

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT LUCIA
VIDEOCONFERENCE
MONDAY 8th- FRIDAY 12th November 2021

JUDGMENTS

[1] AMSTEL Investment Holdings Limited

[2] Christopher Stuart Mckenzie

**[3] Cavendish Management Enterprises
Limited**

and

[1] AMS Holdings Limited

[2] Circle Capital Limited

[3] Sukru Evrengun

and

AMS Holdings Limited

and

AMSTEL Investment Holdings Limited

**[BVIHCMAP2021/0016]
(Territory of the Virgin Islands)**

Date: Monday, 8th November 2021

**Coram for
delivery of
judgment:** **The Hon. Dame Janice M. Pereira, DBE, Chief
Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellants: Mr. Tim Wright
Respondents: Ms. Allana-J Joseph

Issues: Interlocutory appeal — Summary judgment — Material issues of fact — Unfairly prejudicial conduct of a director — Improper purpose — Dilution of shares — Whether the learned judge erred by applying the wrong test in determining the summary judgment application — Whether judge erred in not granting summary judgment on the ancillary claim on the basis that the actions of the director were for an improper purpose and were therefore invalid

Result and Reason: Held: dismissing the appeal and making the orders set out at paragraphs 48, 49 and 50 of this judgment, that:

1. The applicable test in this jurisdiction for determining proper purpose under section 121 of the BVI Business Companies Act 2004 is the ‘substantial or dominant purpose’ test. In applying this test a court must consider four issues. These are: (i) the power whose exercise is in question, (ii) the proper purpose for which that power was delegated to the directors, (iii) the substantial purpose for which the power was in fact exercised, and (iv) whether that purpose was a proper purpose. The substantial or dominant purpose test points to how fact sensitive issues of ‘purpose’ are generally, and the importance of deciding such issues not purely on affidavit evidence, but after hearing the evidence of the witnesses, including the directors, and such evidence being tested by cross-examination at a trial.

Section 121 of the Business Companies Act, Act No. 16 of 2004, Laws of the Virgin Islands applied; *Antow Holdings Limited v Best Nation Investments Limited and others* [2018] ECSCJ No. 253 (delivered 21st September 2018) followed; *Nam Tai Property Inc v IsZo Capital LP and another* [2021] ECSCJ No. 714 (delivered 4th October 2021) followed;

Extrasure Travel Insurances Ltd and another v Scattergood and another [2002] EWHC 3093 (Ch.) followed.

- 2. The test to be applied in determining an application for summary judgment is whether there is a real as opposed to fanciful prospect of either the claim or the defence, as the case may be, succeeding. In applying this test, the court must do so having regard to the pleaded cases and to any evidence adduced before it at that stage of the proceedings. Certain categories or types of claims are not well-suited for determination by summary judgment. Claims grounded upon allegations of reprehensible conduct, including fraud or dishonesty, are ill-suited for determination by summary judgment as they are usually fact sensitive claims, relying on complex facts and involving significant questions of law and fact for determination.**

Comodo Holdings Ltd v Renaissance Ventures Ltd. And another [2016] ECSCJ No. 78 followed.

- 3. In the instant matter, having regard to the pleaded issues and to the issues of fact which underpin any proper determination of the questions of improper purpose and unfairly prejudicial conduct, the learned judge was correct in concluding that this is not an appropriate case for ordering summary judgment. The Ancillary Claimants have pleaded allegations of breaches of fiduciary duties and statutory duties by Mr. Evrengun. They have pleaded that he acted in bad faith, dishonestly and for an improper purpose, and that he committed unfairly prejudicial, discriminatory, and oppressive conduct. These issues concern important questions of fact to be determined by the court having heard and seen the witnesses and with the benefit of cross-examination at a trial. Moreover, they also have some bearing on the court's proper determination of the**

substantial or dominant purpose for the restructuring of the share capital of AMS Holdings and the issuance of new shares in exchange for debt. It is for the court to decide the subjective motive or intention of the sole director when he made the decisions sought to be impugned in the Ancillary Claim, and to do so utilizing an objective approach to and assessment of all the relevant evidence, including Mr. Evrengun's explanation or evidence as to why he made the said decisions. Therefore, the judge was correct to approach the matter from the position of whether there were material issues of fact left to be determined and whether, in all the circumstances, it was appropriate to grant summary judgment.

4. In the instant matter, the principle set out by this Court in *Independent Asset Management Company Limited v Swiss Forfaiting Limited* that where there is a power struggle between different groups of shareholders, the directors should not issue additional shares in such a way as to affect the balance of power in the company or influence in any way the outcome of shareholders' resolutions, even where it results in additional capital or other benefits for the company, while important to the ultimate determination of the Ancillary Claim, is not of blanket application. There is no generally applicable rule that a decision of directors which may or does have as one of its effects the benefitting one group of shareholders of a company over another group, is or must be considered to be, without more, made for an improper purpose and therefore invalid. Each matter falls to be determined on its particular facts as to whether a decision which may or does have such an effect, was made for an improper purpose, in the sense that such effect was the substantial or dominant purpose.

Independent Asset Management Company Limited v Swiss Forfaiting Limited [2017]

ECSCJ No. 271 (delivered 24th November 2017) considered.

- 5. In the instant matter, there was no power struggle or balance of power issue between Mr. Evrengun and Mr. McKenzie within AMS Holdings. It is indisputable that at the time of the decision to restructure the share capital of the company and to swap debt for equity, Circle was the majority shareholder and Mr. Evrengun the sole director, and Amstel was the minority shareholder of AMS Holdings. The restructuring of the share capital of the company and issuance of shares in exchange for debt which had the effect of increasing the number and percentage of shares held in the company by Circle and the dilution of the percentage of shareholding held by Amstel, did not result in a change in the balance of power or control of the company either at the level of the board of directors or of the shareholders in general meeting.**

Independent Asset Management Company Limited v Swiss Forfaiting Limited [2017] ECSCJ No. 271 (delivered 24th November 2017) distinguished.

- 6. It has not been demonstrated that the judge committed any error of law or of principle or that he took account of irrelevant facts or failed to have regard to relevant facts when reaching his decision on the summary judgment application or that his decision was plainly or blatantly wrong. Therefore, there is no basis upon which this Court ought to disturb the judge's decision.**

Dufour and others v Helenair Corporation Ltd and others (1996) 52 WIR 18 followed.

Case Name:

**Leon Riley
v
The Queen**

**[ANUHCRA2019/0004]
(Antigua and Barbuda)**

Date:

Monday, 8th November 2021

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

Mr. Lawrence Daniels

Respondent:

**Ms. Sharon Jones-Gittens holding papers for the
Director of Public Prosecutions**

Issues:

Criminal appeal — Appeal against conviction and sentence — Lucas direction — Whether learned judge erred in failing to give a Lucas direction in relation to lies by accused relied upon by prosecution — Good character — Whether failure of counsel in court below to raise issue of good character renders conviction unsafe — DNA Evidence — Whether learned judge erred in failing to direct jury on lack of DNA evidence — Whether conviction unsafe and unsupported by evidence — Whether learned judge erred in permitting evidence of recent complaints made by virtual complainant — Section 28 Sexual Offences Act — Whether evidence of recent complaint in sexual case is inadmissible in trial for rape — Whether learned judge was required to give special direction to jury to disregard evidence of recent complaints — Section 40 of The Eastern Caribbean Supreme Court Act – Whether section 40 proviso to be applied – Whether the jury if they had been properly directed would inevitably have come to the same conclusion upon a review of all the evidence – Retrial - Whether a retrial should be ordered in the circumstances

**Result and
Reason:**

Held: allowing the appeal; quashing the conviction and sentence; and remitting the matter to the High Court for trial before a different judge, that:

1. A Lucas direction is not required to be given where there is the danger that giving the Lucas direction might only serve to elevate the importance of a lie, or potential lie, especially about a collateral fact, in the mind of the jury. The difference between the accounts of the appellant and the VC's mother was rather slight and had a Lucas direction been given, it may have served to elevate, to the appellant's prejudice, an otherwise potentially trifling issue of memory to a position of prominence in the jury's deliberations. Therefore, the learned judge did not err by not giving a Lucas direction on the issue of lies of this case.

Attorney General v Michael Spicer et al Criminal Appeal No. 6 of 2001 (delivered 14th January 2002, unreported) considered; Regina v Burge and Pegg [1996] 1 Cr. App 163 considered; Bhagchandka v The Queen [2016] EWCA Crim 700 applied.

2. No forensic evidence was tested and accordingly none was presented in court. As such, it was not necessary for any special direction to have been given about the failure of the prosecution to adduce forensic evidence, although certain samples had been collected for DNA analysis. The general direction which the court gave to the jury that, if there was any doubt of the appellant's guilt they should acquit, was enough guidance in the circumstances of this case. Therefore, the learned judge did not err in this regard.

Carlton Junior Hall v The Queen CCJ Appeal No. BCCR2019/001 considered; R v Chance [1988] 3 All ER 225 applied.

3. Section 28 of the Sexual Offences Act abolished all of the common law rules relating to evidence of recent complaint in sexual offence cases. Therefore, it was incumbent upon the learned trial judge to direct the jury to completely disregard the VC's evidence of recent complaints. However, a review of the summing-up given by the learned judge to the jury reveals that the learned judge did not give any direction to the jury on the law of recent complaints or previous self-serving statements or any directions as to how to use such evidence. Accordingly, the judge's failure to direct the jury in this regard was a fatal flaw.

Sexual Offences Act No. 9 of 1995 of the Revised Laws of Antigua and Barbuda applied; *The Queen v Lillyman* [1896] 2 Q.B. 167 considered; *White v The Queen* [1998] UKPC 38 applied; *Sheldon Thomas v The Queen* Criminal Appeal No. 11 of 2002 (delivered 20th October 2003, unreported) considered; *David Jobe v The Queen* Criminal Appeal No. 23 of 2003 (delivered 20th September 2004, unreported) considered; *Diaz v The State* [1990] LRC (Crim) 317 considered.

4. The test to determine whether the proviso within section 40 of the Supreme Court Act should be applied, is whether, if the jury had been properly directed, they would inevitably have come to the same conclusion upon a review of all the evidence. Upon considering the judge's summing-up, it cannot be concluded that a reasonable jury, properly directed and confronted with this evidence would, inexorably have convicted the appellant of the charges against him. That being the position, the proviso cannot be applied and the appeal must be allowed and the convictions for rape and serious indecency quashed.

The Eastern Caribbean Supreme Court Act, Cap. 143 of the Revised Laws of Antigua and Barbuda applied; Giselle Stafford and another v The State [1999] 1 WLR 2026 applied.

5. The Court has the power to order a retrial if it is in the interest of the public, the VC, and the appellant that the question of guilt be determined finally by the verdict of a jury, and is not left as something which must remain undecided by reason of a defect in legal machinery. To determine whether or not the proper course is to order a re-trial, this Court considered several non-exhaustive factors which include: (a) the seriousness and prevalence of the offence; (b) the expense and length of time involved in a fresh hearing; (c) the ordeal suffered by an accused person on trial; (d) the length of time that will have elapsed between the offence and the new trial; (e) the fact, if it is so, that evidence which tended to support the defence on the first trial would be available at the new trial; and (f) the strength of the case presented by the prosecution. The court was also of the view that, the decision requires the exercise of the collective sense of justice and common sense of the judges, who are familiar with local conditions. Applying the factors above, it is in the interest of justice that the question of the appellant's guilt be determined by the verdict of a jury. It is therefore appropriate in the circumstances for this Court to order a retrial.

Reid v R [1978] 27 WIR 254 applied; Au Pui-Kuen v A-G of Hong Kong [1979] 1 All ER 769 applied; Ng Yuk Kin v Regina (1955) 39 HKLR 49 applied.

Case Name:

Eugene Hamilton
v
[1] Cedric Liburd
[2] Leroy Benjamin
[3] Wayland Vaughn

**[SKBHCVAP2011/0025]
(Saint Christopher and Nevis)**

Date: Wednesday, 10th November 2021

Coram for delivery: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Terence V. Byron

Respondents: Mr. Delano Bart, QC with him Ms. Vadeesha John for the first respondent
Ms. Nisharma Rattan Mack for the second and third respondents

Issues: Civil Appeal - Costs - Whether order for costs to be taxed unenforceable due to repeal of the Rules of Supreme Court (1970) - Determination of quantum of costs - Whether learned judge erred in his approach to quantifying costs by determining what costs were reasonable.

Result and Reason: Held: Dismissing the appeal; ordering the appellant to pay the costs of the first respondent in the sum of two thirds of the costs in the High Court and making no order as to costs between the appellant and the second and third respondents, that:

1. An order requiring costs to be determined is not an order for the enforcement of costs. Therefore, the issue of enforceability could not be raised prior to costs being quantified. Additionally, the fact that the order by the first instance judge required costs to be 'taxed if not agreed' did not mean that there was no other method by which the court could quantify costs due to the repeal of the Rules of the Supreme Court (1970). The court

retained jurisdiction to determine matters relating to the quantification of costs under Parts 64 and 65 of the new Civil Procedure Rules 2000. Further an interpretation of the order to mean that the learned judge intended for costs to be taxed under the old rules whilst fully aware that those rules had been repealed at the time of making the order would produce an absurd result. A proper interpretation of the order suggests that reference to the word 'taxed' was simply intended to mean that costs should be assessed by the court in absence of agreement by the parties. The ground of appeal that the cost order is unenforceable therefore fails.

2. It is trite that this Court will be slow to interfere with a decision of the court below unless there is evidence that the costs were determined on an incorrect basis or resulted in a decision that was blatantly wrong. It must be borne in mind that the crucial consideration underpinning any judge's approach to the determination of the quantum of costs is what is fair and reasonable in all circumstances of the case, including the nature of the proceedings and other factors relevant to the assessment of costs. The learned judge followed the approach approved by this Court in *Lindsay Grant v Rupert Herbert* which similarly concerned an election petition (as opposed to a monetary claim) and in which costs were quantified using the method of determining what costs were reasonable. There was nothing to convince this Court that the learned judge erred in adopting this approach. Alternatively, had the learned judge quantified costs pursuant to Parts 64 or 65 of the Civil Procedure Rules 2000 or utilized a different approach altogether, there is no proof that a substantially different result would be forthcoming. Considering the foregoing, there is no basis upon which this Court should interfere with the judge's determination of costs to be paid by the

appellant. Consequently, this ground of appeal fails.

Lindsay Grant v Rupert Herbert
SKBHCVAP20012/0001 (delivered 21st
December 2017, unreported) considered.

3. As it relates to appeal of the decision of Thomas J made pursuant to this Court's order dated 2nd December 2011, that the appellant should pay the 2nd and 3rd respondents quantified costs, this ground of appeal was not argued before this Court due to the prior decision of this Court on 14th July 2017 in Grant v Herbert mentioned prior. However the court refers to its findings above in relation to the judge's approach to quantifying costs on the basis of what costs were reasonable costs and reiterates that it finds no fault of the learned judge in this regard. Furthermore this court was informed that settlement negotiations were ongoing between the appellant and the 2nd and 3rd respondents and the Court need not trouble itself on this issue.

Case Name:

The Attorney General

v

[1] Anthony Henry

[2] Francis Noel

[SLUHCVAP2020/0006]

(Saint Lucia)

Date:

Wednesday, 10th November 2021

Coram for
delivery:

The Hon. Dame Janice M. Pereira, DBE, Chief
Justice

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

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

Appearances:

Appellant: Mr. Garth Patterson with Ms. Tina Louison and Mrs. Rochelle John-Charles

Respondent: Ms. Lydia Faisal

Issues:

Civil appeal – Constitutional law — Detention of persons found unfit to plead — Limitations to right to liberty – Doctrine of implied repeal — Whether Criminal Code impliedly repealed conflicting provisions in Mental Hospitals Act — Section 1021 of the Criminal Code – Section 31 of the Mental Hospitals Act of Saint Lucia – Whether there is a statutory requirement that a person found unfit to plead is to be detained in a mental hospital – Obligation of state to conduct periodic reviews of fitness to plead — Whether failure of state to conduct periodic reviews on detainees amounted to a breach of liberty – Protection from inhuman and degrading treatment – Assessment of evidence – Whether detention of a person found unfit to plead in prison can amount to inhuman and degrading treatment — Applicability of European Court of Human Rights jurisprudence in interpreting Commonwealth Constitutions — Whether constitutional right to protection from inhuman and degrading treatment breached by failure of state to conduct periodic reviews on detainees – Whether respondents rights to personal liberty breached in circumstances where detention was for periods which undermined their rights to protection of the law — Redress for breaches of constitutional rights – Damages — Whether learned judge erred in the assessment of damages – Permanent stay of criminal proceedings – Principles applicable to grant of permanent stay of criminal proceedings

Result and Reason:

Held: allowing the appeal in part and making the orders set out at paragraph 142 of the judgment:

1. An appellate court ought only to interfere with a trial judge's exercise of discretion if satisfied that the exercise of discretion or evaluations of the evidence on the basis of which he

exercised his discretion were plainly wrong or the exercise of discretion was based on findings which were not open to him or her on the evidence.

Edy Gay Addari v Enzo Addari [2005] ECSCJ No. 125 (delivered 27th June 2005) followed; Ming Siu Hung and others v J F Ming Inc. and another [2021] UKPC 1 applied.

- 2. Detention of a person found unfit to plead in a prison as opposed to a mental hospital will not of itself result in a breach of their constitutional right to protection from inhuman and degrading treatment. A claim which invokes this right must be supported by evidence, on the basis of which a finding of breach may be founded. In this case, there was no direct evidence before the court or inferences drawn by the judge from which a breach of the right to protection from inhuman and degrading treatment could reasonably have been found.**

Section 5 of the Constitution of Saint Lucia, Cap 1.01 of the Revised Laws of Saint Lucia 2015 considered; Thomas v Baptiste [1999] 3 WLR 249 applied; Higgs and another v Minister of National Security and Others [1999] UKPC 55 applied; Ireland v United Kingdom (1980) 2 EHRR 25 considered; Mayeka v Belgium (2008) 46 EHRR 23 considered; ZH v Hungary ECHR 1891 (2012), application no. 28973/11 distinguished; Cable and Wireless v Marpin Telecoms and Broadcasting Company Limited [2000] UKPC 42 applied; Observer Publications Limited v Matthew and Others [2001] UKPC 11 considered; Strazimiri v Albania ECHR 028 (2020), application no. 34602/16 distinguished; WD v Belgium ECHR 277 (2016), application no. 73548/13 distinguished; Raffray Taddei v France ECHR 989 (2010), application no. 36435/07 distinguished; Novak v Croatia ECHR 483 (2007), application no. 8883/04 distinguished.

3. A breach of the right to the protection from inhuman and degrading treatment does not automatically follow from the fact that a detention has not been reviewed. The court must be satisfied that, had the periodic reviews taken place as required, the result would more likely than not have been that the detained person would have been permitted to stand trial or have been otherwise released from detention. In this case, the uncontroverted evidence before the judge was that both respondents continued to suffer from serious mental illness up until the date on which the matter was heard in the court below. The right to protection from inhuman and degrading treatment could therefore not have been breached by the fact of their unreviewed detention. Accordingly, it was not open to the judge to find that the respondents' constitutional rights to protection from inhuman and degrading treatment were breached.

Ian Seepersad and Roodal Panchoo v The Attorney General of Trinidad and Tobago [2012] UKPC 4 applied; Bissessar v The Attorney General of Trinidad and Tobago Civil Appeal No. P 136 of 2010 (delivered 31st January 2017, unreported) applied.

4. A breach of the right to personal liberty may be found where a person is detained in a place other than that which is specified by an authorising law. Both the Criminal Code and the Mental Hospitals Act authorise the detention of a person found unfit to plead. Section 31 of the Mental Hospitals Act provides for the mandatory detention of a person found to be insane prior to conviction in a mental hospital. However, section 1021(1) of the Criminal Code vests in the trial judge a broad discretion to determine the place of detention following a finding of unfitness to plead. Where there is a conflict such as this between the provisions of an earlier and a

later enactment, the court may find that the earlier enactment has been impliedly repealed to the extent of the conflicting provision, where such conflict gives rise to an inescapable logical contradiction.

5. It is clear that section 31 of the Mental Hospitals Act and section 1021(1) of the Criminal Code give rise to an inescapable logical contradiction. The mandate and discretion under the respective enactments are incompatible and cannot peaceably coexist. It follows that the mandatory requirement under the earlier section 31 of the Mental Hospitals Act for detention at a mental hospital following a finding of unfitness to plead, has been impliedly repealed by the later Criminal Code. Accordingly, there is no requirement in law for an accused person to be detained in a mental hospital pending recovery of their fitness to plead and a judge has a broad discretion to determine the place and manner of detention of the accused.

Section 3 of the Constitution of Saint Lucia Cap 1.01 of the Revised Laws of Saint Lucia 2015 considered; Section 31 of the Mental Hospitals Act Cap 11.14 of the Revised Laws of Saint Lucia 2015; Section 1021 of the Criminal Code 1992 considered; R v Pinder [2021] UKPC 13 considered; Re Greenwood (1855) 24 LJQB 148 considered; Re S-C (Mental Patient: Habeas Corpus) [1996] QB 599 considered; Commissioner of Prisons and another v Seepersad and another [2021] UKPC 13 considered; Ferdinand James v Planviron (Caribbean Practice) Limited and another [2019] ECSCJ No. 336 (delivered 16th October 2019) considered; Susan Snelling and Anor v Burstow Parish Council [2013] EWCA Civ 1411 considered; O'Byrne v Secretary of State for Environment, Transport and the Regions [2002] HLR 30 considered.

6. A finding of breach of the constitutional right to personal liberty, on the basis of the failure to conduct periodic reviews of a defendant's

fitness to plead, must be made on an assessment of the evidence. In this case, the evidence showed that the respondents continued to suffer from serious mental illness up until the date on which the matter was heard in the court below. It follows that the respondents' unreviewed detentions could not amount to a breach of their rights to personal liberty as no argument could be made on the evidence that they would have been released whether on bail or otherwise had their detention been subject to periodic reviews. Accordingly, the judge erred in finding that the detention of the respondents without periodic reviews amounted to a breach of their constitutional rights to personal liberty.

7. The circumstances in which the state may derogate from the constitutional right to personal liberty must be construed narrowly and detention under the Constitution of Saint Lucia and some other law, can only be lawful when it seeks to achieve the purpose for which it is authorised by the Constitution of Saint Lucia. The purpose of section 3(1)(a) of the Constitution of Saint Lucia and section 1021 of the Criminal Code is to ensure that detention is effected for the limited purpose of permitting a defendant to recover his fitness to plead with a view to standing trial. In this case, it cannot be reasonably said that Noel's detention in excess of 32 years was in legitimate pursuit of his recovery of fitness to stand trial when his period of detention was in excess of the maximum lawful custodial sentence which could have resulted from his trial and possible conviction. The detention therefore became arbitrary at some point and accordingly against the constitutionally enshrined safeguards. Noel's detention, following at the very least, 10 years, therefore could not reasonably have been in continued

pursuit of his conviction and sentence for the offence of causing grievous harm.

Section 3(1)(a) of the Constitution of Saint Lucia Cap 1.01 of the Revised Laws of Saint Lucia 2015 considered; Section 1021 of the Criminal Code 1992 considered; Liversidge v Anderson [1942] AC 206 applied; Dillon v R [1982] AC 484 considered; Schlieske v Federal Republic of Germany [1987] FCA 58 considered; Re S-C (Mental Patient: Habeas Corpus) [1996] QB 599 considered; Bouamar v Belgium (1988) 11 EHRR 1 considered; R (Gillan) v Commissioner of Police of the Metropolis [2006] 2 AC 307 considered; Winterwerp v Netherlands (1979) 2 EHRR 387 considered; Dow v Attorney General [1992] LRC (Const) 623 considered; Makuto v The State [2000] 5 LRC 183 considered.

- 8. The right to protection of the law is not limited to the compendium of rights set out in section 8 of the Constitution of Saint Lucia but is a broad spectrum of rights including the constitutional right to a fair trial within a reasonable time. In this case, Noel and Henry's detention ran counter to their constitutional rights to a fair trial within a reasonable time and the duration of the periods of detention in prison eliminated the possibility of a fair trial. In these circumstances, the respondents' rights to liberty must have been breached as the purpose of their detention had been effectively overtaken by the fact that the period of their detention exceeded the lawful custodial sentence which could have been imposed on them following a possible conviction, and a fair trial could no longer take place due to the passage of time.**

Section 8(1) of the Constitution of Saint Lucia, Cap 1.01 of the Revised Laws of Saint Lucia 2015 considered; Attorney General v Joseph and Boyce [2006] CCJ 1 (AJ) applied; Ong Ah Chuan v Public Prosecutor [1981] AC 648

applied; *Jabari Sensimania Nervais v The Queen* [2018] 4 LRC 545 considered; *Jamaicans for Justice v Police Service Commission and another* [2019] UKPC 12 considered; *Commissioner of Prisons and another v Seepersad and another* [2021] UKPC 13 considered; *Maya Leaders Alliance v The Attorney General of Belize* [2015] CCJ 15 (AJ) considered; *Urban St. Brice v The Attorney General of Saint Lucia* SLUHCVP2018/0036 (delivered 31st July 2020, unreported) applied; *Boolell v The State* [2006] UKPC 46 applied.

9. Where a trial judge exercises the discretion to award damages for breaches of constitutional rights, the quantum must be assessed in light of the particular circumstances of the case and the Court of Appeal ought not to interfere with the judge's award unless it exceeded the generous ambit within which reasonable disagreement is possible and was therefore blatantly wrong. In this case, there was no basis on which damages could have been awarded for the breaches of the respondents' constitutional rights for the entire period of their detention in prison. Further, the court should only use a daily rate in the assessment of damages where the date of the unlawfulness of the detention is readily ascertainable, or where losses incurred are capable of estimation on a per diem basis. As the dates on which the respondents' detention became unlawful is unascertainable, the use of a daily rate was inappropriate. The awards of damages are therefore outside the ambit of reasonable disagreement and are blatantly wrong. In carrying out the assessment of damages afresh, this Court considers it appropriate in the circumstances to award damages in the sums of \$250,000.00 and \$500,000.00 to Henry and Noel respectively for the breaches of their constitutional rights.

Ian Seepersad and Roodal Panchoo v The Attorney General of Trinidad and Tobago [2012] UKPC 4 applied; *James v Attorney*

General of Trinidad and Tobago [2010] UKPC 23 considered; Merson v Cartwright and Anor [2005] UKPC 38 considered; Subiah v The Attorney General of Trinidad and Tobago [2008] UKPC 47 considered; Martin Alphonso et al v Deodat Ramnath Civil Appeal No. 1 of 1996 (delivered 21st July 1997, unreported) applied; Everette Davis v Attorney General of St. Christopher and Nevis SKBHCV2013/0220 (delivered 30th June 2014, unreported) distinguished; Takitota v The Attorney General and Others [2009] UKPC 11 considered; Wakeem Guishard v The Attorney General of the Virgin Islands BVIHCVAP2018/0006 (delivered 2nd October 2020, unreported) applied; Boolell v The State [2006] UKPC 46 considered.

10. The court will only exercise its discretionary power to grant a stay of criminal proceedings in circumstances where it would be unfair, unlawful or in bad faith to permit the proceedings to continue. The circumstances of this case are extraordinary and given the length of the period that has elapsed since the respondents were charged and the impossibility of a fair trial, it would no longer serve the interests of justice for the prosecution to proceed. Accordingly, the indictments against Henry and Noel for double murder and causing grievous bodily harm respectively ought to be permanently stayed.

Urban St. Brice v The Attorney General of Saint Lucia SLUHCVP2018/0036 (delivered 31st July 2020, unreported) applied.

Case Name:

Clint Louis
v
Miguel Jeffrey

[SLUHCVP2018/0010]
(Saint Lucia)

Date: Wednesday, 10th November 2021

Coram for delivery: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Alvin St. Clair

Respondent: Ms. Sueanna Frederick

Issues:

Civil appeal — Negligence — Assessment of damages — Approach of appellate court to findings of fact of court below — Approach of appellate court to award of damages by court below — Apportionment of liability – Whether judge erred in apportionment of liability between appellant and respondent — Whether judge erred in finding that appellant was liable in the circumstances — Whether learned judge erred in assessment of damages for pain and suffering and loss of amenities — Whether learned judge failed to draw reasonable inferences – Whether judge’s decision went against weight of evidence

Result and Reason:

Held: allowing the appeal in part and making the orders outlined at paragraph 54 of the judgment, that:

1. An appellate court reviewing the findings of a trial judge should not interfere with the trial judge’s decision 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 judge’s conclusion. In this case, it cannot be said that the judge acted as an expert for the purposes of reconstructing the accident. This is because the judicial process of assessing credibility requires a judge to

weigh the balance of which narrative was more probable. The judge's attempt to rationalise how the accident happened does not equate to him acting as an expert witness. However, his theory of the accident is against the weight of the evidence. Based on the totality of the evidence, it was not open to the judge to find that Mr. Louis was more liable than Mr. Jeffrey for the accident. The advantage enjoyed by the judge by reason of having seen and heard the witnesses is not sufficient to explain or justify his conclusion. Given the extent of Mr. Jeffrey's role in causing the accident, a more appropriate apportionment of liability would be that Mr. Louis is 30% responsible and Mr. Jeffrey is 70% responsible.

Watt (or Thomas) v Thomas [1947] AC 484 applied; Webster Dyrud Mitchell and another v Jenny Lindsay [2021] ECSCJ No. 691 (delivered 20th September 2021) applied; Yates Associates Construction Company Ltd v Blue Sand Investments Limited [2016] ECSCJ No.63 (delivered 20th April 2016) applied; JTrust Asia PTE Ltd. v Mitsui Konoshita and another [2021] ECSCJ No. 691 (delivered 20th September 2021) applied; Onassis v Vergottis [1968] 2 Lloyd's Rep. 403 considered.

2. An appellate court may interfere with an award of damages if, in all the circumstances, there is no reasonable proportion between the amount awarded and the loss sustained. The appellate court will also interfere if the judge misapprehended the facts, took irrelevant factors into consideration, or applied a wrong principle of law, or applied a wrong measure of damages which made his award a wholly erroneous estimate of the damage suffered, such that the judge's award exceeded the generous ambit within which reasonable disagreement is possible and was therefore clearly and blatantly wrong. Applying the

principles, there is nothing to suggest that the judge wrongly exercised his discretion in awarding Mr. Louis \$100,000.00 for pain and suffering and not making an award for loss of amenities. There is no basis for this Court to interfere with the award of damages. However, in light of this Court's finding that liability should be split at 30%/70% as between Mr. Louis and Mr. Jeffrey respectively, the amount ultimately payable by Mr. Jeffrey to Mr. Louis should be adjusted accordingly.

Joseph Horsford v Bernard Jarvis [1996] ECSCJ No. 29 (delivered 24th June 1996) followed; Alphonso and others v Deodat Ramnath (1997) 56 WIR 183 applied.

3. It would be illogical and unreasonable to expect the judge to determine the nature and extent of Mr. Louis' injuries, his permanent or partial disability, and any particulars of loss of amenities, from the receipts produced by him. The receipts, together with the initial medical report and witness statement, were insufficient to assist the judge in determining Mr. Louis' entitlement to damages for any permanent or residual disability and for loss of amenities.

Dawn Noel v Don John [2012] ECSCJ No. 374 (delivered 21st December 2012) distinguished; Howell Fontenelle v Jn. Baptiste Marville [2017] ECSCJ No. 298 (delivered 12th December 2017) distinguished; Ryan Richards v Michael Francois, GDAHCV2010/0156 (delivered 7th November 2013, unreported) distinguished.

APPLICATIONS AND APPEALS

Nam Tai Property Inc.

v

IsZo Capital LP

[BVIHCMAP2021/0010]

and

Greater Sail Limited

v

IsZo Capital LP

[BVIHCMAP2021/0011]

(Territory of the Virgin Islands)

Date: Monday, 8th November 2021

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal [Ag.]

Appearances

Applicants: Mr. Thomas Plewman, QC with him Ms. Rosalind Nicholson and Mr. Renell Benjamin for Nam Tai Property

Mr. Vernon Flynn QC with him, Mr. John Carrington QC, Mr. Gerard Clarke, Mr. Andrew Emery and Ms. Gurprit Mattu for Greater Sail Limited

Respondent: Mr. Edward Davies QC with him, Mr. Ben Griffiths and Mr. Nicholas Burkill for Iszo Capital LP

Issues: Applications for leave to appeal to Her Majesty in Council as of right - Section 3(1)(a) of the Virgin Islands (Appeals to the Privy Council) Order 1967 – Applications to stay paragraph 4 of the order of Court of Appeal made on 4th October 2021 (reissued 6th October 2021) for convening of shareholders’ meeting pursuant to requisition made on 11th September, 2020 pending determination of appeal to Privy Council - Principles set out in C-Mobile Services Limited v Huawei Technologies Co. Ltd principles - Whether failure to grant stay would render appeal nugatory - Balance of harm - Application for variation of court order fixing record

date of 15th March 2021 to 19 November 2021 and variation of shareholders' meeting date from 30th November to 30th December – Adjournment of hearing date of appeal in BVIHCMAP 2021/0011.

Type of Order: N/A

Result/Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Decision is reserved.

Case Name:

[1] Francis Maurice
[2] Leo Williams
v
[1] Juliana Joseph
[2] Nyron Taylien
[3] AL Hamid Housing Construction Co. Ltd.

[SLUHCVAP2021/0005]
(Saint Lucia)

Date: Monday, 8th November 2021

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Applicants: Mrs. Wauneen Louis-Harris

Respondents: Ms. Veronica Barnard

Issues: Interlocutory appeal - Application to discharge order of single judge of Court of Appeal - Refusal of

application for extension of time to file leave to appeal - Exercise of judicial discretion - Whether judge erred in exercise of his discretion - Whether judge's exercise of discretion in refusing application for extension was plainly wrong - Principles guiding the grant of extension of time - Whether judge considered all relevant circumstances in exercising his discretion - Whether judge failed to consider the prospects of success on appeal - Whether appellate court should exercise its discretion afresh in the circumstances - Whether respondents would suffer any prejudice from grant of extension of time - Rule 26.2 Civil Procedure Rules 2000

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application to reconsider the order of the single judge dated 25th May 2021 is refused.
2. The decision of the single judge is affirmed.
3. The applicants shall pay costs to the respondents assessed summarily in the sum of \$1,000.00.

Reason:

This is a notice of application by the applicants in which they sought a number of orders, all of which concerned the order that was rendered by the single judge on 25th May 2021 in circumstances where the main crux of the application before the learned single judge was for an extension of time to seek leave to appeal. Alternatively, the application sought an extension of time within which to file the notice of appeal, relief from sanctions and a stay of execution against the order pending the determination of the appeal, together with an order that the Court treats the hearing of the application for leave as a substantive appeal and also an application for the learned single judge to remit the matter for trial before the High Court.

The Court considered the written and oral submissions of both parties. Having also reviewed

the entirety of learned judge's order, the Court was of the view that the learned judge took into account all of the relevant factors in exercising his discretion in dismissing the application and that he referred to the relevant principles in Carleen Pemberton v Mark Brantley [2011] ECSCJ No. 229 (delivered 14th October 2011) and Hyacinth v Joseph (2016) 89 WIR 303. The Court considered that importantly, the learned single judge stated in the preamble that he was of the view that the applicant did not properly seek to explain the reasons for the delay, the prejudice occasioned by the grant of an extension of time or the prospects of the applicants succeeding on appeal. The Court was of the view that the judge gave deliberate consideration to all of the relevant principles and examined the affidavit evidence. The Court held that there was no basis upon which they could have come to the conclusion that the single judge's exercise of discretion was plainly wrong as per the principles laid down in Michel Dufour and Others v Helenair Corporation Limited and Others (1996) 52 WIR 188 and were accordingly of the unanimous view that the appeal against the single judge's order should be refused.

The Court also heard from both parties on the issue of costs. Counsel for the appellants referred to the authority of Hyacinth v Joseph (2016) 89 WIR 303 and proposed an award of \$1,000.00 as an appropriate sum for costs. Counsel for the respondents made a request for $\frac{2}{3}$ of the costs awarded in the High Court but conceded to the discretion of the Court. The Court was of the view that the learned single judge made no award as to costs and thus an award of \$1,000.00 was deemed appropriate in the circumstances.

Case Name:

Yanne Drysdale

v

The Queen

[SLUHCRA2017/0003]

(Saint Lucia)

Date:

Monday, 8th November 2021

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. David Francis

Respondent: Mr. Daarsrean Greene and Mrs. Tanya Alexis-Francis

Issues: Criminal appeal – Murder - Appeal against sentence - Life sentence - Whether the sentence of life imprisonment is disproportionate, excessive and arbitrary - Whether the sentence of life imprisonment should be replaced by a term of 30 years - Whether the learned judge’s discretion in sentencing the appellant was improperly exercised - Whether the decision was blatantly wrong - Whether judge erred by failing to give any or adequate reasons for his sentence - Whether the learned judge misdirected himself in law insofar as he concluded that he had no choice but to sentence the appellant to life imprisonment - Whether new sentencing guidelines should have applied in sentencing the appellant - Whether domestic violence is a mitigating factor in the circumstances - Whether judge failed to take into consideration all the relevant circumstances of the offence and the offender in coming to his sentence

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved for an oral ruling at 3:00 pm.

Reason: N/A

Case Name:

Yanne Drysdale

v

The Queen

[SLUHCRA2017/0003]

(Saint Lucia)

Date:

Monday, 8th November 2021

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Mr. David Francis

Respondent:

Mr. Daarsrean Greene and Mrs. Tanya Alexis-Francis

Issues:

Criminal appeal – Murder - Appeal against sentence - Life sentence - Whether the sentence of life imprisonment is disproportionate, excessive and arbitrary - Whether the sentence of life imprisonment should be replaced by a term of 30 years - Whether the learned judge’s discretion in sentencing the appellant was improperly exercised - Whether the decision was blatantly wrong - Whether judge erred by failing to give any or adequate reasons for his sentence - Whether the learned judge misdirected himself in law insofar as he concluded that he had no choice but to sentence the appellant to life imprisonment - Whether new sentencing guidelines should have applied in sentencing the appellant - Whether domestic violence is a mitigating factor in the circumstances - Whether judge failed to take into consideration all the relevant circumstances of the offence and the offender in coming to his sentence

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal against sentence is allowed.
2. The sentence of the learned judge is set aside.
3. The sentence of 27 years and 7 months is substituted to commence from the date of sentence by the learned judge being 1st February 2007.

Reason:

The appellant, Yanne Drysdale, was convicted of the offence of murder of his estranged girlfriend and sentenced to life imprisonment. The background to this appeal was summarised in the submissions of the respondent which the Court adopted. The appellant appealed against his sentence. The main thrust of the submissions of learned counsel for the appellant was that the learned judge, in exercising his discretion in sentencing the appellant, failed to take into account all of the relevant circumstances in relation to the offence and the offender, which resulted in the sentence imposed being excessive and arbitrary. Learned counsel urged the Court to set aside the sentence of the learned judge and to impose an appropriate sentence. Learned counsel for the appellant submitted that in the circumstances of this case, applying the Sentencing Guidelines, an appropriate sentence would be a sentence of 30 years imprisonment.

Learned counsel for the respondent conceded that the learned judge failed to apply the principles of sentencing and as a result, the sentence imposed was excessive. Learned counsel submitted that in those circumstances, the sentence imposed by the Court should be set aside and the Court of Appeal agreed.

Counsel on both sides agreed that having regard to the level of seriousness of this case, the case would fall within paragraph 8 of the Sentencing Guidelines which provides for a starting point of 30 years and a range of 20-40 years. Counsel on both sides also agreed that the starting point should be 30 years. The Court considered the aggravating factors of the offence which had been submitted by both counsel

and which included the prevalence of the offence, the premeditation involved, the deceased received multiple stab wounds, another person who tried to stop the attack on the deceased was also injured by the Appellant and that this incident occurred in a public place. The Court considered that there were no mitigating factors of the offence. In the circumstances, the Court was of the view that the starting point should be increased to 35 years.

The Court also considered the aggravating factors of the offender and noted from the submissions of counsel for the Crown, the lone factor that the appellant was abusive to the deceased. In relation to the mitigating factors, the Court took into account the fact that the appellant had no previous convictions, he had a good relationship with the child born during that relationship with the deceased, the court below accepted that the appellant was remorseful, the Crown reminded the Court that the appellant was gainfully employed at the time of the incident and that based on the report there was a good prospect of rehabilitation. The Court found that in those circumstances, the mitigating factors of the offender outweighed the aggravating factors and the notional sentence should accordingly be reduced by 5 years. This brings the sentence to 30 years.

The Court also noted that the appellant was remanded into custody from the 8th September 2004 to the 1st February 2007 when he was sentenced by the learned judge; that being a period of 2 years 4 months and 21 days. The Court rounded that period to 2 years and 5 months. This period was deducted from the sentence of 30 years and this would bring the sentence to a period of 27 years and 7 months from the date of the sentence of the judge being 1st February 2007.

Case Name: **Nam Tai Property Inc**
(Applicant/1st Defendant)

and

IsZo Capital LP
(Applicant/Respondent)

and

Greater Sail Limited
(Applicant/2nd Defendant)

Westridge Investment Company Limited
(3rd Defendant)

[BVIHCMAP2021/0010]
(Territory of the Virgin Islands)

Date: **Wednesday, 10th November 2021**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal [Ag.]

Appearances:

Applicants: **Mr. Thomas Plewman, QC with him Ms. Rosalind Nicholson and Mr. Renell Benjamin for the Applicant/1st Defendant**

Mr. Vernon Flynn QC, with him Mr. John Carrington, QC, Mr. Gerard Clarke, Mr. Andrew Emery, Mr. Ben Woolgar and Ms. Gurprit Mattu for the Applicant/ 2nd Defendant

Respondent: **Mr. Edward Davies, QC with him Mr. Ben Griffiths and Mr. Nicholas Burkill for the Applicant/Respondent**

Issues: Commercial appeal – Motion for conditional leave to appeal to Her Majesty in Council – Motion for conditional leave to cross-appeal to Her Majesty in Council – Section 3(1)(a) of the Virgin Islands (Appeals to the Privy Council) Order 1967

Type of Order Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. Leave to appeal to Her Majesty in Council against the judgment of the Court of Appeal delivered on 4th October 2021 (and re-issued on 6th October 2021) affirming the decision of the court below made on 3rd March 2021 is hereby granted to the Applicant/ 1st Defendant and to the Applicant/ 2nd Defendant (collectively “the Applicants”), and for the Respondent to cross appeal on the following conditions:

- a) The Applicants and the Respondent shall each, within 90 days of the date hereof enter into good and sufficient security to the satisfaction of the Registrar in the equivalent sum of £500.00 sterling for the due prosecution of the respective appeal and cross-appeal, the payment of all costs as may become payable by the Applicants and the Respondent in the event of not obtaining an order granting final leave to appeal and cross appeal or of the appeals and cross appeal being dismissed for want of prosecution or in the event that the Privy Council orders the Applicants or the Respondent to pay the costs of the appeals or the cross appeal.

- b) The Applicants and the Respondent shall take all necessary steps to prepare a joint Record of Appeal in accordance with the provisions of rules 18 to 20 of the Judicial Committee Rules 2009 and Practice Directions 4.2.1 to

4.3.2 and 5: the same to be transmitted to the Registrar of the Court immediately upon final leave to appeal and cross appeal being granted and shall include a copy of the orders granting conditional and final leave.

c) Each of the Applicants and the Respondent shall apply to this Court within 30 days of receipt of the certificate of the Registrar that the security for costs ordered herein has been given within the time prescribed to the satisfaction of the Registrar and that the Applicants and the Respondent have otherwise complied with this order, for an order for final leave to appeal to Her Majesty in Council which applications shall be supported by the certificate of the Registrar.

2. The costs in these applications shall be costs in the appeals and cross appeal to Her Majesty in Council.

Reason:

The Court was of the view that the requirements of articles 3(1)(a) of the Appeals to the Privy Council Order 1967 of the Virgin Islands have been met and the Court accordingly grants conditionally leave to Her Majesty in Council to the applicant/1st defendant Nam Tai Property Inc, the applicant/2nd defendant Greater Sails Limited and the respondent IsZo Capital LP in respect of its intended cross appeal.

Case Name:

**Nam Tai Property Inc
(Applicant/1st Defendant)**

and

**IsZo Capital LP
(Applicant/Respondent)**

and

**Greater Sail Limited
(Applicant/2nd Defendant)**

**Westridge Investment Company Limited
(3rd Defendant)**

**[BVIHCMAP2021/0010]
(Territory of the Virgin Islands)**

Date: Wednesday, 10th November 2021

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal [Ag.]

Appearances:

Applicants: Mr. Thomas Plewman, QC with him Ms. Rosalind Nicholson and Mr. Renell Benjamin for the Applicant/1st Defendant

Mr. Vernon Flynn QC, with him Mr. John Carrington, QC, Mr. Gerard Clarke, Mr. Andrew Emery, Mr. Ben Woolgar and Ms. Gurprit Mattu for the Applicant/ 2nd Defendant

Respondent: Mr. Edward Davies, QC with him Mr. Ben Griffiths and Mr. Nicholas Burkill for the Applicant/ Respondent

Issues: Commercial appeal – Application for stay of judge’s order

Type of Order Oral Decision with Written Reasons to Follow

Result / Order: IT IS HEREBY ORDERED THAT:

1. The Stay Applications seeking a stay of paragraph 4 of the order of the Court of Appeal contained in its judgment delivered on 4th October 2021 is refused.
2. The Applicant/1st Defendant and the Applicant/2nd Defendant shall pay the Respondent's costs of the Stay Applications, such costs to be assessed by a judge of the Commercial Court if not agreed within 21 days.

Reason:

The Court was of the view that the applicants did not meet the threshold for a grant of a stay of the judge's order.

Case Name:

**Nam Tai Property Inc
(Applicant/1st Defendant)**

and

**IsZo Capital LP
(Applicant/Respondent)**

and

**Greater Sail Limited
(Applicant/2nd Defendant)**

**Westridge Investment Company Limited
(3rd Defendant)**

**[BVIHCMAP2021/0010]
(Territory of the Virgin Islands)**

Date:

Wednesday, 10th November 2021

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief
Justice**

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

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

Appearances:

Applicants: Mr. Thomas Plewman, QC with him Ms. Rosalind Nicholson and Mr. Renell Benjamin for the Applicant/ 1st Defendant

Mr. Vernon Flynn QC, with him Mr. John Carrington, QC, Mr. Gerard Clarke, Mr. Andrew Emery, Mr. Ben Woolgar and Ms. Gurprit Mattu for the Applicant/ 2nd Defendant

Respondent: Mr. Edward Davies, QC with him Mr. Ben Griffiths and Mr. Nicholas Burkill for the Applicant/ Respondent

Issues: Commercial Appeal – Application for variation of Record Date and shareholders’ meeting date

Type of Order Oral Decision with Written Reasons to Follow

Result / Order: IT IS HEREBY ORDERED THAT:

1. The Record Date Applications are refused.
2. The Respondent’s costs of the Record Date Applications shall be paid by the Applicant/1st Defendant and the Applicant/2nd Defendant, such costs to be assessed by a judge of the Commercial Court if not agreed within 21 days.

Reason: The Court after reading the evidence filed in support of the application and the evidence in opposition, and hearing counsel, was of the view that the applications ought to be refused.

Case Name:

**Greater Sail Limited
(Appellant/ 2nd Defendant)**

and

**IsZo Capital LP
(Respondent/Claimant)**

**Nam Tai Property Inc
(1st Defendant)**

and

**Westridge Investment Company Limited
(3rd Defendant)**

**[BVIHCMAP2021/0011]
(Territory of the Virgin Islands)**

Date: Wednesday, 10th November 2021

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal [Ag.]

Appearances:

Applicants:	Mr. Vernon Flynn QC, with him Mr. John Carrington, QC, Mr. Gerard Clarke, Mr. Andrew Emery, Mr. Ben Woolgar and Ms. Gurprit Mattu for the Appellant/ 2 nd Defendant
Respondent:	Mr. Edward Davies, QC with him Mr. Ben Griffiths and Mr. Nicholas Burkill for the Respondent/ Claimant

Issues: Commercial appeal – Application for directions - Application for adjournment of hearing of appeal pending determination of appeal to Her Majesty in Council – Overriding objective of the Eastern Caribbean Civil Procedure Rules – Case management powers of the Court

Type of Order: Oral Decision with Written Reasons to Follow

Result / Order: IT IS HEREBY ORDERED THAT:

1. The hearing of the appeal herein is adjourned until the hearing and determination of the appeal to Her Majesty in Council in BVIHCMAP2021/0010.
2. The application for a stay pending the hearing of the appeal to the Court of Appeal is refused.
3. Costs in the Adjournment Directions Application shall be costs in the appeal.
4. The Respondent's costs on the stay application made herein shall be borne by the Applicant/2nd Defendant to be assessed by a judge of the Commercial Court unless agreed within 21 days.

Reason: The Court considered that the Appellant/2nd Defendant and the 1st Defendant have met the requirements for the grant of leave to appeal to Her Majesty in Council as of right under Article 3(1)(a) of the Virgin Islands (Appeals to the Privy Council) Order 1967 in respect of the judgment of the Court of Appeal delivered on 4th October 2021 in BVIHCMAP2021/0010 and that it had granted conditional leave to appeal on terms and also granted conditional leave to the Respondent to cross appeal to Her Majesty in Council on similar terms. The Court also noted the fact that Appellant/2nd Defendant's application for a stay of paragraph 4 of the Order of the Court of Appeal in BVIHCMAP2021/0010 pending the hearing and determination of the appeal to Her Majesty in Council was refused and was mindful of both its case management powers and the overriding objective of the Civil Procedure Rules and was of the view that in all the circumstances, this appeal should be adjourned until determination of the appeal to Her Majesty in Council in BVIHCMAP2021/0010.

Case Name:

**Nam Tai Property Inc
(Applicant/1st Defendant)**

and

**IsZo Capital LP
(Respondent)**

and

**Greater Sail Limited
(Applicant/ 2nd Defendant)**

**Westridge Investment Company Limited
(3rd Defendant)**

Date: Wednesday, 10th November 2021

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal [Ag.]

Appearances:

Applicants: Mr. Thomas Plewman, QC with him Ms. Rosalind Nicholson and Mr. Renell Benjamin for the Applicant/ 1st Defendant

Mr. Vernon Flynn QC, with him Mr. John Carrington, QC, Mr. Gerard Clarke, Mr. Andrew Emery, Mr. Ben Woolgar and Ms. Gurprit Mattu for the Applicant/ 2nd Defendant

Respondent: Mr. Edward Davies, QC with him Mr. Ben Griffiths and Mr. Nicholas Burkill

Issues: Commercial appeal – Application for stay of Court’s orders

Type of Order: Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The applications for a stay of the Court's orders made on 10th November 2021 pending the making of an application for a stay to Her Majesty in Council, are refused.**
- 2. The Applicant/1st Defendant and the Applicant/2nd Defendant shall pay the Respondent's costs of the applications for a stay, such costs to be assessed together with the costs of the Stay Applications by a judge of the Commercial Division if not agreed within 21 days.**

Reason:

The Court considered oral applications by the Applicant/1st Defendant and the Applicant/2nd Defendant for stays of the Court's orders made on 10th November 2021 in appeal number BVIHCMAP2021/0010, pending the making of an application for a stay to Her Majesty in Council. The Court heard counsel for the Applicant/1st Defendant, counsel for the Applicant/2nd Defendant and counsel for the Respondent and noted the orders which were sought to be stayed. The Court was mindful of all the circumstances of the case and was of the view that the Court's orders ought not to be stayed.

Case Name:

**SOL EC. Limited
v
Rubis West Indies Limited**

**[SLUHCVAP2020/0004]
Formerly SLUHCVAP2017/0052]
(Saint Lucia)**

Date:

Wednesday, 10th November 2021

Coram:

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

Appearances:

Appellant: Ms. Sueanna Frederick

Respondent: Ms. Marie-Ange Symmonds

Issues:

Civil appeal – Consent order - Withdrawal of appeal and counter appeal

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal and the counter appeal by consent are withdrawn and stand dismissed as in terms set out in the consent order dated and filed 9th November 2021.

Reason:

The Court having received a consent order from the parties, ordered that the appeal and the counter appeal be withdrawn and stand dismissed on the terms of the consent order.

Case Name:

Kharim Baptiste

v

Narisa Browne

[ANUMCVAP2020/0002]

(Antigua and Barbuda)

Date:

Thursday, 11th November 2021

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. R. Leonard Moore

Respondent: Ms. Sherrie-Ann Bradshaw

Issues: Civil appeal - Variation of order of single judge - Whether application to vary the order of a single judge made within time - Rule 62.16A Civil Procedure Rules 2000 - Application for extension of time within which to serve extension of time – Application to serve extension of time application by registered post - Service by alternative method - Service of application by registered post deemed good service - Relief from sanctions

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The order of Baptiste JA made on 28th September 2021, as a single judge of this Court, requiring the applicant/appellant to personally serve the respondent with the application for an extension of time to comply with the case management order made by the Chief Registrar on 10th May 2021 is varied so that the applicant/appellant shall be permitted to serve the application for an extension of time on the respondent on or before 17th October 2021 via registered post at the address of the respondent's mother Virginia Simmons as Narisa Browne c/o Virginia Simmons 776E213 Apartment 2 Bronx, New York 10467 USA.
2. The service of the application via registered post at the aforesaid address on 16th October 2021 is hereby deemed to have been properly effected.
3. The applicant is granted relief from the sanction stipulated in paragraph 2 of the order of Baptiste JA dated 28th September 2021.
4. No order as to costs.

Reason: The Court considered the notice of application for a variation of the order of a single judge, for an extension of time and for the approval by the Court of an alternative method of service. The Court also noted the non-objection of Counsel appearing for

the respondent and was of the view that the application should be granted.

Case Name:

**Useta Joseph
v
Gabriel Clifton Joseph
[SLUHCVAP2018/0042]
(Saint Lucia)**

Date:

Thursday, 11th November 2021

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: Mrs. Wauneen Louis-Harris
Respondent: Ms. Ann-Alicia Fagan**

Issues:

**Civil appeal – Evidence – Admissibility of evidence -
Whether judge erred in letting the evidence of a
witness who was present during the appellant's
testimony be adduced - Weight attached to evidence
- Whether judge's assessment can be impugned -
Civil Code Cap 4:01 Revised Laws of Saint Lucia
2017 - Whether the learned judge erred in law by
failing to give due effect to Articles 1229, 1230 and
1231 of the Civil Code and in failing to grant the relief
sought - Whether the deed of transfer should have
been set aside - Whether there was an authentic act
in accordance with 1230 of the Civil Code**

Type of Order:

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The decision of the learned judge is affirmed.
3. The appellant shall pay costs to the respondent in the sum of \$3,000.00 to be paid within 21 days of the date of this order.

Reason:

This was an appeal by Ms. Uselta Joseph against the decision of the learned Smith J dated 19th October 2018, in which the learned judge dismissed the appellant's claim in its entirety and ordered the appellant to pay prescribed costs to the respondent. The appellant, being aggrieved by the learned judge's decision, filed a notice of appeal in which she listed six (6) grounds of appeal. However, during oral submissions, counsel for the appellant, Mrs. Wauneen Louis-Harris, informed the Court that the appellant would only pursue grounds 2, 3, 4, and 5.

The Court, upon considering the skeleton arguments and oral submissions of counsel for the appellant, the skeleton arguments of counsel for the respondent, Ms. Ann-Alicia Fagan, and its interaction with learned counsel for the appellant, was of the view that there was no need to call upon counsel for the respondent to respond to the oral submissions of counsel for the appellant, as there was no merit in the appeal.

The Court was of the view that the learned judge's decision was a closely reasoned one and there was no basis on which this Court could impugn the decision of the learned judge. This Court therefore affirmed the learned judge's decision in its entirety.

Case Name:

**[1]Dax Norville
[2]Dax Wholesale & Retails Inc
v
Royal Bank of Canada**

**[SLUHCMAP2021/0001]
(Saint Lucia)**

Date: Friday, 12th November 2021

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Horace Fraser

Respondent: Mr. Geoffrey DuBoulay and Mrs. Sardia Cenac Prospere

Issues: Interlocutory appeal - Case management powers of court - Witness summary - Grant of application to strike out witness summary - Rules 29.6(1) and 29.6(2) of Civil Procedure Rules 2000 - Whether it was permissible for counsel to file witness summary on behalf of witness - Rule 26.9 of Civil Procedure Rules 2000 - Whether judge had a discretion under Rule 26.9 to correct procedural error under Rule 29.6 - Whether judge exercised her discretion properly in not utilising her case management powers to rectify procedural error - Admissibility of expert evidence - Whether judge erred in striking out report on ground that it was opinion evidence - Sections 66 and 67 of the Evidence Act of Saint Lucia

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against the order of Justice St. Rose Albertini made on 10th February 2021 is allowed and the order set aside.
2. Leave is granted to the appellants to file and serve a witness statement of Andrew Chitolie and to make application under Part 32 of the Civil Procedure Rules 2000, if so advised, to put in expert evidence in support of the case for the appellants as defendants in the court below, within 14 days of the date of this order.
3. Having regard to the fact that the appellants were not diligent in making application to

correct the defects in the witness summary and report of Andrew Chitolie, giving rise to significant delay in the proceedings in the court below and necessitating this appeal, this Court exercises its discretion under Rule 64.6(2) of the Civil Procedure Rules 2000 to order the appellants to pay the respondent's costs in this Court and in the court below, in the sum of \$1500.00 for the costs in the High Court and two thirds of this amount, as costs in this Court, the total costs of \$2500.00 to be paid on or before 30th November 2021.

Reason:

The Court was of the view that the certificate of truth in the witness summary for Andrew Chitolie was defective but could be remedied by an order of the court. The Court was also of the view that the report of Andrew Chitolie includes statements of opinion and should therefore comply with the requirements of Part 32 of the Civil Procedure Rules 2000. The Court considered the overriding objective of dealing with cases justly under the Civil Procedure Rules 2000 and was of the view that the appeal should be allowed and that the order of Justice St. Rose Albertini be set aside.