

THE EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT CHRISTOPHER AND NEVIS
IN PERSON
Monday 26th – Thursday 29th February 2024

JUDGMENTS

Case Name: **Exquisite Homes Limited**

v
Geest Industries (Estates) Limited

[SLUHCMAP2023/0001]
(Saint Lucia)

Date: **Wednesday, 28th February 2024**

Coram for delivery of judgment: **The Hon. Mde. Vicki Ann Ellis, Justice of Appeal**
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: **Mr. Horace Fraser**

Respondent: **Mrs. Cynthia Hinkson-Oula**

Issues: **Commercial appeal – Frustration – Compulsory acquisition by the Crown – Whether the acquisition of the respondent’s lands before the completion of its agreement with the appellant amounted to a frustrating event – Breach of contract – Repudiatory breach – Whether the respondent breached its agreement with the appellant prior to the Crown’s acquisition of its lands – Pleadings – Pleading dishonesty offences – Whether the pleadings sufficiently particularised bribery or secret profit –**

Costs – Whether the judge was justified in not awarding the successful party their costs

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The appellant shall pay the respondent its costs on the appeal and in the court below. The costs are to be assessed by a judge or master of the court below. The costs on appeal shall not exceed two-thirds of the costs below.**
- 3. The counter-appeal is dismissed save for the issue of costs.**
- 4. The respondent shall pay the appellant 75% of the costs of the counter-appeal, such costs to be assessed by a judge or master of the High Court.**

Reason:

- 1. According to section 3(3) of the Land Acquisition Act, the procedure by which land is acquired by the Crown is through publication of a declaration to that effect in the Gazette. Upon the second publication of the said declaration, the land vests absolutely in the Crown. Therefore, the respondent's lands became vested absolutely in the Crown upon the second publication of the declaration of compulsory acquisition on 22nd July 2019. The second publication amounted to a frustrating event as it occurred on 22nd July 2019 which was prior to the completion date of the 2019 agreement. The respondent, upon the second publication, was rendered unable to perform its obligation under the 2019 agreement to convey the land to the appellant.**

Sections 3 and 4 of the Land Acquisition Act Cap. 5.04 of the Revised Laws of Saint Lucia applied; Section 3 of the Land Acquisition Act Cap. 228 of the Revised Laws of Barbados

considered; *E Johnson & Co (Barbados) Ltd v N S R Ltd* (1996) 49 WIR 27 distinguished.

2. It is settled law that a party to a contract may treat the contract as discharged where the other party has committed a fundamental or repudiatory breach. In the present case, the appellant failed to show evidence that there was such a breach of the 2019 agreement. Firstly, the appellant relied on a letter dated 24th July 2019, informing Mr. Charlemagne that the respondent would not proceed with the 2019 agreement. The Court found that the letter could not lead to a repudiatory breach of the 2019 agreement as it was sent after that agreement was frustrated. The appellant further submitted that since the notice to acquire was published after the 2019 agreement was executed, there must have been an agreement between the Government and the respondent between 27th June 2019 and 16th July 2019. However, the Court found that there was no evidence in support of that contention.

Blairmont Rice Investment Inc. v Kayman Sankar Investments Limited and Others [2021] CCJ 7 (AJ) GY applied; *Hong Kong Fir Shipping Co. Ltd v Kawasaki Kisen Kaisha Ltd* [1962] 2 QB 26 applied; *Bunge Corporation (New York) v Tradex Export SA (Panama)* [1981] UKHL 11 applied.

3. The evidence showed that the discussions and proposal between the respondent and the Government happened before the execution of the 2019 agreement. However, the Government only took steps to acquire the lands after the 2019 agreement was executed. This was to no fault of the respondent, because the respondent did not have control over whether the Government would proceed with its decision to acquire its lands.
4. A party who wishes to rely on fraud or dishonest conduct must include such matters

in their pleaded case, so that the opposing party would know the case they have to meet at trial. On its pleaded case, the respondent was counterclaiming in conspiracy to interfere with its business relations; there was no allegation of a bribe or secret profit. Therefore, even though it is not disputed that the appellant paid to Mr. Johannes, \$75,000.00, the respondent led no evidence as to the purpose of that payment.

Three Rivers District Council v Governor and Company of the Bank of England [2001] UKHL 16 applied; Ramdass v Jairam and Others [2008] CCJ 6 (AJ) applied; Joseph v Mangal [2016] CCJ 22 (AJ).

5. The Court did not find reason to interfere with the judge's finding that, a mutation was completed and a land register was issued for Parcel 314 which reflects a survey plan and that as the vendor, it was primarily the respondent's responsibility to ensure that the land it agreed to sell was with vacant possession. Furthermore, the Court found that in any event the absence of a survey plan in relation to Parcel 314 did not in any way nullify the 2019 agreement. The land to be sold was clearly identified in the schedule to the 2019 agreement.
6. The general rule is that the successful party is entitled to their costs. The Court may in the exercise of its discretion depart from that rule. However, in the instant case, the judge did not give a reason as to why the respondent, as the successful party on the claim, was not awarded their costs. The Court found that the judge erred in the manner in which the issue of costs was treated

Case Name:

Marshall Phillips

v

The King

[SVGHCRAP2016/0005]

Date:	Thursday, 29th February 2024
Coram for delivery of judgment:	The Hon. Mr. Trevor Ward, Justice of Appeal The Hon. Mde. V. Georgis Taylor- Alexander, Justice of Appeal [Ag.]
Appearances:	Appellant: Mr. Art Williams holding papers for Mr. Stephen Williams
	Respondent: Ms. Maria Jackson-Richards
Issues:	Criminal appeal against conviction – Murder – Self-defence – Whether the judge failed to properly direct the jury on the issue of pre-emptive strike as it relates to self-defence – Provocation – Whether the trial judge failed to properly direct the jury on the issue of provocation
Result/Order:	IT IS HEREBY ORDERED THAT: 1. The appeal against conviction is dismissed, and the conviction is affirmed. 2. The appellant having abandoned his appeal against sentence, the sentence is also affirmed.
Reason:	1. A trial judge is duty bound to provide a direction on self-defence and leave that issue for the jury to consider as long as that defence arises from any evidence or material during a trial. It does not matter whether it emerges from the evidence or material adduced by the defence or by the prosecution. A trial judge, applying common sense to the evidence in the particular case, makes the determination as to whether or not the evidence is sufficient to raise self-defence. There are no prescribed words to convey to the jury the concepts of self-defence or pre-emptive strike. All that is

needed is a clear exposition, in relation to the facts of the case. In this case, the judge clearly appreciated that the appellant was alleging, among other things, that he was acting in self-defence and left that defence to the jury. She clearly set before the jury the meaning of self-defence and directed the jury to the appellant's evidence that he was fending off an attack by the deceased and his brother, as evidenced by the transcript. When the learned trial judge made reference to a "threatened attack" in the context of her direction on self-defence, the jury were made aware that the appellant could act in self-defence prior to the actual attack. That is the essence of a pre-emptive strike. The jury hearing this direction would have been left in no doubt that the appellant could have struck before he was attacked if he reasonably believed that an attack was imminent. The trial judge therefore did not err in her direction on the issue of pre-emptive strike as it relates to self-defence and the first ground of appeal failed.

Ewart Bacchus v The Queen
SVGHCRAP2008/006 (delivered 29th April 2011, unreported) followed; **R v Bonnick** [1977] 66 Cr App R 266 applied; **Palmer v R** [1971] AC 814 applied.

2. Where a summation is criticised on the ground that it lacks fairness and balance one has to consider the criticisms in the context of the summation as a whole and the several issues which arose for decision. An appellate court is enjoined to look at the thrust of the directions and consider whether they have adequately put the several issues before the jury and given them a proper explanation of their task in relation to those which they have to decide.

Shonovia Thomas v The Queen
BVIHCRAP2010/006 (delivered 27th August 2012, unreported) followed.

3. On a charge of murder, where there is evidence on which the jury can find that the accused person was provoked, whether by things said or things done or by both and lost his self-control, the question whether the provocation was enough to make a reasonable man of the age and with the characteristics of the accused react as the accused did shall be left to the jury for determination. There are no precise words to give a direction on provocation, only a clear explanation to the jury of the legal principles to be applied and an indication of the evidence which is supportive of the legal principles is necessary.

Joseph Bullard v The Queen [1957] AC 635 applied; Che Gregory Spencer v The Director of Public Prosecutions SKBHCRA2009/013A (delivered 10th February 2014, unreported) followed.

4. On the facts, the issue of provocation arose as the appellant's evidence alleged that the deceased taunted him by throwing words at him. The judge rightfully explained what provocation was and directed the jury to the appellant's evidence of the provocative behaviour. She went even further and addressed the issue of provocation on the respondent's case. The judge directed the jury on the burden on the prosecution to disprove provocation, she properly told the jurors that provocation did not only have to come from the words or actions of the deceased, but also the words and actions of his brother Romario, and she also directed them that if they found the accused was indeed provoked, they were to go on to consider whether a reasonable man would have responded as the appellant did. She explained who the reasonable man was and properly directed the jury that if a reasonable man would have so acted, they were to return a verdict of manslaughter. Having considered the totality of the directions given by the learned judge, the summation was fair and balanced. There was no error on the

judge's part and this ground of appeal also failed.

APPLICATIONS AND APPEALS

Case Name:

**[1] Minister of National Security of
Saint Christopher and Nevis
[2] Attorney General of Saint
Christopher and Nevis**

v

**[1] Khaled Awad
[2] Walid Awad**

**[SKBHCVAP2022/0015]
(Saint Christopher and Nevis)**

Date:

Monday, 26th February 2024

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]**

Appearances:

Appellants/Respondents:

Ms. Simone Bullen-Thompson and Ms. Sasha Lloyd

Respondents/Applicants:

Mr. Tim Prudhoe

Issues:

Application for conditional leave to appeal to His Majesty in Council - Section 99(1)(c) of the Constitution of Saint Christopher and Nevis - Whether the proposed appeal emanates from a final decision of the Court of Appeal that involves a question of the interpretation of the Constitution such that it is an appeal as of right - Section 99(2)(a) of the Constitution of Saint Christopher and Nevis - Whether the issues raised in the proposed appeal, by

reason of their great general or public importance or otherwise ought to be submitted to His Majesty in Council- Whether section 5 protects the right to a passport - Whether section 18 of the Constitution of St. Christopher and Nevis precludes consideration of a constitutional provision that has not been pleaded

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application is dismissed in its entirety.
2. Costs in the sum of \$3000.00 to be paid on or before 28th March 2024.

Reason:

This is an application for conditional leave to appeal to His Majesty in Council the decision of the Court of Appeal dated 19th September 2023 with written reasons provided on 22nd September 2023 which allowed the appeal, save and except for paragraph 80(vi) and dismissed the counter notice in its entirety. In its counter notice the applicants sought a declaration that the disabling of their passports was a breach of section 5 of the Constitution of St. Christopher and Nevis. Additionally, they asked the Court of Appeal to exercise the power to remit to the court below the making of an order for the issuance of the passport to the applicants. Section 5 of the Constitution of St. Christopher and Nevis was first raised in submissions filed by the applicants in the court below as a reference point to their argument that the decision of the Indian Supreme Court in Sawhey v Assistant Passport Officer, Government of India (1967) The Times 15.4.1967 and Article 1 of the Constitution of India, were of a similar nature to section 5 of the Constitution of St. Christopher and Nevis. The trial judge held that section 5 of the Constitution of St. Christopher and Nevis was not pleaded in the applicant's claim for judicial review filed on 28th December 2021. The Court of Appeal in its reasons, agreed with the submissions of the

Solicitor General that no claim was made in relation to section 5 of the Constitution of St. Christopher and Nevis in the court below. The applicants now seek permission for leave to appeal to the Privy Council on two bases.

The first basis is that they should be granted leave as of right pursuant to section 99(1)(c) of the Constitution of St. Christopher and Nevis which provides a right of appeal from final decisions in any civil proceedings that involve a question as to the interpretation of the Constitution. The Court, relying on the decisions such as Frater v The Queen (1981) 1 WLR 1468; Joseph v The State of Dominica (1988) 36 WIR 216; Alleyne Forte v The Attorney General of Trinidad and Tobago [1998] 1 WLR 68; William Martin v Percil Peters, found that conditional leave on this ground must involve a disputable issue as to the interpretation of the Constitution. In Frater, Lord Diplock stated '[i]n their Lordships' view similar vigilance should be observed to see that claims made by the appellants to be entitled to appeal as of right under section 110(1)(c) [which is equivalent to section 99(1)(c) of the Constitution of St. Christopher and Nevis] are not granted unless they do involve a genuinely disputable question of interpretation of the Constitution and not one which has merely been contrived for the purpose of obtaining leave to Her Majesty in Council as of right'. The Court was satisfied that in respect of the section 5 ground which is now sought to be engaged by the applicants, no genuine disputable question of interpretation arises on section 5 or any other section of the Constitution of St. Christopher and Nevis.

The second basis is grounded in section 99(2)(a) of the Constitution of Saint Christopher and Nevis which is a discretionary ground and provides for the Court to grant leave where the Court is of the opinion that a question involved in the appeal is one that by reason of its great general or public importance or otherwise ought to be submitted to His Majesty in Council. To satisfy the requirements of section 99(2)(a) of the Constitution, an applicant must show that a question involved in the proposed appeal is either of great general or public importance or that it

is otherwise a matter that should be submitted to His Majesty in Council. In many decisions of this Court, including Martinus Francois v The Attorney General Civil Appeal No. 37 of 2003 (delivered 7th June 2004, unreported); Emmerson International Corporation v Viktor Vekselberg et al BVIHCMAP2019/0020 (delivered 27th July 2023, unreported); Renaissance Ventures Ltd et al v Comodo Holdings Ltd BVIHCMAP2018/0005 BVIHCMAP2018/0008 (delivered 8th October 2018, unreported); and Pacific Wire and Cable Company Limited v Texan Management Limited BVIHCVAP2006/019 (delivered 6th October 2008, unreported), the Court stated that in construing the phrase ‘great general or public importance’ the Court usually looks for matters that involve a serious question of law, a constitutional provision that has not been settled, an area of law in dispute, or a legal question- the resolution of which poses dire consequences for the public. To qualify under the ‘or otherwise’ limb of the rule, the matter in question must be one that could benefit from guidance from the Privy Council on the law. The applicants, in oral arguments before this Court, submitted that the two following questions are questions that are either of great general importance or that otherwise ought to be submitted to His Majesty in Council: 1) whether section 5 protects the right to a passport and 2) whether section 18 of the Constitution of St. Christopher and Nevis precludes consideration of a constitutional provision that has not been pleaded. None of these questions, in our opinion, are questions either of great general or public importance or which otherwise should be submitted to His Majesty in Council. These two questions are not matters which require further guidance from the apex court. Accordingly, permission on this ground also failed and the application was dismissed in its entirety.

Case Name:

**Petrodel Investment Advisers (Nevis)
Limited
v
Tiger Holdings Inc**

**[NEVHCVAP2023/0013]
(Saint Christopher and Nevis)**

Date: Monday, 26th February 2024

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Michael Fay KC with him Mrs. Jackie Hunkins-Taylor

Respondent: Dr. Henry Browne KC

Issues: Civil appeal - Summary judgment - Unjust enrichment
- Whether the respondent has a real prospect of success in its unjust enrichment claim - Whether the learned judge failed to refer to or consider the law relating to unjust enrichment, and to what matters the respondent would need to prove in order to succeed in such claim - Whether the learned judge failed to apply the principles for summary judgment in respect of the claim for unjust enrichment - Whether the learned judge wrongly applied principles that would be relevant to an application to strike out a pleading to the application for summary judgment in respect of the alternative claim of unjust enrichment.

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The learned judge's order in the court below on the unjust enrichment claim is set aside and the summary judgment on the unjust enrichment claim is allowed so that there is summary judgment in respect of the whole claim made by the respondent.

2. The appellant shall have 100% of his prescribed costs on the prescribed value of \$85,000 in the court below and two-thirds of that amount on appeal.

Reason:

Upon the respondent conceding that the claim for unjust enrichment has no realistic prospect of success, the Court was in agreement that the learned trial judge erred in his application of the principles relating to summary judgment on the unjust enrichment claim. Accordingly, the Court allowed the appeal and set aside the learned judge's order in the court below in respect of the unjust enrichment claim holding that summary judgment on the unjust enrichment claim is granted so that there is summary judgment in respect of the whole claim made by the respondent.

The Court also awarded prescribed costs to the appellant.

Case Name:

Kevin A. Horstwood

v

Adam Bilzerian

**[SKBHCVAP2023/0005]
(Saint Christopher and Nevis)**

Date:

Tuesday, 27th February 2024

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. V. Georgis Taylor- Alexander, Justice
of Appeal [Ag.]**

Appearances:

Appellant: Ms. Michelle Slack-Clarke

Respondent: No appearance

Issues:

Application for leave to appeal – Whether the

application meets the required threshold for the grant of leave - Addition and substitution of parties - CPR 19.2(5) (a) and (b) - Whether the judge erred in exercising her discretion to substitute the existing claimant - Costs - Whether the costs order made by the learned judge ought to be set aside

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Leave is granted to appeal the decision of the learned judge made on 23rd June 2023.**
- 2. The applicant is given 21 days from the date of this order to file and serve the notice of appeal in this matter.**
- 3. Thereafter the appeal will proceed in accordance with Part 62 of the Civil Procedure Rules 2023.**

Reason:

Before the Court was an application for leave to appeal the decision of the learned judge dated 26th June 2023 in which she ordered pursuant to CPR Part 19.2(5)(a) and (b) that: (1) International Investments Limited (a limited liability company duly incorporated under the laws of Saint Christopher and Nevis) be substituted in place and instead of Adam Bilzerian as the applicant in the hearing; (2) the respondent shall pay the applicant's cost on the application in the sum of EC\$1,500.00 on or before 21st July 2023.

The application was filed without notice and was supported by the affidavit evidence of the applicant filed on 27th June 2023 and 9th February 2024. Pursuant to CPR Part 62.2(8) leave to appeal would only be given where the Court considers that the intended appeal would have a realistic rather than fanciful prospect of success or that there is some other compelling reason why the appeal should be

heard. The Court also had regard to the dicta of Lord Woolf MR in Swain v Hillman and another [2001] 1 All ER 91 in which he stated that a realistic prospect of success means that the prospect of success must be realistic rather than fanciful. The court is not required to analyse whether the grounds of the proposed appeal will succeed but merely whether there is a real prospect of success. As a starting point, the court needs to know if there is an argument capable of being advanced and the court requires affidavit evidence to propel it to that conclusion.

In the present application, the applicant has advanced the application on the basis of the first limb, that is, that the appeal has a realistic prospect of success. The Court considered the evidence advanced in support of the application for leave to appeal as well as the written and oral submissions advanced on behalf of the applicant and determined that the application for leave should be granted.

In arriving at this conclusion, the Court took into consideration the conditions upon which an appellate court may interfere with the exercise of such discretion elucidated by Sir Vincent Floissac CJ in Dufour and Others v Helenair Corporation Ltd (1996) 52 WIR 188 in the following terms: “[w]e are thus here concerned with an appeal against a judgment given by a trial judge in the exercise of a judicial discretion. Such an appeal will not be allowed unless the appellate court is satisfied (1) that in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and (2) that, as a result of the error or the degree of the error, in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong.”

Having reviewed the evidence filed in support, legal submissions and the transcript of proceedings, the Court was satisfied that the prescribed threshold for the grant of leave had been satisfied and the

applicant should have leave to appeal the order of the learned judge.

Case Name:

**[1] Digital Security Services
Limited**

[2] Michael Peets

v

**Nevis International Bank and Trust
Limited**

(Formerly Hamilton Reserve Bank Limited)

**[NEVHCVAP2023/0014]
(Saint Christopher and Nevis)**

Date:

Tuesday, 27th February 2024

Coram:

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

The Hon. Mr. Trevor Ward, Justice of Appeal

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

Appearances:

Applicants:

Ms. Angela Cozier

Respondent:

No appearance

Issues:

Application for leave to appeal - Realistic prospect of success - Whether the appellant's counterclaim against respondent for breach of contract and damages, if successful, impugns the attachment of debt order made by the judge - Whether if the applicants succeed on this ground in their counterclaim, the agreement between the parties would be treated as not having existed, rendering it impossible for the respondent to have enforced a judgment in default in accordance with that contract/agreement - Whether costs order made against the appellants to the 1st Garnishee bank should be set aside

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. Leave is granted to appeal paragraph 3 of the order of the learned judge of 12th October 2023, for attachment of debt.
2. The applicants are given 21 days from today's date to file and serve the notice of appeal, thereafter the appeal is to continue pursuant to Part 62 of the Civil Procedure Rules, 2023.

Reason:

Before the Court was an application for leave to appeal the order of the learned trial judge dated 12th October 2023 for attachment of debt. The attachment of debt is a procedure under which a creditor obtains payment for all or part of a judgment debt from a person who owes a judgment creditor money.

The panel had difficulty distilling the grounds for leave to appeal but in oral submissions, counsel for the applicants crystalised the grounds as follows:

1. that the applicants filed a counter-claim against the respondent for breach of contract and damages which will cancel out the amount ordered to be paid by the applicants by the learned trial judge on 12th October 2023;
2. that the counter-claim filed on 30th June 2020, the applicants claimed the following reliefs from the respondent:
 - a) the balance of the costs of the applicants labour which was agreed between the parties in the amount of US\$7,000.00 (or XCD \$18,900.00 at the exchange rate of 2.70);
 - b) 17 days of extra labour which the applicants were forced to undertake as a result of the actions of the respondent in the amount of US \$8,585.77 (or XCD\$23,181.58 at the rate of exchange of

2.70);

c) damages for repudiation of the agreement between the parties by the respondent;

d) prescribed costs in the counterclaim;

e) interest on the sums awarded; and

f) any other relief that the Court deems just.

3. one of the reliefs sought by the applicants is the repudiation of the agreement between the parties due to the actions of the respondent.

4. if the applicants succeed on this ground in their counter-claim, the agreement between the parties would be treated as not having existed, rendering it impossible for the respondent to have enforced a judgment in default in accordance with that contract/agreement.

5. the order of the learned judge to grant the attachment of debt order on 12th October 2023 was blatantly wrong and contrary to law and should be set aside.

6. counsel for the applicants further contended that neither of the two applicants have an account at the 1st garnishee's bank, St.Kitts Nevis Anguilla National Bank Ltd, who was brought to the hearing by the respondent, so costs awarded to the 1st garnishee bank against the applicants in the amount of XCD \$750.00 is unjustifiable and wrong.

Despite the urgings of the Court, counsel was unable to identify any legal authority that supported the contentions that she has advanced in relation to grounds 13-17 of the application which dealt with her contentions on the counter-claim. Her legal submissions are simply a repetition of what is set out in her notice of application. These did not assist the Court in arriving at a determination that on those grounds, the appeal had a realistic prospect of

success. The Court reminded itself that in considering an application for leave, the Court must be satisfied that the appeal would have a realistic prospect of success or there is some other compelling reason why the appeal should be heard. The applicants advanced their application on the first limb of Part 62.2(8) of the Civil Procedure Rules. Having reviewed the evidence filed in support of the application, the Court was not satisfied that the prescribed threshold for the grant of leave had been met.

However, in so far as the application relates to an order in costs against (sic) the 1st garnishee, where in paragraph 3 of the order, the learned judge ordered the defendants, judgment debtors who are the applicants in these proceedings, to pay the 1st garnishee's costs in the sum of \$750.00, the Court was satisfied that the relevant threshold for the grant of leave had been met and accordingly the Court granted leave to appeal that part of the judge's order, set out in paragraph 3.

Case Name:

Keeane Richards

v

The Director of Public Prosecutions

**[SKBHCRAP2023/0012]
(Saint Christopher and Nevis)**

Date:

Tuesday, 27th February 2024

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. V. Georgis Taylor-Alexander, Justice
of Appeal [Ag.]**

Appearances:

Applicant:

In person

Respondent: Mr. Leslie Roberts, Senior Crown Counsel

Issues: Criminal appeal - Application for leave to appeal against sentence - Armed robbery - Applicant sought an adjournment to have legal aid assigned to him - Unavailability of transcript - Directions for the filing of the transcript as well as written submissions

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The applicant to provide the Court with affidavit evidence which makes clear, and sets out details of his financial means within 14 days of the date of this order or by the 13th March 2024.
2. The court's office in Saint Christopher and Nevis will assist the applicant and facilitate the filing of the said affidavit evidence within the time prescribed.
3. The application for legal aid assignment will be considered by a single judge of the Court of Appeal in chambers.
4. The application for leave to appeal is adjourned for consideration to the next sitting of the Court of Appeal for the Federation of Saint Christopher and Nevis fixed for the week commencing 17th June 2024.
5. The transcript in this matter reflecting the sentencing remarks and reasons for decision of the learned judge shall be filed and served on the appellant and office of the Director of Public Prosecutions by 31st March 2024.
6. The applicant shall file and serve written legal submissions by 30th April 2024.

7. The respondent shall file and serve written legal submissions by 30th May 2024.
8. The applicant shall file and serve written submissions, in reply, if necessary, 7 days thereafter or by 14th June 2024.
9. The Registrar of the High Court shall serve a copy of this order on both parties.

Reason:

The Court noted that the applicant was unrepresented. The Court also noted that in response to question 7 (1) of his application for leave to appeal, the applicant indicated that he wished to be assigned legal aid in the Court of Appeal. The applicant orally confirmed this before the Full Court. The Court noted however that there was not sufficient evidence before it to perform an assessment of the financial means of the applicant.

As such, the Court directed the applicant to file affidavit evidence of his financial means so that his application for legal aid could be considered by a judge of the Court of Appeal in chambers.

The Court noted as well that the transcript of proceedings was not yet filed. As such, the Court directed the filing of the said transcript, and the filing of the written submissions of the parties thereafter.

The matter was adjourned to give the applicant the opportunity to be represented in the matter, as well as to allow for the filing of the transcript and the written submissions.

Case Name:

Monthana Mathias
v
The King
[SKBHCRAP2019/0006]

Royston Browne
v

The King
[SKBHCRAP2019/0005]
(Saint Christopher and Nevis)

Date: Tuesday, 27th February 2024

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. V. Georgis Taylor- Alexander, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Craig Tuckett

Respondent: Mr. Adlai Smith - Director of Public Prosecutions

Issues: Criminal Appeal - Appeal against conviction - Failure of judge to provide good character directions - Concession by Office of the Director of Public Prosecutions

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. 1. The appeal is allowed.

2. The appellants' convictions and sentences are quashed.

Reason: On 24th November 2018, the appellants were convicted of the offence of rape. On 18th June 2019, the appellant Monthana Mathias was sentenced to 10 years imprisonment whilst Royston Browne was sentenced to 8 years. By notice of appeal filed on 1st July 2019, the appellants lodged 3 grounds of appeal which read as follows:

“(1) misdirection in law and fact.
(2) the learned judge failed to accentuate the inconsistencies and discrepancies of the witness testimonies and as such his summation offended in being inadequate.

(3) the virtual complainant's testimony failed to validate that a crime had been committed by the defendants and it also lacked corroborative evidence."

The Court noted that the written submissions which had been filed by the appellants only yesterday purported to list 8 grounds of appeal including grounds that were not contained in the notice of appeal, in particular grounds 1 and 3. The Civil Procedure Rules provides that the appellant may not rely on any ground not mentioned in the notice of appeal without the permission of the Court. No permission having been sought or granted, the Court disregarded entirely what purported to be grounds 1 and 3.

As it relates to the final ground of appeal, by previous email correspondence to the Chief Registrar dated 13th February 2024, the learned Director of Public Prosecutions ("DPP") advised that given the trial judge's failure to give a good character direction, coupled with the absence of independent corroborative evidence, the Crown would not propose "to advocate for the defence of these convictions and furthermore considering all the relevant matters, the Crown will not pursue a retrial for either of these matters". The DPP reiterated this position in an email dated 21st February 2024 and before this Court at the hearing today.

In the Court's view, the concession was properly made. Whilst it was true that counsel did not specifically raise the appellants' good character during the trial and that in general terms, the trial judge would not be obliged to give a good character direction where the issue is not raised, nor does the failure to give a good character direction inevitably lead to a quashing of the conviction, the contemporary learning instructs that in such circumstances it falls to an appellate Court to determine whether the failure to give a good character direction impacted the fairness of the trial and the safety of the conviction. In the Court's view, given that this was a case where there was no corroborative evidence in relation to the issue of lack

of consent, and that it was a case based entirely on the credibility of the virtual complainant, and involved a situation where the two appellants were both serving members of the Royal Saint Christopher and Nevis Police Force and Defense Force respectively, the need for a good character direction was brought into high relief. It cannot be said with any certainty that the good character direction would have made no difference to the result of the convictions. Accordingly, the appellants' convictions and sentences were quashed and the appeals were allowed.

Case Name:

Kevaughn Adams

v

Stanley Warde

**[SKBMCVAP2016/0004]
(Saint Christopher and Nevis)**

Date:

Tuesday, 27th February 2024

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. V. Georgis Taylor- Alexander, Justice
of Appeal [Ag.]**

Appearances:

Appellant: In person

Respondent: In person

Issues:

Magisterial civil appeal - Judgment debt - Appellant being in default of payment of judgment debt summoned to appear before magistrate - Appellant ordered to pay \$4037.50 in equal monthly instalments and in default of any instalment, 14 days imprisonment, as well as costs of \$500 - Whether the magistrate erred in failing to enquire about the appellant's financial means – Whether the magistrate properly declined to entertain the judgment debtor's

submissions in which he denied liability in respect of the judgment debt – Whether the learned magistrate’s decision was illegal and unsupported by the evidence - Whether the learned magistrate relied on illegal evidence and rejected legal evidence in arriving at her decision

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed on the basis that neither the order of the court of 3rd February 2016 or the reasons of decision of the Magistrate indicated that she conducted a proof of means and ability to pay inquiry in respect of the judgment debtor in accordance with section 155(2) of the Magistrate’s Code and Procedure Act, prior to making her order.
2. The matter is remitted to be heard on an expedited basis with directions to be listed before another magistrate for the examination on oath of proof of the means and ability of the appellant to pay the judgment debtor for the sum of the judgment debt of 4037.50.
3. The other grounds of appeal are otherwise dismissed.
4. There is no order as to costs.

Reason:

The appellant, who was unrepresented, requested an adjournment of the matter in order to retain counsel. However, after carefully reviewing the court documents filed in the appeal and after taking into account i) the fact that the appeal had been filed since 19th February 2016; ii) the appellant’s indication that he had only on the morning of the hearing of the appeal sought to retain legal counsel. The Court refused the appellant’s application to adjourn the

matter in the circumstances.

Before the Court was an appeal by the appellant Kevaghna Adams appealing the order of the learned Magistrate for District A contained in her order dated 3rd February 2016, in which the appellant was ordered to pay to the respondent the sum of \$4,037.50 and costs, on her finding that the appellant had the means to pay the judgment debt in 5 months commencing on 27th February 2016, in default of payment in any month, [the appellant] to serve the term of imprisonment of 7 days.

The Magistrate's Code and Procedure Act, section 155(2) provides that proof of means of a judgment debt may be given in such manner as the Magistrate thinks fit. The Court reviewed the notice of appeal including the grounds of appeal, the notes of evidence, the order of the Magistrate and the reasons for her decision. Neither the order of the court of 3rd February 2016 or the reasons of decision of the Magistrate indicated that there was a proof of means and ability to pay inquiry conducted of the judgment debtor. Before an order for the payment of a judgment debt either in one instalment or by instalments is made, an inquiry is appropriate to determine the means and ability of the judgment debtor to pay.

Consequently, the Court decided to allow the appeal and to remit the matter with directions that it is to be listed before another Magistrate for the examination on oath of proof of means and ability of the judgment debtor to pay the sum of the judgment debt of \$4,037.50. The other grounds of appeal were otherwise dismissed with no order as to costs.

Case Name:

Timothy Abbott

v

**The Attorney General of Saint Christopher
and Nevis**

**[SKBHCAP2018/0023]
(Saint Christopher and Nevis)**

Date: Wednesday, 28th February 2024

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Glenford Hamilton and Ms. Zoe Hamilton

Respondent: Mrs. Simone Bullen-Thompson

Issues: Civil appeal - Breach of constitutional right-
Constitutional remedies - Whether the learned judge
erred in finding that damages was not the appropriate
redress after a finding of a breach of constitutional
rights - Whether the learned judge erred in the
application of Hinds v the Attorney General - Whether
the learned judge took into account irrelevant
considerations in arriving at her decision

Type of Order: N/A

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

Case Name: Hamilton Reserve Bank Limited
v
[1] Greyridge Iron Holdings Incorporated
[2] Redhunt Enterprises Limited
[3] Socratis Christofi

**[NEVHCVAP2023/0015]
(Saint Christopher and Nevis)**

Date: Wednesday, 28th February 2024

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

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

Appearances:

Appellant: Ms. Kurlyn Merchant

Respondent: Mr. Errol Williams and Ms. Maurisha Robinson

Issues:

Interlocutory appeal - Stay of proceedings pending arbitration - Learned master's decision to dismiss appellant's application for claim to be stayed pending mediation/arbitration - Whether the learned master failed to properly construe and consider clause 32 of the Agreement between the parties - Arbitration - Fraud - Whether the master erred in finding that the allegations of money laundering and fraud made the case inappropriate for arbitration - Whether the master erred in finding that the court was being called upon to determine allegations of fraud on the claim - Summary Judgment - Application to strike out the claim - Learned master's decision to dismiss appellant's application to strike out the claim or for summary judgment - Whether the master erred in finding that there was a complete cause of action for breach of contract pleaded with several disputes of facts which made the case inappropriate for striking out or summary judgment

Type of Order:

N/A

Result / Order:

**IT IS HEREBY ORDERED THAT:
Judgment is reserved**

Case Name:

Nakita Rawlins

v

Linval Carey

**[SKBMCVAP2021/0007]
(Saint Christopher and Nevis)**

Date:

Wednesday, 28th February 2024

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Zenitaa Singh holding for Mr. Jason Hamilton

Respondent: Ms. Pauline Hendrickson

Issues: Application for an adjournment

Type of Order: Adjournment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is adjourned to the next sitting of this Court in the Federation of St. Christopher and Nevis set down to the week of 17th June 2024.
2. There is no order as to costs.

Reason:

- i. The Court having had sight of the application filed on 28th February 2024 in which the appellant applies to the Court (pursuant to Part 62.27 of the Civil Procedure Rules 2023) for an adjournment of the hearing date of the appeal and seeking no order as to costs on the basis of the illness of counsel;
- ii. The Court, having read the affidavit in support as well as the exhibits;
- iii. The Court having noted that Counsel for the respondent did not object to the application;

was satisfied that the application should be granted.

Case Name:

Godfrey Roberts

v

Erlene Bedford

**[SKBMCVAP2016/0011]
(Saint Christopher and Nevis)**

Date:

Wednesday, 28th February 2024

Coram:

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

Appearances:

Appellant: In person

Respondent: Ms. Brittney Jeffers

Issues:

Whether learned magistrate erred in finding the appellant guilty for trespass to goods - Whether there was injustice in the circumstances of the case – Whether appellant was not given a chance to defend himself properly

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The magistrate's order of 13th July 2016 is affirmed.**
- 3. Costs to the respondent in the sum of \$250.00.**

Reason:

Before the Court was a Magisterial Civil Appeal filed by the appellant on 20th July 2016 in which he sought to set aside the decision dated 13th July 2016 in which

the learned magistrate ordered that the appellant pay to the respondent the cost of goods and stamps in the sum of \$830.95 and costs in the sum of \$800.00. The appellant proceeded on the basis of one ground only, injustice. In written legal submissions the appellant contended that there was no evidence to prove that he would have touched the respondent's cooler. He also contended that the magistrate's decision was based on assumptions without evidence. In oral submissions, the appellant submitted, inter alia, that he did not push down the cooler and there was no one who would have witnessed this. He contended also that the learned magistrate incorrectly recorded that he admitted to the police that he would pay for the cost of the goods.

The Court also considered the oral submissions by counsel for the respondent, the grounds of appeal, the record of appeal including the notes of evidence and the magistrate's reasons for decision, and was satisfied that the appellant had not made out the grounds of his appeal. It was clear that the learned magistrate had before her eyewitness evidence of a third party witness who testified that he witnessed the appellant's action in overturning the cooler. The learned magistrate was clearly persuaded by the credibility of that witness and weighed the evidence in determining whether on a balance of probabilities the appellant committed the actions which caused damage to the respondent's goods. The learned magistrate would have also weighed the evidence in regard to the appellant's offer to compensate the respondent and treated it as an admission of liability. The Court was satisfied that the learned magistrate was entitled to come to that conclusion and found no basis to interfere with her findings of fact. In coming to this conclusion, the Court considered the guidance in Yates Associates Construction Company Ltd v Blue Sand Investments Ltd BVIHCVAP2012/0028 (delivered 20th April 2016, unreported) which dictates the approach the appellate court when reviewing findings of fact of the trial court.

Accordingly, the appeal was dismissed and the learned magistrate's order affirmed. Costs of the

appeal were also awarded to the respondent in the sum of \$250.00.

Case Name:

Dwight “Dangles” Walters

v

**[1] Comptroller of Customs
[2] The Attorney General of St.
Christopher and Nevis**

**[SKBMCVAP2018/0008A]
(Saint Christopher and Nevis)**

Date:

Thursday, 29th February 2024

Coram:

**The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. V. Georgis Taylor- Alexander, Justice
of Appeal [Ag.]**

Appearances:

Appellant: In person

Respondents: Mr. Christopher Forde and Ms. Sasha Lloyd

Issues:

**Magisterial civil appeal - Whether decision of the
magistrate was unreasonable and could not be
supported having regard to the evidence - No
appearance of appellant**

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

**The appeal filed herein is dismissed for want of
prosecution.**

Reason:

**On this matter coming on for the hearing of the
appeal and upon the Court noting that the notice of**

hearing was personally served on the appellant at 18:30 hrs on 27th February 2024, and upon further noting that at the hearing, his name having been called three times, there was no answer at 9:13am, the Court ordered that the appeal filed herein is dismissed for want of prosecution.

Case Name:

Brian Wallace

v

Chief of Police

**[SKBMCRAP2023/0004]
(Saint Christopher and Nevis)**

Date:

Thursday, 29th February 2024

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag]**

Appearances:

Appellant: Ms. Angela Cozier

Respondent: Mr. Leslie Roberts

Issues:

Magisterial criminal appeal - Defacement of a public asset contrary to section 38(b) of the Small Charges Act Cap 4.36 - Statute of limitations - Section 78 of the Magistrate's Code of Procedure Act Cap 3.17 - Whether, notwithstanding the fact that the charge was made within six months from the time when the matter of the charge arose, the failure of the appellant to be served with said charge within that statutorily prescribed time frame invalidates the timeliness of the charge, thereby rendering it out of time

Type of Order:

Oral Judgment

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The conviction and sentence of the lower court is affirmed.**

Reason:

Upon this matter coming on for appeal against an order of the learned magistrate given on 30th May 2023, wherein the magistrate ordered the appellant to pay the sum of \$2000 in fines and restitution. Upon reading the notice of appeal filed on 12th June 2023 and upon reading the amended notice of appeal filed on 13th October 2023 containing the following grounds: (i) that the decision of the learned magistrate was erroneous on a point of law; (ii) that the decision of the learned magistrate was unreasonable and cannot be supported having regard to the law; (iii) that the decision of the learned magistrate was based on a wrong principle and was such that the magistrate knowing the circumstances reasonably could not have properly decided; (iv) section 76 of the Magistrate's Code of Procedure Act Cap 3.17 provides that in all cases where no time is specifically limited for the making of any charge in the Act or law relating to the particular case such charge shall be made within 6 months from the time when the matter of the charge arose; (v) the Small Charges Act under which the appellant was charged does not prescribe a time limitation for any charge thereunder nor does it prescribe a penalty for arrest of alleged offences; (vi) that the appellant was arrested on 16th July 2022 and released on 19th July 2022 after being held for 86 hours under arrest but was never charged or summoned under the Small Charges Act until 24th March 2023, some 8 months and 8 days after the time when the matter of the charge arose on 16th July 2022; (vii) the magistrate's court summons charging the appellant under section 38(b) of the Small Charges Act was made out of the time limit for such a charge contrary to section 76 of the Magistrate's Code of Procedure Act (the Court recognises it to be under the Revised Act as section 78); (viii) the appellant was unrepresented by counsel in court and was not informed by the court that he should retain counsel, therefore his plea of guilty was void and of no legal effect in the circumstances of a charge made out of time; (ix) the learned magistrate erred in law when he failed to recognise that the charge against the appellant was made some 8 months and 8 days after the time when the matter of the charge arose and was therefore completely out of

time; (x) the decision of the learned magistrate to fine the appellant the sum of \$2,000.00 for defacing public property under section 38(b) of the Small Charges Act and the sum of \$1,000.00 to be paid to the Public Works department as restitution was unreasonable and could not be supported by law because the charge was made out of time and therefore without any or any proper evidence; (xi) the learned magistrate erred in law in ordering, according to the appellant, to pay the amount of \$2,000.00 for the charge under section 38(b) of the Small Charges Act when in fact it was not supported by law against the appellant; and (xii) that no rational court having properly considered the law and evidence in the form of the notes of the Magistrate Eddy, noting that there was no proof of service on the appellant despite multiple requests to the respondent to produce the said proof would have given judgment against the appellant in the circumstances.

Upon considering the Magistrate's Code of Procedure Act, in particular sections 38 and 78 and recognising that the charge of defacing property is a summary charge under the Small Charges Act for which no time is prescribed for the laying of the charge, thus per section 78, the limitation period is 6 months; and recognising that the charge was made on the 12th September 2022 which was well within the prescribed 6 months and that the summons was served on the appellant on 24th March 2023, a period of 8 months after the matter of the charge arose and recognising that the Magistrate's Code of Procedure Act does not prescribe a time limit for the service of summons on the appellant, save that section 36 of the Act provides for a summons to be served in a reasonable time before the date of the appellant's appearance at the hearing. In this case, the hearing was fixed for the 3rd April 2023 and the summons was served on the appellant on 24th March 2023.

The Court found that the time within which the summons was served on the appellant was reasonable and there was no evidence that it caused prejudice to the appellant. The Court also found that the charge against the appellant was properly laid. The Court noted that none of the other grounds of

appeal identified in the amended notice of appeal were developed. Consequently, the appeal was dismissed and the conviction and sentence of the lower court affirmed.

Case Name:

Rachael France

v

The Licensing Authority

**[SKBMCRAP2022/0001]
(Saint Christopher and Nevis)**

Date:

Thursday, 29th February 2024

Coram:

**The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. V. Georgis Taylor-Alexander, Justice
of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Hesketh Benjamin

Respondent:

Mr. Leslie Roberts

Issues:

Magisterial criminal appeal - Failure of magistrate to sign complaint - Whether complaint is defective because magistrate did not sign complaint - Section 22 of the Magistrate's Code of Procedure Act - Failure of magistrate to sign summons- Disclosure - Whether as a matter of law, in summary cases, the defendant was entitled to have prior sight of the witness statements of the prosecution's witnesses – Whether magistrate erred in proceeding with trial without legal representation of the defendant/appellant

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed on account of ground 3 of the appellant's appeal only.
2. The appellant's conviction is quashed and the fine set aside.
3. The matter is remitted to the magistrate's court for a re-hearing before a different magistrate.

Reason:

On 10th March 2022 the appellant was convicted of the offence of driving without due care and attention and sentenced to a fine of \$1,000.00 to be paid within 6 days and in default of such payment, 30 days imprisonment.

Being aggrieved, the appellant lodged a notice of appeal on 23rd March 2022 containing 5 grounds of appeal. In summary, grounds 1 and 4 overlap and essentially aver that in relation to the proposed conviction and sentence, the magistrate erred in law. Ground 2 asserts that the learned senior magistrate failed to consider the fact that the prosecution failed to disclose to the defendant or his solicitor the prosecution's witness statements before trial. While ground 3 challenges the decision of the magistrate to proceed with the trial in absence of counsel for the appellant. Ground 5 complains that the sentence imposed was unduly severe.

In the appellant's written skeleton arguments, grounds 1 and 4 did not appear to be developed, instead the appellant identified what he describes as multiple procedural errors. These were identified as the absence of the magistrate's signature on the complaint and the defendant summons. At the hearing, the appellant sought and obtained leave to amend his notice of appeal to add these matters as a ground of appeal. This was the first ground argued by counsel for the appellant. It was noted that whilst section 31 specifically requires a police complainant to sign the complaint, the Act is silent as to whether that requirement extends to the magistrate. Even if it did, it has been held in the case of *D'Oliveira (Comptroller of Customs and Excise) v Ramrattan Singh* (1963) 6 WIR 193, a decision of the British Guiana Supreme Court, that the affixing of a signature of the magistrate is only an administrative

act and does not affect the merits of the complaint. The Court endorsed that position and accordingly found that there was no merit to the ground of appeal that posited that the complaint was somehow defective because it did not bear the magistrate's signature. In relation to the alleged unsigned summons, section 28 of the Magistrate's Code of Procedure Act provides that when a complaint is laid before the magistrate, he or she may issue a warrant directing the defendant's appearance at court to answer the charge. Even though the summons was unsigned, the Court agreed with the submissions of the respondent that the appellant having surrendered herself to the jurisdiction of the court without protest, such a defect cannot have impacted the fairness of the trial and can ground no basis for quashing the conviction. In any event, section 229 of the Magistrate's Code of Procedure Act provides that no objection shall be allowed to any information, complaint, summons or warrant for any alleged defect therein in substance or in form or for any variants between such information, complaint, summons or warrant and the evidence adduced on the part of the informant or complainant on the hearing of such information or complaint. There was therefore no merit to this ground of appeal.

Non-Disclosure of prosecution's witness statements

The appellant complained that although counsel wrote to the DPP on 17th May 2021 requesting copies of all the relevant witness statements and exhibits pertaining to the charge, the disclosure was never forthcoming. Mr. Roberts for the respondent submitted that there was no such duty of disclosure on the prosecution and the appellant suffered no prejudice by such lack of disclosure. Generally, the prosecution is obliged to disclose to the defence any material which it has in its possession, which would assist the defendant with the preparation of his defence and which might undermine the case for the prosecution against the accused. Such material includes the statement of a witness whom the prosecution believes credible but whom they do not intend to call as part of their case, and any previous inconsistent statements made by its own witnesses. In the context of summary proceedings, the question

whether that legal obligation extends to the statements of witnesses the prosecution proposes to call has been settled for some time and are discussed in the Privy Council decision of Franklyn and Vincent v R (1993) 42 WIR 262. Distilled, the following propositions emerge: a) there is no general duty on a prosecutor to disclose witness statements in advance of a summary trial; b) such an obligation may arise however where the offence charged is serious or complex; c) where the offence is trivial to be dealt with summarily or the issues are simple the provision of witness statements before trial is of less importance. Applying these principles to the facts of this case, a charge of driving without due care and attention is a relatively simple and uncomplicated charge. The entire trial consisted of the testimony of three witnesses only: the virtual complainant, the investigating officer and the appellant. The notes of evidence occupied a mere 5 pages, the issue was a narrow one and turned on whose version the magistrate accepted. The Court's view was that in these circumstances, there was no obligation on the prosecution to disclose in advance the statements of the witnesses it proposed to call. This ground of appeal therefore failed.

Trial of appellant in absence of counsel

The appellant's contention under this ground was that although she was represented by counsel, the learned magistrate proceeded to try the case in counsel's absence in breach of the right to representation. The respondent contended that there was no obligation on the magistrate to seek out counsel for the appellant and the appellant suffered no prejudice on account of the absence of a lawyer. The Court did not agree with such a sweeping proposition. Undoubtedly, a defendant must be advised that he/she is entitled to be represented by counsel if he/she so desires. This right to legal representation is part and parcel of the duty to ensure that a defendant is given the opportunity to be heard. A denial of that right may result in any ensuing conviction being quashed on the basis that the defendant has been denied a fair trial. See Arlette v Chief of Police (1965) 10 WIR 243. In this case, based on the evidence before us, it is clear that by at least

17th May 2021, the appellant had retained counsel who had written for disclosure on her behalf. It was not in dispute that the trial proceeded without the appellant's counsel being present. The issue was whether the appellant was denied a fair trial by virtue of the fact that the magistrate proceeded to hear the case in the absence of her counsel. On the face of the record there was no indication that there was any enquiry by the magistrate as to the whereabouts of counsel for the appellant and there was no indication whether the appellant expressly waived her right to legal representation. On the other hand, there was no indication on the record that the appellant made an application for an adjournment to seek representation of counsel. In the circumstances of this case, where it was not disputed that by then the appellant was represented by counsel it was incumbent on the magistrate to at least stand the matter down to allow the appellant to make contact with counsel to ascertain his whereabouts. It might have been different if the appellant had never been represented by counsel and had never indicated a desire to be represented by counsel but this was not such a case. The Court could not help but feel that the appellant was disadvantaged by the absence of counsel. The Court felt this way, having reviewed the transcript of evidence. While she did her best to cross examine the prosecution witness, understandably her cross examination lacked the forensic sharpness that counsel could have brought to the process, possibly leading to a different outcome. For those reasons, the Court considered that the learned magistrate erred when he conducted the trial in the absence of the appellant's counsel. On this ground alone, the appeal was allowed, the conviction was quashed and fine set aside and the matter was remitted to the magistrate's court for a re-hearing before a different magistrate.