

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE
ANTIGUA AND BARBUDA
29th April 2024 – 3rd May 2024

JUDGMENT

Case Name:

Nellie Forde

v

Bertille Da Silva

[SVGHCVAP2017/0012]
(Saint Vincent and the Grenadines)

Date:

Thursday, 2nd May 2024

Coram for
Delivery:

The Hon. Mde. Margaret Price Findlay, Justice of
Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal

Appearances:

Appellant: Mr. Joseph Delves

Respondent: Mr. Justin Simon KC holding papers for Ms. Paula
David

Issues:

Civil appeal – Land law – Possessory title to land –
Trial judge's reliance on material not before the court –
Whether the learned trial judge had erred in law by
first seeking and then relying on material and
documents which were not before the court in the trial

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed and the decision of the

learned judge set aside in its entirety.

2. The appellant is to have her costs of the appeal, such costs to not exceed two-thirds of the costs awarded in the court below.
3. If the parties or either of them wishes further to pursue their respective applications, the matter will be remitted to the High Court for trial before a different judge.

Reasons:

1. Where the judge sits as an arbiter between two parties, he need consider only what they put before him. If one or other omits something material and suffers from the omission, he must blame himself and not the judge. Where the judge sits purely as an arbiter and relies on the parties for his information, the parties have a correlative right that he should act only on information which they have had the opportunity of testing.

Official Solicitor v K and Another [1963] 3 All ER 191 applied.

2. With respect to the Respondent's claim for a declaration that he is the true owner of the parcel of land, having acquired it by purchase in or about 1972 from Carib Isle Enterprise Ltd to whom it had belonged at the time, the learned judge sought and then relied on the Wagenseil Affidavit which was not before him at trial, carrying out an evidence-gathering exercise in the absence of the parties. Moreover, the learned judge had expressly confirmed that this evidence, which he regarded as "crucial to the claim of Bertille Da Silva" had been the determining factor in his decision. Clearly, the decision had been arrived at in reliance on evidence which had not been before the court and in relation to which the appellant had not been given an opportunity to be heard.

Moreover, and in any event, justice was not seen to be done.

3. With respect to the Appellant's claim for title for possessory title to the land the Learned Judge found that she had failed to prove on a balance of probabilities that she had been in exclusive possession of the land for the requisite period of twelve years with the necessary animus possidendi, and that her claim failed on the facts. Nonetheless in the reasons given for this conclusion, the learned judge alluded to the evidence in the affidavit of Wagenseil in case No 292 of 1992. While it is not possible to discover whether the learned judge's decision on the appellant's claim would have been the same had he not taken the Wagenseil Affidavit into account or had the appellant been afforded the opportunity to be heard in relation to it, there is a risk that the contents of the Wagenseil Affidavit did work to the prejudice of the appellant in her application for possessory title to the land.

R v Leicester City Justices ex parte Barrow [1991] 2 QB 260 applied; R v Chief Constable of the Thames Valley Police ex parte Cotton [1990] IRLR 344 applied.

APPLICATIONS AND APPEALS

Case Name:

Yulia Gurieva-Motlokhov

v

**[1] The Port Manager of the Port Authority of
Antigua and Barbuda**

**[2] The Director of the Antigua and Barbuda
Department of Marine Services and Merchant
Shipping**

[3] Attorney General of Antigua and Barbuda

**[ANUHCVP2023/0028]
(Antigua and Barbuda)**

Date: Monday, 29th April 2024

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal

Appearances:

Applicant: Dr. David Dorsett

Respondents: Mr. Anthony Astaphan SC with him Mrs. Carla Brookes-Harris

Issues: Motion for conditional leave to appeal to His Majesty in Council - Section 122(2)(a) of the Constitution of Antigua and Barbuda - Whether the questions involved in the proposed appeal are of great general or public importance or otherwise, such that they should be submitted to His Majesty in Council - Presumption of constitutionality

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The notice of motion for conditional leave to appeal to His Majesty in Council is dismissed in its entirety.
2. The applicant shall pay costs to the respondent in the sum of \$2000.00 to be paid on or before 24th May 2024.

Reason: This is an application filed by the applicant on 13th December 2023 for conditional leave to appeal to His Majesty in Council under section 122(2)(a) of the Constitution of Antigua and Barbuda from a decision of the Court of Appeal dated 22nd November 2023.

The applicant submitted that the questions raised on

the proposed grounds of appeal to His Majesty are questions which, by reasons of their great general or public importance or otherwise, ought to be submitted to his Majesty in Council pursuant to section 122(2)(a) of the Constitution of Antigua and Barbuda.

Having read the motion, the Court was able to discern 2 such questions. At paragraph 8, '[t]he question of when and to what extent an Act is to be presumed to be constitutional is plainly one of great general or public importance. Any final decision on a claim involving a question of constitutional interpretation is expressly recognised to be of such importance that an appeal lies to His Majesty in Council as of right. But when the presumption of constitutionality arises in an interim decision, it is of no less practical importance, and necessitates the correction of the Court of Appeal's error'; and at paragraph 14, '[t]he (presumed) constitutionality of this provision of primary legislation is similarly plainly a question of great general or public importance'.

The Court of Appeal on 22nd November 2023 dismissed the applicant's appeal against the decision of Williams J on 29th June 2023 refusing to grant interim relief in respect of the applicant's originating motion challenging the respondents' claim that they are entitled to take possession of and sell the M/Y Alfa Nero and retain the proceeds by the virtue of section 38A of the Port Authority Act.

The applicant in the court below argued that the process authorised by section 38A of the Port Authority Act contravened sections 3 and 9 of the Constitution of Antigua and Barbuda. The applicant, in his submissions, contended that the following 3 grounds would form the grounds of her intended appeal to His Majesty in Council:

1. The Court of Appeal's presumption of constitutionality is too broad.
2. Section 38A of the Port Authority Act cannot be presumed to be constitutional.
3. The presumed constitutionality of section 38A of the Port Authority Act vitiates the Court's decision not to grant interim relief.

The focus it appeared was on the presumption of constitutionality in these intended grounds. In the course of his reasoning, rejecting interim relief sought by the applicant to restrain the respondents from selling the vessel and certain works of art upon it, the learned trial judge in responding to one of the orders sought by the applicant stated as follows:

“[31] The applicant seeks an order that the respondent should notify any prospective purchaser of the applicant’s interest in the vessel. The applicant also seeks an order preventing the Port Manager from issuing a certificate to the effect that the vessel is free and clear from any lien or encumbrances.

[32] It is not appropriate to make such an order for two reasons. Firstly, any such order would affect third parties who would not have had the opportunity to be heard in these proceedings. Secondly the Port Authority (Amendment) Act 2023 as an Act of Parliament is presumed to be constitutional. This presumption has not been rebutted by the applicant. Thus, the court should not make an order requiring the Port Manager to act contrary to an Act of Parliament in these circumstances.”

The Court of Appeal had the following to say about the statements of the learned trial judge:

“[105] The issue of constitutional presumption of constitutionality of legislation arose when the learned judge was considering the appellant’s prayer for interim declaratory relief in relation to the registration of the vessel under the Merchant Shipping Act. It was no part of his reasoning in relation to his refusal to grant interim injunctive relief. The appellant appeared not to have any issue with the learned judge’s reliance on and application of the presumption of constitutionality in refusing to grant an interim declaration that the vessel does not qualify for registration under the Merchant Shipping Act. She made no submissions to

such effect. Therefore, the appellant's argument that the learned judge applied a higher and different standard with respect to the injunctive relief as to the presumption of constitutionality than outlined in *Belize Alliance* is not borne out in the decision. There is therefore no merit to that argument. For this reason, I would dismiss ground of appeal 4."

In relation to the applicable test under section 122(2)(a) of the Constitution of Antigua and Barbuda, this Court has considered the ambit of similar constitutional provisions on numerous occasions including the decision of *Martinus Francois v The Attorney General* SLUHC VAP2003/0037 (delivered 7th June 2004, unreported). In considering the requirement under the Saint Lucian equivalent of section 122(2)(a) this Court stated that:

"[13] Leave under this ground is normally granted when there is a difficult question of law involved. In construing the phrase 'great general or public importance', the Court usually looks for matters that involve a serious issue of law; a constitutional provision that has not been settled; an area of law in dispute, or, a legal question the resolution of which poses dire consequences for the public..."

In explaining this passage this Court in *Renaissance Venture Ltd et al v Comodo Holdings Ltd* BVIH CMAP2018/0005 and BVIH CMAP2018/0008 (delivered 8th October 2018, unreported) summarised the applicable principles:

"[10]...Where there is no genuine dispute on the applicable principles of law underlying the question which the applicant wishes to pursue on his or her proposed appeal, a question of grant great general or public importance does not ordinarily arise, especially where the principle of law is settled either by the highest appellate court or by longevity of application. Where the principle is one established by this Court but is either unsettled, in the sense that there are differing views or conflicting dicta, or

there is some genuine uncertainty surrounding the principle itself, or it is considering to be far reaching in its effect, or given to harsh consequences, or for some other good reason would benefit from consideration at the final appellate level, this Court would be minded to seek the guidance of their Lordships' Board. Where, however, the real question on the proposed appeal is the way this Court has applied settled and clear law to the particular facts of the case, or whether a judicial discretion was properly exercised, leave will ordinarily not be granted on this ground. In such a case, the question on the proposed appeal may be of great importance to the aggrieved applicant, but it would not for that reason alone be a question of great general or public importance."

The issue concerning the presumption of constitutionality is a well-known concept in Caribbean constitutional law which merely states that the law is presumed to be constitutional unless an applicant can show or prove that it is unconstitutional. That is all that the so-called presumption means. It is for the applicant to show that the law is unconstitutional. In such a case the burden then shifts to the state to show that the law is reasonably justifiable in a democratic society.

The learned trial judge considered the factors mentioned by the applicant in considering whether or not to grant interim relief in the context of the challenge to the constitutionality of section 38A of the Port Authority Act and the learned trial judge made it clear that these matters are for trial. The applicant's right to bring a claim had not been determined and the right of the respondent to the property had not been determined by the court. These were matters for trial. The Court of Appeal did not have to engage in setting out the parameters of any such presumption since it was mentioned by the learned trial judge as one of the factors he had in mind in determining whether or not to exercise his discretion to grant the declaration sought.

There is no uncertainty in relation to any such

presumption because neither the learned trial judge nor the Court of Appeal accepted any definitive view on the way in which the presumption is to apply. Additionally, there is no serious issue of law involved here. Having regard to the proposed questions raised by the applicant in her notice of motion, the applicant has not shown that any of the proposed questions amount to questions of great general or public importance or otherwise such that they should be referred to His Majesty in Council. Accordingly, the notice of motion was dismissed in its entirety with the applicant to pay costs to the respondents in the sum of \$2000.00.

Case Name:

Calvin Ayre

v

Reuters News & Media Inc

**[ANUHCVP2023/0029]
(Antigua and Barbuda)**

Date:

Monday, 29th April 2024

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal**

Appearances:

Applicant: Mr. David Joseph KC with him Dr. L. Errol Cort and Ms. Claneisha Gomes

Respondent: Mr. John Carrington KC with him Ms. Cheryl-Lee Bolton

Issues:

Motion for conditional leave to appeal to His Majesty in Council - Section 122(1)(a) of the Constitution of Antigua and Barbuda - Whether the proposed appeal is an appeal as of right - Whether the decision being appealed is a final decision - Section 122(2)(a) of the Constitution of Antigua and Barbuda - Whether the questions involved in the proposed appeal are of great

general or public importance or otherwise, such that they should be submitted to His Majesty in Council

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

The decision is reserved.

Case Name:

Brenda Gillian Furlonge

v

**[1] Honourable Minister of Public Safety and
Labour**

[2] Honourable Attorney General

**[ANUHCVP2020/0009]
(Antigua and Barbuda)**

Date:

Tuesday, 30th April 2024

Coram:

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

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

The Hon. Mde. Esco Henry, Justice of Appeal

Appearances:

Appellant: In person

Respondents: Ms. Alicia Aska and Ms. Joy Dublin

Issues:

**Civil appeal - Judicial review - Antigua and Barbuda
Labour Code - Public authority's decision to transfer
the appellant to different positions within the
government's service - Whether the learned judge
erred in finding that the transfers were correctly made
by the government in their sole discretion without
consulting the appellant - Whether the learned judge**

erred in her construction of the Collective Agreement - Whether the learned judge erred in interpreting Division K (Part 4) of the Labour Code - Whether the learned judge failed to properly consider the fact that the appellant had been transferred after a complaint of sexual assault had been made - Whether the learned judge failed to make a finding of fact of malice against the employer - Whether the learned judge erred by failing to find that non-established government employees cannot be transferred without their consent - Whether the learned judge failed to consider that the employer had arbitrarily transferred the appellant

Type of Order:

Directions

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The parties shall file and serve supplemental submissions with authorities within 21 days of the date of this order to address the following:

The legal basis upon which non-established employees can be transferred at will or involuntarily; and whether this issue is circumscribed by reference to the common law and/or other authorities, with particular emphasis on procedural grounds, including the duty to act fairly with respect to a transfer to an office below the current status of the employee.

2. The judgment is reserved pending receipt of the supplemental submissions.

Reason:

The Court was of the view that further submissions were necessary to assist in arriving at a decision on the issues in the appeal.

Case Name:

Vere C. Bird III

v

Gaston Browne

**[ANUHC VAP2023/0024]
(Antigua and Barbuda)**

Date: Tuesday, 30th April 2024

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal

Appearances:

Appellant: Mr. Ruggles Ferguson KC with him Ms. Luann De Costa

Respondent: Mr. Jarid Hewlett

Issues: Civil appeal – Defamation – Fair comment – Truth – Whether the learned judge erred in finding that the respondent could rely on the defences of truth and fair comment as complete defences to the appellant’s defamation claim – Whether the learned judge erred in finding that the decision of Cabinet was invalid and not grounded in any sanctioned procedure, without a proper challenge first being successfully mounted to set it aside – Whether the learned judge erred in going behind what appeared to be a regular Cabinet decision, which was duly signed by the Cabinet secretary, to find that it was a ‘creeper’ decision and not a valid decision of Cabinet that the appellant could rely on – Whether the learned judge erred in placing no or insufficient weight on the common law and statutory presumption of regularity of official documents – Whether the learned judge erred in placing too much weight on the hearsay evidence of the respondent, that he was told by other members of Cabinet that there was no discussion of the decision at Cabinet – Whether the learned judge erred in placing the burden on the appellant to prove that the Cabinet decision was valid and not a ‘creeper’ decision – Whether the learned judge erred in finding

that once the court is satisfied that the respondent's comment and opinion was on the sole truthful fact that the appellant had been a beneficiary of a Cabinet decision to be sold land at a rate traditionally reserved for parliamentarians, then the respondent could rely on the defence of fair comment – Whether the learned judge erred in finding that the respondent was not actuated by malice in making the impugned comments against the appellant

Type of Order:

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Winston James

v

Ross Brooks

**[ANUMCVAP2023/0014]
(Antigua and Barbuda)**

Date:

Wednesday, 1st May 2024

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal**

Appearances:

Appellant: Mr. Wendel Alexander

Respondent: Mr. Arthur Thomas Jr.

Issues:

Application for costs upon discontinuance - Consent order

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED BY CONSENT THAT:

The appeal filed on 19th October 2023 is discontinued with costs agreed in the sum of \$1000.00.

Reason: The Court noted that a consent order was filed on 1st May 2024 and awarded costs in the sum of \$1000.00, as agreed by the parties.

Case Name: Brit Syndicates Limited

v

Ashley Hanley

[ANUHCVAP2024/0009]
(Antigua and Barbuda)

Date: Wednesday, 1st May 2024

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal

Appearances:
Applicant: Mr. Kendrickson Kentish
Respondent: No appearance

Issues: Application for leave to appeal - Adjournment

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED BY CONSENT THAT:

The application for the adjournment of the hearing of the application for leave to appeal is granted on the terms set out in the consent order signed by the parties, which provides for a report on the status of the mediation by 7th June 2024.

Reason:

The Court was furnished with a consent order indicating that the parties agreed to refer the matter to mediation and that a mediation report would be provided by 7th June 2024. Accordingly, the application for an adjournment was granted.

Case Name:

HMB Holdings Ltd

v

**[1] Attorney General of Antigua and Barbuda
[2] David Matthias**

**[ANUHCVP2022/0008]
(Antigua and Barbuda)**

Date:

Wednesday, 1st May 2024

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal**

Appearances:

Appellant:

Mr. Kendrickson Kentish

Respondents:

**Mrs. Carla Brookes-Harris, Dr. David Dorsett and Mrs.
Cherissa Roberts Thomas**

Issues:

Application by respondents to strike out appeal for want of prosecution - Delay - Whether the appellant's delay in prosecuting the appeal while awaiting the transcript was inordinate - Whether the delay in

prosecuting the appeal caused undue prejudice to the respondents

Type of Order:

Directions

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The application to strike out the appeal is withdrawn.**
- 2. The appellant shall file and serve the Record of Appeal on or before 31st May 2024.**
- 3. The parties shall thereafter follow the rules of court in respect of the filing and serving of skeleton arguments.**

Reason:

In considering the application to strike out the appeal, the Court noted that the parties had not made any concerted effort to further the progress of the appeal. The Court emphasized the need for parties to take all the necessary steps to minimise costs and delay, and such steps were not taken.

The Court further highlighted that where the parties are of the view that a matter can proceed in the absence of the transcript, it is available to them to agree in writing to dispense with the need for the transcript of proceedings pursuant to rule 62.12(3) of the Civil Procedure Rules (Revised Edition) 2023.

In light of the indications made by the Court, the respondents withdrew the application to strike out the appeal and directions were given for the filing of the Record of Appeal.

Case Name:

Sylvia O'Mard

v

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

[ANUHCVAP2021/0010]
(Antigua and Barbuda)

Date: **Wednesday, 1st May 2024**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal

Appearances:

Appellant: **Dr. David Dorsett**

Respondent: **Mr. Justin L. Simon KC for the first respondent**
Ms. E. Ann Henry KC for the second respondent
Mrs. Carla Brookes-Harris for the third respondent

Issues: **Application to strike out notice of appeal for want of prosecution - Failure to file the record of appeal - Whether the delay in filing the record of appeal and skeleton arguments was inordinate - Whether the delay constitutes an abuse of process - Whether the failure of the appellant to appear for at least three Status Hearings indicated an intention not to prosecute the appeal - Whether the delay in prosecuting the appeal has caused undue prejudice to the respondents**

Type of Order: **Oral Decision**

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application to strike out the appeal is refused.**
- 2. The appellant shall file and serve on the respondents the Record of Appeal containing all**

other relevant documents including her skeleton arguments in support of the appeal on or before 24th May 2024, failing which the appeal shall stand dismissed without further order.

3. The appellant shall bear the costs of the respondents in respect of this application in the sum of \$2500.00 per party, as agreed, to be paid on or before Friday, 31st May 2024.

Reason:

This was an application to strike out the appeal filed by the appellant on 28th April 2021. It was conceded that there had been inordinate delay by the appellant in the prosecution of her appeal. Further, the Court was of the view that no good reason was proffered by the appellant for the delay, other than the business of her legal practitioner. The Court found that this was not a good reason.

The principles to which the Court will have regard when considering whether to strike out an appeal for want of prosecution, have been distilled in a number of cases including *The Barbuda Council v The Attorney General et al* Civil Appeal No. 12 of 1994 (delivered 15th January 2004, unreported), which the Court has referred to and applied on many occasions. These include a consideration of the length of delay, the explanation put forward for it which would make the delay excusable, the merits or prospects of success as well as the prejudice to the respondents. These are not exhaustive as the Court will have regard to the overall justice of the case.

Counsel for the appellant relied on the Privy Council decision of *Icebird Ltd v Winegardner* [2009] UKPC 24 and suggested that to the extent that case differs in approach or application from the Barbuda Council case, the Privy Council decision of *Iceberg* should guide this Court. The Court was of the view that the principles adumbrated in the Barbuda Council case do not differ in substance and effect from those set out by the Judicial Committee of the Privy Council in *Iceberg*. The role and object of the Court is to seek to do justice in the circumstances of any particular case before it. The Court had regard to the notice of appeal

and the ground of appeal set out therein, which raises questions of the appellant's fundamental constitutional rights and freedoms in respect of her right or interest to property and her right of access to the court. This factor, in the Court's view, in a consideration of all the various factors weighs in the circumstance of this case heavier. The Court in the exercise of its discretion was therefore not minded to strike out the appeal, notwithstanding the inordinate delay and the lack of a good excuse.

However, the Court considered, having regard to the delay by the appellant, that the justice of the case justifies, and the appellant concedes, the making of an unless order. The Court also considered that the justice of the case warranted an order for costs in favor of the respondents to be paid by the appellant. It is common ground that given the nature of the proceedings that a transcript of the proceedings before the court below was not necessary.

Case Name:

Director of Public Prosecutions

v

[1] Dalianne Richardson

[2] Shanique Dwyer

[3] Shimmea Welsh

[4] Larsheka Gray

[ANUHCRAP2020/0002]

(Antigua and Barbuda)

Date:

Wednesday, 1st May 2024

Coram:

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

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

The Hon. Mde. Esco Henry, Justice of Appeal

Appearances:

Appellant:

Ms. Rashida Jonas

Respondents: Ms. Dalianne Richardson, Ms. Shimmea Welsh and Ms. Larsheka Gray in person

Issues: Criminal appeal - 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 of Appeal in Antigua and Barbuda during the week commencing 30th September 2024.
2. The Registrar of the High Court shall serve a copy of the notice of hearing on all of the respondents within a reasonable time before the next hearing and shall file affidavit evidence as proof of service thereafter.

Reason: The Court noted that there was no proof of service of the notice of hearing of the appeal on the second respondent. The matter was accordingly adjourned to allow her to be served and to appear on the next occasion.

Case Name: West Indies Oil Company Limited

v

**[1] Janis James
[2] Bernadine Henry Hughes**

**[ANUHCVP2022/0014]
(Antigua and Barbuda)**

Date: Thursday, 2nd May 2024

Coram: The Hon. Mde. Margaret Price Findlay, Justice of

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

Appearances:

Appellant: Mr. Justin Simon KC

Respondents: Ms. E. Ann Henry KC

Issues:

Application by respondents to strike out notice of appeal - Failure of appellant to file submissions in support of appeal in time - Application by appellant for an extension of time to file submissions in support of the appeal - Consent order

Type of Order:

N/A

Result / Order:

The parties were directed to reduce the terms of their agreement in a consent order for the Court's approval and provide the same to the Court by the morning of 3rd May 2024.

Reason:

Counsel for the appellant and the respondent indicated that they had agreed a position concerning both applications that were before the Court. Accordingly, the Court directed that the parties reduce the terms to writing in the form of a consent order for consideration by the Court.

Case Name:

[1] Akkel Caribbean Properties Limited

[2] David Bond

[3] Ena Bond

v

Carlisle Bay Limited

[ANUHC VAP2023/0013]

(Antigua and Barbuda)

Date:

Thursday, 2nd May 2024

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

Appearances:

Appellants: Mr. Justin Simon KC with him Ms. Joanne Massiah

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

Issues: Application to strike out notice of appeal - Application for an extension of time to file notice of appeal - Rule 62.9 of the Civil Procedure Rules (Revised Edition) 2023 - Failure to serve notice of appeal in accordance with rule 62.9(2) of the CPR 2023

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

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

Reason: Before the Court were two applications: an application to strike out the notice of appeal filed on 3rd November 2023 and an application for an extension of time to comply with rule 62.9(2) of the Civil Procedure Rules (Revised Edition) 2023 filed on 24th April 2024. The notice of appeal was filed on 28th March 2023. There

was an affidavit of service filed on 27th September 2023, some six months after the filing of the notice of appeal. CPR 62.9 required the appellants to serve the notice of appeal on the respondent within 14 days of the filing of the notice of appeal.

The application for an extension of time was filed some six months after the strike out application was filed. The strikeout application was predicated on the following premises: 1) that no written application for relief from sanctions was filed, 2) that the delay was not in keeping with the overriding objective of the CPR, 3) that no good reason was given for the delay, 4) that there was prejudice to the respondents and 5) that the appeal had no chance of success.

The appellants conceded that they failed to serve the notice of appeal within the timeframe stipulated by the CPR. The application for an extension of time was filed on 24th April 2024 some 13 months after the filing of the notice of appeal which the Court observed was seemingly filed in response to the strike out application filed in November 2023.

The Court, having considered the written and oral submissions of both applicants in the respective applications, was of the view that the delay was inordinate both in respect of the service of the notice of appeal and the application for an extension of time. The Court noted that the reasons given for the delay were administrative issues relative to the office of counsel and urged that such reasons have often not found favour with the Court. The delay was therefore inexcusable. In considering the merits of the appeal based on the notice of appeal, the Court observed that the grounds of appeal were primarily challenges to findings of fact made by the learned trial judge and to a lesser extent, an attack on mixed findings of fact and law. Having considered the grounds of appeal and the written and oral submissions of counsel, the Court was not satisfied that the appeal had good prospects of success.

In relation to the prejudice to the respondent, the Court noted that the respondent is entitled to the fruits of the judgment in the court below. Based on the

written and oral submissions, it was evident that the respondent has been kept out of the complete fruits of its judgment which remains unsatisfied in several respects.

In all of the circumstances, the Court dismissed the application for an extension of time and granted the application to strike out the appeal.

Case Name:

Asot A. Michael

v

The Speaker of the House of Representatives

**[ANUHCVAP2023/0035]
(Antigua and Barbuda)**

Date:

Thursday, 2nd May 2024

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal**

Appearances:

Appellant: Ms. Kema Benjamin

Respondent: Dr. David Dorsett and Mr. Jarid Hewlett

Issues:

**Application to strike out notice of appeal - CPR 62.1(3)
- Section 31(2)(g) of the Eastern Caribbean Supreme Court Act - Whether the claim which included an application for interim relief having been struck out in its entirety, brought the Notice of Appeal squarely within section 31(2)(g)(ii) of the Act and the appellant did not require leave of the court before filing the notice of appeal - Application Test - Whether the order in the court below was an interlocutory order and accordingly leave to appeal was required to file the notice of appeal - Whether the notice of appeal is a nullity**

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application to strike out the notice of appeal is granted.**
- 2. The notice of appeal filed on 5th October 2023 is declared a nullity and, accordingly, is struck out.**
- 3. Costs to the applicant in the sum of \$2,500.00 to be paid within 21 days of today's date.**

Reason:

Before the Court was an application by the respondent/applicant for the notice of appeal filed on 5th October 2023 to be struck out. The notice of appeal was against a decision of the learned trial judge given on 23rd August 2023 wherein he declared that he had no jurisdiction to hear the constitutional claim brought by the appellant. The application was predicated on the fact that no leave had been sought by the appellant to file the appeal, the order of the trial judge being an interlocutory one wherein leave was required.

Part 62.1(3) of the Civil Procedure Rules 2023 (Revised Edition) states that a determination of whether a judgment is final or interlocutory is made on the application test. Counsel for the respondent in opposing the application set out two grounds on which she rested her submissions: 1) By Section 31(2)(g)(2) of the Eastern Caribbean Supreme Court (Antigua and Barbuda) Act no leave was required to appeal an interlocutory order where an injunction was granted or refused. The appellant posited that the order of 23rd August 2023 struck out the claim in its entirety which included an application for interim injunctive relief which brought the notice of appeal filed on 5th October 2023 squarely within section 31(2)(g)(2) of the Act and therefore the appellant did not require leave to appeal; 2) The order of 23rd August 2023 brought the entire proceedings to an end when the claim was struck out in its entirety, it was therefore

a final order which did not require leave of the court before the notice of appeal was filed.

During oral arguments, counsel for the appellant/respondent conceded that she was no longer depending on limb 2 with respect to the application test. Having considered the legal and oral submissions, the Court was satisfied that the provisions of section 31(2)(g)(2) are clear and unambiguous. This was not an appeal against an order granting or refusing an injunction. The notice of appeal did not contain any ground challenging the grant or refusal of an injunction. Moreover, the application for the injunction was not considered by the court below and fell away once the court decided that it had no jurisdiction to hear the matter and struck the claim out.

The test for whether an order made is final or interlocutory is found in *Antigua Commercial Bank v Louise Martin* Civil Appeal No. 22 of 2007 (delivered 15th January 2008, unreported) where the Court held that in determining whether a party required leave to appeal from a decision of the High Court, rule 62.10 of CPR 2000 had to be read as in the instant case with section 31(2)(g)(2) of the Eastern Caribbean Supreme Court (Antigua and Barbuda) Act pursuant to which any person who wished to appeal against an interlocutory judgment or order of the High Court had first to obtain the leave of a judge or of the Court of Appeal. For these purposes the application test is used to determine whether an order was interlocutory or final. An order made on an application which would not necessarily bring an end to the proceedings whichever way a decision was made was an interlocutory order and not a final order.

Consequently, using that definition, the Court was satisfied that the order of the learned trial judge was an interlocutory order and therefore leave was required to file the notice of appeal. Leave was not sought nor granted therefore the notice of appeal filed on 5th October 2023 was declared a nullity accordingly struck out.

Case Name:

**[1] The Minister of Health and the Environment
[2] The Public Service Commission
[3] The Commissioner of Police
[4] Attorney General
[5] Police Service Commission**

v

**[1] Shaniel Howe
[2] Novita Roberts
[3] Cavet Thomas
[4] Alfonzo Lyttle
[5] Brenton Smith
[6] Sylvorne Olliver**

consolidated with

**[1] The Minister of Health and the Environment
[2] The Public Service Commission
[3] The Commissioner of Police
[4] Attorney General
[5] Police Service Commission**

v

**[1] Shefflorn Ballantyne
[2] Travis Cumberbatch
[3] Rohan Giles**

**[SVGHCVAP2023/0003]
(Saint Vincent and the Grenadines)**

Date:

Thursday, 2nd May 2024

Coram:

**The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mr. Gerhard Wallbank, Justice of Appeal
[Ag.]
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellants: Mr. Anthony Astaphan SC with him Ms. Karen Duncan, Ms. Cerepha Harper-Joseph and Ms. Franeek Joseph for the 1st, 3rd and 4th appellants
Mr. Grahame Bollers for the 2nd and 5th appellants

Respondents: Mrs. Cara Shillingford-Marsh, Mr. Jomo Thomas and Ms. Shirlan Barnwell

Issues: Civil appeal - Constitutionality of Covid-19 Special Measures Rules 2021 - Whether the learned judge erred in failing to give effect to the recommendations of the Chief Medical Officer and the fact that the issues arose in the context of the Covid-19 pandemic and rising hospitalisations and deaths, particularly among unvaccinated persons - Whether the learned judge erred in failing to consider that the respondents had the choice to take the vaccine or apply for a medical or religious exemption and/or refuse to take the vaccine and bear the consequences - Separation of powers - Whether the learned judge erred in holding that the Covid-19 (Miscellaneous Amendments) Act, insofar as it grants the Minister unfettered powers to amend any existing law, violates section 37 of the Constitution and the doctrines of separation of powers and rule of law - Whether the learned judge erred in holding that section 73A of the Police Act, having been made pursuant to the Covid-19 (Miscellaneous Amendments) Act, is unconstitutional - Whether the learned judge erred in finding that the Special Measures Rules, made by the Minister of Health pursuant to section 43B of the Public Health Act, is unconstitutional, ultra vires, disproportionate and void – Whether the learned judge erred in finding that rules 8(1), 8(2), and 8(3) of the Special Measures Rules are in violation of section 77 and 78 of the Constitution and are void - Whether the learned judge erred in finding that the decisions of the Public Service Commission, the Police Service Commission and the Commissioner of Police to deem the respondents to have resigned from their respective offices pursuant to regulation 31 of the Public Service Regulations and section 73A of the Police Act respectively, by operation of law under rule 8 of the Special Measures Rules were unlawful - Whether the learned judge erred in finding that the deemed resignations of the

respondents, who were not given an opportunity to be heard, constituted a breach of the principles of natural justice - Whether the learned judge erred in holding that the Special Measures Rules, insofar as it has the effect of providing for deprivation of the respondents' accrued pension benefits or rights under their contracts of employment, infringed the respondents' right to protection from the deprivation of property without compensation under section 6 of the Constitution - Whether the learned judge erred in holding that the respondents never ceased to be public officers and are entitled to all emoluments and benefits as well as damages to be assessed

Type of Order:

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Taladro Holdings Venezuela

v

BOI Bank Corporation

**[ANUHCVAP2023/0033]
(Antigua and Barbuda)**

Date:

Friday, 3rd May 2024

Coram:

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

Appearances:

Appellant:

Dr. David Dorsett and Mr. Jarid Hewlett

Respondent:

Mr. Craig L. Jacas and Ms. Talia DaCosta

Issues:

Interlocutory appeal - Application for summary judgment - Appeal against decision of the learned master to dismiss application for summary judgment - Whether the respondent had a realistic prospect of success of defending the claim - Whether the learned master erred in concluding that he was not satisfied that the respondent had no realistic prospect of successfully defending the issues identified by the appellant - Appellant's instructions to respondent bank to pay out funds in its account and/or terminate the customer-banker relationship - Bank's failure to comply with appellant's instructions - Whether the respondent bank was under a strict duty to comply with appellant's instructions - Whether the respondent bank could successfully mount a defence for its failure to comply with the appellant's instructions - Whether the learned master erred by failing to make a determination on all the issues he was required to give a ruling on

Type of Order:

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

[1] Jessy James Khouly
[2] Sandy- Ann Khouly
(Administrators of the Estate of Wafaa Khouly
nee Hadeed a.k.a. Waffa Khouly
nee Hadid a.k.a Wafaa Khouly)

v

Mount St. John's Medical Center Board

[ANUHCVP2023/0034]
(Antigua and Barbuda)

Date: Friday, 3rd May 2024

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

Appearances:

Appellants: Mr. Kendrickson Kentish

Respondent: Mr. George Looby

Issues: Interlocutory appeal - Default judgment - Part 12 of the Civil Procedure Rules (Revised Edition) 2023 (“the CPR”) - Application to set aside default judgment - Part 13 of the CPR - Appeal against decision setting aside default judgment - Whether the learned judge erred in law in finding that there was a good explanation advanced by the respondent for its failure to file a defence - Whether the period for the filing of the defence commenced the day after the order of the Court of Appeal dated 8th March 2023 - Appellate interference - Whether the decision of the learned judge exceeded the generous ambit within which reasonable disagreement was possible, such that it was plainly or blatantly wrong, so as to warrant interference by the Court of Appeal

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.