

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

COMMONWEALTH OF DOMINICA

4th to 8th December 2023

JUDGMENTS

Case Name:

**Ezra Phillip
v
The King**

[SLUHCRA2022/0001]

(SAINT LUCIA)

Date:

Tuesday 5th December 2023

**Coram for
delivery:**

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price Findlay, Justice of
Appeal**

Appearances:

**Appellant: Ms. Alberta Richelieu holding papers for Mr. Alberton
Richelieu**

Respondent: Ms. Tanya Alexis-Francis

Issues:

**Criminal appeal – Appeal against conviction and
sentence - Joint enterprise – Intention - Section 56 of
the Criminal Code of Saint Lucia - Whether the learned
trial judge gave adequate directions to the jury on the
element of intention as contained in section 56 of the
Criminal Code**

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against conviction is dismissed.**

2. The appeal against sentence is allowed to the extent only of setting aside the order that the appellant pay \$6,000.00 in compensation to the virtual complainant.

Reasons:

1. Section 56(1) of the Criminal Code is a general statement of a person's intention in committing a criminal act. Section 56(2) lists five matters that the jury can consider in determining whether the prosecution has established the necessary level of intention for the commission of the crime charged. In directing a jury on intent, a judge is not required to direct the jury on each and all of the matters mentioned in section 56. What is required is that the trial judge directs the jury on the substance of the requirements in the section and explains to the jury contemporaneously, how to apply the principles to the facts of the case. In doing this, the trial judge should keep his or her directions simple and intelligible so that the jury can clearly understand how to assess the law and apply it to the facts.

Sections 56(1) and 56(2) of the Criminal Code Cap. 3.01, Revised Laws of Saint Lucia 2008 applied *Denis Alphonse v The Queen* (1996) 52 WIR 179 applied; *Baldeo Dihal v R* (1960) 2 WIR 282; *Jevonne Demming v R* BVIHCRA2015/0001 (delivered 14th January 2020, unreported) applied; *Daniel Dick Trimmingham* [2009] UKPC 25 applied; *James Miller v The King* [2023] UKPC 10 considered.

2. In this case, a consideration of the learned trial judge's summing up as a whole shows that he gave adequate directions on the substantive requirements of section 56 of the Criminal Code insofar as they are relevant to this case and that he related those requirements to the evidence in the case. His directions on intention were concise and clear and the jury must have been satisfied beyond reasonable doubt that the

appellant either stabbed Mr. St. Marie in his stomach with a sharp object with the intention of causing him dangerous harm, or that he participated in the fight with the other men by helping or encouraging them with the intention of causing dangerous harm to Mr. St. Marie, for example, by contributing to the force of numbers in a hostile confrontation. Accordingly, the first and second grounds of appeal are dismissed. The appeal against sentence is however allowed to the extent that the compensation order is set aside.

Case Name:

Oscar Vargas

v

**Barbara Vargas (Nee Pierre)
CIBC FirstCaribbean International Bank (Barbados)
Limited
Caribbean Union Bank**

[ANUHCVP2020/0034]

(ANTIGUA AND BARBUDA)

Date:

Wednesday 6th December 2023

**Coram for
delivery:**

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

Appearances:

Appellant:

Ms. Chantal Marshall

Respondents:

**Ms. Barbara Vargas appearing in person
Ms. Mandi Thomas for the 2nd Respondent**

Issues:

Notice of appeal – Strike out application – Application test – Whether judgment and orders are interlocutory or final - Whether the notice of appeal ought to be struck out as a nullity as no leave to appeal had been obtained

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The application to strike out the notice of appeal is granted.**
- 2. The notice of appeal filed on 8th October 2020 is struck out as a nullity; and**
- 3. The Respondent/Appellant shall pay the Applicant's costs on this application to be assessed if not agreed within 21 days of the date of this judgment.**

Reasons:

- 1. The proper means for challenging the order of a single judge is by applying to either vary, discharge or revoke that order within 14 days of it being made. Since the Applicant has not followed the proper procedure in challenging the orders of Baptiste JA, those challenges are not properly before the Court. In any event, as it relates specifically to the order of Baptiste JA dated 25th May 2021, there is no appeal against an order allowing an extension of time for appealing from a judgment or order.**

Rules 62.16(A)(1) and 62.16(A)(2) of the Civil Procedure Rules 2000 applied; Section 31(2)(b) of the Eastern Caribbean Supreme Court Act Cap. 143 of the Revised laws of Antigua and Barbuda applied.

- 2. No appeal shall lie without the leave of the court below or the Court of Appeal from any interlocutory judgment or order. Whether or not**

a decision is interlocutory or final is determined by the application test, which states that an order or judgment is final if it would be determinative of the issues that arise on a claim, whichever way the application could have been decided. The question for the Court is thus whether the judgment and orders of Kelsick J (Ag.) are final or interlocutory. In applying the application test one must look at the possible outcomes of the underlying applications. In respect of the orders of Kelsick J dated 21st July 2020, and 31st July 2020, had the Applicant's applications been denied, then the proceedings would have continued, and the provisional orders would have remained in place until discharged or made final. A denial of the applications therefore would not have brought the proceedings to an end or decided the substantive rights of the parties. A similar conclusion is reached when the application test is applied to determine whether the judgment of Kelsick J (Ag.) delivered on 15th July 2020 is final or interlocutory.

Section 31(1) and 31(2)(g) of the Eastern Caribbean Supreme Court Act Cap. 143 of the Revised laws of Antigua and Barbuda applied; Rules 62.2 and 62.1(3) of the Civil Procedure Rules (Revised Edition) 2023 applied; *Candey Limited v Russell Crumpler et al BVIHCMAP2020/0021* (delivered 21st September 2021, unreported) followed.

3. On the application test, the judgment and orders of Kelsick J are interlocutory. Therefore, leave to appeal should have first been sought and obtained. The Respondent/Appellant not having done so, the Court is therefore constrained to strike out the notice of appeal as a nullity.

Travia Douglas v Shivoughn Warde et al SKBHCVAP2008/0011 (delivered 16th March 2009, unreported) followed

Case Name:

**Levi Maximea
v
The Chief of Police et al
[DOMHCVAP2020/0009]**

(COMMONWEALTH OF DOMINICA)

Date:

Thursday 7th December 2023

**Coram for
delivery:**

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal [Ag.]**

Appearances:

**Appellant: In Person
Respondents: Mr. Jason Lawrence**

Issues:

Civil appeal – Res judicata – Filing of new claims addressing same issues pending the delivery of judgment – Whether the learned judge erred in finding that the new claims were litigated and determined in earlier proceedings – Whether the learned judge erred in striking out the claim on the ground of abuse of process – Whether the delay in the delivery of the judgment resulted in breach of the constitutional right to a fair hearing within a reasonable time – Whether rule 26.3(1)(c) of the CPR 2000 is inconsistent with section 103 of the Constitution

Result/Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. Costs to the Respondents to be assessed if not agreed within 21 days of the date of this order.**

Reasons:

- 1. Where a matter becomes the subject of litigation and adjudication by a court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case.**

The court will not (except in special circumstances) permit the same parties in subsequent litigation to raise issues that could have been brought forward as part of the subject in the first litigation, but which were not through negligence, inadvertence, or even accident. This rule is not based on the doctrine of *res judicata* in a narrow sense, nor any strict doctrine of issue estoppel or cause of action estoppel. It is a rule of public policy based on the desirability, in the general interest as well as that of parties themselves, that litigation should not drag on forever and that a defendant should not be oppressed by successive suits when one would do.

Henderson v Henderson (1843) 3 Hare 100 followed; Barrow v Bankside Members Agency Ltd. [1996] 1 All Er 981 followed.

2. The Appellant's New Claims were struck out because they were an attempt by the appellant to re-litigate issues that had already been heard by the court. The Appellant was not entitled to bring fresh claims on the ground that decisions were outstanding in Claims No. 139/2011 and 121/2012 ("the Old Claims"). This was an abuse of the court's process.
3. The claim for constructive dismissal was also correctly struck out as being *res judicata*. This Court is bound by the decision of the Caribbean Court of Justice which upheld the judgment of Stephenson J in claim No. 54 of 2009 which included the finding that there was a claim for loss of future earnings and gratuity based on constructive dismissal of the appellant from the Police Force.
4. The trial judge was correct in striking out the New Claims and there is no reason to interfere with her decision.
5. As a general rule, the Court of Appeal does not have original jurisdiction to entertain breaches of the Constitution. It has jurisdiction in two

situations: (i) on appeal from a final decision of the High Court where such issues were raised for determination, and (ii) where such questions arise in extant appellate proceedings. In this case, there is no final decision on the constitutionality issue in the High Court and the Appellant must bring the case under the second situation. His challenge to the constitutionality of the delay in the delivery of the judgment in the Old Claims by filing an additional ground of appeal does not qualify as an issue that arose in extant proceedings. The challenge should have been raised in an appeal against the decision of the Old Claims, or in the High Court as was done in claim No. 84 of 2015. In these circumstances, the Court does not have original jurisdiction to deal with the alleged breach of the Appellant's constitutional rights to a fair trial by the delay in the delivery of judgment in the Old Claims.

Allen Chastanet v Ernest Hilaire SLUHCVAP2019/0005 (delivered 16th January 2020, unreported) followed; Akim Monah v R GDAHCRAP2021/0015 (formally 2014/0002 delivered 23rd February 2022, unreported) followed.

6. There is nothing unusual, irregular, or unconstitutional about a superior court taking upon itself the power to strike out the claim for abuse of process. Even without CPR rule 26.3, such an entitlement is an inherent feature of all superior courts to prevent misuse of their procedures. The claim that CPR rule 26.3(1) is unconstitutional lacks merit and Stephenson J was entitled, and right, to strike out the claim.

CCJ Application No. DM/A/CV2021/001 applied.

Case Name:

Villa Cornucopia Limited

v

Esther Developments Limited

(TERRITORY OF THE VIRGIN ISLANDS)

Date: Friday 8th December 2023

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

Appearances:

Appellant: Mr. Simon Hall

Respondents: Ms. Reisa Singh

Issues: Interlocutory appeal - Interim injunction – Restrictive covenants – Whether the master applied a flawed approach of the American Cyanamid principles - Adequacy of damages as a remedy - Whether the master erred in failing to hold that the respondent did not provide an adequate undertaking as to damages - Whether the master erred in resolving the balance of convenience in favour of granting the interim injunction

Result/Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The order of the court below is affirmed.

Reasons:

1. The judgment in American Cyanamid v Ethicon Ltd contains no more than a set of useful guidelines which a court may apply in many cases. There is no rigid four stage or ‘box-ticking’ approach by which a court is to exercise its discretion when considering whether to grant an injunction. The overarching principle is the statutory power of the court to grant interim injunctions when it is just and convenient to do

so. In this case, the fact that the master's analysis of the adequacy of damages sequentially followed his assessment of the balance of convenience was not indicative of a misdirection or flawed approach or that he 'skipped a step'. Accordingly, the Court finds no merit in the submission that the master adopted a flawed approach in considering the principles under the American Cyanamid test.

Section 24 of the Eastern Caribbean Supreme Court (Virgin Islands) Act Cap 80 of the Laws of the Virgin Islands applied; Rule 17.1(1)(b) of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000 applied; American Cyanamid Co. v Ethicon Ltd [1975] AC 396 (HL) considered; N.W.L Ltd v Woods [1979] ICR 867 considered; Cambridge Nutrition Ltd v British Broadcasting Corp [1990] 3 All ER 523 considered; Apotex Fermentation Inc v Novopharm Ltd [1994] 7 W.W.R. 420 considered; National Commercial Bank Jamaica Ltd v Olint Corpn Ltd. [2009] 1 WLR 1405 considered.

2. In the context of a negative covenant, damages might not always afford a sufficient or satisfactory remedy and therefore equity would need to interfere to prevent a mischief. The courts have generally paid less regard to the question of the amount of damage or injury likely to be suffered by the applicant and more to the negative bargain which the parties would have freely made. While the potential change of character of the neighbourhood is not a necessary determinant of whether there is a breach of the restrictive covenant, it is a factor which the master could properly consider in the exercise of his discretion. Moreover, even if this Court were to hold a contrary view, this is not sufficient to set aside the master's decision.

Doherty v James Clagston Allman and W.C. Dowden (1878) 3 App Cas 709 considered; Halsbury's Laws of England (2022) vol 87, Real Property and Registration considered;

Chatsworth Estates Company v Fewell [1931] 1 Ch. 224 considered.

- 3. Before a court will grant an interlocutory injunction, the party seeking the order will almost always offer or be required to give to the court the 'usual undertaking as to damages'. The fact that a claimant is funded by a third party or is of limited means would not preclude the grant of an injunction in a proper case. Each case turns on its own facts. In this appeal, it is clear that the respondent's financial resources were relevant to the court's exercise of discretion to make an interlocutory injunction and that in fact it did adduce evidence of its financial capacity to meet the undertaking. The learned master was clearly satisfied with the terms of the proposed undertaking and had no doubt as to the financial security of the funder. The Court sees no basis to interfere with that finding of fact especially when there was no evidence of the appellant actively seeking fortification of that undertaking.**

Allen and others v Jambo Holdings Ltd. and others [1980] 1 WLR 1252 considered; Cambridge Credit Corporation Ltd (Receiver Appointed) v Surfers' Paradise Forests Ltd [1977] Qd R 261 considered; Frank Industries PTY Ltd v Nike Retail BV and others [2018] EWCA Civ 497 applied.

- 4. The way in which courts apply the balance of convenience test varies from case to case. In cases of prohibitory injunctions enforcing negative covenants between parties, the courts have emphasised the need to enforce negative covenants expeditiously. However, in recent times the courts have prescribed a cautious approach. The court should take whichever course seems likely to cause the least irreparable prejudice and should seek to avoid irreparable damage and harm to either party while recognising that its decision, whether in favour or against the grant of an injunction, will inevitably involve some disadvantage to either**

party which damages cannot compensate. It is the extent of this uncompensable disadvantage which is a significant factor in determining the balance of convenience. The master's approach appears to be consistent with the case law. He clearly recognised that the dispute between the parties involved a negative covenant of some vintage which he was obliged to accord appropriate weight. However, the master did not stop there; he took into account other factors such as the appellant's bookings for November 2022 to February 2023 and concluded that the balance of convenience would not favour the grant of an injunction during this period. The master was clearly seized of the potential impact on the appellant. Accordingly, the Court is not satisfied that the learned master's exercise of discretion and the conclusion which the master reached in granting the interim injunction is blatantly wrong.

Cayne and another v Global Natural Resources plc [1984] 1 All ER 225 considered; National Commercial Bank Jamaica Ltd v Olint Corpn Ltd. [2009] 1 WLR 1405 applied; Hampstead & Suburban Properties Ltd. v Diomedous [1969] 1 Ch. 248 considered; Digicel (Fiji) Ltd v Fiji Rugby Union and another [2017] 2 LRC 97 considered; Attorney General v Barker and another [1990] 3 All ER 257 considered; Michel Dufour and Others v Helenair Corporation Ltd [1996] 52 WIR 188 applied.

Case Name:

Vincent Cassell

v

The Director of Public Prosecutions

[MNIHCVAP2023/0002]

(MONSTERRAT)

Date:

Friday 8th December 2023

**Coram for
delivery:**

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

Appearances:

Appellant: Mr. Fitzroy Buffonge

Respondent: Mr. Oris Sullivan

Issues:

**Refusal of application to discharge a restraint order –
Appellate interference with trial judge’s discretion –
Whether the learned judge erred by refusing the
appellant’s application to discharge the restraint order
– Procedure for obtaining a restraint order under the
Proceeds of Crime Act – Whether an application for a
restraint order must be made by fixed date claim form
and comply with the provisions of Part 8 and 17 of the
Civil Procedure Rules 2000 – Joint tenancy – Appellant
and wife owning property subject to restraint order
jointly – Whether property owned jointly could be the
subject of a restraint order – Whether, on an
application for a restraint order, the applicant must
adduce evidence of the value of the benefit obtained
by the defendant on account of his criminal conduct –
Risk of dissipation - Whether there was evidence of a
risk of dissipation of assets**

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Grounds of appeal 1, 2, 3, 4, 5 and 7 are dismissed.**
- 2. The appeal is allowed on ground 6 and the restraint order granted on 8th March 2023 is discharged.**

Reason:

- 1. A restraint order under POCA is an order preventing a suspect from disposing of his assets. Its sole purpose is to preserve property to satisfy any confiscation order that might be**

made in the event of a later conviction. The POCA, in effect, provides a free-standing statutory regime for making an application for a restraint order. It prescribes the way the application should be made and the conditions that must be satisfied. Under the Act, on these facts, the judge needed to be satisfied that (1) a criminal investigation had commenced or that charges had been laid, and (2) that there was reasonable cause to believe that the offender had benefitted from his criminal conduct. This test is different from the test under rule 17.2(3) of the Civil Procedure Rules 2000 (the “CPR”) which stipulates that a court may only grant an interim remedy if (1) the matter is urgent or (2) it is otherwise necessary to do so in the interests of justice. Neither of these conditions are to be satisfied under the POCA. Contrary to counsel for the appellant’s assertions, there is nothing to warrant importing the CPR rules applicable to interim remedies under Part 17 or for invoking the CPR regime for instituting a claim by fixed date claim form under Part 8.

Sections 41 and 43 of the Proceeds of Crime Act Chapter 4.04 of the revised laws of Montserrat, 2019 applied.

2. The definition of property under the POCA is wide and includes land. A person holds property under the Act if they have an interest in property, and that interest may be a right (including a right to possession), any legal interest or estate or any equitable interest or power. The appellant, as joint owner, undoubtedly has an interest in the restrained property and it clearly falls within the definition of property under the Act. Further, the restrained property would be realisable property under the Act since the definition of realisable property does not exclude jointly owned property. Whilst the appellant and his wife were joint tenants, the reality is that each joint tenant has an interest in the property as joint owners of the whole property. Counsel’s reliance on dicta in *Keithley Lake et al v Richard Vento et al*

for the proposition that since joint property could only be severed voluntarily, a court ordered sale could not sever the joint tenancy and so such property could never be the subject of a restraint order, is misplaced. There is no provision under the Registered Land Act (“RLA”) that would make the provisions of the POCA relating to restraint orders inapplicable to jointly owned property. Consequently, even though the property was jointly owned, it fell within the definition of realisable property under POCA and was therefore capable of being subject to a restraint order.

Keithley Lake et al v Richard Vento et al AXAHCVP2016/0012 (delivered 20th June 2019, unreported) distinguished; Blackstone’s Criminal Practice 2024 paragraphs E19.49-E19.51 and E19.57 considered.

3. A person benefits from criminal conduct if he obtains property as a result of or in connection with his criminal conduct. The value of the benefit is the value of the property so obtained or where a pecuniary advantage had been obtained, a sum of money equal to that advantage. In making a restraint order, the court’s task is not to reach firm conclusions as to the precise extent of a suspect’s benefit, rather the court’s duty is to decide whether to make the protective order so that in the event of any confiscation order being made, it will be efficacious. On the facts, there was evidence on which the judge could be satisfied that the appellant had benefited from criminal conduct in relation to both the salary and the honorarium. There was also evidence in relation to the value of the benefit in relation to the honorarium. The fact that there was no evidence of the precise value of the benefit obtained by the appellant in relation to the failure to pay tax on his salary afforded no basis for the judge to discharge the restraint order. There is therefore no merit in the appellant’s contention that the judge erred in holding that there were reasonable grounds for suspecting that the

appellant had benefited from criminal conduct. Additionally, in so far as the appellant contended that the judge also erred in finding that there were reasonable grounds for suspecting that the appellant had committed a criminal offence, the judge was not required to be satisfied of this under the POCA. To the extent therefore, that the judge appears to have added another condition to be satisfied, this was an error, but it caused no prejudice to the appellant.

Jennings v Crown Prosecution Service [2005] 4 All ER 391 applied.

4. Even where the statutory conditions for the grant of a restraint order are established, the court must not grant the order unless the prosecutor has established that there is a real risk of dissipation of assets. Whilst counsel for the respondent argued that evidence of dishonesty permitted a ready inference of a risk of dissipation, a finding of dishonesty in itself, is insufficient to constitute a real risk of dissipation. If the dishonesty itself is at the heart of the claim against the relevant defendant, the court may be able to draw the inference that the making out of that case against the defendant also establishes sufficiently the risk of dissipation. While the instances of dishonesty on the part of the appellant as referred to in Sean Mason's affidavit showed a pattern of evasive behaviour on the part of the appellant in so far as cooperating with IRD was concerned, there was no actual evidence before the judge of any attempt by the appellant to dissipate his assets. As the judge had provided no written reasons, the only insight into his thought process is from his order dated 8th March 2023. The judge's order failed to address the risk of dissipation at all. Since a restraint order ought not to be granted in the absence of evidence of a risk of dissipation, the judge's failure to deal with this factor was a fatal error of law. The Court of Appeal therefore exercised its discretion afresh and determined that this was not an appropriate

case to infer a risk of dissipation merely because dishonesty was charged, The Court therefore allowed ground 6 of the appellant's grounds of appeal and discharged the restraint order.

Mitsuji Konoshita et al v JTrust Asia PTE Ltd
BVIHCMAP2018/0047, BVIHCMAP2018/0020
(delivered 18th December 2018, unreported)
followed; Jennings v Crown Prosecution
Service [2005] 4 All ER 391 considered.

APPLICATIONS AND APPEALS

Case Name:	Panel 1 Annette Turney v Josian Nixon Jason Nixon (as the personal representative of the estate of Giraud Nixon) Tutil St. John Rosie St. John [DOMHCVAP2021/1003] (Commonwealth of Dominica)
Date:	Monday 4 th December 2023
Coram:	The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mde. Georgis Taylor Alexander, Justice of Appeal [Ag.] The Hon. Mr. Eddy Ventose, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Mark Douglas
Respondent:	Ms. Hazel Johnson holding papers for Mrs. Dawn Yearwood-Stewart
Issues:	Application for adjournment

Type of Order

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

The hearing of the application filed on the 29th November 2023 and the interlocutory appeal are adjourned to a date to be fixed by the Chief Registrar.

Reason:

The Court noted the report made by Ms. Johnson holding papers for Ms. Yearwood-Stewart, counsel for the appellant and Mr. Douglas, Counsel for the respondent and noted that Mr. Douglas had no objection to the granting of the adjournment of the application and the appeal. Having regard to the circumstances being experienced by Ms. Yearwood-Stewart, the Court was of the view that the hearing of the application and the appeal should be adjourned.

Case Name:

**[1] Mathias Peltier
[2] West Indies Communication Enterprises Ltd
V
Mathew Leblanc
[DOMHCVAP2020/0006]
(Commonwealth of Dominica)**

Date:

Monday 4th December 2023

Coram:

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Georgis Taylor Alexander, Justice of Appeal [Ag.]
The Hon. Mr. Eddy Ventose, Justice of Appeal [Ag.]**

Appearances:

Appellants:

Mrs. Cara Shillingford

Respondent:

Mrs. Heather Felix-Evans

Issues:

Civil appeal - Defamation - Assessment of damages - Whether the amount of damages awarded by the learned master was disproportionately high in light of the facts of the case - Whether the learned master erred in rejecting the appellants submissions that there was mitigating factors which should reduce the quantum of damages - Whether the learned master erred in finding that pleaded facts cannot be disputed or found to be untrue in an assessment of damages hearing - Whether the learned master failed to give sufficient weight to the fact that prior to the publication, the respondent, by his own admission, had a reputation of having committed the very acts the caller accused him of - Whether the learned master failed to give appropriate weight to the fact that the statements were made by a caller and not the appellants - Whether the learned master erred in failing to consider the apology offered by the appellants as a mitigating factor - Whether the learned master erred in refusing to set aside the default judgment in circumstances where it was irregularly obtained since the respondent failed to provide service of the claim form, defence form and acknowledgment of service form prior to obtaining the default judgment - Whether the learned master erred in failing to consolidate the claim with Claim DOMHCV085 of 2015 since the two claims concern the same facts and the same allegedly defamatory statement - Whether the learned master erred in failing to consider that the respondent filed separate legal proceedings against the publisher of the statement and that there was a real risk of the respondent receiving double compensation

Type of Order:

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Panel 2

Case Name:

**Floreat Real Estate Limited
v
[1] XYZ
[2] Chia Hsing Wang
[3] Real Assets (RA) Global Opportunity Fund
Limited**

**[BVIHCMAP2023/0017]
(Territory of the Virgin Islands)**

Date:

Monday 4th December 2023

Coram:

**The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Andrew Hunter KC with Mr. William Hare, Mr. Alistair Abbott and Mr. Christopher Bromilow

**Respondents: Mr. James Collins KC with him Mr. Benedict Tompkins
Mr. Andrew Willins and Ms. Tamara Cameron**

Issues:

Interlocutory appeal - Appointment of joint provisional liquidators - Whether the second respondent had standing to make application for the appointment of liquidators pursuant to section 170(2) of the Insolvency Act 2003 - Whether the judge erred in finding that the second respondent had standing to bring the application for the second joint provisional liquidators order - Whether the judge erred in his approach to the second application - Whether second application was an abuse of process - Whether the judge erred by relying on materials which were inadmissible and legally irrelevant - Whether the judge's analysis of the evidence before him was unreasonable

Counter notice of appeal by 2nd respondent - Appellate review of trial judge's findings of fact - Whether the judge erred in finding that the second respondent was not a member of the third respondent

within the meaning of section 2(1) Insolvency Act 2003
- Whether the judge erred in finding that the alternative
relief sought by the second respondent was
oppressive and inappropriate

Type of Order: N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: Liana Leanne Prince Charles
v
Derrickson Charles

[DOMHCVAP2013/0023]

(Commonwealth of Dominica)

Date: Tuesday 5th December 2023

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price Findlay, Justice of Appeal

Appearances:

Appellant: Ms. Gina Dyer-Munro

Respondent: Ms. Hazel Johnson

Issues: Application for an adjournment - Application for an
extension of time to file submissions in reply and for
relief from sanctions - Application to adduce fresh
evidence

Type of Order Directions

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The application filed on behalf of the appellant for an extension of time to file submissions in reply to the respondent's submissions in the substantive appeal and for relief from sanctions not being opposed by the respondent is accordingly granted.**
- 2. Leave is granted to the respondent to file and serve an affidavit and submissions in response to the application to adduce fresh evidence within 14 days of the date of this order.**
- 3. Leave is granted to the appellant to file an affidavit and submissions in reply within 7 days of receipt of the respondent's affidavit and submissions.**
- 4. The application filed on behalf of the appellant to adduce fresh evidence on the appeal is adjourned to a chamber hearing on a date to be fixed by the Chief Registrar.**

The hearing of the appeal is adjourned to a date to be fixed by the Chief Registrar.

Reason:

The Court noted that the appellant's application for an extension of time to file submissions in reply in the substantive appeal and for relief from sanctions was unopposed by the respondent, and accordingly granted that application.

However, the Court noted that the respondent opposed the appellant's application to adduce fresh evidence and, accordingly, adjourned the application for a Chamber Hearing on a date to be fixed by the Chief Registrar.

Given the foregoing, the Court adjourned the hearing of the substantive appeal to a date to be fixed by the Chief Registrar.

Case Name:

1. The Commissioner of Police
2. The Minister of Justice, Immigration and National Security
3. The Attorney General

v

1. Archipelago Trading Ltd
2. Greens Wholesale & Co. Ltd.
3. H & H Wilson & Co. Ltd.
4. Josephine Gabriel & Co. Ltd.
5. L. A. Dupigny & Co. Ltd.
6. Pirates Ltd.

[DOMHCVAP2023/0002]

(Commonwealth of Dominica)

Date:

Tuesday 5th December 2023

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price Findlay, Justice of Appeal**

Appearances:

Appellant:

Mr. Anthony Astaphan, SC with Dr. David Dorsett

Respondent:

**Professor Leslie Thomas, KC with Ms. Noelize Knight
- Didier, Ms. Joelle Harris and Ms. Indira St. Jean**

Issues:

**Interlocutory appeal - Administrative responsibility -
Duty of Care - Whether a duty of care existed in the
circumstances - Whether the police owe a duty at
common law to prevent crime - Breach of agreement -
Whether a duty of care arose in relation to the third and
fourth respondents based on the special relationship
and express agreement between the parties - Whether
the police gave express assurance to prevent
economic loss - Whether the master erred in refusing**

the strike out application - Whether the master erred in awarding costs

Type of Order

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Kelvin Mann

v

Lorden Warrington

[DOMHCVAP2023/0003]

(Commonwealth of Dominica)

Date:

Wednesday 6th December 2023

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Margaret Price Findlay, Justice of Appeal

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

Appearances:

Appellant:

Ms. Heather Felix-Evans

Respondent:

Ms. Dawn Yearwood Stewart

Issues:

Interlocutory appeal - Relief from sanctions - Appeal against a judicial discretion - Whether the learned judge erred in determining that the application before her was an application for relief from sanctions and not for an extension of time - Whether the learned judge erred by failing to consider the respondent's various applications as separate applications from each other - Whether the learned judge erred in relying on affidavit evidence of counsel on record for the respondent in determining the applications - Whether the learned judge erred in finding that the

respondent's applications had satisfied the requirements of CPR 26.8(2) - Whether the learned judge failed to consider settled principles of law on the quality of evidence required for the grant of relief from sanctions - Whether the learned judge was blatantly wrong in exercising her discretion to grant relief from sanctions

Type of Order:

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

The judgment is reserved.

Case Name:

Dion Phillip Mitchel

v

The Police

[DOMMCRAP2021/0004]

(Commonwealth of Dominica)

Date:

Wednesday 6th December 2023

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Margaret Price Findlay, Justice of Appeal

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

Appearances:

Appellant:

Mr. Wayne Norde

Respondent:

Ms. Daina Matthew

Issues:

Criminal Appeal - Illegal Entry - Appeal against sentence - Whether the sentence imposed by the Magistrate was too harsh - Whether the magistrate

erred in law in imposing a custodial sentence on the appellant due to lack of funds to pay a fine forthwith

Type of Order

Oral Judgment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. Appeal against sentence is allowed.**
- 2. The sentence imposed by the magistrate is set aside and substituted with a fine of \$2300.00 to be paid within two months from today's date failing which a term of imprisonment of 3 months is imposed.**

Reason:

The Respondent conceded that the sentence imposed on the appellant was too harsh and that the magistrate erred in law when he imposed a custodial sentence due to the appellant's lack of means to pay the fine forthwith. Accordingly, the Court was the view that the appeal should be allowed, and the sentence set aside and a fine imposed.

Case Name:

Shirmon Liam Kiron Joseph

v

The Police

[DOMMCRAP2021/0006]

(Commonwealth of Dominica)

Date:

Wednesday 6th December 2023

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Margaret Price Findlay, Justice of Appeal

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

Appearances:

Appellant:

Mr. Wayne Norde

Respondent: Ms. Daina Matthew

Issues: Criminal Appeal - Illegal Entry - Appeal against sentence - Whether the sentence imposed by the Magistrate was too harsh - Whether the magistrate erred in law in imposing a custodial sentence on the appellant due to lack of funds to pay a fine forthwith

Type of Order Oral Judgment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. Appeal against sentence is allowed.
2. The sentence imposed by the magistrate is set aside and substituted with a fine of \$2300.00 to be paid within two months from today's date failing which a term of imprisonment of 3 months is imposed.

Reason: The Respondent conceded that the sentence imposed on the appellant was too harsh and that the magistrate erred in law when he imposed a custodial sentence due to the appellant's lack of means to pay the fine forthwith. Accordingly, the Court was the view that the appeal should be allowed, and the sentence set aside and a fine imposed.

Case Name: Donnelle Travis Mitchel
v

The Police

[DOMMCRAP2021/0005]

(Commonwealth of Dominica)

Date: Wednesday 6th December 2023

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

Appearances:
Appellant: Mr. Wayne Norde
Respondent: Ms. Daina Matthew

Issues: Criminal appeal - Appeal against sentence - Whether Magistrate erred in imposition of sentence

Type of Order Oral Judgment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. Appeal against sentence is allowed.
2. The sentence imposed by the magistrate is set aside and substituted with payment of a fine of \$2300.00 to be paid within 2 months from today's date, failing which a term of 3 months imprisonment is imposed.

Reason: The Respondent conceded that the sentence imposed on the appellant was too harsh and that the magistrate erred in law when he imposed a custodial sentence due to the appellant's lack of means to pay the fine forthwith. Accordingly, the Court was the view that the appeal should be allowed, and the sentence set aside and a fine imposed.

Case Name: Isaline Carbon
v
Lestrade Lamothe

[DOMMCVAP2020/0003]

(Commonwealth of Dominica)

Date: **Wednesday 6th December 2023**

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

Appearances:

Appellant: **Mr. Peter Alleyne**

Respondent: **No appearance**

Issues: **Civil appeal - Directions to Registrar to determine if a representative of the estate of the respondent can be identified**

Type of Order **Directions**

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The Court is satisfied that the respondent to this appeal is deceased.**
- 2. The Registrar of the High Court of the Commonwealth of Dominica is to make enquiries to determine if a representative of the estate of the respondent can be identified.**
- 3. The matter is set down for status hearing on a date to be fixed by the Chief Registrar.**
- 4. A copy of the order is to be served on the Registrar of the High Court of the Commonwealth of Dominica.**

Reason: **Upon the Court being satisfied that the respondent is deceased, it was deemed necessary that a**

representative of the respondent is required to proceed with the matter.

Case Name:

Davidson Etienne

v

The Police

[DOMMCRAP2019/0018]

(Commonwealth of Dominica)

Date:

Thursday 7th December 2023

Coram:

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Trevor Ward, Justice of Appeal

The Hon. Mr. Eddy Ventose, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mrs. Gina Dyer - Munro

Respondent:

Ms. Sherma Dalrymple, Director of Public Prosecutions

Issues:

Magisterial Criminal Appeal - Cross Examination of prosecution's witness missing from record-Adjournment

Type of Order:

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. Her Honour the Chief Magistrate shall provide a copy of the record of evidence of the cross examination of the prosecution's witness, Sergeant Bertrand, to the parties and to the Chief Registrar within 6 weeks of the date of this order.**
- 2. The hearing of the appeal is adjourned to a date to be fixed by the Chief Registrar.**

3. A copy of this order shall be served on the Chief Magistrate within 7 days of the date of this order.

Reason:

The Court considered the matter and was of the view that having regard to the circumstances where the record is incomplete in that the cross-examination of one of the prosecution's witnesses, Sergeant Bertrand, is absent from the record; and noting that the former counsel for the appellant, Mr. David Bruney, has indicated to the Court that he is in possession of the record of the cross examination which was done by him; and also taking note that it was only this morning that Mrs. Gina Dyer-Munro, having been recently retained, has written to the learned Chief Magistrate who had conduct of the matter, requesting the record in relation to Sergeant Bertrand; the hearing of the appeal ought to be adjourned to allow for notes of evidence in relation to the cross examination of Sergeant Bertrand to be provided to the parties and to the Court.

Case Name:

Stacia Williams

v

The Police

[DOMMCRAP2017/0007]

(Commonwealth of Dominica)

Date:

Thursday 7th December 2023

Coram:

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Ms. Gina Dyer Munro

Respondent:

Ms. Sherma Dalrymple, Director of Public Prosecutions

Issues: Criminal Appeal – Battery - Disorderly conduct - Failure of Magistrate to give full reasons for decision - Section 146 Magistrates Code of Procedure - Whether the appellant can properly prosecute and present the appeal without the benefit of the completed reasons for decision - Whether to proceed with the hearing of the appeal in the absence of the completed reasons amounts to a breach of the appellant’s constitutional rights and lack of due process -Whether the fact that the reasons for decision are written as if the appellant was solely charged although being jointly charged with codefendants renders the record incomplete - Whether the absence of the evidence with regards to the acquittal of Sana James prevents the appellant from fully ventilating the appeal

Type of Order Oral Decision

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The conviction is quashed and the sentence set aside.

Reason: This was an appeal by Stacia Williams against conviction and sentence where the learned Magistrate found her guilty of beating Tasha Daniel and sentenced her to a fine of \$500.00. Learned counsel for the appellant submitted that the record of appeal was incomplete and as a result, the appellant was hampered in the presentation of her appeal, in circumstances where the learned magistrate in his reasons for decision outlined that he relied on the evidence, in particular that of the virtual complainant Tasha Daniel and her partner Mr. Raphael Valmond.

The Court noted that the magistrate failed to make any reference to the other two codefendants who were also charged with the appellant Stacia Williams. The appellant and one other codefendant were convicted whilst the other codefendant Sana James was found not guilty.

Counsel for the appellant submitted that in those circumstances the appellant was hampered in the presentation of her appeal in that while the evidence against all the appellants as it relates to identification was the same, it is not clear why Ms. Sana James was found not guilty, and the appellant was found guilty. Counsel submitted that in those circumstances there was an appearance that the verdict was inconsistent.

The Learned Director of Public Prosecutions agreed with counsel for the appellant that the appeal should be allowed.

Upon reviewing the evidence and reasons for the decision of the Magistrate, the Court was of the view that having regard to the evidence that was before the learned magistrate in particular the evidence on which the learned magistrate relied being the evidence of Ms. Tasha Daniel and Mr. Valmond it appears that the conviction was indeed inconsistent. Further, the absence of the reasons for the different verdicts would have hampered the appellant in the prosecution of her appeal. The Court therefore agreed that the appeal should be allowed on this ground.

Learned Counsel during her submissions, also submitted to the court in relation to Section 146 of the Magistrate's Code of Procedure Act on which the learned Director of Public Prosecutions had referred in her written submissions where she conceded that the failure of the learned magistrate to give signed reasons at the time of his decision should lead the Court to allow the appeal.

The Court reviewed the decisions such as *R v Parker* 1966 10 W.I.R.85, *Alexander v Williams* (1984) 34 W.I.R. 340; *Aqui v Pooran Maharaj* (1983) 34 WIR 282 which were referred to by counsel for the appellant and the legislative provisions and was of the view that neither the legislation nor the cases relied on by counsel did not assist the appellant with respect to the submissions which were made in relation to the interpretation of Section 146. Those submissions were accordingly rejected by the Court.

The Court therefore allowed the appeal only on the ground of the lack of the full reasons for decision by the Magistrate.

Case Name:

**Gabriel John Pierre
v
Castries Constituency Council**

**[SLUHCVAP2023/0008]
(Saint Lucia)**

Date:

Thursday 7th December 2023

Coram:

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mrs. Wauneen Louis-Harris and Ms. Mertle John

Respondent: Mr. Lorne Theophilus

Issues:

Interlocutory appeal - Appeal against order refusing injunctive relief - Whether the learned judge erred in proceeding to hear the application for an interim injunction ex parte and without notice - American Cyanamid Co v Ethicon Ltd [1975] UKHL 1 - Whether the learned judge erred in concluding that the balance of convenience lay in refusing the injunction - Whether, on a with notice application where no evidence was given by the respondent, the learned judge was able to properly assess where the balance of convenience lay

Type of Order:

Oral judgment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**

2. No order as to costs.

Reason:

The appellant appealed against the decision of the trial judge dated 23rd March 2023 in which he refused an interim injunction. The appellant filed six grounds of appeal, but they can be reduced to two. First, the trial judge erred in proceeding to hear the application without notice whereas the application was a with notice application; and second, the learned trial judge committed an error of law in concluding that the balance of convenience was in favour of refusing the injunction in favour of the appellant.

The Court noted that there was no doubt that this appeal concerned the exercise by a trial judge of judicial discretion. It is unquestionable that an appeal challenging the exercise of judicial discretion gives rise to a high threshold for an appellant to meet. These important principles of appellate judicial restraint are trite and have been stated and restated in several decisions of this Court. Accordingly, an appellate court will rarely interfere with the exercise of judicial discretion unless it is shown that the trial judge erred in principle by failing to take into account relevant factors, or give too much or too little weight to relevant factors or took into account irrelevant factors or considerations, or that as a result of the error or errors of principle committed by the judge, his decision was plainly or blatantly wrong such that it exceeded the generous ambit within which reasonable disagreement is permissible.

Furthermore, an appellate court, when considering whether the judge got it plainly wrong, must caution itself that it is impermissible to come to such a conclusion on a basis that the appellate judges would, on the evidence in the court below, have come to a different conclusion or would have exercised the discretion differently.

The appellant's evidence was that in or around 6th January 2017, the appellant and the respondent entered into an oral agreement for the lease of the premises on the top floor of the Castries market. It was a term of the agreement that the terms would be

subsequently reduced to writing. The evidence was that sometime in 2017, the appellant was given possession of the premises to carry out renovations in contemplation of entering into a lease of the premises. The evidence of the appellant was that sometime prior to November 2017, the renovations ceased and have not resumed to date. The respondent has since resumed possession of the premises.

Approximately 5 years later, on 7th February 2023, the appellant filed an application for an interim injunction seeking to restrain the respondent and its servants or agents from trespassing on the premises, from entering on the premises, from interfering with or altering the premises, to grant licences or leases to the premises and a mandatory injunction directing the respondent to permit the appellant to occupy the premises, complete the renovations and operate the business in the premises.

The trial judge, on 23rd March 2023, refused to grant the injunction. The trial judge was minded to maintain the status quo as the appellant was no longer in possession of the premises. The trial judge noted that the mandatory injunction sought would cause significant change in the landscape such that the status quo would not be preserved. The court found that the balance of convenience was in favour of the respondent.

In relation to the first ground of appeal, the appellant could not point to any prejudice to the appellant arising from the hearing being held without the participation of the respondent. The Court noted that it had no doubt that the Civil Procedure Rules must be followed, however the rules all serve a purpose. The purpose of the notice period is to allow the respondent to the application adequate time in which to consider the applicant's case on both factual and legal issues, to enable them properly to prepare so as not only to be able to address all facts and issues of law, but also to be able to adduce all relevant evidence and to make full submissions on all legal and factual issues. The appellant cannot complain that the trial judge refused the application for an interim injunction, having heard

all the evidence and submissions of the appellant. This ground of appeal therefore failed.

In relation to the second ground of appeal, namely that the learned trial judge committed an error of law in concluding that the balance of convenience was in favour of refusing the injunction in favour of the appellant. The appellant sought refuge in the argument that, having failed to conduct an inter partes hearing, the trial judge could not properly assess the balance of convenience without the participation of the respondent. The appellant submitted that the trial judge did not have any evidence from the respondent to determine the adequacy of damages and the ability of the respondent to pay damages in light of the procedural requirements from the decision in *American Cyanamid Co v Ethicon Ltd* [1975] UKHL 1. Consequently, it was argued that the trial judge prematurely proceeded to consider the balance of convenience, which the appellant stated should not have been resolved in favour of the respondent.

Once the court is satisfied that there is a serious question to be considered in the underlying claim, the court will exercise a discretion based on the balance of convenience. The court will weigh the likely inconvenience or damage which will be suffered by the applicant if the injunction is not granted, against the likely inconvenience or cost for the respondent if it is. The trial judge examined the implications for the parties if the injunction were to be granted in the terms sought by the appellant and noted that: (1) the status quo would not be maintained; (2) it would cause a significant change in the landscape; and (3) the respondent would be prejudiced by having to pay more damages to the appellant if the court were to grant a mandatory injunction directing the respondent to permit the appellant to occupy the premises, complete the renovations and operate business on the premises.

Judges routinely adopt this approach in granting interim injunctions on an ex parte basis without hearing from the other side and this has never prevented them from making an assessment of all the criteria outlined in the *American Cyanamid* case for

the grant of interim injunctions. The trial judge did not need evidence from the respondent for him to determine that, if the respondent was successful at trial, the respondent would have to pay more damages to the appellant for the completed works that would be carried out on the premises.

Counsel for the appellant cited the decision of *Eurick Dorset v Valentine Thomas* SKBHCV2009/0105. While the facts in that case bear some similarity to the one at bar, the grant of interim injunctions is fact sensitive and the fact that one judicial officer exercised his or her discretion in one way, does not of itself mean that in a different case, the same result should necessarily obtain. The appellant could not point to any relevant factors that the trial judge took into account or gave too little weight to or any errors the trial judge made such that his decision was plainly or blatantly wrong or that it exceeded the generous ambit within which reasonable disagreement is permissible. This ground of appeal also failed.

For these reasons, the Court dismissed the appeal against the decision of the trial judge refusing to grant the injunction and made no order as to costs.

Case Name:

Miguel Rolle

v

The Police

[DOMMCRAP2020/0004]

(Commonwealth of Dominica)

Date:

Friday 8th December 2023

Coram:

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

The Hon. Mr. Gerard Farara, Justice of Appeal

The Hon. Mr. Eddy Ventose, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Wayne Norde

Respondent: Ms. Daina Matthew

Issues: Criminal Appeal - Appeal against sentence - Possession of cocaine and possession with intent to supply contrary to sections 7(2) and 7(3) of the Drugs (Prevention of Misuse Act) Chapter 40:07 of the Revised Laws of Dominica 1990 - Whether the learned magistrate erred in law and misdirected himself when he did not follow the sentencing guidelines for drug offences and as a result handed the appellant an excessive sentence - Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 - Whether the learned magistrate erred in not applying the sentencing guidelines in the circumstances of this case

Type of Order Oral Judgment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The sentence imposed by the learned magistrate is set aside and a fine of \$20,000 is substituted; such sum is to be paid within 6 months of today's date. In default of payment the appellant will serve a term of 6 months imprisonment.

Reason: Section 50 (2) of the Criminal Law and Procedure Act, Chapter 12:01 Revised Laws of Dominica which provides that:

“Where in any written law more than one penalty linked by the word “and” is prescribed for an offence, this shall be construed to mean that the penalties may be imposed alternatively or cumulatively.”

prescribes a discretion which allows a court to consider whether the penalty prescribed under section 7(2) and (3) of the 16(1) of the Drugs (Prevention of

Misuse) Act as amended by section 16 of the Drugs (Prevention of Misuse) (Amendment) Act No. 3 of 1993 should be applied alternatively or cumulatively. The Court was satisfied that the proper exercise of the discretion under section 50 (2) should not be based on any practice which may or may not have been developed in the jurisdiction but must be based on the facts of each case and having regard to all the circumstances.

There was no indication in this case that the Learned Magistrate considered the maximum penalty prescribed by section 7(2) and (3) of the 16(1) of the Drugs (Prevention of Misuse) Act as amended by section 16 of the Drugs (Prevention of Misuse) (Amendment) Act No. 3 of 1993 or the discretion vested under section 50 (2) of the Act.

In this appeal the Court has considered all of the circumstances of the case including the submissions from both sides and it was clear that the Learned Magistrate erred in not applying the guidelines which he was required to do. In that regard, the Court noted the provisions set out in the guidelines which are very clear and unambiguous. In the Sentencing Guidelines for Drug offences under the heading Applicability of the Guideline it prescribes that

“In sentencing for these offences the Chief Justice has issued guidelines, and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances where such departure can be justified. Clear reasons for not applying the guidelines when passing sentence.”

The court was satisfied that no proper justification has been advanced for departure from the guidelines in this appeal and that the guidelines should have been applied in this case.

In the application of the guidelines, the court accepted the steps and calculation set out by counsel for the respondent in arriving at the appropriate sentence, to

wit a fine of \$20,000.00 and not the fine of \$50,000.00 which was imposed by the Learned Magistrate. The Court noted that this calculation and the prescribed sentence was largely conceded by counsel for the appellant in submissions made before the Court.

Moreover, having regard to the facts of this particular case, the totality of the circumstances in this matter and the fact that both sides have agreed that the court should not impose a term of imprisonment in this case in addition to a fine, the Court accordingly ordered that the appeal be allowed and the sentence imposed by the magistrate be set aside and substituted with a fine of \$20,000.00.

Case Name:

The Bank of Nova Scotia

v

[1] Joyce Erin Rabess

[2] Anison Rabess

[DOMHCVAP2016/0010]

(Commonwealth of Dominica)

Date:

Friday 8th December 2023

Coram:

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

The Hon. Mr. Gerard Farara, Justice of Appeal

The Hon. Mr. Eddy Ventose, Justice of Appeal [Ag.]

Appearances:

Appellant:

Ms. Joelle Harris with her Ms. Noelize Knight-Didier

Respondents:

Mr. David Bruney for the respondents

Ms. Hazel Johnson appearing amicus

Issues:

Civil appeal - Whether the learned Master erred when she failed to distinguish the legal issues for consideration before the court in Anison Rabess and Joyce Rabess v National Bank of Dominica Civil Appeal No. 2011/0003 Dominica from those before her for consideration - Whether the learned Master erred when she failed to consider that the conversion of an

equitable mortgage to legal mortgage under section 66 of the Title by Registration Act, Chap 56:50 did not amount to enforcement proceedings - Whether the learned Master erred when she failed to find that, pursuant to CPR 2.2(3)(e), the CPR 2000 did not apply to the proceedings - Whether the learned Master erred in finding that the statements of Mitchell JA in Anison Rabess and Joyce Rabess v National Bank of Dominica created binding precedent - Whether the learned Master erred in finding that the statements of Mitchell JA, in Anison Rabess and Joyce Rabess v National Bank of Dominica, on the issue of enforceability of a default judgment that was not served and the validity of all steps taken on the unserved judgment were not obiter dicta

Type of Order:

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.