

**EASTERN CARIBBEAN SUPREME
COURT**

COURT OF APPEAL

CHAMBER HEARING

20th February 2024

MATTERS DEALT WITH ON PAPER

Before: The Hon. Mde. V. Georgis Taylor-Alexander,
Justice of Appeal [Ag.]

Case Name: BOI Bank Corporation

v

Jose Rafael Padron Salazar

**[ANUHCVP2023/0039]
Antigua and Barbuda**

Date: Tuesday, 20th February 2024

On paper: Applicant: Mr. Craig L. Jacas

Respondent: Dr. David Dorsett

Issues: Application for stay of execution pending the hearing and
determination of the appeal

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application for a stay of execution is granted pending the hearing and determination of the appeal.
2. Costs in the appeal.

Reason:

The Court considered the principles adumbrated in *C-Mobile Services Ltd. v Huawei Technologies Co. Ltd.* BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported) concerning the granting of an application for a stay of execution. The Court was satisfied that a stay of execution should be granted considering said principles, in particular, the likely prejudice which the applicant may suffer if the application for a stay of execution is refused coupled with the potential rendering of the appeal as nugatory.

Case Name:

BOI Bank Corporation

v

Sodecorp SA

**[ANUHC VAP2023/0038]
Antigua and Barbuda**

Date:

Tuesday, 20th February 2024

On paper:

Applicant: Mr. Craig L. Jacas

Respondent: Dr. David Dorsett

Issues:

Application for stay of execution pending the hearing and determination of the appeal

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application for a stay of execution is granted pending the hearing and determination of the appeal.
2. Costs in the appeal

Reason:

The Court considered the principles adumbrated in *C-Mobile Services Ltd. v Huawei Technologies Co. Ltd.* BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported) concerning the granting of an application for a stay of execution. The Court was satisfied that a stay of execution should be granted considering said principles and in particular, the likely prejudice which the applicant may suffer if the application for a stay of execution is refused coupled with the potential rendering of the appeal as nugatory.

Case Name:

Jeffrey Daniel

v

The King

[ANUHCRA2024/0001]

Antigua and Barbuda

Date:

Tuesday, 20th February, 2024

On paper:

Applicant: Mr. Wendel Alexander

Respondent: Ms. Shannon Jones-Gittens, Director of Public Prosecutions [Ag.]

Issues: Application for leave to appeal against conviction and sentence

Result / Order: IT IS HEREBY ORDERED THAT:

1. The notice of application for leave to appeal is granted.
2. The said notice of application is deemed to be the notice of appeal.
3. The Registrar of the High Court shall serve a copy of this order on the applicant and the Director of Public Prosecutions within 7 days of the date of this order and provide proof of service thereof.

Reason: The Court noted that the applicant had filed a notice of application for leave to appeal against conviction and sentence. However, even though leave is required to appeal against sentence in this particular case, no leave is required to appeal against conviction in accordance with section 39(a) of the Eastern Caribbean Supreme Court Rules Cap 143. The Court was satisfied that the application for leave to appeal against sentence had a realistic prospect of success and the applicant has thus met the threshold for leave to be granted.

Case Name: Monrowe Marvin Toussaint

v

The Police

**[DOMMCRAP2023/0014]
Dominica**

Date: **Tuesday, 20th February 2024**

On paper:

Applicant: **In person**

Respondent: **Ms. Sherma Dalrymple, Director of Public Prosecutions**

Issues: **Application for leave to appeal out of time**

Result / Order: **IT IS HEREBY ORDERED THAT:**

The notice of application for leave to appeal out of time is refused.

Reason: **The Court noted that there has been a more than five-year delay between the issuance of the bail forfeiture order and the filing of the application for leave to appeal out of time. Considering that the Court has an inherent jurisdiction to guard and protect its processes from abuse by litigants according to Baird v Goldgar and another SKBHCVAP2019/0038 (delivered 22nd December 2023, unreported) and the applicant has not furnished any good and cogent reason which would justify the inordinately long five-year delay, the Court decided to not exercise its discretion to grant the application.**

Case Name: **Liana Leanne Prince Charles**

v

Derrickson Charles

**[DOMHCVAP2013/0023]
Dominica**

Date: **Tuesday, 20th February 2024**

On paper:

Applicant: **Ms. Gina Dyer-Munro**

Respondent: **Ms. Hazel Johnson**

Issues: **Application to adduce fresh evidence**

Result / Order: **IT IS HEREBY ORDERED THAT:**

1. The application to adduce fresh evidence is refused.

2. There is no order as to costs.

Reason: **The Court was not satisfied that the evidence being sought to be adduced met the Ladd v Marshall principles recently set out by the Court in Geminis Investors Limited v Goods Technology Starting International Limited and another BVIHCMAP2022/0020 (delivered 23rd August 2023, unreported).**

Case Name: **Michael McQueen**

v

The King

[GDAHCRAP2023/0022]

Grenada

Date: **Tuesday, 20th February 2024**

On paper:

Applicant: **In person**

Respondent: **The Director of Public Prosecutions**

Issues: **Application for leave to appeal against conviction and sentence**

Result / Order: **IT IS HEREBY ORDERED THAT:**

- 1. The application filed by the applicant on 7th December 2023 and filed on the E-Litigation Portal on 28th December 2023 for leave to appeal against his conviction and sentence is granted.**
- 2. The application filed by the applicant on 7th December 2023 and filed on the E-Litigation Portal on 28th December 2023 for leave to appeal against his conviction and sentence is deemed the notice of appeal.**

Reason: **The Court, was satisfied that leave to appeal against conviction and sentence should be granted and having regard to rule 55 of the Eastern Caribbean Supreme Court, Court of Appeal Rules, the Court consequently deemed the leave to appeal application as the notice of appeal.**

Case Name: **Kevon Charles**

v

The King

**[GDAHCRAP2022/0003]
Grenada**

Date: **Tuesday, 20th February 2024**

On paper:

Applicant: In person

Respondent: The Director of Public Prosecutions

Issues: Application for legal aid

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appellant be assigned counsel from the roster of legal aid counsel kept by the Registrar of the High Court and selected by the Registrar of the High Court to assist the appellant in the conduct of the hearing of the appeal.
2. The Registrar of the High Court shall furnish counsel selected from the roster, with the Record of Appeal.
3. The Registrar of the High Court shall file and serve a copy of the affidavit filed on 8th August 2023 seeking an order of the Court to assign legal aid to the appellant, together with a copy of this order on the Office of the Director of Public Prosecutions within 7 days of the date of this order.

Reason: Upon considering section 52 of the West Indies Associated States Supreme Court (Grenada) Act, the Court was satisfied that it was in the interest of justice that the appellant/applicant be assigned legal aid in the circumstances.

Case Name: Theresa Agatha Calliste-Belle

v

Miranda Belle

**[GDAHCVAP2023/0032]
Grenada**

Date: Tuesday, 20th February 2024

On paper:

Applicant: Ms. Crystal Braveboy-Chetram

Respondent: Ms. Sheriba Lewis

Issues: Application for a stay of execution

Result / Order: IT IS HEREBY ORDERED THAT:

The appellant's application for a stay of proceedings in GDAHCV2022/0301 is granted.

Reason: The Court was satisfied that the applicant met the requirements for a stay to be granted having regard to the principles on which a stay is granted, in particular that: (i) the party seeking a stay must provide cogent evidence that its appeal will be stultified or rendered nugatory unless a stay is granted; (ii) the exercise of the Court's discretion to grant a stay will depend on all the circumstances of the case; and (iii) the essential question is whether there is a risk of injustice to one or both parties if a stay is granted or refused.

Case Name: Donniel Pierre

v

The King

**[GDAHCRAP2023/0009]
Grenada**

Date: Tuesday, 20th February 2024

On paper:

Applicant: In person

Respondent: No appearance

Issues: Application for legal aid

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appellant be assigned counsel from the roster of legal aid counsel kept by the Registrar of the High Court and selected by the Registrar of the High Court to assist the appellant in the conduct of the hearing of the appeal.
2. The Registrar of the High Court shall furnish counsel selected from the roster, with the Record of Appeal.
3. The Registrar of the High Court shall file and serve a copy of the affidavit and letter dated 2nd February 2024 seeking an order of the Court to assign legal aid to the appellant, together with a copy of this order on the Office of the Director of Public Prosecutions within 7 days of the date of this order.

Reason: Upon considering section 52 of the West Indies Associated States Supreme Court (Grenada) Act, the Court was satisfied that it was in the interest of justice that the applicant be granted legal aid.

Case Name: **Bank of Nevis International Limited**

v

Ocean Consulting Services Limited

**[SKBHCVAP2024/0001]
Saint Christopher and Nevis**

Date: **Tuesday, 20th February 2024**

On paper:

Applicant: **Ms. Kalicia Marks**

Respondent: **Mr. Benjamin A. Drakes with Ms. Joia Reece**

Issues: **Application for leave to appeal – Application for stay of execution – Application for furnishing of written reasons**

Result / Order: **IT IS HEREBY ORDERED THAT:**

- 1. The application for leave to appeal against the order of Gill J dated 15th December 2023 is granted.**
- 2. The applicant shall file and serve its notice of appeal within 21 days of the date of this order in accordance with the rules of Court.**
- 3. The application for an order that Gill J provide written reasons for the order dated 15th December 2023 is dismissed.**
- 4. The applicant's application for a stay of execution of**

Gill J's order dated 15th December 2023 pending the hearing and determination of the appeal is granted.

Reason:

The Court was satisfied that the applicant met the threshold for the grant of leave to appeal having regard to Rule 62.2(8) of the Civil Procedure Rules (Revised Edition) 2023 which states that leave to appeal may be given only where: (a) the court considers that the appeal would have a realistic prospect of success; or (b) there is some other compelling reason why the appeal should be heard. The Court was also satisfied that the applicant met the requirements for a stay of execution to be granted having regard to the principles set out in C-Mobile Services Limited v Huawei Technologies Co Limited BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported).

Case Name:

**[1] David Shimeld
[2] Paul Kerridge
[3] Jane Stables**

v

Drake Marina Village Limited

**[SLUHCVAP2023/0013]
Saint Lucia**

Date:

Tuesday, 20th February 2024

On paper:

Applicants

Mr. Gerard Williams

Respondent

Gordon, Gordon & Co. Registered Office for Drake Marina Village Limited

Issues: Application for a stay of execution

Result / Order: IT IS HEREBY ORDERED THAT:

The application filed by the applicant on 15th January 2023 is granted and the proceedings in the High Court in SLUHCV2021/0225 are stayed pending the hearing and determination of the appeal.

Reason: The Court considered the principles adumbrated in C-Mobile Services Limited v Huawei Technologies Co. Limited BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported), and in particular the essential question of whether there is a risk of injustice to one or both parties if it grants or refuses a stay. The Court was satisfied that the appeal is likely to be rendered nugatory if the proceedings in the court below are not stayed and that the respondent would unlikely be prejudiced by the granting of a stay.

Case Name: Allen Chastanet

v

[1] Comptroller of Customs
[2] Paul Noel

[SLUHCVAP2023/0025]
Saint Lucia

Date: Tuesday, 20th February 2024

On paper:

Appellant/Respondent Ms. Vanessa S. Pinnock

**Respondents/
Applicants**

Mr. Seryozha Cenac

Issues:

Application for an extension of time to file submissions in reply – Application for relief from sanctions

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application filed by the respondents/applicants on 17th January 2024 for an extension of time to file their submissions in reply to the notice of interlocutory appeal filed on 31st October 2023 is granted and the respondents/applicants are relieved from any sanctions which may have applied.**
- 2. The submissions in reply filed on 16th January 2024 are deemed properly filed.**

Reason:

The Court upon considering the length of delay and the reasons proffered therefor, was satisfied that the appellant/respondent would not be prejudiced by the granting of an extension of time for the filing of submissions by the respondents/applicants.

Case Name:

The King

v

Emerson Delplesche

[SVGHCRA2024/0002]

Saint Vincent and the Grenadines

Date:

Tuesday, 20th February 2024

On paper:

Applicant: Ms. Renee Simmons, Office of the Director of Public Prosecutions

Respondent: In person

Issues: Application for leave to appeal

Result / Order: IT IS HEREBY ORDERED THAT:

1. The parties shall file written submissions within 14 days of this order, on the issue of whether Section 61B of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, can be interpreted as conferring a right of appeal on the prosecution, within or additional to the three types of circumstances covered in the Section under the circumstances stipulated in the application filed.
2. The application for leave to appeal filed on 17th January 2024 against the decision of Henry J and the application for a stay of execution filed on 18th January 2024 shall be set down for hearing before the Full Court on a date to be fixed by the Chief Registrar.

Reason: The Court considered sections 61B(b) and 61B(c) of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act Cap. 24 of the Laws of Saint Vincent and the Grenadines Revised Edition (2009) as amended. The Court was of the view that the matter would be best placed before the Full Court for proper ventilation of the pertinent issues raised.

Case Name: [1] Russell Crumpler
[2] Christopher Farmer (as joint liquidators of Three Arrows Capital Limited (In Liquidation))

v

**[1] Three Arrows Capital Limited (In liquidation)
[2] Digital Currency Group, Inc.**

**[BVIHCMAP2023/0018]
Territory of the Virgin Islands**

Date: **Tuesday, 20th February 2024**

On paper:

Applicants **Mr. Romauld Johnson**

Respondent: **The First Respondent appearing in person
Ms. Mary Stewart for the Second Respondent**

Issues: **Application for the removal of the second respondent as a party to the appeal – Application for costs order to be preserved on appeal**

Result / Order: **IT IS HEREBY ORDERED THAT:**

- 1. The second respondent is removed as a party to this appeal forthwith.**
- 2. The First Affidavit of Christopher Farmer, including the exhibit to the same, which has been filed in support of the application, shall be sealed, and shall not be disclosed without the agreement of the second respondent or an order of the Court.**
- 3. The costs order in the second respondent's favour, at paragraph 2 of the order of Mangatal J [Ag.] dated 26th July 2023 in the proceedings below, shall be preserved on the appeal.**

4. There shall be no orders as to costs between the appellants, the first respondent and the second respondent in relation to this application or the appeal.

Reason:

The Court noted the settlement agreement exhibited to the first affidavit of Christopher Farmer. The Court also noted that the second respondent irrevocably withdrew its opposition and objection to the appeal in accordance with clause 1(i)(i) of the Settlement Agreement, on terms that inter alia: (i) it be forthwith removed as a respondent to the appeal; and (ii) the costs order in the second respondent's favour, at paragraph 2 of the Order dated 26th July 2023 in the proceedings below, shall be preserved and there shall be no orders as to costs between the parties in relation to the application or the appeal. Having regard to the foregoing, the Court was satisfied that the application ought to be granted on the terms agreed upon by the parties.

Case Name:

**Haimen Zhongnan Investment Development
(International) Co. Ltd**

v

Cithara Global Multi-Strategy SPC

**[BVIHCMAP2023/0012]
Territory of the Virgin Islands**

Date:

Tuesday, 20th February 2024

On paper:

**Appellant/Resp
ndent Mr. Jerry D. Samuel,**

[BVIHCMAP2023/0022]
Territory of the Virgin Islands

Date: Tuesday, 20th February 2024

On paper:

Appellant/Respondent Ms. Reisa Singh

Respondents/Applicants: Mr. Richard Baird

Issues: Application for security for the respondent's costs and an extension of time for the respondents to serve their written submissions and counter-notice/notice under CPR 62.10 OR 62.11

Result / Order: IT IS HEREBY ORDERED THAT:

The respondents' amended application for security for costs and application for an extension of time to serve their submissions in opposition to the appeal and any counter-notice until 14 days after the dismissal of its application for security for costs are set down for hearing before the Full Court at the next sitting of the Court of Appeal in the Territory of the Virgin Islands scheduled for the week commencing 20th May 2024.

Reasons: The Court was of the view that the matter ought to be properly ventilated before the Full Court.

Case Name: Mex Clearing Limited

v

[1] Mex Securities S.A.R.L

[2] Multibank FX International Corporation

[3] Von Der Heydt Invest S.A

[4] Naser Taher

**[BVIHCMAP2024/0003]
Territory of the Virgin Islands**

Date: Tuesday, 20th February 2024

On paper:

Appellant/Applicant: Ms. Samantha Hollingsworth for Multibank FX International Corporation

Respondent: Ms. Catherine O'Connell for Von Der Heydt Invest S.A

Issues: Application for an expedited hearing of the appeal

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application is dismissed.
2. Costs in the appeal.

Reason: The Court considered that the hearing of the appeal was no longer urgent given the adjournment of the lower court matter to a date during the summer vacation. As such, there was no need for an expedited hearing.

Case name: Ng Min Hong

v

Somarlie Lie
[2] Emir Omar Abdalla Siregar

Success Overseas Finance Limited

[BVIHCMAP2023/0028]
Territory of the Virgin Islands

Date: **Tuesday, 20th February 2024**

On Paper

Applicant: **Mr. James Noble**

Respondent: **Mr. Richard Evans for Somarlie Lie**

Issues: **Security for costs – Consent order**

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

- 1. The respondent shall give security for the applicant's costs of the appeal herein on the terms set out in this Order.**
- 2. The following sums shall be provided by the respondent by the following dates:**
 - a. US\$75,000 shall be paid on 23rd February 2024;**
 - and**
 - b. US\$75,000 shall be paid not less than 30 days before the first business day of the week in which the Appeal is listed to be heard.**
- 3. Each of the deadlines under paragraph (2) above shall expire at 4pm BVI time on the respective dates.**
- 4. Payment of each of the sums set out under**

paragraph (2) above shall be to Carey Olsen to be held by them under the terms of their Undertaking recorded in the Schedule to this order. Carey Olsen shall notify Conyers forthwith of a payment being made by the Respondent in satisfaction of paragraph (2) above.

5. In the event that any payment required under paragraph (2) is not made in full by its respective due date, the Appeal shall be dismissed with costs (to be assessed) pursuant to CPR 62.21(4), without the need for any further order.
6. There shall be no order as to costs.

Reason:

The Court noted that parties' agreement to an order and undertaking concerning security for costs and was in agreement with the terms of that order.