

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

GRENADA
VIDEOCONFERENCE
20TH-23RD SEPTEMBER 2022

JUDGMENTS

Case Name:

[1] Philomen Nixon

[2] Annette Turney

v

[1] Joseph Nixon aka Paswoe

[2] Jason Nixon (in his personal capacity and as the personal representative of the Estate of Giraud Nixon)

[3] Steven Nixon (in his personal capacity and as the representative of the Estate of Gabriel Nixon)

[4] Johnnie Nixon

[DOMHCVAP2018/0005]
(Commonwealth of Dominica)

Date:

Wednesday, 21st September 2022

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Trevor Ward, Justice of Appeal

The Hon. Mr. Dexter Theodore, Justice of Appeal [Ag.]

Appearances:

Appellants:

Mr. Mark Douglas

Respondents:

Mrs. Kathy Buffong- Royer for the 1st and 3rd respondents

Mr. Ronald Charles for the 2nd and 4th respondents

Issues:

Civil appeal - Striking out of defence - Defendant's duty to set out case - Rule 10.5 of the Civil Procedure Rules

2000 - Whether the judge erred when she denied the appellants' application to strike out the defence for non-compliance with rule 10.5 of the Civil Procedure Rules 2000 and for failure to disclose any reasonable grounds for defending the claim - Rule 26.3(1) of the Civil Procedure Rules 2000 - Exercise of judge's discretion - Whether the judge's exercise of her discretion by denying the strike out application was an improper exercise of discretion which exceeded the generous ambit of reasonable disagreement

Result/Order:

IT IS HEREBY ORDERED THAT:

- i. The appeal is accordingly allowed.**
- ii. The defence filed by the respondents on 26th August 2016 is struck out and the appellants shall make such application or take such other course of action as they may be advised for the continuation or conclusion of this matter.**
- iii. Costs to the appellants here and in the court below to be assessed by a judge or master of the High Court, unless agreed to by the parties within 21 days.**

Reasons:

- 1. Rule 10.5 of the CPR sets out the requirements which must be complied with to render a defence valid. All of the requirements are expressed in mandatory terms by the use of the word 'must' and are set out in separate provisions, leaving no doubt that they are both mandatory and conjunctive requirements.**

Rule 10.5 of the Civil Procedure Rules 2000 considered.

- 2. The defence filed by the respondents does not say which allegations they admit, deny, neither admit nor deny, or which they require the appellants to prove in accordance with rule 10.5(3). The fact that paragraphs 1 to 49 of the appellants' statement of claim may not be pleadings in support of any of the 5 stated**

causes of action does not mean that they can be ignored. In any event, paragraphs 50 to 76 of the statement of claim set out specific allegations and claims in support of what the respondents state are the 5 causes of action, and they should have been specifically admitted, denied or proof of them should have been specifically required from the appellants. This was not done by the respondents in their defence and this renders the defence non-compliant with rule 10.5. Therefore, the learned judge erred in her failure to have struck out the defence when there was such obvious and egregious non-compliance by the respondents with the mandatory requirements of rule 10.5 of the CPR.

Rule 10.5(3) of the Civil Procedure Rules 2000 applied.

3. Furthermore, the absence of reasonable grounds for resisting the claim was exposed when the learned judge rejected the locus standi argument - that the first appellant, as the first claimant in the court below, did not have the locus standi to bring the claim; and the res judicata argument- that the parties and issues in dispute were the same as the parties who disputed and the issues which were disputed in previous proceedings before the court. The respondents did not deny the allegations of breach of fiduciary duty, conversion, embezzlement and fraud advanced against them by the appellants and did not therefore present any reasonable grounds for resisting the appellants' claims. The learned judge accordingly erred when she failed to strike out the respondents' defence for this reason also.

Rule 10.5(5) of the Civil Procedure Rules 2000 applied.

4. The court has a discretion whether or not to strike out a party's statement of case under rule 26.3(1) of the CPR. However, the overriding objective of the CPR, which is to enable the court to deal with cases justly, cannot be achieved by leaving in place the non-compliant

defence of the respondents. Moreover, the respondents' case, as can be gleaned from the defence, is manifestly weak, containing no more than a prayer that the appellants' claim be dismissed as it is an abuse of process and the matter is *res judicata*; which issue was canvassed in the application by the respondents to dismiss the appellants' claim, and which application the learned judge found had no merit. This case is one, therefore, where striking out without any intermediate step is the appropriate order.

Rule 26.3(1) of the Civil Procedure Rules 2000 applied; *Saint Lucia Furnishings Limited v Saint Lucia Co-Operative Bank Limited* and another [2003] ECSCJ No. 82 (delivered 24th November 2003) followed.

5. In the exercise of her judicial discretion not to strike out the respondents' defence, the learned judge erred by giving too little weight to the seriousness of the breaches of rule 10.5 of the CPR and in giving too much weight to other litigation involving the land forming part of the estate of Giraud Nixon, especially after having found that the appellants' claim was not *res judicata*. As a result of these errors, the learned judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong. Accordingly, the learned judge's order made in the exercise of her discretion declining to strike out the defence and giving directions for the making of submissions or the giving of evidence by affidavit, whichever was intended by her order, is set aside.

Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188 followed.

6. Having set aside the orders made by the learned judge in the exercise of her judicial discretion, this Court is entitled to make its own decision as to whether or not to strike out the defence and to make any consequential or accompanying

orders. The case before this Court is one where the striking out of the defence is appropriate, given the respondents' egregious non-compliance with the CPR and the fact that the defence discloses no reasonable ground for defending the claim.

Case Name:

Stanley Felix

v

- 1. Elizabeth Darius-Clarke
(in her personal capacity and
representing the co-proprietors)**
- 2. Aldith Darius also known as Elizabeth
Darius-Clarke**
- 3. Stephen Darius also known as Stephen
Fleary**

**[SLUHCVAP2022/0005]
(Saint Lucia)**

Date:

Wednesday, 21st September 2022

**Coram for
delivery:**

**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]
The Hon. Mr. Godfrey Smith, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Danielia Chambers

Respondents: Mr. Sahleem Charles

Issues:

Civil appeal – Default judgment – Setting aside default judgment – Civil Procedure Rules 2000 – Rule 13.3(1) – Whether there was a real prospect of successfully defending the claim – Whether learned master erred in finding that appellant did not satisfy the conjunctive requirements of 13.3(1) – Rule 13.3(2) – Exceptional circumstances – Whether learned master erred in finding that the onset of the Covid-19 pandemic was not an exceptional circumstance justifying the setting

aside of the default judgment under 13.3(2) – Prescription – Whether learned master erred in failing to properly consider the issue of prescription and whether it was an exceptional circumstance justifying the setting aside or varying of the order – Rule 13.3(3) – Variation – Interest

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal against the decision of the learned master refusing the application to set aside the default judgment is dismissed.
2. The matter is remitted to a judge or master of the High Court for the assessment of arrears of rent for the period October 2012 to June 2016, the assessment of prejudgment interest for the period January 2013 to June 2018 and the consequent variation of the judgment.
3. Costs are awarded to the respondents in the sum of \$400.00, being two-thirds of the amount awarded in the lower court, discounted by 20% to reflect the appellant's partial success.

Reasons:

1. An appellate court should only disturb the exercise of a master's discretion if it were to conclude that the master erred in principle in his approach or has left out of account some aspect that he should have considered or considered some aspect that he should not have, and as a result, the decision exceeded the generous ambit within which reasonable disagreement is possible, or the decision is plainly wrong.

Dufour and others v Helenair Corporation Ltd and others (1996) 52 WIR 188 applied.

2. While the learned master conflated the test for real prospect of successfully defending the claim in rule 13.3(1)(c) with the test for exceptional circumstances in rule 13.3(2), this is immaterial, both factually and as a matter of law. The learned master having already concluded

that the second condition of rule 13.3(1) had not been satisfied, the application was bound to fail as a matter of law. Even if the master had applied the correct test and come to a decision in favour of the appellant, the application would still have failed as the defence did not show a real prospect of successfully defending the claim.

Rules 13.3(1)(c) and 13.3(2) of the Civil Procedure Rules 2000 applied.

3. Each instalment of rent represents a cause of action in respect of which a separate action may be brought. These actions may be joined, but the landlord's election not to do so does not constitute dividing his cause of action. In this case, the accrual of rent was not one continuing cause of action but 54 separate causes of action, some of which fall outside of the prescriptive period. The claim having been filed on 29th January 2020, and arrears of rent being prescribed by five years, no action can be maintained for any arrears of rent accrued before 29th January 2015. Therefore, the period for which rent can be claimed is January 2015 to June 2016.

Articles 2111, 2129, 2085 and 2088 of the Civil Code Cap. 4:01 of the Revised Laws of Saint Lucia applied; *Victor Romans v Bradley Barrett* (1976) 28 WIR 99 applied.

4. To interrupt prescription under Article 2088 of the Civil Code, there must be a clear and unequivocal admission of liability to pay what is alleged to be owed. All that is required is a statement by the debtor acknowledging the existence of some outstanding amount owed to the creditor. There is no requirement to admit any particular amount and a query to the creditor as to the outstanding amount is sufficient. The amount of the debt must be quantifiable or capable of ascertainment by calculation or from extrinsic evidence. In this case, the 1st respondent's WhatsApp message on 27th October 2017 to the appellant is an

unambiguous demand for the payment of arrears of rent. The appellant's response acknowledged that a debt for arrears of rent was due to the respondents, and that he had every intention to settle it. This acknowledgment of the debt was therefore capable of interrupting prescription.

Article 2088 of the Civil Code applied; First Caribbean International Bank (Barbados) Limited v The Roserie Company Limited and others, SLUHCV209/1067 and SLUHCV2010/0121 (delivered 30th June, 2017, unreported). applied; Bradford & Bingley plc v Rashid [2006] UKHL 37 applied.

5. When there has been an acknowledgment of a debt sufficient to interrupt prescription, time starts to run afresh from the date of the acknowledgment. However, any acknowledgment of the debt after the prescribed period is of no legal effect. In the instant case, arrears of rent were being claimed for the period January 2012 to June 2016. The acknowledgment of the debt was made on 27th October 2017. The respondents are therefore not entitled to arrears of rent accruing earlier than 27th October 2012. They are thus entitled to collect arrears of rent for the period October 2012 to June 2016 (44 months).

Network Construction Maintenance and Rehabilitation Limited et al v Cable & Wireless (St. Lucia) Limited SLUHCVAP2018/0024 (delivered 18th September 2020, unreported) applied.

6. An applicant who is unsuccessful under rule 13.3(1) may have a default judgment set aside under rule 13.3(2), on the basis of exceptional circumstances. What amounts to an exceptional circumstance is not defined by the CPR. It is to be decided on a case-by-case basis and an applicant must provide a compelling reason why he should be permitted to defend the proceedings in which the default judgment has

been obtained. While a small portion of the claim appears to be prescribed, the judgment can be varied under rule 13.3(3) of the CPR, and the prescribed portion can be severed from the judgment. Subject to variation, it remains a regularly entered default judgment.

Rule 13.3(2) of the Civil Procedure Rules 2000 applied; Meyer v Baynes [2019] UKPC 3 applied; Carl Baynes v Ed Meyer ANUHC VAP2015/0026 (delivered 30th May 2016, unreported).

7. Interest should not be awarded on the entire amount of \$81,250.00 from January 2013 as this was not the amount owed as at that date. Pre-judgment interest should be calculated on the amount of \$1,500.00, starting from the date when that payment became due, increasing by \$1,500.00 monthly, and with each interest payment being calculated based on the total amount of rent owed at the particular time, until the date of judgment. With respect to post-judgment interest, it is settled law that a claimant cannot be awarded interest on interest. Therefore, any post-judgment interest must run from the date of the judgment to the date of payment, and the judgment must be varied to reflect this.

The Attorney General of The Federation of St. Christopher And Nevis v SKN Choice Times Limited SKBHCVAP2019/0045 (delivered 27th May 2022, unreported) applied.

Case Name:

**The Attorney General
The Minister of Finance
v
The Grenada Bar Association

[GDAHCVAP2022/0018]
(Grenada)**

Date: **Wednesday, 21st September 2022**

Coram for delivery: **The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]
The Hon. Mr. Godfrey Smith, Justice of Appeal [Ag.]**

Appearances:

Appellant: **Mr. Darshan Ramdhani, KC with him Ms. Sabrita Ramdhani**

Respondents: **Mr. Ruggles Ferguson and Ms. Danyish Harford**

Issues: **Interlocutory appeal – Constitutional law – Section 8(8) of the Constitution of Grenada – Right to a fair trial – Part 21 of the CPR – Application for representation order – Whether the GBA has standing to seek constitutional redress – Whether the GBA and the litigants before the Supreme Court have the same or similar interests in the constitutional proceedings – Whether the class of ‘litigants’ is sufficiently identifiable – Whether the availability of an alternative remedy is a bar to the constitutional motion – Whether the Judge erred in granting the representation order**

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

- 1. The appeal is allowed.**
- 2. The order of the judge is set aside with no order as to costs.**

Reasons:

- 1. The GBA has a sufficient prima facie interest in the courts of Grenada to raise issues that may affect the constitutional right to a fair trial within a reasonable time for its members and litigants before the courts. The Judge correctly left the final determination of standing to be resolved at the trial. The real issue in this appeal is whether that right includes the right to represent persons who have trials in the courts.**

Section 4 of the Legal Profession Act Cap. 167A of the Laws of Grenada applied.

- 2. The GBA and the litigants have a common interest, namely, the proper funding and administration of the courts in Grenada. In individual cases, litigants' needs and expectations may be addressed because their cases are progressing through the courts satisfactorily. But that does not mean that they do not have the same interests as other litigants whose needs and expectations are not being addressed. The interest is present in all litigants as soon as they become involved in a matter before the courts. Therefore, the threshold issue in CPR 21.1 of having the "same or similar interest" is satisfied.**

Rule 21.1(2) of the Civil Procedure Rules 2000 applied; Millharbour Management Ltd and others v Weston Homes Ltd and another [2011] EWHC 661 applied; John v Rees [1970] Ch 345 applied; Duke of Bedford v Ellis and others [1901] AC 1 considered.

- 3. The persons who comprise a represented class must be identifiable. The common interest between the GBA and the litigants existed at the time when the claim was filed in July 2019, and though the membership of the represented group fluctuates it can be ascertained from time to time by, for example, checking the courts' lists. Membership of the class is attained once a person becomes a litigant and does not depend on the result of the proceedings. Therefore, the represented class of litigants is sufficiently defined for the purposes of CPR part 21.**

Emerald Supplies Ltd v British Airways plc [2010] EWCA Civ 1284 applied; John v Rees [1970] Ch 345 applied; Markt & Co. Limited v Knight Steamship Company Limited and others [1910] 2 K.B. 1021 considered.

4. It is not disputed that an alternative remedy exists, namely, to file individual constitutional claims in the High Court alleging that a litigant's constitutional right to a fair trial within a reasonable time protected by section 8 of the Constitution has been breached or is likely to be breached. However, the availability of an alternative remedy is not an absolute bar to bringing a constitutional motion. The wording of section 16 of the Constitution is discretionary.

Akim Monah v The Queen GDAHCRAP2021/0015 (delivered 23rd February 2022, unreported) applied; Attorney General v Ramanoop [2005] UKPC 15 applied.

5. A representation order would not necessarily strengthen a litigant's rights in these proceedings nor any future claims for constitutional relief. Neither will the order create an estoppel between the State and individual litigants. Any application by a litigant for a declaration that his right to a fair trial within a reasonable time has been infringed will depend on the facts of the case that he presents to the court. He cannot use a declaration of unconstitutionality in these proceedings to claim that his rights have been infringed in other proceedings. There is no utility in continuing the representation order as the GBA can pursue the substantive claim without such an order.

Akim Monah v The Queen GDAHCRAP2021/0015 (delivered 23rd February 2022, unreported) applied.

APPLICATIONS AND APPEALS

Case Name:

**Alexander Clack
v
The King**

**[GDAHCRAP2016/0004]
(Grenada)**

Date: Tuesday, 20th September 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Chief Justice
[Ag.]
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal

Appearances:

Applicant/Appellant: Mr. Anselm Clouden

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issues: Criminal appeal – Non-capital murder – Appeal against conviction and sentence – Unavailability of transcript of proceedings – Re-trial – Section 41(2) of the Supreme Court Act, Cap. 336 – Whether appellate court has the power to order a retrial in the circumstances – Delay – Whether inordinate delay in production of complete transcript of proceedings gives rise to breach of the right to a fair hearing within reasonable time – Application for stay of proceedings – Permanent stay of criminal proceedings – Whether proceedings ought to be permanently stayed in light of the circumstances – Principles applicable to grant of permanent stay of criminal proceedings

Type of Order: Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. A permanent stay of proceedings is granted.
2. The appellant is to be released immediately from custody.

Reason:

The appellant was convicted of non-capital murder on 1st February 2015 and was sentenced to 67.5 years in prison. The appellant filed an appeal against his conviction and sentence on 9th February 2016. The appellant remains in custody. The appellant is not in a position to prosecute his appeal against conviction and sentence, the reason being that although the court reporting unit advised that they had prepared most of the transcript there is no audio of the judge's notes for the trial which deals with the summation and plea in mitigation. These remain outstanding. The absence of the judge's notes and plea in mitigation is occasioned by the fact that the computer containing the judge's notes and record was stolen. It is accepted that the summation of the judge is a very critical part of the proceedings where an appeal has been lodged, so although the appeal has been filed, the appellant, for the reasons indicated, is not in the position to prosecute his appeal with the attendant injustice which flows from that situation, injustice and unfairness.

The Court heard submissions from both counsel on the matter, counsel for the appellant Mr. Anselm Clouden and Mr. Howard Pinnock, Senior Crown Counsel. The submissions largely centered on whether a stay ought to be granted. Initially, the Crown had advanced the view that there ought to be a retrial, but having regard to section 41(2) of the West Indies Associated States Supreme Court (Grenada) Act, Cap. 33 it was agreed by both counsel that this section is not engaged and as such the statutory authority for the ordering of a retrial does not exist. Although both counsel advanced a position with respect to a permanent stay, counsel for the respondent Mr. Pinnock suggested that a stay should be couched so as to permit the prosecution at some time in future of resuscitating the matter at the High Court with a new trial. The Court was of the view that the Court should entertain that situation. Having heard both counsel, the Court was of the view that given the exceptional circumstances of this matter the appropriate order would be to grant a permanent stay and to also order the immediate release of the appellant, Mr. Alexander

Clack. The Court believed that this would best serve the interests of justice and fairness.

Case Name:

**Joshua Wilson
v
The King**

**[GDAHCRAP2020/0016]
(Grenada)**

Date:

Tuesday, 20th September 2022

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Chief Justice
[Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of
Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal**

Appearances:

Applicant:

In person

Respondent:

Mr. Howard Pinnock, Senior Crown Counsel

Issues:

Leave to appeal to His Majesty in Council- Appeal against sentence - Whether Court of Appeal has jurisdiction to hear application for leave to appeal to the Privy Council - Section 104 (3) of the Constitution of Grenada- Special leave to appeal to His Majesty in Council

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal is dismissed.

Reason:

On 21st September 2021, the Court of Appeal heard an appeal by the applicant against his sentence of 8 years imprisonment and a compensatory order of \$112,968.70 imposed upon him by Her Ladyship Madam Justice Gilford on 19th December 2019.

The Court of Appeal rendered its decision on 21st September 2021, which varied the sentence imposed on the applicant to the extent that the order for compensation was vacated but affirmed the custodial sentence of 8 years imprisonment.

The Court, having previously heard the matter and rendering its decision affirming the applicant's custodial sentence, lacked jurisdiction to hear the applicant's application for leave to appeal to the Privy Council. The applicant must apply directly to the Privy Council for special leave to appeal. The appeal was accordingly dismissed.

Case Name:

**Isa Charles
v
The King**

**[GDAHCRAP2019/0005]
(Grenada)**

Date:

Tuesday, 20th September 2022

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Chief Justice
[Ag.]
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of
Appeal**

Appearances:

**Applicant/Appellant:
t: Mr. Anselm Clouden**

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issues: Criminal appeal - Appeal against sentence - Application to withdraw appeal

Type of Order N/A

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is withdrawn.

Reason: The appeal was withdrawn by counsel for the appellant.

Case Name: Clint Thorne
V
The King
[GDAHCRAP2017/0002]
(Grenada)

Date: Tuesday, 20th September 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Chief Justice
[Ag.]
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issues: Appeal against sentence- Unlawful carnal knowledge of female 8 years contrary to Section 178 of the Criminal Code, Cap 72A Revised Laws of Grenada - Time spent on remand pre conviction not taken into account by sentencing judge

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed to the extent that the sentence is varied to take account the period of 1 year 2 months and 4 days spent on remand by the appellant.**
- 2. The period of 1 year, 2 months and 4 days is discounted from the sentence.**

Reason:

The appellant had been committed for having unlawful sexual carnal knowledge with a female 8 years contrary to section 178 of the Criminal Code Cap 72A, Revised Laws of Grenada. After a trial by jury he was found guilty on 27th January 2017 and sentenced to 12 years and 7 months imprisonment. The appellant appealed against conviction and sentence, however at the hearing he abandoned his appeal against conviction and proceeded with the appeal against sentence only. The appellant sought to have time varied to take into account the time of 1 year 2 months and 4 days spent on remand pre conviction deducted from his sentence. Counsel for the respondent confirmed that the remand time of 1 year 2 months and 4 days was not brought to the attention of the court prior to sentence being imposed. In the circumstances the appeal against sentence was allowed to take into account the time spent on remand and subsequently deducted from the sentence.

Case Name:

Ken Charles

v

The King

**[GDAHCRAP2017/0020]
(Grenada)**

Date:

Wednesday, 21st September 2022

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Dexter Theodore, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Jerry Edwin

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issues: Criminal Appeal- Appeal against sentence- Offence of unlawful and carnal knowledge contrary to section 178 of the Criminal Code Cap 72A of the Revised Laws of Grenada, 2010- Whether sentence was manifestly excessive - Whether Eastern Caribbean Supreme Court Sentencing Guidelines are applicable to a sentence imposed before the Sentencing Guidelines came into effect- Akim Monah v The Queen GDAHCRAP2021/0015

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The sentence of 14 years, 11 months and 29 days imposed by the trial judge on the appellant is set aside and replaced by a sentence of 9 years imprisonment.

Reason: This is an appeal against a sentence imposed on the appellant, Mr. Ken Charles, of 14 years, 11 months and 29 days following a verdict of guilty arrived at by a majority of the jurors sitting on the matter. The offence was unlawful and carnal knowledge of a 7-year old girl contrary to the Criminal Code of Grenada, the incident giving rise to the appeal having taken place on 29th July 2010. The trial took place in October 2017 and on 24th October 2017 the jury arrived at its verdict. On 27th October 2017, the judge imposed the 15-year sentence on the appellant. The appellant appealed against both his conviction and sentence initially, but in his submissions filed in this appeal on 17th March

2022, counsel now appearing for the appellant abandoned his appeal against conviction and proceeded only with the appeal against sentence on the single ground that “the sentence is too excessive for a first time offender”.

In paragraph 11 of the submissions filed on behalf of the appellant, it was submitted that “the trial judge committed an error of law in determining the sentence by taking into account matters which were extraneous and irrelevant in that they were not before the court”. In the submissions filed by the Crown, it is expressly stated that the Crown agrees with paragraph 11 of the appellant’s submissions.

Therefore the issue of the trial judge’s error in imposing a sentence based on a statement made by the brother of the appellant, who was not a witness in the matter, that “he is tired of this stupidity” which led the judge to come to a conclusion that the appellant had previously committed the acts for which he was convicted and sentenced is not in dispute. There was in fact no such evidence and it is conceded by both sides that the judge so erred.

The onus then is on this Court to impose an alternative sentence once the sentence imposed by the judge is set aside. The appellant contends that an appropriate sentence, in all the circumstances, is a sentence of 9 years imprisonment. The respondent through Senior Crown Counsel, Mr. Pinnock agreed that 9 years is an appropriate sentence. The order of the court therefore is that the sentence of 14 years, 11 months and 29 days imposed by the trial judge on the appellant is set aside and replaced by a sentence of 9 years imprisonment.

Case Name:

Craig Thomas

v

The King

**[GDAHCRAP2018/002]
(Grenada)**

Date: Wednesday, 21st September 2022

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Dexter Theodore, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Derick F. Sylvester

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issues: Criminal Appeal - Appeal against sentence - Sexual offence with a female under the age of 13 years contrary to section 180 (1) of the Criminal Code of Grenada - Whether sentence was excessive in the circumstances

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against sentence is allowed.
2. The sentence of the learned judge of 13 years and 6 months on the first count and 14 years and 3 months on the second count to run concurrently is set aside and a sentence of 9 years on each count is substituted to run concurrently less the 1 month and 26 days that the appellant spent on remand.

Reason: The Appellant was indicted on 27th August 2018 of 2 counts of unlawful carnal knowledge of a 12-year-old female contrary to s 180(1) of the Criminal Code as amended. On 13th December 2018 after pleading guilty to both counts he was sentenced to a term of imprisonment of 13 years and 6 months on the first count and 14 years 3 months on the second count, to run concurrently. He appealed against the sentence.

On 21st February 2015 the victim met the appellant at the bus terminus in Saint George and travelled with him to his home in Saint David. The Appellant was 27 years old at the time. He undressed her except for her bra, put on a condom and had sex with her. During the process she asked him to stop but he ignored her request and proceeded to ejaculate. After ejaculation he wiped his penis and inserted it into the victim's vagina. She again asked him to stop, he did not stop and a struggle ensued, during which the bed broke and the appellant subsequently stopped and fixed the bed. The victim subsequently left after the appellant had initially told her that he would not have allowed her to leave.

In the notice of appeal, the appellant stated that the sentence was too excessive and that the learned trial judge failed to take into consideration the fact that he pleaded guilty. The maximum sentence under section 180(1) is a term of imprisonment not exceeding 30 years.

Mr. Sylvester for the appellant submitted that the appellant pleaded guilty at the first reasonable opportunity. The respondent has conceded that the full 1/3 discount was applicable in the circumstances. Mr Sylvester submitted that this was a case where the mitigating factors outweighed the aggravating factors.

Mr Pinnock submitted that the aggravating factors of the offence were the age disparity, ejaculation, premeditation, the appellant ignored a request to stop and the prevalence of sexual offences in Grenada.

Learned counsel for the appellant submitted that the mitigating factors were that the victim was not injured, there was no abhorrent perversion by the appellant during the commission of the offence, both counts arose from a single enterprise on the same day and that the appellant genuinely believed that the victim was 16 years old.

The psychology report before the court suggested that the appellant did not fit the profile of a sexual

predator and the prison report suggested that he has been a model prisoner.

Learned counsel for the appellant suggested that a sentence of around 8 years would be appropriate.

Senior Crown Counsel Mr Pinnock submitted that 9 yrs and 9 months would be an appropriate sentence in all the circumstances.

The Court noted that it will only interfere with a sentence when the trial judge has not followed the appropriate sentencing guidelines or made an error of law with the result that the sentence is manifestly excessive. However, the Court highlighted that it was decided in *Akeem Monah v R*, that the guidelines were not appropriate in the case of sentences passed before the guidelines came into effect.

The Court accepted the submissions of both counsel that the learned judge erred by failing to accord a full discount of 1/3 to the appellant on account of his guilty plea with the result that the sentence is unsafe.

Although both counsel seemed to suggest that it was a mitigating factor of the offender that there had been no violence, the Court was of the view that the refusal to stop after the victim asked him to stop resulting in a struggle during which the bed broke constituted violence during the commission of the offence which is an aggravating factor.

The court was of the view that taking the matter in the round, that it should set aside the sentence of the learned judge.

Case Name:

Arthur Braveboy

v

The King

[GDAHCRAP2017/0003]

(Grenada)

Date: Wednesday, 21st September 2022

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Dexter Theodore, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Jerry Edwin

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issues: Criminal appeal - Dismissal of appeal for want of prosecution

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal is dismissed for want of prosecution.

Reason: Counsel on record for the appellant, Mr. Jerry Edwin, indicated to the Court that the appellant has served his sentence since the filing of his appeal and has abandoned his appeal.

Case Name: Enroy Williams
v
The Commissioner of Police

[GDAHCRAP2020/0006]
(Grenada)

Date: Wednesday, 21st September 2022

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Dexter Theodore K.C, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Jerry Edwin

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issues: Criminal appeal - Appeal against sentence- Defrauding by false pretense contrary to section 97 (1) of the Criminal Code of Grenada- Abandonment of appeal

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal is dismissed for want of prosecution.

Reason: Counsel, Mr. Jerry Edwin informed the court that he did represent the appellant up to the status hearing of the matter in February 2022. Counsel indicated that the appellant has served his sentence in full and returned to his native country, thus the appeal was abandoned.

Case Name: Jeffrey Derick Christopher Aban
v
Enid Bissoon Aban

[GDAHCVAP2019/0018]
(Grenada)

Date: Wednesday, 21st September 2022

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Dexter Theodore K.C, Justice of Appeal
[Ag.]

Appearances:
Appellant: Mr. Nazim Burke with him, Ms. Georgell George
Respondent: Mr. Deloni Edwards

Issues: Civil appeal - Consent order

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal filed by Jeffrey Derick Christopher Aban by notice of appeal filed on 8th August 2019 is allowed to the extent that the order made by the learned judge on 3rd April 2019 is set aside and replaced by the consent order entered into by the parties, the appellant Jeffery Derick Aban and the respondent, Enid Bissoon Aban which consent order was signed by the parties and their respective counsel, Mr. Nazim Burke for the appellant Mr. Jeffrey Aban and Mr. Deloni Edwards for the respondent Ms. Enid Bissoon Aban in the following terms:

1. That the terms of the Judgment of the Honourable Madame Justice Wynante Adrien-Roberts in Claim No.GDAHMT2012/0172 delivered on the 3rd day of April, 2019 be, and are hereby varied in accordance with the terms hereinafter set out.
2. That the Appellant shall pay to the Respondent the sum of \$800,000.00 in full settlement of all claims arising from the ancillary proceedings in the aforementioned claim.
3. The said sum of \$800,000.00 shall be paid from the funds standing to the Credit of the

Appellant and Annmarie Aban at the Grenada Cooperative Bank (which funds are now frozen pursuant to the Order of the Court made the 6th day of February 2013) within Thirty (30) days of release of the said funds. Upon payment of the said sum to the Respondent the remainder of the said funds therein shall be unfrozen.

4. Upon the payment of the said sum of \$800,000.00 by the Appellant, the Respondent shall relinquish any all claims to any and all property owned by and in the name of the Appellant, whether solely or jointly with any other person, including but not limited to:

- i. The Richmond Hill property held in the name of the Appellant;**
- ii. The Grand Anse/ Lance Aux Epines property held in the name of the Appellant;**
- iii. Any and all monies in any and all bank accounts held by and in the name of the appellant, whether solely or jointly with any other person.**

5. The Respondent and the Child of the Marriage, namely, Justin Aban, shall vacate the upstairs unit of the Grand-Anse/ Lance Aux Epines property, now occupied by them, within Four (4) months from the date of this Order and deliver vacant possession of same to the Appellant;

6. The Respondent shall lay no claim to the furniture, equipment, appliances and effects contained in the rented (downstairs) units of the building and shall leave same at the use and disposal of the tenants thereof upon vacating the property.

7. Each party shall bear its own costs both with respect to the High Court Claim and of this Appeal.

Reason: The parties agreed to a consent order which was approved by the Court.

Case Name: The Federal Republic of Nigeria

v

1. Tibit Limited

2. Justin Ickonga

**[BVIHCMAP2021/0044]
(Territory of the Virgin Islands)**

Date: Wednesday, 21st September 2022

Coram: The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]
The Hon. Mr. Godfrey Smith, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Steven Thompson, KC with him Mr. Faisal Osman,
Mr. Richard Brown and Mr. Paul Griffiths

Respondent: Mr. Matthew Hardwick, KC with him Mr. Neil McLarnon
and Ms. Monique Peters

Issues:

Commercial appeal - Default judgment - Rule 12.9 of the Civil Procedure Rules 2000 - Refusal to grant default judgment against 2nd respondent - Exercise of discretion - Whether learned judge erred in failing to recognise that the entry of default judgment is merely a procedural step which has nothing to do with the merits of a claim - Whether learned judge was wrong not to follow Flaux J's analysis in Otkritie International Investment Management Ltd v Urumov & Ors [2012] EWHC 890 (Comm) - Whether learned judge wrongly held that the claims against the 1st and 2nd respondents cannot be dealt with separately within the meaning of rule 12.9(2) of the Civil Procedure Rules 2000 - Whether it was correct for judge to determine that this was a claim of joint liability - Whether learned judge was correct to hold that the court could not sensibly deal separately with the appellant's claim against Mr. Ickonga and the claim against Tibit - Whether the court has a discretion under rule 12.9(2)(a)(i) of the Civil Procedure Rules 2000 not to enter default judgment against one defendant even if their claim can be dealt with separately from the claim against the other defendant - Whether the entry of default judgment against 2nd respondent precludes the denial of liability by 1st respondent

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Kenyatta Boynes

v

The King

[BVIHCRA2017/0001]

(Territory of the Virgin Islands)

Date: Thursday, 22nd September 2022

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Paul Taylor, KC with him Mr. Michael Maduro

Respondent: Mr. John Black, KC with him Mrs. Kellee-Gai Smith

Issues: Application for reduction in sentence - Whether the delay in delivering judgment on the appellant's appeal violated his constitutional right to a fair hearing within a reasonable time - Whether the delay of almost 1 year was inordinate and unreasonable - Whether the Court of Appeal is functus officio - Whether the Court of Appeal has jurisdiction to hear the application - Whether there is a more appropriate forum for the hearing of the application

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:
The application for a reduction in sentence is refused, the Court having no jurisdiction to hear this application.

Reason: The application before this Court, which was filed on 15th June 2022, is for the applicant/appellant to be granted a reduction in sentence for the delay by this Court in delivering its judgment on the applicant's appeal against his conviction for murder.

The Court engaged the applicant's counsel, Mr. Paul Taylor, KC, quite extensively on the issue of the Court's jurisdiction to entertain an application on an appeal which was concluded some seven months ago when the judgment of the Court of Appeal was

delivered and the Certificate of Result of the appeal was issued.

Having heard Mr. Taylor extensively and having heard briefly from counsel for the Respondent, Mr. John Black, KC, the Court was firmly of the view that it had no jurisdiction to entertain the application for a reduction in the appellant's sentence based on an alleged violation of his constitutional right to a fair hearing within a reasonable time.

If the appellant wishes to have the issue of the violation of his constitutional right litigated, there is another forum where he can seek to litigate it. If he wishes to pursue an application for leave to appeal against his sentence, to which he made reference in his submissions filed on 21st September 2022, then he should make the appropriate application to invite the Court's consideration of the application.

On the application which was set down for hearing by this Court today, for the court to consider a reduction in the applicant's sentence consequent on the delay in the delivery of the judgment in his appeal against conviction, the Court did not find that it was clothed with the jurisdiction to hear and determine it.

Case Name:

**Monmot Limited
v
1. Caribbean Financial Services
Corporation
2. Park View Limited**

**[GDAHCVAP2022/0011]
[Formerly GDAHCVAP2020/0004]
(Grenada)**

Date:

Thursday, 22nd September 2022

Coram:

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

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

Appearances:

Appellant: Mr. Ruggles Ferguson

Respondents: Mr. V. Nazim Burke for the second named respondent

Issues: Application to withdraw appeal

Type of Order Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal, having been withdrawn by the appellant, is accordingly dismissed.
2. The appellant shall pay costs to the 2nd respondent agreed in the sum of \$1,750.00.

Reason: Counsel for the appellant made an oral application before the Court to have the appeal withdrawn. Counsel for the appellant also intimated that both the appellant and second named respondent agreed that costs should be payable by the appellant to the second named respondent in the sum of \$1,750.00. The Court acceded to counsel for the appellant's application and therefore made the above order.

Case Name:

**Leslyn Simms
v
Brenda Wardally-Beaumont**

**[GDAHCVAP2021/0026]
(Grenada)**

Date: Thursday, 22nd September 2022

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Applicant/Appellant: Mrs. Sherrine Francis Hackett and Ms. Jacqueline McKenzie

Respondent: Ms. Deborah Mitchell

Issues: Interlocutory Appeal- Review of case management decision- Dismissal of summary judgment application- Issue of unjust enrichment- Whether there was a real prospect of the defendant defending the claim of unjust enrichment- Whether Master misdirected himself by treating the application for summary judgment on the claim of unjust enrichment as an application for summary judgment on the whole claim - Whether Master erred in dismissing the application for summary judgment on the claim of unjust enrichment when there was no contradiction by the defendant of the pleading that there was no agreement between the parties that the respondent could use the proceeds of sale to her sole benefit- Whether Master erred by finding that there were disputed facts relating to the other allegations made in the claim to be resolved at trial- Whether Master erred in failing to recognise that the only issue on the application for summary judgment was whether the Defendant had a realistic prospect of defending the claim that she was unjustly enriched

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The order of the learned Master is set aside.

3. Summary judgment is granted in favour of the applicant/ appellant on the issue of unjust enrichment.
4. The respondent is to pay to the applicant/appellant half of the proceeds of the sale, less half of any taxes associated with the subject property, as determined by the Master.
5. Costs to be paid by the respondent to the appellant, both here and in the court below, to be assessed if not agreed within 21 days.

Reason:

The applicant/appellant having applied to the Master for summary judgment on the sole issue of unjust enrichment as pleaded in the statement of claim filed on 15th October 2019;

And the Master having heard the matter and having decided by way of a ruling dated 31st August 2021 that there were factual issues to be decided between the parties;

And the Master in that application having taken into account issues not raised before the Court;

The appellant has appealed against the judgment of the learned Master.

The Court, having heard from the appellant and the respondent;

And being satisfied that the learned Master erred in considering the applicant/appellant's claim in its entirety and not the sole issue of unjust enrichment;

And the Court being of the view that the respondent has not in her pleadings put forward any defence to the claim of unjust enrichment;

And the appellant having satisfied this Court that the pleadings are sufficient to raise the issue;

THE COURT THEREFORE DECLARES THAT:

1. The respondent has been unjustly enriched, having applied all the proceeds of sale of the subject property to her sole use and benefit.
2. The Court will therefore allow the appeal and set aside the order of the learned Master.

Further, the Court in the exercise of its powers under CPR Rule 15.2 will order:

1. Summary judgment on the applicant/appellant on the issue of unjust enrichment.

And will further order that:

2. The respondent is to pay to the appellant half of the proceeds of sale of the subject property less half of any taxes associated with the subject property, those taxes to be determined by the Master.
3. Costs are to be paid by the respondent to be assessed if not agreed, both here and in the Court below.

Case Name:

The National Lotteries Authority

v

Jerome De Roche

[GDAHCVAP2021/0025]

(Grenada)

Date:

Friday, 23rd September 2022

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal**

Appearances:

Appellant: Mr. Leslie Haynes, KC with him, Ms Melissa Modeste Singh

Respondent: Mr. Ruggles Ferguson with him, Ms. Danyish Harford

Issues: Civil Appeal - Rule 8.7 of the Civil Procedure Rules 2000 - Whether learned judge erred in law in admitting oral evidence and permitting respondent to deduce evidence in chief contrary to his pleaded case in deciding appellant's obligation to pay prize winnings - Presentment - Whether learned judge erred in findings of fact - Whether learned judge's reasons for disbelieving witnesses for appellant are unjustifiable - Whether learned judge erred in believing the evidence of witnesses for the respondent - Bearer instrument-Whether learned judge erred in finding that the Super 6 ticket was not a bearer instrument and failing to find that it was a term of the contract

Type of Order N/A

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

Reason: N/A

Case Name: Johnny Julien
v
Anthony Charles

[GDAHCVAP2020/0013]
(Grenada)

Date: Friday, 23rd September 2022

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal

Appearances:

Appellant: Mr. Ian Sandy

Respondent: No appearance

Issues:

Civil appeal - Application for adjournment

Type of Order:

Adjournment

Result / Order:

[Oral Delivery]

The respondent not having been served with notice of hearing of the appeal it is hereby ordered that:

1. The hearing of this appeal is adjourned to the next sitting of the Court of Appeal for Grenada scheduled for the week commencing 20th February 2023.
2. The Registrar of the High Court is hereby directed to cause the respondent to be served with notice of the hearing of the appeal and to cause an affidavit of service to be filed verifying service on the respondent.

Reason:

Counsel for the appellant informed the Court that the respondent has not made an appearance in this matter since October 2020. The Court also noted that the court office in Grenada was unable to locate the respondent in order to effect service of a notice of hearing.

Case Name:

Elma Benjamin

v

Calvin Fletcher

**[GDAHCVAP2022/0017]
(Grenada)**

Date: Friday, 23rd September 2022

Coram: The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]
The Hon. Mr. Godfrey Smith, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Ian Sandy

Respondent: No appearance

Issues: Application for leave to appeal - Test for leave to appeal - Whether the appellant's intended appeal has a realistic prospect of success - Civil appeal - Appellate court's exercise of discretion - Whether the order was disproportionate in the circumstances - Whether the judge failed to carry out the required balancing exercise when determining whether the claim should be struck out

Type of Order Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal is granted.
2. The hearing of the application for leave to appeal is treated as hearing of the appeal.
3. The appeal is allowed.

Reason: On 26th November 2021, this matter was sent to mediation. On 17th March 2022 the learned judge ordered that unless mediation was concluded with the resolution of the matter, the matter would be adjourned into court on 23rd June 2022. The learned judge further ordered that all parties to the proceedings were to be present, failing which there was a risk that the court would strike out the statement of claim as an abuse of process.

On 23rd June 2022 the matter came before the court and the appellant was represented by her daughter Ms. Benjamin. The learned trial judge subsequently made an order striking out the claim, statement of claim and defence to the counterclaim. The appellant, dissatisfied with the learned judge's decision, has appealed to this Court on the basis that in striking out the claim, statement of claim and defence to the counterclaim the learned trial judge did not carry out the required balancing exercise. The respondent, despite having been served with the application for leave along with affidavits, exhibits and other ancillary documents has not participated in the proceedings.

The Court upon considering the written and oral submissions of counsel for the appellant, was of the view that the learned judge failed to carry out the required balancing exercise in coming to the decision to strike out the statement of claim.

Case Name:

**Fang Ankong
v
Green Elite (in Liquidation)**

**[BVIHCMAP2022/0048]
(Territory of the Virgin Islands)**

Date:

Friday, 23rd September 2022

Coram:

**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]
The Hon. Mr. Godfrey Smith, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. John Carrington, KC with him Ms. Reisa Singh

Respondent:

Mr. John Machell, KC with him Mr. Peter Ferrer, Mr. Christopher Pease and Mr. Zachary Van Horn

Issues:

Commercial appeal - Disclosure - Whether the learned judge determined the disclosure application on a basis

that did not appear in the grounds of the application - Whether the learned judge erred in law and in principle in that he failed to direct himself on or to apply the proper legal principle on which the exercise of his discretion depended - Whether the learned judge failed to consider adequately or at all the sole substantial ground on which the application for disclosure was made by the respondent - Whether the learned judge conducted a balancing exercise between the appellant's right to privacy and the respondent's right to disclosure - Whether the learned judge erred in principle by failing to consider properly or at all the inadequate nature of a bare undertaking by Delco Participation BV, a non-party to the proceedings who was involved in adversarial proceedings against the appellant - Costs - Whether the learned judge erred in principle in awarding costs to the respondent in that he should have considered the conduct of the respondent including the failure to send any pre-action correspondence to the appellant on the issue of the disclosure prior to making the application

Type of Order:

N/A

Result / Order:

**IT IS HEREBY ORDERED THAT:
Judgment is reserved.**