

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
VIDEOCONFERENCE

SAINT VINCENT AND THE GRENADINES
24th – 27th January 2022

JUDGMENTS

Panel 1

Case Name: Capital WW Investment Limited (In
Liquidation) acting through its Directors
v
Tall Trade Limited
[BVIHCMAP2020/0025]
(Territory of the Virgin Islands)

Date: Monday 24th January 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of
Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of
Appeal [Ag.]

Appearances:
Appellant: Mr. Renell Walker
Respondent: Ms. Marcia McFarlene

Issues: Commercial appeal — Insolvency proceedings — The
Insolvency Act, 2003 — Appointment of liquidators of
a company — Actionable conspiracy — Genuinely
disputed debt on substantial grounds — Whether the
judge erred in fact and/or in law in failing to conclude
that there was no genuinely disputed debt on the
basis of an actionable conspiracy to form the
appellant's cross-claim — Improper purpose —
Whether the judge

erred in law and/or in fact in failing to conclude that the application for appointment of liquidators was not being made for an improper purpose, namely in furtherance of the alleged conspiracy — Section 125 of the Evidence Act, 2006 — Admissibility of evidence — Whether the judge erred in law in not admitting the telegram messages into evidence — Whether the judge's exercise of his discretion to abridge the hearing date of the second application resulted in the appointment of liquidators being irregular, void and of no effect — Whether foreign law was applicable to the conspiracy claim.

Result:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The decision of the learned judge is affirmed in its entirety
3. Costs on the appeal are awarded to the respondent, which costs shall be paid out of Capital WW's assets in the liquidation, shall be no more than two-thirds of the assessed costs in the court below, and which are to be assessed by a judge of the Commercial Division unless otherwise agreed within 21 days of the date of this judgment.

Reason:

1. An appellate court should apply restraint not only to the judge's findings of fact but also to the evaluation of those facts and the inferences drawn from them. The critical question is whether there was evidence before the learned judge from which he could properly have reached the conclusions that he did or whether, on the evidence, the reliability of which it was for him to assess, he was plainly wrong. In this case it was clearly open to the learned judge to make the findings which he did on the evidence.

Yates Associates Construction Company Ltd v Blue Sand Investments Limited [2016] ECSCJ No. 71 (delivered 20th April 2016) followed; Fage

UK Ltd and another v Chobani UK Ltd and another [2014] EWCA Civ 5 at paragraph 114 followed; Shankar Khushalani and another v Lindsay Mason (Trading as Tropical Home Designs Architectural & Construction Services) [2021] ECSCJ No. 593 (delivered 11th June 2021) followed.

2. The court will not make a winding up order under section 157(1) of the Insolvency Act if the debt demanded in the statutory demand is disputed on substantial grounds. Furthermore, the court will not wind up a company in circumstances where there is a serious and genuine cross-claim save in special circumstances provided always that the cross-claim equals or exceeds the amount of the application's debt. The onus was on Capital WW to provide evidence which pointed to a case of conspiracy to found a cross-claim. The judge properly examined the evidence to determine whether it disclosed substantial and reasonable grounds for the allegation of conspiracy, however the evidence was found to be seriously wanting. That situation did not improve before this Court, and once the conspiracy allegations failed, the improper purpose complaints must of necessity suffer a similar fate. Consequently, there is no basis on which to impugn the judge's decision.

Section 157(1) of the Insolvency Act, No. 5 of 2003, Revised Laws of the Virgin Islands applied; Re Bayoil S.A. [1999] 1 WLR 147 considered; Sparkasse Bregenz Bank AG v In the Matter of Associated Capital Corporation British Virgin Islands Civil Appeal No. 10 of 2002 (delivered 18th June 2003, unreported) considered; Taylor v Van Dutch Marine Holding Ltd and others [2019] EWHC 1951 considered; Kuwait Oil Tanker Co SAK and others v Al Bader and others [2000] 2 All ER (Comm) 271 followed; Re Amalgamate Properties of Rhodesia (1913), Limited [0082 of 1917.] [1917] 2 Ch 115 followed; Re H and others (Minors)

(Sexual Abuse: Standard of Proof) 1996 AC 563 followed.

- 3. The common law position that governs the admissibility of improperly obtained evidence cannot avail Capital WW. In the Virgin Islands, the legislature has provided a statutory scheme that must be applied in order for this Court to determine whether the learned judge erred by excluding the hacked telegram messages. Having reviewed the judge's careful treatment of the issue of the admissibility of the hacked telegram messages, there is no basis upon which this Court could conclude that the exercise of his discretion to exclude the hacked telegram messages was perverse.**

Section 125 of the Evidence Act 2006, Act No. 15 of 2006, Laws of the Virgin Islands applied; Ras Al Khaimah Investment Authority v Azima [2021] EWCA Civ 349 distinguished.

- 4. The appellate court should only interfere if it is satisfied that in exercising his or her judicial discretion, the trial judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors or being influenced by irrelevant factors; and that, as a result of the error, in principle, the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be blatantly wrong. Applying these principles to the circumstances of this case, it is clear that the learned judge committed no error in the exercise of his discretion.**

Michel Dufour and others v Helenair Corporation Ltd. and others [1996] ECSCJ No. 11 (delivered 12th February 1996) followed; Ming Sui Hung & others v JF Ming Inc and another [2021] UKPC 1 followed; J Trust Asia Pte Ltd. v Mitsuji Konoshita and another [2021] ECSCJ No. 571 (delivered 31st May 2021) followed; Novel Blaze Limited (In Liquidation) v Chance Talent Management Limited [2021]

ECSCJ No. 529 (delivered, 16th April 2021) followed; Cherney v Deripaska No. 2 [2009] EWCA Civ 849 followed.

5. The judge was correct in determining that the real issue in relation to the acceleration of the hearing date was whether in the specific circumstances of the case he should have dispensed with the advertisement of the second application. It was part of the judge's essential function to case manage the second application and determine that since its advertisement was dispensed with, he could have exercised his discretion by bringing forward the date. No useful purpose would have been served in adjourning the matter. Therefore, there is no proper basis to impugn the exercise of the judge's discretion to abridge the hearing date of the second application, nor his decision to appoint liquidators over Capital WW.

Panel 2

Case Name:

**[1] Ikana Holdings, S. DE R.L.
[2] Consorcio Energetico Punta-Cana
Macao, SA**

v

**[1] Putney Capital Management Ltd.
[2] Basic Energy (BVI) Ltd. (Now Known
As Haina Energy Holdings II)
[3] Snapper Investments, Inc.**

**[BVIHCMAP2021/0027]
(Territory of the Virgin Islands)**

Date:

Monday, 24th January 2022

**Coram for
delivery:**

**The Hon. Dame Janice M. Pereira DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellants: Mr. Simon Hall

Respondents: Mr. Andrew Willins, QC

Issues: Interlocutory appeal – Application for specific disclosure of documents held by third party – Appellate interference with findings of fact – Civil Procedure Rules 2000 – CPR 28.1(4) – Document to be disclosed must be directly relevant to issues at trial – Whether the documents for which appellants seek disclosure are directly relevant to the issues in the case – Whether Court should exercise discretion to order respondents to search for documents in third party's possession and disclose them – Control – CPR 28.2 – Existence of an express agreement or an arrangement or understanding, for the disclosing party to have free access to the documents of third party in possession of documents – Whether the Respondents have control of the documents held by a third party – Whether the judge erred in his overall approach to the application for specific disclosure – Fresh evidence – Application to adduce fresh evidence – Ladd v Marshall principles - Whether fresh evidence should be admitted

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The Judge's order is affirmed.
3. The application to rely on fresh evidence is granted.
4. The Appellants are ordered to pay the assessed costs of the Respondents at the rate of two-thirds of the amount awarded in the lower court.

Result and Reason:

1. An appellate court is generally reluctant to interfere with the findings of fact, the evaluation of those facts and the inferences drawn from the facts made by a lower court, since the trial judge had the opportunity of seeing and hearing the witnesses give their evidence and to assess their demeanour and

credibility. The appellate court will only interfere if the judge erred in principle in his findings or if his decision was clearly or blatantly wrong. In the case where the evidence before the judge was on affidavits and there was no cross examination of the deponents, an appellate court's degree of reluctance to interfere is less. In such cases, the appellate court will have due regard to the Judge's evaluation of the evidence and his findings of fact and will only interfere if the disagreement with the Judge's findings is so wide that the appellate court is satisfied that it can legitimately interfere.

Watt (Or Thomas) v Thomas [1974] 1 All ER 582 applied; Assicurazioni Generali SpA v Arab Insurance Group [2003] 1 WLR 577 applied; Datec Electronics Holdings Ltd and others v United Parcel Service Ltd [2007] 1 WLR 1325 considered.

2. A document is liable to be disclosed if it is directly relevant to the issues that would arise for decision at trial. By virtue of rule 28.1(4) of the Civil Procedure Rules, a document is directly relevant if: the party with control of the document intends to rely on it; it tends to adversely affect that party's case; or it tends to support another party's case. In this case, at least some of the requested documents are or may be directly relevant to the issues between the parties and are liable to be disclosed.

Rule 28.1(4) of the Civil Procedure Rules 2000 applied; Dr. The Honourable Timothy Harris v Dr. The Right Honourable Denzil Douglas SKBHCVAP2019/0026 (delivered 9th December 2021, unreported) followed.

3. A party's duty to disclose is limited to those documents that are or have been in the control of that party within the meaning of CPR 28.2. In the context of a parent/subsidiary relationship, control must be demonstrated by sufficient evidence showing that there is an express

agreement for the disclosing party to have free access to the documents of the subsidiary, or an arrangement or understanding for the disclosing party to have such access. The existence of an arrangement or understanding may be inferred from the surrounding circumstances. Evidence of past access to the subsidiary's documents in the same proceedings is a highly relevant factor. In this case, the previous disclosures of documents by the Respondents relating to EGE were not sufficient to raise the inference of an arrangement or understanding for free access to EGE's documents by the Respondents. Therefore, the Judge's conclusion that the previous disclosures do not amount to an arrangement or understanding for general access to EGE's documents cannot be impugned.

Lonrho Ltd v Shell Petroleum Co Ltd [1980] 1 WLR 627 considered; *Ardila Investments NV v ENRC, NV and another* [2015] EWHC 3761 (Comm) applied; *North Shore Ventures Ltd v Anstead Holdings Inc* [2012] EWCA Civ 11 applied.

4. The Judge did not err in his overall approach and consideration of the issues and there is no basis for this Court to legitimately interfere with the Judge's finding.
5. In interlocutory appeals, the Court applies a more relaxed approach in its application of the *Ladd v Marshall* test. Notwithstanding this, the applicant must still satisfy the three limbs of the test. In this case, the Appellants satisfied all three limbs of the test and the new evidence was admitted as fresh evidence to be used in the determination of the appeal. However, the new evidence, when considered with all the evidence in the case, does not rise the case to the level of proving an understanding or arrangement that the Respondents have general access to EGE's documents.

Ladd v Marshall [1954] 3 All ER 745 applied;
Bilzerian & Others v Byron & Others [2020]
ECSCJ No. 249 (delivered 21st July 2020)
followed.

APPLICATIONS AND APPEALS

Panel 1

Case Name:

**Fostina Hoyte
v
Deidre Hamilton**

**[SVGMCVAP2021/0004]
(Saint Vincent and The Grenadines)**

Date:

Monday 24th January 2022

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of
Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of
Appeal [Ag.]**

Appearances:

Applicant: In person

Respondent: Ms. Deidre Hamilton

Issues:

**Application for extension of time to apply for leave to
appeal – Reasons for delay**

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The applicant shall serve a copy of the
application for the extension of time for leave
to appeal on or before the 15th of February 2022**

and provide an affidavit of service on or before 2nd March 2022.

2. The applicant shall provide this Court with a copy of the order of Magistrate Zola Ellis Browne on or before 15th February 2022.
3. The matter is adjourned for further consideration at the next chamber hearing of the Court scheduled for 15th March 2022.
4. The Registrar of the High Court shall serve a copy of this order on the applicant on or before 31st January 2022.

Reason:

The Court considered an application for an extension of time to file an application for leave to appeal.

The Court noted that the application has been continuously adjourned because the applicant had not been served with the order of the Court and therefore unable to comply with the order. The respondent explained that the bailiff had difficulties locating the applicant which resulted in the delay of service.

In the circumstances the Court was of the view that it was appropriate to grant the extension of time to the applicant.

Case Name:

Jeffrey Cuffy

v

The Queen

[SVGHCRA2017/0015]

(Saint Vincent and The Grenadines)

Date:

Monday 24th January 2022

Coram:

The Hon. Mde. Louise Esther Blenman, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

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

Appearances:

Appellant:

Mr. Israel Bruce

Respondent: Mrs. Tammika Da Silva-Mc Kenzie

Issues: Criminal appeal – Non appearance of appellant – Appellant's failure to prosecute appeal

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal against sentence and conviction is dismissed for want of prosecution.

Reason: The Court considered an appeal against sentence and conviction made by the appellant. However, the appellant did not appear in court to prosecute the matter.

Case Name: Terrance Joseph
v
The Queen

[SVGHCRA2018/0005]
(Saint Vincent and The Grenadines)

Date: Monday 24th January 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Ms. Renee Simmons

Issues: Appeal against conviction and sentence

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against conviction and sentence is dismissed.
2. The sentence of the trial judge of 12 years is affirmed.

Reason: The Court considered an appeal against conviction and sentence made by the appellant.

The appellant pursued the appeal on the basis that there was lack of evidence and no witness to attest that he committed the offence.

With regard to conviction the Court was of the opinion that the jury, having reviewed the evidence was correct to come to its conclusion.

Further, given the violent nature of the incident the Court was of the opinion that there was no reason to interfere with the sentence.

The Court was of the view that there was no error in relation to the conviction or sentence and therefore no basis to interfere with the learned judge's decision.

Case Name: Anthony Edwards
v
The Queen

[SVGHCRA2018/0001]
(Saint Vincent and The Grenadines)

Date: Monday 24th January 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

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

Appearances:

Appellant: In person

Respondent: Ms. Rose Ann Richardson

Issues: Application for leave to withdraw appeal

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. Leave is granted to the appellant to withdraw and discontinue his appeal.
2. The appeal stands dismissed.

Reason: The Court considered an application by the appellant to withdraw the appeal. The application was not opposed and so the Court ordered that the appellant be granted leave to withdraw his appeal.

Case Name: Marlon Mc Cree
v
The Queen

**[SVGHCRA2017/0001]
(Saint Vincent and The Grenadines)**

Date: Monday 24th January 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mrs. Tammika Da Silva-Mc Kenzie

Issues: Application to withdraw appeal against conviction and sentence

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. Leave to withdraw appeal against conviction and sentence is granted
2. The appeal stands dismissed.

Reason: The Court considered an application by the appellant to withdraw the appeal against conviction and sentence. There was no objection to the application. The Court therefore granted the appellant leave to withdraw his appeal.

Case Name: Colly Lowman
v
The Commissioner of Police

[SVGMCRAP2020/0001]
(Saint Vincent and The Grenadines)

Date: Monday 24th January 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mrs. Maria Jackson-Richards

Issues: Application to withdraw appeal

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. Leave is granted to the appellant to withdraw and discontinue his appeal.
2. The appeal stands dismissed.

Reason: The Court considered an application by the appellant to withdraw the appeal. There was no objection to the application and so the Court granted the appellant leave to withdraw his appeal.

Case Name: **Tambu Patrick**
v
The Commissioner of Police

[SVGMCRAP2020/0005]
(Saint Vincent and The Grenadines)

Date: Monday 24th January 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Appellant:	In person
Respondent:	Ms. Rose–Ann Richardson

Issues: Criminal Appeal – Adjournment

Type of Order: Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

The matter is adjourned to the next sitting of the Court of Saint Vincent and the Grenadines for the week commencing 18th July 2022 to allow the appellant to retain the services of counsel to represent him.

Reason:

The Court was of the opinion that the matter should be adjourned to allow the appellant to retain the services of counsel to represent him.

Case Name:

**Maurice Cupid
v
The Commissioner of Police**

**[SVGMCRAP2020/0018]
(Saint Vincent and The Grenadines)**

Date:

Monday 24th January 2022

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

Appearances:

Appellant: In person

Respondent: Ms. Kaylia Toney

Issues:

Criminal appeal against sentence – Whether the sentence was manifestly excessive

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

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

2. The sentence of the Magistrate is affirmed.

Reason:

The Court considered an appeal against the decision of the magistrate where the appellant was found guilty and was fined a sum of \$ 3,000.00 to be paid by December 31st 2021 or in default 9 months in prison and also a fine of \$1000.00 to be paid by December 31st2021.

The Court looked at the circumstances of the offence and noted that the magistrate indicated that there were no mitigating factors and several aggravating factors.

The Court was of the view that sentence was not excessive and on the contrary, it was quite lenient.

The Court noted that it has the discretion in circumstances where there is an appeal against sentence to increase sentence, however in this case the Court chose not to increase it.

The Court was of the opinion that there was no merit in the complaint against the Magistrates sentence and it should be dismissed.

Case Name:

**Oswald Nero
v
The Commissioner of Police**

**[SVGMCRAP2020/0020]
(Saint Vincent and The Grenadines)**

Date:

Monday 24th January 2022

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent: Ms. Shackell Bobb

Issues: Application for leave to appeal

Type of Order Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. Leave is granted to the appellant to file and serve submissions together with authorities on or before the 24th of February 2022.
2. Leave is granted to the respondent to file and serve written submissions together with authorities on or before the 24th of March 2022.
3. The hearing of this appeal is adjourned to the next sitting of this Court in Saint Vincent and the Grenadines during the week which commences on the 18th of July 2022.

Reason: The Court considered an application for leave to appeal by the appellant. The appellant did not file and serve submissions with the application therefore the Court was of the opinion that the appellant should be given the opportunity to do so.

Case Name: Asher Dublin
v
The Commissioner of Police

[SVGMCRAP2019/0020]
(Saint Vincent and The Grenadines)

Date: Monday 24th January 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Israel Bruce holding papers for Mr. Ram Conel

Respondent: Ms. Sejilla Mc Dowel

Issues:

Criminal appeal against conviction and sentence – Whether the decision of the Chief Magistrate could be supported by the evidence in this case – Duty of Disclosure – Section 99 of the Criminal Procedure Code of Saint Vincent and the Grenadines – Whether the appellant was denied a fair trial – Whether the sentence was manifestly excessive.

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal against conviction and sentence is dismissed.
2. The conviction and sentence are affirmed.

Reason:

The Court considered an appeal against conviction and sentence from the appellant.

The appellant was convicted of the offence of possession and drug trafficking. He was sentenced to 5 years and 6 years respectively. He appeals against his conviction and sentence on the grounds that; the decision of the Chief Magistrate could not be supported by the evidence in this case, he was denied a fair trial and his sentence is excessive in the circumstances.

Having reviewed the record of the proceedings and submissions made on behalf of appellant and by the respondent, the Court found that there was no merit on the first ground that there was no evidence in the case. The Court was of the view that the learned Magistrate who is the finder of fact in these circumstances would have evaluated the evidence

and arrived at the conclusion that the case was made out.

The Court as a court of review is slow to interfere with findings of fact of the lower court where there was evidence to support the findings.

On the second ground of appeal, the appellant argued that he was denied a fair trial because he was not permitted to call a the prosecutions witness as his witness although he was cross examined by the appellant. He sought to rely on Section 99 of the Criminal Code of Saint Vincent and the Grenadines. The Court was satisfied that in the circumstances of this case that the witness was called and cross examined at length by the defence and no application was made to recall the witness for further cross examination. Rather the defence sought to call the witness as their witness, having already testified for the prosecution. The Court was of the view that such situation does not arise under the Section 99 of the Criminal Code and therefore the learned Magistrate was entitled to deny the application made before the court.

On the third ground of appeal, the appellant argued that the sentence was excessive. The Court considered the sentence of 5 years and 6 years respectively for each offence. Having regard to the nature and quantity of the drug (5 pounds of cocaine) and the fact that the appellant has previous convictions of a similar offence, the Court was of the opinion that given the circumstances the sentence was not manifestly excessive.

Case Name:

Desley Gaymes

v

The Commissioner of Police

[SVGMCRAP2021/0007]

(Saint Vincent and The Grenadines)

Date:

Monday 24th January 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:
Appellant: No appearance
Respondent: Ms. Shackell Bobb

Issues: Magisterial criminal appeal – Non appearance of appellant – Appellant’s failure to prosecute appeal on

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal is dismissed for want of prosecution.

Reason: The Court considered an appeal against sentence from the appellant on the basis that it was excessive.

The appellant was served to appear in Court and despite efforts of counsel who appeared on his behalf the appellant did not appear to prosecute the matter.

Panel 2

Case Name: Tethyan Copper Company Pty Limited

v

[1] Islamic Republic of Pakistan

[2] Pakistan International Airways Corporation Limited

[3] PIA Investments Limited

[4] Minhal Incorporated

[5] PIA Hotels Limited

[6] Virgin Islands Registrar of Companies

[7] Citco B.V.I. Limited

[8] Harneys Corporate Services

Limited

**[BVIHCMAP2021/0014]
(Territory of the Virgin Islands)**

Date: Monday, 24th January 2022

Coram: The Hon. Dame Janice M. Pereira DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Lord Charlie Falconer, QC, with him Mr. Joshua Folkard, Mr. Piers Plumptre and Mr. Shawn Reardon-John

Respondents: Mr. Vernon Flynn, QC for the first respondent

Mr. Andrew Willins for the second respondent

Mr. Stephen Moverly Smith, QC, with him, Mr. Tim Wright for the third, fourth and fifth respondents

No appearance for or on behalf of the sixth, seventh and eighth respondents

Issues: Commercial appeal - Application for adjournment – Consent order

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The appeal listed to be heard on 24th January 2022 to 27th January 2022 shall be adjourned to the first available date after 31st March 2022, to be listed at the convenience of the Court of Appeal.
2. Costs in the appeal.

Reason: The Court considered the draft consent order of the parties and was minded to grant an adjournment to allow the parties to engage in settlement discussions.

Panel 1

Case Name: RBTT Bank Caribbean Limited
v
Financial Services Authority

**[SVGHCVAP2021/0005]
(Saint Vincent and The Grenadines)**

Date: Tuesday 25th January 2022

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

Appearances:
Appellant: Mr. Stanley John QC. and with him Mr. Akin John
Respondent: Mr. Grahame Bollers

Issues: Adjournment

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

On application from counsel appearing for the respondent with no objection by counsel for the appellant, the hearing of this appeal is adjourned to a date to be fixed by the Chief Registrar.

Reason: Counsel for the respondent made an application before the Court for an adjournment of the matter on

the basis that his co-counsel was unable to appear before the Court due to unforeseen circumstances. There was no objection from counsel for the appellant.

Case Name:

**Nevis Housing and Land Development
Corporation
v
Eustace Nisbett**

**[NEVHCRA2021/0001]
(Saint Christopher and Nevis)**

Date:

Wednesday, 24th January 2022

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of
Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Applicant:

Mr. Patrice Nisbett

Respondent:

Mr. Terrance Byron

Issues:

**Civil appeal - Application to strike out notice of appeal
- Failure to serve notice of appeal - Whether the failure
of the appellant to file a notice of appeal is fatal to the
overall appeal- Whether the appeal should be struck
out - Extension of time - Whether the court would
grant an extension of time to allow the appellant to
serve the notice of appeal - Costs**

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application to strike the notice of appeal
out is refused.**

2. The application for an extension of time to serve the notice of appeal and supporting documents is granted.
3. The notice of appeal and supporting documents are deemed properly filed and served.
4. The respondent should have costs assessed in the sum of \$1000.00.

Reason:

In circumstances where the appeal was filed in time and the complaint as made by the applicant is one of failure to serve and taking into account the totality of the circumstances, the Court was of the view that this was not an appropriate case in which to exercise its discretion to strike out the appeal.

Case Name:

Benjamin Harvey

v

The Queen

[SVGHCRA2018/0011]

(Saint Vincent and The Grenadines)

Date:

Monday, 24th January 2022

Coram:

The Hon. Mde. Louise Esther Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Applicant:

Mr. Jomo Thomas

Respondents:

Mrs. Maria Jackson-Richards

Issues:

Criminal Appeal - Appeal against conviction - Application for leave to substitute initial grounds of appeal

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

Leave is hereby granted to the appellant to argue the following three grounds in substitute for grounds 1,2,3,4:

1. The learned trial judge committed a material error when he dismissed the objections of the defence counsel and allowed the exhibits of the controlled substances to be entered into evidence.
2. The learned trial judge erred in law when he failed to direct the jury on the law of chain of custody of evidence collected and tendered into evidence at trial.
3. The learned trial judge erred in law by not entirely or at all putting the defendant's case to the jury.

Reason:

The application for leave to substitute the previous grounds of appeal was granted considering no objection from counsel for the respondent.

Case Name:

Benjamin Harvey

v

The Queen

[SVGHCRA2018/0011]

(Saint Vincent and The Grenadines)

Date:

Monday, 24th January 2022

Coram:

The Hon. Mde. Louise Esther Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Mr. Jomo Thomas

Respondents:

Mrs. Maria Jackson-Richards

Issues:

Criminal Appeal - Appeal against conviction - Whether the learned trial judge committed a material error when he dismissed the objections of the defence counsel and allowed the exhibits of the controlled substances to be entered into evidence - Whether the learned trial judge erred in law when he failed to direct the jury on the law of chain of custody of evidence collected and tendered into evidence at trial - Whether the learned trial judge erred in law by not entirely or at all putting the defendant's case to the jury

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The conviction is affirmed.**

Reason:

The appellant Benjamin Harvey was convicted of the offences of possession of a controlled drug and drug trafficking, He appeals against that conviction. At trial, he denied possession of the drug. His appeal was heard on three grounds that (i) the learned trial judge committed a material error when he dismissed the objections of the defence counsel and allowed the exhibits of the controlled substances to be entered into evidence; (ii) the learned trial judge erred in law when he failed to direct the jury on the law of chain of custody of evidence collected and tendered into evidence at trial; and (iii) the learned trial judge erred in law by not entirely or at all putting the defendant's case to the jury.

In support of the first ground of appeal, learned counsel referred the court to a number of instances where the signature on the bags were not clear, the sealing such as the rope and tabs were not on the exhibits and that those affected the admissibility of the drugs. Both sides relied on a decision of this Court in *Damian Hodge v The Queen*. The Court found unanimously that the fact that the exhibits were not in the same condition that they were in when first

recovered is not fatal to the admissibility of the evidence. The question is whether the integrity of the evidence was affected. There was nothing on the record which suggested the same. In those circumstances, the Court found that there was no merit in the ground of appeal. The learned judge made no error when he admitted the exhibits into evidence.

In relation to ground two, the Court found that there was no merit in that ground of appeal. The chain of custody from the time the evidence was recovered and evidence was admitted from both sides was argued by both sides. The jury rendered their verdict indicating that they preferred the prosecution's evidence. The issue of chain of custody was not raised in the lower court. The judge outlined both the defence and the prosecution's arguments and the jury would have been alerted to the fact that there were two versions of the facts.

On ground 3, the Court found that the judge made it clear to the jury that the defence of the appellant was denial. Counsel also submitted that the judge's summation was unfair in that it did not make reference to all the evidence raised by the defence and the prosecution. However, when the summation is viewed as a whole, it is clear that the judge went over all the evidence with the jury. The jury would have therefore been able to see the inconsistencies in the evidence. Nevertheless, inconsistencies in evidence alone do not necessarily render the verdict unsafe. Counsel also submitted that it was not balanced because the judge reminded the jury that the appellant had an opportunity to give his account of the facts but had chosen not to do so. However, the judge also reminded the jury that the appellant had said he was acting under instructions from his counsel to remain silent and had also told the jury that it was the prosecution's burden to prove the case. Therefore, there was no doubt as to where the burden to prove the offence rested in the trial. The Court could find no basis for disturbing the finding of guilty by the jury. The evidence of the prosecution was cogent and compelling and there was no reason that the Court could find to undermine the safety of the conviction. Like in every case, the fact that the

judge could express some things differently is not a basis for overturning the decision of the jury.

The Court found no merit in the appeal against conviction.

Case Name:

Danley Matthews

v

The Queen

[SVGHCRAP2018/0002]

(Saint Vincent and The Grenadines)

Date:

Wednesday, 26th January 2022

Coram:

The Hon. Mde. Louise Esther Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

No appearance

Respondents:

Ms. Sejilla McDowall

Issues:

Criminal appeal

Type of Order:

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

Due to the medical condition of Mr. Danley Matthews, the hearing of this appeal is adjourned and traversed to the next sitting of the Court in Saint Vincent and the Grenadines during the week which commences on 18th July 2022 and on that date the Court will receive a report as to the status of Mr. Danley Matthews.

Reason: Due to the medical condition of Mr. Danley Matthews, the matter was adjourned to the next sitting of the Court of Appeal in the state of Saint Vincent and The Grenadines

Case Name: Jariel Belle
v
The Queen

[SVGHCRAP2017/0014]
(Saint Vincent and The Grenadines)

Date: Wednesday, 26th January 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Ms. Rose-Ann Richardson

Issues: Criminal appeal – Application for an adjournment

Type of Order: Adjournment

Result/Order [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. Leave is granted to Mr. Jariel Belle to file and serve skeleton arguments together with authorities, on or before 25th February 2022.
2. Leave is granted to the respondent if necessary to file and serve submissions in reply on or before 25th March 2022.
3. The hearing of this appeal is adjourned and traversed to the next sitting of the Court in Saint Vincent and The Grenadines during the week which commences on 18th July 2022.

Reason: The appellant indicated that he had prepared skeleton submissions but neither the Court, the respondent nor the Saint Vincent and the Grenadines registry had a copy of the submissions. The Court therefore adjourned the matter to the next sitting of the Court of Appeal in the state of Saint Vincent and The Grenadines to allow him time to file those submissions and for the respondent to reply.

Case Name: Selwyn John
v
The Commissioner of Police
[SVGMCRAP2021/0001]
(Saint Vincent and The Grenadines)

Date: Wednesday, 26th January 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: Ms. Kay Bacchus Baptiste
Respondent: Ms. Kaylia Toney

Issues: High court criminal appeal - Application for adjournment - Whether the court would grant an adjournment to allow the respondent time to prepare and file submissions in reply to the appellant's submissions which were filed later than they should have been

Type of Order Adjournment

Result/Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. Leave is granted to the DPP to file and serve written submissions together with authorities on or before 25th February 2022.
2. The appellant is granted leave to file and serve written submissions in reply if necessary on or before 25th March 2022.
3. The hearing of this appeal is adjourned and traversed to the next sitting of the Court in Saint Vincent and The Grenadines during the week which commences 18th July 2022.

Reason:

An application was made by the respondent to have the matter adjourned to the next sitting of the Court of Appeal in the state of Saint Vincent and The Grenadines to allow them time to file their written submissions in reply to the appellant's submissions. This request was made due to delay in the applicant's filing and service of its written submission and the indisposition of the attorney who had charge of the matter on behalf of the respondent.

Based on a request for an adjournment and leave to file submissions occasioned by the late filing of the submissions of the appellant's whose submissions were received on 18th January 2022 and there being no objection to the application by learned counsel by the appellant; the Court granted the adjournment and extended the time in which the respondent could respond and further provided for time in which the appellant may respond if necessary.

Case Name:

**Colin Lewis
v
The Commissioner of Police**

**[SVGMCRAP2019/0043]
(Saint Vincent and The Grenadines)**

Date:

Wednesday, 26th January 2022

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: In person

Respondent: Ms. Rose-Ann Richardson

Issues:

Criminal appeal - Leave to withdraw the appeal - Whether the appellant can withdraw the appeal since he has completed his sentence

Type of Order

Oral Decision

Result/Order:

IT IS HEREBY ORDERED THAT:

1. Leave to withdraw appeal is granted
2. Accordingly the appeal stands dismissed.

Reason:

The appellant has since served and completed his sentence and no longer wished to prosecute the appeal.

Case Name:

Gideon Billingy

v

Joel Woodley

[SVGHCVAP2016/0013]

(Saint Vincent and The Grenadines)

Date:

Thursday 27th January 2022

Coram:

The Hon. Mde. Louise Esther Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellant: In person

Respondent: In person

Issues: Civil appeal – Adverse possession - Whether learned judge erred in holding that the appellant failed to establish adverse possession by himself and/or his father – Interruption in possession - Whether judge erred in holding that appellant’s possession was interrupted when he was at sea for 8 months – Service of application on adjoining landowners - Whether judge erred in holding that the lack of personal service on one adjoining landowner was fatal to the application – Possessory Titles Act Cap. 328 - Whether the learned judge failed to properly consider that the Possessory Titles Act allowed procedural errors to be corrected – Locus standi – Standing of respondent - Whether the learned judge failed to properly consider that the respondent could not maintain his standing as he was neither the paper owner of the subject land nor the personal representative of either of his grandparents who were the true owners of the subject land

Type of Order: N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: Haadiyah Grant
v
The Commissioner of Police
[SVGMCRAP2021/0010]
(Saint Vincent and The Grenadines)

Date: Thursday 27th January 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Applicant/Appellant: Ms. Samantha Robertson

Respondent: Ms. Allana Cumberbatch

Issues:

Application to amend grounds of appeal – Whether leave ought to be granted – No objection by the respondent

Type of Order:

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

Leave is granted to the appellant/applicant to amend the notice of appeal in order to reflect the following two grounds, that:

- i. The conviction is unsafe and unsatisfactory
- ii. The sentence is excessive.

Reason:

The Court was of the view that, as there was no objection to the application by the respondent, the application ought to be granted.

Case Name:

**Haadiyah Grant
v
The Commissioner of Police**

**[SVGMCRAP2021/0010]
(Saint Vincent and The Grenadines)**

Date:

Thursday 27th January 2022

Coram:

The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Samantha Robertson

Respondent: Ms. Allana Cumberbatch

Issues: Magisterial criminal appeal against conviction and sentence – Unlawful and malicious wounding – Section 174 of the Criminal Code – Whether conviction unsafe and unsatisfactory – Fine of \$500 imposed - Whether sentence manifestly excessive

Type of Order: Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against conviction is dismissed.
2. The conviction is affirmed
3. The sentence of a fine of \$500.00 is affirmed, but the time in relation to which the fine of \$500.00 is to be paid is varied to that of payment within two (2) months of today's date, in default, three (3) months' imprisonment.

Reason: This was an appeal by the appellant against the decision of the learned magistrate in which the learned magistrate convicted the appellant of wounding and imposed a fine of \$500.00 to be paid in one month or three months imprisonment.

The appellant was aggrieved by the decision of the learned magistrate and by way of the amended grounds of appeal, has pursued two matters:

- i. That the conviction was unsafe and unsatisfactory; and
- ii. That the sentence was excessive

The Court had regard to both the oral and written submissions of learned counsel for the appellant as well as the written submissions of counsel for the respondent and was of the view that in the circumstances, there was no basis upon which the Court could properly conclude that the conviction that was imposed was unsafe or unsatisfactory. Accordingly, the appeal against conviction was

dismissed and the conviction of the learned magistrate affirmed.

In relation to the sentence of \$500.00, the Court was of the view that the sum imposed by the learned magistrate was not excessive in the circumstances. However, the Court noted that there was no indication on the record that a means test was carried out. In the circumstances, the Court affirmed the sentence of \$500.00 and varied the time in relation to payment. The payment date was therefore varied to two months from the date of the judgment.

Case Name:

**Allie Harry
v
O'Brian Nanton**

**[SVGMCVAP2018/0004]
(Saint Vincent and The Grenadines)**

Date:

Thursday 27th January 2022

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Kay Bacchus Baptiste

Respondent: Mr. Ronald Marks

Issues:

Magisterial civil appeal – Breach of contract – Magistrate's decision to proceed with matter when counsel for the appellant requested an adjournment - Whether learned magistrate erred by failing to adjourn the matter to allow appellant to obtain another lawyer – Whether the appellant was denied the right to have legal counsel represent him – Whether order by learned magistrate unreasonable in all the circumstances

Type of Order: Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against the decision of the learned magistrate is allowed.
2. By consent, the case is remitted to be heard by a different magistrate.
3. Costs to the appellant in the agreed sum of \$500.00.

Reason: This was an appeal by the appellant against the decision of the learned magistrate whereby the appellant complained that the procedure adopted by the magistrate, in proceeding with the matter in circumstances where counsel for the appellant was appearing in the High Court, was unfair.

The Court had regard to the written submissions of both parties, in particular the concession by counsel for the respondent that the magistrate, having known that the appellant had counsel in the matter and that the appellant's counsel was before a superior court and had made an application for an adjournment, ought to have granted the adjournment.

The Court therefore allowed the appeal and ordered, by consent, that the matter be remitted to be heard before another magistrate.

Case Name: Ranjie Francis
v
[1] Adrian Richards
[2] Fay-Ann Richards

[SVGMCVAP2021/0009]
(Saint Vincent and The Grenadines)

Date: Thursday 27th January 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal

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

Appearances:

Appellant: Ms. Samantha Robertson

Respondents: Ms. Ronnia Durham Balcombe

Issues:

Magisterial civil appeal – Breach of contract – Right to be heard - Whether the learned magistrate erred in failing to give the appellant an opportunity to put his case properly before the court – Whether the learned magistrate, in failing to take evidence from the respondents, denied the appellant the opportunity to cross-examine the respondents – Whether the magistrate, in his decision, failed to consider that the appellant acknowledged only the debt of \$2,200 and not the entire sum – Whether the magistrate erred in finding that the appellant owed the entire sum of \$6,374.80

Type of Order:

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The decision of the learned magistrate is affirmed in its entirety.**
- 3. The respondents shall have costs on the appeal assessed in the sum of \$500.00.**

Reason:

This was an appeal by the appellant against the decision of the learned magistrate in which the learned magistrate gave judgment for the respondents in the sum of \$6,374.80 plus costs of \$1,200.00. The appellant was aggrieved by the decision of the learned magistrate and filed four grounds of appeal indicating that:

- i. The learned magistrate failed to allow him to put his case properly before the court;**

- ii. The learned magistrate failed to allow him to cross-examine the respondents;
- iii. The learned magistrate, in his decision, failed to consider that the appellant acknowledged only the debt of \$2,200 and not the entire sum; and
- iv. The learned magistrate erred in finding that the appellant owed the entire sum of \$6,374.80

The Court heard the oral submissions of counsel for the appellant and read the written submissions of both parties and had regard to the record which clearly indicated that this was a matter in which there was an admission of the debt by the appellant. The Court also noted specifically the reasons for decision by the learned magistrate and also the indication in the judgment itself where the court took the time in stating that the parties were unrepresented and that the appellant acknowledged the debt and that the monies were due and owing.

In the circumstances, there was no basis on which the appellant could state that he ought to have been given an opportunity to cross-examine and to lead evidence in circumstances where there was an admission. The grounds of appeal filed and argued by learned counsel for the appellant were therefore without merit and accordingly the appeal was dismissed and the decision of the learned magistrate was affirmed in its entirety.

Case Name:

Gideon Billingsy

v

Joel Woodley

[SVGHCVAP2016/0013]

(Saint Vincent and The Grenadines)

Date:

Thursday 27th January 2022

Coram:

The Hon. Mde. Louise Esther Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellant: In person

Respondent: In person

Issues:

Civil appeal – Adverse possession - Whether learned judge erred in holding that the appellant failed to establish adverse possession by himself and/or his father – Interruption in possession - Whether judge erred in holding that appellant’s possession was interrupted when he was at sea for 8 months – Service of application on adjoining landowners - Whether judge erred in holding that the lack of personal service on one adjoining landowner was fatal to the application – Possessory Titles Act Cap. 328 - Whether the learned judge failed to properly consider that the Possessory Titles Act allowed procedural errors to be corrected – Locus standi – Standing of respondent - Whether the learned judge failed to properly consider that the respondent could not maintain his standing as he was neither the paper owner of the subject land nor the personal representative of either of his grandparents who were the true owners of the subject land

Type of Order:

N/A

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.