

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL
CHAMBER HEARING

18th April 2023

MATTERS DEALT WITH ON PAPER

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

Case Name: The Director of Public Prosecution
v
Desbones James St. John
[ANUHCRA2023/0001]
(Antigua and Barbuda)

Date: Tuesday, 18th April 2023

On paper:

Applicant: In person

Respondent: Wendel Alexander

Issue: Application for extension of time to appeal

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for an extension of time to appeal against the judgment of Williams J delivered on 10th February 2023 is granted.
2. The time for filing the notice of appeal is extended to 8th March 2023.
3. The notice of appeal filed on 8th March 2023 is deemed properly filed.

Reason: The Court was satisfied that the applicant met the threshold for the grant of an extension of time.

Case Name: Leroy Campbell
v
The King
[ANUHCRA2023/0002]
(Antigua and Barbuda)

Date: Tuesday, 18th April 2023

On paper:

Applicant: Ms. Kema Benjamin

Respondent: The Director of Public Prosecutions

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

Result / Order: IT IS HEREBY ORDERED THAT:

1. The applicant shall provide to this Court a copy of his minute of conviction and sentence within 14 days of the date of this order.
2. The applicant shall file and serve an application for tendering the fresh evidence to be relied upon supported by evidence showing compliance with the requirements of section 45 of Eastern Caribbean Supreme Court Act Cap 143 (including the statement referred to but not attached to the application) within 14 days of the date of this order.
3. The application for leave to appeal, leave to appeal out of time and the intended application to rely on fresh evidence is adjourned for consideration to the next Chamber Hearing scheduled for 30th May 2023.

Reason: The applicant's minute of conviction and sentence did

not accompany the application. The Court was also of the view that the purported fresh evidence to be relied on by the applicant was not tendered to the Court of Appeal in accordance with section 45 of the Eastern Caribbean Supreme Court Act Cap 143.

Case Name:

Oscar Vargas

v

- 1. Barbara Vargas (nee Pierre)**
- 2. CIBC First Caribbean International Bank
(Barbados) Limited**
- 3. Caribbean Union Bank**

**[ANUHCVP2020/0034]
(Antigua and Barbuda)**

Date:

Tuesday, 18th April 2023

On paper:

Applicant: In person

Respondent: Mr. Hugh Harshall

Issue:

Application for exceptional urgency

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application is adjourned to be heard by the Full Court on a date to be fixed by the Chief Registrar.**

Reason:

The application or exceptional urgency was not accompanied by the relevant order of the court below.

Case Name: Barbara Vargas
v
Oscar Vargas
[ANUHCVP2023/0009]
(Antigua and Barbuda)

Date: Tuesday, 18th April 2023

Appearances:
Applicant: In person
Respondent: No appearance

Issues: Application for leave to appeal

Result / Order: IT IS HEREBY ORDERED THAT:

1. The applicant shall provide a copy of the judgment and/or order of Robertson J dated 23rd February 2023 in Suit No. ANUHCVP2020/0200 within 14 days of the date of this order.
2. The application for leave to apply for Judicial Review of the judgment of Robertson J dated 23rd February 2023, or for leave to appeal against the said judgment is adjourned until the applicant files a copy of the judgment and/or order of Robertson J.

Reason: The order being appeal was not placed before the Court.

Case Name: [1]Angela Barkhouse
[2]Toni Shukla
v
[1]Samuel Benjamin Bankman Fried
[2]Emergent Fidelity Technologies Ltd
[3](In provisional Liquidation)
[4]Yonatan Ben Shimon
[ANUHCVP2023/0008]

(Antigua and Barbuda)

Date: Tuesday, 18th April 2023

Appearances:

Applicant: Dr. David Dorsett

Respondent: Mr. Kyle Kentish

Issues: Application for security for costs

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

The application of the Applicant, Samuel Benjamin Bankman-Fried, for security for costs in the sum of US\$200,000.00 is dismissed with costs of \$3,500.00 to the appellants to be paid within 21 days.

Reason: The Court noted that the requirements for the grant of security for costs have not been satisfied for the following reasons:

1. The Appellants are officers of the court and have stated in their evidence opposing the application that they would be in a position to satisfy SBF's reasonable costs of the appeal if ordered to do so;
2. There are three outstanding costs orders against SBF in this appeal and two costs orders against the Appellants in favour of SBF in related proceedings. On a summary review of the various costs orders and the proceedings leading to the orders the net position appears to favour the Appellants;
3. SBF has not complied with paragraph 10 of the order of Williams J made on 18th November 2022 ordering him to give disclosure on affidavit of his equity and debt interest in Emergent;
4. The claim for costs of \$200,000.00 is not supported by any details such as hourly rates of the fee earners, estimated time to be spent and details of the work to be done, making it difficult to estimate what would be a reasonable amount to order for security.

Case Name:

**Jeanne Boland
v
Serge Junior Simon**

**[DOMHCVAP2023/0004]
(Dominica)**

Date:

Tuesday, 18th April 2023

Appearances:

Applicant: In person

Respondent: No appearance

Issues:

Application for leave to appeal

**Result /
Order:**

IT IS HEREBY ORDERED:

- 1. The applicant shall provide to the Court a copy of the judgment of Stephenson J dated 9th March 2023, within 14 days of the date of this order.**
- 2. The application for leave to appeal against the judgment of Stephenson J dated 9th March 2023 is adjourned for consideration to the next Chamber Hearing scheduled 30th May 2023.**

Reason:

The Court was not furnished with a copy of the order being appealed.

Case Name:

**Handel Stafford
v
The King**

**[GDAHCRAP2017/0022]
(Saint Lucia)**

Date:

Tuesday, 18th April 2023

Appearances:

Applicant: In person

Respondent: Director of Public Prosecutions

Issues: Application for legal aid

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

1. The application for legal aid is granted.
2. 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 hearing of the appeal.

Reason: The Court was of the view that the applicant met the requirements for obtaining legal aid.

Case Name: Jessamy Environmental Consulting & Research
Caribbean Incorporated
v
Republic Bank Grenada Limited
[GDAHCVAP2021/0016]
(Grenada)

Date: Tuesday, 18th April 2023

Appearances:

Applicant: Mr. Jerry Edwin

Respondent: No appearance

Issues: Application for an extension of time to appeal

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

1. The applicant shall serve a copy of the application for extension of time, together with the affidavit in support and exhibits, on the respondent within 14 days of the date of this order.
2. The application for an extension of time to file a notice of appeal is adjourned for consideration to

the next Chamber Hearing scheduled for 30th May 2023.

Reason: The Court noted that there was no evidence of service of the application for an extension of time to appeal on the respondent.

Case Name: Vincent Cassell
V
The Director of Public Prosecutions
[MNIHCVAP2023/0002]
(Montserrat)

Date: Tuesday, 18th April 2023

Appearances:
Applicant: Mr. Fitzroy Buffonge
Respondent: No appearance

Issues: Application for leave to appeal

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal against the judgment of Morley J dated 8th March 2023 is granted.
2. The applicant shall file and serve a notice of appeal within 21 days of the date of this order.
3. The appeal shall proceed in accordance with the Civil Procedure Rules 2000.

Reason: The Court was of the view that the applicant met the threshold for the grant of leave to appeal.

Case Name: David Lapsley
(Administrator of the Estate of Reginald Sinclair)
V

Brenda Lapsley-Foreman

**[SKBHCVAP2023/0001]
(Saint Kitts and Nevis)**

Date: Tuesday, 18th April 2023

Appearances:

Applicant: Ms. Talibah Byron

Respondent: No appearance

Issues: Application for leave to appeal

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

1. The application for leave to appeal against the decision of the Honourable Madam Justice Tamara Gill dated 20th February 2023 is granted.
2. The applicant shall file and serve the notice of appeal within 21 days of the date of this order.
3. The appeal shall proceed in accordance with the Civil Procedure Rules 2000.

Reason: The Court was of the view that the applicant met the threshold for the grant of leave to appeal.

Case Name:

Wayne Chapman

V

Director of Public Prosecutions

**[SKBHCVRAP2023/0002]
(Saint Kitts and Nevis)**

Date: Tuesday, 18th April 2023

Appearances:

Applicant: In person

Respondent: In person

Issues: Application for leave to appeal against conviction and sentence

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal against conviction and sentence is granted.
2. The notice of application for leave to appeal is deemed to be the notice of appeal.
3. The Registrar of the High Court shall cause a copy of this order to be served on the applicant and the Director of Public Prosecutions within 14 days of the date of this order and provide proof of such service.

Reason: The Court was of the view that the applicant met the threshold for the grant of leave to appeal.

Case Name: Ocean Reef Resorts Limited
v
Legal and Equitable Nominees Limited
[NEVHCVAP2023/0006]
(Saint Kitts and Nevis)

Date: Tuesday, 18th April 2023

Appearances:
Applicant: Mr. O’Grenville Browne
Respondent: Mr. Adrian Daniel

Issues: Application for extension of time for leave to appeal –
Application for relief from sanctions - Application for leave to appeal

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for an extension of time to seek leave to appeal and to be granted relief from sanctions filed on 16th March 2023 is dismissed.

2. Costs of the application to the respondent of \$2,500.00 to be paid within 28 days.

Reason: The Court was of the view that the applications were not properly before the Court. More specifically, the Court noted that the judgment in default of acknowledgment of service was entered against the applicant on 30th September 2022 and the applicant had not applied to set aside the said default judgment which therefore stands as being regularly entered.

Case Name: Kimba Wattley
v
Director of Public Prosecutions
[SKBHCRA2023/0003]
(Saint Kitts and Nevis)

Date: Tuesday, 18th April 2023

Appearances:
Appellants: In person
Respondent: In person

Issues: Application for leave to appeal against conviction and sentence

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal against conviction and sentence is granted.
2. The notice of application for leave to appeal is deemed to be the notice of appeal.
3. The Registrar of the High Court shall cause a copy of this order to be served on the applicant and the Director of Public Prosecutions within 14 days of the date of this order and provide proof of such service.

Reason: The Court was of the view that the applicant met the threshold for the grant of leave to appeal.

Case Name:

**Jadee S.K Caines
v
[1] Spencer Brand
[2] Oaklyn Peets (Supervisor of Elections)
[3] Calvin Fahie (Registration Officer for the
Constituencies of St. Paul)
[4] Kevin Barrett (Returning Officer for the
Constituencies of St. Paul)
[5] The Electoral Commission
[6] The Attorney General of St. Christopher and
Nevis

[NEVHCVAP2023/0005]
(Saint Kitts and Nevis)**

Date: Tuesday, 18th April 2023

Appearances:

Applicant: Ms. Maria Angela Cozier

Respondents: No appearance

Issues: Application for leave to appeal

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

1. The application for leave to appeal the interlocutory order of Thompson Jr. J delivered 27th February 2023 is dismissed as a nullity.
2. Costs of the application to the respondent not exceeding two-thirds of the costs awarded in the court below.

Reason: The Court considered section 12 (1), (6) & (7) of the National Assembly Elections Act 2009, Cap 2.01, Laws of Saint Christopher and Nevis and the decision of this Court in Glenroy Cuffy et al v Melissa Skerrit et al DOMHCVAP2020/0012A-J (delivered 21st May 2021, unreported), affirmed by the CCJ decision in Cuffy and Others v Skerrit and Others [2022] CCJ 12 (AJ) DM, which confirmed that the Court does not have jurisdiction to hear appeals against interlocutory matters relating to an

election petition.

Case Name: **Regulator of International Banking**
v
[1]Petrodel Investment Advisers (Nevis) Ltd
[2]Michael J Prest
[3]Bank of Nevis International Limited
[NEVHCVAP2023/0008]
(Saint Kitts and Nevis)

Date: **Tuesday, 18th April 2023**

Appearances:
Applicant: **Ms. Rhonda Nisbett-Browne**
Respondents: **JHT Law Firm**
No appearance for the second respondent
Ms. Kalisia Marks for the third respondent

Issues: **Application for an interim stay**

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

1. The applicant shall personally serve the application for a stay of execution, along with the supporting documents, on the 2nd respondent within 14 days of the date of this order and furnish this Court with proof of such service.
2. The application for a stay of execution of the judgment of Thompson Jr. J dated 10th February 2023 is adjourned to the next Chamber Hearing of this Court scheduled for 30th May 2023.

Reason: **The Court was of the view that an application for a stay ought not to be considered unless all the respondents in the matter have been properly served. In this case, the 2nd respondent was not served with the application.**

Case Name: **Columbus Communications (St. Lucia) Ltd doing business as Flow**
v
Mark D. Maragh

**[SLUHCVAP2023/0005]
(Saint Lucia)**

Date: Tuesday, 18th April 2023

Appearances:

Applicant: Mr. Deale Lee

Respondent: No appearance

Issues: Application for leave to appeal

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

1. The application for leave to appeal against the judgment of Pariagsingh M dated 20th February 2023 is granted.
2. The applicant shall file and serve a notice of appeal within 21 days of the date of this order.
3. The appeal shall proceed in accordance with the Civil Procedure Rules 2000.

Reason: The Court was of the view that the applicant met the threshold for the grant of leave to appeal.

Case Name:

**Richard Frederick
v
Mark D. Maragh**

**[SLUHCVAP2023/0006]
(Saint Lucia)**

Date: Tuesday, 18th April 2023

Appearances:

Applicant: Mr. Horace Fraser

Respondent: No appearance

Issues: Application for leave to appeal

Result / IT IS HEREBY ORDERED THAT:

Order:

1. The application for leave to appeal against the judgment of Pariagsingh M dated 20th February 2023 is granted.
2. The applicant shall file and serve a notice of appeal within 21 days of the date of this order.
3. The appeal shall proceed in accordance with the Civil Procedure Rules 2000.

Reason:

The Court was of the view that the applicant met the threshold for the grant of leave to appeal.

Case Name:

Fleur Byron Cox aka Fleur Odlum

v

Nick Ltd

**[SLUHCVAP2023/0003]
(Saint Lucia)**

Date:

Tuesday, 18th April 2023

Appearances:

Applicant: Ms. Cynthia Hinkson-Ouhla

Respondent: Ms. Diana Thomas

Issues:

Application for stay of execution

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

1. The application for a stay of execution of the judgment of Cenac-Phulgence J dated 12th January 2023 is dismissed.
2. The applicant shall pay costs of the application of \$1,000.00 to the respondent by 31st May 2023.

Reason:

The Court considered that the applicant sought the stay of execution after the deadline to deliver up vacant possession of the said property thereby making the granting of a stay of execution otiose. The Court also considered that the applicant's appeal would not be

rendered nugatory if a stay is not granted nor will any prejudice accrue to the applicant if she complies with the other orders made by Cenac-Phulgence J on 12th January 2023.

Case Name: Augustin Stephen
v
Sabrina Butcher
[SLUHCMAP2022/0007]
(Saint Lucia)

Date: Tuesday, 18th April 2023

Appearances:
Applicant: Mr. Horace Fraser
Respondent: Mr. Leslie Prospere

Issues: Application for extension of time to file record of appeal

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

1. The application for an extension of time within which to file the record of appeal is granted.
2. The applicant shall file and serve the record of appeal on or before 3rd May 2023.

Reason: The Court was of the view that the applicant met the threshold for the grant of an extension of time within which to file the record of appeal.

Case Name: Treston Butcher
v
The King
[SVGHCRA2023/0003]
(Saint Vincent and the Grenadines)

Date: Tuesday, 18th April 2023

Appearances:

Applicant: In person

Respondent: Ms. Tammika Da Silva- Mc Kenzie

Issues: Application for extension of time within which to appeal

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

1. The application for an extension of time within which to appeal is granted.
2. The applicant shall file and serve his notice of appeal within 21 days of the date of this order.
3. The Registrar of the High Court shall serve a copy of this order on the applicant and respondent within 7 days of the date of this order and provide proof of service thereof.

Reason: The Court was of the view that the applicant met the threshold for the grant of an extension of time within which to appeal.

Case Name:

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

and

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

[1] The Minister of Health, Wellness and
Environment
[2] The Public Service Commission

**[3] The Commissioner of Police
[4] Attorney General
and
[1] Shefflorn Ballantyne
[2] Travis Cumberbatch
[3] Rohan Giles**

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

Date: Tuesday, 18th April 2023

Appearances:

Applicants: Ms. Gabrielle Myers

Respondents: Ms. Shirlan Barnwell

Issues: Application for stay of execution

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

The application for a stay of the judgment and order of Esco Henry J delivered on 13th March 2023 pending the hearing and determination of the appeal is granted.

Reason: The Court was satisfied that the applicants have reasonable prospects of success on appeal, that there is cogent evidence that the appeal will be rendered nugatory unless a stay is granted, and that the appeal concerns matters of public importance. In all the circumstances of the case, the Court was satisfied that the applicants met the threshold for the grant of a stay of execution.

Case Name: Kamara Lampkin
v
The King

**[SVGHCRAP2023/0004]
(Saint Vincent and the Grenadines)**

Date: Tuesday, 18th April 2023

Appearances:

Applicant: In person

Respondent: Ms. Tammika Da Silva- Mc Kenzie

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 against conviction and sentence is granted.
2. The notice of application filed on 30th March 2023 for leave to appeal 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 and provide proof of service within 7 days of the date of this order.

Reason: The Court was of the view that the applicant met the threshold for the grant of leave to appeal.

Case Name: Junior Jarvis
v
The King

[SVGHCRA2023/0005]
(Saint Vincent and the Grenadines)

Date: Tuesday, 18th April 2023

Appearances:

Applicant: In person

Respondent: Ms. Tammika Da Silva- Mc Kenzie

Issues: Application for leave to appeal against conviction and sentence

Result / Order: IT IS HEREBY ORDERED THAT:

1. The applicant shall file and serve an application for an extension of time for leave to appeal within 14 days of the date of this order.

2. Subject to the appellant's compliance with paragraph 1 of this order, the application for leave to appeal is adjourned for further consideration at the next Chamber Hearing of the Court scheduled for 30th May 2023.

Reason: The Court noted that the application for leave to appeal was out of time and was not accompanied by an application for an extension of time.

Case Name: [1]Simon John McNally
[2]Simon Nicholas Hope Cooper

v

[1]Carl Stuart Jackson
[2]Andrew Hosking
[3]Simon Bonney
[4]Greig Mitchell
(As Joint Liquidators of Glen Moar Properties Limited,
Unicorn Worldwide Holdings Limited and Ballaugh Holdings Limited)

Date: Tuesday, 18th April 2023

Appearances:
Applicants: Mr. Andrew Willins KC
Respondent: Mr. Adeoye Gabriel Adedeji

Issues: Application for security for costs

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appellants shall give security for the respondents/applicants' costs of the appeal herein by paying the sum of USD\$165,000.00 into court on or before 12th May 2023.
2. The appellants shall provide evidence of the payment of the sum described at paragraph 1, by filing evidence of the same, on affidavit, on or before

12th May 2023.

- 3. In default of the payment of security pursuant to paragraph 1, the appeal shall be struck out without further order and the appellants shall pay the respondents/applicants' costs of the appeal to be assessed by a Commercial Court Judge if not agreed within 21 days in an amount not exceeding two-thirds of the costs of the respondents/applicants' costs in the court below.**
- 4. The appellants shall pay the costs of this application to be assessed by a Commercial Court judge if not agreed within 21 days.**

Reason:

The Court was of the view that the evidence satisfied the requirement that the appellants are not likely to pay the costs of the appeal if ordered to do so and that in all the circumstances it was just to make the order for the grant of security for costs.