

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
VIDEOCONFERENCE

SAINT VINCENT AND THE GRENADINES
23rd – 25th January 2023

APPEALS

Case Name:

[1] Atibon Campbell
[2] Marlon Chance
v
The King

[SVGHCRAP2021/0002]
(Saint Vincent and the Grenadines)

Date:

Monday 23rd January 2023

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal

Appearances:

Appellants: **Mr. Jomo Thomas**

Respondent: **Ms. Alana Cumberbatch**

Issues:

Criminal appeal - Appeals against conviction - Whether conviction of both appellants unsafe - Appellate court's interference with trial judge's findings of fact - Whether the learned trial judge erred when he allowed into evidence the electronic video statement of Atibon Campbell - Whether video statement of 1st appellant obtained illegally through oppression after 1st appellant invoked his right to legal counsel - Whether the learned trial judge erred by failing to stop the trial when the main prosecution witness admitted during cross-examination that the

police threatened him with jail time if he did not testify - Whether the learned judge failed to give the proper direction to the jury concerning the evidence of the main prosecution witness - Whether the main prosecution witness had an interest to serve - Whether the learned judge failed to give sufficient directions to the jury as regards a witness with an interest to serve - Whether the learned judge failed to emphasize to the jury that the 1st appellant and main prosecution witness said that they were beaten by police - Whether the learned judge failed to properly put the appellants' case to the jury - Whether the learned judge erred at sentencing when he said the virtual complainants identified both appellants

Type of Order:

N/A

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Orbon Lampkin
v
The King

[SVGHCRAP2020/0005]
(Saint Vincent and the Grenadines)

Date:

Monday 23rd January 2023

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal

Appearances:

Appellant: Mr. Grant Connell

Respondent: Ms. Rose-Ann Richardson

Issues:

Criminal Appeal - Appeal against sentence and conviction - Whether appellant was denied a fair trial and conviction is unsafe - Section 193 Criminal Procedure Code of St. Vincent and the Grenadines - Whether judge erred in the exercise of his discretion in allowing the deposition of the witness to be read in absence of the witness in the circumstances - Whether judge's instructions to the virtual complainant during the prosecution's case was a departure from good practice and highly prejudicial to the entire proceedings - Whether the judge's summary was biased and invited the jury to disbelieve the evidence of the appellant

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The conviction and sentence of the appellant are quashed.**
- 3. Liberty of the Director of Public Prosecutions to re-try the appellant for the offences for which he had been convicted.**

Reason:

This was an appeal against the conviction and sentence of the appellant, Orbon Lampkin, for the offences of wounding with intent, possession of a firearm with intent to injure, possession of a firearm without a licence and possession of ammunition without a licence. The appellant was sentenced to 10 years and 11 months on the 1st offence, 9 years and 11 months on the 2nd, 3 years and 11 months on the 3rd and 2 years and 5 months on the 4th with all 4 sentences to run concurrently.

On 7th April 2020, the appellant filed a notice of appeal by which he appealed his conviction and

sentence. The appellant filed 4 grounds of appeal but counsel for the appellant, Mr. Grant Connell, informed the Court this morning that he would not be proceeding with ground 4, which speaks to the sentence of the court being too harsh and unconscionable in the circumstances. Mr. Connell informed the Court too that he would rely on his submissions on grounds 2 and 3 and would address the Court on ground 1 only. Ground 1 read that the appellant was denied a fair trial and the conviction was unsafe under all of the circumstances. In support of this ground, Mr. Connell relied on section 193 of the Criminal Procedure Code which sets out the conditions which must be satisfied before the deposition of an absent witness may be read at a trial to form part of the evidence of the trial. The witness, who was the girlfriend of the virtual complainant, had her evidence taken at the preliminary inquiry of the matter. She did not however appear in court to give evidence. The indications were that the witness was out of the state and an application had been made for the witness to give evidence via Skype. However, Mr. Kareem Nelson who appeared as counsel for the Crown in the court below, indicated that they were not able to locate the witness. Counsel further indicated to the court that the witness appeared to be uncooperative, effectively unwillingly to have her evidence taken. At the trial, when the issue of the deposition came before the judge, the judge took the view that once the requirements which had to be fulfilled under section 193 of the Criminal Procedure Code were fulfilled, then the court would allow the deposition of the witness to be read. The judge did not indicate and did not appear to have endeavored to exercise the discretion afforded him by the section, which provides for the court determining after the various criteria had been met, whether the deposition should be read as evidence in court.

Based on the statement made by Mr. Karim Nelson in the court below of the witness' apparent lack of cooperation, it was clear that they should have enquired whether the deponent had an interest in giving evidence at the trial instead of merely allowing her deposition to be read on his satisfaction that the conditions were met. The Court considered that the

section required the witness to not be available to give evidence and not simply that the witness be unwilling to give evidence at the trial. The Court found that there was a significant difference between these two positions. The availability of technology such as Skype and other means by which the evidence of a witness could be taken without the physical presence of the witness in court was such that the learned judge was minded to look at the circumstances as a whole and to determine whether the witness was able to give evidence and then to exercise his discretion. The Court was of the view that his disposition of the matter may very well have been different.

This factor however, taken on its own, that the trial judge allowed the evidence of the absent witness to be read even without all of the enquiries that ought properly to have been made, and even without the learned judge exercising the discretion which was afforded to him, may not be sufficient to deem the trial of the appellant and his conviction and sentence unfair in view of the fact there had been other evidence that a jury properly directed may yet have convicted the appellant. But the matter went further. In terms of the second ground of appeal, although counsel for the appellant indicated that he would not address it orally, he certainly addressed it in his written submissions. Counsel submitted that the judge's instructions to the virtual complainant during the prosecution's case was a departure from good practice and highly prejudicial to the entire proceedings. The Court did not rehash what was said by the judge to the virtual complainant which gave rise to that complaint since counsel for the respondent conceded that the words spoken by the judge to the virtual complainant (after he had left the witness box having said that he did not recall being shot) were in fact prejudicial.

Then there was what counsel for the respondent referred to as "the unfortunate statement made by the judge" where the judge in fact said in his summary to the jury that "fortunately the prosecution has other witnesses that they can call", referring to what he considered was the unsatisfactory evidence of the

virtual complainant himself. Further, in giving his directions to the jury, the judge indicated that, notwithstanding the inadequacy of the evidence of the virtual complainant “fortunately the prosecution had other witnesses that they can call”. This, no doubt, would have given the jury the impression that the evidence of these two other witnesses would save the day for the prosecution and ought therefore to be believed by the jury. Again, on this issue, counsel for the respondent conceded that the words spoken by the learned judge were unfair to the appellant and could result in the trial of the appellant and the conviction and sentence of the appellant being unsafe. The Court agreed with the submissions of counsel for the appellant in this regard and with the concession of counsel for the respondent in this regard. The Court therefore was of the view that the conviction of the appellant ought to be set aside as being, in all the circumstances, unsafe, and quash both his conviction and sentence.

On the issue of the consequence flowing from that, i.e. whether there ought to be a re-trial, counsel for the respondent submitted that there ought to be a re-trial, since there was sufficient evidence on the basis of which the appellant could be convicted on a re-trial, and that the time which had elapsed between the incident and the trial, and even between the incident and now had been as a result of delays occasioned by the appellant who should not therefore benefit from the delays occasioned by him and that, in all the circumstances, the fair course of action would be a re-trial. Counsel for the appellant submitted otherwise and indicated that because of the time that had elapsed, the virtual complainant and his friend may not be willing, or able, or available, to give evidence and one would be left with the evidence only of the Austin Fraser and, in these circumstances, a re-trial should not be ordered.

The Court had regard to the cases of Dennis Reid v The Queen [1978] UKPC 29 and the case of Allan Baptiste v The Queen, BVIHCRA2013/0003 consolidated with Yan Edwards v The Queen BVIHCRA2013/0004 (delivered 30th January 2018, unreported), a case from our Court of Appeal and in

particular the words there spoken that in determining whether a re-trial should be ordered, the court was required to make an assessment of how the interests of justice would be best served. In making that determination, the Court must consider both the defendant's interest and the public's interest in convicting the guilty and maintaining confidence in the effectiveness in the criminal justice system. In so doing the court was required to consider several factors, including whether the defendant could get a fair trial, the time that had elapsed since the commission of the offence and the likely time of the re-trial, whether key witnesses for the defence were no longer available, that persons guilty of an offence should not escape because of an error in the summation of a judge, the serious nature of the offence, the prevalence of the offence in the society and the strength of the prosecution's case. These were the several factors that the Court considered were necessary to have regard to in determining whether there ought to be a re-trial. The Court further indicated that this was not an exhaustive list.

Looking at the factors specifically enumerated by the Court, the Court considered that given the serious nature of the crime, the prevalence of the offence in the society and the fact the delays in the matter coming to trial appeared to have been occasioned largely by the appellant, that statement was certainly made by Ms. Richardson for the respondent and not countered by Mr. Connell for the appellant who was counsel in the matter in the court below.

In all the circumstances, the Court considered that fairness and justice would require that the Director of Public Prosecutions ("DPP") be given liberty to re-try the appellant. The Court did not order a re-trial, but rather directed that the DPP may re-try the appellant in the circumstances. That would be a decision for the DPP to make, having regard to the witnesses and the evidence as a whole that may be available to the Crown.

In the circumstances, the order of the Court was that (i) the appeal was allowed, (ii) the conviction and sentence of the appellant were quashed and (iii)

liberty to the Director of Public Prosecutions to re-try the appellant for the offences for which he had been convicted.

Case Name:

**Rosean Davis
v
Judy Cordice**

**[SVGMCVAP2020/0003]
(Saint Vincent and the Grenadines)**

Date:

Monday 23rd January 2023

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal**

Appearances:

Appellant: In person

Respondent: In person

Issues:

Magisterial civil appeal - Slander - Whether the decision of the learned magistrate was harsh and excessive - Whether the plaintiff's witness, her son, gave evidence which was contrary to the plaintiff's evidence - Whether the magistrate's judgment should be set aside in the circumstances - Whether the magistrate's decision was biased due to prior familiarity with the plaintiff

Type of Order:

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed in part.**
- 2. The learned magistrate's findings in respect of liability are upheld.**
- 3. The learned magistrate's assessed award of damages is quashed and this Court substitutes**

an assessed amount of \$1,000.00 plus costs claimed in the sum of \$12.00.

4. In respect of the costs of the appeal the Court makes no order as to costs.

Reason:

The respondent brought a claim in slander as against the appellant and sought damages in the sum of \$10,000.00 plus costs. The respondent in her evidence deposed that on 8th April 2018 the appellant uttered words which could be interpreted to mean that she was of loose morals. The respondent contended that the words were uttered in the presence of her son and others. The appellant in her defence admitted that she made the impugned utterances, but only in response to words uttered by the respondent. Following a trial, in which the parties and the respondent's son gave oral evidence, the learned magistrate found in favour of the respondent on liability and awarded damages in the sum of \$6,000.00 plus costs of \$12. The learned magistrate found that the words carried an imputation of unchastity on the part of the respondent as a woman. He determined that the words were capable of a defamatory meaning. He also determined that the words were uttered in the presence of others including the respondent's son and that there was no evidence offered by way of defence.

The appellant took issue with this ruling and by notice of appeal she advanced the following grounds: (i) that the judgment was harsh and excessive in light of the facts presented, (ii) that the evidence of the respondent's son contradicted the respondent's evidence, (iii) that the respondent was a member of the local constabulary while the magistrate was the commissioner of police and that she also worked for the magistrate as a domestic worker.

Turning first to the issue of bias, the Court noted that the learned magistrate addressed that in his reasons for decision found at page 18 of the record of appeal. He stated:

"The plaintiff Judy Cordice was indeed an auxiliary police officer for a very short period of time, who was

called out on special occasion to render support to the regular police. I have never had cause to interact with the plaintiff on any of those occasions. I have never employed anyone, including the plaintiff as a domestic worker at no time."

Applying the law on bias found in R v Bow Street Metropolitan Stipendiary Magistrate Ex parte Pinochet Ugarte (No. 2) 2000 1 AC 119 and Porter v Magill [2001] UKHL 67, and applying the relevant legal test, the Court was satisfied that a fair minded and informed observer could not on the basis of the allegations advanced (which were not supported by any evidence) have concluded that the learned magistrate, in the circumstances of this case, would have been biased and so that ground of appeal fails.

Turning now to the challenges to the findings on liability, it is clear that where a trial judge has made findings of fact an appellate court should not interfere with those findings, unless it is satisfied that any advantage enjoyed by the trial judge, having seen and heard the witnesses, could not be sufficient to justify the magistrate's conclusion. It is not the function of an appellate court to go tracing through evidence to determine whether the findings of the magistrate were correct. In the present case, having assessed the evidence, the learned magistrate came to the conclusion that the words were uttered, that they were defamatory in nature and that they were made in the presence of others. The appellant has failed to identify any error in the learned magistrate's reasons or conclusions, despite having been invited to do so on several occasions. The learned magistrate would have clearly had the opportunity to observe the witnesses under cross examination, to observe their demeanor and assess it. In the circumstances, the Court declined to interfere with the findings of fact of the learned magistrate as there was no basis to do so. The Court also found that there was no basis on which to interfere with the way the learned magistrate applied the law in relation to liability. The conclusions arrived at were open to him on the evidence that was before him.

Turning finally to the question of the award of damages, the learned magistrate assessed damages

in the sum of \$6,000.00, although the sum of \$10,000.00 was claimed. The appellant said that the sum awarded was excessive. The learned magistrate's reasons did not disclose a basis upon which he assessed damages and in considering the question of the quantum of the award, the Court considered the learning in the case of Hayward v Hayward (1887) 34 Ch. D. 198. There, the English Chancery Division determined that there should normally be evidence advanced in support of a claimant's claim in general damages, because where a claimant offers no evidence of damage at all, that claimant may find his or herself awarded small or nominal damages only.

Given the state of the evidence before the learned magistrate, this Court found that indeed the award was inordinately high and determined that the sum of \$6,000.00 awarded should be substituted with an award of \$1,000.00.

Case Name:

Simon Hoyte

v

The King

[SVGHCRAP2016/0008]

(Saint Vincent and the Grenadines)

Date:

Tuesday 24th January 2023

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mde. Margaret Price-Findlay, Justice of Appeal

Appearances:

Appellant:

Ms. Tonya Da Silva

Respondent:

Ms. Rose-Ann Richardson

Issues:

Criminal appeal - Appeal against conviction and sentence - Unlawful sexual intercourse with a girl under the age of 13 - Whether the evidence of the

virtual complainant was not supported by any other independent material evidence to enable a jury to convict the appellant having regard to the facts and circumstances of the case - Whether the learned judge in her summation failed to put the defence case properly to the jury - Whether the conviction cannot be supported by the evidence - Whether the medical evidence was far too remote - Whether the sentence of eighteen years imprisonment handed down by the learned trial judge was manifestly too excessive having regard to the facts and circumstances of the case

Type of Order:

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The conviction and sentence of the appellant are affirmed.

Reason:

The appellant, Simon Hoyte, was charged with the offence of having sexual intercourse with a girl under the age of thirteen years old. The girl was seven years old at the time when the offence was committed on 6th January 2014. On 21st March 2016, the appellant was found guilty of the offence of having sexual intercourse with a girl under the age of thirteen years and was sentenced to eighteen years in prison.

On 7th June 2016, the appellant appealed against his conviction and sentence with four grounds of appeal against his conviction and one ground of appeal against his sentence. The appellant filed submissions on 5th October 2022 wherein he stated that he would advance two grounds of appeal as follows: (i) that the conviction is unsafe and cannot be supported by the evidence adduced, (ii) the sentence of eighteen years imprisonment was manifestly excessive having regard to the facts and circumstances of the case. The appellant commenced his written submissions on ground one with a quotation from Widgery LJ in

the case of R v Cooper (1969) 53 Cr. App R. 82 which aptly sets out the basis upon which the court will allow an appeal on the ground that the verdict of the jury is unsafe or unsatisfactory. Widgery LJ said:

“We are ... charged to allow an appeal against conviction, if we think that the verdict of the jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory. That means that in cases of this kind, the court must in the end ask itself a subjective question, whether we are content to let the matter stand as it is, or whether there is not some lurking doubt in our minds which makes us wonder whether an injustice has been done. This is a reaction which may not be based strictly on the evidence as such; it is a reaction which can be produced by the general feel of the case as the court experiences it.”

The appellant then referred in his written submissions to the case of R v Galbraith [1981] 1 W.L.R 1039 and quotes from the judgment of Lord Lane in that case. R v Galbraith is considered to be the locus classicus on no case submissions and sets out the basis on which a judge will determine whether at the close of a prosecution's case there is sufficient evidence to justify the judge leaving the case to the jury to decide whether the defendant is guilty of the offence for which he is charged. R v Galbraith does not address the question of whether the verdict rendered by a jury at the conclusion of a criminal trial is considered by an appellate court to be safe and supported by evidence led in the case, as was put in the phrasing of the ground of appeal, or that the verdict was unsafe or unsatisfactory which is the language used in the appellant's written submissions, and that in either case the verdict should therefore be set aside by this Court. It should be noted that the appellant makes much of his not having had a lawyer, to the point of almost submitting that his conviction is unsafe because he did not have a lawyer, a circumstance which was entirely of his choosing or making. The idea that because he is not a lawyer and because he therefore was not aware of the procedures and rules of the court that that would render his conviction unsafe is of course an

untenable submission. The appellant's submission on ground two is that the sentence of eighteen years should be quashed and replaced by a sentence of 14.5 years which the appellant says is warranted.

Submissions in response were filed on behalf of the respondent on 16th January 2023. In the respondent's submissions it was submitted that the appellant's conviction was safe and that there was sufficient evidence adduced at trial for a jury properly directed to convict the appellant. The respondent also submitted that the sentence was fair and if anything it is lenient in the circumstances and should not be disturbed.

The Court looked at and read the submissions by both sides, the relevant evidence and summations of the learned trial judge and the oral submissions made by counsel for the parties and the Court was not of the view that the conviction of the appellant was unsafe or that it cannot be supported by the evidence adduced. The Court saw no basis therefore to interfere with the verdict arrived at by the jury convicting the appellant on the charge of having sexual intercourse with a child under the age of thirteen years. In terms of the sentence of eighteen years imprisonment imposed on the appellant, the Court noted that a view may be taken that the sentence is on the high end of the spectrum, however to justify appellate interference with the sentence, the Court must be satisfied that the judge erred in principle in arriving at the particular sentence that she did. The Court found no error in principle by the judge and did not find the sentence to be manifestly excessive in all the circumstances as to justify appellate interference.

Case Name:

Granvil Defreitas

V

The Commissioner of Police

[SVGMCRAP2021/0013]

(Saint Vincent and the Grenadines)

Date: Tuesday 24th January 2023

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal

Appearances:

Appellant: Mr. Ronald Marks

Respondent: Ms. Rose-Ann Richardson on behalf of the Director of Public Prosecution

Issues: Application for adjournment

Type of Order: Adjournment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for an adjournment is granted.
2. The hearing of the matter is adjourned to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week commencing 24th July 2023.

Reason: Counsel for the respondent made an oral application to the Court for the adjournment of the matter on the basis of the respondent's inability to file written submissions in response within the prescribed time for doing so. Counsel for the appellant indicated to the Court that he consented to the respondent's application as the appellant filed his submissions late, due to finding new relevant legal authority to support the appeal. As a consequence, the respondent would have had less time to file written submissions in response. The Court upon hearing these reasons granted the application.

Case Name: Raffique Andrews
v
The Commissioner of Police

**[SVGMCRAP2021/0011]
(Saint Vincent and the Grenadines)**

Date: Tuesday 24th January 2023

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal

Appearances:

Appellant: Mr. Israel Bruce

Respondent: Ms. Alana Cumberbatch

Issues: Criminal Appeal - Appeal against conviction - Whether conviction is unsafe on the ground of breach of natural justice - Whether appellant was denied a fair trial and the opportunity to put his case properly before the court in absence of legal counsel - Whether the magistrate erred in the exercise of her discretion in proceeding with the hearing without the appellant's legal counsel being present

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:
1. The appeal is allowed.
2. The matter is ordered for re-trial before a different magistrate.

Reason: This was an appeal against the decision of the magistrate to proceed to hear and determine a matter set before her without the lawyer acting for the defendant who is the appellant in this matter. The facts are that the matter had come before the magistrate, it had been adjourned a few times (the record will show that the adjournments were at the behest of both sides at different times), it had been

set down for final adjournment before the magistrate.

On the particular date when it was set to be heard on a final adjournment, counsel for the appellant was in another court and had written to the magistrate indicating that he was going to be before another court and asked that his matter be stood down for hearing at a later time during that day. As it was, the matter was called by the magistrate and the defendant, now the appellant, indicated that he had a lawyer. The magistrate however decided to proceed with the hearing of the matter. The defendant was tried in his lawyer's absence, evidently said nothing, did nothing and at the end of the hearing he was convicted.

He has appealed on the basis of his having been effectively denied legal representation. We note that the power exercised by the magistrate in not acceding to the request for the matter to be stood down to await the arrival of the defendant's lawyer and the intent to proceed with the trial of the matter, was done in the exercise of her discretion, effectively what would have been referred to in the High Court as a case management decision (that is of course a matter within her discretion). Looking at all the facts and circumstances of the matter and having regard especially to the fact that what counsel for the appellant sought was not an adjournment which would have somewhat offended the indication that the matter was set down for a final adjournment, the Court was impressed with the fact that Mr. Bruce did not ask for a further final adjournment but asked for the matter to be stood down while he was before another magistrate so that he could then come to the court in time to represent his client in the matter. In all the circumstances, the Court was of the view that whilst the magistrate was exercising a discretionary power, it was a discretion which the Court considered was outside the generous ambit within which different judicial officers may disagree. The magistrate notably did not give any reason in her reasons for decision as to why she proceeded with the matter, notwithstanding the request of counsel for the defendant to have the matter stood down and notwithstanding the indication from the defendant that he had a lawyer whom he wished to represent

him in the matter.

In the circumstances, as indicated, we consider that the magistrate exceeded the generous ambit in the exercise of her discretion and that the decision of the magistrate ought to be reversed. The appeal was allowed, and the matter was returned to a different magistrate for re-trial.

Case Name:

Jasmine McDowald

v

Morita Williams

[SVGMCVAP2021/0005]

(Saint Vincent and the Grenadines)

Date:

Tuesday 24th January 2023

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal**

Appearances:

Appellant: No appearance

Respondent: In person

Issues:

**Magisterial civil appeal - Appearance of respondent -
Non-appearance of appellant - Appellant's failure to
prosecute the appeal**

Type of Order:

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

**The notice of appeal filed on 27th January 2021 is
dismissed for want of prosecution.**

Reason:

This appeal brought by the appellant, Jasmine

McDowald, against the respondent, Morita Williams, was set down for hearing at this sitting of the Court of Appeal in the state of Saint Vincent and the Grenadines. As per the certificate of result of the appeal dated 22nd July 2022, this Court adjourned the hearing of the appeal to this sitting.

The Registrar advised the Court that the appellant was notified of the hearing of the appeal on the 11th day of August 2022. The appellant failed to appear at this hearing to prosecute her appeal with no reason given to the Court for her absence from the hearing. The Court therefore dismissed the appeal for want of prosecution, the appellant having shown no interest in prosecuting her appeal, in that she was absent without any explanation to the Court.

The Court reminded that the appeal had not been struck out and so, if the appellant was desirous of further prosecuting the appeal, she could seek to have the matter is reinstated.

Case Name:

RBTT Bank Caribbean Limited

v

Financial Services Authority

[SVGHCVAP2021/0005]

(Saint Vincent and the Grenadines)

Date:

Wednesday 25th January 2023

Coram:

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal**

Appearances:

Appellant: Mr. Stanley John, KC with him Mr. Akin John and Ms. Nakita Charles

Respondent: Mr. Anthony Astaphan, SC with him Mr. Graham Bollers and Mr. Sten Sargeant

Issues: Interlocutory appeal - Striking out of claim - Summary judgment - Whether the learned master acted on wrong or inconsistent principles of law - Insurance law - Whether the statutory trustee has fiduciary duties in private law

Type of Order: Oral judgment with written reasons to follow.

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The decision of the learned master is upheld.
3. Costs to be awarded to the respondent in the sum of \$3500.00 to be paid within 14 days of the date of this order.

Case Name: Kenton Chance
v
Adrian DaSilva

[SVGMCVAP2021/0006]
(Saint Vincent and the Grenadines)

Date: Wednesday 25th January 2023

Coram: The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal

Appearances:
Appellant: Mr. Jomo Thomas
Respondent: Ms. Tonya Da Silva

Issues: Magisterial civil appeal - Adjournment - Submissions of the appellant not transmitted to the Court of Appeal

Type of Order:

Adjournment

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

The hearing of the appeal is adjourned to a date to be fixed by the Chief Registrar.

Reason:

The Court would have indicated that on receipt of the record of appeal in the matter, the appellant's submissions had not been transmitted to them. The Registrar informed the Court that the submissions would be transmitted as soon as possible. Consequently, the Court indicated they would not be in a position to hear the appeal today as more time would be needed to study the submissions. The matter was therefore adjourned to a date to be set by the Chief Registrar.