

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL

CHAMBER HEARING

29th November 2022

MATTERS DEALT WITH ON PAPER

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Case Name: Rex
v
Kirkland Spencer
[AXAHCRA2022/0004]
(Anguilla)

Date: Tuesday, 29th November 2022

On paper:

Applicant: Mr. Dwight Horsford

Respondent: Mr. Anthony Astaphan

Issues: Application for leave to appeal

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

The hearing of the application is set down for hearing by the Full Court on a date to be fixed by the Chief Registrar.

Reason: The Court was of the view that the application for leave to appeal ought to be heard before the Full Court.

Case Name:

West Indies Oil Company Ltd

v

[1] Janis James

[2] Bernadine Henry Hughes

[ANUHCVP2022/0014]

(Antigua and Barbuda)

Date:

Tuesday, 29th November 2022

On paper:

Applicant:

Mr. Justin L. Simon, KC

Respondent:

Ms. E. Ann Henry, KC

Issues:

Application for stay of execution

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

The application for stay of execution pending the hearing and determination of the appeal is granted.

Reason:

The Court was of the view that cogent evidence was provided in support of the application for a stay of execution.

Case Name:

Natalia Bevans

v

Akeba Aska
[ANUHCVAP2022/0018]
(Antigua and Barbuda)

Date: **Tuesday, 29th November 2022**

On paper:

Appellant: **Ms. Natalia Bevans**

Respondents: **No appearance**

Issues: **Application for stay of execution**

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

The application for stay of execution pending the hearing and determination of the appeal is granted.

Reason: **The Court was of the view that that the risk of injustice to the applicant would be greater if the stay application was refused.**

Case Name: **Angela L. G. Dickinson**
v
Aidan McCauley
[ANUHCVAP2022/0021]
(Antigua and Barbuda)

Date:

Tuesday, 29th November 2022

On paper:

Applicant:

Mr. Andrew O’Kola

Issues:

Application for leave to appeal

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The applicant is to file an affidavit and skeleton submissions in support of the application for leave to appeal within 21 days of the date of this order.**
- 2. The applicant shall file a copy of the order being appealed within 14 days of the date of this order.**
- 3. The application for leave to appeal is adjourned to the chamber hearing scheduled for 31st January 2023.**

Reason:

The Court noted that that the applicant had not filed any affidavit evidence in support of the application and the order being appealed was not evidenced.

Case Name:

[1] SAG Motors Limited

[2] Desmond Carlisle

v

National Bank of Dominica

[DOMHCVAP2022/0001]

(Commonwealth of Dominica)

Date: **Tuesday, 29th November 2022**

On paper:

Applicants: **Mrs. Cara Shillingford-Marsh**

Respondent: **Mr. Jeffrey L. Douglas-Murdock**

Issues: **Application for leave to appeal**

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The application for leave to appeal the decision of Stephenson J dated 22nd September 2022 is granted.**
- 2. The applicant shall file and serve the notice of appeal within 21 days of the date of this order following which the appeal shall proceed in accordance with the Civil Procedure Rules 2000.**

Reason:

The Court was of the view that the applicant has shown a realistic prospect of success on appeal and has met the threshold for the grant of leave to appeal.

Case Name:

Patricia Bedminister

v

Mariana Cuffy

**[DOMHCVAP2022/0002]
(Commonwealth of Dominica)**

Date: **Tuesday, 29th November 2022**

On paper:

Applicant: **Mrs. Cara Shillingford-Marsh**

Issues: Application for leave to appeal

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

1. The application for leave to appeal the decision of Stephenson J dated 22nd September 2022 is granted.
2. The applicant shall file and serve the notice of appeal within 21 days of the date of this order following which the appeal shall proceed in accordance with the Civil Procedure Rules 2000.

Reason: The Court was satisfied that leave to appeal should be granted.

Case Name: Norma Noel
v
Dr. Patrick Antoine
[GDAHCVAP2016/0012]
(Grenada)

Date: Tuesday, 29th November 2022

On paper:
Appellant/Applicant: Mr. Anselm B. Clouden

Respondent: Ms. Deborah Mitchell

Issues: Application for stay of proceedings

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

The application for a stay of execution of the orders of Mon Desir J dated 21st October 2015 and 24th February

2016 respectively and all further proceedings in Claim No. GDAHCV2009/00346 is refused.

Reason

The Court was not satisfied that the applicant had met the threshold for the grant of a stay of execution of the order of Mon Desir J.

Case Name:

Garvin Clarke
v
The King
[GDAHCRAP2022/0015]
(Grenada)

Date:

Tuesday, 29th November 2022

On paper:

Applicant:

Self-represented

Issues:

Application for leave to appeal against sentence

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The application for leave to appeal against sentence is granted.**
- 2. The notice of application filed on the 26th October 2022 for leave to appeal against sentence is deemed to be the notice of appeal.**
- 3. The Registrar of the High Court shall serve a copy of this order on the applicant and the Director of Public Prosecutions and provide proof of service within 14 days of the date of this order.**

Reason: The Court was of the view that the applicant met the threshold for the grant of leave to appeal.

Case Name: Kayoy Jarrett
v
The King
[MNIHCRAP2022/0006]
(Montserrat)

Date: Tuesday, 29th November 2022

On paper:

Applicant:	Self-represented
Respondent:	Mr. Oris Sullivan

Issues: Extension of time within which to appeal - Leave to appeal against sentence

Result / Order: IT IS HEREBY ORDERED THAT:

The application filed on 28th October 2022 seeking (i) an extension of time within which to file the purported notice of appeal against conviction; (ii) leave to appeal against sentence; and (iii) the purported notice of appeal be deemed properly filed, is dismissed.

Reason: The Court was of the view that the applicant did not meet the requirements for the grant of an extension of time.

Case Name: Kirby Lima
v
The King
[SLUHCRAP2022/0007]
(Saint Lucia)

Date: Tuesday, 29th November 2022

On paper: Applicant: Self-represented

Issues: Application for extension of time

Result / Order: IT IS HEREBY ORDERED THAT:
1. The application for an extension of time within which to appeal is granted.
2. The application for leave to appeal against sentence is granted.
3. The applicant shall file a Notice of Appeal outlining his grounds of appeal within 14 days of the date of this order.

Reason: The Court was of the view that the applicant should be granted an extension of time within which to appeal and leave to appeal his sentence.

Case Name: Gilroy Auguste
v

**The King
[SLUHCRAP2020/0004]**

(Saint Lucia)

Date: Tuesday, 29th November 2022

On paper:
Appellant: Self-represented

Issues: Application by way of letter for legal aid

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

The application for legal aid is refused.

Reason: The Court was of the view that the appellant failed to satisfy the Court that he did not have sufficient means to enable him to obtain legal representation.

Case Name: Terrance Amedee

v
Marcus Modeste
[SLUHCVAP2022/0015]

(Saint Lucia)

Date: Tuesday, 29th November 2022

On paper:
Applicant: Self-represented

Issues:

**Application for extension of time to file leave to appeal
– Leave to appeal – Permission to file skeleton arguments**

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The application for an extension of time to file an application for leave to appeal against the order of Phillip J dated 18th February 2020 is dismissed.**
- 2. The application for an extension of time being dismissed, the application for leave to appeal, permission for the applicant to file the notice of appeal and skeleton arguments within 28 days of permission being granted and that the intended appeal be consolidated and heard together with Civil Appeal No. 0001 of 2022 falls away.**

Reason

The Court upon considering the principles applicable to the grant of an extension of time and in particular that the length of the delay being over 2 years was inordinate, that there was a good reason for the delay but that the intended appeal did not have a realistic prospect of success, was not of the view that the application should be granted.

Case Name:

**Lawvington Forbes
v
The Attorney General of St. Christopher and
Nevis**

**[NEVHCVAP2022/0012]
(Saint Christopher and Nevis)**

Date:

Tuesday, 29th November 2022

On paper:

Applicant

Mr. Eustace D. Nisbett

Issues:

Application for leave to appeal

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

1. The applicant shall provide a copy of the perfected order of Thompson J dated 21st September 2022 and the originating motion, within 14 days of the date of this order.
2. The applicant shall file written submissions in support of the application within 14 days of this order.
3. The application for leave to appeal against the order of Thompson J dated 21st September 2022 and for a stay of the hearing of 17th October 2022 is adjourned for consideration to the next Chamber Sitting of this Court scheduled for 14th December 2022.

Reason:

Case Name:

Rams Trading Limited

V

Mercyer Gumbs

**[SKBMCVAP2022/0002]
(Saint Christopher and Nevis)**

Date:

Tuesday, 29th November 2022

On paper:

Applicant:

Mr. Damian E. S. Kelsick

Respondent: Mr. Mercyer Gumbs

Issues: Application for extension of time to file notice of appeal

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

1. The applicant shall serve the notice of application, affidavit in support, exhibits and draft order filed by the applicant on 10th October 2022, together with the authorisation code generated by the Electronic Litigation Portal, in accordance with rule 13 of the Eastern Caribbean Supreme Court (Electronic Litigation Filing and Service Procedure) (Amendment) Rules, 2019 on the respondent and shall provide proof of service of same within 14 days of the date of this order.
2. The application for extension of time to file a notice of appeal is adjourned for consideration at the next Chamber Sitting of this Court scheduled for 14th December 2022.

Reason: The Court noted that that there was no proof of service of the authorisation code generated by the ECSC's Electronic Litigation Portal on the respondent in accordance with sub-rule (3) of the Eastern Caribbean Supreme Court (Electronic Litigation Filing and Service Procedure) (Amendment) Rules 2019 and therefore service was deemed not to have been effected.

Case Name:

**Everton Elliot
v
Anselm Caines
[NEVHCVAP2022/0013]**

(Saint Christopher and Nevis)

Date: **Tuesday, 29th November 2022**

On paper:

Applicant: **Mr. Leon Charles**

Respondent: **Mr. Anselm Caines**

Issues: **Application for leave to appeal - Stay of proceedings**

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

- 1. The application for leave to appeal paragraphs 2 and 3 of the order of Master Tamara Gill dated 26th September 2022 is granted.**
- 2. The applicant shall file and serve the application for the stay and the affidavit in support on the respondent on or before 14th December 2022.**
- 3. The hearing of the application for the stay is adjourned to a date to be fixed by the Chief Registrar after the time for the respondent to file an affidavit in response has expired.**

Reason: **The Court was satisfied that the applicant had met the requirement for the grant of leave to appeal. However, the Court required that the application for the stay be filed and served on the respondent.**

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 29th November 2022**

On paper:

Applicant: **Ms. Jackie Hunkins-Taylor**

Respondents: **Ms. Simone Bullen-Thompson for the 1st and 3rd Respondents**
Corporal Randolph Diamond for the 2nd Respondent
Sherry-Ann Liburd-Charles for the 4th Respondent

Issues: **Application for stay of execution**

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

The application for a stay of the execution of the two arrest warrants issued against him on 21st July 2021, pending the hearing and determination of the appeal, is refused.

Reason: **The Court was not satisfied that the applicant provided such cogent evidence as required.**

Case Name:

Hilton Lake
v
Pirate's Nest Limited
[SKBHCVAP2020/0005]
(Saint Christopher and Nevis)

Date: **Tuesday, 29th November 2022**

On paper:

Applicant:

Respondent:

Issues: **Application for extension of time to serve notice of appeal**

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

The notice of application filed on 28th October 2022 by the appellant for time to be extended to 18th November 2022 to serve the notice of appeal filed on 28th February 2020, is granted.

Reason: **The Court was satisfied that the applicant had met the requirements for the grant of extension of time.**

Case Name:

Orvis Kasim Pogson

v

Director of Public Prosecutions

[SKBHCRAP2022/0006]

(Saint Kitts and Nevis)

Date: **Tuesday, 29th November 2022**

On paper:

Applicant:

Self-represented

Issues: Application for leave to appeal against conviction and sentence

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal against conviction and sentence is granted.
2. The notice of application filed on 1st November 2022 is deemed to be the notice of appeal.

Reason: The Court was of the view that the applicant met the requirement for the grant of leave to appeal.

Case Name: Allan Wilson
v
The King
[SVGHCRA2019/0004]
(Saint Vincent and the Grenadines)

Date: Tuesday, 29th November 2022

On paper: Applicant: Self-represented

Respondent: No appearance

Issues: Application for bail pending appeal

Result / Order: IT IS HEREBY ORDERED THAT:

The application for bail pending appeal is refused.

Reason: The applicant had not provided any evidence which, on the authority of The State v Lynette Scantlebury (1976) 27 WIR 103, revealed any exceptional circumstances which have arisen for granting bail pending the hearing and determination of the appeal.

Case Name: **Andrey Titarenko**
v
[1] Messrs. Forbes Hare (a Partnership)
[2] Robert Nadar
[3] Emmerson International Corp
[BVIHCMAP2022/0035]
(Territory of the Virgin Islands)

Date: **Tuesday, 29th November 2022**

On paper:

Appellant:	Self-represented
3rd Respondent/Applicant:	Mr. Robert Nadar

Issues: **Application for security for costs**

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

1. The appellant, Mr. Andrey Titarenko shall give security for the third respondent's costs of the appeal herein by paying the sum of USD\$75,000.00 into court within 14 days of the date of the order.
2. The appellant, Mr. Andrey Titarenko shall provide evidence of the payment of the sum described at paragraph 1, by filing evidence of the same, on affidavit, within 21 days of the date of the order.

3. In default of the payment of security pursuant to paragraph 1, the appeal shall be struck out and the appellant Mr. Andrey Titarenko shall pay the third respondent's costs of the appeal in an amount to be assessed by a Commercial Court Judge if not agreed within 14 days.
4. The appellant, Mr. Andrey Titarenko shall pay the third respondent's costs of this application in an amount to be assessed by a Commercial Court Judge if not agreed within 14 days.
5. The appellant's application for a wasted costs order is refused.
6. The application for the stay of the appeal is refused.

Reason:

The Court was of the view that there is no risk of injustice to the applicant if the stay was refused and that upon considering rule 64.9 of the Civil Procedure Rules 2000, the appellant had not satisfied the Court that a wasted costs order against the third respondent was appropriate in the circumstances.

Case Name:

[1] Simon John McNally
[2]
v
[1] Carl Stuart Jackson
[2]
[BVIHCMAP2022/0060]
(Territory of the Virgin Islands)

Date:

Tuesday, 29th November 2022

On paper:

Applicant:

Mr. John McCarroll, SC

Issues:

Application for leave to appeal

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The notice of application seeking leave to appeal paragraph 1 of the order of Jack J (Ag.) dated 27th September 2022 is granted.**
- 2. The appellant shall file the notice of appeal within 21 days of the date of this order.**

Reason:

The Court was satisfied that the applicant had met the requirement for the grant of leave to appeal.