

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
VIDEOCONFERENCE/IN PERSON

ANGUILLA

MONDAY 9TH JANUARY 2023 TO TUESDAY 10TH JANUARY 2023

JUDGMENTS

Case Name:

Fang Ankong

HWH Holdings Limited

V

Green Elite Limited (in Liquidation)

(BVIHCMAP2022/0013)

(TERRITORY OF THE VIRGIN ISLANDS)

Date:

Monday 9th January 2023 (Panel 2)

**Coram for
delivery:**

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]**

Appearances:

Appellants: Mr. Andrew Ayres KC with him Ms. Reisa Singh

Respondent: Mr. Peter Ferrer with Mr. Christopher Pease

Issues:

**Commercial Appeal- Sale of shares - Duomatic Principle -
Whether judge applied wrong legal test in ascertaining
whether the Duomatic principle applied - Duomatic assent
- Whether there was an “understanding” between the
shareholders of Green Elite assenting to payments made
- Whether a particularized and comprehensive agreement
was necessary for establishing Duomatic assent -
Section 175 of the BVI Business Companies Act, 2004
(“BCA”) – Whether payments were subject to the approval**

and authorization requirements of section 175 - Whether disposition of sale proceeds was in the usual or regular course of business - Section 121 of the BCA - Whether directors personally liable for repayment of funds

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed, and the decision of the learned trial judge affirmed.
2. Costs are awarded to the respondent to be assessed in the court below, if not agreed within 21 days from the date of this judgment.

Reasons:

1. The Duomatic principle recognizes a situation where members of a company can reach a unanimous agreement on its affairs without the need for strict compliance with formal procedures. The essence of the doctrine is that shareholders, who have the right to attend and vote at a general meeting of a company, can assent to some matter which a general meeting of the company could carry into effect, without the need for a formal resolution. The effect is that the assent is as binding as a resolution in a general meeting would be. However, although characterised by informality, for the Duomatic principle to apply the shareholders must be aware that their assent is being sought to the particular matter and must apply their minds to the issue of assent, that is to say, they must have full knowledge. Additionally, there must also be requisite material from which an observer can objectively discern or infer assent.

In re Duomatic Ltd [1969] 2 Ch. 365. applied; Parker and Cooper Ltd v Reading and another [1926] Ch. 975 considered; Herman v Simon (1990) 8 ACLC 1094 considered; Westminster Oil Limited et al v International Investments House Co. LLC (a company incorporated under the Laws of the United Arab Emirates) et al BVIHCVAP2009/0004 (delivered 30th April 2012, unreported) applied; Ciban Management Corporation v Citco (BVI) Ltd and another [2020] UKPC 21 considered; EIC

Services Ltd and another v Phipps and others [2004] BCLC 589 applied; Re Tulsense Ltd [2010] EWHC 244 (Ch) applied.

2. It is not in dispute that there was no formal or written resolution of Green Elite's shareholders authorising the payment of the sale proceeds from the sale of the CT shares to Mr. Fang and then to the Three Employees, however whether there was Duomatic assent hinges on what was the "understanding" between the shareholders and the effect of such understanding. Accordingly, the learned judge was obliged to determine whether, objectively, the shareholders, by that "understanding", assented to the payment made. An appellate court applies restraint not only to the judge's findings of fact but also to the evaluation of those facts and the inferences drawn from them. There was evidence before the learned judge from which he could properly have reached the conclusions about the "understanding" that he did and it cannot be said that the learned judge was plainly wrong so as to warrant this Court's interference.

Watt (or Thomas) v Thomas 1947] 1 All ER 582 applied; Re Tulsense Ltd [2010] EWHC 244 (Ch) considered.

3. The objective approach contemplated for the ascertainment of assent is broadly similar to the objective approach which must be taken when determining formation of a contract, in that the concepts of intention to create legal relations and certainty of terms come into play. This is not to say that Duomatic assent is subject to general contractual principles. The learned judge was not applying a strict contractual approach when he used the terms "legally binding agreement", "intention to create legal relations" and "meeting of minds" and cannot be criticised for applying the wrong legal test. Similarly, the appellants' complaint that the judge was wrong to have insisted a level of particularity of the agreement is misconceived. The Duomatic principles require that approval given by an understanding or agreement must be unequivocal, therefore it is unsurprising

that, throughout the judgment, the learned judge emphasized the need for there to be a legally enforceable agreement in the context of the understanding and found that key terms such as agreement as to the price or any means of fixing the price and lock-up period, were lacking. Although not a requirement, particularity, to some extent, would aid in establishing intention and in making the assent unequivocal and unqualified.

CH Trustees SA (as Trustee of the Maple Leaf Trust) v Omega Services Group Limited et al BVIHC(Com) 0037 of 2015 (delivered 22nd November 2016, unreported) considered; Re TulseSense Ltd [2010] EWHC 244 (Ch) considered.

4. If shareholders in discussion among themselves outline a course of action they do not yet intend to be bound by or to be legally enforceable, they cannot be said to have assented to the course of action. The shareholders of Green Elite, in arriving at the “understanding” in 2008, envisaged further discussions. The understanding in 2008 could not objectively evince an intention by the shareholders to create a binding agreement at that point given that key parts of the agreement had not yet been agreed and given that, at that point, Green Elite had not yet been incorporated. Accordingly, it cannot be said that the payments made to the Three Employees were done with the full knowledge and consent of all the shareholders of Green Elite. The learned judge rightly held that the payments to the Three Employees and the disposal of the entire asset base of the company for the benefit of the Three Employees, were not the subject of a valid Duomatic assent.
5. Section 175 of the BCA is designed as a safeguard for a company from the disposition of more than 50% of its assets without the approval of its directors and shareholders. However, the section applies where there is a disposition by a company of more than 50% in value of its assets which is not made in the usual or regular course of the business carried on by the company. Such a disposition must not only be approved by the directors but also authorised by a resolution of members of the

company. If, as the appellants contend, the section does not apply where there are multiple transfers of value by the company to multiple recipients, with each transfer being for less than 50% of the company's assets, the legislative intent of section 175 can easily and regularly be undermined and defeated. The learned judge was correct in holding that the payments to or for the benefit of the Three Employees, who each received one-third (33%) of the net sale proceeds, were in principle subject to the approval and authorisation requirements in section 175 of the BCA.

Soemarli Lie v Ng Min Hong et al BVIHC(Com) 2020/147 (formerly BVIHCM 2018/0114) (delivered 25th October 2021, unreported) considered.

6. Green Elite was set up as an incentive scheme for certain employees and its only asset was the CT shares. It carried on no business whatsoever in the sense of any kind of commercial activity. Therefore, it cannot be said that the disposal of 50% or more of its assets was in the usual and regular course of its business. The learned judge erred in so concluding.

Kathryn Ma Wai Fong v Wong Kie Yik and others BVIHVMAP2018/0001 and BVIHCMAP2018/0002 (delivered 27th March 2019, unreported) considered.

7. Where a director causes a company to make unauthorised payments for which the company receives no value, the director is liable to the company to pay compensation equal in amount to the payments. This Court having found that the payment of the monies to Mr. Fang and the Three Employees who were also the directors of Green Elite was not for a proper purpose, the directors can be held personally liable under section 121 of the BCA.

Auden McKenzie (Pharma Division) Ltd. v Patel [2019] EWCA Civ 2291 considered.

Case Name:

**Sun Vessel Global Limited
v
HQ Aviation Limited
Great Lakes Insurance (UK) SE**

**(BVIHCMAP2022/0017)
(TERRITORY OF THE VIRGIN ISLANDS)**

Date:

Monday 9th January 2023 (Panel 2)

**Coram for
delivery:**

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Allana-J Joseph

Respondent: Mr. Matthew Reeve

Issues:

Commercial appeal – Section 404 of the BVI Merchant Shipping Act, 2001 – Pre-Judgment Interest - Limitation fund - Whether Section 404 of the Merchant Shipping Act should be construed as requiring the court (in a case where the shipowner/wrongdoer has elected not to constitute a limitation fund) to apply, to any pre-judgment interest on damages, the same rate of interest as would have been prescribed if a limitation fund had in fact been constituted – Exercise of judicial discretion – Appellate court’s interference with judge’s discretion to award of interest – Statutory interpretation – Section 18(3) of Legal Profession Act, 2015 – Costs – Whether the judge correctly permitted recovery of costs incurred by foreign lawyer who was not enrolled as a legal practitioner in the Territory of the Virgin Islands - Costs – Assessment of Costs – Exercise of Discretion on Costs – Jurisdiction to reconsider matters prior to the perfection of its judgments/ orders

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. Grounds 1 and 2 of the appeal are dismissed.**

2. Ground 3 of the appeal is allowed and the order of the judge allowing recovery of the pre-action costs in relation to Dr. Fox is set aside.
3. The appellant shall pay the respondents eighty per cent of the respondents' costs on the appeal, to be assessed if not agreed within 30 days.
4. The appellant shall also pay the respondents the costs of this application to be assessed if not agreed within 30 days.

Reason:

1. As a matter of statutory construction, section 404 of the BVI Merchant Shipping Act, 2001 does not expressly apply where a limitation fund has not been established. The assertion by the appellant that the prescribed rate applied as a matter of statutory construction to the case where a limitation defence was pleaded with no fund having been constituted was therefore wrong. With section 404 expressly only covering cases where a fund is constituted, it was for the appellant to provide, by its own words as 'a question of construction or interpretation' a legal basis for the application of the prescribed rate to a case where no fund was constituted. None of the explanations advanced by the appellant achieved this.

**Section 404 BVI Merchant Shipping Act, 2001
No.13 of 2021, Laws of the Virgin Islands applied.**

2. There are relevant practical and legal differences between the two situations (where a limitation fund is constituted and where limits are invoked without a fund). Where a shipowner elects to constitute a limitation fund, the shipowner can fix the currency rate at which limits are converted at the time of constitution and where the applicable national law prescribes the rate of interest to be added to the fund on constitution, the shipowner can secure that rate. Prescribing the rate in advance is of obvious practical assistance for the shipowner in calculating the amount to pay in as the limitation fund. It is a fundamentally different situation where

the limit is simply invoked as a defence. Interest will be then assessed in the normal way at the end of the case, fairly taking account of all factors relevant to the assessment. Thus, it is not automatic that a shipowner, who has not provided the actual security of a fund will be entitled to the same interest rate, simply on the basis of entitlement to plead limitation.

AS Fortuna Opco BV and another v Sea Consortium PTE Limited and others [2021] Lloyd's Law Rep Plus 48 considered; Patrick Griggs, Richard Williams, Jeremy Farr *Limitation of Liability for Maritime Claims* (4th edn, Routledge 2004) considered.

3. A judge has a discretion to award interest at such a rate and in accordance with established principles. An appeal against the use of judicial discretion will not be allowed unless the appellate court is satisfied that the judge erred in principle in the exercise of the discretion or was influenced by irrelevant factors and considerations and that as a result of the error or degree of the error in principle, the judge erred. In this case it cannot be concluded that the judge would have had no legal or factual basis to arrive at and support the decision that he made, and it cannot be said that the judge was plainly or blatantly wrong. No error of law in the approach of the judge has been demonstrated and the conclusion which he reached as to the appropriate rate of interest to be awarded fell within the generous ambit of his discretion.

Michel Dufour and others v Helenair Corporation and others (1996) 52 WIR 188 followed; Carrasco v Johnson [2018] EWCA Civ 87 considered.

4. The starting point for dealing with the issue of recoverability of fees claimed by persons who are

not admitted to practice law in the BVI is section 18(3) of the Legal Profession Act, 2015. The fees of legally qualified, non-admitted persons are no longer recoverable as disbursements at common law since section 18(3) prevents recovery of costs in relation to anything done by a person whose name is not on the Roll.

Section 18(3) of the Legal Profession Act, 2015, No. 13 of 2015, Laws of the Virgin Islands applied.

5. Once a legal practitioner was assisting with a BVI matter and the work he produced was being utilised in BVI proceedings, he automatically would be purporting to act as a BVI legal practitioner. What mattered was the function performed by the foreign lawyer, not the capacity in which he or she acted. The broad test of determining functionality is that of any conduct which was broadly deemed to be assisting with the conduct of a BVI matter. Where the court has made a finding that the non-admitted lawyer was acting as a legal practitioner, then there is no need to dissect the work performed, since any administrative task would be incidental to anything done by them to assist with the conduct of the litigation. In a case like this where the judge found that BVI and English aviation law were the same and the determination of where to sue was necessarily bound up in the BVI proceedings, the conclusion is inescapable that Dr. Fox would be seeking to recover costs for assisting with a BVI matter, when he was not registered on the Roll. It would be irrelevant that at the time the work was done it was not then intended to utilise it in BVI proceedings. The learned judge erred in permitting the respondents to recover pre-action costs in respect of legal fees paid to Dr. Fox on the ground that Dr. Fox was, as a legal practitioner, providing

assistance with the BVI litigation while his name was not on the Roll.

Dimitry Vladimirovich Garkusha v Ashot Yeghiazaryan BVIHCMAP2015/0010 (delivered 6th June 2016, unreported) followed; Yao Juan v Kwok Kin Kwok and another BVIHMCAP2018/0042 (delivered 1st June 2021, unreported) followed; John Shrimpton and another v Dominic Scriven and others BVIHCMAP2016/0031 (delivered on 3rd February, 2017, unreported) followed.

Case Name:

**Vanroy Hodge
v
Anguilla Air and Sea Ports Authority

(AXAHCVAP2022/0001)
(ANGUILLA)**

Date:

Tuesday 10th January 2023

**Coram for
delivery:**

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal**

Appearances:

Appellant: Ms. Paulette Harrigan

Respondent: Ms. Yanique Stewart

Issues:

Interlocutory appeal – Judgment in default of acknowledgement of service – Setting aside of default judgment by learned master - Rule 13.3(2) of the Civil Procedure Rules 2000 – Exceptional circumstances – 6-month limitation period for the institution of proceedings against any person for act done in execution of public duty – Section 1(1) of the Public Authorities Protection Act – Whether the limitation defence amounted to an exceptional circumstance warranting the setting aside of the default judgment – Appellate interference with learned master’s finding of facts – Whether learned master had sufficient evidence before her to conclude that AASPA

could rely on limitation defence – Whether learned master erred in setting aside the default judgment

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1.The appeal is dismissed.**
- 2.The appellant shall pay the respondent the costs of this appeal in the sum of two-thirds of the costs awarded in the court below.**

Reasons:

- 1. Section 1(1) of the PAPA must be construed restrictively. It only applies to public authorities, and not to all persons acting under statutory provisions. It does not apply to all actions performed by public authorities but only to those where the obligation sued upon is owed generally to the public or to a section of it. Where the obligation sued upon arises simply out of a relationship with the claimant which would be the same for any non-public person or body, and where there is no question of a public law challenge, the Act has no application. Consequently, for a public authority to rely on the limitation period set out in section 1(1), the act complained of must be an act done (i) in the direct execution of a statute; (ii) in the discharge of a public duty; (iii) in the exercise of a public authority; and (iv) the claim was instituted more than 6 months after the cause of action arose. The limitation defence is not a defence in relation to the merit of the case.**

Alves v The Attorney General of the Virgin Islands [2017] UKPC 42 applied; Bradford Corporation v Myers [1916] 1 A.C. 242 applied.

- 2. In determining whether section 1(1) of the PAPA was applicable, the question for the learned master was not whether Mr. Hodge was performing his duties as CEO of AASPA but or whether he was performing the duties of accountable manager of ASSI when he issued the suspension letter but whether AASPA in terminating Mr. Hodge's appointment was discharging a public duty.**

3. An appellate court should not seek to interfere with findings of fact by a lower court unless there is no evidence to ground such a finding, or the lower court based the finding on a misunderstanding of the evidence, or the finding was one which no reasonable judge considering the evidence could have made. There was evidence adduced by AASPA in its affidavit, on which the learned master could have ground her findings that AASPA could rely on the limitation defence that the termination was done as part of its statutory duty to manage and operate the Airport. It was not in dispute that the claim was filed more than 6 months after Mr. Hodge's employment was terminated.

Henderson v Foxworth Investments Limited and another [2014] UKSC 41 applied; Beacon Insurance Co Ltd. v Maharaj Bookstore Ltd [2014] UKPC 21 applied; Kwok Kin Kwok v Yao Juan [2022] UKPC 52 applied.

4. What amounts to an exceptional circumstance under CPR 13.3(2) is not defined and must therefore be decided on a case-by-case basis. It must be a circumstance that provides a compelling reason why the defendant should be permitted to defend the proceedings in which the default judgment has been obtained. Such circumstances include where it can be shown that the claim is not maintainable as a matter of law or one which is bound to fail, or one with a high degree of certainty that the claim would fail or where the remedy sought or granted was not one available to the claimant.

Carl Baynes v Ed Meyer ANUHCVP2015/0026 (delivered 30th May 2016, unreported) followed.

5. The limitation defence under section 1(1) of the PAPA if successful would result in the claim being statute barred. Therefore, the learned master did not err in finding that it was an exceptional circumstance and, on that basis, exercised her discretion to set aside the default judgment. There being no error in principle in the exercise of her

discretion, there is no basis to interfere with the decision.

Dufour and Others v Helenair Corporation Ltd. and Others (1996) 52 WIR. 188 applied; Kwok Kin Kwok v Yao Juan [2022] UKPC 52 applied.

APPLICATIONS AND APPEALS

Case Name:

Emanuel Webster

v

**[1] Khamal Vere Hodge
[2] Patricia Harding-Hodge
[3] Valencia Hodge**

[AXAHCVAP2020/0002]

Date:

Monday, 9th January 2023 (Panel 1)

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal**

Appearances:

Appellant

Mr. Roger Forde, SC with him Mr. Kennedy Hodge

Respondents:

Mr. John Carrington, KC with him Mr. Horace Fraser

Issues:

Civil appeal - Transfer of land - Whether the trial judge erred in law in holding that the question of whether an agreement existed between the appellant and the first or third respondent for the sale of part of Parcel 29 did not arise for determination by the court - Whether the trial judge erred in law by framing the primary issue of the appellant as whether the third respondent had a power of attorney which authorised him to execute the RL 1 Form when the true issue was whether the first respondent had given the third respondent a power of attorney to act on

his behalf in negotiating and agreeing to the sale and purchase of a part of Parcel 29 prior to execution - Whether the trial judge erred in law in holding that the primary issue was the fact that the certification of the RL 1 Form was not done in the presence of all the signatories when in fact the primary issue was whether the appellant and the transferor (being the wife of the appellant) did transfer or agreed to transfer part of Parcel 29 to the first respondent - Whether the trial judge erred in law in holding that the third respondent did pay the purchase price for a $\frac{1}{4}$ share of Parcel 29 - Fraud - Partition - Rectification of land register - Whether the trial judge erred in law in holding that there was no evidence of fraud or mistake in the registration of the RL 16 Form and as such the provisions of Section 146 of the Registered Land Act were inapplicable - Whether the learned judge erred in law in holding that there was no evidence that there was fraud or mistake in the process of the registration of the RL 16 Form in circumstances where the third respondent admitted that he made a false certification on the RL 16 Form in the process of the recording and registration of the said Form - Whether the learned judge erred in law in holding that the fraudulent certification by the third respondent as contained in the RL 16 Form was done by the said third respondent in his capacity as a Notary Public and as such he owed no duty of care to the appellant who was the applicant in the RL 16 Form and whom the third respondent knew or ought to have known may be adversely affected by the said false certification and in circumstances where the third respondent and his son, the first respondent, had an interest in the subject matter of the said RL 16 Form - Whether the learned judge erred in finding that the allegations of fraud in relation to the partition of Parcel 29 were insufficient to justify rectification of the register - Whether the learned judge erred in law in failing to consider fraud as a separate and distinct cause of action and simply considering fraud as a ground for rectifying the Register under Section 146 of the Registered Land Act - Trespass to land - Whether the learned judge erred in finding that damages in the sum of \$2500.00 were adequate for the trespass committed by the appellant on Parcel 232 - Whether the learned judge erred in refusing to make an order for exemplary/aggravated damages

Type of Order: N/A

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

Case Name: Erma Browne
v
Evangeline Bradshaw
[SKBMCVAP2021/0005]
(Saint Christopher and Nevis)

Date: Monday, 9th January 2023 (Panel 1)

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal

Appearances:

Appellant	Mr. Nassibou Butler
Respondent:	In Person

Issues: Magisterial civil appeal - Landlord and tenant - Arrears of rent - Recovery of possession - Notice to quit - Section 16(1)(a) of Rent Restrictions Act Cap 18:29 - Whether the learned magistrate erred in law when she concluded that the notice to quit would no longer be operative as the respondent paid arrears within a specified time - Whether the learned magistrate erred in failing to make an order for possession and arrears of rent when during the hearing the respondent admitted being in arrears of rent some portion of which was over 60 days- Whether the learned magistrate had jurisdiction to make an order for possession after the appellant had accepted payment

of some rent from the respondent after service of the notice to quit

Type of Order:

Oral Judgment

Result/Order

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The order for possession is granted in favour of Ms. Browne for possession of the premises and delivery up by the respondent, Ms. Bradshaw.
3. The delivery up of possession must be done no later than 9th March 2023 during which period the respondent shall make the payments in relation to her occupation still outstanding, ie. the months of January and February going into March.
4. The costs order made by the Magistrate below of \$800.00 in favour of the respondent is set aside.
5. The appellant shall have her costs fixed in the sum of \$400.00 on this appeal and in the court below, that sum to be paid no later than 9th March 2023.

Reason:

The Court considered that the Magistrate erred as a matter of law in considering and applying section 16(1)(a) of the Rent Restrictions Act Cap 18:29 of Saint Christopher and Nevis and ought to have reckoned the remedy which could have been granted as of the date of the hearing having regard to the notice to quit which was served on the respondent. The Magistrate ought to have had regard to the fact that as to the time and date of the hearing in March 2021, there were arrears of rent then outstanding for the months of January, February and March. That fact therefore gave the Magistrate the jurisdiction to make the appropriate order and grant the remedy of possession which was sought by the appellant. The Magistrate accordingly erred in dismissing the claim for possession and not ordering the payment of arrears of rent. The Court was cognisant, having listened to the parties, that currently the only arrears outstanding referencing payments as at the commencement of any particular month is for the month of January 2023. The Court therefore allowed the appeal on the aforementioned bases.

Case Name:

**Jamila Aliena William
v
The Commissioner of Police
(AXAMCRAP2015/0002)
(ANGUILLA)**

Date:

Monday 9th January 2023 (Panel 2)

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant: No appearance

Respondent: Ms. Erica Edwards with Mr. Sasha Courtney

Issues:

**Criminal Appeal - Theft - Request for adjournment -
Absence of Appellant – Delay in prosecution of appeal -
Want of prosecution**

Type of Order

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal is struck out for want of prosecution.

Reason:

Counsel for the appellant sent correspondence by email dated 8th January 2023 at 8:54 PM requesting an adjournment to an unspecified time on the account that she had an urgent medical appointment for a minor procedure and was unable to attend the hearing of the appeal. The email also indicated that medical supporting documents would be forwarded in a subsequent email. The appellant was also out of the jurisdiction and not present at court.

Counsel for the respondent objected to the application for the adjournment and indicated that the hearing of the appeal has been adjourned on several occasions at the

instance of the appellant and therefore objected to the request for an adjournment.

The Court considered that the appellant was charged in April 2009 with 12 counts of theft and related offences committed between February 2006 and March 2009. In January 2011, 10 of the charges were withdrawn and the summary trial for the 2 remaining offences was commenced. The trial was completed 4 years later and on 23rd July 2015 the appellant was found guilty of both of the remaining charges and sentenced to a fine and compensation for each of the charges.

On 4th August 2015 the appellant appealed against her conviction and sentence with the consequence that the payment of the fine and compensation was automatically stayed. The appellant filed submissions in support of the appeal 4 and half years later on 24th January 2020. On 8th April 2020 the respondent filed submissions in opposition to the appeal. The appellant filed further submissions in support of the appeal on 27th January 2022 with no authorisation from the court.

A further document titled notice of grounds of appeal was filed in which the appellant filed five grounds of appeal unrelated to the grounds which was advanced in the January 2020 submissions. In February 2022 the appellant filed another document titled “notice of additional grounds of appeal” which contained different grounds of appeal to those contained in the notice of appeal filed in August 2015, different to the submissions filed in January 2020, and different to submissions in January 2022. Then on 7th February 2022 with no leave granted to the appellant to adduce fresh evidence the appellant filed affidavit evidence by one Delroy Hughes and in February 2022 the appellant filed skeleton arguments in support of the appeal. By that time the grounds of appeal in respect of which the appellant was filing submissions had become uncertain.

The appeal came up for hearing before the Court on 7th July 2022, over 13 years after the appellant was charged and over 7 years after the appellant appealed against her conviction and sentence. The appellant was still unprepared to proceed with the appeal and the court

adjourned the hearing of the appeal and gave the appellant 4 weeks to put matters right for the hearing in order by taking the requisite steps to comply with the Rules of Court.

The appellant however did nothing to regularise matters with regards to the appeal and instead, the appellant filed a notice of application on 3rd August 2022 for extension of time to file grounds of appeal, skeleton arguments, and authorities out of time on the day she was supposed to file and serve the respondent all documents to prosecute the appeal.

On 5th September 2022 with no permission from the court the appellant filed another set of grounds of appeal and an affidavit sworn to by counsel representing the appellant in support of the application for an extension of time. The appellant also filed on that day another set of skeleton submissions.

On 23rd September 2022 the respondent filed submissions in opposition to the application for extension of time submitting that the appellant has not satisfied the factors that would lead to the grant of an extension of time, particularly length of the delay in compliance, the reason for the delay and the chances of success on the appeal if the extension of time is granted.

The application for extension of time, together with an affidavit in support, came before a judge in chambers on 25 October 2022, whereupon the application was dismissed, because it does not even address, far as satisfy the requirements for the grant of an extension of time by the court.

The appeal came up for hearing today, however neither the appellant or her counsel appeared and there was no formal application seeking an adjournment of the appeal which should have been served on the respondents. Instead, counsel for the appellant sent an email to the Chief Registrar at 8:54 p.m. last night, indicating her unavailability as a result of a medical appointment. In that emailed message, Counsel for the appellant promised supporting medical documents which, as at the time of hearing had not been provided.

The Court noted that Counsel for the appellant did not appear, nor did she have counsel hold papers for her. The Court further noted that counsel for the respondents would not have been copied in on Counsel for the appellant's emailed correspondence and so the respondents would have prepared for the disposal of the appeal today and would understandably have been surprised by these events.

The court noted the significant vintage of this appeal and the repeated adjournments at the instance of the appellant and was not of the view that this appeal should further occupy the court's list, neither should the virtual complainant in the matter continue to be denied the benefit of the compensation awarded to them since 2015. The Court noted that the balance of prejudice tilted in favour of the appellant when considering that the virtual complainant would have suffered the loss of their money between 2006 and 2009 and has had the benefit of a compensation order which has not been satisfied some 7 and a half years later because the appeal against the conviction and sentence of the appellant is still subsisting.

Having regard to all of these circumstances the appeal is struck out for want of prosecution.