

THE EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

**SAINT CHRISTOPHER AND NEVIS
VIDEOCONFERENCE**

Monday 24th – Friday 28th April 2023

JUDGMENTS

Case Name: Sian Participation Corp (in Liquidation)

v

Halimeda International Limited

**[BVIHCMAP2021/0017]
(Territory of the Virgin Islands)**

Date: Monday 24th April 2023

**Coram for
delivery of
judgment: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Andre McKenzie

Respondent: Ms. Tamara Cameron

Issues: Leave to appeal to His Majesty in Council – Section 3(1)(a) of the Virgin Islands (Appeals to the Privy Council) Order 1967 – Whether intended appeal lies of right – Whether the decision of the learned judge to appoint liquidators over Sian was a final decision - Whether the appeal involves directly or indirectly a claim to or question respecting property or a right valued at £300 or more – Whether the appeal concerns the liquidation of a company in respect of

an alleged debt in excess of US\$226 million

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Sian's application for conditional leave to appeal to the Privy Council is dismissed.**
- 2. Costs of the application to Halimeda to be assessed by a judge of the court below if not agreed within 21 days.**

Reason:

Held: dismissing the application for conditional leave to appeal to the Privy Council and awarding costs of the application to the respondent to be assessed by a judge of the court below if not agreed within 21 days, that:

- 1. It is well-settled that winding-up orders are considered final judgments in civil proceedings which can be appealed as of right. While the intended appeal to His Majesty in Council emanates from a winding-up order and as such, is a final decision of the court below, this alone does not satisfy all the requirements of section 3(1)(a) of the 1967 Order relating to an appeal as of right. The requirements that (i) the matter in dispute on the intended appeal to His Majesty in Council be of the value of £300 sterling or upwards, and/or (ii) the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of the value of £300 sterling or upwards, must also be satisfied.**

Inderjit Kaur Chhina v Muhammad Nazir Muhammad Ismail et al BVIHCMAP2020/0024 (delivered 23rd March 2023, unreported) followed; Walter Fletcher v Income Tax Commissioner [1972] AC 414 applied; Alceo Zuliani and others v Vernon S. Viera [1994] 1 WLR 1149 followed;

**Meghji Lakhamshi & Bros. v Furniture Workshop
[1954] AC 80 applied.**

2. In this case, neither of these requirements have been satisfied by Sian. It is not enough that the dispute relates in some way to property or a right that is worth more than the threshold amount. The fact that the winding-up was ordered because of an unpaid debt of US\$226 million does not mean that the value threshold test is met. It is the value of the dispute itself that must meet the threshold amount. In the court below, the learned judge determined that the debt was not disputed on genuine and substantial grounds. Further, in relation to the Arbitration Issue, the learned judge found that it had been raised too late. These decisions of the learned judge were upheld by the Court of Appeal in the substantive appeal. Moreover, as this Court found in the appeal that the judge in the court below did not make any determination concerning Sian's interest in any property, the intended appeal cannot involve directly or indirectly a claim to or question respecting property of the value of £300.

3. The Court has the power to refuse leave to appeal to His Majesty in Council where there is no genuine dispute, even where, in the circumstances, the applicant is entitled to leave to appeal as of right. In this case, while the Arbitration Issue does raise a question of law, that question is not one of great general or public importance or which otherwise which ought to be submitted to His Majesty pursuant to section 3(2)(a) of the 1967 Order. It is not sufficient to satisfy the requirement of that subsection that this issue will or may be

encountered by other parties from time to time. Further, the issue of law has been settled in the BVI in the decision of this Court dated 8th December 2015 in Jinpeng Group Limited v Peak Hotels and Resorts limited and does not require resolution, and Sian's complaint that the case of Jinpeng Group Limited took a different approach to that taken by the English Court of Appeal in Salford Estates (No. 2) Ltd does not make the Arbitration Issue one of "great general or public importance" or which otherwise requires the attention or determination of the Privy Council..

Meyer v Baynes [2019] UKPC 3 followed; Water and Sewerage Authority of Trinidad and Tobago v Sahadath and another [2022] UKPC 56 applied; Jinpeng Group Limited v Peak Hotels and Resorts Limited BVIHCMAP2014/0025 and BVIHCMAP2015/0003 (delivered 8th December 2015, unreported) considered; Salford Estates (No. 2) Ltd v Altomart Ltd [2014] EWCA Civ 1575 considered; Renaissance Ventures Ltd et al v Comodo Holdings Ltd. BVIHCMAP2018/0005 and BVIHCMAP2018/0008 (delivered 8th October 2018, unreported) followed; Inderjit Kaur Chhina v Muhammad Nazir Muhammad Ismail et al BVIHCMAP2020/0024 (delivered 23rd March 2023, unreported) followed.

4. Sian has not shown how the rejection of the fresh evidence application can properly be placed before the Board. Without sight of the arbitration award, the Court is not in a position to determine whether its contents would have an important bearing on the outcome of this appeal. Consequently, this Court is not in a position to find that there are issues of great general or public importance or any point of law on which

the Court could benefit from the guidance by the Board.

Case Name:

Starcy Huggins

V

The Commissioner of Police

**[BVIMCRAP2021/0004]
(Territory of the Virgin Islands)**

Date:

Tuesday, 25th April 2023

**Coram for
delivery of
judgment:**

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

Appearances:

Appellant:

Ms. Akilah Anderson with Ms. Tracy Francis-Smith

Respondent:

**Mr. Kael London holding papers for the Director of
Public Prosecutions**

Issues:

**Criminal appeal – Appeal against conviction –
Restraint of appellate court to interfere with findings
of fact – Abuse of power – Nature of judgment
entered by learned magistrate – Breach of trust by a
public officer – Elements of offence – Mens rea –
Admissibility of audiovisual recordings into evidence
– Whether adducing evidence improperly or unfairly
results in an unfair trial or miscarriage of justice –
Whether entrapment serves as a full defence –
Section 81G of the Criminal Code of the Virgin
Islands**

Result / Order:

**IT IS HEREBY ORDERED THAT:
The appeal is dismissed and the conviction and
sentence of the learned magistrate is affirmed.**

Reason:

Held: dismissing the appeal and affirming the conviction and sentence of the learned magistrate, that:

- 1. An appellate court should not interfere with a judge's findings of primary fact unless they are 'plainly wrong', which connotes that either there was no evidence to support the finding, or the finding was based on a misunderstanding of evidence, or the finding was one that no reasonable judge could have reached. The reasons for such appellate restraint are not limited to the advantage enjoyed by the trial judge of having seen and heard the witnesses. They include the recognition that the judge who presides over the trial is immersed in the evidence in a way that an appeal court cannot replicate.**

Kwok Kin Kwok v Yao Juan [2022] UKPC 52 applied.

- 2. Section 81G of the Criminal Code provides that a public official who, in the discharge of his duties, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, commits an offence. The Criminal Code does not outline the elements of the offence. However section 81G is in similar terms as section 122 of the Criminal Code of Canada. The Canadian courts have held that the offence is committed where (a) a public official; (b) in the course of or connected to his public office (c) wilfully misconduct himself; by act or omission, for example, by wilfully neglecting or failing to perform his duty; (d) without reasonable excuse or justification; and where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects. The elements of the offence**

were satisfied in this case as the appellant was a police officer who misconducted herself in connection to her public office without reasonable excuse or justification. Further, the appellant's misconduct may be deemed serious as police officers are placed in a position of trust to maintain law and order. An officer calling and alerting the subjects of an operation clearly represented a serious and marked departure from the standards expected of an individual in the appellant's position.

R v Boulanger 2006 SCC 32 applied; R v Quach [2010] VSCA 106 applied.

3. The test for admissibility is relevance. For evidence to be relevant, and to have a nexus between it and the subject matter, such evidence must be reliable. A tape recording is admissible provided that: (i) its accuracy could be proved; (ii) the voices were properly identified and, (iii) that the evidence was relevant and otherwise admissible. Ultimately the admissibility of evidence is a matter for a judge and there was sufficient evidence at trial for the learned magistrate to determine that the audio-video evidence was reliable.

R v Maqsud Ali [1966] 1 QB 688 applied.

4. The Court's jurisdiction is limited to assessing whether the conviction is safe. Not every departure from good practice renders a trial unfair. The fairness of a trial can only be assessed in the factual context of the particular case. It is for the appellant to show that the absence of the exhibit produced a disadvantage at trial. Patrick Lovelace v The Queen Saint Vincent and the Grenadines HCRAP 2009/017 (delivered 27th February 2012, unreported) considered; Kuruma, Son of Kaniu v R [1955] AC 197 applied.
5. The law states that entrapment is not a complete defence but where an accused can show entrapment, the court may stay the proceedings

as an abuse of the court's process or may exclude the evidence. If there is no evidence to show that the appellant was forced, coerced or encouraged in any way but acted in her own dishonesty, the defence of entrapment cannot prevail.

R v Loosely Attorney General's Reference (No. 3 of 2000) [2001] UKHL 53 considered; Williams and another v Director of Public Prosecutions [1993] 3 All ER 365 applied.

Case Name:

Emmanuel Webster

v

**[1] Khamal Vere Hodge
[2] Patricia Harding - Hodge
[3] Valencia Hodge**

**[AXAHCVAP2020/0002]
(Anguilla)**

Date:

Thursday, 27th April 2023

**Coram for
delivery of
judgment:**

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag]**

Appearances: Appellant:

Mr. Kennedy Hodge

Respondents:

Mr. John Carrington, KC

Issues:

Civil appeal – Partition of land held in common – Application form for partitioning land held in common - Grounds for the rectification of the land register - Fraud - First respondent's failure to appear before third respondent when he certified the application form – Whether the register ought to be rectified on the ground of fraud due to the alleged false certification on the application form – Damages for fraud – Whether actual fraud pleaded and proved by appellant to warrant an award of damages - Mistake –

Application form bearing a date different to the date form actually signed – Whether the mistake on the application form warrants rectification of the register – Exclusive ownership of partitioned land – Section 109 of the Registered Land Act - Whether under section 109 of the Registered Land Act a partition of land formerly held in common is sufficient to bestow ownership of individual parcels on proprietors who formerly held land in common – Trespass to land – Exemplary damages - Aggravated damages – Whether the learned judge erred by failing to award exemplary and aggravated damages to the respondents

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed with costs to the respondents, such costs to be assessed by a Judge or Master of the High Court, if not agreed within 21 days.
2. The counter-notice of appeal is dismissed with costs to the appellant, such costs to be assessed by a Judge or Master of the High Court, if not agreed within 21 days.
3. The respondents are awarded costs on the application for interim relief and the application to strike out in accordance with the order of Ramdhani J dated 13th April 2018, such costs to be assessed by a Judge or Master of the High Court, if not agreed within 21 days.

Reason:

Held: dismissing the appeal and the counter-notice of appeal and awarding costs of the appeal, costs of the application for interim relief and costs of the application to strike out in accordance with the order of Ramdhani J dated 13th April 2018 to the respondents, and awarding costs of the counter-notice of appeal to the appellant, such awards of costs to be assessed by a judge or master of the High Court if not agreed within 21 days, that:

1. Upon reading Mr. Webster's Statement of Claim filed in the lower court, it cannot be said that

the assertion that he and Mr. Hodge owned all the parcels emanating out of Parcel 29 as proprietors in common in their original shares of $\frac{3}{4}$ and $\frac{1}{4}$ respectively, was ever pleaded and put before the judge. Instead, Mr. Webster seemed to argue that Mr. Hodge owned no share in Parcel 29 and consequently none in the subdivided Parcel 232. The consequence of this is that the issue of fraud in the partition of Parcel 29, specifically the alleged false certification of the RL16 form and the consequences flowing therefrom, were never raised in the lower court. Accordingly, it cannot be said that the learned judge erred in failing to determine an issue which was not properly put before him.

2. Under section 146 of the Registered Land Act, the register may be rectified for fraud. However, what must be proved is actual fraud which entails some deliberate act, misrepresentation or concealment of facts by a person in the process of registering land ownership. The acts must be deliberately aimed at swindling the rightful owner out of some unregistered right or interest. Intention to defraud is therefore necessary. On the facts, the alleged false certification of the RL16 form by Mr. Hodge can amount to no more than an irregularity for the purposes of fraud and rectification of the register. Despite Mr. Hodge's admission that he did not appear before the third respondent to certify the RL16 form, the fact is that when the transactions in relation to Parcel 29 began, he was under the age of 18 and his parents were acting on his behalf. Moreover, the third respondent was Mr. Hodge's father. Mr. Hodge and Mr. Webster intended that Parcel 29 be partitioned and these were matters known to all the parties. On the evidence, it therefore cannot be said that a case of actual fraud was made out by the appellant to warrant the rectification of the register and nullify the partition of Parcel 29.

Section 146 of the Registered Land Act

Revised Statutes of Anguilla, Chapter R30 applied; *Assets Co Ltd v Mere Roihi* [1905] AC 176 applied.

3. Even if non-compliance with the Registered Land Act's requirements as to registration may involve the possibility of cancellation or correction of the entry, registration once effected must attract the consequences which the Act attaches to registration, whether that was regular or otherwise. It is the registration and not its antecedents which vests and divests title. On the facts, despite the alleged false certification of the RL16 form by Mr. Hodge's father, this alone would not be sufficient to deprive Mr. Hodge of his absolute title to Parcel 232. This is so, particularly in circumstances where the partition of the original Parcel 29 was the intention of all parties involved and the parties acted upon the said partition.

Phillip Brelsford et al v Providence Estate Limited et al MNIHCVAP2016/0008, MNIHCVAP2016/0009, MNIHCVAP2016/0010, MNIHCVAP2016/0011 (delivered 15th February 2018, unreported) followed; *Cenac and others v Schafer* [2016] UKPC 25 applied.

4. The register may be rectified under section 146 of the Registered Land Act for mistake. However, a clerical error on the RL16 form, where there was no such error on the land register would not amount to a mistake for the purposes of section 146. Despite the fact that the RL16 form presented to the Registry bore the date 13th February 2004, when in fact it was signed by Mr. Webster on 13th February 2006, this was a clerical error. It had no bearing on the substance and content of the form or the parties' intention that Parcel 29 be partitioned. Additionally, there was no error on the land register for any of the parcels and the date of the first registration thereon was correctly recorded. Thus, there was no mistake as contemplated by section 146 which would

warrant a rectification of the register.

Section 146 of the Registered Land Act Revised Statutes of Anguilla, Chapter R30 applied; Phillip Brelsford et al v Providence Estate Limited et al MNIHCVAP2016/0008, MNIHCVAP2016/0009, MNIHCVAP2016/0010, MNIHCVAP2016/0011 (delivered 15th February 2018, unreported) followed.

5. For a party to claim damages for common law fraud or deceit, the prayer for relief is not sufficient and a party must specifically plead and prove all the elements thereof. On the facts, the appellant failed to set out any claim for damages for common law fraud or deceit and no effort was made to prove any of the elements either in this Court or in the court below. Particularly, the appellant failed to show any loss suffered as a result of the alleged fraudulent certification. Consequently, Mr. Webster was not entitled to damages for fraud.

Bullen & Leake & Jacob's Precedents of Pleadings 17th Edition Volume 2 applied.

6. A partition of a parcel of land under section 109 of the Registered Land Act is sufficient to bestow ownership of individual parcels on proprietors who formerly held land in common. Whilst it is true that partition does not vest title, section 109 explicitly allows the Registrar to effect a partition in accordance with any agreement of the proprietors. On the evidence, the RL16 form presented by Mr. Webster contained an illustration of the map sheet and how it ought to look after the partition, with a note that Lot 2 was to be recorded as being owned by Mr. Hodge only, as his $\frac{1}{4}$ share of the original Parcel 29, and Lots 1, 3 and 4 to be recorded as owned by Mr. Webster only, as his $\frac{3}{4}$ share of the original Parcel 29. This was clearly the intention of the parties as evidenced by their conduct since Mr. Webster sold Parcel 231 and amalgamated Parcels 233 and 234, without the consent or input of Mr. Hodge. The

evidence clearly pointed to an agreement between the parties for the partition of the land in the manner in which it was effected. Consequently, there was no merit in the appellant's argument that all of the parcels were still owned in common.

Section 109 of the Registered Land Act Revised Statutes of Anguilla, Chapter R30 applied.

7. An award of exemplary damages is exceptional, and the defendant's conduct must be particularly egregious to warrant punishment beyond the compensatory damages that the claimant would normally receive. Exemplary damages may be awarded where the defendant's conduct has been calculated to make a profit for himself however, this is not confined to moneymaking in the strict sense. It extends to cases in which the defendant is seeking to gain, at the expense of the claimant some object. On the facts, Mr. Webster's conduct of tearing down the barricade and refilling the trench were merely demonstrations of an assertion of ownership over Parcel 232. Such acts, on their own, would not have made a profit at Mr. Hodge's expense and so the learned judge did not err by not making an award of exemplary damages.

Rookes v Barnard [1964] 1 All ER 367 applied.

8. An award of aggravated damages for trespass to land would be made on the basis of subjective evidence as to injury to the plaintiff's feelings caused by the defendant's conduct. On the facts, insufficient evidence was adduced before the learned judge as to injured feelings on the part of any of the respondents. Consequently, the learned judge did not err by not making an award of aggravated damages.

Horsford v Bird and others [2006] UKPC 3 applied; Eaton Mansions (Westminster) Ltd v

**Stinger Compania de Inversion SA [2014] EGLR
89 applied.**

Case Name:

Lunan Pharmaceutical Group Corporation
Appellant/Defendant

and

[1] Zhao Long
[2] Kunlun Newcentury Investment
Holdings Co. Ltd
Respondents/Claimants

and

[1] Endushantum Investments Co. Ltd
[2] Zhongzhi Investment Holding Co
Ltd
[3] Sharon Wei
[4] Hengde Co (PTE) Ltd
Respondents/Defendants

HEARD TOGETHER WITH:

Lunan Pharmaceutical Group Corporation
Appellant/Defendant

and

[1] Zhao Long
[2] Kunlun Newcentury Investment
Holdings Co. Ltd
Respondents/Claimants

and

[1] Endushantum Investments Co. Ltd
[2] Jade Value Investments Holding Co.
Ltd
[3] Zhongzhi Investment Holding Co.

Ltd
[4] Sharon Wei

Respondents/Defendants

and

Hengde Co (Ptc) Ltd

Respondent/Claimant
(in BVIHC(COM) 2017/0125)

[BVIHCVAP2021/0007]
(Territory of the Virgin Islands)

Date: **Thursday, 27th April 2023**

**Coram for
delivery of
judgment:** **The Hon. Dame Janice Pereira, DBE, Chief Justice**
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag]

Appearances: **Appellant:** **Ms. Laure-Astrid Wigglesworth**

Respondents: **Ms. Meenaa Azmayesh for the 1st and 2nd respondents**
Mr. Robert Nader for Endushantum Investments Co. Ltd.

Issues: **Application for a stay of execution – Rules 26.1(2)(q), 62.19 & 62.20(1) of the Civil Procedure Rules 2000 – Rule 30(1) of the Court of Appeal Rules 1968 – The principles from C-Mobile Services Limited v Huawei Technologies Co. Ltd – Whether Lunan ought to be granted of a stay of execution of the Ancillary Judgment – Applications for an extension of time – Anti-suit injunction – Interim payment – Whether the reasons advanced by Lunan for its purported inability to comply with the anti-suit injunction and the interim payment order are satisfactory – Applications for unless orders – Parts 26 & 62 of the Civil Procedure Rules 2000 – Whether the case management powers in Part 26 that are given to the Court of Appeal can only be exercised in relation to an appeal of which the court is seised and not in relation to the proceedings below – Whether Lunan should be debarred from prosecuting its appeal given its**

alleged contempt in failing to comply with orders made by the BVI Commercial Court

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. Lunan's applications for a stay of execution of the Ancillary Judgment and an extension of time to comply with the Interim Payment order and the anti-suit injunction are dismissed with costs to the respondents to be assessed by a judge of the Commercial Court if not agreed within 21 days.**
- 2. Lunan's appeals, BVIHCMAP2021/0007 and BVIHCMAP2022/0029, are stayed unless and until, on or before 26th May 2023, Lunan complies: (i) with the ancillary claim order by causing the re-conveyance of the Endushantum shares to Endushantum; (ii) with the final anti-suit injunction order dated 23rd August 2022; and (iii) with the Interim Payment order in favour of Ms. Zhao.**
- 3. Should Lunan fail to comply with the orders at paragraph (2) above, its appeals in BVIHCMAP2021/0007 and BVIHCMAP2022/0029 shall stand struck out without further order of the Court.**
- 4. Lunan shall pay Endushantum's and Ms. Zhao's costs of the Unless Order applications, including the amended and re-amended applications, to be assessed by a judge of the Commercial Court if not agreed within 21 days.**

Reasons:

Held: dismissing Lunan's applications for a stay of execution and an extension of time, and making the orders set out at paragraph [90] of this judgment, that:

1. The court, on an application for a stay, is essentially engaged in performing a balancing exercise which requires it to consider a number of factors: (i) the court must take into account all the circumstances of the case; (ii) a stay is the exception rather than the general rule; (iii) a party seeking a stay should provide cogent evidence that the appeal will be stifled or rendered nugatory unless a stay is granted; (iv) in exercising its discretion the court applies what is in effect a balance of harm test in which the likely prejudice to the successful party must be carefully considered; and (v) the court should take into account the prospects of the appeal succeeding but only where strong grounds of appeal or a strong likelihood the appeal will succeed is shown (which will usually enable a stay to be granted).

C-Mobile Services Limited v Huawei Technologies Co. Ltd BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported) followed.

2. Endushantum and Ms. Zhao have undertaken, through counsel, that were the shares to be re-conveyed, they would not exercise any voting rights in respect of the PRC Shares save to reverse any changes to the Articles of the PRC companies since 2001 and not to take or rely upon any arguments before the Court regarding a change of the *lex situs* of the PRC Shares as a result of the reconveyance. With such clear undertakings being placed on the record, the risks which had so excited Lunan would be considerably mitigated if not eliminated. In these circumstances, Lunan's position would not be prejudiced by a refusal of the stay application nor would the appeal be rendered nugatory in circumstances where the status quo is preserved. If Lunan prevails in its appeal, the position reverts to what it was prior to the Main Judgment. These factors weigh against the grant of a stay as these undertakings would serve to hold the ring sufficiently pending the determination of the

appeal. Further, in circumstances where much of Lunan's challenge to the Ancillary Judgment centers on findings of fact by the trial judge, this is not a case where it can be said that it has been shown that there are strong grounds of appeal or a strong likelihood the appeal will succeed. On balance, the risk of prejudice is greater to Endushantum and Ms. Zhao should the stay be granted as the prospects of Lunan re-conveying the PRC Shares if it were unsuccessful on the appeal are not encouraging. Having regard to all of these circumstances, Lunan's application for a stay of execution pending appeal is dismissed.

C-Mobile Services Limited v Huawei Technologies Co. Ltd BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported) considered; Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5 considered.

3. The reasons advanced by Lunan for its purported inability to comply with the anti-suit injunction and the Interim Payment order are unsatisfactory. Furthermore, it seems ironic that while the PRC courts will not recognise the BVI judgment and court orders, this Court is being asked to defer to those proceedings by permitting Lunan to continue to disregard the orders of the BVI court so as not to impede its prospects in the PRC matters. This is a completely untenable expectation. The anti-suit injunction properly serves to hold the ring pending the determination of the appeal before this Court and nothing placed before this Court is persuasive that the time for compliance with it should be extended. Similarly, this Court is not persuaded that there is a proper basis on which the time for making the Interim Payment should be extended. Accordingly, both applications are dismissed.
4. There is no warrant for construing the rules as confining the jurisdiction to make unless orders to breaches of the rules or orders of the Court of Appeal itself. Such a construction

would mean that although the Court of Appeal is alive to multiple, wilful breaches of orders of the court below, it would be powerless to impose conditions in relation to the prosecution of the appeal arising from those proceedings. That would seem to fundamentally undermine the overriding objective of the Civil Procedure Rules 2000. On a proper construction of the rules, the Court of Appeal has the jurisdiction and discretion to impose conditions for the prosecution of an appeal before it, in the face of an ongoing and wilful failure by an appellant to comply with consequential orders made in the court below, whether or not there has been a formal finding of contempt by the court below.

Parts 1, 26 and 62 of the Civil Procedure Rules 2000 applied; *Michael Baptiste v Yoland Bain-Joseph Grenada* HCVAP2006/026 (delivered 7th February 2008, unreported) considered; *Astro Exito Navegacion SA v Southland Enterprise Co Ltd and Nan Jong Iron and Steel Co. Ltd*, *The Messiniaki Tolmi* [1981] 2 Lloyd's Rep. 595 considered; *Hadkinson v Hadkinson* [1952] 2 All ER 567 considered.

5. While there is a general rule that a court will not hear an application for his own benefit by a person in contempt unless and until he has first purged his contempt, there is an established exception to that general rule where the purpose of that application is to appeal against, or have set aside, on whatever ground or grounds, the very order disobedience of which has put the person concerned in contempt. That exception is itself subject to qualifications including: (i) there may be cases where an appeal by a party in contempt against the very order, disobedience of which has placed him in contempt, can be shown to be, for one reason or another, an abuse of the process of the court; and (ii) cases where disobedience to the order impedes the course of justice. In such cases, the exception may be disappplied.

6. The current approach is not to take as a starting point the proposition that the court will not hear a party in contempt and then ask if the instant case falls within an exception to that general rule. It is to ask whether, in the circumstances of an individual case, the interests of justice are best served by hearing a party in contempt or by refusing to do so. The court is required to carefully consider the factual circumstances of the case to determine whether the interests of justice are best served by hearing or refusing to hear a party in contempt, and not merely refuse to hear him because he is in contempt; or entertain him because he is appealing the very order that has placed him in contempt. The peculiar circumstances of the case must be analysed to determine what the interests of justice dictate.

Astro Exito Navegacion SA v Southland Enterprise Co Ltd and Nan Jong Iron and Steel Co. Ltd, The Messiniaki Tolmi [1981] 2 Lloyd's Rep. 595 considered; Hadkinson v Hadkinson [1952] 2 All ER 567 considered; Motorola Credit Corp v Uzan and others (No. 2) [2004] 1 W.L.R. 113 considered; X Ltd v Morgan-Grampian (Publishers) Ltd [1991] 1 AC 1 considered; Arab Monetary Fund v Hashim and others; Arab Monetary Fund v Bahiraluloom and others [1997] Lexis Citation 2080 considered.

7. Lunan's breach of the ancillary claim order is deliberate, and the explanations proffered relate to its desire to not compromise its position in parallel legal proceedings in the PRC; and not because it is impossible to comply. Further, Lunan has no assets within the jurisdiction and has signalled that it does not intend to comply with the BVI court orders even if the appeal goes against it, while at the same time seeking to secure the advantage of being able to maintain their appeals. This constitutes an abuse of the process of the court and an impediment to justice as, assuming the respondents are successful on

appeal, it would be a pyrrhic victory only as there would be no means of enforcing the judgment, given that the shares are located in the PRC, where it has been said repeatedly in these proceedings, BVI court orders are not recognised. These particular circumstances, make this a case where it is appropriate to disapply the general exception.

APPLICATIONS AND APPEALS

Case Name: [1] Notre Dame Investments Limited
[2] Angela Diala List

v

[1] Rowntry Trading Limited
[2] Paul List
[3] BCM International Limited
[4] Morning Star Holdings Limited

**[NEVHCVAP2022/0009]
(Saint Christopher and Nevis)**

Date: Monday, 24th April 2023

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Applicants: Mr. Delano Bart, KC with him Ms. Midge Morton

Respondents: Ms. Jean Dyer for the 1st, 2nd and 3rd respondents
Mrs. Jackie Hunkins-Taylor for the 4th respondent

Issues: Removal of 4th respondent from the proceedings -
Whether 4th respondent ought to be removed from
the intended appeal - No formal application made by
4th respondent for removal - No relief sought by
applicants against 4th respondent in intended appeal

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The 4th respondent is removed as a party to this application/intended appeal.**
- 2. No order as to costs.**

Reason:

The Court having read the 4th respondent's submissions in response to the applicants' application for leave to appeal filed on 5th April 2023 and the Court having noted that no formal application had been made for the removal as a party to this intended appeal and counsel having indicated that there were no live issues between the applicants/intended appellants and the 4th respondent / intended respondent which warranted their continued joinder, and there being no objection for the 4th respondent's removal by the 1st-3rd respondents, the Court ordered that the 4th respondent be removed.

Case Name:

**[1] Notre Dame Investments Limited
[2] Angela Diala List
V
[1] Rowntry Trading Limited
[2] Paul List
[3] BCM International Limited

[NEVHCVAP2022/0009]
(Saint Christopher and Nevis)**

Date:

Monday, 24th April 2023

Coram:

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

Appearances:

Applicants: Mr. Delano Bart KC with him, Ms. Midge Morton

Respondents: Ms. Jean Dyer

Issues:

Application for leave to appeal - Whether leave to appeal ought to be granted - Whether there are good prospects of success on appeal - Decision by learned judge to dismiss applicants' application for interim relief - Whether the judge erred by not granting interim relief - Whether judge failed to give reasons for vital issues in his ruling - Whether judge erred in finding that damages was an adequate remedy - Whether learned judge erred by departing from the principles established in the American Cyanamid case - Whether learned judge erred by adopting the test in *Cayne v Global Natural Resources plc* - Decision by learned judge to dismiss application to strike out defence - Whether judge erred in failing to strike out the defence - Whether the judge erred in finding that the respondents had reasonable grounds for defending the claim - Application for stay of proceedings pending the determination of the appeal - Whether stay ought to be granted - Whether appeal would be rendered nugatory if stay not granted - Whether there is a risk of injustice to one or other or both parties if the stay is granted or refused

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The applicants/intended appellants are granted leave to appeal the decision and judgment of the court below dated 3rd August 2022.
2. The application for a stay of proceedings in the court below pending the determination of the intended appeal is dismissed.
3. The applicants/intended appellants shall pay to

the first, second and third respondents, costs on the stay application fixed in the sum of \$1,500.00 to be paid within 21 days of the date of this order.

Reason:

Before the Court was an application for leave to appeal the decision of the learned judge dated 3rd August 2022 and for a stay of the proceedings in the court below pending the determination of the intended appeal. The applicants also sought all necessary and consequential directions. The application was supported by the affidavit of the 2nd named applicant. However, the application was opposed by the respondents.

Having considered the written submissions of counsel for both the applicants and respondents, as well as their oral submissions, and being mindful that in relation to the application for leave to appeal, the respondents were not entitled to be heard unless the Court orders otherwise, the Court was satisfied that the applicants had met the threshold for the grant of leave to appeal. In coming to this conclusion, the Court considered the various potential grounds of appeal and was satisfied, based on the submissions before them, that the threshold of a realistic (as opposed to fanciful) prospect of success had been met.

As it pertained to the second aspect of the application, that is, the application for a stay of proceedings in the court below, the Court was not satisfied that the applicants had met the requirements for the grant of the stay, as set out in C-mobile Services Limited v Huawei Technologies Co. Limited BVIHCMAP2014/0017 (delivered 2nd October 2014). Accordingly, that limb of the application was refused.

Case Name:

**[1] Minister of National Security of
Saint Christopher and Nevis
[2] The Attorney General of Saint**

Christopher and Nevis

v

[1] Khaled Awad

[2] Walid Awad

**[SKBHCVAP2022/0015]
(Saint Christopher and Nevis)**

Date: Monday, 24th April 2023

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellants: Ms. Simone Bullen- Thompson

Respondents: Mr. Tim Prudhoe

Issues: Civil Appeal - Application for a stay of proceedings in the High Court pending the determination of the appeal - Judicial Review - CPR 62.20 (1) and 26.1 (2) (q) - Citizenship by Investment Programme - Passports and Travel Documents - Whether the learned trial judge erred in finding that the decision of the 1st applicant/ 1st appellant to disable the passports of the respondents was ultra vires the Passports and Travel Documents Act, and is therefore null, void, and of no legal effect - Whether the learned trial judge erred in finding that the respondents are entitled to compensation in the form of damages for the unlawful deprivation of their passport - Whether the learned trial judge erred in finding that there was a breach of procedural fairness - Assessment of Damages - Whether the hearing of the assessment of damages should proceed pending the determination of the appeal - Whether the appellants would suffer prejudice if the proceedings in the High Court continue - Whether the appeal

would be stifled or rendered nugatory -
Recoverability of Damages

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for a stay of proceedings pending the determination of the appeal is dismissed.
2. The matter will proceed as an expedited appeal and is to be set down before the Chief Registrar for case management to be conducted on that basis.
3. The respondents shall have their costs fixed in the sum of \$1500.00 to be paid within 28 days of the date of this order.

Reason: Before the Court was an application for an order staying proceedings in the High Court matter SKBHCV2021/0196 pending determination of this appeal SKBHCVAP2022/0015 filed on 29th December 2022. More specifically the application related to the assessment of damages proceedings ordered by the learned judge in the court below which proceedings remain pending in the court below.

Having considered the skeleton arguments advanced by the parties, the hearing bundles presented and having heard counsel for the applicants and the respondents, the Court was not satisfied that the applicants had met the relevant test for the grant of a stay of proceedings as set out in the case of C-Mobile Services Ltd v Huawei Technologies Co. Ltd BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported).

The central ground advanced in this application was that if damages and costs are paid there is no reasonable probability of getting them re-paid in the event that the appeal was successful. The Court was not satisfied that this ground met the relevant test or that the applicants' appeal would be stifled or

rendered nugatory and that the applicants are likely to suffer prejudice if a stay of the assessment of damages is not granted pending the hearing and determination of the appeal.

The Court also noted that no application had been advanced in the court below seeking a stay of the assessment of damages in those proceedings.

Accordingly, the Court dismissed the application for a stay of proceedings with costs.

Case Name:

Michael J Prest

v

[1] Magistrate District “C”

[2] Corporal Randolph Diamond

[3] The Attorney General

[4] The Director of Public Prosecutions

[NEVHCVAP2022/0003]

(Saint Christopher and Nevis)

Date:

Tuesday, 25th April 2023

Coram:

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

Appearances:

Appellant:

Mr. Peter Foster, KC with him Mrs. Jackie Hunkins-Taylor and Mr. Kris Liburd

Respondents:

Mrs. Simone Bullen-Thompson for the first and third respondents

Mr. Anand Ramlogan SC with him Ms. Sherry-Ann Liburd-Charles for the second and fourth respondents

Issues:

**Application to vary or discharge order of single judge
- Withdrawal of application - Oral application for costs - Oral application for expedited hearing of the**

appeal

Type of Order:

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application to revoke, vary or discharge the order of the single judge, Thom JA, is hereby withdrawn.**
- 2. The appellant shall bear the costs thrown away in respect of today's hearing, such costs to be assessed by a Master or Registrar of the Court unless agreed within 21 days and the costs to be certified fit for one senior and one junior counsel.**
- 3. The substantive appeal shall be heard on an expedited basis and is to be fixed for case management before the Chief Registrar or Deputy Chief Registrar, no later than 19th May 2023.**

Reason:

The Court, having heard counsel for the applicant as well as counsel for the respondents, and having regard to CPR Part 56 dealing with judicial review, this being an application in judicial review proceedings, allowed the withdrawal of the application to vary, discharge or revoke the order of the single judge filed by the applicant on 5th December 2022.

The Court, in considering CPR 56.13(6) and having regard to what the Court considered to be delays in complying with the rules of court, and while not of the view that those delays were deliberate, the Court nonetheless concluded that a costs order should be made against the applicant in relation to the costs of the hearing of the application.

Additionally, having heard the oral application by counsel for the applicant for an expedited hearing of

the substantive appeal, the Court directed that the appeal be heard on an expedited basis and accordingly fixed a date for case management of the substantive appeal.

Case Name:

Michael Prest

v

The Director of Public Prosecutions

[NEVHCVAP2021/0008]

Consolidated with:

[NEVHCVAP2022/0002]

(Saint Christopher and Nevis)

Date:

Tuesday, 25th April 2023

Coram:

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

Appearances:

Appellant:

Mr. Peter Foster KC with him Mr. Terence Byron

Respondent:

Dr. Henry Browne KC

Issues:

Application for adjournment - Consent order

Type of Order:

Adjournment

Result / Order:

The matter being adjourned as per the request contained in the consent order filed on 24th April 2023 to allow further discussions between the parties in respect of the appeals and the Court being of the view that the matters be adjourned and delisted with liberty to either party to write to the Court to relist the appeals, IT IS HEREBY ORDERED BY CONSENT THAT:

The said appeals are adjourned and delisted with liberty to apply for relisting the said appeals.

Reason:

The Court noted the request for an adjournment contained in the consent order filed on 24th April 2023 and also noted that the consent order indicated that the orders being appealed were spent. Having heard from both counsel, the Court was minded in the circumstances to grant the adjournment sought and delist the matters with liberty to either party to write to the Court to relist the appeals.

Case Name:

Wycliffe Baird

Respondent

v

[1] David Goldgar

Applicant

[2] Paul B. Coburn

[3] Caribe (Realties) Canada Limited

[4] Immeubles Caribe Canada LTEE

[5] Betts Realty Limited

**[SKBHCVAP2019/0038]
(Saint Christopher and Nevis)**

Date:

Wednesday, 26th April 2023

Coram:

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

Appearances:

Appellant/Respondent:

Mr. Christopher Hamel-Smith SC with Mr. Terence Byron and Ms. Talibah Byron

Respondent/Applicant:

Ms. Midge Morton with Ms. Maurisha Robinson

Issues: Application to strike out appeal - Whether the notice of appeal ought to be struck out - Appellant's delay in prosecuting the appeal - Notice of appeal filed in September 2019 - Transcript prepared in April 2020 - Appellant's delay in notifying respondents that transcript was prepared and in his possession - Appellant informing respondents about the transcript in his possession in July 2021 - Directions given at June 2022 status hearing for the appellant to file the record of appeal and skeleton arguments - Appellant's failure to comply with the Court's directions

Type of Order: N/A

Result / Order: [Oral Delivery]
IT IS HEREBY ORDERED THAT:

1. The parties are to make available to the Chief Registrar such information and evidence on the factual issue as to whether there was expert evidence given in the court below on the legal status of the company Betts Realty Limited and its capacity to perform a contractual obligation, by no later than 4:00 pm on 26th April 2023.
2. Judgment is reserved.

Reason: During the hearing of the application a factual issue arose as to the legal status of Betts Realty Limited and its capacity to perform contractual obligations. The Court therefore gave directions for both parties to submit to the Chief Registrar such information and evidence on the issue of whether there was expert evidence given on the legal status of the company Betts Realty Limited and its capacity to perform a contractual obligation, by no later than 4pm of today's date. The Court noted that such information will then be taken into consideration and thereafter a decision as regards the application would be made.

Case Name:

Glendale Herbert

v

**Violet Wade
(by her Agent Gareth Wade)**

**[NEVMCVAP2022/0006]
(Saint Christopher and Nevis)**

Date:

Wednesday, 26th April 2023

Coram:

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

Appearances:

Appellant/Respondent: Ms. Angela Cozier

Respondent/Applicant: Ms. Farida Hobson

Issues:

Application to strike out notice of appeal - Applicant deceased before application was made – Withdrawal of application – Costs

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application to strike out the notice of appeal has been withdrawn by counsel.**
- 2. Costs is awarded to the respondent to the application to be paid by Mr. Gareth Wade in the sum of \$750.00 within 14 days of the date of this order.**

Reason:

The Court noted that Ms. Violet Wade had been

deceased before the making of the application to strike out the notice of appeal by her agent Mr. Gareth Wade and that upon her death the agency arrangement came to end. Therefore Mr. Wade had no locus standi to bring the application in the name of Ms. Violet Wade. Counsel upon noting the Court's indication withdrew the application. Costs were awarded to the respondent to the application.

Case Name: **Joseph W Horsford**

v

[1] The Attorney General
[2] Geoffrey Croft

[ANUHCVP2022/0028]
(Antigua and Barbuda)

Date: **Wednesday, 26th April 2023**

Coram: **The Hon. Mr. Mario Michel, Justice of Appeal**
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:
Appellant/Applicant: **In person**

Respondents: **Mrs. Carla Brookes-Harris for the first respondent**
Mr. Sylvester Carrott for the second respondent

Issues: **Application for an extension of time - Whether the applicant provided a good and substantial reason for the delay in serving the notice of appeal on the respondent - Whether the delay in serving the notice of appeal was inordinate - Whether the applicant has a realistic prospect of success on appeal - Whether the respondents will suffer prejudice by the granting of the extension**

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

1. The application for an extension of time is dismissed.
2. Costs to the second respondent in the sum of \$750.00 to be paid by the appellant, Joseph Horsford, within 30 days of the date of this order.

Reason:

The decision of the Court was unanimous. Before this Court was an application for an extension of time filed 20th March 2023 to effect service of the notice of appeal on the respondents. The Court considered the notice of application for an extension of time, the affidavit in support filed on even date as well as the evidence filed in opposition by the first and second respondent and the submissions filed by the parties.

The Court noted that the principles on which a court will entertain an application for an extension of time are well settled. Factors which the Court must take into account include- (i) the length of the delay; (ii) the reasons for the delay; (iii) the prospect of success of the appeal; and (iv) the prejudice to the parties. Having considered all these matters the Court was satisfied that the applicant/appellant had not satisfied any of the relevant limbs.

In respect of the length of the delay, the Court noted that there was some delay. Service ought to have been effected on the respondents within 14 days after the date of filing the notice of appeal. That notice of appeal was filed on 28th December 2022. In respect of the Attorney General, service was effected on 9th February 2023, 28 days outside the prescribed time. In respect of the second respondent, service had still not been effected.

Much more important than the length of the delay is the reasons advanced in support of the application for the extension. In that regard, the Court noted that with regard to the Attorney General, the application did not disclose any good explanation for the delay in service. In respect of the second respondent, the Court was satisfied that the evidence filed in support of the application did not sufficiently condescend to particulars, to the degree that is expected in such applications and did not disclose a good explanation

for the delay.

With regard to the merits of the appeal (prospects of success), while the Court could not come to the conclusion that the appeal lacked merit purely on the basis of the limitation period (the Court noted the relevant paragraphs of the judgment below dealing with limitation), the Court nevertheless felt that the actual grounds that had been advanced did not disclose a realistic prospect of success.

In light of that conclusion, the Court was satisfied consequent with the reasoning in *Carleen Pemberton v Mark Brantley SKBHCVAP2011/009 (delivered 14th October 2011, unreported)*, that the prejudice follows in circumstances where the Court concludes that there is no realistic prospect of success. There must be certain prejudice to both respondents in this case in those circumstances.

When the Court regarded these factors in the round, it was satisfied that the justice of the case demanded that the application for an extension of time should be refused.

Case Name:

Joseph W Horsford

Appellant/Respondent

v

[1] The Attorney General

Respondent

[2] Geoffrey Croft

Respondent/Applicant

**[ANUHCVP2022/0028]
(Antigua and Barbuda)**

Date:

Wednesday, 26th April 2023

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellant/Respondent:	In person
Respondent/Applicant:	Mr. Sylvester Carrott

Issues: Application to strike out appeal - Whether the appeal ought to be struck out where service of the notice of appeal has not been properly affected on the respondents

Result / Order: IT IS HEREBY ORDERED THAT:

- 1.The application to strike out the notice of appeal is granted.
- 2.The notice of appeal filed 28th December 2022 is struck out.
- 3.Costs to the second respondent in the sum of \$750.00 to be paid by the appellant, Joseph Horsford, within 30 days of the date of this order.

Reason: The Court noted the notice of application filed on 3rd February 2023 by the second respondent and the evidence filed in support. The Court also heard the oral submissions of the second respondent and the appellant on the application and considered further its prior findings on the appellant's previous application for an extension of time, in particular the Court's findings on the realistic prospect of success and the refusal of that application. The Court therefore found that the notice of appeal filed 28th December 2022 should be struck out.

Case Name: Leslie Charles Adamson Salters

v
Harvey Lee Sullivan

[NEVHCVAP2022/0005]
(Saint Christopher and Nevis)

Date: Thursday, 27th April 2023

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

Appearances:

Appellant: Ms. Midge A. Morton

Respondent: In person

Issues: Application for leave to appeal and stay of execution -
Oral application to withdraw application for leave to
appeal and stay of execution

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:
With the leave of the Court, the application for leave
to appeal and stay of execution is withdrawn and
dismissed with no order as to costs.

Reason: Counsel for the applicant indicated that she was
instructed to withdraw the application for leave to
appeal and stay of execution. There was no objection
from the respondent.

Case Name: Leslie Charles Adamson Salters

v

Bank of Nova Scotia

**[SKBHCVAP2022/0014]
(Saint Christopher and Nevis)**

Date: Thursday, 27th April 2023

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

Appearances:

Applicant: Ms. Angela Cozier

Respondent: Ms. Hadya Dolphin

Issues: Motion for conditional leave to appeal to His Majesty in Council - Whether appeal lies of right to His Majesty in Council – Section 99 (1)(a) of the Constitution of the Federation of St. Christopher and Nevis – Whether there is a genuine disputable issue – Whether the matter is of the prescribed value or upwards for grant of leave to appeal to His Majesty in council

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:
1. The motion for conditional leave to appeal to His Majesty in Council is dismissed.
2. No order as to costs.

Reason: Before the Court was a motion for conditional leave to appeal to His Majesty in Council. The Court noted that the motion for conditional leave to appeal to His Majesty in Council was grounded in section 99 (1)(a) of the Constitution of the Federation of St.

Christopher and Nevis which provides that:

“[a]n appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases:-

(a) final decisions in any civil proceedings where the matter in dispute on appeal to Her Majesty in Council is of the prescribed value or upwards where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards.”

The Court read the motion for conditional leave to appeal to His Majesty in Council together with the affidavits in support, and considered the record of what was before the Court of Appeal in the notice of appeal. The Court was not satisfied that the gateway that is section 99(1)(a) of the Constitution, had been met.

The Court noted that the grounds raised sought to go outside the single question which was in issue before the Court of Appeal. That question raised the issue as to the appellant’s right to give evidence when he failed to file and serve witness statements in accordance with the timetable set by the orders of the Court. This meant that the appellant had run afoul of the Civil Procedure Rules Part 29(11).

The Court was of the view that this issue was not one where the matter in dispute in the appeal to His Majesty in Council is of the prescribed value or upwards or one where the appeal involved directly or indirectly a claim to or a question respecting property of the prescribed value or upwards.

In any event, the grounds set out in the motion did not raise a genuinely disputable issue as described by Lord Nicholls in Alleyne-Forte v A-G of Trinidad and Tobago [1998] 1 WLR 68 and followed by this Court in William Martin v Ursil Peters Antigua and Barbuda 2004/0036 (delivered 17th September 2007, unreported) and that such grounds were not grounds in the notice of appeal before the Court of Appeal.

The Court concluded that this approach would be

permitting an abuse of the Court's process and therefore should not be allowed. For these reasons the motion for conditional leave to appeal to His Majesty in Council was dismissed.

Case Name:

Evanson Mitcham

v

The King

**[SKBHCRAP2022/0004]
(Saint Christopher and Nevis)**

Date:

Thursday, 27th April 2023

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag]**

Appearances:

Appellant:

Mr. Douglas Mendes, SC with him Ms. Talibah Byron

Respondent:

**Mr. Teshaun Vasquez of the Office of the Director of
Public Prosecutions**

Issues:

Criminal appeal - Appeal against sentence - Whether the learned judge failed to give credit to the evidence showing that the appellant had been rehabilitated - Whether a reduction in sentence ought to have been given to the appellant for the breaches of his constitutional rights - Whether the learned judge failed to deduct the time spent on remand from the appellant's sentence - Whether the learned judge erred in increasing the sentence from the starting point of 40 years toward the top of the range to 48 years and misapplied the Sentencing Guideline on murder - Whether the premeditation of the robbery warranted an increase in the starting point for sentence - Whether the learned judge failed to give any or sufficient weight to the relevant mitigating factors in respect of his rehabilitation as contained in the reports- Whether the learned judge erred in

double counting the fact that the offence of murder was committed during the commission of a robbery - Whether the sentence was manifestly excessive

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: Wycliffe Baird
Respondent

v

[1] David Goldgar
Applicant

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

[SKBHCVAP2019/0038]
(Saint Christopher and Nevis)

Date: Friday, 28th April 2023

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag]

Appearances:

Appellant/Respondent:	Mr. Christopher Hamel-Smith SC with Mr. Terence Byron and Ms. Talibah Byron
Respondent/Applicant:	Ms. Midge Morton with Ms. Maurisha Robinson

Issues: Application to strike out appeal - Parties invited to make further submissions on whether in fact there

was before the court expert evidence from a lawyer as to the legal effect of Betts Realty being struck off the company register and then being reinstated - Ability of parties to close agreement - Whether there was a repudiatory breach by the respondent

Type of Order: N/A

Result/Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved

Case Name: The Landings Proprietors Unit Plan No. 2 of
2007
(also known as the Landings Body
Corporate or the Landings BC)
v
The Development Control Authority
Applicant

The Landings Proprietors Unit Plan No. 2 of
2007
(also known as the Landings Body Corporate
or the Landings BC)
v
Two Seas Holdings Limited
Interested Party/Applicant

**[SLUHCVAP2019/0019]
(Saint Lucia)**

Date: Friday, 28th April 2023

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag]

Appearances:

Appellant/Respondent:	Mr. Richard Harwood KC with him Ms. Renee St Rose and Ms. Marie-Ange Symmonds
Respondent/Applicant:	Mr. Dexter Theodore KC for the Development Control

**ant:
Interested
Party/Applicant:**

**Authority
Mr. Garth Patterson KC with Mr. Mark Maragh and
Ms.Taylor Laurayne for Two Seas Holdings Limited**

Issues:

**Preliminary Issues – Standing of an interested party -
Whether Two Seas has standing to make a petition
for leave to appeal to His Majesty in Council when
Two Seas was not a party to the appeal - Final Court
of Appeal - Section 108(1) and (2) of the Constitution
of Saint Lucia – Section 108 repealed by Constitution
Amendment Act and replaced by new section 108 –
Whether court should proceed in light of repeal of
section 108 - Whether leave sought to appeal is to the
Caribbean Court of Justice or to His Majesty in
Council (CCJ)**

**Petition by Two Seas Holdings Ltd (“Two Seas”) for
conditional leave to appeal to His Majesty in Council
or the CCJ - Appeal as of right - Whether appeal lies
as of right - Whether the proposed appeal is one
relating to or in respect of property within the
meaning of section 108(1)(a) - Whether question in
the appeal is one which, by reason of its great
general or public importance or otherwise ought to
be submitted to His Majesty in Council or the CCJ -
Section 108(2)(a) of the Constitution**

**Motion by the Development Control Authority for
conditional leave to appeal to His Majesty in Council
or the CCJ - Section 108(2)(a) of the Constitution of
Saint Lucia - Whether the question involved in the
appeal is one that, by reason of its great general or
public importance or otherwise, ought to be
submitted to His Majesty in Council or the CCJ**

Type of Order:

Directions

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. Counsel for Two Seas Holdings and The
Landings shall file further submissions with
authorities on the issue of the standing of
interested parties to a matter to make
applications and or to appeal, on or before 12th**

May 2023.

2. Judgment is reserved.