

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

GRENADA
VIDEOCONFERENCE
15th – 18th JANUARY 2024

JUDGMENTS

Case Name:

[1] Lau Man Sang, James
[2] Lung Hung Cheuk
[3] Cheung Wing Sum, Albert
[4] Ngai Hin Kwan, Albert
[5] Yeung Yiu Chong
[6] Zhang Guo Wei

v

[1] King Bun Limited
[2] Kency Limited
[3] Kar Kwong Development Limited (trading
as Kai Kwong Trading Company)
[4] Khi Capital Limited
[5] Kentrue Company Limited
[6] Hui Pak Kong (suing in the name and on
behalf of themselves and all other
shareholders in Vanway International Group
Limited, except the first and second
defendants)
[7] Chau Cheuk Wah, Angus
[8] Vanway International Group Limited

[BVIHCVAP2022/0019]
(Territory of the Virgin Islands)

Date:

Wednesday, 17th 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:

Appellants: Ms. McKay Drigo

**Respondents: Mr. James Bailey and Ms. Alecia Johns for the first to
sixth respondents
No appearances for the seventh and eighth
respondents**

Issues:

**Interlocutory Appeal – Costs – Commercial matters
Discretion to order costs in split trials – Whether the
judge has a discretion to order costs at the conclusion
of the liability phase of a split trial – Whether the judge
erred in exercising his discretion to make the costs
order**

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed and the order of the learned trial judge is affirmed.**
- 2. Costs are awarded to the respondents to be assessed, if not agreed within 21 days from the date of this judgment.**

Reason:

- 1. CPR 69B.12 contains the regime for awarding costs in commercial matters. By its clear language, CPR 69B.12 excludes any applicability of CPR 65.12. It states that after a trial or earlier conclusion of the proceedings, the court will determine the entitlement and quantification of costs. A “trial”, in its ordinary meaning, means the conclusion by a competent tribunal of questions in issue in legal proceedings, whether civil or criminal. By that definition of “trial”, the determination of liability**

by a judge in a split trial is classified as a trial and therefore falls within the ambit of CPR 69B.12. It follows that, when an order for a split trial is made, the judge has a discretion to award costs upon the completion of the liability stage of the proceedings. The judge is not confined to wait until the completion of the quantum and relief stage to award costs.

Part 69B of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 applied; *Friar Truck Ltd et al v International Tax Authority BVIHCVAP2017/0003* (delivered 12th March 2019, unreported) followed; *Daniel Greenberg, Strouds Judicial Dictionary of Words and Phrases* (7th edn, Sweet and Maxwell 2006) applied; *Shepherds Investments Ltd. v Andrew Walters and others* [2007] EWCA Civ 292 followed; *Langer v McKeown* [2022] 1 WLR 1255 followed.

2. Further and imperatively, complex commercial matters can span the course of many years, it would be incorrect and illogical to limit a judge to wait until the determination of the entire proceedings before awarding costs. Such a proposition runs contrary to the ethos of the CPR and the overriding objective.
3. In order for this Court to interfere with the judge's decision, it must be shown that the judge erred in principle and as a result, his decision exceeded the generous ambit of reasonable disagreement or was blatantly wrong. The Court is of the view that the judge correctly applied CPR 69B.12, recognising that it could not be read in a vacuum considering its express reference to CPR 64.6. He correctly had regard to the fidelity which must be given to the general principle that costs follow the event. He also considered the overriding objective of the CPR and the court's case management powers adumbrated in part 26 of the CPR. More specifically, the judge considered relevant matters, namely, that the costs were large, that the appellants spent a lot of time on post-sale

matters, and that the conduct of the litigation fell far short of what was proper. Ultimately, the judge found that there was utility in ordering costs at the end of the trial on liability, as it would not be fair to deprive the respondents of their costs at that stage. Having regard to the foregoing, the Court finds that the judge could not be said to have been plainly wrong such that his decision could be regarded as being outside of the generous ambit of the discretion entrusted to him.

Dufour and others v Helenair Corporation Limited and others (1996) 52 WIR 188 followed; Emmerson International Corp and Another v Viktor Vekselberg BVIHCMAP2020/0011 (delivered 8th October 2021, unreported) followed; Ted Baker Plc v AXA Insurance UK Plc [2012] EWHC 1779 (Comm) considered; Weill v Mean Fiddler Holdings Ltd [2003] EWCA Civ 1058 considered.

Case Name:

Werner Fuhrken Batista

v

Dietrich Fuhrken Batista

[BVIHCVAP2022/0015]

(Territory of the Virgin Islands)

Date:

Thursday, 18th January 2024

**Coram for
delivery:**

The Hon. Mr. Mario Michel, Justice of Appeal

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

The Hon. Mr. Eddy Ventose, Justice of Appeal

Appearances:

Appellant:

**Mr. Peter Ferrer with him Ms. Kimberly Crabbe-
Adams**

Respondent:

**Ms. Allana J Joseph holding papers for Mr. Jerry
Samuel**

Issues:

Interlocutory appeal – Application to adduce fresh evidence – Principles in Ladd v Marshall – Eastern Caribbean Supreme Court (Non-contentious Probate and Administration of Estates) Rules 2017 – Role of the Registrar – Whether the learned judge erred in finding that all applications for probate are to be made to the Registrar and that rule 67(1) confers exclusive jurisdiction on the Registrar to entertain and dispose of such applications, to the exclusion of a judge of the High Court – Contentious probate proceedings – Costs – Whether the learned judge erred in failing to give the parties an opportunity to be heard on the issue of costs – Assessed costs

Result/Order:

IT IS HEREBY ORDERED THAT:

[1] For the foregoing reasons, the appeal is upheld in part.

(1) The fresh evidence application is refused.

(2) The appeal against the learned judge's order that applications for probate under rule 67(1) of the NCPR may be made only to the Registrar and must be determined by the Registrar is upheld.

(3) The appeal against the learned judge's ruling that it was improper and/or an abuse of process and/or otherwise inappropriate to continue with the rule 67(1) application; against her refusal to determine to whom probate should be issued; and against her refusal to deploy case management powers to correct perceived defects in the rule 67(1) application is dismissed.

(4) The appeal against the costs award in part; and affirm the learned judge's costs award is upheld.

(5) Each party shall bear his own costs of the appeal.

Reason:

- 1. When considering an application for leave to adduce fresh evidence the Court is engaged in the exercise of discretion. In the exercise of its discretion, the Court must seek to give effect to the overriding objective to do justice between the parties. In doing so, it must act judicially and cautiously. The Court will take into account a number of factors including whether either party will be prejudiced by or obtain an unfair advantage by the grant or refusal of permission to adduce the fresh evidence. Furthermore, the three criteria in *Ladd v Marshall* must be satisfied i.e. the proposed new evidence must be such that it could not have with reasonable diligence been obtained for use at the hearing in the lower court; the evidence would likely have an important but not necessarily a decisive bearing on the outcome of the appeal; and the proposed evidence must be credible but not necessarily irrefutable. However, a more flexible approach is to be taken to the application of those principles in interlocutory matters. In the instant case, it is not disputed that the Brazilian judgment was not available at the time of the hearing before the learned judge. As it emanated from a court of law in Brazil, it is credible. However, it is not likely to have an important bearing on this appeal, since the issues before this Court relate largely to the interpretation and application of rule 67(1) of the NCPR, the learned judge's exercise of discretion relative to case management and the award of costs, and those matters would not benefit from considerations which influenced the Brazilian court or that appear in the Brazilian judgment and ruling. Accordingly, the application to adduce the Brazilian judgment and ruling as fresh evidence is refused.**

**Ladd v Marshall [1954] 3 All ER 745 applied;
Adam Bilzerian v Gerald Lou Weiner et al**

SKBHCVAP2019/0033 (delivered 21st July 2020, unreported) followed.

2. Rule 5 of the NCPR expressly stipulates that all applications for probate or grant of letters of administration must be made to the Registrar and be filed at the registry; while rules 7(1) and 67(1) provide respectively for 'an application under the NCPR [to be] made in the first instance to the court', and similarly one for a grant of probate to a citor to be made 'to the court'. These three rules speak to where the applications are to be sent. In other words, they deal with the depository for such applications, not which judicial officer is authorized to deal with them. Read in isolation rule 5 may suggest that the Registrar is the only judicial officer who may entertain and dispose of an application for a grant of probate. However, it must be read in context which is a *sine qua non* of statutory comprehension. This reveals that rule 5 merely provides for such applications to be directed to the Registrar and does not forbid an applicant from transmitting or addressing it to another judicial officer. Notably, it contains no prohibition against such application being made to another judicial officer and imposes no sanctions in such a case. When the aforementioned rules are considered within the overall legislative context of the NCPR and in accordance with rules of interpretation, including the presumption against absurdity, it is clear that, rules 5 and 67(1) speak to the court and Registrar in the capacity of depository, while rule 7(2) deals with jurisdiction.

Dennis Donovan v Irene Donavan BVIHCV2009/0058 (delivered 31st March 2010, unreported) distinguished; Re Stevens, Cooke v Stevens 1894 S. 1752 distinguished; Olga Vladimirovna Scherbakova et al v Brigita Morina Scherbakova et al BVIHC(COM) 134 of 2018 (delivered 25th October 2018, unreported) distinguished.

3. A citor who wishes to contest a grant of probate to the citee, must engage the probate arm of the court, by filing a rule 67(1) application under the NCPR. Significantly, rule 67(1) makes no provision for a citor to apply for a grant of probate if, following the citation, the citee has applied for a grant under rule 66(7) expeditiously and prosecutes it with reasonable diligence. The rules contemplate that in such a case, the registry will process and issue a grant to the citee on receipt of the relevant application for probate. A citor who desires to contest a grant to a citee in those circumstances is required to engage the probate division of the court in contentious proceedings under CPR Part 68, by filing and issuing a fixed date claim and a statement of claim or supporting affidavit. Such proceedings would be triggered not by the citee's rule 66(7) application, or by a rule 67(1) application by the citor but rather by the institution of a probate claim under CPR Part 68. By filing a rule 67(1) application, Werner was seeking to pursue CPR Part 68 contentious probate proceedings under the non-contentious regime in a manner not provided for under the NCPR generally or rule 67(1) specifically. While the NCPR expressly provides that the CPR applies to non-contentious probate practice, the converse is not expressed. It follows that the procedures applicable under the NCPR in respect of non-contentious probate business are inapplicable for purposes of contentious probate proceedings under the CPR. Accordingly, Werner's contention that rule 67(1) is inherently contentious runs contrary to judicial precedent and the practice and procedure in the probate division of the Supreme Court. Thus, his contention that his rule 67(1) application is non-contentious and must for this reason be made to the Registrar holds no merit. The learned judge therefore erred by construing rule 5 as mandating that applications for the grant of probate under rule 67(1) must be made to the Registrar and this ground of appeal is allowed.

In re Jolley, dec'd, Jolley v Jarvis and Another [1964] 2 WLR 556 applied.

- 4. On the issue of jurisdiction, subrule 7(2) expressly empowers all judicial officers throughout the court's hierarchy (from the Registrar at the lower level to the Chief Justice at the apex) to execute any of the court's functions relative to the determination of such non-contentious probate applications and to issue directions unless some law or practice direction provides otherwise. Another consideration is that there is nothing in the NCPR that expressly precludes a judge of the High Court from determining an application for the grant of probate under rule 67(1). Additionally, it is commonly known that within the civil jurisdiction of the Supreme Court, a judge at times carries out judicial functions that are routinely performed by the Registrar or Deputy Registrar, even where the rules specify the Registrar as the authorized functionary. This suggests that the NCPR in general and rule 7(2) in particular contemplates that an application for probate under any of its provisions may be determined by the Registrar, a master or any judge of the Eastern Caribbean Supreme Court unless expressly provided for otherwise. While the learned judge was correct to take the entire legislative scheme into consideration and to consider rules 5, 7 and 8 when construing rule 67(1), she erred in law in holding that rule 67(1) applications for probate must be made to and be determined only by the Registrar.**
- 5. As illustrated in *Hunter v Chief Constable of West Midlands* abuse of process arises where the court's process is being used or manipulated for a purpose that is manifestly different from its ordinary and proper use. The learned judge's rationale for holding that Werner's application was an abuse of the court's process was based on what she considered to be an unnecessary duplication of processes with the same objective. She reasoned that no prejudice would be**

occasioned to Werner if his application was discontinued and further it would lead to less of the court's resources being deployed to address the issues that arose for determination. She was clearly of the view that it was manifestly unfair for Werner to be permitted to persist with his application in those circumstances. The learned judge took into account the applicable legal principles and relevant matters and cannot be justifiably criticised for so concluding. Therefore, this ground of appeal must fail.

Hunter v Chief Constable of West Midlands Police and another [1981] 3 All ER 727 applied; Re Majory v F. A. Dumont LD [1955] Ch. 600, CA applied; In re Jolley, dec'd, Jolley v Jarvis and Another [1964] 2 WLR 556 considered.

6. The practice and procedure in the court with respect to the uncontested grant of probate is settled, is inherently a non-contentious process and is governed by the NCPR. Constituting as it does a contentious dispute, Werner's rule 67(1) application could in no way be considered an application for non-contentious probate. Accordingly, the learned judge could not ignore the prescriptions of the legislated procedure under the NCPR, and invoke the court's inherent jurisdiction and the overriding objective of the CPR to justify processing the application as a fixed date claim under CPR part 68 and determining who should be granted probate when the NCPR and CPR dictated otherwise. In all the circumstances, the learned judge did not err in law either in refusing to determine which Batista brother should be granted probate; or by not referring the application to the Registrar with directions as to which of them should be granted probate. In arriving at her determination she took into account all of the relevant legal principles and factual matters and did not rely on any irrelevant considerations. She did not err in principle and did not make a determination that was blatantly wrong. Accordingly, this ground of appeal must also fail.

Texan Management Limited et al v Electric Wire & Cable Company Limited [2009] UKPC 46 applied; Olga Vladimirovna Scherbakova et al v Brigita Morina Scherbakova et al BVIHC(COM) 134 of 2018 (delivered 25th October 2018, unreported) distinguished.

- 7. It is well-established that the failure to give parties a chance to make representation runs counter to procedural fairness and principles of natural justice and would invalidate a determination. This Court has pronounced on the necessity of affording affected persons an opportunity to be heard before a determination is made as to their rights or interests. Failure to hear from parties before making a costs order infringes the principles of natural justice and is fatal. Accordingly, the sixth ground of appeal must be allowed, albeit limited to the issue of lack of procedural fairness. Despite this finding, the assessed costs regime under CPR rule 65.11 is applicable and in keeping with the general rule the successful party would be entitled to his costs. Werner's complaint that the judge erred by applying the incorrect rule was not made out. Her errors were the failure to seek submissions and to indicate the reasons for the award. Accordingly, the learned judge correctly utilized the assessed costs regime and was not clearly wrong in so doing.**

Webster Dyrud Mitchell (A Partnership) and others v Jenny Lindsay AXAHC VAP2017/0001 (delivered 20th September 2021, unreported) followed; Patricia Ann Huggins v Lloyd Browne SVGHC VAP2018/0007 (delivered 14th June 2021, unreported) followed.

APPLICATIONS AND APPEALS

Case Name:

**Theresa Calliste- Belle
v
Miranda Belle**

**[GDAHCVAP2023/0032]
(Grenada)**

Date: Monday, 15th January 2024

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

Appearances:

Applicant: Mrs. Crystal Braveboy- Chetram

Respondent: Ms. Sheriba Lewis

Issues: Application to revoke order of single judge - Whether single judge fell into error in calculating filing dates - Application for leave to appeal - Application filed pursuant to part 32 of Civil Procedure Rules 2000 for the filing of expert evidence refused - Whether appeal has realistic prospect of success

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The order of Ward JA made on 31st October 2023 whereby he refused leave to appeal the order of Actie J made on 20th July 2023 is set aside.
2. The applicant is granted leave to appeal the order of Actie J made on 20th July 2023.
3. The applicant shall file a notice of appeal within 21 days of the date of this order.
4. The appeal should proceed in accordance with the Civil Procedure Rules 2023 Revised Edition.

Reason: The Court was in agreement with the applicant that there had been an error by the single judge in calculating the filing dates of the application for leave to appeal. In addition, the Court was satisfied that the applicant had met the threshold test for the grant of leave to appeal.

Case Name: **Massy Properties (Trinidad) Ltd**
V

[1.] Basel Algharbi
[2.] Toni Algharbi
[3.] Norab Mansour
[4.] Rohit Persaud
[5.] Jason Fleming

[GDAHCVAP2023/0022]
(Grenada)

Date: **Monday, 15th January 2024**

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

Appearances:

Applicant: **Mr. Dylan Johnathan Charles**

Respondent: **Ms. Gerrisa Rodney for the third respondent**

Issues: **Application for leave to appeal – Whether appeal has realistic prospect of success - Application for stay**

Type of Order: **Oral Decision**

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

- 1. The application filed by Massy Properties (Trinidad) Ltd on 6th June 2023 for leave to**

appeal and a stay of the decision of Michel M dated 28th April 2023 is dismissed and the order of the learned master is affirmed.

2. The document headed 'counter notice' filed by the third respondent on 20th June 2023 is withdrawn.
3. No order as to costs.

Reason:

On 6th June 2023, the applicant, Massy Properties (Trinidad) Ltd applied to the Court seeking orders for: 1.) an extension of time to apply for leave to appeal and a stay of the order of the Honourable Master Carlos Michel ("Michel M" or "the learned master") dated 28th April 2023 granting the third respondent's applications filed 3rd December 2022 and 8th March 2023 for permission to file and serve an amended defence to the claim and 2.) for leave to appeal the decision of Michel M dated 28th April 2023 and a stay thereof pending the hearing and determination of the intended appeal.

The application to extend time to apply for leave to appeal was granted by a single judge of the Court on 27th June 2023 and the substantive application for leave to appeal and a stay was adjourned for hearing before the Full Court. The application was supported by the affidavit of Ms. Melissa Modeste Singh, an associate attorney at law at Henry, Henry and Bristol, legal practitioners for the applicant, also filed on 6th June 2023 together with the exhibits thereto. One such exhibit, "MMS1" contained the order of Michel M in respect of which leave to appeal is sought. Exhibit "MMS2" contained an application by notice filed on 22nd May 2023 seeking leave to appeal and a stay of the order of Michel M. The proposed grounds of appeal were set out in the said exhibited application. Also exhibited to the affidavit in support was a draft notice of appeal marked "MMS4" which also set out the intended grounds of appeal.

The third named respondent, on 20th June 2023, filed in the proceedings, a document titled 'counter notice' which set out the grounds on which the third

respondent says the decision of Michel M ought to be affirmed. The Court was of the view that this filing was premature and it was accordingly withdrawn by counsel for the third respondent.

On 15th December 2023, the applicant filed skeleton arguments and authorities in support of the application for leave to appeal and stay. On 5th January 2024, the third respondent filed his skeleton arguments and authorities. The Court noted that the submissions filed by the third respondent appeared to have been in opposition to the substantive appeal and in support of the counter notice. The Court also noted the general rule that a respondent to an application for leave to appeal is not entitled to be heard on the said application, except with the Court's permission.

The Court then considered the brief oral submissions by learned counsel for the applicant (who mainly relied on his written submissions) in support of the application for leave to appeal and a stay. The Court also considered the decision of Michel M as captured in the transcript of proceedings in the court below on 28th April 2023. The Court also gave consideration to the guiding principles applicable to the grant of leave to appeal as set out in rule 62.28 of the Civil Procedure Rules (Revised Edition) 2023, that is, whether the intended appeal would have a realistic prospect of success or there is some compelling reason why the appeal should be heard.

In applying the test, the Court took into consideration the written and oral submissions of the applicant, the intended grounds of appeal and the answers which were given by the third respondent in cross-examination in the court below on 23rd March 2023, permission for such cross examination having been granted by the learned master.

The Court also noted that the intended appeal is against a case management decision of the learned master and the exercise of his discretion. The Court emphasised that there is a high level of restraint which an appellate court must exercise when considering appeals from case management decisions in particular

and the exercise of a learned judge or master's discretion.

The Court was of the view that the intended appeal did not have any realistic prospect of success. The learned master gave full consideration to all the points raised by the applicant in opposition to the application by the third named respondent to amend his defence. The learned master also considered and applied all the relevant factors to be considered by the court when invited to exercise its discretion to permit a party to amend its statement of case as set out in rule 20.1(2) and (3) of the CPR. Michel M also gave ample consideration to the guiding principles of the relevant case law including the cases of Ketteman and others v Hansel Properties Limited [1988] 1 All ER and the decisions of this Court in George Albert et al v Joshua Matheson et al GDAHCVAP2014/0007 (delivered 24th November 2014, unreported) and Mark Brantley v Dwight Cozier SKBHCVAP2014/0027 (re-issued 11th March 2019, unreported).

In the Court's considered view, the learned master correctly exercised his discretion to grant the application and permit the third respondent to amend his defence. The learned master did not commit any discernible error in the exercise of his discretion to permit the third respondent to amend his defence such that the contention on appeal, that the decision was blatantly wrong would have any realistic prospect of success or that there is some other compelling reason why the appeal should be heard. In all the circumstances, the Court was of the view that leave to appeal should not be granted. The corresponding application for a stay accordingly fell away.

Case Name:

Handel Stafford

v

The King

[GDAHCRAP2017/0022]
(Grenada)

Date:

Monday, 15th January 2024

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

Appearances:

Appellant: Mr. Jerry Edwin

Respondent: Mr. Christopher Nelson KC, Director of Public Prosecutions and with him, Mr. Damon Joseph

Issues: Criminal appeal against sentence - Rape and stealing
- Appellant sentenced to 11 years for rape and 1 year for stealing from a dwelling-house, both sentences to run concurrently - Whether the sentence is excessive due to the learned judge's consideration of inapplicable aggravating factors of the offender and the learned judge's failure to adequately take into account mitigating factors relating to the offender

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The sentence of 11 years for the offence of rape is set aside and is substituted with a sentence of 9 years 1 month and 8 days, which sentence is to run concurrently with the sentence for stealing.
3. The ancillary orders of the trial judge are to remain undisturbed.

Reason: The Court considered the grounds of appeal, the written and oral submissions, and the decision of the judge on sentencing.

In the Court's view, the trial judge erred in considering a spent conviction in order to escalate the notional sentence of the appellant. In considering that previous conviction, she failed to give the appellant the benefit of good character which would have been a mitigating feature allowing for a discount of the notional sentence.

Consequently, the sentence of 11 years for the offence of rape should be reflected as a sentence 9 years 1 month and eight days which should run concurrently with the sentence for the offence of stealing.

The ancillary orders are to remain undisturbed.

Case Name:

Penelope Beaumont
(in her capacity as Administratrix of the Estate of
Martin Beaumont, deceased)

v

Michael Radix

[GDAHCVAP2019/0014]
(Grenada)

Date:

Tuesday, 16th January 2024

Coram:

The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal

Appearances:

Applicant:

Mr. Peter Foster KC with Ms. Afi Ventura de Vega and Ms. Yurana Phillips

Respondent:

Ms. Carah St. Paul and Ms. Chanelle Hyacinth

Issues:

Application for Ellen Radix to be appointed as the legal representative of the Estate of the respondent, Michael Radix and that she be substituted as the respondent in the proceedings - Application that the verbatim noted

compiled by the attorney at law, Lawrence Griffith, and taken during the trial of the matter be adopted as the transcript of the proceedings of the trial

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED:

1. That the parties shall meet to examine the audio recording held by Ms. Lawrence Griffith, Attorney-at-Law, to verify the authenticity of same as a Court generated recording on or before 19th January 2024.
2. That provided it is determined that the audio recording held by Ms. Lawrence Griffith, Attorney-at-Law, is an authentic Court generated recording, the parties shall jointly instruct an agreed transcriptionist to produce a transcript from the said audio recording.
3. That the said transcript shall be produced on or before 19th February 2024.
4. That further to the appointment of Ms. Ellen Radix as Administratrix of the Estate of Michael Radix, deceased, by Order made on 20th July 2023 in Probate Claim No: GDAHPB2021/0297, Ms. Ellen Radix in her capacity as Administratrix of the Estate of Michael Radix, deceased, shall be substituted as the Respondent on the Appeal herein.
5. That there be no Order as to Costs.

Reason:

The Court was advised of the order dated 20th July 2023 granting the appointment of Ellen Radix as Administratrix of the Estate of the late Michael Radix and counsel for the parties represented that they had agreed to confirm the substitution of Ellen Radix as the respondent, in her capacity of Administratrix of the Estate of the late Michael Radix, deceased. In addition, the Court was provided with the Supplemental Affidavit of Lawrence Griffith, Attorney-at-Law, filed on 16th January 2024 in which she deposed that she has been able to

retrieve a copy of an audio recording of the trial of the matter which was shared with her by the Court Office.

The parties therefore resolved the principal issues in the application by consent and given the nature of the application and the all the circumstances, the Court was not satisfied that an order for costs was appropriate.

Case Name:

**Grenlas Management Grenada Limited
(Trading as “Sandals La Source”)**

v

Akeisha Benjamin

**[GDAHCVAP2023/0014]
(Grenada)**

Date:

Tuesday, 16th January 2024

Coram:

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

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

The Hon. Mr. Trevor Ward, Justice of Appeal

Appearances:

Appellant:

Ms Melissa Modeste-Singh

Respondent:

Ms. Deborah Mitchell

Issues:

Civil appeal - Set off - Whether the learned master erred in refusing to consider the issue of set off as raised by the appellant, in the assessment of damages - Whether the learned master had jurisdiction to consider set off as a formed part of the appellant’s defence

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal against the decision of the learned master dated 1st March 2023 is allowed.
2. The learned master's decision where he decided not to consider the issue of set-off and his award of costs are set aside.
3. The matter is remitted to the learned master for consideration and determination on the discrete issue of set-off.
4. Costs in the sum of \$2,000.00 are awarded to the appellant.

Reason:

Before the Court was an appeal filed against the decision of the learned master in which he made an award of general damages in the sum of \$75,000.00 in favour of the respondent. The core ground of appeal was that the learned master erred in failing to properly consider that the appellant paid to the respondent her full salary inclusive of gratuities for the duration of the period of her injury while she received payments from the National Insurance Scheme's Injury on the Job benefit. The appellant contended that the respondent was only entitled to receive damages assessed less the sum of \$39,227.76 and that the learned master failed to reduce the award of damages by the pleaded set-off to prevent the respondent from being unjustly enriched.

The Court considered the pleadings before the learned master, the evidence filed by Mr. Randy Lewis along with the supporting exhibits, the written legal submissions advanced in the court below and the transcripts of proceedings along with the learned master's reasoned judgment and was of the view that the documents before the learned master did raise the issue of set-off.

The Court was of the view that the learned master erred when he failed to consider the issue of set-off which was properly before him. The Court therefore allowed the appeal and remitted the matter to the learned master for consideration and determination of the discrete issue of set-off. The Court also set aside the decision of the learned master where he decided not to consider the issue of set-off as well as the order of

costs made by the learned master and awarded costs on the appeal to the appellant.

Case Name:

**Raheeman Frederick
v
Phillip Neptune
Marva Neptune
Zorina Frederick
Cecilia Phyllis Frederick

[GDAHCVAP2022/0023]
(Grenada)**

Date:

Wednesday, 17th 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:

Appellant:

Ms. Karen Samuels holding for Mr. Alban John

Respondents:

**Mr. Ruggles Ferguson KC instructed by Mrs. Avril
Anande Trotman-Joseph for the first, second and third
respondents**

Issues:

Civil appeal - Adjournment

Type of Order

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

**The matter is adjourned to 18th January 2024 at 9:00
a.m. for the parties to advise on the outcome of
settlement discussions.**

Reason: The parties advised that this matter was part heard before a differently constituted panel. The Court adjourned the matter to allow for discussions between counsel and the parties with the aim of arriving at an amicable solution, failing which, the matter is to continue before the panel before whom it was part heard.

Case Name: **Tomaž Slivnik**
v
Martin Dinning (as Conservator) et al
[AXAHCVAP2023/0005]
(Anguilla)

Date: Thursday, 18th January 2024

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

Appearances:

Appellant/Respondent:	In person
Respondents/Applicants:	Mr. Paul Dennis KC with him Ms. Nadine Whyte Laing and Ms. Navine Flemming

Issues: Application to discharge and revoke order of single judge - Extension of time - Principles on which applications for extensions of time ought to be granted as espoused in Lindsay F.P. Grant et al v Tanzania Tobin Tanzil SKBHCVAP2020/0004 (delivered 6th July 2020, unreported) - Whether the single judge failed to consider relevant matters which ought to have been taken into account

Type of Order Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application to discharge paragraphs 3 and 4 of order of the learned Justice of Appeal made in Chambers on 31st October 2023 wherein he granted the appellant's application to strike out the respondents' notice of opposition and dismissed the respondents' application for an extension of time to file and serve the notice of opposition and their written submissions is granted.**
- 2. The respondents are granted an extension of time, retrospectively, to file their notice of opposition and skeleton arguments to 11th July 2023 and 15th August 2023 respectively and to serve their notice of opposition and skeleton arguments to 3rd October 2023.**
- 3. The notice of opposition and written submissions which were filed on behalf of the respondents on 11th July 2023 and 15th August 2023, respectively, are deemed to have been properly filed.**
- 4. Although the respondents have prevailed in their application, having regard to the lapse in time and the general laxity of the respondents in this application in pursuing their opposition and filing their documents, costs are awarded to the appellant to be assessed if not agreed.**

Reason:

On 3rd May 2023, Pariagsingh M gave a judgment against Mr. Tomaz Slivnik (hereinafter referred to as "the appellant") and seventeen other claimants in a claim brought by them against the Eastern Caribbean Central Bank and eleven other defendants. On 13th June 2023, the appellant filed an appeal against the decision of Pariagsingh M. On 23rd June 2023, the appellant served a notice of appeal on the respondents together with submissions and authorities in support. In accordance with rule 62.13(3) of the Civil Procedure Rules (Revised Edition) 2023 ("CPR"), the respondents intending to oppose the notice of appeal were required

to file and serve a notice of opposition within seven days of having been served with the notice of appeal, that is, by the 5th July 2023. The respondents, however, filed the notice of opposition on 11th July 2023, some six days late and an amended notice of opposition on 20th July 2023, some 9 days later. The respondents also did not serve their notice of opposition on the appellant until 3rd October 2023, almost 3 months later.

In accordance with rule 62.13(5) of the CPR, the respondents were required to file copies of any written submissions in opposition to the appeal within 14 days of the receipt of the notice of appeal that is, by 11th July 2023. The respondents filed written submissions in opposition to the appeal on 15th August 2023, some 5 weeks late but still did not serve them on the appellant until 3rd October 2023, a further 7 weeks later. On 13th October 2023, the respondents filed an application for an extension of time and for the documents to be deemed properly filed.

On 15th September 2023, the appellant filed an application for an extension of time to file the affidavit of service of the notice of appeal. On 19th October 2023, the appellant filed the affidavit of service of the said notice of appeal. On 24th October 2023, he filed an application to strike out the notice of opposition.

On 30th October 2023, the respondents filed an amended notice of application for an extension of time and for the documents filed by the respondents to be deemed properly filed with an affidavit in support and draft order filed on 15th September 2023. On 31st October 2023, Ward JA (“or the learned judge”) sitting as a single judge of the Court of Appeal granted the application by the appellant for an extension of time for the service of the notice of appeal and deemed the affidavit of service filed by the appellant on 19th October 2023 to be properly filed. Ward JA also granted the appellant’s application to strike out the notice of opposition and refused the application by the respondents for the extension of time and for the documents to be deemed properly filed.

On 15th November 2023, 6 of the respondents to the appeal who will also be collectively referred to as ‘the

respondents', filed an application seeking an order pursuant to CPR 62.20(2) discharging paragraphs 3 and 4 of the order of Ward JA wherein he granted the appellant's application to strike out the notice of opposition to the appeal and dismissed the application by the respondents for an extension of time to file and serve their notice of opposition and their skeleton arguments or written submissions. The orders made by Ward JA granting the application by the appellant for an extension of time to file the affidavit of service of the notice of appeal and deeming the affidavit of service filed on 19th October 2023 to be properly filed were not contested by the respondents and do not therefore need further consideration.

The issue before the Court was then whether Ward JA ought to have granted the appellant's application to strike out the respondents' notice of opposition to the appeal and to have dismissed the respondents' application for an extension of time to file and serve the notice of opposition and submissions in support. The learned judge found that the respondents did not advance any good reason for the delay in filing their notice of opposition and their submissions.

The principal ground of the application before the Court was that the learned judge erred in failing to properly consider the totality of the principles upon which an extension of time may be granted and the power of the single judge to extend time pursuant to CPR 26.1(2)(k). The respondents contended that the learned judge failed to consider all the factors in exercising his powers to extend the time as enunciated in the case of Lindsay F.P. Grant et al v Tanzania Tobin Tanzil SKBHCVAP2020/0004 (delivered 6th July 2020, unreported). Those relevant principles are:

1. the length of the delay;
2. the reasons for the delay;
3. the prospects of success on appeal if the extension is granted;
4. the degree of prejudice to the respondent if the extension were to be granted.

The Court emphasised that it is guided by the principles governing the challenge to the exercise of a judge's discretion where it has to be demonstrated

that the judge exceeded the generous ambit within which reasonable disagreement is possible. It must also be sure that the judge has either erred in principle in his approach or has considered irrelevant factors or that his decision is blatantly wrong.

The Court considered the written legal submissions of the parties both in this Court and in the court below, as well as the order of the learned judge and was of the view that the learned judge erred in principle by giving too much weight to the issue of the reasons for the delay and failing to take into account the other relevant factors and considerations, to wit, the prospects of success on the appeal and the degree of prejudice to the appellant if the extension were to be granted.

The Court therefore exercised its discretion afresh and allowed the appeal and set aside paragraphs 3 and 4 of the order of learned judge and exercise its own discretion by making the following orders:

1. An order pursuant to CPR 62.20(2) discharging the order of the learned Justice of Appeal leading Chambers on 31st October 2023 wherein he granted the appellant's application to strike out the respondents' notice of opposition and dismissed the respondents' application for an extension of time to file and serve the notice of opposition and their written submissions.
2. An order retrospectively extending the time for the respondents to file their notice of opposition and skeleton arguments to 11th July 2023 and 15th August 2023 respectively and to serve their notice of opposition and skeleton arguments to 3rd October 2023.
3. An order that the notice of opposition and written submissions which were filed on behalf of the respondents on 11th July 2023 and 15th August 2023, respectively, are deemed to have been properly filed.

Although the respondents have prevailed in their application to discharge paragraphs 3 and 4 of the order of the single judge, largely on account of their realistic prospect of success in defeating the appeal, but bearing in mind the lapse in time and the general laxity of the respondents in this application in

pursuing their opposition and filing their documents, the Court awarded costs to the appellant to be assessed if not agreed.

Case Name:

**Raheeman Joy Frederick
v
Phillip Neptune
Marva Neptune
Zorina Frederick (also in her capacity as
personal representative in the estate of
Cecilia Phyllis Frederick, deceased)**

**[GDAHCVAP2022/0023]
(Grenada)**

Date:

Thursday, 18th January 2024

Coram:

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

Appearances:

Appellant:

Ms. Karen Samuel holding for Mr. Alban John

Respondents:

**Mrs. Avril Anande Trotman-Joseph and Mr Ruggles
Ferguson for the first, second and third respondents**

Issues:

Civil appeal - Adjournment

Type of Order

Adjournment

Result / Order:

IT IS HEREBY ORDERED THAT:

**The hearing of the appeal is adjourned to a date to be
fixed by the Chief Registrar after 31st March 2024.**

Reason:

Counsel indicated that the parties are amenable to settling the matter by consent and requested time until the 31st March 2024 to allow them to explore settlement options including the option of a Judicial Settlement Conference.