

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
VIDEO CONFERENCE

SAINT LUCIA
MONDAY 5TH DECEMBER TO FRIDAY 9TH DECEMBER 2022

JUDGMENTS

Case Name:

Darlington Noel
v
The King
SLUHCRA2016/0008

Jan Isidore
v
The King
SLUHCRA2016/0007

SAINT LUCIA

Date:

Tuesday 6th December 2022

**Coram for
delivery:**

The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal

Appearances:

Appellant: **Mr. Alberton Richelieu**

Respondent: **Ms. Kelly Thompson**

Issues:

Criminal appeal - Appeal against conviction – Admissibility of documentary evidence - Sections 55 and 56 of the Evidence Act Chapter 4.15 of Saint Lucia - Duty to give reasons - Trial judge's exercise of discretion – Whether the learned judge misdirected himself in law - by admitting witness statement which was the only evidence that sought to link appellant

with the crime - Whether the learned judge misdirected and confused the jury that, although the content of witness statement was not proof of the truth of its content, he went on to direct the jury that it was a cell confession, which provided evidence of the appellant's involvement in the killing - Recognition evidence- Whether the learned judge did not exercise his discretion fairly by permitting witness to admit the unacknowledged oral confession of appellant into evidence – Section 136 of the Evidence Act – Whether the learned judge failed to give a section 136 direction in relation to the evidence of witness – Test for a miscarriage of justice - Identification parade – Whether learned judge erred in admitting the evidence of the identification parade at the trial - Whether learned failed to direct the jury that little weight, if any, can be given to the parade - Whether the judge erred in failing to direct the jury on the effect of an unfair identification parade on a dock identification – Appeal against Sentence - Whether the sentence of 45 years imposed on the appellants was too excessive and wholly inappropriate.

Result and Reason:

HELD: 1. The appeal of Darlington Noel against his conviction for capital murder is dismissed and the conviction is affirmed. 2.The appeal of Jan Isidore against his conviction for capital murder is dismissed and the conviction affirmed.3. The appeal of Darlington Noel and Jan Isidore against sentence is allowed to the extent that the sentence of 45 years imposed on each appellant is set aside and substituted for a sentence of 40 years imprisonment.

Jan Isidore's appeal

1. Sections 55 and 56 of the Evidence Act deal with the admissibility of documentary records as an exception to the hearsay rule. Sections 55 (1) and (2)(a)(i) provide for the admission of a statement in a document, in any proceedings, as evidence of any fact stated therein of which direct oral evidence would be admissible. This is conditioned on the document being or forming part of a record compiled

by a person acting under a duty, from information supplied by another person, whether the other person was acting under a duty or not, who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in that information; and the person who supplied the information is dead. While section 56(5)(b) is an exclusionary provision which provides that the court shall not give leave to admit a statement referred to in section 56(4) unless the court is of the opinion that the statement ought to be admitted in the interest of justice having regard to the likelihood that the defendant will be prejudiced by the admission of the statement in the absence of the person who supplied the information on which the statement is based.

Sections 55 and 56 of the Evidence Act Chapter 4.15 of the Revised Laws of Saint Lucia, 2019 applied.

2. The learned judge in satisfying himself that all the statutory requirements were met for the admission of the statement, would have had to take account of the exclusionary provision contained in section 56(5)(b) of the Evidence Act. The judge was bound to admit all admissible evidence unless its probative value was outweighed by its prejudicial effect. The judge was justified in admitting the statement of the deceased Eleuthere after the voir dire was held and the Crown complied with the statutory requirements for admissibility. In addition, the trial judge was well positioned to weigh the probative value of the evidence on the one hand and its prejudicial effect on the other. Further, the evidence was not the only evidence linking Isidore to the crime. There was independent support for the hearsay statement of Eleuthere, for example, the evidence of SPC Biscette that he heard Isidore say to Eleuthere, “a man I killed in Vieux Fort there, that’s why I am in the cell”. The learned judge therefore did not misdirect himself in law by admitting the witness statement of Eleuthere.

**Brunetta Festa v The Queen [2001] HCA 72 applied;
Pfennig v R [1995] HCA 7 applied.**

3. It is settled law that the duty to give reasons is a function of due process and justice. What is required depends on the nature of the case, but a judgment needs to make clear not only to the parties but to an appellate court the judge's reason for his conclusion on the critical issues. The test is: does the losing party know sufficiently why they have lost, and the other party has won? In this case, the learned judge adequately dealt with the matter and in his judgment made it clear to the parties as well as to this Court, his reason for admitting the statement was that all the statutory requirements were met. The admissibility of the statement was a matter provided for by statute. There is therefore no merit in the appellant's complaint.

Flannery v Halifax Estate Agencies Ltd [2001] 1 WLR 377 applied; English v Emery Reimbold & Strick Ltd; DJ & C Withers (Farms) Ltd v Ambic Equipment Ltd; Verrechia (trading as Freightmaster Commercials) v Commissioner of Police of the Metropolis [2002] EWCA Civ 605 applied; Baird v Thurrock Borough Council [2005] EWCA Civ 1499 applied.

4. It could not be lost upon the jury, that the statement of the deceased witness ought not to be treated as a confession and was not a confession. This is borne out in the learned judge's directions that: if the jury accepted the statement, they cannot hold it out to be a confession; that is, they cannot say that Isidore confessed to Eleuthere that he took part in the murder of Ali Baba. The learned judge placed enough emphasis on the fact that the statement of the deceased witness ought not to be treated as a confession. The overall effect of the direction on the issue was to warn the jury that the utterances did not amount to a confession. In the circumstances, there

was no material misdirection to the jury. The treatment of the evidence was fair to the appellant.

5. The learned judge in his judgment exercised his discretion fairly in admitting the oral utterance “a man I killed in Vieux Fort there, that’s why I am in the cell”. There is therefore no proper basis for appellate interference.

6. Section 136 (2) of the Evidence Act ordains that where there is a jury, the judge shall, unless there are good reasons for not doing so: (a) warn the jury that the evidence may be unreliable; (b) inform the jury of the matters that may cause it to be unreliable; and (c) warn the jury of the need for caution in determining whether to accept the evidence and the weight to be given to it. Section 136 (3) states that it is not necessary that a particular form of words be used in giving the warning or information. Such warning under section 136 is to be given in terms which are appropriate to the particular case rather than in the form of a standardised direction which slavishly adheres to the terms of the section. Further, warnings are not to be approached as mere matters of ritual. What needs to be said to a jury in order to ensure that they bring a full appreciation to a case will depend upon the individual case. In this case, the learned judge warned the jury as to the weakness of Biscette’s evidence in that he never confronted Isidore after he said he overheard him admitting to killing a man in Vieux Fort nor did he make any record of what he overheard. The warning was given in terms appropriate to the circumstances of the case. Accordingly, enough was said to warn the jury of the matters that may cause Biscette’s evidence to be unreliable, in terms of the section. It cannot be said there was a misdirection by the judge.

7. The identification of both appellants in court by Fevriere was not in truth a dock identification. Fevriere’s evidence is properly classified as recognition evidence. The claimed basis of recognition as shown by his evidence was not tenuous. It was not a case where the appellants were

unknown to Fevriere, and he subsequently pointed them out for the first time in court. Apart from being introduced to him by reason of their tenancy of his rental home, he also described a neck tattoo unique to Isidore, which also assisted in his identification to the police. Given the circumstances, it would not be reasonable to have held an identification parade. Further, where a witness has already identified a person in the absence of a parade, holding a parade is more likely to confirm the witness' previous identification than to test his ability to make an identification. Thus, the evidence of a prior identification that has been reinforced through an identification parade might in fact be more dangerous than the evidence of the prior identification alone and excluding such evidence would be consistent with the overall aim of section 114 of the Evidence Act to restrict the admissibility of unreliable identification evidence.

Stubbs v The Queen; Davis v The Queen; The Queen v Evans [2020] UKPC 27 applied.

Darlington Noel's appeal

8. The court retains a discretion in relation to admissibility of evidence. The question is whether the admission had an adverse effect on the fairness of the proceedings. In the instant case, the admission of the evidence of the identification parade did not have an adverse effect on the fairness of the proceedings.

Police and Criminal Evidence Act 1984 UK ("PACE") considered; The State v Vibert Hodge [1976] 22 WIR 303 considered; The Queen v Eron Collymore and another SLUCRD2016/0661A, 0662A, 0663A, 0664A, 0665A, 066A, 0667A (delivered 6th May 2020, unreported) considered.

9. The test for whether a miscarriage of justice has actually occurred is not simply whether an appellate court is itself persuaded of guilt. While the appellate court's satisfaction of guilt is certainly necessary, it is not by itself sufficient. The test is normally, whether the appellate court is further satisfied that any jury acting properly must inevitably have convicted the appellants if the flaws in the proceedings had not occurred. The question is fact specific and a matter of degree. In this case, there is no proper basis to set aside the conviction of both appellants.

Section 35 of the Eastern Caribbean Supreme Court (Saint Lucia) Act Chapter 2.01 Revised Laws of Saint Lucia, 2019 applied; Cassell and another v The Queen [2016] UKPC 19 applied.

10. With respect to the appeal against sentence, the learned judge erred when he gave no reasons as to why his starting point was fifty years. In applying the now in force Sentencing Guidelines, this case falls within the category of cases where the starting point is set at 40 years with a range from 30-50 years. In considering other mitigating and aggravating circumstances of the offence and the offenders, an appropriate sentence would be 40 years imprisonment.

Eastern Caribbean Supreme Court Sentencing Guidelines for Homicide Offences re-issued 26th November 2021 applied.

Case Name:

Sugar Beach Management Limited

v

[1] Jaime Susannah Limited

[2] [2] Priestley Designs Ltd

(suing on behalf of themselves and other owners for the time being of villas at the touristic development known as the Sugar

Beach Resort at Val des Pitons, Soufriere in Saint Lucia)

**[SLUHCMA2022/0005]
(SAINT LUCIA)**

Date: Friday 9th December 2022

Coram for delivery: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerhard Wallbank, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Peter Foster, KC with him Ms. Renee St. Rose, Ms. Marie-Ange Symmonds and Ms. Shari-Ann Walker

Respondent: Mr. Garth Patterson, KC with him Mr. Mark Maragh and Ms. Taylor Laurayne

Issues: Interlocutory appeal – Admissibility of evidence – Sections 44 and 66 of the Evidence Act - Whether the learned judge erred in law and/or misdirected herself as to the law when she found that certain paragraphs of the witness statement of Mike Power were irrelevant to the issues to be determined – Whether the learned judge erred in fact and law and/or misdirected herself as to the facts and law when she made findings that certain individuals were agents of the appellant – Whether the learned judge erred in law when she determined that Document No.5 was admissible and failed to consider the authenticity and reliability of the undated document – Whether the learned judge erred in law when she failed to consider or determine all of the appellant’s objections particularly as it related to hearsay evidence of the respondents’ witnesses - Whether court should import commercial logic/efficacy into interpretation of contract

**Result and
Reason:**

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed in part.**
- 2. Paragraph 1 of the Order is set aside and the challenged statements in paragraphs 8, 25, 28, 35, 36, 37, 38, 39, 40, 43 and 44 of the witness statement of Mike Power are admitted provisionally.**
- 3. Paragraph 3 of the Order is varied to say that the document exhibited as MP 9 is admitted provisionally and the learned judge's decision to refuse the admission of the document exhibited as MP 11 is affirmed.**
- 4. Paragraph 5 is affirmed and the decision of the learned judge to admit the document referred to as No. 5 or the comparison table is affirmed.**
- 5. Save as varied or amended by this order the terms of the Order of the learned judge dated 1st July 2022 are affirmed.**
- 6. The parties have enjoyed varying degrees of success on the appeal and the Court in its discretion orders that each party will bear its own costs of the appeal.**

The Court considered the grounds of appeal, bearing in mind the following principles: This is an appeal against the exercise of discretion by the learned judge in managing the case in the lower court. The Court is generally reluctant to interfere with the exercise of a judge's discretion unless the judge erred in principle either by failing to take into account, or giving too little or too much weight, to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and as a result of the error or the degree of the error in principle, the judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be plainly wrong.

1. The objections to the admissibility of the disputed evidence were taken during the week before the scheduled trial date. The objections could have been dealt with by the trial judge during or at the end of the trial. 2. The decision by the learned judge and now by this Court are made on the basis of untested witness statements without the benefit of a trial. 3. There are provisions in the Evidence Act ("the Act") dealing

with the admission of evidence as exceptions to the hearsay rule (part 4 division 1 of the Act); the admission of opinion evidence by persons who are not experts in their respective field (section 65 of the Act) and by persons with specialised knowledge (section 66 of the Act); and for the admission of potentially irrelevant evidence provisionally (section 46 of the Act). 4. The courts have a general power or discretion to admit evidence *de bene esse*, that is on a provisional basis, without determining its admissibility. This is usually done either to ensure that relevant evidence is not lost or overlooked, or for the purpose of first assessing its relevance, value or admissibility.

The Court was satisfied that: 1. The central issue in the case is the interpretation of the various management agreements in standard form between the appellant and the owners of villas in the Sugar Beach Resort known as Management and Rental Pool Agreements (“MARPA”), and whether the MARPAs require the appellant or the owners of the villas to pay for capital repairs and capital maintenance of the villas. The MARPAs are said to be silent on this obligation and the task of the court at the trial will be to determine which of the parties, the appellant or the owners, are responsible for paying for capital repairs and capital maintenance of the villas. This will involve reviewing the terms of the MARPAs and, if necessary, the surrounding circumstances, to determine the meaning of the MARPAs and the intention of the parties regarding the responsibility for capital repairs and capital maintenance; 2. The judge’s decision to rule out paragraphs 8, 25, 28, 35, 36, 37, 38, 39, 40, 43 and 44 of the witness statement of Mike Power on the eve of trial as being irrelevant to the issues to be determined is, on the facts of this case where the evidence has not been tested, outside the generous ambit of reasonable disagreement and the statements should be admitted provisionally, thereby giving the judge conducting the trial the final say as to the admissibility of the statements. These statements, or at least some of them, are potentially relevant to the defence of the appellant; 3. The issue of the insurance of the villas in the Resort is an issue in the case and the insurance policy at exhibit MP 9,

though dealing with reinstatement and not repairs, should also be admitted provisionally. However, the court does not find that there is any basis to interfere with the judge's decision that exhibit MP 11 (the financial statements of Milly Limited) is irrelevant and should not be admitted; 4. The finding by the judge in paragraphs 6, 8, 10 and 13 of the Order that persons to whom statements were made by non-witnesses are agents of the appellants is premature and should be reserved for the trial. The disputed statements in paragraphs 6, 8, 10 and 13 appear to have been admitted unconditionally by the judge but should be admitted provisionally leaving the issue of final admission to the judge trying the case; There was no basis for the Court to interfere with the judge's decision to admit the document referred to as "No. 5" or as "the comparison table" that is exhibit BEP 4 to the witness statement of Barbara Perfect filed on 26th November 2021. The contents of the document appear to be relevant to the issues in the trial and there is no evidence challenging the provenance of the document.

Dufour and others v Helenair Corporation and others (1996) 52 WIR 188; The Evidence Act, Cap. 4.15 of the Laws of Saint Lucia; Shagang Shipping Company Ltd v HNA Group Company Ltd [2020] UKSC 34; Aldford House Freehold Ltd v Grosvenor (Mayfair) Estate [2018] EWHC 3430 (Ch); [2019] 1 WLR 1489, R v Mirza [2004] UKHL 2; [2004] 1 AC 1118.

APPLICATIONS AND APPEALS

Case Name:

[1] Raphael Charlemagne
[2] Marilyn Martin aka Marilyn Charlemagne
V
[1] The Attorney General
[2] Saint Lucia National Housing Corporation

(SLUHCVAP2019/0025)
(SAINT LUCIA)

Date:

Monday 5th December, 2022

Coram: The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal [Ag.]

Appearances:

Appellants/Respondents: In person

Respondents/Applicants: Ms. Antonia Charlemagne and Mrs. Rochelle John-Charles for the 1st respondent

Mrs. Edith Petra Jeffrey-Nelson for the 2nd respondent

Issues: Application to strike out notice of appeal - Rule 62.10 of the Civil Procedure Rules 2000 - Whether the appellants have failed to comply with rule 62.10 of the CPR - Whether the appellants have provided a sufficient reason for the delay in the prosecution of their appeal - Whether the appellants have a reasonable prospect of success on the merits of the appeal

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The Notice of Appeal filed by the appellant on 31st March 2020 is hereby struck out.
2. There is no order as to costs.

Reason: This is an application by the first respondent, the Attorney General, in which the first respondent/applicant seeks to have the notice of appeal filed on 31st March 2020 struck out on the ground that the appellants/respondents have failed to comply with rule 62.10 of the Civil Procedure Rules 2000 ("the CPR").

The Court read the written submissions and heard the oral submissions of both the first respondent/applicant and the

appellants/respondents. The Court further noted that the application to strike out the notice of appeal is supported by the second respondent. The first respondent/applicant submitted to the Court, in both written and oral submissions, that the Court should strike out the appeal as the appellants/respondents have taken no steps to prosecute the appeal since the filing of the appeal. The notice of the readiness of the transcript of proceedings was given on 4th February 2020, which is prior to the notice of appeal being filed. In spite of having notice of the readiness of the transcript, the appellants have failed to file the transcript as required by the CPR. Indeed, they have taken no steps since they filed the notice of appeal.

This Court, on considering the application to strike out the notice of appeal on 23rd June 2022, ordered that the appellants/respondents file and serve an affidavit in response to the application to strike out the notice of appeal and they were given leave to file written submissions together with authorities in response to the strike out application on or before 19th September 2022. The hearing of the application to strike out was adjourned to a date to be fixed by the Chief Registrar on notice to the parties. The appellants/respondents failed to comply with the order of the Court made on 23rd June 2022. They have further failed to seek an extension of time to comply and the appeal remained pending without any documents filed to prosecute the appeal.

The Court found that the length of time, from the filing of the appeal to today's hearing, was indeed a lengthy and inordinate delay. The Court also considered the prospects of success of the appeal and that the appeal is against an order striking out a constitutional motion, in circumstances where the court found there were alternative remedies available to the appellants/respondents. Furthermore, the appellants/respondents have since pursued those alternative remedies, and judgment in that matter is pending. When considering the matter in the round, the prejudice on both sides and the fact that the appellants/respondents continue to await the decision of the lower court in relation to the alternative remedies, the Court was of the view that in

light of the lengthy delay and there being no realistic prospect of the appeal succeeding, the appeal should be struck out.

Case Name:

Mattaniah Charlemagne

V

Saint Lucia National Housing Corporation

**SLUHCVAP2019/0004
(SAINT LUCIA)**

Date:

Monday 5th December 2022

Coram:

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal [Ag.]**

Appearances:

Appellant/Respondent: Ms. Natalie Da Breo

Respondent/Applicant: Ms. Edith Petra Jeffrey-Nelson

Issues:

**Application for removal from record by counsel -
Application to strike out appeal - Application for adjournment**

Type of Order:

N/A

Result/Order:

**[Oral Delivery]
IT IS HEREBY ORDERED THAT:**

The application to be removed as counsel on record made by Ms. Natalie DaBreo and the application to strike out the notice of appeal made by the respondent are adjourned to the next sitting of the Court of Appeal in the State of Saint Lucia during the

week commencing 20th March 2023, there being no service of the applications on the appellant.

Reason:

There being no service of the applications on the appellant, the Court was of the view that the applications should be adjourned.

Case Name:

Gregory Fevrier

V

**Luciana Mary Fevrier (nee Jn Jacques)
(SLUHCVAP2022/0009)
(SAINT LUCIA)**

Date:

Monday 5th December 2022

Coram:

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal [Ag.]**

Appearances:

Applicant:

Mr. Horace Fraser

Respondent:

Mr. Leevie Herelle

Issues:

Application for leave to appeal - Interest on judgment debt - Whether the payment of interest on the judgment debt was in the contemplation of the parties at the time when the consent order was entered - Whether the decision of the learned judge exceeded the generous ambit within which reasonable disagreement is possible - Whether applicant has reasonable prospect of success on appeal

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. Leave is granted to the applicant to appeal the decision of His Lordship Justice Roland Phillip dated 27th May 2022.
2. The applicant shall file the notice of appeal within 21 days of the date of this order.

Reason:

The Court considered an application for leave to appeal the decision of the learned judge dated 27th May 2022.

The Court had regard to the record of appeal including the decision of the learned judge and listened to the submissions of learned counsel and was of the view that the applicant satisfied the requirement for the grant of leave to appeal.

The Court considered the two points raised by the applicant in relation to whether the interest on a judgment is automatic or whether it is only available where the court so makes an order; and the true interpretation of Article 208 of the Civil Code of Saint Lucia.

The Court considered further that the applicant also sought the determination of the issue of whether the learned judge correctly interpreted Article 2111 of the Civil Code in view of the decision of this Court which was affirmed by the Privy Council in Nelson v FirstCaribbean International Bank [2014] UKPC 30.

The Court examined the issues and was of the view that the applicant has met the threshold of a realistic prospect of success and accordingly granted leave to appeal.

Case Name:

Edmund Estephane

v

**McDowall Broadcasting Corporation (MBC)
Limited**

**(SLUHCVAP2022/0002)
(SAINT LUCIA)**

Date: Monday 5th December 2022

Coram: The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Candace Fletcher and Mr. Mark Maragh

Respondent: Mr. Horace Fraser

Issues: Civil appeal - Defamation - Service of the claim form on limited liability company- Civil Procedure Rules 2000 - CPR 5.7 - Whether learned master failed to properly exercise his discretion in the matter and consequently erroneously held that the service of the claim form and supporting documents on the respondent at its place of business was defective - CPR 26.9- Article 2123 of Civil Code - Prescription of defamation claim- Whether the claim was prescribed by law - Section 23 of Interpretation Act Chapter 1.06 of Saint Lucia- Whether the learned master erred in law and misdirected himself when he considered section 23 of the Interpretation Act which is only relevant if Act is silent as to service

Type of Order N/A

Result / Order: IT IS HEREBY ORDERED THAT:

The judgment is reserved.

Case Name: Jonathan Edward
v
The King

**[SLUHCRAP2022/0004]
(SAINT LUCIA)**

Date: Monday 5th December 2022

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal

Appearances:

Appellant/Applicant: Mr. Leslie Prospere with him Ms. Britney Barnard

Respondent: Mrs. Tanya Alexis-Francis

Issues:

Application to adduce fresh evidence - Section 40 of the Eastern Caribbean Supreme Court (Saint Lucia) Act Cap. 2:01 - Application to adduce the medical notes of virtual complainant - Medical notes not adduced at trial - Whether medical notes creditable and would have been admissible at trial - Whether medical notes exculpatory of appellant - Whether notes would have undermined evidence of prosecution's witnesses - Whether notes would have bolstered appellant's defence of self defence - Whether reasonable explanation exists for the failure to adduce the medical notes at trial - Whether medical notes ought to be admitted at the hearing of the appeal

Criminal appeal - Causing dangerous harm - Procedural irregularity - Virtual complainant's medical notes not adduced at trial - Whether procedural irregularity occurred due to the omission of the medical notes of the virtual complainant - Whether medical notes ought to have been made available to appellant prior to retiring of jury - Whether learned judge erred by refusing appellant's application for the matter to be stood down pending counsel for the appellant being provided with the medical notes - Section 912 of Criminal Code of Saint Lucia - Permission to make adverse comments - Adverse comments by learned prosecutor about appellant's failure to call two witnesses in support of

his version of the events - Whether prosecutor's adverse comments prejudicial to appellant - Section 584(2)(a) of the Criminal Code - Section 8(7) of the Constitution of Saint Lucia - Appellant's pretrial right to silence - Whether trial judge erred by refusing to declare a mistrial and discharge the jury in the aftermath of prosecutor's adverse comments - Whether trial judge erred in his summation when he failed to provide appropriate directions in light of the prosecutor's adverse comments - Self defence - Whether verdict against appellant perverse in light of evidence of self defence adduced at trial - Sentence - Whether learned judge erred when he refused to accept that a custodial sentence was incapable of achieving the core principles of sentencing - Whether sentence excessive and wholly disproportionate in circumstances

Type of Order:

N/A

Result/Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

David Phillip

v

Joseph Phillip

[SLUHCVP2022/0003]
(SAINT LUCIA)

Date:

Tuesday 6th December 2022

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal

Appearances:

Appellant:

Mr. Horace Fraser

Respondent:

Mr. George Charlemagne

Issues: Civil appeal - Unfairness of trial - Whether the learned trial judge failed to resolve issues at trial - Title by prescription - Overriding interests - Section 28(g) of the Land Registration Act - Registration by mistake - Articles 372 and 374 of the Civil Code of Saint Lucia - Whether the learned judge erred in striking out the defence and counterclaim

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name: Cap Estate St. Lucia Limited

v

[1] JASDIP LTD
[2] David Jackson

[SLUHCVP2020/0025]
(SAINT LUCIAa)

Date: Tuesday 6th December 2022

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

Appearances:
Appellant: Mr. Dexter Theodore, KC
Respondents: Ms. Patricia Augustin

Issues: Interlocutory appeal - Agency - Whether the learned master erred in asserting that the question to be determined was whether it would be correct to find

that there was an agency relationship between Cap Estate and Sea Breeze - Whether the learned master erred in finding, in the absence of a full trial of the issues, that there is no doubt that Cap Estate was as much Sea Breeze's agent as it was JASDIP's - Whether the pleadings disclosed a maintainable cause of action against Cap Estate - Costs - Whether the learned master erred in awarding costs of \$2,500.00 to the respondents and ordering such costs to be assessed

Type of Order:

Oral judgment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The decision of the Learned Master is set aside in its entirety.**
- 3. The appellant is removed as a party to the claim (SLUHCV2019/0276) in the court below.**
- 4. The appellant will have costs in the court below to be quantified in accordance with the Civil Procedure Rules 2000.**
- 5. The appellant will have costs on the appeal in the sum of \$2500.00.**

Reason:

By the decision dated 10th June 2020, the learned master Sandcroft granted summary judgment on the amended claim filed on 13th November 2019 by the respondents to this appeal, JASDIP Ltd and Mr. David Jackson, who were the claimants in the claim in the court below. The particulars of that amended claim were set out in an Amended Statement of Claim also filed on 13th November 2019. In that amended statement of claim, the respondents (claimants in the court below) sought: (i) a declaration that the defendants do forthwith provide the claimants with all

records relating to the business of Sea Breeze Hills Development Company Limited ('Sea Breeze') in Sea Breeze's and the Second Defendant's possession; and (ii) costs. The Second Defendant was Cap Estate St. Lucia Ltd ('Cap Estate').

The basis of the claim was as follows: JASDIP Ltd is a member of Sea Breeze and the respondents alleged that Cap Estate is an agent of Sea Breeze. By paragraph 10 of the amended statement of claim, the respondents pleaded that by virtue of the fact of this agency, Cap Estate owed JASDIP Ltd a duty to provide JASDIP Ltd with all documents of Sea Breeze, in JASDIP's capacity as a member of Sea Breeze.

Cap Estate filed a Notice of Application to strike out the statement of claim on 7th August 2019; and an Amended Notice of Application to strike out the Amended Statement of Claim filed 22nd January 2020. This latter was then determined on the papers by the learned master in the decision now subject to appeal. The learned master determined this strike out application and refused it and the learned master, apparently of his own motion, went further and entered summary judgment against the defendants, including Cap Estate, for the relief sought in the amended statement of claim and awarded the respondents costs of \$2500.00 to be paid by Cap Estate.

In this appeal, in submissions filed by the respondents in respect of the appeal filed on 11th November 2022, the respondents conceded the appeal in relation to the summary judgment. In the Court's view this concession was correct, as the learned master had erred in granting summary judgment of his own motion and ought to have allowed the claim against at least the 1st defendant, Sea Breeze, to have proceeded to trial. In light of this concession, and having reviewed the pleadings and the parties' submissions, the Court was satisfied that the summary judgment could not stand and must be

set aside. The consequential costs award of \$2500.00 must equally be set aside.

The parties agreed that 2 grounds remained for the Court to determine, those being: (i) whether the learned master misdirected himself and therefore erred in asserting that the question to be determined by the Court is whether it would be correct to find that there was an agency relationship between the 2nd defendant and the 1st defendant (paragraph 55 of the judgment); and (ii) whether the learned master erred in finding, in the absence of evidence or full trial of the issues, and without cross-examination, that there is no doubt that Cap Estate was as much Sea Breeze's agent as it was JASDIP Ltd's (paragraph 74 of the judgment).

The learned master's rulings, both in relation to refusing the strike out application and granting summary judgment were grounded in a finding that Cap Estate was Sea Breeze's agent; most clearly expressed at paragraph 74 of the judgment which stated:

“There is little doubt that the claimants have a cause of action based on the transfer agreement. The question is whether they can bring that action against the 2nd defendant, Cap Estate. The general rule is that the master is liable for the wrongful actions of his servant or agent as committed in the course of the service and for the master's benefit. There is no doubt that Cap Estate was as much Sea Breeze's (1st defendant) agent as it was JASDIP's (1st claimant). It had the authority given by both companies to act on their behalf. Its selection formed part of the transfer agreement between them as to how the shares would be given. Is there any justification for denying the claimants the same remedy which would have been available to a third party to the transfer party? The answer lies in the functions performed by Cap Estate.”

The Court was satisfied that it was not open to the learned master to reach that conclusion, because: (i) there was no pleading that Cap Estate was JASDIP's agent; (ii) the learned master made a finding of fact on the basis of a single document (the transfer agreement) which does not directly evidence or express an agency relationship; and (iii) upon a course of dealing. The learned master also did not consider what kind of agency had been created – for what purpose.

The issue whether or not there was any agency relationship between Cap Estate and Sea Breeze was properly a matter for trial. The learned master prejudged that issue. In prejudging that issue, the learned master fell into error. Moreover, whether or not any such agency relationship would give rise to a duty upon Cap Estate to disclose documents it might possess to Sea Breeze's shareholders is an issue of law. At best, these were issues which would have been required to be tried. However, the Court determined that the pleadings did not disclose a maintainable cause of action by the respondents against Cap Estate.

The Court was satisfied that the learned master made errors of principle in the exercise of his discretion and that he strayed beyond the generous ambit of his discretion. The law on the Court of Appeal's role in relation to lower court's exercise of discretion is discussed in JTrust Asia PTE Ltd v Showa Holdings Co. Ltd BVIHCMAP2020/0022 (delivered 31st May 2021, unreported). Blenman JA stated at paragraphs 49 and 50 that:

“[49] For the sake of completeness, I will briefly address the allied point of the exercise of discretion. The law in relation to the appellate court interference with the exercise of discretion by the court of first instance has long been settled. Indeed, the law is clear that in order for the appellate court to interfere with an exercise of

discretion, there is a heavy burden placed on the applicant to prove that the exercise of the discretion was plainly wrong or falls outside the general ambit within which reasonable disagreement is possible. The leading authority on this principle in our Court is the well-known case of *Michel Dufour and Others v Helenair Corporation Limited and others* ((1996) 52 WIR 188) in which Sir Vincent Floissac held that the appellate court could only interfere if:

“(a) the judge in exercising his discretion has erred in principle by either failing to take into account or giving too little or too much weight. As relevant factors or considering or being influenced by irrelevant factors; and (b) as a result of the error the trial judge’s decision exceeds the generous ambit within which reasonable disagreement is possible and may be said to be clearly wrong.”

[50] This principle has been enunciated in a number of recent decisions of this Court such as *Novel Blaze Limited (In Liquidation) v Chance Talent Management Limited* [2021] ECSCJ No.529 (delivered 16th April 2021) and *Throne Capable Investment Limited v Agile Star Group Limited* [2021] ECSCJ No.433 (delivered 14th January 2021). At paragraph 28 of *Throne Capable*, in applying the Dufour principles, I stated as follows:

“In so far as Throne appeals against the exercise of the judge’s discretion, in not awarding costs against Agile, it must satisfy this Court that the learned judge committed an error of principle or was plainly wrong in the exercise of his discretion...the circumstances in which an appellate court may interfere with the exercise of a judge’s discretion are well-known and have been restated in a strong stream of jurisprudence from this Court.”

I am still of that view.”

Further in Hadmor Productions Ltd. and others v Hamilton and others [1983] 1 AC 191, p. 220, the court stated:

“...judge's decision to grant or refuse the injunction is so aberrant that it must be set aside upon the ground that no reasonable judge regardful of his duty to act judicially could have reached it. It is only if and after the appellate court has reached the conclusion that the judge's exercise of his discretion must be set aside for one or other of these reasons, that it becomes entitled to exercise an original discretion of its own.”

Being satisfied that the learned master made errors of principle, the Court determined that the learned master's decision ought to be set aside in its entirety and the Court's discretion should be exercised afresh. The Court determined that the claim does not disclose a cause of action that is maintainable in its current form by the respondents versus Cap Estate. The Court also considered allowing an amendment - however, it could not accede to a proposal for an amendment without having had sight of a draft re-amended statement of claim. It appeared to the Court that the claim against Sea Breeze could proceed but since there was no discernible course of action on the present pleadings against Cap Estate, the Court decided that Cap Estate should be removed as a party pursuant to CPR 19.2(4), as indeed Mr. Dexter Theodore KC suggested in his submissions.

CPR 19.2(4) provides:

“The court may order any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings.”

As a result, the Court unanimously made the above orders.

Case Name:

Franklyn George

V

**[1] Cynthia Beausoleil Jefferson
[2] Ricardo Beausoleil**

**(SLUHCVAP2018/0034)
(SAINT LUCIA)**

Date: Tuesday 6th December 2022

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

Appearances:

Appellant: Ms. Alberta Richelieu

Respondents: Ms. Beverley Downes

Issues: Civil appeal - Consent order

Type of Order: N/A

Result / Order:

IT IS HEREBY ORDERED BY CONSENT THAT:

- 1. All further proceedings in this appeal are stayed permanently upon the terms set out in the schedule to this order save for the purposes of carrying such terms into effect.**
- 2. Either party has permission to apply to the court to enforce the terms upon which this matter has stayed without the need to bring a new claim.**
- 3. Each party will bear its own costs.**

Reason: The parties agreed to a settlement of this appeal in the terms set out in a Settlement Agreement signed by the parties.

Case Name: [1] Eldon Wilson
[2] Donny Camille
[3] Miriam Holt
v
Lance Willie
(Qua Administrator of the Estate of George Willie)

[SLUHCVAP2020/0006]
(SAINT LUCIA)

Date: Wednesday 7th December 2022

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal

Appearances:

Appellants: Ms. Cleopatra McDonald with her Ms. Diana Thomas

Respondent: Mr. Dexter Theodore KC

Issues: Civil appeal - Personal injury - Award of damages - Assessment of damages - Special damages - Whether learned master erred in making award to compensate for grant of letters of administration when no such claim made in the lower court - Whether the learned master erred in the award made for funeral expenses - Whether cost for the burial of deceased in 2 chamber tomb unreasonable - Whether sum should be deducted from the award made for funeral expenses - Personal expenses - Whether learned master erred by failing to make a deduction for expenses from deceased's income - Whether learned master erred by failing to make a deduction for expenses from

deceased's revenue - General damages - Loss of earnings - Whether learned master erred by failing to consider the deceased's net income rather than gross income - Multiplier - Whether the learned master erred by considering a multiplier of 3.5 - Whether the learned master erred in his assessment of damages - Whether the award of damages ought to be reduced - Whether sum awarded as prescribed costs ought to be reduced in accordance with the reduced award of damages

Type of Order:

Directions

Result / Order:

IT IS HEREBY ORDERED THAT:

1. Counsel for the appellants and the respondent shall provide the Court with further submissions on their respective calculations by no later than 4:00 pm on Friday 9th December 2022.
2. Judgment is reserved.

Reason:

After hearing counsel for both the appellants and the respondent, the Court found that further submissions as to the calculations would be necessary. Consequently, the Court gave directions for both parties to submit further submissions and the judgment was reserved in the matter.

Case Name:

**Guy Eardley Joseph
v
McDowall Broadcasting Corporation (MBC)
Limited**

**[SLUHCVP2022/0008]
(SAINT LUCIA)**

Date:

Wednesday 7th December 2022

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellant: Ms. Candace Fletcher and Mr. Mark Maragh

Respondent: Mr. Horace Fraser holding papers for Mr. Thaddeus Antoine and Mr. Kenroy Justin

Issues:

Interlocutory appeal - Service of claim form - Whether the learned master erroneously held that the service of the claim form and supporting documents on the receptionist of the respondent at its place of business, in the face of the respondent having acknowledged service and filed a defence on the merits, prior to making its application to challenging the court's jurisdiction on the basis of prescription or alternatively disputing service, could not constitute proper service, and as such, was not an appropriate basis for the exercise of the court's discretion to correct procedural irregularities pursuant to rule 26.9 of the Civil Procedure Rules 2000 - Whether the learned master erred and misdirected himself when he considered and applied the principle in the decision of Barton v Wright Hassall [2018] 3 All ER, to the instant matter - Whether the learned master erred in law and misdirected himself when he considered section 23 of the Interpretation Act on the issue of which company representative may be served, since the said provision is relevant only where the applicable Act is silent on the manner of service

Type of Order

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

1] Cheryl Bertrand

**[2] Shakira Francis
by her next friend, Kara Maria Francois**

**v
The Attorney General**

**[SLUHCVAP2021/0014]
(SAINT LUCIA)**

Date: Wednesday 7th December 2022

**Coram: The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mde. Esco Henry, Justice of Appeal [Ag.]
The Hon. Mr. Gerhard Wallbank, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Horace Fraser

**Respondent: Mr. Rene Williams, Ms. Karen Bernard and Mr.
Seryozha Cenac**

Issues: Civil appeal - Constitutional law - Article 579 of the Civil Code - Whether the trial judge erred in failing to exercise her discretion to allow the appellants to amend their claims to read that their constitutional right to property was breached and that they suffered discrimination on the ground of sex because of their fathers' status as married men - Whether the respondent would be prejudiced by an amendment to the claim - Whether the exercise of discretion by the judge was outside the ambit within which reasonable disagreement is possible warranting appellate interference - Whether Article 579 of the Civil Code is unconstitutional - Whether the judge erred in failing to apply her mind to the appellants' case that they suffer sufficient direct loss as a result of their fathers' status as married men and that Article 579 is in breach of their fathers' freedom of expression which resulted in them suffering direct loss in relation to their inability to inherit their fathers' estate - Distinction between definition of "single man" and

“single woman” under the Civil Code - Whether the judge erred in law by failing to recognize that the law protects one’s interest in property which is in the character of a chose in action when she ruled that the appellants failed to prove ownership or interest in any property - Whether an expectation to inherit is a chose in action - Whether the judge erred in law when she failed to have regard to the directive principles contained in section 1 of the Constitution in construing section 13 of the Constitution in order to give effect to the declarations sought by the appellant - Whether the judge erred in law by ruling that Section 13(4) of the Constitution does not shift the burden on the Crown to prove that a restriction or prohibition imposed by law is reasonably justifiable in a democratic society

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Sugar Beach Management Limited

V

[1] Jamie and Susannah Ltd

[2] Priestley Designs Ltd

(suing on behalf of themselves and other owners for the time being of villas at the touristic development known as the Sugar Beach Resort at Val des Pitons, Soufriere in Saint Lucia)

**[SLUHCMAP2022/0005]
(SAINT LUCIA)**

Date:

Wednesday 7th December 2022

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

Appearances:

Appellant: Mr. Peter Foster, KC with him Ms. Renee St. Rose,
Ms. Marie-Ange Symmonds and Ms. Shari-Ann Walker

Respondent: Mr. Garth Patterson, KC with him Mr. Mark Maragh
and Ms. Taylor Laurayne

Issues: Interlocutory appeal – Admissibility of evidence – Sections 44 and 66 of the Evidence Act - Whether the learned judge erred in law and/or misdirected herself as to the law when she found that certain paragraphs of the witness statement of Mike Power were irrelevant to the issues to be determined – Whether the learned judge erred in fact and law and/or misdirected herself as to the facts and law when she made findings that certain individuals were agents of the appellant – Whether the learned judge erred in law when she determined that Document No.5 was admissible and failed to consider the authenticity and reliability of the undated document – Whether the learned judge erred in law when she failed to consider or determine all of the appellant's objections, particularly as it related to hearsay evidence of the respondents' witnesses - Whether court should import commercial logic/efficacy into interpretation of contract

Type of Order: N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved until Friday 9th December 2022.

Case Name: Miguel Baptiste Aneville aka Miguel Onerville

v

The Honourable Attorney General

**[SLUHCVAP2020/0013]
(SAINT LUCIA)**

Date: Thursday 8th December 2022

Coram: The Hon. Mr. Trevor Ward Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mde. Esco Henry, Justice of Appeal [Ag.]

Appearances:

Appellant/Respondent: Mrs. Wauneen Louis-Harris

Respondent/Applicant: Ms. Kozel Creese and Mrs. Rochelle John-Charles

Issues: Oral application for an adjournment - Application to strike out notice of appeal - Part 62 of the Civil Procedure Rules 2000 - Whether the appellant has failed to comply with rules 62.11 and 62.12 of the Civil Procedure Rules 2000 and to take any steps to prosecute his appeal - Whether the appellant has provided any reasons for the delay in prosecuting the appeal - Whether there is any sufficient merit in the appellant's appeal

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:
1. The oral application for an adjournment is refused.
2. The notice of appeal filed on 12th June 2020 is struck out.

3. No order as to costs.

Reason:

The Court considered the indications of counsel for the appellant/respondent that she was very recently approached to represent the appellant/respondent, has not been properly placed on record as acting for him and therefore has not had sight of the documents filed in relation to the application to strike out the notice of appeal. Counsel requested that the matter be adjourned to allow her time to apprise herself of the contents of the filed documents and to respond to the application to strike. The Court further considered the indication of counsel for the respondent/applicant that despite her readiness to proceed with the application, she is understanding of the circumstances and would not oppose the request for an adjournment of the matter. The Court further considered the history of the matter, specifically that even when the appellant/respondent was formerly represented by counsel there was no engagement by him to progress prosecution of his appeal despite the respondent/applicant making attempts by correspondence to ascertain the progress of the appeal. In the circumstances, the Court was of the view that there was no justifiable reason to adjourn the matter, given the amount of time that had elapsed and the appellant/respondent being well aware that his counsel had withdrawn and that his hearing was scheduled for today.

The Court therefore proceeded to consider the application to strike out the notice of appeal filed on 12th June 2020. The grounds of the application were that the appellant/respondent had failed to comply with rules 62.11 and 62.12 of the Civil Procedure Rules 2000 (“the CPR”), which required him to file skeleton arguments within 52 days of receipt of the notice of availability of the transcript of proceedings and to file the record of appeal within 42 days of receipt of said notice. That notice had been served on the appellant/respondent on 20th August 2020. The application to strike is supported by an affidavit sworn by the Attorney General and it refers to the date on which the notice was served and that to date the appellant/respondent has filed neither his

skeleton arguments nor the record of appeal. No explanation had been forthcoming from the appellant/respondent for his failure to do so despite correspondences from the respondent/applicant dating as far back as 2021. Furthermore, at the hearing of this application the appellant/respondent advised the Court that he appeared before this Court on 20th June 2022, explained his circumstances and was granted an opportunity to retain counsel to prosecute the appeal on his behalf. To date there had been no compliance with the requirements of the rules. Given the period that had elapsed it could not be doubted that there had been an inordinate delay, no proper or reasonable explanation for the delay and no application for an extension of time.

In approaching an application to strike out for breach of the aforementioned rules, it is useful to have in mind firstly the overriding objective of the rules, which is to deal with cases justly. The Court's power to strike out a notice of appeal for breach of these rules is not in doubt. It derives from CPR 62. 20 and 62.14 of the CPR, which are to the effect that the Court possesses all of the case management powers in CPR 26.1 which includes the power to strike out a statement of case. It has been held that the definition of statement of case under CPR 2.4 can be assimilated to the contents of a notice of appeal. In circumstances where there has been an abject failure to comply with the rules without any satisfactory explanation the Court is of the view that the above-mentioned factors justify the Court acceding to the application that the notice of appeal be struck out.

Case Name:

**[1] Henry Liu
[2] Feng Huang
[3] Sunflower Limited**

**v
RBTT Bank Caribbean Ltd**

**[SLUHCMAP2022/0002]
(SAINT LUCIA)**

Date: Thursday 8th December 2022

Coram: The Hon. Mr. Trevor Ward Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mde. Esco Henry, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Eghan Modeste

Respondent: Mrs. Shervon Pierre

Issues: Interlocutory appeal - Refusal to set aside grant of registration of judgment order - Part 72 of the Civil Procedure Rules 2000 (“CPR”) - Failure to comply with CPR 72 - Appellate approach to findings of fact - Whether judge erred in finding that registration application met requirements for granting an order for registration of the judgment - Enforcement of Foreign Judgments Rules - Whether judge erred in finding that all requirements for granting the order were met under the Enforcement of Judgments Rules and CPR 72.2 (b) and (c) - Whether respondent’s failure to state the the trade or business of judgment debtors in registration application fatal - Calculation of interest – whether failure specify the amount of the accrued interest in accordance with CPR 72.2(b) fatal -Whether judge erred in finding that judgment was not to be set aside despite making finding that registration application contained errors and omissions - Case management powers - Rule 26.1 (6) of the CPR - - Whether judge erred in finding that CPR 26.1(6) permitted her to put right and dispense with the requirement to comply with CPR 72.2(b) and (c) - Whether judge erred in finding that judgment creditor is entitled to respond to the application to set aside by providing further affidavit evidence - Value of property - Whether judge erred in finding that the judgment creditor provided satisfactory evidence of the value of the property in Saint Vincent through an offer letter - Prejudice - Whether judge erred in finding that the judgment debtors failed to indicate any prejudice they will suffer if the order is not set aside

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against the judgment and order of Albertini J dated 2nd March 2022 is dismissed.**
- 2. The costs of this appeal shall be costs as prescribed pursuant to rule 65.13 of the Civil Procedure Rules 2000, being two-thirds of the costs ordered in the court below.**

Reason:

This is an appeal filed by the appellants on June 21st 2022 against the order of the learned judge delivered on 2nd March 2022, in which she refused to set aside a Registration Order dated 4th August 2020, made by the High Court in Saint Lucia pursuant to Part 72 of the Civil Procedure Rules 2000 (“CPR”), registering a judgment of the High Court in Saint Vincent and the Grenadines that was delivered on 23rd January 2020. The appellants are dissatisfied with the learned judge’s decision and have appealed against it.

The application to register the Saint Vincent judgment was filed by the respondent on 30th July 2020 and was made pursuant to section 9(3) of the Supreme Court Act, Cap 2.01 of the Revised Laws of Saint Lucia; Part 72 of the CPR; Article 1923 of the Civil Code Cap 4.01 of the Revised laws of Saint Lucia (the “Civil Code”); and section 83 of the Land Registration Act Cap 5.01 of the Revised laws of Saint Lucia (the “Registration Application”). On 4th November 2021, the appellants filed an application to set aside the Registration Order.

Before the Court, the appellants’ essentially complained that CPR 72.2 (b) and (c) were not complied with or complied with fully, respectively, and this invalidated the Registration Order, as a consequence of which it should have been set aside. The appellants advanced 10 grounds of appeal which may be compressed neatly into 4:

1. The learned judge erred by finding that the Registration Order was not improper or irregular; and/or that as a matter of law the Registration Application met the requirements under CPR Part 72 and the Enforcement of Foreign Judgments ('EFJ') Rules, for granting an order for registration of the judgment. They contended specifically that the applicant's failure to:

(a) specify the amount of the accrued interest in accordance with CPR 72.2(b) and instead stating only the rate of interest; and

(b) state the business of the judgment creditor and the usual place of abode or business or last known place of abode of the judgment debtor – in accordance with CPR 72.2(c);

constituted material irregularities which invalidated the Registration Application and rendered the Registration Order liable to be set aside. On this ground, they contended further that all such evidence should have been made available to the court when the *ex parte* Registration Order was made and not subsequently.

2. The learned judge erred in finding that she was empowered by Part 26.1(6) of the Civil Procedure Rules to put right and dispense with the respondent's requirement to comply with Parts 72.2(b) and (c) of the Civil Procedure Rules, the appellants having not suffered any prejudice.

3. The learned judge erred in finding that the judgment debtors failed to indicate any prejudice they will suffer if the Registration Order is not set aside.

4. The learned judge erred in finding that the judgment creditor provided satisfactory evidence of the value of the property in Saint Vincent through an offer letter. The learned judge erred in finding that: "...if the judgment debtors are suggesting that the value of the property is sufficient it is their responsibility to present this evidence to the Court".

The appellants conceded before the Court that there was no requirement for a valuation to be provided in support of the registration application. In light of the concession that a valuation of the property was not a necessary, consideration for purposes of the Registration Application, the Court was of the

considered view that this issue was moot and would there dismiss grounds of appeal (7 & 8).

The Court had the benefit of written and oral submissions from learned counsel for the appellants and for the respondent. The Court took into account that at no time, whether in the proceedings in Saint Vincent or proceedings in Saint Lucia or before this Court, did the appellants deny being indebted to the respondent in the amount of the Saint Vincent judgment and the details of the principal sum and applicable rates of interest. As to those related grounds of appeal, the Court was of the view that while the amount of interest was not calculated and expressly stated in the Registration Application, it was capable of being ascertained from the evidence provided and the failure to supply the exact amount was not necessary or fatal in the circumstances.

In relation to CPR 72.2(c) which stipulates that the trade or business of the judgment debtor and judgment creditor be supplied, the Court agrees with the learned judge that the absence of such details constituted merely omissions and did not invalidate the application.

The Court was satisfied that the learned judge was entitled to find on the materials before her that the requirements of the EFJ Rules and CPR 72 were substantially complied with and any departure from those provisions were not fatal to the application, and in the circumstances this matter did not provide a basis on which to set aside the Registration Order.

As to the issue of prejudice to the appellants, the Court formed the opinion that the judge was correct to find that the appellants had not established that they had suffered any real prejudice by reason of the refusal to set aside the Registration Order and it was accordingly just and convenient to refuse to set it aside. In the round, the Court was satisfied that there is no discernible error of principle, error of law or of fact in the learned judge's decision to not set aside the Registration Order.

Case Name:

Sugar Beach Management Limited

v

[1] Jaime Susannah Limited

[2]

[SLUHCMAP2022/0005]

(SAINT LUCIA)

Date:

Friday 9th December 2022

**Coram for
delivery:**

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerhard Wallbank, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

**Mr. Peter Foster, KC with him Ms. Renee St. Rose, Ms.
Marie-Ange Symmonds and Ms. Shari-Ann Walker**

Respondent:

**Mr. Garth Patterson, KC with him Mr. Mark Maragh
and
Ms. Taylor Laurayne**

Issues:

**Interlocutory appeal – Admissibility of evidence –
Sections 44 and 66 of the Evidence Act - Whether the
learned judge erred in law and/or misdirected herself
as to the law when she found that certain paragraphs
of the witness statement of Mike Power were
irrelevant to the issues to be determined – Whether
the learned judge erred in fact and law and/or
misdirected herself as to the
facts and law when she made findings that certain
individuals were agents of the appellant – Whether
the learned judge erred in law when she determined
that Document No.5 was admissible and failed to
consider the authenticity and reliability of the
undated document – Whether the learned judge erred
in law when she failed to consider or determine all of
the appellant’s objections particularly as it related to
hearsay evidence of the respondents’ witnesses -
Whether court should import commercial
logic/efficacy into interpretation of contract**

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed in part.
2. Paragraph 1 of the Order is set aside and the challenged statements in paragraphs 8, 25, 28, 35, 36, 37, 38, 39, 40, 43 and 44 of the witness statement of Mike Power are admitted provisionally.
3. Paragraph 3 of the Order is varied to say that the document exhibited as MP 9 is admitted provisionally and the learned judge's decision to refuse the admission of the document exhibited as MP 11 is affirmed.
4. Paragraph 5 is affirmed and the decision of the learned judge to admit the document referred to as No. 5 or the comparison table is affirmed.
5. Save as varied or amended by this order the terms of the Order of the learned judge dated 1st July 2022 are affirmed.
6. The parties have enjoyed varying degrees of success on the appeal and the Court in its discretion orders that each party will bear its own costs of the appeal.

Reason:

The Court considered the grounds of appeal, bearing in mind the following principles: This is an appeal against the exercise of discretion by the learned judge in managing the case in the lower court. The Court is generally reluctant to interfere with the exercise of a judge's discretion unless the judge erred in principle either by failing to take into account, or giving too little or too much weight, to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and as a result of the error or the degree of the error in principle, the judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be plainly wrong.

1. The objections to the admissibility of the disputed evidence were taken during the week before the scheduled trial date. The objections could have been dealt with by the trial judge during or at the end of the trial.

2. The decision by the learned judge and now by this Court are made on the basis of untested witness statements without the benefit of a trial.

3. There are provisions in the Evidence Act (“the Act”) dealing with the admission of evidence as exceptions to the hearsay rule (part 4 division 1 of the Act); the admission of opinion evidence by persons who are not experts in their respective field (section 65 of the Act) and by persons with specialised knowledge (section 66 of the Act); and for the admission of potentially irrelevant evidence provisionally (section 46 of the Act).

4. The courts have a general power or discretion to admit evidence *de bene esse*, that is on a provisional basis, without determining its admissibility. This is usually done either to ensure that relevant evidence is not lost or overlooked, or for the purpose of first assessing its relevance, value or admissibility.

The Court was satisfied that: 1. The central issue in the case is the interpretation of the various management agreements in standard form between the appellant and the owners of villas in the Sugar Beach Resort known as Management and Rental Pool Agreements (“MARPA’s”), and whether the MARPA’s require the appellant or the owners of the villas to pay for capital repairs and capital maintenance of the villas. The MARPA’s are said to be silent on this obligation and the task of the court at the trial will be to determine which of the parties, the appellant or the owners, are responsible for paying for capital repairs and capital maintenance of the villas. This will involve reviewing the terms of the MARPA’s and, if necessary, the surrounding circumstances, to determine the meaning of the MARPA’s and the intention of the parties regarding the responsibility for capital repairs and capital maintenance; 2. The judge’s decision to rule out paragraphs 8, 25, 28, 35, 36, 37, 38, 39, 40, 43 and 44 of the witness statement of Mike Power on the eve of trial as being irrelevant to the issues to be determined is, on the facts of this case where the evidence has not been tested, outside the generous ambit of reasonable disagreement and the statements should be admitted provisionally, thereby giving the judge conducting the trial the final say as to the admissibility of the statements. These

statements, or at least some of them, are potentially relevant to the defence of the appellant; 3. The issue of the insurance of the villas in the Resort is an issue in the case and the insurance policy at exhibit MP 9, though dealing with reinstatement and not repairs, should also be admitted provisionally. However, the court does not find that there is any basis to interfere with the judge's decision that exhibit MP 11 (the financial statements of Milly Limited) is irrelevant and should not be admitted; 4. The finding by the judge in paragraphs 6, 8, 10 and 13 of the Order that persons to whom statements were made by non-witnesses are agents of the appellants is premature and should be reserved for the trial. The disputed statements in paragraphs 6, 8, 10 and 13 appear to have been admitted unconditionally by the judge but should be admitted provisionally leaving the issue of final admission to the judge trying the case; There was no basis for the Court to interfere with the judge's decision to admit the document referred to as "No. 5" or as "the comparison table" that is exhibit BEP 4 to the witness statement of Barbara Perfect filed on 26th November 2021. The contents of the document appear to be relevant to the issues in the trial and there is no evidence challenging the provenance of the document.

Dufour and others v Helenair Corporation and others (1996) 52 WIR 188; The Evidence Act, Cap. 4.15 of the Laws of Saint Lucia; Shagang Shipping Company Ltd v HNA Group Company Ltd [2020] UKSC 34; Aldford House Freehold Ltd v Grosvenor (Mayfair) Estate [2018] EWHC 3430 (Ch); [2019] 1 WLR 1489, R v Mirza [2004] UKHL 2; [2004] 1 AC 1118.

APPLICATIONS AND APPEALS

Case Name:

**Warren Cassell
v
The King**

[MNIHCRAP2022/0003]

(MONSTERRAT)

Date: Friday 9th December 2022

Coram: The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]
The Hon. Mr. Gerhard Wallbank, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. David Dorsett

Respondent: Mr. Richard Jory KC

Issues: Application for bail pending appeal- Whether there are exceptional circumstances which warrant the granting of bail- Whether prima facie, appeal is likely succeed- Offence of concealing the proceedings of criminal conduct contrary to section 33(1)(a) of the Proceeds of Crime Act 1999- Whether appellant concealed or disguised property as per section 33 (1)(a)- Omission of section 33 in indictment- Whether trial proceedings were a nullity having been conducted without due publicity- Whether trial proceedings were a nullity due to the trial proceeding on an indictment that was duplicitous- Whether judge erred in rejecting the no case submission made by the appellant- Whether conviction unsafe and unsatisfactory on account of errors in the summing up by the learned judge- Section 7 of the Constitution of Montserrat

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The applicant is granted leave to file an amended notice of appeal and notice of application for bail to include an additional ground to address the issue raised in paragraphs 32 and 33 of his skeleton arguments filed on 6th July 2022, The amended notice of appeal and notice of application for bail to be lodged

on the E-Litigation portal by noon on 10th December 2022.

2. The respondent is granted leave to file written submissions with authorities to the additional grounds in the amended notice of application by 13th December 2022 by no later 4pm.
3. Thereafter the Court will further consider the application on paper and deliver its decision.

Case Name:

**In the matter of the Attorney General's
Reference (Constitutional Questions) Act
Cap. 17.18 of the Revised Laws of Saint
Lucia 2006**

**[SLUHCMAP2021/0015]
(SAINT LUCIA)**

Date:

Friday 9th December 2022

Coram:

**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]
The Hon. Mr. Gerhard Wallbank, Justice of Appeal [Ag.]**

Appearances:

**The Attorney General:
1st interested party:**

**Mr. Seryozha Cenac and Mrs. Rochelle John-Charles
Mr. Fyard Hosein SC, Ms. Sasha Bridgemohansingh
and Mr. Geoffrey DuBoulay**

**2nd and 3rd interested
parties:**

Mr. Deale Lee

Issues:

**Referral of important questions of law concerning the
interpretation of legislation enacted by Parliament -
Attorney General's Reference (Constitutional
Questions) Act - Jurisdiction of the Court of Appeal -
Whether the Court of Appeal has original jurisdiction**

to determine the questions posed - Whether the subject matter of the notice of reference is caught by any of the 3 subheads of section 3 of the Attorney General's Reference (Constitutional Questions) Act so that it can be established that the Court's jurisdiction is properly engaged - If yes, having regard to the judgment in Claim No. SLUHCV2020/0030, whether the notice of reference may be a collateral attack on the judgment rendered in Claim No. SLUHCV2020/0030 - If not, whether in order to properly resolve the issues raised on the notice of reference the Court would be in need of expert evidence - Whether the Court of Appeal can decline jurisdiction to determine the questions

Type of Order

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

An order will be produced as to the Court's disposition on the preliminary matters.

Reason:

After hearing counsel for the parties on the preliminary issues raised by the Court, the Court directed that an order would be produced giving the Court's disposition on the issues.