgment of Actie J dated 24th August 2021, which in substance ordered an injunction, was not required. As a result of this, learned Queen's Counsel intimated to the Court that the applicant's application for leave to appeal should be treated as the notice of appeal and that in the circumstances, the application for the stay of proceedings should be granted.

The Court, upon considering the application, found that all documents filed by counsel for the applicant in relation to the appeal had not been filed in accordance with the rules of court and that there was no proper hearing bundle, making traversing through the relevant documents difficult. Counsel for the applicant therefore requested that the matter be adjourned and accommodated to another sitting of the Court in Grenada. Counsel for the respondent had no objection to that request.

The Court, upon considering those matters before it, held that it would be in the interest of justice to grant a stay pending the hearing and determination of the appeal and that the hearing of the appeal should be adjourned to a later date. Further, the Court directed that a proper hearing bundle be filed for the use of the Court and asked that all care be taken to ensure that all of the documents relevant to the appeal be placed before the Court in chronological and indexed order on or before Friday 8th April 2022.

Case Name:

Nicholas Alexis

v

The Queen

**[GDAHCVAP2016/0018]
(GRENADA)**

Date:

Wednesday, 6th April 2022

Coram:

**The Hon. Dame Janice M. Pereira DBE, Chief Justice
The Hon. Mr. Davidson Kelvin Baptiste, Justice of
Appeal
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Anslem Clouden

Respondent:

Mr. Howard Pinnock

Issues:

**Criminal appeal - Appeal against sentence -
Abandonment of appeal against conviction**

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against sentence is allowed.**

2. The appellant's sentence is varied to time served.

Reason:

The Court having regard to the delay in the hearing of the appellant's appeal, which was filed on 29th March 2016, and the almost six years delay in obtaining the transcript of the proceedings in the court below, and the fact that the appellant would have completed his sentence in the next six months, to wit November 2022, considered that it is in the interest of justice that the appellant's sentence be varied and be varied to time served.

Case Name:

Handel Stafford

v

The Queen

**[GDAHCRAP2017/0022]
(GRENADA)**

Date:

Wednesday, 6th April 2022

Coram:

**The Hon. Dame Janice M. Pereira DBE, Chief Justice
The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Jerry Edwin

Respondent:

Mr. Howard Pinnock holding for Mr. Christopher Nelson, QC Director of Public Prosecutions

Issues:

Criminal appeal - Application for an adjournment

Type of Order

Adjournment

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

1. The hearing of the appeal is adjourned to the next sitting of the Court scheduled for Grenada commencing on 19th September 2022.
2. The appellant shall file and serve written submissions in support of the appellant's appeal together with a bundle of authorities relied on, on or before 3rd June 2022.
3. The respondent shall file and serve submissions in response to those of the appellant on or before 29th July 2022.

Reason:

The Court noted that the transcript of the proceedings was ready in the matter. Counsel for the appellant indicated that they were not yet ready to proceed and requested an adjournment of the matter. Counsel also requested sufficient time to file written submissions in the appeal. Counsel for the respondent made no objection to the appellant's application.

The Court acceded to the application for an adjournment and made directions for the filing and serving of submissions.

Case Name:

[1]Peter Alexander
[2]Benedict Charles
[3]Aillerous Charles
[4]Lennox Charles

v

[1]Hicklyn Nyack
(Executor and Trustee of the Estate of the Late
Randolph Forrester of Paraclete, St. Andrew)
[2]Stephanie Peters
(Administratrix of the Estate of the late John Douglas
Forrester aka as Johnny Forrester of Blaize, St.
Andrew)

[GDAHCVAP2021/0033]
(GRENADA)

Date: Thursday, 7th April 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Darshan Ramdhani QC with him, Mrs. Sabrita Khan-Ramdhani and Ms. Karen Samuel

Respondents: Mr. Ian Sandy with him, Ms. Sandina Date Osei-Gyau

Issues:

Civil Appeal - Committal Proceedings for contempt - Part 53 of Civil Procedure Rules 2000 - Penal Notice - Whether penal notice required by Rule 53.3(b) of the Civil Procedure Rules 2000 can be endorsed by the legal practitioners of the applicants - Whether the endorsement of the penal notice by the applicant for committal proceedings on an order after it had been perfected amounts to a variation of the court's order - Whether judge erred in finding that penal notice must be endorsed with leave of the court – Academic appeal - Whether judge erred in making costs order on an erroneous basis of law - Whether appellants can pursue a challenge to the costs order of the judgment of the learned judge in the court below having not incorporated it as a ground of appeal in their notice of appeal

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved until 2:30pm.

Reason: N/A

Case Name: Grenada Football Association Inc.

V
Victor Daniel

[GDAHCVAP2021/0035]
(GRENADA)

Date: Thursday, 7th April 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Benjamin Hood

Respondent: Dr Francis Alexis QC with him, Ms Winifred Duncan Phillip

Issues: Interlocutory appeal - Unless order - Part 26.4 of the Civil Procedure Rules 2000 - Whether the affected party must be given notice before unless order is granted - Whether learned judge erred in making an unless order of his own initiative without affording the appellant, as the party likely to be affected, a reasonable opportunity to make representations - Rule 11.18 of the Civil Procedure Rules 2000 - Whether learned judge erred in construing rule 11.18 by considering conduct of the appellant subsequent to the making of unless order - Overriding Objective of the CPR - Rule 1.1(2) of the Civil Procedure Rules 2000 - Whether the learned judge ensured, so far as is practicable, that the parties are on an equal footing

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed in its entirety.
2. The underlying claim is remitted to the High Court to be case managed by a different judge.
3. Costs to the appellant in the sum of \$700.00.

Reason:

The Court considered an appeal against an order of the learned judge made on 18th October 2021 by which his Lordship refused the appellant's application to set aside the order made on 16th September 2020.

Counsel for the appellant relied on 8 grounds of appeal in his written submissions but chose to present oral submissions on grounds 1 and 5, namely:

1. The learned judge erred in procedural law and fell into grave error by wrongly construing the provisions of Rule 11.18 of the Civil Procedure Rules 2000 giving undue consideration to evidence regarding the conduct of the appellant and other matters which transpired after the order of 16th September 2020 was made, thus basing his findings on inaccurate and irrelevant considerations.

5. The learned judge erred in procedural law and fell into grave error by wrongly purporting to make an unless order of his own initiative on 16th September 2020 without affording the appellant who was a party likely to be affected, a reasonable opportunity to make representations.

Counsel for the appellant began his oral submissions with ground 5 and asserted that Part 26.2 of the CPR provides that before an unless order is made without an application before the court for issuing of an unless order in accordance with Part 26.4 of the CPR, the affected party must be given notice before that unless order is granted. In the circumstances of this case, counsel argued that there was no notice given to counsel or to the appellant that the court was minded to give an unless order. He submitted that on that basis, the order issued by the learned trial judge on the 16th September 2020 ought to be struck out.

With regard to ground 1, counsel argued that in hearing the application of the defendant pursuant to CPR 11.18, the court is bound to consider two factors which are; (i) Whether there is a good reason for non-attendance of the applicant, (ii) Whether it is likely that the court would have made a different order if the applicant had been in attendance when the order was made.

He submitted that the appellant had good reason for his absence when the order was made in that there was a clear indication of miscommunication between him and his counsel as further evidenced by way of affidavit and the defendant was not notified of the hearing until the morning of the matter.

Counsel also argued that the order itself was a breach of the overriding objective of the CPR, more specifically 1.1(2) which speaks to ensuring that all the parties are on equal footing. He submitted that in the circumstances, there was a clear conflict between counsel and the appellant and the appellant should have been given a right to be heard before an unless order was made.

Learned Queen's Counsel for the respondent opposed the application mainly on the basis that the appellant consistently presented a pattern of stating that he was unaware of hearings before the court and that the learned trial judge was correct to issue an unless order in the circumstances.

The Court was of the view that the learned judge erred in refusing to set aside the decision that was made on the 16th September 2020, the effect of which is to grant an unless order that did not comply with the Civil Procedure Rules and that the appeal should be allowed.

Case Name:

**In The Matter of the Possessory Titles Act No.
22 of 2016, Re Errol George**

**[GDAHCVAP2021/0004]
(GRENADA)**

Date:

Thursday, 7th April 2022

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of
Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Deborah Mitchell

Issues: Civil appeal - Adverse possession - Application for possessory title - Possessory Titles Act No. 22 of 2016 - Sections 3 and 7 of Possessory Title Act - Whether judge erred in law in finding that appellant was not entitled to a declaration of possessory title under the Possessory Titles Act

Type of Order: Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The decision of the learned judge in the court below is set aside.
2. The appellant is granted a declaration of possessory title to the portion of land located at Williamson Road and a declaration is accordingly issued to that effect that:

The appellant Errol Seaton George is hereby granted a declaration of possession of the property located at Williamson Road in the parish of Saint George in the State of Grenada containing 4853 square feet English Statute Measure and bounded on the North by property owned now or formerly owned by Judy Cabby and property owned by Carl Cherebin and Veronica Samuel to the South by Williamson Road, to the East by property formerly owned by Rosetta Ross and to the West by property owned now or formerly by Gregory Hercules, and shown on the plan drawn by Licensed Land Surveyor Trevor la Crette (except for the property to the East and West, which is not shown on the plan) and exhibited to the affidavit of the applicant.

Reason: This is an appeal against an order of the learned judge on an application by the appellant for a declaration of possessory title to a portion of land located at

Williamson Road (referred to as “the Williamson Road Property”). The learned judge declined the application for possessory title on the basis that the applicant, who is the appellant in these proceedings, was entitled to the property as part of the estate of his grandfather. However, the provisions of the Status of Children Act of Grenada Act No. 39 of 1991 clearly indicates that a person in the position of the applicant was not entitled to inherit from the estate of his grandfather, his father, Sylvester Seaton George, having been born out of the marital union between Joseph Albert George and his wife Rosana George.

The Court reasoned that in the circumstances, the judge clearly erred in his finding that the appellant was entitled to the land as part of the estate of his grandfather. The appellant’s claim is founded on Part 2, section 3 of the Possessory Titles Act No. 22 of 2016 which provides that a person in adverse possession of the land for a period of in excess of 12 years is entitled to a declaration of possession. The evidence presented by the appellant in the affidavits before the lower court (both his affidavit and the affidavits of supporting witnesses), clearly show that he was in adverse possession of the land for a period of in excess of 12 years.

In those circumstances, the Court had no difficulty in overturning the decision of the learned judge which declined the application of the appellant for the declaration of possessory title. Accordingly, the order of the learned judge in the court below was set aside.

Case Name:

**[1]Peter Alexander
[2]Benedict Charles
[3]Aillerous Charles
[4]Lennox Charles**

v

**[1]Hicklyn Nyack
(Executor and Trustee of the Estate of the Late
Randolph Forrester of Paraclete, St. Andrew)
[2]Stephanie Peters**

(Administratrix of the Estate of the late John Douglas
Forrester aka as Johnny Forrester of Blaize, St.
Andrew)

**[GDAHCVAP2021/0033]
(GRENADA)**

Date: Thursday, 7th April 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of
Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Darshan Ramdhani QC with him, Mrs. Sabrita Khan-Ramdhani and Ms. Karen Samuel
Respondent:	Mr. Ian Sandy with him, Mrs. Sandina Date Osei-Gyau

Issues:

Civil Appeal - Committal Proceedings for contempt - Part 53 of Civil Procedure Rules 2000 - Penal Notice - Whether penal notice required by Rule 53.3(b) of the Civil Procedure Rules 2000 can be endorsed by the legal practitioners of the applicants - Whether the endorsement of the penal notice by the applicant for committal proceedings on an order after it had been perfected amounts to a variation of the court's order - Whether judge erred in finding that penal notice must be endorsed with leave of the court – Academic appeal - Whether judge erred in making costs order on an erroneous basis of law - Whether appellants can pursue a challenge to the costs order of the judgment of the learned judge in the court below having not incorporated it as a ground of appeal in their notice of appeal

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The Court found that this is an academic appeal as there is no live issue before the Court. The Court however took time to indicate and to provide some clarification as follows:

- (i) A penal notice is not a part of a court's order.
- (ii) Endorsing the penal notice is not a judicial act and does not require the sanction of the court. It can be done administratively by the applicant or his or her legal practitioners.

2. There shall be no order as to costs.

Reason:

On 6th May 2021, the court accepted undertakings from counsel for the parties and made an order to maintain the status quo in the matter until trial. The defendant, who are the respondents in the appeal, brought an application to commit Ms. Sandina Date, counsel for the respondents, to prison for contempt of court for breaching the said order. The order was served on Ms. Date with a penal notice endorsed as required by Part 53.3 of the Civil Procedure Rules 2000. The learned judge dismissed the application and ordered the legal practitioners for the appellants to pay Ms. Date's costs. The appellants, who were successful on the contempt application, appealed against the learned judge's findings that the order could not have been endorsed with a penal notice other than by or on the order of the court and that such an endorsement by the legal practitioners amounted to a variation of the order. The notice of appeal, the record of appeal and the submissions of counsel disclose that this is the sole issue in the appeal.

The Court considered the foregoing documents, the oral submissions of counsel and the relevant authorities including the decision of the High Court of Grenada in the case of Ariza Credit Union Limited v Kenrick Gay GDAHCV306/2020 (delivered 13th December 2021, unreported), the English cases of Deery v Deery [2016] NICH 11 and Anglo-Eastern Trust Ltd. v Kermanshahchi (2002) The Times, 8 November 2002, and Blackstone's Civil Practice (Charles & Ors., Oxford University Press 2003) p. 1006, paragraph 78.4 and was satisfied that:

- 1.) A penal notice is not a part of a court's order.
- 2.) Endorsing the penal notice is not a judicial act and does not require the sanction of the court. It can be done administratively by the applicant or his or her legal practitioners.

In short, the Court found that a penal notice can be endorsed on an order in committal proceedings and can be done by the legal practitioners for the applicants which represents the settled law and practice in the Eastern Caribbean.

The Court then considered the costs challenge. In his oral submissions, learned counsel for the appellants, Mr. Darshan Ramdhani QC challenged the costs order made by the learned judge at paragraph 25 of her decision. The order reads:

“For the foregoing reasons, it is hereby ordered and directed as follows:

(1) The application by the Law firm of Samuel Phillip & Associates to commit Ms. Sandina Date, Legal Practitioner for the claimants, to Her Majesty's Prisons stands dismissed.

(2) The Law firm of Samuel Phillip & Associates shall pay costs to Ms. Sandina Date in the sum of \$1,000.00 within twenty-one (21) days from today's date.”

The Court noted that there was no appeal against the costs order and no application to amend the notice of appeal to include an appeal against the costs order. The point was not addressed in counsel's written submissions. The Court considered that the decision of the English Court of Appeal in Compagnie Noga D'importation Et D'exportation SA v Australia & New Zealand Banking Group Ltd. & Ors [2002] EWCA Civ 1142, which was relied on by counsel for the appellants in his oral submissions, is distinguishable on its facts, and in any event does not assist the appellants on the costs point.

The Court emphasised that there was no appeal against the decision of the lower court and treated the appeal as an academic appeal with an invitation to make a ruling on the issue of the penal notice. The

Court therefore did not make any order on the decision made by the learned judge.

The parties did not seek an order as to costs of the appeal and accordingly no order as to costs was made.

Case Name:

Letha Davidson

v

Kyron Frederick

**[GDAHCVAP2021/0032]
(GRENADA)**

Date:

Friday, 8th April 2022

Coram:

**The Hon. Dame Janice M. Pereira DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

**Mr. Ruggles Ferguson with him, Mr. Patrick Superville
and Ms. Danyish Harford**

Respondent:

Ms. Winnifred Duncan-Phillip

Issues:

Civil appeal - Statutory interpretation - Possessory Titles Act No. 22 of 2016 - Section 9 of the Possessory Titles Act - Whether the learned judge erred in the interpretation of the statute - Whether judge has jurisdiction and discretion to grant an extension of time to enter an appearance or to accept an entry of appearance later than two months after the date of the last publication of the notice in the newspapers - Whether judge has jurisdiction or discretion to grant an extension of time to file or accept a written claim filed within 21 days of an entry of appearance where that appearance was entered later than two months after the date of the last publication of the notice in the newspapers - Section 19 of the Possessory Titles Act - Rule 26.1(2)(k) of the Civil Procedure Rules 2000 -

Whether court has jurisdiction and discretion under section 19 of the Possessory Titles Act to apply Rule 26.1(2)(k) to extend time or accept late claims or entry of appearance - Section 10(3) of the Possessory Titles Act - Whether learned judge erred in granting declaration of possessory title

Type of Order

Directions

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

The parties shall obtain the transcript of the proceedings in the court below in relation to the claim and file the same with the Court no later than 27th May 2022 and thereafter, the Court shall review the transcript *de bene esse* and render its decision on this appeal thereafter or give further directions for a further hearing as the Court considers appropriate.

Reason:

The Court was of the view that the transcript of proceedings in the court below would assist the Court in delivering and considering its decision on the appeal.

Case Name:

Hassan Brothers

V

Heida Rahim

**[GDAHCVAP2015/0024]
(GRENADA)**

Date:

Friday, 8th April 2022

Coram:

**The Hon. Dame Janice M. Pereira DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Benjamin Hood

Respondent: Ms. Claudette Joseph holding papers for Ms. Lisa Taylor

Issues:

Civil appeal - Whether the learned judge erred when she held that the respondent was the owner in fee simple of the disputed lot and entitled to possession of same - Whether the learned judge erred in holding that there was no evidence to support the appellant's assertion to ownership of the disputed lot - Whether the learned judge erred in holding that the respondent proved their case on a balance of probabilities - Whether the learned judge erred and misdirected herself in law when she held that the evidence brought by the appellant with regard to the tax receipt is not admissible so as to determine the boundaries of the disputed lot - Whether the learned judge erred and misdirected herself in law when she found that the disputed lot had not been conveyed to the appellant - Whether the learned judge erred by placing too much or any weight on irrelevant matters

Type of Order

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. Costs to be paid by the appellant to the respondent in the sum of \$1,800.00, being two-thirds of the costs awarded in the court below pursuant to rule 65.13(1) of the Civil Procedure Rules, on or before 9th May 2022.

Reason:

The Court in delivering its judgment, adopted the view of the Privy Council in Central Bank of Ecuador and others v Conticorp SA and others [2015] UKPC 11 where that court observed that:

“...(1) Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion; (2) The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence; (3) The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court.”

The Court was of the view that the appellant did not meet this threshold and therefore the appeal was dismissed and costs were awarded to the respondent.