

EASTERN CARIBBEAN SUPREME COURT
STATUS HEARING
TERRITORY OF THE VIRGIN ISLANDS
30th January 2023

Case Name: Anwar Moussa

v

[1] David Boyd
[2] Jose Santos
[3] Dores Limited

[BVIHCMAP2019/0006]

Date: Monday, 30th January 2023

Coram: Mrs. Michelle John-Theobalds, Chief Registrar

Appearances:

Appellant: No appearance

Respondents: No appearance

Issues: Status of the matter

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED BY CONSENT THAT:

1. These appeal proceedings be stayed during the course of the settlement negotiations.
2. Liberty to apply.

Reason: The Court received a draft consent order from the parties to have the matter removed from the status hearing list as the parties are in continued settlement discussions. The Court therefore gave the order as consented to by the parties.

Case Name:

Mex Clearing

v

**[1] Von der Heydt Invest SA
[2] Mex Securities S.A.R.L
[3] Multibank FX International Corporation**

[BVIHCMAP2021/0026]

Date:

Monday, 30th January 2023

Coram:

Mrs. Michelle John-Theobalds, Chief Registrar

Appearances:

Appellant: Mr. Robert Nader, appearing amicus curiae

Respondents: Ms. Sara Malik

Issues:

Status of the matter

Type of Order:

Directions

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appellants shall file and serve written submissions with authorities on or before 6th February 2023.**
- 2. The respondents shall file and serve written submissions with authorities on or before 28th February 2023.**
- 3. The hearing of the appeal shall be fixed for the court of appeal sitting for the Territory of the Virgin Islands scheduled for the week commencing 22nd May 2023.**

Reason:

The Court considered that a notice of withdrawal as counsel on record was filed on the 3rd November 2022 by counsel for the appellant.

The Respondents contended as follows: that the Notice of Appeal was issued more than 15 months ago on 11th October 2021 and an Amended Notice of Appeal was issued on 22nd October 2021. No submissions in support of the appeal have been filed. The procedural requirements for an interlocutory appeal have not been complied with. The Appellant has not progressed the appeal in any way, nor sought to withdraw it. The Appellant also issued an application for interim relief which was dismissed by the Court of Appeal's Orders dated 29th October 2021, 8th November 2021 and 12th November 2021. No steps have been taken by the Appellant since then, despite numerous enquiries by the Respondent. The Court of Appeal heard a number of appeals arising from the proceedings below in a five-day special sitting in the week commencing 25th April 2022. This appeal should and could have been listed and heard then (both for the Court's convenience and because there was an overlap in issues), but the Appellant took no steps to ensure that it was. The Appellant has actively participated in the proceedings below and pursued another appeal, whilst this appeal has been left in abeyance. At a status hearing on 26th September 2022, the Court made it clear that the Appellant should indicate whether it intends to pursue the appeal. There has been no such indication. In the circumstances, VDHI seeks an order that the appeal is dismissed and that Mex Clearing should pay the costs of the appeal to be assessed by the Court below if not agreed within 21 days.

The Appellant contended: that it wishes to prosecute the appeal. The Appellant has instructed Forbes Hare to act in the appeal. Forbes Hare has appeared on the record. The Appellant is prepared to undertake to file its submissions and authorities by 4pm on 6th February 2023. The matters in the appeal overlap substantially with matters in Appeal Number BVIHCPMAP2021/0009 (the "MBFX Appeal"). The MBFX Appeal was considered by the Court of Appeal during early May 2022. There is no real utility in the appeal being heard until after judgment is handed down in the MBFX Appeal. In the circumstances the Court should not dismiss the appeal at the status hearing.

The Court noted that the Record of Appeal had been filed on 15th October 2022 and in light of this being an Interlocutory Appeal the Court was of the view that directions should be given to facilitate the hearing of the appeal.

Case Name: Charmaine Rosan-Bunbury

v

The Attorney General

[BVIHCVAP2015/017]

Date: Monday, 30th January 2023

Coram: Mrs. Michelle John-Theobalds, Chief Registrar

Appearances:

Appellant: Mr. David Penn

Respondent: Ms. Maya Barry

Issues: Status of the matter

Type of Order: Directions

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appellant is at liberty to file and serve further written submissions with authorities on or before 3rd March 2023.
2. The respondent is at liberty to file and serve further written submissions with authorities on or before 4th April 2023.
3. The appellant is at liberty to file and serve written submissions with authorities in reply, if necessary, on or before 19th April 2023.
4. The hearing of the appeal is fixed for the next Court of Appeal Sitting for the Territory of the Virgin Islands scheduled for the week commencing 22nd May 2023.

Reason: The Court noted that the record of appeal was already filed. The Court therefore gave the necessary directions for the filing of submissions and the progress of the appeal.

Case Name: McArthur Engineering Company Limited

v

[1] Christian Cottoy

[2] Annita Cottoy

[BVIHCVAP2016/0001]

Date: Monday, 30th January 2023

Coram: Mrs. Michelle John-Theobalds, Chief Registrar

Appearances:

Appellant: Ms. Stacy Abel

Respondents: No appearance

Issues: Status of the matter

Type of Order: Adjournment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The matter is adjourned to the next status hearing of the court for the Territory of the Virgin Islands scheduled for 15th May 2023 to allow the appellant to provide the court with a filed copy of the Notice of Appeal in this matter.
2. This is the final adjournment for this purpose.

Reason: The Court noted that the documents filed in the matter were destroyed in Hurricane Irma and was not reconstructed. The

Court therefore adjourned the matter to allow the appellant to provide the Court with a filed copy of the notice of appeal in this matter.

Case Name:

**[1] Sylvia Maduro-Dale
[2] Lucia Chalwell**

v

The Registrar of Lands

[BVIHCVAP2010/0022]

Date:

Monday, 30th January 2023

Coram:

Mrs. Michelle John-Theobalds, Chief Registrar

Appearances:

Appellants: No appearance

Respondent: Ms. Maya Barry

Issues:

Status of the matter

**Type of
Order:**

Adjournment

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

1. Upon noting that the appellants were not served to be present at this Status hearing, the matter is adjourned to the next status hearing of the court for the Territory of the Virgin Islands scheduled for 15th May 2023 to allow the appellants to indicate whether they are still interested in prosecuting this appeal.
2. The Registrar of the High Court shall serve a copy of this order on the appellants by publication in 2 copies of a newspaper in the Territory of the Virgin Islands, and shall provide proof of service thereafter.

The Court noted that the court office has had a general difficulty locating the appellants for service of the notice of hearing. The Court also noted counsel for the respondent's indication that it will take whatever steps deemed necessary as the appellants do not reside in the Territory of the Virgin Islands and efforts to serve them with the notice of hearing have proved futile. The Court therefore adjourned the matter to allow the appellants to indicate whether they are still interested in prosecuting this appeal.

Reason:

Case Name:

Jessroy McKelly

v

The King

[BVIHCRAP2014/0002]

Date:

Monday, 30th January 2023

Coram:

Mrs. Michelle John-Theobalds, Chief Registrar

Appearances:

Appellant: Mr. Michael Maduro

Respondent: Ms. Tiffany Scatliffe, Director of Public Prosecutions

Issues:

Status of the matter

**Type of
Order:**

N/A

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

Upon noting the application to amend the notice of appeal filed by the appellant on 27th January 2023, the matter is removed from the status hearing list pending the determination of the application.

Reason: The Court noted that there was an application filed on 27th January 2023 to amend the grounds of appeal. The application has not been served on the respondent. The appellant informed the Court that he is awaiting some other documents to be prepared before he serves everything on the Director of Public Prosecutions. The matter was therefore removed from the status hearing list pending the determination of the application.

Case Name: Antonio Stoutt

v

The Commissioner of Police

[BVIMCRAP2015/0006]

Date: Monday, 30th January, 2023

Coram: Mrs. Michelle John-Theobalds, Chief Registrar

Appearances:

Appellant: In person

Respondent: Ms. Tiffany Scatliffe, Director of Public Prosecutions

Issues: Status of the matter

Type of Order: Adjournment

Result / Order: IT IS HEREBY ORDERED THAT:

The matter is adjourned to the next status hearing for the court of appeal for the Territory of the Virgin Islands, scheduled for 15th May 2023 to allow the appellant to take the necessary steps to settle his legal representation.

Reason: The Court noted the appellant's indication that he had been involved in a bad car accident which has deterred his ability to settle his legal representation which he needed more time to settle. The respondent indicated that they were made aware of the appellant's accident and have no objection to giving him more time to settle his legal representation. In the circumstances, the matter was adjourned.

Case Name: **Jaime Scatliffe**

v

The Commissioner of Police

[BVIMCRAP2020/0008]

[BVIMCRAP2020/0009]

[BVIMCRAP2020/0010]

Date: **Monday, 30th January 2023**

Coram: **Mrs. Michelle John-Theobalds, Chief Registrar**

Appearances:

Appellant: **Mr. Michael Maduro, appearing amicus curiae**

Respondent: **Mr. Kael London**

Issues: **Status of the matter**

Type of Order: **Adjournment**

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

1. The matter is adjourned to the next Status Hearing of the court for the Territory of the Virgin Islands scheduled for 15th May 2023 for the appellant to regularize his legal representation.

2. This is the final adjournment for this purpose.

Reason: The Court noted that at the time of the hearing the appellant had not finalized the terms of his representation for the appeal. The matter was therefore adjourned to allow for the appellant to regularize his legal representation.

Case Name: Delvin Green

V

The Commissioner of Police

[BVIMCRAP2020/0002]

Date: Monday, 30th January 2023

Coram: Mrs. Michelle John-Theobalds, Chief Registrar

Appearances:

Appellant: Ms. Valerie Rebecca Gordon

Respondent: Ms. Tiffany Scatliffe, Director of Public Prosecutions

Issues: Status of the matter

Type of Order: Adjournment

Result / Order: IT IS HEREBY ORDERED THAT:

The matter is adjourned to the next Status Hearing of the Court for the Territory of the Virgin Islands scheduled for 15th May 2023 to allow counsel for the appellant to review the supplemental record filed on 27th January 2023.

Reason: The Court noted that the appellant had not had an opportunity to review the supplemental record filed and requested time to do so. The Court therefore adjourned the matter to allow counsel for the appellant to review the supplemental record.

Case Name: Ricardo Leonard

v

The Commissioner of Police

[BVIMCRAP2020/0003]

[BVIMCRAP2020/0004]

[BVIMCRAP2020/0005]

Date: Monday, 30th January 2023

Coram: Mrs. Michelle John-Theobalds, Chief Registrar

Appearances:

Appellant: No appearance

Respondent: Ms. Tiffany Scatliffe, Director of Public Prosecutions

Issues: Status of the matter

Type of Order: Adjournment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The matter is adjourned to the next Status Hearing of the Court for the Territory of the Virgin Islands scheduled for 15th May 2023 to allow the appellant to take the necessary steps to regularize service of the notice of appeal on the respondent.
2. This is the final adjournment for this purpose.

3. The Registrar of the High Court serve a copy of this order on the appellant and provide proof of service thereafter.

Reason: The Court noted that there was no evidence that the respondent was served with the notice of appeal. The Court therefore adjourned the matter to the next status hearing to allow the appellant to take the necessary steps to regularize service of the notice of appeal on the respondent.

Case Name: **Brian Penn**
v
The Commissioner of Police
[BVIMCRAP2018/0003]

Date: **Monday, 30th January 2023**

Coram: **Mrs. Michelle John-Theobalds, Chief Registrar**

Appearances:
Appellant: **In person**
Respondent: **Ms. Tiffany Scatliffe, Director of Public Prosecutions**

Issues: **Status of the matter**

Type of Order: **Adjournment**

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

1. The Court office shall take the necessary steps to compile the record of appeal and serve the same on the parties.

2. The matter is adjourned to the next Status Hearing of the Court for the Territory of the Virgin Islands scheduled for 15th May 2023.

Reason: The Court noted that the record of appeal is still incomplete. The Court therefore adjourned the matter to allow the court office time to take the necessary steps to compile the record of appeal and serve the same on the parties.

Case Name: Sayied Scatliffe

V

Smith Seaman

[BVIMCVAP2016/0002]

Date: Monday, 30th January 2023

Coram: Mrs. Michelle John-Theobalds, Chief Registrar

Appearances:

Appellant: Mr. Michael Maduro

Respondent: Ms. Ruthilia Maximea

Issues: Status of the matter

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

N/A

Reason: The Court noted that a notice of discontinuance had been filed on 27th January 2023. Accordingly, no order was made.

Case Name:

Kelly Ann Percival

v

Alimha Beresford

[BVIMCVAP2019/0001]

Date:

Monday, 30th January 2023

Coram:

Mrs. Michelle John-Theobalds, Chief Registrar

Appearances:

Appellant: Mr. Michael Maduro

Respondent: Ms. Stacey Abel

Issues:

Status of the matter

**Type of
Order:**

Adjournment

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

The matter is adjourned to the next Status Hearing of the Court for the Territory of the Virgin Islands scheduled for 15th May 2023 to allow the parties to continue settlement discussions.

Reason:

The Court noted that the parties are still in discussions. However, there has been a development in that the appellant is gravely ill and had to leave the jurisdiction to seek medical treatment. This has created a difficulty in concluding the settlement discussions. The parties are still interested in continuing settlement discussions.

The respondent did not object to the matter being adjourned. Therefore, the Court adjourned the matter to allow the parties to continue settlement discussions.

