

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE

SAINT VINCENT AND THE GRENADINES

29th January – 2nd February 2024

JUDGMENTS

Case Name:

Redcliffe Holdings Limited

v

[1] Edward Meyer

[2] Kathleen Meyer

[3] William Cooper

[ANUHCVAP2023/0018]

(Antigua and Barbuda)

Date:

Tuesday 30th January 2024

**Coram for
delivery:**

The Hon. Mr. Mario Michel, Justice of Appeal

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

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

Appearances:

Appellant:

Ms. Jacqueline Walwyn

First and Second

Dr. David Dorsett

Respondents

Third Respondent:

Ms. E Ann Henry KC

Issues:

**Interlocutory appeal – Security for costs – Section
548 of the Companies Act of Antigua and Barbuda –
Whether the master erred by finding that the
appellant company was impecunious – Whether the
master erred in granting the respondents' application
for security for costs**

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed in its entirety and the order of the learned master made 13th April 2023 set aside.
2. The Registrar of the High Court shall return or refund to the appellant, Redcliffe, or its legal practitioners on its behalf, within ten (10) days of the date of this judgment, the sums paid into court by Redcliffe as security for the costs of the respondents pursuant to the said order.
3. Costs are awarded to the appellant in the court below, such costs to be assessed by a judge or master, if not agreed within 21 days from the date of this judgment, and two-thirds of such costs in the appeal.

Reason:

1. In determining an application for security for costs brought pursuant to section 548 of the Companies Act, there is a two staged approach. In the first stage, the sole test is impecuniosity of the claimant company. The onus is on the defendant to lead cogent evidence of the claimant's impecuniosity. A determination as to whether the claimant company is impecunious involves an evaluative exercise by the judge or master of the evidence before the court. If impecuniosity of the claimant company is not established by cogent evidence, section 548 is not engaged and the court cannot proceed to the second stage, that is, to consider the exercise of its discretion, and the application must be dismissed. If however, an applicant has been able to satisfy the court as to the claimant company's impecuniosity, the court is then required under section 548, to determine whether it is just in all the circumstances to make an order for security for costs. The court is not compelled to make such an order and may decline to do so in circumstances where an order for the payment of security for costs would, for example, stifle a genuine claim, or where it has been shown that the actions of the applicant for security for costs is responsible for bringing about the state of impecuniosity of the claimant company.

National Bank of Anguilla Limited (In Receivership) et al v Eastern Caribbean Central Bank et al AXAHCVAP2019/0004 (delivered 9 th July 2023, unreported) followed; Section 548 of the Companies Act No. 18 of 1995, Laws of Antigua and Barbuda applied.

2. Whilst the learned master was cognisant of the two-staged approach, it cannot be said that Redcliffe is or was impecunious at the time of the hearing of the application and thus would be incapable of satisfying a costs order made against it. The respondents' evidence, particularly the memorandum of the third respondent, showed that there was a cash reserve in the company in the sum of EC\$300,374.00 after the sale of the ABI Financial Centre. It therefore could not be said that the respondents had led cogent evidence of Redcliffe's impecuniosity and the master erred in finding that Redcliffe would be unable to satisfy a costs order made against it. As the evidence did not give rise to a finding of impecuniosity on Redcliffe's part, section 548 was not engaged, and the master erred in so finding and in proceeding to the second stage to determine whether to make the order for security for costs.

Case Name:

The Attorney General's Reference

**[SLUHCVAP2021/0015]
(Saint Lucia)**

Date:

Wednesday 31st January 2024

**Coram for
delivery:**

**The Hon. Mde. Margaret Price-Findlay, Justice of
Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Eddy Ventose Justice of Appeal**

Appearances:

**The Attorney
General:**

**Mr. Seryozha Cenac for the Attorney General of Saint
Lucia**

Interested Parties: Mr. Fyard Hosein SC with Mrs. Sardia Cenac Prospere for the First Interested Party - Republic Bank (EC) Limited
Mr. Deale Lee for the Second Interested party - 1st National Bank Saint Lucia Limited and the Third Interested Party - Royal Bank of Canada

Issues: Attorney General's Reference – Assessment of stamp duty under section 35 of the Stamp Duty Act and Instruments 35 and 36 of the Schedule

Reason: A. Reference Question One
Whether the assessment of stamp duty under section 35 of the Stamp Duty Act and instruments numbers 35 and 36 of the Schedule is to be based on the value of the consideration stated in the instrument of transfer or whether it is to be based on the chargeable value of the assets transferred.

B. Answer to Question One
The answer to Question One is that the assessment of stamp duty under sections 35 and 36 of the Stamp Duty Act and Instruments 35 and 36 of the Schedule is based on the amount or value of the consideration for sale.

C. Reference Question Two
If the answer to question 1 is found to be on the consideration (which is denied), whether the net asset value approach has any applicability on such a conveyance, whether as to a banking business vesting order or any other conveyance of a going concern or other asset.

D. Answer to Question Two
The answer to Question Two is that the net asset value approach may be applicable in determining the consideration for a conveyance or transfer on sale, irrespective of whether this is achieved by a Banking Business Vesting Order or any other conveyance of a going concern or other asset. However, it is not relevant to the actual assessment to ad valorem duty under the Stamp Duty Act.

E. Reference Question Three

Whether a decision of the judge is final under section 16 of the Stamp Duty Act, where the matter concerns the interpretation of the statute and not merely the assessment of stamp duty.

F. Answer to Question Three

The answer to Question Three is that any decision made by a High Court judge under section 16(2) concerning an appeal from an assessment of stamp duty (including any interpretation of the Stamp Duty Act on which the assessment is based) is final and cannot be appealed to the Court of Appeal.

Case Name:

**Seventh Day Adventist Cooperative Society
Limited**

v

Financial Services Regulatory Authority

**[SLUHCMAP2022/0008]
(Saint Lucia)**

Date:

Wednesday 31st January 2024

Coram:

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

The Hon. Mr. Trevor Ward, Justice of Appeal

The Hon. Mr. Eddy Ventose Justice of Appeal

Appearances:

Appellant:

Mr. Leevie Herelle

Respondent:

**Mrs. Sardia Cenac Prospere with Ms. Cleopatra
Mcdonald**

Issues:

**Civil Appeal – Section 45 of the Financial Services
Regulatory Authority Act of Saint Lucia – Whether
section 45 establishes a right to appeal decisions of
the Authority made under section 180 of the Co-
operative Societies Act - Whether learned judge erred
in her interpretation and application of rules 11.15
and 11.16 of the Civil Procedure Rules 2000 – Failure
to include statement in ex parte order as required by**

rule 11.16(3) of the Civil Procedure Rules 2000 - Rule 13 of the Eastern Caribbean Supreme Court (Electronic Litigation Filing and Service Procedure) Rules, 2019 - Duty to give full and frank disclosure – Whether the judge failed to give due regard to the failure of the respondent to give full and frank disclosure at the ex parte hearing

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal is dismissed with costs to the respondent.

Reason:

- 1. Section 45(3) of the FSRAA establishes the right to appeal decisions of the Authority made under the FSRAA itself or an enactment specified in Schedule 1 of that Act unless that enactment provides otherwise. The Co-operative Societies Act is a specified enactment under Schedule 1. As it relates to appeals under this Act, it is concerned only with prescribing a right of appeal in respect of specified decisions taken under that Act, which it makes appealable to the Co-operative Societies Appeals Tribunal under section 188. In the context of this case, a proper interpretation of section 45(3) is that decisions taken by the Registrar under the Co-operative Societies Act are appealable pursuant to section 45(3) of the FSRAA except decisions taken pursuant to sections 177, 187 and 148(9) of the Act as these are expressly excluded from the ambit of section 45(3) of the FSRAA. Since a decision made by a Registrar taken under section 181 of the Co-operative Societies Act to appoint an examiner is not specifically made subject to appeal under that Act, nor is it stated in that Act that no appeal lies from such a decision, it is caught by section 45(3) of the FSRAA and is appealable to the Appeals Tribunal established thereunder. Moreover, there can be no appeal to the Appeals Tribunal under section 45(3) in the absence of a duly constituted Tribunal**

pursuant to section 45(2). The learned judge was therefore right to characterise the appellant's written overtures to the Minister as a "purported appeal," in the sense that while the act of writing to the Minister is stated by the appellant to be an appeal, it is in fact and law not an appeal and, therefore there was no pending appeal at the time the respondent engaged the court with the ex parte application to appoint an investigator.

Section 45 of the Financial Services Regulatory Authority Act Cap.12:23 of the Revised Edition of the Laws of Saint Lucia applied; Sections 177, 148(9), 180, 181, 182, 188 of the Co-operative Societies Act Cap 12:06 of the Revised Edition of the Laws of Saint Lucia considered.

2. Read together, rule 11.15 of CPR 2000 and E-Litigation Rule 13(3)(b) have as their primary objective the requirement that a respondent to an ex parte order or claim commenced on the E-Litigation Portal must be served with the application, supporting documents and evidence, and at the same time must be served with the authorisation code. Service of the originating documents without the authorisation code means that proper service has not been effected and this defect cannot be cured by serving the code separately at a later date but may be remedied by re-serving the court documents with the authorisation code. In this case, the defective service of the documents did not render the ex parte order invalid and liable to be set aside. Moreover, in circumstances where the evidence is that the other documents were served personally on the appellant on 21st July 2022, and the authorisation code, though served separately, was served about 2 hours later, and considering that the appellant was able to access the portal documents and lodge his application to set aside the ex parte order and otherwise participate in the process, there is no basis for finding that any prejudice was

caused to the appellant by not receiving the authorisation code at the same moment that it was served with the other documents. Further, the underlying purpose served by CPR 11.16(3) is to ensure that the respondent to an *ex parte* application is given notice of their right to apply to have the order set aside and to apprise them of the deadline by which they must do so. Despite the fact that the *ex parte* order did not contain a statement as required by the rule, the appellant in fact lodged an application to set it aside within the time prescribed by the rules. In all the circumstances, the reasons given by the learned judge for exercising her discretion not to set aside the *ex parte* order for breach of rule 11.16(3), cannot be said to exceed the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong.

Rules 11.15 and 11.16 of the Civil Procedure Rules 2000 applied; Rule 13 of the Eastern Caribbean Supreme Court (Electronic Litigation Filing and Service Procedure) Rules, 2019 applied; *Flavio Maluf v Durant International Corp et al* BVIHCMAP2021/0025 (delivered 13th January 2022, unreported) considered.

3. A person applying for relief upon an application made *ex parte* must make full and frank disclosure of all material matters relevant to the decision whether or not to grant the application. The test of materiality is whether the matter might reasonably be taken into account by the judge in deciding whether or not to grant the application. In this case, the respondent could not be said to have failed to make full and frank disclosure at the *ex parte* hearing in relation to the appellant's contention in relation to its purported appeal. The learned judge examined the evidence before her and related it to the allegations made and the order that was being sought on the *ex parte* application. Having considered

the evidence, the learned judge found that even if the Credit Union Sector Reports had been disclosed, they would not have caused her to refuse the order because they did not demonstrate that the appellant was compliant with the relevant provisions of the law. The learned judge also carefully assessed the evidence before her on the set aside application and provided cogent reasons for her decision not to set aside the *ex parte* order on the basis of material non-disclosure. As such, there is no warrant for interference by this Court and ground 3 of the appeal is dismissed.

Commercial Bank - Cameroun v Nixon Financial Group Limited BVIHCVAP2011/0005 (delivered 6th June 2011, unreported) applied.

4. The test of materiality is context specific and what is considered relevant or material depends in every case on the nature of the application and the orders sought. In this case, the nub of the allegations grounding the *ex parte* application was the appellant's serial non-compliance with the statutory requirements of the Co-operative Societies Act. Therefore, matters pertinent to whether or not the appellant had been compliant were highly relevant at both the *ex parte* and set aside applications. The judge was cognisant of this as can clearly be gleaned from paragraph 28 of the dismissal order. Additionally, a judge should give his or her reasons in sufficient detail to show the principles on which he or she has acted and the reasons that have led him to the decision. They need not be elaborate. The judge gave a very detailed order and set out her reasoning on each issue at different paragraphs throughout the order. The matters that informed her decision were readily apparent to this Court. There is no merit to this complaint.

English v Emery Reimbold & Strick Ltd and other appeals [2002] EWCA Civ 605 applied;

Thornton Tomasetti Inc v Anguilla
Development Corporation Ltd
AXAHCVAP2014/0008 (delivered 15th
September 2015, unreported) applied.

APPLICATIONS AND APPEALS

Panel 1

Case Name:

**Unicomer (St. Vincent) Ltd
v
[1] Appeal Commissioners
[2] The Comptroller of Inland Revenue

[SVGHCVAP2021/0010]
(Saint Vincent and the Grenadines)**

Date:

Monday, 29th January 2024

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of
Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

**Appellant: Mr. Barrie Attzs and Mr. Mikhail Charles

1st Respondent: Mr. Grahame Bollers

2nd
Respondent/Applica
nt: Mr. Duane Daniel**

Issues:

**2nd respondent's application for an extension of time
to file and serve written submissions - Appellant's
application to strike out written submissions filed by
2nd respondent**

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application by the 2nd respondent for an extension of time to file submissions in opposition to the appeal is granted.
2. The 2nd respondent's submissions filed on 5th December 2023 is deemed validly filed.
3. The appellant's application to strike out the 2nd respondent's submissions is denied.
4. Each party shall bear their own costs.

Reason:

The Court took into account four factors in considering the application by the 2nd respondent for an extension of time to file submissions in opposition to the appeal. Firstly, the Court considered the length of the delay and whether that delay was inordinate. The Court noted that the length of the delay in this case was just over 7 weeks. The 2nd respondent had just under 12 weeks to file his submissions, (from the date of the Status Hearing order on 28th July 2023 to 16th October 2023). The Court acknowledged that this delay was long but not inordinate in all the circumstances.

Secondly, the Court considered the reason for the delay. The reason advanced by the 2nd respondent for the more than 7-week delay was essentially 'pressure of work' by counsel Mr. Duane Daniel, which is not generally considered a good explanation for delay in compliance with the court's orders. However, the fact that co-counsel Ms. Tonya Da Silva was indisposed by reason of illness and was consequently unavailable to assist Mr. Daniel in the preparation of the submissions and Mr. Daniel was further overloaded by having to bear part of the workload of his co-counsel mitigated against the otherwise unacceptable reason for the delay.

Thirdly, the Court considered the chances of success of the party seeking the extension of time and determined that it could reasonably be said that the 2nd respondent had a good chance or reasonable prospect of success in defending an appeal grounded on factual determinations and statutory interpretation made by the trial judge. Fourthly, the Court considered the degree of prejudice in the

circumstances to the appellant if the extension was granted weighed against the degree of prejudice to the 2nd respondent if the extension was not granted. The Court noted that the prejudice to the appellant if the extension was granted was that the appellant would have to reply to submissions which were filed over seven weeks after they were due to be filed, and up until the scheduled date for the hearing of the appeal the appellant would not have known for certain whether the submissions would have been accepted by the court. It was noted that this prejudice was mitigated by the fact that the appellant did not need to file a reply to the submissions but could reply orally to them at the hearing of the appeal after they had been presented by the 2nd respondent.

On the other hand, the 2nd respondent faced the unmitigated prejudice that if the application for extension of time was refused, of possibly being disallowed from making submissions to the Court in opposition to the appeal. Added to this was the fact that the appellant was itself not compliant with the rules or orders of the Court in relation to the filing of submissions within the stipulated time. The Court noted that the appellant was required to file written submissions within 52 days of being notified that the transcript of the proceedings in the court below was available for collection. The transcript was filed on 22nd September 2022, and it therefore would have been in the possession of the appellant by that date and that at latest, the appellant ought to have filed submissions in support of the appeal by 14th November 2022. However, the appellant only filed its submissions on 14th April 2023. Therefore, whereas there was a delay of less than 2 months in the 2nd respondent filing his written submissions in accordance with the stipulated order, there was a five-month delay by the appellant in filing its written submissions in accordance with CPR 62.11 (1).

The Court stated that apart from its consideration of the four factors above, three of which it noted favoured the 2nd respondent, and apart from the appellant's own default in filing its submissions on time, the Court was of the view that the overriding objective of the rules which is to enable the court to

deal with cases justly, inclined the Court to grant the extension sought, to deem the submissions to have been validly filed and to allow the parties to argue the appeal with the benefit of their written submissions augmented by oral submissions made by counsel on their behalf. The Court also noted that the appellant did inform the Court by email to the Registrar dated 28th December 2023 that it remained ready to proceed with the hearing of the appeal and confirmed its readiness to proceed at case management on 4th January 2024. The Court therefore granted the application by the 2nd respondent for an extension of time to file his submissions in opposition to the appeal and deemed the submissions filed by the 2nd respondent on 5th December 2023 as being validly filed. The Court accordingly denied appellant's application to strike out the 2nd respondent's submissions and ordered that each party bear their own costs.

Case Name:

**Unicomer (St. Vincent) Ltd
v
[1] Appeal Commissioners
[2] The Comptroller of Inland Revenue

[SVGHCVAP2021/0010]
(Saint Vincent and the Grenadines)**

Date:

Monday, 29th January 2024

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Barrie Attzs and Mr. Mikhail Charles

Respondents:

**Mr. Grahame Bollers for the 1st respondent
Mr. Duane Daniel for the 2nd respondent**

Issues: Civil appeal - Evidential burden under Section 23 (1) of the Income Tax Act - Whether the learned judge erred in the application of section 23 (1) of the Income Tax Act - Whether the judge erred by finding that the CPI premium payments violated section 23(1) - Whether the learned judge erred by finding that the Comptroller discharged his evidential burden of proof in order to establish that the CPI premium payments fell afoul of section 23(1) - Whether the learned judge erred in the application of section 66 of the Income Tax Act - Whether the judge erred by finding that the CPI premium payments were made directly to Canterbury for withholding tax purposes - Whether the learned judge erred in the application of section 9(1)(b) of the Income Tax Act - Whether the judge erred by failing to distinguish between what was done in the appellant company's accounts and what ought to have been done pursuant to a commercially recognised system of accounting

Type of Order: N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Panel 2

Case Name: Magavon Toby
v
Barrow Toby

[SVGHCVAP2020/0005]
(Saint Vincent and the Grenadines)

Date: Monday 29th January 2024

Coram: The Hon. Dame Janice Pereira DBE Chief Justice
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of Appeal

Appearances:

Appellant: Ms. Tonya Da Silva

Respondent: Mr. Michael Wylie

Issues:

Interlocutory Appeal - Appeal against order denying appellant's application for extension of time to file witness statements and relief from sanctions - Application for adjournment to engage in settlement discussions

Type of Order:

Adjournment

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

1. By consent at the request of counsel for the appellant and the respondent, the hearing of the appeal is adjourned to facilitate settlement discussions.
2. The matter shall be called for report at the next sitting of the Court for Saint Vincent and the Grenadines on 16th September 2024.

Reason:

Counsel for the appellant and respondent indicated that they were engaged in discussions on settlement. The Court ordered that the parties should be given the opportunity to further engage in reaching a settlement in the matter.

Case Name:

Michael Wylie

v

[1] Magavon Toby

[2] Dianetta Patrick

[SVGHC VAP2019/0005]

(Saint Vincent and the Grenadines)

Date:

Monday 29th January 2024

Coram: The Hon. Dame Janice Pereira DBE Chief Justice
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of Appeal

Appearances:

Appellant: In person

Respondents: Ms. Tonya Da Silva for the first respondent
Ms. Paula David for the second respondent

Issues: Request for an adjournment - Appellant application for an adjournment owing to the absence of his counsel

Type of Order: N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

The matter is stood down to Friday 2nd February at 9:00 a.m. at which point the Court expects all counsel to be present and ready to proceed with the hearing of the appeal.

Reason: The appellant requested an adjournment stating that his counsel, Ms. Vynnette Frederick, was not present as she had to attend to her elderly father. The Court noted that the respondents were ready to proceed, that the matter had already been adjourned in July 2023 and that the next sitting of the Court for the state of St. Vincent and the Grenadines was in September 2024.

The Court also took note that there was no material before it, whether it be letter, or email, indicating that Ms. Frederick would be absent from the hearing of the appeal.

Having regard to the foregoing, the Court was not of the view that an adjournment until September 2024

would be appropriate and consequently stood down the hearing of the appeal to Friday 2nd February 2024.

Case Name:

**Arnol Dasent
v
The Commissioner of Police**

**[SVGMCRAP2020/0006]
(Saint Vincent and the Grenadines)**

Date:

Monday 29th January 2024

Coram:

**The Hon. Dame Janice Pereira DBE, Chief Justice
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of Appeal**

Appearances:

Appellant: No appearance

Respondent: Mrs. Maria Jackson-Richards

Issues:

**Magisterial Criminal Appeal against sentence - Theft
- No appearance of appellant**

Type of Order:

N/A

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The Registrar of the High Court shall serve the appellant, Mr. Arnol Dasent, with a notice to appear before the Court for the hearing of his appeal on Friday 2nd February 2024.**
- 2. The matter is stood down to Friday 2nd February 2024 at 9:00 a.m.**

Reason:

The Court noted that the appellant was not present in court despite being present at the status hearing and

was being notified of the hearing date of his appeal. In the circumstances, the Court stood down the matter to Friday 2nd February 2024 to allow the Registrar of the High Court to serve the appellant with a notice of hearing for Friday 2nd February 2024 at 9:00 a.m.

Case Name:

**[1] Jennifer Abbott
[2] Albert Plato
[3] Shirley Layne Jones
v
Cyril Evans**

**[SVGHCVAP2018/0011]
(Saint Vincent and the Grenadines)**

Date:

Tuesday 30th January 2024

Coram:

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

Appearances:

Appellants	No appearance
Respondent	No appearance

Issues:

**Nonappearance of parties at hearing of the appeal -
Death of appellants prior to hearing of the appeal -
Dismissal of appeal for want of prosecution**

Type of Order:

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

**SVGHCVAP2018/0011 filed on 12th October 2018 not
having been progressed beyond the filing of the
notice of appeal over 5 years ago is hereby struck
out.**

Reason:

This matter concerned a claim filed in 1992 by Mr. Cyril Evans over a portion of land. The claim was tried in February 2018 and judgment was given in favour of Mr. Evans in September 2018. By that judgment, Mr. Cyril Evans was declared to be the owner of the land and entitled to possession of it. Mr. Evans was given the right, if he so desired, to seek damages for trespass to be assessed by the master.

A counterclaim filed against Mr. Evans was dismissed. As of that date therefore in September 2018, Mr. Evans became the undisputed owner of the land and entitled to do as he wished with it. The three defendants whom he brought the claim against, filed an appeal seeking to set aside the judgment. That appeal was never pursued, and no application was made for a stay of execution of the order of the judge. The three appellants have, in the process, met their demise, without their progressing the case from the notice of appeal which was filed over 5 years ago. The respondent Mr. Evans has certainly been entitled, as of September 2018, to exercise all his rights as owner of the land and was not inhibited or hindered from doing so by the filing of the notice of appeal. From the information available to the Court, the respondent was served with notice of the hearing of the appeal and was not present, whilst there were affidavits filed on non-service of the appellants because of their prior demise.

The Court therefore considered that the appeal filed on 12th October 2018 was dead, as were the appellants who filed it, and the appeal would no longer occupy space on the shelves of the Court whether physically or virtually.

Case Name:

**[1] Stephen Williams
[2] Gellizeau King
v
Kassinda Williams
(Substituted in place of Elste Elaine
Williams)**

[SVGHCVAP2019/0013]
(Saint Vincent and the Grenadines)

Date: Tuesday 30th January 2024

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

Appearances:

Appellants: Mr. Art Williams holding papers for Mr. Richard Williams

Respondent: Ms. Mandella Peters and Ms. Michaela Miguel

Issues: Discontinuance of appeal

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Upon an application made by the appellants to withdraw and discontinue the appeal and with no objection by the respondent, the appeal filed on 31st May 2019 is hereby dismissed with no order as to costs.

Reason: Counsel for the appellant made an application to withdraw and discontinue the appeal and there was no objection from counsel for the respondent. Counsel for the respondent also waived costs in the circumstances.

Case Name: Wycliffe Baird
v
[1] David Goldgar

**[2] Paul B. Coburn
[3] Caribe (Realties) Canada Limited
[4] Immeudbles Caribe Canada Ltee
[5] Betts Realty Limited**

**[SKBHCVAP2019/0038]
(Saint Vincent and the Grenadines)**

Date: Wednesday 31st January 2024

Coram: The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Eddy Ventose Justice of Appeal

Appearances:

Appellant/Applicant: Mr. Christopher Hamel-Smith SC with Mr. Terrance Byron and Ms. Talibah Byron

Respondents: Ms. Midge Morton and Ms. Maurisha Robinson and Mr. Errol Williams

Issues: Application for leave to appeal to His Majesty in Council - Whether applicant has an appeal as of right under section 99(1)(a) of the Constitution of St Kitts and Nevis - Whether decision being appeal is a final decision - Application test - Special leave - Section 99(2)(a) of the Constitution of St. Kitts and Nevis - Whether appeal raises issues of great general importance or otherwise - Whether it is correct to apply the same test to determine if to strike out an appeal for abuse of process as for determining whether to dismiss an appeal for want of prosecution - What is the correct test to apply to determine if to strike out an appeal for abuse of process - Application for stay of execution of order in which Court of Appeal set aside stay of execution of single judge

Type of Order: N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. Judgment is reserved on the application for leave to appeal to His Majesty in Council.
2. Pending the determination and decision of the Court of Appeal of the application for leave to appeal to His Majesty in Council, a stay of execution is granted of the order made on 22nd December 2023 in which the Court of Appeal set aside the stay of execution made by a single judge of this Court on 24th March 2020 and confirmed by the Full Court on 12th June 2020.

Reason:

Pending the determination of the application for leave to appeal to His Majesty in Council, the Court granted a stay of execution of the order dated 2nd December 2023 in which the Court of Appeal set aside the stay of execution made by a single judge on 24th March 2020 and confirmed by the Full Court on 12th June 2020.

Case Name:

**Shone Bynoe
v
The King**

**[SVGHCRA2023/0020]
(Saint Vincent and the Grenadines)**

Date:

Wednesday 31st January 2024

Coram:

**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Eddy Ventose Justice of Appeal**

Appearances:

Applicant: In person

Respondent: Ms. Maria Jackson-Richards

Issues:

Application for leave to appeal against sentence - Whether leave to appeal ought to be granted - Commission of further offences whilst applicant already serving prior sentences - Previous conviction of rape and abduction - Applicant convicted of aggravated burglary and assault whilst serving sentence for previous convictions - Sentence of 8 years 6 months and 20 days for aggravated burglary - Sentence of 1 year and 20 days for assault - Sentences for aggravated burglary and assault to run concurrently with each other but consecutively to sentence already being served for previous convictions of rape and abduction - Whether the sentences for subsequent convictions of aggravated burglary and assault ought to run concurrently to the sentences for the previous convictions of rape and abduction

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal against sentence is dismissed.
2. The sentence of 8 years 6 months and 20 days for aggravated burglary and the sentence of 1 year and 20 days for assault are affirmed.
3. The ruling of the trial judge that these sentences run consecutive to the applicant's previous sentences stands.

Reason:

The applicant filed an application for leave to appeal against his sentence on 29th August 2023. The applicant had been convicted by the high court on 26th May 2023 and sentenced on 7th July 2023 for the offences of aggravated burglary and assault occasioning bodily harm. The applicant had been given a sentence of 8 years 6 months and 20 days for aggravated burglary and 1 year and 20 days for assault occasioning actual bodily harm, those sentences to run concurrently but consecutive to a sentence he was already serving for rape and abduction whereby he was sentenced on 7th July

2022 to a term of 13 years 1 month and 21 days for rape and 11 months and 21 days for abduction.

The Court, having heard the applicant and the respondent, was of the view that having regard to the Eastern Caribbean Supreme Court Sentencing Guidelines Practice Direction 8A No. 1 of 2019, that the order of the judge that the sentences for the offences of aggravated burglary and assault run consecutive to the applicant's previous sentences was a fair one and therefore leave to appeal was denied. The Court then ruled that the sentences were affirmed, and the ruling of the learned trial judge would stand.

Case Name:

Schemel Dunbar

v

The King

[SVGHCRAP2023/0017]

(Saint Vincent and the Grenadines)

Date:

Wednesday 31st January 2024

Coram:

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

The Hon. Mr. Trevor Ward, Justice of Appeal

The Hon. Mr. Eddy Ventose Justice of Appeal

Appearances:

Appellant/Applicant: Mr. Carl Williams

Respondent: Mr. Ritchie Maitland

Issues:

Application to amend notice of appeal

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application for leave to amend the notice of appeal filed on 11th January 2024 is granted.**

2. The notice of appeal filed on 11th January 2024 is deemed properly filed and the appeal shall progress with the Civil Procedure Rules (Revised Edition) 2023 thereafter.
3. The application for leave to appeal is adjourned for hearing at the next sitting of the Court of Appeal in Saint Vincent and the Grenadines commencing on 16th September 2024 unless listed before that date by the Chief Registrar.

Reason:

The Court determined that the application to amend the notice of appeal filed on 11th January 2024 should be granted to properly reflect the position of the appellant. There was no objection from the respondent and the application to amend was granted.

Case Name:

George Franklyn

v

The King

[SVGHCRA2018/0008]

(Saint Vincent and the Grenadines)

Date:

Wednesday 31st January 2024

Coram:

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

The Hon. Mr. Trevor Ward, Justice of Appeal

The Hon. Mr. Eddy Ventose Justice of Appeal

Appearances:

Appellant/Applicant: In Person

Respondent: Ms. Tammika Da Silva-Mckenzie

Issues:

Application for legal aid - Lack of funds to prosecute appeal

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application for legal aid is granted.
2. The Registrar of the High Court shall make the necessary arrangements to assign a lawyer to the appellant for the prosecution of his appeal.

Reason:

The Court considered the request by the appellant by letter dated 30th September 2022 for legal aid. The appellant indicated that he does not possess the requisite funds to afford legal representation in the prosecution of the appeal. The Court noted that the appellant pleaded guilty to the indictment and had legal aid in the court below. The respondent did not object to the grant of legal aid in the circumstances.

Accordingly, the Court granted the request for legal aid for the purpose of prosecuting the appeal.

Case Name:

**Darryl Frett
v
The Commissioner of Police**

**[BVIMCRAP2022/0002]
(Territory of the Virgin Islands)**

Date:

Wednesday 31st January 2024

Coram:

**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Eddy Ventose Justice of Appeal**

Appearances:

Appellant:	Mr. Terrance Williams with Ms. Karlene Thomas-Lucien
Respondent:	Ms. Khadija Beddeau

Issues:

**Application to adduce further evidence - Section 172
Magistrate's Code of Procedure - Trial conducted in**

appellant's absence - Appellant's voluntary absence from jurisdiction in breach of bail conditions - Appellant serving a sentence in another jurisdiction when trial proceeded - Whether affidavit of Ron Augustin should be allowed to be produced as fresh evidence - Whether evidence could have been obtained at trial - Whether evidence is credible - Whether the appellant showed cogent reasons for not producing the evidence at trial - Application to amend the grounds stated in the notice of appeal - Whether leave should be granted for the appellant to add to his grounds of appeal based on the fresh evidence to be produced

Type of Order:

N/A

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

The decision is reserved.

Case Name:

**Darryl Frett
v
The Commissioner of Police**

**[BVIMCRAP2022/0002]
(Territory of the Virgin Islands)**

Date:

Wednesday 31st January 2024

Coram:

**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Eddy Ventose Justice of Appeal**

Appearances:

Appellant:

Mr. Terrence Williams with Ms. Karlene Thomas-Lucien

Respondent:

Ms. Khadija Beddeau

Issues: Magisterial appeal against conviction - Trial conducted in the appellant's absence - Appellant's voluntary absence in breach of bail conditions - Whether the appellant's absence was involuntary - Whether the learned magistrate's decision to continue the trial in the appellant's absence was a material irregularity which would result in the conviction being quashed - Whether the learned magistrate admitted and considered inadmissible evidence - Whether the learned magistrate failed to appreciate the principles of joint enterprise and as such the court's decision was unreasonable and could not be supported by law

Type of Order: N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: Tarik Aaron
v
The Commissioner of Police
[BVIMCRAP2022/0003]
(Territory of the Virgin Islands)

Date: Wednesday 31st January 2024

Coram: The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Eddy Ventose Justice of Appeal

Appearances:
Appellant: Mr. Terrence Williams with Ms. Karlene Thomas-Lucien
Respondent: Ms. Khadija Beddeau

Issues: Criminal Appeal - Magisterial Appeal against sentence - Possession with intent to supply cocaine in contravention of s. 7 (2) of the Drugs (Prevention of Misuse) Act - Whether the learned Senior Magistrate's sentence was unduly severe and on incorrect principles, respectively - Spent Conviction - Whether the learned Senior Magistrate erred in failing to treat the Appellant as having no prior criminal record and, as a result, as a mitigating factor - Whether the learned Senior Magistrate erred in failing to taking the Appellant's youthfulness as a mitigating factor - Whether the learned Senior Magistrate double counted a single act, the attempt at disposal of evidence, as 2 aggravating circumstances - Delay

Type of Order: N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: Brennon Roberts
v
The King

**[SVGHCRAP2023/0010]
(Saint Vincent and the Grenadines)**

Date: Thursday 1st February 2024

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:
Applicant: In person

Respondent: Mr. Richie Maitland

Issues: Application for an extension of time within which to appeal - Whether length of the delay in seeking leave is inordinate - Whether reasons for the delay are cogent - Whether applicant showed good prospects of success on appeal - Application for leave to appeal - Whether leave to appeal ought to be granted - Applicant previously withdrew his appeal against conviction - Applicant's former appeal against sentence only was previously heard and determined - Allegation by applicant that he was encouraged to withdraw his appeal against conviction by his previous counsel

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:

The applications for an extension of time within which to appeal and for leave to appeal are dismissed.

Reason: The Court had regard to the two applications put before the Court. The Court read the minute of conviction which had been filed since 3rd April 2018, the affidavit of Wena Roberts filed on 15th January 2024 and the affidavit of Ms. Kay Bacchus-Baptiste (the appellant's former counsel). The Court heard the oral submissions of both the appellant and counsel for the respondent.

Having regard to these matters, the Court concluded that there was no basis upon which the Court could grant the applications in a matter which had been concluded nearly 4 years ago. The Court noted that a grant of an extension of time required a number of factors to be established to the satisfaction of the Court, including the length of the delay, reasons for the delay, chances of the appeal succeeding and the prejudice to be occasioned. The Court found that none of these factors had been satisfied by the applicant.

With respect to the grant of leave to appeal, the Court noted that it was material for the applicant to demonstrate a realistic prospect of success. The Court was of the view that the appeal had no chance of succeeding considering that the applicant had filed an appeal against conviction and sentence and wrote to the Court indicating his desire to discontinue the appeal against conviction. Although the applicant indicated he could neither read nor write, the Court noted that the applicant admitted that someone wrote the letter on his behalf, read it out for him and he signed same.

Two months after writing the letter, the applicant came to Court with his then counsel who repeated near verbatim what had been contained in his letter. The applicant was present in Court and there was no indication from him or anyone else that he protested in any manner what his then counsel stated. Whilst the applicant indicated that he had expected his sentence to be reduced, none of these factors justified the Court of Appeal re-opening an already concluded matter. For these reasons, the applications were dismissed.

Case Name:

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

v

[1] Shaniel Howe
[2] Novita Roberts
[3] Caveat Thomas
[4] Alfonzo Lyttle
[5] Brenton Smith
[6] Sylvorne Olliver
[7] Shefflorn Ballantyne
[8] Travis Cumberbatch
[9] Rohan Giles

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

Date: Thursday 1st February 2024

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellants: Mr. Anthony Astaphan SC, with him Ms. Karen Duncan, Ms. Cerepha Harper-Joseph and Ms. Franeek Joseph and Ms. Shernell Hadaway for the 1st, 3rd and 4th appellants

Respondents: Mr. Grahame Bollers for the 2nd and 5th appellants
Ms. Cara Shillingford Marsh, with her Mr. Jomo Thomas and Ms. Shirilan Barnwell

Issues: Civil appeal – Adjournment

Type of Order: Adjournment

Result / Order: [Oral decision]

IT IS HEREBY ORDERED THAT:

The hearing of the appeal is adjourned to a date to be fixed by the Chief Registrar after consultation with Counsel for the parties.

Reason: The President of the Court informed the parties that a member of the panel was unable to participate in the hearing and determination of the appeal and the appeal would accordingly be adjourned.

Case Name: Dorian Mapp
v
The King

[SVGHCRAP2018/0015]

(Saint Vincent and the Grenadines)

Date: Thursday 1st February 2024

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Richie Maitland

Issues: Criminal Appeal - Robbery - Appeal against sentence
- Appellant completing his sentence before the
hearing of the appeal

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal against sentence filed on 21st August
2018 is dismissed.

Reason: The Court noted that the appellant filed an appeal
against sentence on 21st August 2018. He was
sentenced to 5 years imprisonment, however he has
served his sentence in full. The appellant was
notified of the proceedings, but was not present at
the hearing of the appeal. Accordingly, the appeal
was dismissed.

Case Name: Raja Clarke
v
The King

[SVGHCRAP2018/0012]
(Saint Vincent and the Grenadines)

Date: Friday 2nd February 2024

Coram: The Hon. Dame Janice Pereira, DBE Chief Justice
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mde. V. Georgis Taylor Alexander, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Ms. Maria Jackson-Richards

Issues: Criminal appeal - Appeal against conviction and sentence - Robbery - Criminal Code Chap. 171 of the Laws of Saint Vincent and the Grenadines Revised Edition 2009 - Whether the conviction is unsafe and ought to be set aside - Whether the evidence led in the trial can support the charge of robbery - Whether the sentence imposed was excessive in the circumstances - Whether the sentence ought to run concurrently with the prior sentence being served by the appellant

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal is dismissed and the conviction and sentence is affirmed.

Reason: On the analysis of the sentencing principles, the Court did not consider that the sentence imposed warranted interference. The Court found no fault in the fact that the learned judge did not see it fit to run the sentence of 8 years into the sentence currently being served by the appellant. The appeal was therefore dismissed.

Case Name: Eurney Jackson
v
The King

**[SVGHCRAP2019/0029]
(Saint Vincent and the Grenadines)**

Date: Friday 2nd February 2024

Coram: The Hon. Dame Janice Pereira, DBE Chief Justice
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mde. V. Georgis Taylor Alexander, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Ms. Renee Simmons

Issues: Criminal appeal - Rape - Section 123 of Criminal Code, Chapter 171 of Saint Vincent and the Grenadines - Appeal against sentence - Whether sentence imposed by learned judge was too harsh in accordance with Sentencing Guidelines

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against sentence is dismissed.
2. The appellant's sentence is affirmed.

Reason: The Court found that there was no basis for disturbing the appellant's sentence of 18 years, 4 months and 28 days for the offence of rape under section 123 of the Criminal Code of Saint Vincent and the Grenadines. The Court upon considering the Sentencing Guidelines and the maximum sentence for rape pursuant to the Criminal Code, was of the view that the learned judge did not err in his sentencing and in the circumstances of the case, was in fact lenient. However, any such leniency was not so significant to warrant the Court exercising its power to increase the appellant's sentence. The Court accordingly dismissed the appellant's appeal

against sentence and held that the sentence imposed be affirmed.

Case Name:

**Urhando Rock
v
The Commissioner of Police**

**[SVGMCRAP2023/0001]
(Saint Vincent and the Grenadines)**

Date:

Friday 2nd February 2024

Coram:

**The Hon. Dame Janice Pereira, DBE Chief Justice
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mde. V. Georgis Taylor Alexander, Justice of Appeal [Ag.]**

Appearances:

Appellant: In person

Respondent: Mr. Richie Maitland

Issues:

Magisterial criminal appeal against sentence - Possession of prohibited weapon and ammunition - Section 14 of the Firearms Act Cap 386 - Appellant sentenced to 4 years and 3 months imprisonment for possession of a prohibited weapon and 8 months imprisonment for possession of ammunition, both sentences to run concurrently - Whether the sentences imposed are excessive

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The sentences are affirmed.**

Reason:

In support of his appeal, the appellant stated that he did not own the prohibited firearm and ammunition;

he was holding it for someone. He also said that he has an elderly father as well as a girlfriend who has three children. The Court explained to the appellant that the offence in question was one of strict liability. It mattered not whether he owned the prohibited weapon and ammunition. It also mattered not how it came into his possession. The mere fact that the appellant had it in his possession was sufficient to sustain a charge under section 14 of the Firearms Act.

The Court found that the starting point established by the magistrate was low given the serious danger the prohibited weapon presented. The Court noted that the firearm had a maximum range of 400 m and could carry 620 rounds of ammunition which could be dispersed per minute. Notwithstanding the foregoing, there were instances where the magistrate would have double counted, and that would have balanced out the final sentence.

In the circumstances, the Court found that there was no reason to disturb the sentences imposed by the learned magistrate.

Case Name:

**Ranell Mathurin
v
The Commissioner of Police**

**[SVGMCRAP2022/0012]
(Saint Vincent and the Grenadines)**

Date:

Friday 2nd February 2024

Coram:

**The Hon. Dame Janice Pereira, DBE Chief Justice
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mde. V. Georgis Taylor Alexander, Justice of Appeal [Ag.]**

Appearances:

Appellant: In person

Respondent: Ms. Maria Jackson-Richards

Issues: Magisterial criminal appeal - Theft - Damage to property - Appeal against sentence - Whether sentence imposed by the learned magistrate was excessive - Concession by the respondent that the learned magistrate erred in sentencing

Type of Order: Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against sentence is allowed.
2. The sentence of 2 years imprisonment for the offence of theft (suit number 310 of 2020) imposed by the learned magistrate is substituted with a sentence of 4 months imprisonment.
3. The sentence of 2 years imprisonment for the offence of damage to property (suit number 309 of 2020) imposed by the learned magistrate is substituted with a sentence of 8 months imprisonment.
4. The substituted sentences in suit numbers 310 and 309 of 2020 shall run concurrently.
5. The sentence of 1 year imprisonment for the offence of theft (suit number 70 of 2021) imposed by the learned magistrate is substituted with a sentence of 2 months imprisonment to run consecutive to the charges in relation to suit numbers 310 and 309 of 2020.
6. The sentence of 2 years imprisonment for the offence of theft (suit number 72 of 2021) imposed by the learned magistrate is substituted with a sentence of 4 months imprisonment to run consecutive to the substituted sentence in suit number 70 of 2021.

Reason: This was an appeal against the sentence imposed by the learned magistrate in the context of other offences for which the appellant had pleaded guilty. The appellant was convicted of the offences of theft and damage to property. The learned magistrate

would have imposed the maximum sentence with no explanation of reasons provided as to how she arrived at the sentences. The respondent conceded that the learned magistrate erred by simply imposing the maximum sentences and by failing to outline the approach and methodology used to arrive at the sentences. The respondent conceded that the Eastern Caribbean Supreme Court Sentencing Guidelines for Offences of Dishonesty, which came into force on 1st September 2020 applied to the three theft offences (suit number 310 of 2020, 72 of 2021 and 70 of 2021). Applying the Guidelines, the respondent conceded that a reduction in the sentences imposed for the three theft offences was warranted. The Court, having heard oral submissions from both the appellant and the respondent as well as the written submissions of the respondent, found that the learned magistrate had erred in her sentencing and the sentences were accordingly reduced.

Case Name:

**Joloney David
v
The Commissioner of Police**

**[SVGMCRAP2022/0011]
(Saint Vincent and the Grenadines)**

Date:

Friday 2nd February 2024

Coram:

**The Hon. Dame Janice Pereira, DBE Chief Justice
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mde. V. Georgis Taylor Alexander, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

Ms. Maria Jackson-Richards

Issues:

**Criminal appeal - Appeal against sentence -
Possession of an unlicensed firearm - Firearms Act**

Chap. 386 of the Laws of Saint Vincent and the Grenadines Revised Edition 2009 - Whether the sentence imposed by the learned trial judge is excessive in the circumstances

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal is dismissed and the sentence is affirmed.

Reason: The Court found that there was no basis to disturb the sentence of 3 years and 7 months for the offence of possession of an unlicensed firearm contrary to section 4(3) of the Firearms Act of Saint Vincent and the Grenadines. The Court found no error in the sentencing exercise conducted by the learned magistrate and the appeal was accordingly dismissed and the sentence imposed was affirmed.

Case Name: David Richards
v
The Commissioner of Police

[SVGMCRAP2022/0019]
(Saint Vincent and the Grenadines)

Date: Friday 2nd February 2024

Coram: The Hon. Dame Janice Pereira, DBE Chief Justice
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mde. V. Georgis Taylor Alexander, Justice of Appeal [Ag.]

Appearances:
Appellant: In person
Respondent: Mr. Karim Nelson

Issues: Criminal appeal - Possession of firearm without a licence - Possession of ammunition without a licence - Section 4(3) of Firearms Act, Chapter 386 of Saint Vincent and the Grenadines - Appeal against sentence - Whether the learned judge erred in carrying out in her sentencing exercise

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against sentence is dismissed.
2. The appellant's sentence is affirmed.

Reason: The Court found that there was no basis to disturb the sentence of five (5) years and eleven (11) months imprisonment and eight (8) months imprisonment, to run concurrently, for the offences of possession of a firearm without a licence and possession of ammunition without a licence under the Firearms Act of Saint Vincent and the Grenadines. The Court found that notwithstanding some errors in the learned judge's sentencing exercise, the sentence arrived at was appropriate. The Court accordingly dismissed the appellant's appeal against sentence and affirmed the sentence imposed.

Case Name: Arnol Dasent
v
The Commissioner of Police
[SVGMCRAP2020/0006]
(Saint Vincent and the Grenadines)

Date: Friday 2nd February 2024

Coram: The Hon. Dame Janice Pereira, DBE Chief Justice
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mde. V. Georgis Taylor Alexander, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Ms. Maria Jackson-Richards

Issues:

Magisterial criminal appeal - Theft - Appellant sentenced to 8 months imprisonment and ordered to pay \$435 compensation forthwith and in default of such payment to serve 3 months imprisonment both sentences to run concurrently - Whether the evidence led supports the appellant's conviction - Whether the sentence imposed is excessive

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The conviction and sentences are affirmed.

Reason:

The appellant maintained that he did not sell stolen peppers to anyone. The Court highlighted that the evidence showed that the appellant unequivocally admitted that he did in fact spend the money he made from selling the peppers on alcohol. This, the Court noted, was an implied admission.

The Court noted that the magistrate accepted the evidence led by the prosecution to be true. The magistrate therefore accepted that the appellant stole the virtual complainant's peppers and sold them to a Ms. Small who then later tried to resell them. The virtual complainant visited Ms. Small's table on which the stolen peppers were displayed and she was able to determine that they were her peppers. These peppers were easily identifiable because they were one of a kind, newly introduced to St. Vincent and the Grenadines.

The Court stated that it could not simply substitute its own view for that of the magistrate, when the magistrate had the benefit of seeing and hearing the witnesses. The Court therefore found that there was

no basis in law to interfere with the conviction. Similarly, there was no basis for the Court to interfere with the decision of the magistrate on sentencing.

Case Name:

**Carlisle Ryan
v
The Commissioner of Police**

**[SVGMCRAP2023/0005]
(Saint Vincent and the Grenadines)**

Date:

Friday 2nd February 2024

Coram:

**The Hon. Dame Janice Pereira, DBE Chief Justice
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mde. V. Georgis Taylor Alexander, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

Ms. Renee Simmons

Issues:

Magisterial criminal appeal - Appeal against conviction and sentence - Driving without due care and attention - Whether sufficient evidence was produced to support the charge - Whether learned magistrate erred in her findings of fact - Whether the fine imposed by the learned magistrate was excessive

Type of Order:

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The conviction and sentence are affirmed.**
- 3. The fine of \$1,200.00 imposed by the learned magistrate shall be paid no later than 9th February 2024, in default, 12 weeks imprisonment.**

Reason:

This was an appeal against conviction. The appellant had been found guilty of the offence of driving without due care and attention and had been fined by the magistrate the sum of \$1,200.00, in default, 12 weeks imprisonment. The appellant asserted that the evidence produced could not support the conviction and that the magistrate failed to look at all the evidence before her. The Court however regarded that the magistrate would have had the benefit of hearing and assessing the witnesses, including the appellant, and based on what the magistrate saw and heard and the evidence before her, she chose to believe the prosecution's evidence as opposed to the appellant's.

The Court found that the appellant's challenges to the magistrate's findings of fact could not be sustained. The Court noted that an appellate court would only interfere with the trial judge's findings of fact in circumstances where the assessment of the evidence was so irrational and unreasonable that the resulting conviction was blatantly wrong. The Court therefore found there was no basis to disturb the conviction.

The appellant sought to then challenge his sentence, the fine imposed by the learned magistrate. He argued that the fine was excessive in all the circumstances. The Court reminded the appellant that an appellate court would only interfere where the sentence imposed was so irrational and unreasonable as to be plainly or blatantly wrong. Considering the evidence that would have been before the magistrate, the Court found that there was no basis upon which to disturb the fine imposed by the learned magistrate.