

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT LUCIA
11th March 2024 – 15th March 2024

JUDGMENTS

Case Name: **Panel 2**
Tobago House of Assembly

v

[1] Richard Graham also called Rick Graham
(Trading as Original Canopy Tours
Enterprises Limited)

[2] Darren Hrenuik (Trading as Original
Canopy Tours Enterprises Limited)

[BVIHCMAP2022/0074]
(Territory of the Virgin Islands)

Date: **Monday, 11th March 2024**

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

Appearances:

Appellant:	Ms. Hazel-Ann Hannaway with Ms. Jhneil Stewart
Respondents:	In person

Issues: **Interlocutory appeal - Application for injunction in support of foreign proceedings - Whether the judge applied the incorrect test for the grant of interlocutory injunctive relief in aid of foreign proceedings - Personal jurisdiction of court over respondents to grant an injunction - No address for personal service - Rule 7.3(2)(b) of the Civil Procedure Rules 2000 -**

Whether the judge erred in the exercise of her discretion by discharging the interim freezing injunction - Whether the judge failed to consider important facts relative to the risk of dissipation of assets - Whether the judge failed to have regard to the need for judicial comity - Whether the judge erred by failing to take into account several relevant matters thereby making errors of law and or of mixed law and fact

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed, and the order of the learned judge is wholly affirmed.**
- 2. The appellant shall pay to the respondents their costs on the appeal to be assessed by a judge of the Commercial Court if not agreed within 21 days.**

Reasons:

- 1. The freezing order or mareva injunction is an order restraining a respondent from disposing of, dissipating, or removing assets from the jurisdiction where there are grounds for believing that the respondent would take steps to do so and thereby frustrate the enforcement of a later judgment against him. The court has very wide powers to grant interlocutory injunctive relief in aid of foreign and domestic proceedings once it is satisfied that it is just and convenient to do so, in view of the prevailing circumstances. The court cannot grant such relief unless it is satisfied that the respondent has been served with process in accordance with the applicable rules of court and that the court has personal jurisdiction over the respondent. In addition, an applicant has to demonstrate that it has a good arguable case for being granted a money judgment that is enforceable in a court of law and that the respondent has assets within the jurisdiction against which the judgment may be enforced. Further, the court has to be satisfied that there is a real risk that the respondent will deal with**

those assets in such a way as to deplete or impair them and thereby frustrate the recovery of the judgment sum.

Section 24A of the Eastern Caribbean Supreme Court (Virgin Islands) Act, Cap 80 of the Laws of the Virgin Islands applied; *Broad Idea International Ltd v Convoy Collateral Ltd*; *Convoy Collateral Ltd v Cho Kwai Chee (aka Cho Kwai Chee Roy)* [2022] 2 WLR 703 considered; *Siskina (Owners of cargo lately laden on board) and others v Distos Compania Naviera SA* [1979] AC 210 applied.

2. CPR 7.3(2)(b) under which the appellant was granted leave to serve the respondents out of the jurisdiction, does not permit service out of a claim or process seeking a free-standing interim injunction in aid of foreign proceedings. The sub-rule applies only in relation to proceedings that include a substantive claim for final injunctive relief. Moreover, it was quite clear that the appellant had used OCT's registered address as the respondents' address. It simply did not supply any other address for the respondents. This is contrary to the express language of the rules of court. It was therefore quite in order for the learned judge to find that the evidence disclosed no address for the respondents in the BVI and therefore no basis existed on which to find that they resided or were domiciled in Tortola, BVI. By extension, service on them at OCT's registered office in the BVI would have been ineffective. Accordingly, the learned judge's determination that the BVI court does not have personal jurisdiction over the respondents and therefore could not grant a free-standing freezing injunction in aid of enforcement of foreign proceedings against them demonstrates that she appropriately considered and correctly applied the test for the grant of interim injunctive relief in support of foreign proceedings. It matters not that the respondents did not take the jurisdiction point at the hearing. The court is bound to exercise its discretionary power in accordance with the

rules of court. It could not maintain a free-standing interlocutory injunction against either respondent which was obtained contrary to the service stipulation in CPR 7.3(2)(b).

Rule 7.3(2)(b) of the Civil Procedure Rules 2000 applied.

3. In exercising the discretion to grant or discharge a freezing injunction, the court is required to act judicially and must seek to give effect to the overriding objective of the CPR to act justly. It is now settled in law that in order to satisfy the court that it is just and convenient to grant the freezing injunction, an applicant need not present a winning argument but must make out a good arguable case. The court does not conduct a mini-trial, instead the judge considers the affidavit testimony and evaluates the strengths and weaknesses of the case to assess whether a tenable evidentiary narrative is laid out.

Rules 24(1) and 17.1 of the Civil Procedure Rules 2000 considered; *Ninemia Maritime Corporation v Trave Schiffahrtsgesellschaft m.b.H. & Company K.G. (The Niedersachsen)* [1986] 1 Lloyd's Rep 397 considered.

4. The learned judge considered several factors in deciding whether injunctive relief should be granted including whether the appellant had a good arguable case. The learned judge was not satisfied that a good arguable case was made out in respect of the fraud claims as to OCT's existence or the alleged fraudulent performance of the services agreement. However, she was persuaded that there was a bona fide dispute between the parties in relation to breach of contract. The learned judge also had regard to the evidence as to the risk of dissipation and concluded that the appellant had not met the threshold of establishing with solid evidence that there was a real risk of dissipation of assets. She took into account, inter alia, the protracted length of time after which the

appellant pursued legal action against the respondents even though it contended that the respondents were intent on taking steps to dissipate their assets. In the circumstances of this case, the learned judge was entitled to ascribe significant weight to the appellant's delay and to find on the evidence before her that it reflected on the appellant's part, a remarkable level of indifference to the respondents' conduct. The court considers that the learned judge conducted a fair and balanced evaluation of the respective parties' cases, without attempting to conduct a mini-trial. There was more than sufficient evidence to justify the conclusion to which she arrived.

Mitsuji Konoshita and A.P.F. Group Co. Ltd v JTrust Asia PTE Ltd. BVIHCP2018/0047 and BVIHCP2018/0020 (delivered 18th December 2018, unreported) followed; Broad Idea International Ltd v Convoy Collateral Ltd; Convoy Collateral Ltd v Cho Kwai Chee (aka Cho Kwai Chee Roy) [2022] 2 WLR 703 applied; National Bank Trust v Yurov and others [2016] EWHC 1913 applied.

5. As to the issue of judicial comity, it is clear that the learned judge took into account the desirability for judicial comity and gave it at least moderate weight. However, she was careful to indicate that this had to be weighed against other relevant circumstances arising from the evidence which she also took into account such as the status of the pleadings. The learned judge cannot be condemned for having regard to the absence of the respondents' case in opposition in view of the considerable additions made by the appellant in its amended statement of claim, after the *ex parte* freezing injunction was granted and to the other material elements which were not before the Trinidad and Tobago High Court when that order was made. Accordingly, the appellant's criticisms of this aspect of the learned judge's evaluation of the case are unjustified. The learned judge was entitled to find as she did and the Court would

not reverse her determination by reason of the weight she attached to the judicial comity factor.

6. It is an established principle of law that an applicant seeking an *ex parte* injunction has a heavy duty of candour to the court regarding all relevant matters which may impact the grant or refusal of relief. Having regard to the appellant's claim of fraudulent misrepresentation by the respondents, the concerns highlighted by the learned judge were material. They pointed to evidentiary details which were not particularised in the original claim form filed in the Trinidad and Tobago court or in the *ex parte* application in either the Trinidad court or the BVI court. The learned judge had an abundance of material from which she was entitled to find that the appellant had failed to discharge its duty of candour to the court. Furthermore, on the authority of *Brink's Mat Ltd.*, it was open to her to discharge the freezing injunction on account of this breach. For the foregoing reasons, the Court finds that the judge made a well-reasoned, balanced and justifiable determination on each of the relevant factors and did not consider irrelevant matters. Her decision does not disclose any error in principle and is not blatantly wrong.

Brink's Mat Ltd v Elcombe [1988] 1 WLR 1350 applied.

Case Name:

Kier Construction Limited

v

[1] Sundry Workers

**[2] George Dester Tavernier (trading as
Tavernier Construction)**

**[ANUHCVP2022/0009]
(Antigua and Barbuda)**

Date: Wednesday, 13th March 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. Gerard St. C. Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Tianah Foster holding papers for Ms. Safiya Roberts

Respondents: Mr. Cosbert Cumberbatch for the First Respondent
Mr. Kendrickson Kentish for the Second Respondent

Issues: Civil appeal – Appeal from decision of Industrial Court – Section 17(1) of the Industrial Court Act – Whether the Court of Appeal has jurisdiction to review findings of fact by the Industrial Court – Contractual Interpretation - Whether the Industrial Court erred in its interpretation of Article 8.1 and other express terms within the agreements executed between Kier and Tavernier, which lead to the decision that there was an employee-employer relationship between Kier and the workers - Whether the Industrial Court erred in failing to take into consideration the evidence before it concerning the course of conduct of Kier and Tavernier and Tavernier’s actions towards the workers – Whether the Industrial Court misapplied the relevant legal principles and tests in determining whether an employee-employer relationship existed between Kier and the workers

Result/Order: IT IS HEREBY ORDERED THAT:

The appeal is allowed and the Order of the Industrial Court quashed.

Reasons:

1. In the usual course, the Court of Appeal can treat with appeals against findings of fact in accordance with its established body of case law. However, as it relates to matters emanating out of the Industrial Court, the jurisdiction to

review findings of fact is governed by legislation, specifically section 17(1) of the Industrial Court Act. If the findings of fact relied upon by the Industrial Court are found to be based on no evidence or if the Industrial Court fails to construe the evidence in accordance with the correct legal principles, it would amount to an illegality that would substantially affect the merits of the case, such that the Court of Appeal would be furnished with the requisite jurisdiction under the legislation to interfere.

Section 17(1) of the Industrial Court Act Cap 2.14 of the Laws of Antigua and Barbuda applied; *Leonart Matthias v Antigua Commercial Bank* ANULTPAP2017/0002 (delivered 28th May 2020, unreported) followed; *Cable and Wireless (Antigua and Barbuda) Limited v Antigua and Barbuda Workers' Union* ANULTAP2016/003 (delivered 23rd May 2019, unreported) considered.

2. The President of the Industrial Court found that Article 8.1 of the August Agreement and December Agreement when read, clearly supported Tavernier's assertions that he was engaged for the limited purpose of supplying Kier with tradesmen and that he was at no time considered the employer of the Sundry Workers. However, the Court must ascertain the objective meaning of the language which the parties have chosen to express the agreements. To do so, the Court must not solely focus on the wording of Article 8.1 of the August and December Agreements but must consider all the agreements as a whole. Upon reading the August and December Agreements in full, it is apparent that there are several articles which articulate clearly that it was agreed that Tavernier, as subcontractor, was expected to perform tasks beyond simply transporting the employees to the job site.

Rainy Sky SA and Others v Kookmin Bank [2011] UKSC 50 applied; *Wood v Capital*

Insurance Services Limited [2017] UKSC 24 applied.

- 3. Article 1.1 of the August and December Agreements contemplates later modifications and supplemental documents and as such, the provisions of the Subcontractor Agreement should have also been taken into consideration in the President's analysis of the facts. It is apparent and reasonable to conclude that the August, December and Subcontractor Agreements all contemplated that Tavernier would have at his disposal employees to complete the work subcontracted for and that such employees would not be the employees of Kier.**
- 4. In addition to the August, December, and Subcontractor Agreements, the letter dated 6th July 2007 acknowledges that without prejudice to Kier, Tavernier as 'employer' of the labour resources, was responsible for all severance, notice and holiday payments due to employees under the Laws of Antigua and Barbuda. The President in arriving at the conclusion that neither of those agreements governed the contractual relationship between the parties due to their conduct, was plainly wrong. The President appears to have cherry-picked which provisions in the Agreements were enforceable and which were not, without undertaking the appropriate thorough analysis of the various agreements.**
- 5. Further, his basis for finding that the August and December Agreements did not govern the parties was because there were amendments or modifications to the Agreements by the parties. However, this was not only an error in fact but also an error in law as it is trite that agreements can be mutually varied orally, in writing or by conduct. In any event, the August and December Agreements specifically provided that modifications to the agreements after the date of execution were permissible. It is clear throughout their interactions up until the**

Sundry Workers' filing of a claim before the Industrial Court, there was *consensus ad idem* between Kier and Tavernier on how the Agreements should be executed.

Globe Motors v RW Lucas Varity Electric Steering Ltd [2016] EWCA Civ 396 (20 April 2016) applied.

6. Finally, in a commercial context, it is quite difficult and tenuous to contemplate a reality where a subcontractor would be paid such a lucrative subcontract sum for works limited to the transport of labour and that there would be no direction, or supervision of the subcontracted works by the subcontractor if those subcontracted works were performed by the employees. Contract interpretation necessitates that good commercial sense should prevail, and in accepting the evidence of Tavernier that he had solely been contracted to transport the tradesmen, the Industrial Court came to a conclusion which was not borne out in the agreements, nor did that conclusion make sound commercial sense. From all accounts, Kier is a well-established construction company in Antigua and Barbuda. If it so wished, it could have contracted these tradesmen directly without going through the extensive task of executing 3 agreements which emphasised that it was not liable for hiring, supervising or paying these tradesmen. When considering the scope of the work required it would be quite difficult to contemplate Kier's agreement to subcontract work to a contractor who had no employees or who was not prepared to hire employees to complete the subcontracted tasks. Accordingly, the findings of fact relied upon by the Industrial Court cannot be supported by the evidence nor was the evidence construed in accordance with the correct legal principles. Therefore it is overwhelmingly clear that the findings amounted to an illegality that would substantially affect the merits of the case, such that this Court can review them in accordance with section 17(1)(e) of the Industrial Court Act.

APPLICATIONS AND APPEALS

Case Name:

Panel 1
[1] Harbor Club Limited
[2] Sunrod Property Inc
[3] Parcel Holdings Inc

v

**Mc Millan Monroe (Doing Business As
Tropical Decoration)**

**[SLUHCVAP2023/0027]
(Saint Lucia)**

Date:

Monday, 11th March 2024

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal

Appearances:

Applicants:

Mr. Mark Maragh with Ms. Vanessa Pinnock

Issues:

Application for leave to appeal - The test for grant of leave - Rule 62.2 (8) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 (CPR 2023) - Contract Law - Whether the learned master erred in law by failing to have due or any regard to the pleadings and the evidence adduced by affidavit and documentary evidence, which clearly showed that the respondent had not alleged or proven the existence of any JCT contractual relationship with the applicants or otherwise - Whether the learned master failed to appreciate that any alleged contract made orally or by way of any representations with the applicants, a matter not asserted on the pleadings, cannot contradict an express written term of an

agreement - The Court's power to make orders of its own initiative - CPR 26.2 - Whether the learned master erred in law and misdirected himself by basing his decision on matters erroneously inferred by him from the pleadings, without first affording the parties an opportunity to be heard on said issues, and by failing to comply with the requirements of CPR 26.2 - Whether the learned master erred in law by failing to find that the issues of an acknowledgment of the benefit of works done and a promise to pay by the third defendant were not supported by any of the evidence presented by the respondent - Whether the learned master failed to appreciate that all of the evidence adduced, namely the contract between the second defendant and the claimant, the invoices and proof of payments, clearly show the existence of a contract between the respondent and the Second Defendant and not with the applicants - Whether the learned master erred in law and misdirected himself by failing to note from the pleadings that the claimant limited its claim to one for breach of contract only and claimed remedies in relation to that cause of action only and it was therefore not open to the learned master to hold that the issues of estoppel and unjust enrichment arise - Whether the learned master's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reasons:

N/A

Case Name:

[1] The Development Control Authority
[2] Attorney General

v

Mondesir Estates Limited

**[SLUHCVAP2023/0020]
(Saint Lucia)**

Date: Monday, 11th March 2024

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal

Appearances:

Applicants: Mr. Anand Ramlogan SC with him Ms. Marcellina Jouavel and Mrs. Rochelle John-Charles

Respondent: Mr. Peter Foster KC with him Ms. Renee St. Rose, Ms. Marie-Ange Symmonds and Ms. Tianah Foster

Issues: Application to strike out notice of appeal - Application for extension of time to file record of appeal and skeleton arguments - Whether the delay in filing the record of appeal and skeleton arguments was inordinate - Whether the failure to file the record of appeal and skeleton arguments was intentional - Whether there are good and sufficient reasons for the delay - Whether the appellants have a reasonable prospect of success on the appeal - Whether the respondent is suffering prejudice as a result of the appeal - Whether the proposed appeal raises substantive issues of law on which the authorities are not settled - Whether the application for an extension of time should be granted in all the circumstances

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reasons: N/A

Panel 2

Case Name:

Mattaniah Charlemagne

v

**Saint Lucia National Housing Corporation
formerly St. Lucia Housing Authority**

**[SLUHCVAP2019/0018]
[SLUHCVAP2019/0004]
(Saint Lucia)**

Date:

Monday, 11th March 2024

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Applicant: Ms. Natalie Da Breo

Respondent: Ms. Petra Nelson

Issues:

**Withdrawal of application by Counsel for the appellant
to be removed from the record - Application to
discontinue the appeals - No objection by the
respondent**

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Leave is granted to counsel for the appellant to
withdraw the application to be removed from the
record as counsel for the appellant.**
- 2. The appeal in SLUHCVAP2019/0018 and Appeal
SLUHCVAP2019/0004 are hereby withdrawn and
dismissed with no order as to costs.**

Reasons:

Before the Court were two applications filed by Ms. Natalie Da Breo on 8th November 2022 and 23rd February 2023 respectively, in which she sought to be removed from the record as acting for the appellant. The Court noted that neither of the applications had been properly served on the appellant.

On the day of the hearing, Ms. Da Breo sought leave from the Court to withdraw her applications filed. Having heard Ms. Da Breo, leave was granted for the applications to be withdrawn.

Counsel for the appellant, Ms. DaBreo then moved her application (further to instructions received from the appellant) to discontinue both pending appeals before the Court. The Court noted that the respondent was not served in Appeal no. 18 of 2019. Counsel for the respondent indicated that there was no objection and that the respondent would not be seeking costs on the discontinuance. Leave was therefore granted for Appeals no. 18 and no. 4 of 2019 to be withdrawn with no order as to costs.

Case Name:

**Allen Chastanet
v
[1] Comptroller of Customs
[2] Paul Noel

[SLUHCVAP2023/0025]
(Saint Lucia)**

Date:

Monday, 11th March 2024

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Garth Patterson KC with Mr. Mark Maragh and Ms. Tanya Alexis Francis

Respondents: Mr. Anthony Astaphan SC with Mr. Seryozha Cenac

Issues: Civil Appeal - Appeal against learned judge's decision dismissing an application for leave to bring a claim for judicial review and awarding costs to the respondents to be assessed - Power of the Comptroller of Customs to withdraw criminal proceedings - Whether the learned judge erred in law when he decided that the appellant had failed to meet the threshold of an arguable case warranting the grant of leave - Whether the learned judge erred in finding that the court would have fallen into error if it were to assume, in ascertaining whether there was an arguable case, that the facts presented by the appellant were true, in circumstances where it was not possible to resolve the issues of fact which were in dispute - Whether the learned judge erred in adjudicating outside the parameters of the application by making findings which could only properly be resolved in the substantive claim for review - Whether the learned judge erred in awarding costs against the appellant contrary to CPR 56.13(6)

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reasons: N/A

Case Name: Schemel Dunbar

v

The King

[SVGHCRA2023/0017]
(Saint Vincent and the Grenadines)

Date: Tuesday, 12th March 2024

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Carl Williams

Respondent: Mr. Ritchie Maitland

Issues: Application for leave to appeal conviction and sentence - Murder - Whole life sentence with tariff of 30 years

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:

The Court having granted leave to the applicant/appellant to amend the notice of appeal filed by him on 10th August 2023, and having deemed the amended notice of appeal filed by him on 11th January 2024 to have been properly filed, leave is accordingly granted to the applicant/appellant to appeal against his conviction and sentence for murder.

Reasons: The Court having granted leave to the appellant/applicant to amend the notice of appeal filed by him on 10th August 2023, and having deemed the amended notice of appeal filed on 11th January 2024 to have been properly filed, leave was accordingly granted to the applicant/appellant to appeal against his conviction and sentence for the offence of murder.

Case Name: [1] The Roserie Company Limited
[2] Thomas Roserie
[3] Sonia Roserie

**[4] Chemical Manufacturer and Investment
Company Limited**

v

**First Caribbean International Bank (Barbados)
Ltd.**

**[SLUHCVAP2021/0012]
(Saint Lucia)**

Date: Tuesday, 12th March 2024

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of Appeal [Ag.]

Appearances:

Appellants: Ms. Cynthia Hinkson-Ouhla

Respondent: Mr. Bota McNamara with Ms. Zinaida McNamara-Phillip

Issues: Interlocutory appeal - Debt recovery – Application for adjournment

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

The matter is adjourned to a date to be fixed by the Chief Registrar after consultation with counsel for the parties.

Reasons: Counsel for the appellants having informed the Court that she needed to attend to a serious health issue affecting a member of her household and that she

wished to have the matter stood down until 2 p.m. for that purpose, and the Court being cognizant of the possibility that Counsel may yet not be in a position to proceed with the matter this afternoon, determined that it would be best that the matter be adjourned to a date to be fixed by the Chief Registrar.

Case Name:

Dr. Charles Isidore

v

Gerald Williams

**[SLUHCVAP2022/0003]
(Saint Lucia)**

Date:

Wednesday, 13th March 2024

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant/Applicant: Mr. Horace Fraser

Respondent: Mr. Dexter Theodore KC

Issues:

Oral application to amend ground of appeal - Whether application to amend is properly before the Court - Whether appellate court could permit amendment of ground of appeal which was not pleaded in court below

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The oral application by the appellant to amend the first ground of appeal is dismissed.**

2. The appellant having withdrawn the appeal, the appeal is hereby deemed withdrawn and dismissed.
3. The appellant will pay the cost of the respondent to be assessed if not agreed within 21 days of the date of this order.

Reasons:

Before the Court was an appeal against the judgment of the learned judge to dismiss the appellant's claim in the court below.

On the day of the hearing, counsel for the appellant made an oral application to amend his first ground of appeal to reflect his assertion that the learned judge erred in finding that the contract between the appellant and the respondent did not include an implied term that the respondent was required to vet all documents to ensure that everything was in order. Counsel for the respondent indicated that he was not disadvantaged by the application as he had sight of the appellant's skeleton arguments from January 2024 and addressed the proposed amended ground in his own skeleton arguments.

In considering the application to amend the ground of appeal, the Court considered that the transcript had been ready for pickup in March of 2022 yet the appellant only made the application to amend on the day of the hearing. The appellant explained that he had only noticed that his current ground of appeal did not reflect the true nature of the learned judge's findings when perusing the transcript to construct his skeleton arguments.

The Court determined that the new proposed ground of appeal would essentially have the effect of the Court of Appeal considering an implied term of the contract that was not pleaded in the court below. The Court concluded that the appellant's application to amend his first ground of appeal should be dismissed as his proposed amended ground concerned an implied term that was never pleaded and therefore Counsel was unable to raise the issue on appeal.

Upon the dismissal of his application to amend, counsel for the appellant reasoned that his other grounds of appeal would fall away considering that they all stemmed from the alleged failure of the learned judge to imply various terms into the contract, an issue that was never specifically pleaded. Given the dismissal of his application to amend, the appellant was of the view that his best course of action would be to withdraw the appeal.

The appeal was subsequently withdrawn and dismissed with costs to be paid to the respondent to be assessed if not agreed within 21 days of the date of this order.

Case Name:

Attorney General

v

James St. Prix

**[SLUHCVAP2022/0014]
(Saint Lucia)**

Date:

Wednesday, 13th March 2024

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Ms. Rochelle John-Charles with Mrs. Antonia Charlemagne

Respondent:

Ms. Maureen John-Xavier

Issues:

Civil appeal - Appeal against learned master's decision not to strike out the claim in the lower court - Application by appellant in lower court to strike out claim owing to respondent's failure to serve an Article 28 notice - Article 28 of the Civil Code - Requirement

that intended claimant serves notice on a public officer of an intended claim for damages at least one month before claim commenced - Article 28 notice not served on public officer - Section 4(4) and 13(2) of the Crown Proceedings Act - Whether the learned master erred in his construction of sections 4(4) and 13(2) of the CPA - Whether section 4(4) of the CPA extends Article 28 to the benefit of the State - Whether the learned master erred in finding that an Article 28 notice need only be served on the public officer if the public officer is named as a party to the claim - Whether the master erred in finding that since the public officer was not named as a party to the claim the failure to serve the Article 28 notice on him was not fatal to the claim

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

[1] Police Constable Bertrand Nestor
[2] Attorney General

v

Daran Edwards

[SLUHCVAP2022/0022]
(Saint Lucia)

Date:

Wednesday, 13th March 2024

Coram:

The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellants:

Mr. Seryozha Cenac with him Ms. Rochelle John - Charles

Respondent: Ms. Natalie Da Breo

Issues: Interlocutory appeal - Appeal against the learned master's refusal of the strike out application of the appellants - Article 28 of the Code of Civil Procedure of Saint Lucia - Article 28 Notice on public officer - Whether the learned master erred in his application of Bryan James et al v The Attorney General SLUHCVP2013/0023, SLUHCVP2014/0021 (delivered 10th February 2016, unreported) - Whether the learned master failed to have regard to the appellants' reliance on section 4(4) of the Crown Proceedings Act of Saint Lucia - Whether the learned master erred in law by failing to properly analyse the legal effect of section 4(4) of the Crown Proceedings Act - Whether the learned master erred in the exercise of his discretion

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

1. Judgment is reserved.
2. Both counsel for the appellant and the respondent are to provide submissions limited to three pages, to the Court on the definition of "Crown" in civil proceedings, on or before 27th March 2024.

Reasons: N/A

Case Name: Bank of Nova Scotia

v

Comptroller of Inland Revenue

**[SLUHCVP2022/0007]
(Saint Lucia)**

Date: Thursday, 14th March 2024

Coram: The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Barrie Attzs with Mr. Thomas Theobalds

Respondent: Mr. Seryozha Cenac with Mr. George K. Charlemagne

Issues: Civil appeal - Income Tax law - Nature and meaning of income in relation to income tax - The operation of withholding tax on non-resident persons regarding services provided outside of Saint Lucia - Income Tax Act Cap 15.02 of the Revised Laws of Saint Lucia - Appeal against the learned judge's decision to affirm the Income Tax Appeal Commissioners' finding that the payments/reimbursements made by the Saint Lucia Branch of the Bank of Nova Scotia to its head office in Canada were subject to withholding tax and that such tax was rightfully applied - Whether the learned judge erred in interpreting the Income Tax Act in a manner to effectively treat withholding tax as a separate form of taxation - Whether the learned judge erred in law by failing to consider/accurately apply case law presented to her - Cross appeal - Appeal against the learned judge's decision setting aside the Commissioners' decision that cost of sales in section 39(1) of the Act is a form of calculation in arriving at the cost of service and includes interest expenses - Whether the learned judge erred in law in finding that the Commissioners were wrong in holding that withholding tax is not to be treated purely as a tax on income - Whether the learned judge was correct to find that interest expense could not amount to costs of sales within the meaning of the Income Tax Act

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved

Reasons:

N/A

Case Name:

Attorney General

v

Faustinus George

**[SLUHCVAP2023/0019]
(Saint Lucia)**

Date:

Thursday, 14th March 2024

Coram:

**The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]
The Hon. Mde. V. Georgis Taylor-Alexander, Justice
of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Seryozha Cenac with Mr. George K. Charlemagne

Respondent:

Mr. Alvin St. Clair

Issues:

**Civil Appeal - Customs control and management-
Forfeiture of goods - Section 130 of the Customs
(Control and Management) Act (“the Customs Act”) of
Saint Lucia - Whether the detention of the
respondent’s vehicle was unlawful and constituted a
trespass to property - Whether the power to detain the
respondent’s vehicle was exercised under the
aforesaid section 130 or whether it was exercised
under some other power - Statutory interpretation -
Whether the judge erred in his interpretation of the
aforesaid section 130 which led him to conclude that
the only power the customs officer had was to issue a
notice of seizure in the circumstances, thereby
rendering the detention of the vehicle unlawful and a
trespass to property - Whether the judge failed to
distinguish between the terms “detention” and**

“seizure” under the Customs Act - Whether the judge failed to have regard to the analysis and reasoning set out in R (on the application of Eastenders Cash and Carry plc and others v Commissioners for Her Majesty’s Revenue and Customs [2015] UKSC 34 - Evidence - Whether the learned judge failed to materially assess the appellant’s evidence which led him to conclude that the detention of the vehicle was unlawful and a trespass to property - Assessment of damages - Whether the judge erred in the assessment of damages awarded to the respondent

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reasons:

N/A

Case Name:

Simon Marius

v

The King

**[SLUHCRA2017/0002]
(Saint Lucia)**

Date:

Friday, 15th March 2024

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal**

Appearances:

Appellant:

Mr. David Francis

Respondents:

Mr. Linton Robinson

Issues:

**Criminal appeal - Murder - Appeal against sentence
Eligibility for parole - Time spent on remand -
Prospects of rehabilitation - Previous good character -
Aggravating factors of offence - Whether the
imposition of the life sentence was excessive in the
circumstances - Whether the learned trial judge erred
in the exercise of his sentencing discretion - Whether
the learned trial judge erred by failing to employ the
appropriate methodology in imposing a sentence on
the appellant - Whether the learned trial judge erred in
the exercise of his discretion by failing to take into
account the time spent by the appellant on remand in
the calculation of his sentence - Whether the appellant
should be sentenced to a determinate term in
substitution for the sentence of life imprisonment
imposed**

Type of Order:

Directions

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The respondent shall file on or before 2nd April 2024:
 - i. The Psychological Evaluation Report dated 30th December 2017;**
 - ii. The Probation Officers Report prepared for the sentence hearing.**
 - iii. The Behavioral Assessment Report;**
 - iv. The report from the prison authorities on the appellant's conduct and during his time in custody;**
 - v. A precise calculation of the time that the appellant has spent on remand to date.****
- 2. Both parties shall file relevant sentencing authorities on or before 2nd April 2024.**
- 3. Judgment is reserved.**

Reasons: Having heard and considered the oral submissions of counsel for both parties, the Court was of the view that it was necessary for the parties to furnish the Court with certain documents relating to the appellant's aggravating and mitigating factors to aid in the determination of the matter. The Court reserved the judgment awaiting these documents.

Case Name: **Danny Joseph**

v

The King

**[SLUHCRA2023/0003]
(Saint Lucia)**

Date: **Friday, 15th March 2024**

Coram: **The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal**

Appearances:

Appellant: **Mr. Horace Fraser**

Respondent: **Mr. Linton Robinson**

Issues: **Criminal appeal - Murder - Appeal against conviction - Whether judge misdirected the jury as to intent - Section 56 of the Criminal Code of Saint Lucia - Whether by the judge not directing the jury in accordance with section 56 of the Criminal Code of how the jury should view intent, the appellant lost the benefit of being acquitted on the defences of self defence and provocation - If there was a misdirection by the judge, whether this caused a procedural irregularity to occur which resulted in the miscarriage of justice - Whether conviction is unsafe and unsatisfactory and goes against the weight of the evidence**

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Reasons: N/A

Case Name: Gilroy Auguste

v

The King

[SLUHCRAP2020/0004]
(Saint Lucia)

Date: Friday, 15th March 2024

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal

Appearances:
Appellant: Mr. Huggins Nicholas

Respondent: Ms. Kelly Thomson

Issues: Criminal appeal - Appeal against conviction and sentence - Whether the judge made adverse comments in the presence of the jury and asked questions which were clearly prejudicial to the appellant rendering the conviction unsafe - Whether the case raised a number of highly technical legal issues which required the judge to ensure that the appellant properly understood before asking him whether he objected or not - Whether the judge permitted a number of witnesses to refresh their memories without the conditions of the Evidence Act being satisfied - Whether the judge allowed witness statements to be tendered into

evidence without the requirements of the Evidence Act being satisfied - Whether the judge made a number of rulings on important legal matters in the presence of the jury - Whether the judge failed to render adequate assistance to the appellant who was unrepresented - Whether the judge sanctioned the treating of the prosecution witnesses as hostile witnesses in the absence of fulfillment of the demands of section 35 of the Evidence Act - Whether the judge gave inadequate directions on inconsistencies, contradictions, hostile witnesses, refreshing memory out of court witness statements admitted into evidence, the evidence and witness statement of PC Earl Torille and the fact that the virtual complainant was acting hysterical and had to give the remainder of her evidence via video link - Whether the sentence was excessive and contrary to the spirit and intent of the new Sentencing Guidelines - Whether the judge adequately took into account the time the appellant spent on remand

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reasons:

N/A