

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
VIDEOCONFERENCE

MONTSERRAT

MONDAY 23RD JANUARY 2023 TO THURSDAY 26TH JANUARY 2023

JUDGMENT

Case Name:

**Sergey Taruta
v
JSC VTB Bank**

Heard together with:

**Arrowcrest Ltd.
v
JSC VTB Bank et al**

**[BVIHCMAP2021/0043]
[BVIHCMAP2022/0034]
(TERRITORY OF THE VIRGIN ISLANDS)**

Date:

Wednesday 25th January 2023

**Coram for
delivery:**

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

Appearances:

Appellants:	Mr. Adrian Francis and Mr. Scott Tollis for Sergey Taruta Mr. Richard Brown for Arrowcrest Ltd.
Respondent:	No appearance

Issues:

**Commercial appeal – Appointment of receivers –
Duomatic control – Exercise of Duomatic control over**

third parties – Doctrine of separate legal personality - Whether the learned judge erred in appointing receivers over the shares in third party company – Discharge of receivership order - Regulation 11(1) of the Russia (Sanctions) (EU Exit) Regulations 2019 - Section 60(2) of the Sanctions and Anti-Money Laundering Act 2018 - Whether the learned judge erred in finding that the receivership order could not be discharged as a result of the sanctions imposed on JSC VTB Bank – Part 7 of the Civil Procedure Rules 2000 - Service outside the jurisdiction - Whether the learned judge erred in adding Arrowcrest as a party to the proceedings and dispensing with service

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeals are allowed.
2. VTB Bank's counter-notice of appeal is dismissed.
3. The receivership order made by the learned judge on 29th November 2021 is set aside in its entirety.
4. The respective appellants shall have their costs on the appeal and in the court below, such costs to be assessed by a judge of the Commercial Court unless agreed within 21 days.

Reason:

1. While Duomatic principles dictate that a sole shareholder of a company may have the 'power' to direct the way the shares in that company are voted, this does not bestow on that shareholder a right to deal with or dispose of the company's assets for any purpose other than the furtherance of the objectives of the company. These principles do not give rise to a power tantamount to ownership over a company's assets. The doctrine of separate legal personality makes it clear that ownership of a company's assets rests with the company itself and that a company is an entity separate and distinct from its shareholders and directors. This position remains the same even where a company is, for all intents and purposes, a one-man company.

Re Duomatic Ltd [1969] 2 Ch 365 applied; Tasarruf Mevduati Sigorta Fonu v Merrill Lynch Bank and Trust Co (Cayman) Ltd and others [2012] 1 WLR 1721 considered; John Paul Dejoria et al v Gigi Osco-Bingeman et al AXAHCVAP2005/0004 (delivered 24th April 2006, unreported) considered; Salomon v A. Salomon & Co Ltd [1897] A.C. 22; Prest v Petrodel Resources Ltd and others [2013] UKSC 34 applied; Tolley's Company Law Service Division F at F6046 applied; Satyam Enterprises Ltd v Burton and another [2021] EWCA Civ 287 applied; JSC VTB Bank (a company incorporated in Russia) v Pavel Valerjevich Skurikhin and others [2019] EWHC 1407 (Comm) applied.

2. In this case, the learned judge in finding that Mr. Taruta was in a position, as the beneficial owner of Arrowcrest which in turn owned Enard, to exercise Duomatic control amounted to a power in respect of which receivers could be appointed over the share capital in Enard, ignored the doctrine of separate legal personality and in effect extended the scope of the Duomatic principles, giving a beneficial owner of a company the power to deal with the company's assets. To allow the creation of such a power at law would cause the concept of ownership of property by a company in the context of its separate legal personality as settled in Salomon to fall away. The learned judge fell into error by appointing receivers over the shares in Enard. It was a clear departure from the principles of separate legal personality. Furthermore, the Duomatic principles were not relevant in this case. It was simply not open to the learned judge to rely on them or seek to fashion a new legal concept or to elevate them to create a power that would allow the enforcement of a judgment against assets owned by a third-party company. The learned judge therefore had no jurisdiction to make the receivership order.

Cruz City 1 Mauritius Holdings v Unitech Limited et al [2014] EWHC 3131 (Comm) applied;

Lakatamia Shipping Co Ltd v Su and others [2015] 1 WLR 291 applied.

3. Regulation 11(1) of the Sanctions Regulations prohibits VTB Bank, as a sanctioned entity, from dealing with any of its ‘funds’ or ‘economic resources’. ‘Economic resources’ is defined by section 60(2) of the Sanctions and AntiMoney Laundering Act 2018 and the receivership order falls within this definition as it is an asset, but only in so far as it would aid VTB Bank in obtaining funds. Although the receivership order was made before the sanctions were imposed, the receivers had not yet begun to perform their duties. The receivership has been stayed since the imposition of the sanctions and no action will be taken in the immediate future to further the purpose of the receivership. Therefore, a discharge of that order would not constitute the use of it to obtain any as VTB Bank’s position will remain exactly the same. Further, it is trite that legislation does not oust the jurisdiction of the court to exercise its normal functions unless that ouster is explicitly stated in that piece of legislation. There is nothing in the sanctions legislation which ousts the Court’s jurisdiction to set aside an order unlawfully made or a court for other good reason setting aside its own order.

Section 60(2) of the UK Sanctions and Anti-Money Laundering Act 2018 applied; Section 11(1) of the Russia (Sanctions) (EU Exit) Regulations 2019 applied; Prest v Petrodel Resources Ltd and others [2013] UKSC 34 applied.

- 4. The combined effect of CPR 7.2 and 7.3 is to require a party to make an application to the court seeking permission to serve a claim form out of the jurisdiction in the circumstances listed in 7.3. The making of such an application presupposes the existence of a claim or a cause of action against the person whom the applicant wishes to serve. As there was no substantive claim or cause of action against Arrowcrest, nor was there an application before the learned**

judge to serve Arrowcrest with the proceedings outside of the jurisdiction, he had no jurisdiction to add it as a party to the proceedings and there was no gateway in the CPR through which it could have been served in Cyprus. Arrowcrest's filing of an acknowledgement of service was simply to allow it to apply to discharge the receivership order purported to be made by the learned judge over its assets. This was the only way for Arrowcrest to seek any type of relief. The order itself recognised Arrowcrest's right to apply to vary or discharge the order, not having been heard on the making thereof. Accordingly, the learned judge had no jurisdiction to add Arrowcrest as a party to the proceedings or make an order in relation to its assets. Rules 7.2 and 7.3 of the Civil Procedure Rules 2000 applied.

5. The learned judge's dispensation with service on Arrowcrest was contrary to the position that Arrowcrest is its own legal person, that would need to be served in order for it to be joined to proceedings. Additionally, dispensation with service of a claim form on a potential party to proceedings is a power given to the court under CPR 7.8B. However, this power is only to be exercised in exceptional circumstances and upon application to the court. There having been no application for dispensation with service of the proceedings on Arrowcrest, the learned judge erred in so doing.

Linsen International Limited & others v Humpuss Transport Kima & ors [2011] EWCA Civ 1042 applied; Alexander Katunin and other v JSC VTB Bank BVIHCMAP2015/0004 and BVIHCVAP2015/0007 (delivered 20th June 2016, unreported) applied.

APPLICATIONS/APPEALS

Case Name:

Bank of Montserrat

v

Owen Rooney

**(MNIHCVAP2018/0007)
(MONTSEERRAT)**

Date: Monday 23rd January 2023

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

Appearances:

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

Issues: Motion to strike out notice of appeal - Abuse of process- Whether appeal filed is an abuse of process
- Costs- Migrate Appeal to E-Litigation Portal

Type of Order Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application by motion to strike out the appeal is dismissed.
2. The respondent/applicant Mr. Rooney shall pay the costs of the application fixed in the sum of EC \$500.00 to be paid on or before 15th February 2023.
3. The Court records Mr. Rooney's consent to the application to migrate this appeal to the Electronic Litigation Portal.

Reason: The court was satisfied that there was no basis to strike out the notice of appeal. The general rule is that costs should follow the event and there was no reason to deviate from that principle, therefore the

respondent/applicant should pay costs to the appellant in the unsuccessful application. Mr. Owen Rooney indicated his consent to the application by the appellant to migrate the appeal to the Electronic Litigation Portal.

Case Name:

**Keston Riley
v
Honourable Attorney General
(MNIHCVAP2021/0011)
(MONTSERRAT)**

Date:

Monday 23rd January, 2023

Coram:

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

Appearances:

Applicant: Ms. Sherasmus Evelyn

Respondent: Mr. Hugh Marshall

Issues:

Application to strike out notice of appeal - Whether the notice of appeal was filed in time - Whether the judgment in the court below took effect from the date of delivery of the reasons for decision

Type of Order:

Adjournment

Result / Order:

IT IS HEREBY ORDERED THAT:

The matter is adjourned to Thursday 26th January 2023.

Reason:

The Court noted that the Notice of Appeal had been filed out of time and an application for an extension of time had not been made. Accordingly, the Court adjourned the matter to allow counsel for the

appellant/respondent to make the necessary application.

Case Name:

David McKeand

v

[1] H. E. The Governor of Montserrat

[2] The Attorney General of Montserrat

[3] The Chair, Planning and Development
Authority

[MNIHCVAP2022/0005]
(MONTSEERRAT)

Date:

Tuesday 24th January 2023

Coram:

The Hon. Mr. Trevor Ward, Justice of Appeal

The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

The Hon. Mde. Esco Henry, Justice of Appeal [Ag.]

Appearances:

Applicant:

In person

Respondent:

No appearance

Issues:

Application for leave to appeal

Type of Order:

Adjournment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. Upon the court noting that there is no affidavit in support of the application in breach of rule 11.9, Civil Procedure Rules and rule 29(2) of the Court of Appeal Rules 1968, the applicant shall file and serve an affidavit in support of the application on or before 9th February 2023.
2. The hearing of the application is adjourned to the next court of appeal sitting for the Territory of Montserrat during the week commencing 18th September 2023.

Reason: The Court noted that the applicant had not filed an affidavit in support of the notice of application in breach of CPR 11.9 and Rule 29(2) of the Court of Appeal Rules 1968. Accordingly, the Court adjourned the hearing of the application to allow the applicant to file an affidavit in support of the application for leave to appeal.

Case Name: Oris Sullivan
v
Dagrie Wilson
(MNIHCVAP2021/0009)
(MONTSERRAT)

Date: Tuesday 24th January, 2023

Coram: The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mde. Esco Henry, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Sylvester Carrott
Respondent: Mr. Jean Kelsick

Issues: Civil Appeal - Claim for monies paid - Findings of fact
- Whether the judge erred in holding that the monies advanced by the Respondent to the Appellant constituted a loan which was repayable by the Appellant even though parties were in a relationship -
Whether the Judge erred in law in holding that the monies were repayable to the Respondent because they were expressed to be paid to a third party -
Whether there was agreement to repay money -
Restitution - Whether there was an intention to create legal relations - Whether the judge should have considered the contribution of the appellant to the purchase of the Toyota Altezza motor vehicle as a set off against the amount of monies claimed by the respondent - Interests of the respective parties in the Toyota Altezza motor vehicle, Registration number

R1620 – Unjust enrichment - Whether the judge erred in considering the alternative remedy of unjust enrichment - Interest - Whether the judge erred in holding that the respondent was entitled to contractual interest or at all

Type of Order:

Directions

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The parties shall file and serve written submissions along with authorities on the appropriate order which this court should make with respect to the respective parties' interests in the Toyota Altezza motor vehicle, Registration number R1620, on or before 16th February 2023.**
- 2. Judgment is reserved.**

Reason:

After hearing counsel for both the appellant and the respondent, the Court found that further submissions in relation to the respective parties' interests in the Toyota Altezza motor vehicle, Registration number R1620, 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:

The Attorney General

v

Simon Riley

(MNIHCVAP2019/0008)

(MONTSERRAT)

Date:

Wednesday 25th January, 2023

Coram:

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

Appearances:

Applicant: Mr. Sylvester Carrott

Respondent: Mrs. Sheree Jemmotte-Rodney

Issues:

Motion for leave to appeal to His Majesty in Council - Appeal as of right to Her Majesty in Council - Section 3(1)(a) of the Montserrat (Appeals to Privy Council) Order 1967 - Whether the Court erred in finding that the appellant was not entitled to claim an underpayment of his salary - Whether the Court erred in holding it can disregard findings of fact by the trial judge - Whether the Court erred in dismissing the appellant's counter notice of appeal for overtime pay

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. Leave to Appeal to His Majesty in Council is granted to the Respondent pursuant to section 3(1)(a) of the Montserrat (Appeals to the Privy Council) Order 1967 against the Judgment of the Court of Appeal issued herein on 17th October 2022 upon condition that:

- a. The Applicants do within ninety (90) days of the date of the hearing of this application for leave to appeal enter into good and sufficient security in the sum of £500.00 for the due prosecution of the appeal and the payment of all such costs as may be payable by the respondent in the event of this appeal being dismissed, such security to consist of the deposit of the said amount in the Court.**

- b. Within ninety (90) days of the date hereof the Applicant do take the necessary steps for the purpose of procuring the preparation of the preparation of the Record the settling of such Record with the Appellant and the certification of the Record within ninety (90) days of the hearing of this application for leave to appeal.
 - c. The Record shall be prepared in accordance with Rules 18-20 of the Judicial Committee (Appellant Jurisdiction) Rules Order 2009 and its Practice Direction 4.2.1 to 4.3.1 and should be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay where final permission to the appeal has been granted.
3. The Applicant shall make an application to this Court for final permission to appeal to His Majesty in Council without delay supported by the Certificate of the Registrar that the Security for costs herein ordered has been given within the time prescribed by this Order to the satisfaction of the Registrar.
4. The costs of and incidental to this application shall be the costs in the Appeal to His Majesty in Council.

Reason:

The Court noted that there was no objection to the application by the respondent. The Court was satisfied that the judgment was a claim for various sums of money which exceed the sum of £300 sterling and was a final judgment and therefore satisfied the gateway for granting conditional leave to appeal to His Majesty in Council.

Case Name:

[1] Terence McPhoy
[2] Eloise McPhoy

v

**[1] Victoria Hilton
[2] Ministry of Communication & Works
[3] The Hon. Attorney General**

**[MNIHCVAP2020/0015]
(MONTSERRAT)**

Date: **Wednesday 25th January, 2023**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mde. Esco Henry, Justice of Appeal [Ag.]**

Appearances:

Appellants:	In person
Respondents:	No appearance for the 1st respondent
	Ms. Sheree Jemmotte-Rodney for the 2nd and 3rd respondents

Issues: **Appeal against costs order**

Type of Order: **Adjournment**

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

The matter is adjourned to Thursday 26th January 2023 for the purpose of allowing the appellants to produce to the court a sealed and filed copy of the order of the court granting leave to appeal against the costs order of the learned judge, given on 15th May 2020.

Reason: **The Court noted that it did not have a copy of the order granting the appellants leave to appeal the costs order made by Justice Iain Morley on 15th May 2020 and so could not proceed with the hearing of the appeal without having sight of that order.**

Case Name:

**[1] Office of the Deputy Governor
[2] Ministry of Agriculture**

V

Ashel Bramble

**(MNIHCVAP2021/0006)
(MONTERRAT)**

Date:

Wednesday 25th January, 2023

Coram:

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

Appearances:

Appellant: Ms. Renee Morgan

Respondent: Mr. Sylvester Carrott

Issues:

Civil Appeal – Medical leave - Errors of facts – Whether the judge incorrectly applied the doctrine of res ipsa loquitur - Whether the trial judge was plainly wrong- Whether the trial judge took into account irrelevant matters - Unjust enrichment - Restitution for monies overpaid - Whether the negligence of the payer should preclude recovery of monies paid – Whether an action should lie where money has been paid to another under a mistake of fact – Whether the provisions of the public service regulations extend to non-established workers

Type of Order:

N/A

Result / Order:

Judgment is reserved.

Reason:

N/A

Case Name:

David Brandt

V
The King

[MNIHCRAP2021/0004]
(MONTSEERRAT)

Date: Thursday 26th January 2023

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

Appearances:

Applicant: Dr. David Dorsett

Respondent: Ms. Anesta Weekes, KC

Issues: Application for extension time - Application to revoke order of single judge - Whether notice of appeal was properly filed

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:
1. The order made on 26th July 2022 is set aside in its entirety.
2. The Notice of Appeal filed on 21st July 2022 is duly filed.
3. The appeal shall proceed in accordance with the rules of court.

Reason: The Court noted that there was no application for leave to appeal, and the substantive notice of appeal filed on 21st July 2022 subsists and exists. The respondent was also in agreement that the notice of appeal was proper. Accordingly, there was no need for the single judge to give directions in relation to the 'application for leave to appeal' and therefore the order of the Single Judge made on 26th July 2022 was set aside.

Case Name:

**Catherine Tuitt
(The Lawful Attorney for Mary Skelton)**

v

**[1] Ann Thomas
[2] Justin Thomas**

**(MNIHCVAP2019/0015)
(MONTSEERRAT)**

Date:

Thursday 26th January, 2023

Coram:

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

Appearances:

Applicant: Ms. Korah Galloway

Respondents: Ms. Marcelle Watts

Issues:

**Application to amend grounds of appeal - Interlocutory
appeal - Whether leave to appeal was obtained before
the filing of the notice of appeal**

Type of Order:

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. There being no objection by the respondents,
the appellants are granted time to make
applications to put matters right in respect of
this matter, such time to be 30 days, that is by
no later than 23rd February 2023.**
- 2. Where the applications have not been made
within the time specified, the notice of appeal
shall be treated as a nullity and struck out
without further order of the court.**

Reason:

**The Court noted that the order being appealed was an
interlocutory order and leave to appeal was needed.**

Counsel for the applicant conceded that no leave had been sought or obtained and therefore requested time to put matters in order. There was no objection to this request by counsel for the respondents and therefore the Court granted the applicant time to put matters in order.

Case Name:

**Keston Riley
v
Honourable Attorney General
The Director of Public Prosecutions

(MNIHCVAP2021/0011)
(MONTSEERRAT)**

Date:

Thursday 26th January, 2023

Coram:

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

Appearances:

**Appellant/
Applicant**

Mr. Hugh Marshall

**Respondents
/Applicant:**

Ms. Sherasmus Evelyn

Issues:

Civil appeal - Application for an extension of time to appeal and to deem notice of appeal to be deemed properly filed - Application to strike out notice of appeal - Whether notice of appeal discloses reasonable grounds for bringing the appeal

Type of Order:

Oral Decision

Result / Order:

Extension of Time Application

IT IS HEREBY ORDERED THAT:

1. There being no objection by the respondents to the application to extend time, it is hereby ordered that the application for an extension of time is granted and that the Notice of Appeal filed on 29th November 2021 be deemed validly filed.

2. There shall be no order as to costs on this application.

Strike Out Application

IT IS HEREBY ORDERED THAT:

1. The application to strike out the notice of appeal is dismissed.

2. There is no order as to costs on this application.

Reason:

The Court first considered an application by the appellant/applicant for an extension of time within which to appeal and that the notice of appeal filed on 29th November 2021 be deemed properly filed. Upon noting that there was no objection to the application by counsel for the respondents/applicants, the Court was minded to grant the application.

The Court then heard an application by the respondents/applicants to strike out the notice of appeal. The Court determined that the evidential basis on which the applicant/respondent relied for striking out the notice of appeal was not supported by any material that was placed before the Court. Therefore, the application to strike out the appeal was dismissed.

Case Name:

[1] Terence McPhoy

[2] Eloise McPhoy

v

[1] Victoria Hilton

[2] Ministry of Communication & Works

[3] The Hon. Attorney General

[MNIHCVAP2020/0015]

(MONTSEERRAT)

Date: Thursday 26th January, 2023

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mde. Esco Henry, Justice of Appeal [Ag.]

Appearances:

Applicants: In person

Respondent: No appearance of the 1st respondent

Mrs. Sheree Jemmotte-Rodney for the 2nd and 3rd respondents

Issues: Application for extension of time to apply for leave to appeal

Type of Order: Directions

Result / Order: IT IS HEREBY ORDERED THAT:

1. There being no objection by the respondent, time be given to the appellants to make an application for an extension of time and for leave to appeal the costs order of the learned judge, given on 15th May 2020, by no later than Thursday, 23rd February 2023.
2. Failing the making of the applications within the stipulated time, the court shall deem that, there is no proper appeal before the court and that the Notice of Appeal filed on 6th July 2020 be struck out.

Reason: The Court noted that the 2nd and 3rd respondents did not object to the applicants being given time to regularise matters. Accordingly, the applicants were granted an extension of time to make an application for leave to appeal the costs order made by Morley J on 15th May 2020.

Case Name:

**Donald Ryan
v
Commissioner of Police**

**[MNIMCRAP2020/0011]
(MONTSEERRAT)**

Date:

Thursday 26th January, 2023

Coram:

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

Appearances:

**Appellant: In person
Respondent: Mr. Andrew Horton**

Issues:

**Magisterial criminal appeal - Appeal against sentence
- Whether fine of \$12,667.00 imposed by the learned
magistrate grossly excessive when appellant pleaded
guilty at first available opportunity - Whether learned
magistrate misdirected herself on the proper
application of the sentencing guidelines in construing
the sentence - Whether the learned magistrate took
into account information from the prosecution
regarding previous convictions of the appellant
without disclosing this information to the appellant**

Type of Order:

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against sentence is allowed.**
- 2. The fine of \$12,667.00 is substituted for the sum of \$1,200.00 in respect of all 4 offences for which the appellant pleaded guilty before the learned magistrate.**
- 3. The said sum of \$1,200.00 is to be paid by no later than 28th April 2023, in default, the**

appellant shall be imprisoned for a period of 30 days.

Reason:

This was an appeal brought by the appellant against the fine imposed by the learned magistrate of \$12,667.00. The appellant pleaded guilty at the first available opportunity to four offences of simple possession of cannabis. The Court heard counsel for the respondent who conceded that the fine imposed was manifestly excessive. The Court found that the magistrate did in fact err in construing the Sentencing Guidelines in this regard. Counsel for the respondent thereby recommended a fine of \$300 per offence, with a total fine of \$1,200.00. The appellant made no objection to this amount and the Court agreed with the same. The fine of \$12,667.00 was therefore substituted by a fine of \$1,200.00 to be paid within 3 months.