

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

Montserrat
Wednesday, 18th – 21st September 2023

JUDGMENT

Case Name: Morden Finance Ltd.

v

Benono Holdings Ltd.

[BVIHCMAP2022/0027]
(Territory of the Virgin Islands)

Date: Wednesday, 20th September 2023

Coram for
Delivery: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Margaret Price-Findlay Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Christopher Bromilow holding papers for Mr. Robert Nader

Respondent: Mr. Andrew Emery

Issues: Commercial appeal – Statutory demand – Application to set aside statutory demand – Appellate court’s exercise of discretion – Whether the judge erred in the exercise of his discretion by applying the Sparkasse test incorrectly to the facts – Whether the estoppel by deed argument was capable of dispute on the facts – Whether the way in which the estoppel by deed point was raised and dealt

with rendered the hearing unfair – Whether the learned judge erred in his treatment of the evidence

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed;
2. The order of the learned judge dated 15th March 2022 and entered 24th March 2022 is affirmed; and
3. Costs of the appeal are awarded to the Respondent to be assessed by a judge of the Commercial Court if not agreed within 21 days of the date of the judgment.

Reasons:

1. An appellate court will not interfere with the exercise of the trial judge's discretion unless the judge erred by failing to take into account relevant factors or by taking into account irrelevant factors and as a result of the error the decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be blatantly wrong.

Dufour and Others v Helenair Corporation Ltd and Others (1995) 52 WIR 188 followed.

2. The learned judge made no error in his statement of the Sparkasse test. The insertion of the word "genuine" in his final sentence in no way meant that he misconceived or misconstrued the test as being more onerous. When one has regard to the full text at paragraph 3 of the Sparkasse decision, it is evident that the authenticity or "genuineness" of the dispute as to the debt's existence is the central element. Further, the learned judge clearly had in mind that for Morden to successfully dispute the existence of the Debt, they had to provide subjective evidence that they did not genuinely believe the Debt existed, and this belief must have been based on substantial or reasonable grounds.

Sparkasse Bregenz Bank AG v In the Matter of Associated Capital Corporation BVIHCVAP2002/0010 (delivered 18th June 2003, unreported) followed.

3. There was no error in construction of the SPA by the judge. At paragraph 9 of the judgment, the judge stated quite clearly that the SPA was executed between Morden and CP. When one has regard to the SPA, it states that Morden was the pledgor and CP, the pledgee. It mentions that CP and Galantor entered into the Loan and that Morden owned shares in Galantor. At paragraph 1, under the heading, "Pledge" it stated clearly that in the event of a default by Galantor as specified in the Loan, Morden pledged to discharge and pay all of Galantor's obligations under the Loan to CP. Further the judge merely quoting one paragraph from the recitals and not the entirety or more of the SPA, is of no consequence. The learned had the SPA before him and he would have taken it into account when coming to his decision. Any argument that for an estoppel to arise there must have been a clear statement of Morden's indebtedness is therefore otiose since the SPA pellucidly sets out Morden's obligations to CP in the event of a default under the Loan by Galantor.

Bensley v Burdon (1830) 8 L.J. (O.S.) Ch. 85, 87 cited; Carpenter v Buller (1841) 8 M and W 209 cited; Collins v Blantern (1767) 2 Wils KB 341 cited.

4. The learned judge was entitled to find that Mr. Yusov's evidence simply was not sufficient, as his explanation that the SPA was executed by nominee directors on instructions from persons not known to the UBOs, was lacking. The judge was entitled to look at the totality of the evidence including the letter of Mr. Kapsis' in which Morden acknowledged its obligations under the SPA. The judge made no error by relying on and having regard to it as it was properly exhibited as part of Benono's evidence. Whilst his evidence was not in the form of a sworn affidavit, it was still part of Benono's evidence, and the judge was entitled to have regard to the totality of the evidence before him. There was no error by the judge in finding that the estoppel point was not capable of dispute, since having regard to the evidence, Morden simply failed to put before the judge a strong case.

Eyota Pty Ltd v Hanave Pty Limited (1994) 12 ACSR 785 cited; Angel Wise Limited v Stark Moly Limited

BVIHCVAP2010/0030 (delivered 13th February 2012, unreported) cited.

- 5. There was no error by the judge in directing the parties to the main issues. Rather, this is in keeping with the overriding objective to deal with cases justly as per rule 1.1 of the Civil Procedure Rules (Revised Edition) 2023 (the “CPR”). Under rule 1.1(2)(4), dealing with cases justly means ensuring that cases are dealt with expeditiously. Additionally, it was evident that the judge found that Morden was unable to overcome the hurdle of the evidential basis to displace the SPA and their own letter acknowledging the Debt. Having found that they were unable to overcome this, the judge did not deem it necessary to prolong the hearing nor did he deem it necessary for counsel for Benono to address him. The judge, as arbiter of the evidence, was entitled to do so and properly considered all that was before him. There was no error in his consideration.**

Rule 1.1 of the Civil Procedure Rules (Revised Edition) 2023 applied.

- 6. An appellate court should be slow to interfere with a trial judge’s findings of fact. It should only interfere with the findings of fact made by a trial judge if it is satisfied that his decision cannot reasonably be explained or justified. In this case, the findings made by the judge as to the veracity of Mr. Yusov’s evidence were entirely open to him based on the evidence that was before him and the findings made were entirely connected to the question of whether Morden had raised a sufficient dispute as to the existence of the Debt. It cannot be disputed that Mr. Yusov had no personal knowledge of the matters or that he could only rely on the documentary record. These facts were affirmed in his affidavit and it was proper for the judge to have had regard to such matters. The judge also made no error in taking into consideration the fact that Mr. Yusov, in neither of his affidavits, failed to expand on how the SPA came to be executed without the knowledge of the UBOs. The learned judge did not err in this regard.**

Henderson v Foxworth Investments Limited [2014] UKSC 41 followed.

APPLICATIONS / APPEALS

Case Name: Howard Mark Rotherham (as the sole executor of
the Will of
Patricia Lynn Cummings, deceased)

v

Anthony Jonathon Nunns

[MNIHCVAP2022/0007]
(Montserrat)

Date: Monday, 18th September 2023

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 [Ag.]

Appearances:

Appellant:	Dr. David Dorsett
Respondent:	Mr. Jean Kelsick

Issues: Interlocutory appeal - Costs - Appeal against costs -
Assessment of costs - Whether the learned judge erred in
awarding costs against the appellant on his successful
application for an extension of time to file his witness
statement and relief from sanctions at which time there
was no order as to costs - Whether the learned judge erred
in awarding costs against the appellant on his successful
application for an extension of time to file his witness
statement and relief from sanctions without sufficient
regard to CPR 26.8(4) - Whether the learned judge erred in
his assessment of costs with respect to the appellant's
security for costs application without having sufficient
regard to CPR 65.7 and CPR 65.11(7)

Type of Order: Oral Decision

Result/Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The order for costs of \$3,000.00 awarded in the judgment of the learned trial judge dated 16th July 2021 is substituted for the sum of \$2,500.00 with respect to the security for costs application.**
- 2. No order as to costs.**

Reason:

This is an appeal against the decision of the learned trial judge awarding costs on an extension of time application and costs on an application for security for costs filed by way of notice of appeal dated 19th August 2022. The appellant argued that: (i) the learned trial judge assessed costs on the application for security for costs without proper regard to CPR 65.7 and CPR 65.11(7); and (ii) the learned trial judge conflated the awards of costs for the extension of time and the security for costs without proper appropriation between the two applications.

The two applications were filed on 9th July 2022. The application for extension of time was heard first in time on 12th July 2022. That application was granted but no order as to costs was made with respect to it.

The application for security for costs was heard on 16th July 2021 and the decision was given on the same day by the learned trial judge. The learned trial judge awarded costs on both the application for security for costs and on the application for extension of time in that ruling made on 16th July 2021.

The Court was of the view that the learned trial judge erred in retrospectively returning to the earlier order on the extension of time for the filing of witness statements and granting costs in that matter on the application for security for costs. The order on the extension of time having been made on 12th July 2022 and entered on 14th July 2022 and settled by the learned trial judge, the learned trial judge erred in revisiting that order and making an order for costs at the time of the hearing of the security for costs application.

With respect to the costs on the security for costs application, while the learned trial judge made no reference to CPR 65.11(7), the learned trial judge mentioned factors that would amount to special circumstances allowing for deviation from an award of costs in the figure of 10%. The Court, being of the view that the learned trial judge did mention those factors which could amount to special circumstances and bearing in mind that the factors stated by the learned trial judge would lead to an award of an increased amount of costs for the security for costs application, exercising its own discretion would award costs on the security for costs application in the sum of \$2,500.00. Therefore, the Court substituted the order for costs of \$3,000.00 awarded in the judgment of the learned trial judge dated 16th July 2021 with \$2,500.00 with respect to the security for costs application.

Case Name:

Donavon Peart

v

Kenneth Farrell

**[MNIMCVAP2020/0012]
(Montserrat)**

Date:

Monday, 18th September 2023

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 [Ag.]**

Appearances:

**Applicant/
Respondent:**

Mr. Jean Kelsick

**Respondent/
Appellant:**

In person

Issues:	Interlocutory appeal - Application to strike out notice of appeal - Failure to prosecute appeal - Section 111(1) of the Magistrate's Court Act of Montserrat - Failure to serve notice of appeal in accordance with prescribed timeline - Failure to apply for an extension of time within which to serve notice of appeal
Type of Order:	Oral Decision
Result/Order:	IT IS HEREBY ORDERED THAT: 1. The notice of appeal filed on 9th March 2020 is hereby struck out. 2. Costs of the application in the sum of \$500.00 to be paid by the respondent/appellant to the applicant/respondent on or before 16th October 2023.
Reason:	The Court heard the arguments from counsel for the applicant/respondent and the respondent/appellant in person. The Court firstly noted that section 111(1) of the Magistrate's Court Act of Montserrat ("the Act") required the respondent/appellant to serve his notice of appeal within 14 days of the day on which the decision being appealed was made and that the respondent/appellant filed two affidavits of service of the notice of appeal, the first dated 22nd December 2020 and the second dated 25th January 2022 evidencing that the notice of appeal was served outside of the 14 day period required by section 111(1) of the Magistrate's Court Act. The Court further noted that the respondent/appellant failed to apply for an extension of time within which to serve his notice of appeal under section 111(1) of the Act. It was also considered that the correct procedure in the matter was for the appellant to have applied to set aside the decision of the magistrate in accordance with section 72 of the Act as opposed to appealing to the Court. In all the circumstances, the Court was of the view that the notice of appeal filed on 9th March 2020 ought to be struck out.

Case Name:

Brian Kenroy Bailey

v

Chief Immigration Officer

**[MNIMCRAP2022/0001]
(Montserrat)**

Date:

Monday, 18th September 2023

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 [Ag.]**

Appearances:

**Appellant/
Applicant:**

Dr. David Dorsett

Respondent:

**Mr. Oris Sullivan
Ms. Sheree E. Jemmotte-Rodney**

Issues:

Magisterial Criminal Appeal - Adjournment - Counsel for the respondent's failure to file written submissions - Whether the matter ought to be adjourned given the serious constitutional issues which arise on the appeal - Application for release from detention - Whether the appellant/applicant ought to be released from detention given: (i) the time period that he has spent in detention; (ii) that the next sitting of the Court for the State of Montserrat is scheduled for April 2024 and there is no guarantee that the substantive appeal would be heard before that date; and (iii) that the Attorney General has conceded that the appellant should be released from detention

Type of Order:

Adjournment

Result/Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The appeal and application for the appellant to be released from detention are adjourned to a date to be fixed by the Chief Registrar.
2. The Attorney General / Director of Public Prosecutions shall, in the substantive appeal, file and serve submissions with authorities on or before 9th October 2023. No further opportunities will be given to the Attorney General / Director of Public Prosecutions should those submissions not be filed by the stated date.
3. The appellant is at liberty to file and serve submissions in reply in the substantive appeal on or before 16th October 2023 if they deem it necessary to do so.
4. Upon the substantive appeal being adjourned and the time period that the appellant has already spent in detention, and given that the next sitting of this Court in Montserrat is scheduled for April 2024 and there being no guarantee that the substantive matter will be heard before that date, and the Attorney General having conceded that the appellant should be released from detention, the appellant is hereby released from detention forthwith pending the determination of the appeal.
5. Costs in this matter will be costs in the appeal.

Reason:

Mr. Sullivan for the respondent informed the Court that he had not filed written submissions in the substantive appeal. He explained that there was a mix-up with the Attorney General's chambers as to who was representing the respondent. The Court expressed its dissatisfaction with the failure of counsel to file written submissions given the serious constitutional issues which arise on the appeal.

In the circumstances, the Court found that it was in the best interest of the parties that the hearing of the appeal be adjourned.

Upon the substantive appeal being adjourned, and upon the Court noting: (i) the time period that the appellant has already spent in detention; (ii) that the next sitting of the Court for the state of Montserrat is scheduled for April

2024 and there is no guarantee that the substantive matter would be heard before that date; and (iii) that the Attorney General conceded that the appellant should be released from detention, the Court made an order for the appellant's release from detention.

Case Name:

Ashel Bramble

v

The King

**[MNIHCRAP2020/0013]
(Montserrat)**

Date:

Tuesday, 19th September 2023

Coram:

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

Appearances:

Applicant:

No appearance

Respondent:

Mr. Oris Sullivan, The Director of Public Prosecution

Issues:

Criminal appeal - Leave to appeal out of time

Type of Order:

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

The matter is stood over until Wednesday 20th September 2023 on which date the applicant will indicate his readiness to proceed with his application for leave to appeal out of time.

Reason: The Court was informed of the applicant's inability to appear due to a personal emergency he had to attend to in England. Consequently, the Court stood over the matter until Wednesday 20th September 2023.

Case Name: Kayoy Jarrett

v

The King

[MNIHCRAP2022/0006]
(Montserrat)

Date: Tuesday, 19th September 2023

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

Appearances:

Applicant: In person

Respondent: Mr. Oris Sullivan, Director of Public Prosecution

Issues: Criminal appeal - Application to revoke the order of a single judge - Application for McKenzie Friend

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application to revoke the order of the single judge is dismissed.
2. The application for the appointment of a McKenzie Friend is dismissed.

Reason:

The Court first heard an application to revoke an order of a single judge of the Court dated 29th November 2022 in which the judge refused an extension of time to allow the applicant to bring a second appeal in relation to an appeal which was already heard and dismissed by the Full Court. Having heard the submissions of the applicant, the Court concluded that the application to revoke the order of the single judge was without merit. The Court was also of the view that to allow an extension of time to reopen an appeal that has been fully heard and determined would be tantamount to an abuse of the Court's process.

For completeness, the Court considered the application filed by the applicant for the appointment of a McKenzie Friend in the person of Mr. Warren Cassell. The Court noted that a McKenzie Friend is not a person who takes on the role of counsel with a right of audience before the Court. They must be a person who is able, and the Court must be satisfied that, in the interest of justice, a litigant requires assistance and would be adequately guided by that person in relation to the proceedings before the Court. The Court must also be satisfied that the person to be appointed a McKenzie Friend would be a fit and proper person. In this particular case, the person identified as being the McKenzie Friend would not, in any event, be permitted to be appointed. The Court took judicial notice of the fact that Mr. Cassell is an attorney and has been convicted. The Court. Therefore, dismissed the application for the appointment of Mr. Cassell as Mckenzie Friend.

Case Name:

David McKeand

v

**[1] H. E. The Governor of Montserrat
[2] The Attorney General of Montserrat
[3] The Chair, Planning and Development
Authority**

**[MNIHCVAP2022/0005]
(Montserrat)**

Date:

Tuesday, 19th September 2023

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

Appearances:

Applicant: In person

Respondent: -

Issues: Leave to appeal - Application for leave to commence judicial review proceedings dismissed by the High Court

Type of Order: Directions

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. Judgment is reserved.
2. The applicant shall furnish to the Court a copy of his application for leave to apply for judicial review together with the affidavit in support of that application as well as any written submissions, on or before Thursday 21st September 2023.

Reason:

The applicant first described the background to his application for leave to apply for judicial review at the High Court. He explained that the Planning Development Authority and Cabinet responded favourably to certain development proposals without public consultation and without giving the public an opportunity to view planning documents.

The applicant crystallised the issues raised in his application as a failure of the trial judge: (i) to properly consider the evidence; and (ii) to hold the Attorney General and officers of the court accountable for their lack of candour in the proceedings, in particular, their provision of misleading and/or false testimony.

The Court noted that the applicant did not file a copy of his application for judicial review. Without knowing what precisely the applicant was seeking to have reviewed at the lower court, the Court was not in a position to properly

consider and pronounce upon the application for leave to appeal.

As such, the Court decided that the applicant ought to be given additional time to furnish the application for leave to commence judicial review proceedings, the supporting affidavit and any written submissions. Thereafter, the Court would be in a position to deliberate and render its decision on the application for leave to appeal.

Case Name:

Vincent Cassell

v

The Director of Public Prosecution

**[MNIHCVAP2023/0002]
(Montserrat)**

Date:

Tuesday, 19th September 2023

Coram:

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

Appearances:

Appellant:

Mr. Dane Hamilton, KC

Respondent:

Mr. Oris Sullivan, The Director of Public Prosecution

Issues:

Interlocutory appeal - Appeal against restraint order - Civil Procedure Rules 2000 - Whether the learned judge erred in law in failing to hold that an application for a restraint order could only be commenced by filing a Fixed Date Claim Form - Proceeds of Crime Act - Whether the learned judge erred in law in holding that joint property held by the Respondent was realisable property within the meaning of the Proceeds of Crime Act - Whether the learned judge erred in law in holding that there were reasonable grounds for holding that the property would be the subject of a confiscation order - Whether the learned judge erred in law in determining that there were

reasonable grounds for suspecting that the Appellant had committed or benefitted from a criminal offence/conduct - Whether the learned judge erred in law in holding that there was a reasonable risk of dissipation on the facts of this case - Whether the learned judge erred in law in not finding that there was material non-disclosure by the Respondent as to any benefit or probable extent of the benefit as alleged

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

The judgment is reserved.

Case Name:

Catherine Tuitt

v

[1] Ann Thomas
[2] Justin Thomas

[MNIHCVAP2019/0015]
(Montserrat)

Date:

Tuesday, 19th September 2023

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal [Ag.]

Appearances:

Appellant:

Ms. Korah Galloway

Respondent:

Ms. Marcelle Watts

Issues:

Civil appeal - Appeal against decision to strike out claim-Trespass - Disputed use of purported right of way - Whether the learned trial judge erred in striking out the

claim where it was shown that there were conflicting issues to be ventilated -Whether striking out case was appropriate on facts of case as pleaded. Whether the learned judge wrongly sought to reconcile conflicting facts in the absence of evidence in chief or cross examination - Whether the learned judge erred in considering irrelevant evidence and failing to consider relevant evidence in formulating his judgment - Costs - Whether the learned judge erred in awarding costs in the sum of \$35,000.00

Type of Order:

Oral Decision

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The orders of the trial judge are set aside in their entirety.**
- 3. The matter is to proceed to trial in accordance with the rules of court and as an ordinary claim.**
- 4. The costs on this appeal shall be borne by the respondent to the appellant fixed in the sum of \$3,575.00.**

Reason:

The Court heard an appeal of the judgment of Morley J dated 3rd October 2019 striking out the claim of the appellant under CPR 26.3 (1)(b) and CPR 26.3 (2)(c).

After hearing submissions from both parties, the Court was of the view that the learned trial judge erred in striking out the claim. The present case was not an appropriate case for the exercise of the power to strike out when there were clearly issues to be ventilated and conflicts relating to those issues to be ventilated at a trial. The Court therefore found that the power to strike out was exercised wrongly by the learned trial judge.

Case Name:

Ashel Bramble

v

The King

**[MNIHCRAP2020/0013]
(Montserrat)**

Date:

Wednesday, 20th September 2023

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Margaret Price-Findlay Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal [Ag.]**

Appearances:

Applicant:

Self-represented

Respondent:

Mr. Oris Sullivan, Director of Public Prosecution

Issues:

Application for leave to appeal out of time - Res judicata

Type of Order:

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

The application for leave to appeal out of time is dismissed.

Reason:

The Court was of the view that the application for leave to appeal out of time should be dismissed on the basis that the applicant already had the benefit of an appeal and further that the points or issues raised in his application could have been raised in the previous appeal. The Court was also of the view that to allow the application and have the issues ventilated a second time would be tantamount to an abuse of the Court's process.

Case Name: **The Attorney General's Reference No. 1 of 2022**

**[MNIHCVAP2022/0009]
(Montserrat)**

Date: **Wednesday, 20th September 2023**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Margaret Price-Findlay Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal [Ag.]**

Appearances:

Applicant: **Ms. Renee Morgan**

Interested Parties: **Mr. Steven Fagen and Ms. Marie Lidbetter**

Issues: **Attorney General's Reference - Whether, in view of the accused's right to legal representation under section 7(2)(d) of the Constitution of Montserrat Cap.1.01, the High Court may determine, before a trial on indictment takes place, that a count on indictment may be dismissed as an abuse of process if the accused does not receive financial assistance from the State to secure legal representation - Whether a trial may only be conclusively found to be an abuse of process for lack of a legal representative after the trial has taken place - Nature of questions referred - Whether the questions referred were fact specific requiring the Court to carry out an evaluative assessment thereby impacting proceedings before the lower court**

Type of Order: **N/A**

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

The Court will answer questions #1 and #2, which are intricately bound up, and render its opinion on those questions on Thursday 21st September 2023 or at a later date for which notice will be given, however the Court will not entertain questions #3, #4, and #5.

Reason:

Mr. Fagen and Ms. Lidbetter appeared in Court as interested parties and they indicated that they had filed written submissions for the Court's consideration. The Court informed them that the proceedings were not adversarial in nature; they were a reference of questions by the Attorney General for the Court's opinion.

The Court informed counsel that the purpose of a reference was so that the Court could engage the interpretation of a constitutional provision or constitutional provisions. The Court could not render assistance in relation to questions which were fact specific thereby engaging in an evaluative exercise which could impact proceedings before the lower court.

The Court upon considering the questions raised by the Attorney General was of the view that it would answer questions #1 and #2 which were intricately bound up and render its opinion on those questions the following day, or later, on notice. The Court however decided that it would not entertain questions #3, #4 and #5 as they were fact specific thereby inviting an evaluative exercise which could impact proceedings before the lower court.

Case Name:

Keston Riley

v

**[1] Honourable Attorney General
[2] Director of Public Prosecutions**

**[MNIHCVAP2021/0011]
(Montserrat)**

Date:

Wednesday, 20th September 2023

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Margaret Price-Findlay Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal [Ag.]**

Appearances:

Appellant/Respondent **Mr. Hugh Marshall**

Respondents/Applicants **Ms. Sheree Jemmotte-Rodney**

Issues: Application to put further evidence before the Court - Portions of the transcript in the lower court proceedings missing - Whether further evidence ought to be adduced

Civil appeal - Misfeasance in public office - Whether the learned judge failed to analyze the facts in justifying his ruling on the issue of misfeasance - Section 7(13) of the Montserrat Constitution Order 2010; whether the learned judge failed to deal with all matters and consider the various heads of relief claimed.

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The Court shall provide written reasons for its decision, in which the Court will also address the issue of the quantum of costs, at a later date.

Reason: The Court heard oral submissions on the Respondents'/Applicants' application to put further evidence before the Court. The Court decided to refuse that application and proceed with the hearing of the appeal.

The Court then heard the substantive appeal. Having considered the submissions from counsel for the appellant and the respondent, the Court decided to dismiss the appeal with written reasons to follow.

Case Name: Karen Allen

v

The Commissioner of Police

[MNIMCRAP2021/0002]
(Montserrat)

Date: Thursday, 21st September 2023

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Margaret Price-Findlay Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal

Appearances:
Appellant: In person
Respondent: Ms. Kristen Taylor-Hilton

Issues: Magisterial criminal appeal - Appellant convicted under section 3(1) of the Motor Vehicle Insurance (Third-Party Risks) Act Cap 7:08 - Strict liability offence - Whether the court failed to consider the appellant's evidence, the facts of the matter and the actions taken immediately after being informed of the offence - Whether the prosecution and subsequent conviction of the appellant was unfair and/or an abuse of process

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal is dismissed and the appellant's conviction and sentence are affirmed.

Reason: The Court explained that the offence in question was a strict liability offence. This meant that it mattered not whether the appellant intended to commit the offence, whether the appellant inadvertently committed the offence, or whether the appellant realised that she committed the offence. It also mattered not whether the appellant rectified the status of her insurance policy before the charge was laid because on the day in question, the law had not been complied with.

The Court stated that there was no evidence to suggest that the trial before the magistrate was unfair and/or an abuse of process.

In the Court's view, the appeal was entirely without merit and there was no basis for interfering with the sentence imposed by the magistrate.

Case Name: Myron Green
v
The Commissioner of Police

**[MNIMCRAP2021/0004]
(Montserrat)**

Date: Thursday, 21st September 2023

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Margaret Price-Findlay Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal

Appearances:

Appellant In person

Respondent Mr. Oris Sullivan, The Director of Public Prosecution

Issues: Criminal appeal - Whether the learned magistrate erred in law in coming to a finding of guilt for the offences of throwing missiles and being armed with an offensive weapon when both offences are aspects of the same matter, in that they arise out of the one circumstance - Whether the learned magistrate fell into error when she imposed a custodial sentence

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The conviction and sentence in respect of charge No. 28 of 2018 are quashed.
2. The conviction and sentence in respect of charge No. 26 of 2018 are affirmed.

Reason: The Court was of the view that given the definition of offensive weapon under section 68 of the Penal Code of Montserrat the offence of being armed with an offensive weapon, being a bottle, had not been made out on the evidence, as there was no evidence showing that the bottle was adapted for use as a weapon, causing likely injury to any person or property. Accordingly, the Court held that the conviction and sentence in respect of the charge No. 28 of 2018 is hereby quashed.

In respect of charge No. 26 of 2018, the offence of throwing missiles in a public place to the danger of persons, the Court was of the view that the appellant did not challenge whether there were facts or evidence before the magistrate on which that finding could be made and as such, the conviction should be affirmed. In relation to sentence, the Court considered that the learned magistrate took into account all the relevant factors and considerations and that she did not err in the exercise of her sentencing discretion and that there was no reason for the Court to interfere with the sentence that she imposed.