

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE

SAINT LUCIA
7th – 10th June 2022

JUDGMENTS

Case Name: Nardis Maynard
v
The Queen

[SKBHCRAP2004/0012]
(Saint Kitts and Nevis)

Date: Friday 10th June 2022

Coram for delivery of judgment: The Hon. Dame Janice M. Pereira, DBE Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Ms. Siobhan Grey, QC with her, Ms. Talibah Byron
Respondent:	Mr. Teshaun Vasquez and Ms. Terrilyn Hunte

Issues: Criminal appeal - Appeal filed against conviction and sentence - Abandonment of appeal against conviction - Reopening of appeal against conviction - Whether abandonment of appeal against conviction was a nullity - Whether abandonment was deliberate and informed decision of appellant - Application to tender fresh evidence of alibi on appeal - Test for reception of fresh evidence on criminal appeal - Whether failure to call alibi witnesses at trial rendered conviction unsafe - Identification evidence - Turnbull guidelines - Whether judge failed to identify weaknesses in the identification and other evidence in summing up the case to jury -

Good character direction - Whether judge erred in not giving good character direction to jury on behalf of the appellant - Application of the proviso

Result:

IT IS HEREBY ORDERED THAT:

- 1. The application to tender fresh evidence is dismissed.**
- 2. The appeal against conviction is dismissed.**

Reason:

The proper procedure for abandoning an appeal is by the appellant giving written notice of abandonment in Form 15 in Appendix C of the Eastern Caribbean Supreme Court, Court of Appeal Rules 1968 to the Registrar. Upon such notice being given, the appeal shall be deemed to have been dismissed. An abandonment will only be deemed a nullity if it was not the result of the appellant's deliberate and informed decision. In this case, no written notice of abandonment was given by Maynard. His appeal against conviction was abandoned orally by his former counsel. There being no evidence that Maynard had either directed his former counsel to abandon his appeal against conviction or had been informed that such a course of action would be adopted, the position as to whether the abandonment was Maynard's informed decision was placed in serious doubt. The Court accordingly declared the abandonment a nullity and proceeded to hear Maynard's appeal against conviction.

Rule 59 of the Eastern Caribbean Supreme Court, Court of Appeal Rules 1968 considered; R v Medway [1976] 1 QB 779 applied; R v Smith [2013] EWCA Crim 2388 applied; R v Furniss (Michael) [2019] EWCA Crim 2224 considered.

The Court of Appeal may receive fresh evidence on an appeal if the evidence is credible and there is a reasonable explanation for the failure to adduce it at trial. In this case, the test for admission of fresh evidence has not been met as the evidence contained in the affidavit of Yvette Maynard is not credible. There has also been no explanation for the failure to call her

evidence at trial. It therefore cannot be said that her evidence is fresh in the sense that it could not have been obtained for the trial with reasonable diligence. In any event, even if Yvette Maynard's evidence were both credible and fresh, it would not have had any effect on the safety of Maynard's conviction given the quality of the evidence against him at trial. Accordingly, there is no basis on which the affidavit of Yvette Maynard should be admitted as fresh evidence on this appeal.

Section 49 of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act, Cap. 3:11, Revised Laws of Saint Christopher and Nevis 2009; *Lescene Edwards v The Queen* [2022] UKPC 11 applied; *Lundy v The Queen* [2013] UKPC 28 applied.

In relying on the conduct of defence counsel as a ground of appeal, it must be shown that the decision in question is one which no reasonably competent counsel would have made in light of the information available to him or her. In this case, there was no evidence of what informed Maynard's former counsel's decision not to call the alibi witnesses. There was also no assertion made as to the lack of competence of Maynard's former counsel. It would therefore be inappropriate for this Court to infer that there was no good reason for the failure to call Yvette or Terence Maynard to give evidence at the trial. In any event, the evidence of Yvette Maynard raises issues of credibility and does not establish a cogent alibi. In the circumstances, it cannot be properly concluded that the failure to call the two alibi witnesses at the trial rendered Maynard's conviction unsafe.

R v Doherty & McGregor [1997] 2 Cr App R 218 considered.

In giving a Turnbull direction, the judge is required to point out any specific weaknesses in the identification evidence to the jury. However, it is not essential that he or she lists all those weaknesses or every argument made against the credibility of a particular witness. In this case, while the judge failed to highlight certain weaknesses in the evidence to the jury, this failure did not undermine the safety of Maynard's conviction as

the quality of the identification evidence and other evidence weighing against him remained compelling.

R v Turnbull [1976] 3 All ER 459 considered; Mills et al v R [1995] 1 WLR 511 considered; Omar Grieves and others v The Queen [2011] UKPC 39 applied.

The failure of a trial judge to give a good character direction where a defendant was entitled to one does not automatically render the conviction unsafe. The critical question is whether the good character direction would have made a difference to the result of the trial had it been given. In this case, while Maynard was entitled to a good character direction, it cannot be said that such a direction would have changed the view of the jury that Maynard was guilty in light of the evidence weighing against him at trial. Accordingly, the judge's failure to give a good character direction on behalf of Maynard did not undermine the safety of the conviction.

Jay Marie Chin v The Queen ANUHCRA2012/0005 (delivered 5th April 2017, unreported) followed; Bhola v The State [2006] UKPC 9 applied.

In the circumstances, even if the judge's non-direction on the specific weaknesses in the evidence were to be considered as a misdirection to the jury, and even when considered cumulatively along with the judge's failure to give a good character direction, no miscarriage of justice has actually occurred. It is clear considering the quality of the evidence weighing against Maynard that the jury would have inevitably come to the same conclusion that he was guilty of murder. It would therefore have been proper for this Court to dismiss the appeal in any event by applying the proviso contained in section 44(1) of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act.

Section 44(1) of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act, Cap. 3:11, Revised Laws of Saint Christopher and Nevis 2009 considered; Jevone Demming v The Queen BVIHCRA2015/0001 (delivered 14th January 2020, unreported) followed; Cassell and another v The Queen [2016] UKPC 19

considered; Michael Freemantle v The Queen [1994]
UKPC 29 considered.

APPLICATIONS AND APPEALS

Panel 1

Case Name:

**[1] Yan Gustave
[2] Francisco Jn Pierre
v
[1] Southern Taxi Association
[2] Kenneth Philip
[3] James Charlery
[4] Kendall Peter
[5] Herman Hercules
[6] Matthew Hutchinson**

**[SLUHCVAP2021/0016]
(Saint Lucia)**

Date:

Tuesday 7th June 2022

Coram:

**The Hon. Dame Janice M. Pereira, DBE Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Godfrey Smith, Justice of Appeal [Ag.]**

Appearances:

Applicants:

Mrs. Wauneen Louis-Harris

Respondents:

Ms. Shari-Ann Walker holding a watching brief

Issues:

**Application for leave to appeal – Assessment of costs -
Absence of award in accordance with rule 65.1 of the
Civil Procedure Rules 2000 - Whether the learned judge
lacked jurisdiction to award costs or to entertain the
assessment - Whether the applicants should have been
found liable for costs on the withdrawal of the
applications - Reasonableness of the quantum of costs
- Application for an extension of time**

Type of
Result/Order:

Oral decision

Order:

IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal against the order dated 1st December 2021 is refused.
2. The application for an extension of time for seeking leave to appeal the order made by the learned judge on 23rd September 2021 is refused.
3. No order as to costs on either application.

Reason:

This was an application for leave to appeal against the order of the learned judge made on 1st December 2021. However, during the hearing the application appeared to have morphed into an application for leave to appeal and an extension of time for seeking such leave in respect of the order made by the learned judge on 23rd September 2021.

The affidavit in support filed by the applicants, did not treat with the various factors to which the Court would have regard when considering an extension of time to seek leave to appeal. However, counsel for the applicants placed emphasis on the prospects of success of the appeal, relying on the decision of this Court in Joseph Hyacinth v Allan Joseph GDAHCVAP2015/0025 (delivered 20th June 2016, unreported). The Court recalled that in these applications, each case must be decided on its own set of facts and circumstances.

The bases in respect of the application before this Court ranged from a lack of jurisdiction in the learned judge to award costs or to entertain the assessment, the issue as to whether the applicants should have been found liable for costs on the withdrawal of the applications and the question of the reasonableness of the quantum of costs. The bases ranged far and wide in addition to grounds put before the Court which were not canvassed in the application. The Court expressed its displeasure at this approach. Where a party seeks leave to appeal it is important that a party sets out succinctly the issue of which the party complains and the basis on

which it says the court fell into error on determining that issue.

The Court in taking into account all of the varied bases that were placed before it in respect of this application, even those that were not canvassed in the application, was of the view that, as it related to the prospects of success, the applicants failed to demonstrate that an appeal from the judge's order dated 1st December 2021, or indeed on an extension of time to seek leave to appeal the judge's order dated 23rd September 2021 had been made out. Accordingly, the Court refused the application for leave to appeal the order dated 1st December 2021, refused to grant leave for an extension of time to seek leave to appeal the order dated 23rd September 2021 and made no order as to costs on either application.

Case Name:

[1] Constantius Francoise

[2] Gregory Edward

[3] Felix Duncan

[4] Norbert Charles

[5] Anthony St. Jules

[6] Trevor Trim

[7] Frankie Gustave

[8] Anthony Richard

v

[1] Lucien Joseph

[2] Humbert Gidharry

[3] Firmus Popo

[4] Matthew Hutchinson

[5] Holiday Taxi

[SLUHCMA2021/0005]

(Saint Lucia)

Date:

Tuesday 7th June 2022

Coram:

The Hon. Dame Janice M. Pereira, DBE Chief Justice

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Godfrey Smith, SC Justice of Appeal [Ag.]

Appearances:

Applicants: Mrs. Wauneen Louis-Harris

Respondents: No appearance

Issues:

Application for leave to appeal – Alternatively an application for an extension of time to seek leave to appeal - Decision still to be made by lower court judge as to whether it can take judicial notice of previous proceedings - Matter has not yet been determined by trial judge - Application for leave to appeal made prematurely - Withdrawal of application for leave to appeal

**Type of
Result/Order:**

Oral decision

Order:

IT IS HEREBY ORDERED THAT:

The application for leave to appeal is withdrawn.

Reason:

The Court noted that the trial judge had not yet made a determination as to whether or not she would take judicial notice of previous proceedings and so the application for leave to appeal was premature. In the circumstances, counsel for the applicants requested permission to withdraw the application and the Court granted this request.

Case Name:

Miguel Baptiste Aneville aka Miguel Onerville

v

The Honourable Attorney General

**[SLUHCVAP2020/0013]
(Saint Lucia)**

Date:

Tuesday 7th June 2022

Coram: The Hon. Dame Janice M. Pereira, DBE Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Godfrey Smith, SC Justice of Appeal [Ag.]

Appearances:

Applicant/Respondent:	Ms. Kozel Creese with Mrs. Rochelle John-Charles
Respondent/Appellant:	Ms. Andra Gokool-Foster

Issues: Application for solicitor be removed from record -
Application to strike out notice of appeal - Service of
notice of hearing on appellant - No certainty that
appellant had been served with notice of hearing - Non
appearance of appellant at proceedings - Adjournment

Type of Result/Order: Oral decision

Order: IT IS HEREBY ORDERED THAT:

1. The matter is adjourned to a date to be fixed by the Chief Registrar.
2. The notice of hearing for the date and time fixed by the Chief Registrar for the hearing of this matter shall be served on the appellant and an affidavit of service shall be filed with the Court by the court office before the hearing.

Reason: The court office could not verify that the appellant had been served with the notice of today's hearing. As a result, the Court could not proceed to hear the application for removal from the record and consequently, the application to strike out the notice of appeal. The Court therefore decided to adjourn the matter pending service of the notice of the hearing on the appellant.

Panel 2

Case Name:	The Landings Proprietors Unit Plan No. 2 of 2007 (also known as the Landings Body Corporate or the Landings BC) v The Development Control Authority [SLUHCVAP2019/0019] (Saint Lucia)
Date:	Tuesday 7 th June 2022
Coram:	The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.] The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:	Applicant: Mr. Richard Harwood, QC with him Ms. Renee St. Rose and Ms. Marie-Ange Symmonds Respondent: Mr. Dexter Theodore, QC with him Mr. Adrian Etienne Mr. Garth Patterson, QC with him Mr. Mark Maragh and Ms. Taylor Laurayne on behalf of the interested party Two Seas Holdings Limited Mr. Rene Williams holding a watching brief on behalf of the Attorney General
Issues:	Application to adduce fresh evidence - Principles in Ladd v Marshall [1954] 1 WLR 1489 - Whether the evidence could have been obtained with reasonable diligence for use in the court below - Whether the evidence would have an important influence on the result of the appeal - Whether the evidence is credible
Type of Result/Order:	N/A
Order:	[Oral delivery]

Decision is reserved.

Issues: Civil appeal - Judicial review - Physical Planning and Development Act - Planning permission for hotel development - Trespass - Legitimate expectation - Whether the learned judge erred in law and in fact when she found that the respondent did not have a duty to consult the appellant before approving the development plans of the interested party Two Seas

Holdings Limited - Whether the learned judge erred in law when she failed to find that the respondent had made the decision to approve the development in breach of the legitimate expectation, created by its decision that it would consult the appellant - Whether the learned judge erred in law in failing to find that the respondent acted unlawfully when it refused to allow the appellant to see the application documents prior to the grant of approval - Whether the learned judge erred in law and in fact in finding that the respondent had regard to material considerations including the effect of the construction, and the operation and existence of the scheme on its surroundings, including the property of the appellant – Whether the learned judge erred in law and in fact when she found that there was no evidence before the court that the interested party’s development included part of the appellant’s property – Whether the learned judge erred in law in finding that the appellant could not raise grounds in respect of effects on land which it did not own, manage or operate

**Type of
Result/Order:**

N/A

Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Stanley Felix

v

**Elizabeth Darius-Clarke in her personal
capacity and representing the co-proprietors**

[1] Aldith Darius also known as Elizabeth Darius
[2] Elizabeth Darius-Clarke
[3] Stephen Darius also known as Stephen Fleary

[SLUHCVAP2022/0005]
(Saint Lucia)

Date: **Wednesday 8th June 2022**

Coram: **The Hon. Mr. Mario Michel, Justice of Appeal**
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: **Ms. Danielia Chambers with Ms. Diana Thomas**

Respondents: **Mr. Sahleem Charles**

Issues: **Civil Appeal - Appeal against order refusing to set aside default judgment - Whether the learned master erred in ruling that the appellant failed to satisfy the conjunctive requirements of rule 13.3(1) of the Civil Procedure Rules 2000 - Whether the learned master erred in finding that the appellant failed to satisfy rule 13.3(2) of the CPR - Whether the appellant had a good reason for failing to file a defence - Whether the appellant had a good reason for failing to file a written request for an extension of time - Whether the onset of the Covid-19 pandemic was a good reason for failing to file a defence or a written request for an extension of time - Whether the appellant had a duty to follow up on his oral request for an extension of time - Whether the appellant's defence has a realistic prospect of success - Whether the learned master used the wrong test in finding that the appellant did not have a realistic prospect of success - Whether the learned master failed to properly consider the issue of prescription in determining whether the appellant had a realistic prospect of success - Whether the learned master failed to consider prescription as an exceptional circumstance under rule 13.3(2) - Whether prescription was evident on the face**

of the claim - Whether the Court ought to vary the judgment pursuant to rule 13.3(3)

Type of
Result/Order:

N/A

Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

[1] National Contractors Limited
[2] Dave Boriel (Administrator of the Estate of
the late Thomas Boriel)
[3] Dave Boriel
v
Raymond Boriel

[SLUHCVAP2021/0010]
(Saint Lucia)

Date:

Wednesday 8th June 2022

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellants: Mrs. Kimberley Roheman

Respondent: Mr. Gerard R. Williams

Issues:

Interlocutory appeal - Summary judgment - Dismissal by master of appellants' application for summary judgment - Whether the learned master erred in failing to grant summary judgment where underlying claim was barred by the Civil Code of Saint Lucia - Statute-barred claims - Article 2103 of the Civil Code of Saint Lucia - Principle of prescription - Whether learned

master should have given effect to appellants' plea of prescription - Whether claims in lower court were prescribed by the Civil Code as being statute barred - Breach of contract - Breach of trust - Equitable remedies for breach - Specific performance - Declaratory relief - Declaration of trust sought by defendant - Whether the fact that the defendant sought equitable relief in the lower court meant that the claim was not caught by the time bar in Article 2103 of the Civil Code

Type of
Result/Order:

N/A

Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Wesley J. Hall also known as Wes Hall
v
[1] Electrical Associates Limited
[2] Marcillinus Stephen trading as MS Stephen
Tiling

[SLUHCMAP2022/0001]
(Saint Lucia)

Date:

Thursday 9th June 2022

Coram:

The Hon. Dame Janice M. Pereira, DBE Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant:

Ms. Candace Fletcher

Respondents:

Mrs. Wauneen Louis-Harris and Ms. Mertle John

Issues:	Interlocutory appeal - Summary judgment - Whether the learned judge erred in finding that the respondents had a real prospect of succeeding on the claim against the appellant - Whether the learned judge erred by failing to have due or any regard to the pleadings and the evidence adduced by affidavit and documentary evidence upon the hearing of the summary judgment application - Whether the learned judge failed to appreciate the distinction between the appellant acting in his personal capacity and acting as an officer of the third defendant - Whether the learned judge failed to appreciate that oral evidence cannot contradict an express written term of an agreement - Whether the learned judge failed to appreciate that all of the evidence adduced clearly shows the existence of a contract between the respondents and the third defendant and not with the appellant - Whether the decision of the learned judge is against the weight of the evidence and the pleadings
Type of Result/Order:	Oral judgment
Order:	IT IS HEREBY ORDERED THAT: 1. The appeal is allowed. 2. Summary judgment is entered in favor of the appellant. 3. The appellant shall have costs on the appeal and costs in the court below fixed in the total sum of \$1,666.00. 4. The stay granted by the court on 28th December 2021 is lifted, the court having heard and determined this appeal.
Reason:	This was an appeal against the decision of the learned trial judge in which she refused summary judgment to be entered in favour of the appellant, the first defendant in the court below. The crux of the issue was whether there were contracts between the respondents and the appellant in his personal capacity, and in short, the issue in respect of the summary judgment application was whether the claim brought by the respondents had

a realistic prospect of success against the appellant in his personal capacity.

The principles governing the grant of summary judgment are well settled. The Court considered the Privy Council decision of *Sagicor Bank Jamaica Ltd v Taylor-Wright* [2018] 3 All ER 1039 at paragraphs 16 and 17 where that court made reference to Part 15 of the Civil Procedure Rules of Jamaica which is in pari materia to Part 15 of the Civil Procedure Rules 2000 of the Eastern Caribbean:

“[16] Part 15 of the CPR provides, in Jamaica as in England and Wales, a valuable opportunity (if invoked by one or other of the parties) for the court to decide whether the determination of the question whether the claimant is entitled to the relief sought requires a trial. Those parts of the overriding objective (set out in Pt 1) which encourage the saving of expense, the dealing with a case in a proportionate manner, expeditiously and fairly, and allotting to it an appropriate share of the court's resources, all militate in favour of summary determination if a trial is unnecessary.

[17] There will in almost all cases be disputes about the underlying facts, some of which may only be capable of resolution at trial, by the forensic processes of the examination and cross-examination of witnesses, and oral argument thereon. But a trial of those issues is only necessary if their outcome affects the claimant's entitlement to the relief sought. If it does not, then a trial of those issues will generally be nothing more than an unnecessary waste of time and expense.”

The Court endorsed the above paragraphs. The Court also referred to this Court's decision in *Saint Lucia Motor & General Insurance Co Ltd v Peterson Modeste* SLUHC VAP2009/0008 (delivered 11th January 2010, unreported) at paragraphs 21 and 21 where the Court said:

“[21] CPR 15.2 says in essence that the court may give summary judgment on the claim or on a particular issue if it considers that (a) a

claimant has no real prospect of succeeding on a claim, or (b) a defendant has no real prospect of defending the claim or the issue. As I referenced earlier, this Rule provides for the filing of evidence on such an application. Counsel for the Insurer referred to the cases of *Baldwin Spencer v The Attorney General of Antigua & Barbuda*, *The Attorney General of Antigua & Barbuda v Antigua Aggregates Limited et al*, *Swain v Hillman* and also the text *Blackstone's Civil Practice*.

[21] The principle distilled from these authorities by which a court must be guided may be stated thus: Summary judgment should only be granted in cases where it is clear that a claim on its face obviously cannot be sustained, or in some other way is an abuse of the process of the court. What must be shown in the words of Lord Woolf in *Swain v Hillman* is that the claim or the defence has no “real” (i.e. realistic as opposed to a fanciful) prospect of success. It is not required that a substantial prospect of success be shown. Nor does it mean that the claim or defence is bound to fail at trial. From this it is to be seen that the court is not tasked with adopting a sterile approach but rather to consider the matter in the context of the pleadings and such evidence as there is before it and on that basis to determine whether, the claim or the defence has a real prospect of success. If at the end of the exercise the court arrives at the view that it would be difficult to see how the claimant or the defendant could establish its case then it is open to the court to enter summary judgment.”

The Court relied on the above decision as well. The Court had regard to the pleaded claims as well as the evidence adduced by the parties on the application for summary judgment and was satisfied that on the pleaded case and on the evidence, documentary or otherwise, it would be difficult to reason how the claimants could establish a case of personal liability on the part of the appellant in respect of the breach of contracts, which on the respondents' own case and

evidence adduced spoke to contracts with a corporate entity.

The Court found the appellant's arguments more persuasive. Accordingly, the Court was of the view that the learned judge erred in arriving at the conclusion that this was not a proper case in which to enter summary judgment in favour of the appellant. In fact, in the case of *Baldwin Spencer v The Attorney General of Antigua and Barbuda* Civil Appeal No. 20A of 1997, the then Chief Justice, Sir Dennis Byron, made clear that where a claim has no realistic prospect of success, the court ought not to flinch from dismissing that claim and so holding.

The appeal was accordingly allowed, and summary judgment was entered in favour of the appellant. The appellant was also awarded costs on the appeal and costs in the court below.

Case Name:	Marilyn Hippolyte Administratrix of the Estate of Mathilda Jean also known as Mathilda Hippolyte v Heirs of Florita Hippolyte also known as Josephine Hippolyte (nee Joseph) acting and represented by Egbert Joseph [SLUHCVAP2021/0009] (Saint Lucia)
Date:	Thursday 9th June 2022
Coram:	The Hon. Dame Janice M. Pereira, DBE Chief Justice The Hon. Mr. Paul Webster, Justice of Appeal [Ag.] The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Ms. Cythnia Hinkson-Ouhla
Respondents:	Mrs. Wauneen Louis Harris holding papers for Mr. George Charlemagne

Issues: Civil appeal - Administration of estate of deceased - Claim form filed when appellant, as administrator of deceased's estate, already executed and submitted a vesting deed to Land Registry - Claim form served when vesting deed already registered by Land Registry - Whether judge was functus to make the order granting the respondents a share in the property when appellant already divested herself of same - Whether order as made was of no legal effect - Natural justice - Substituted parties were never parties to proceedings in the lower court - Article 21 of the Code of Civil Procedure of Saint Lucia - Whether the learned judge erred in making the order affecting the interests of the substituted parties when they were never served with the proceedings of the lower court

Type of Result/Order: Oral judgment

Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed and the order of the learned trial judge made on 26th May 2021 is set aside in its entirety.
2. Any and all steps undertaken by the Registrar of Lands or by or on behalf of the respondents are hereby set aside and are of no effect.
3. The respondents shall pay the appellant's costs of the appeal fixed in the sum of \$1,200.00 to be paid on or before 29th July 2022.
4. A copy of this order shall be served by the court office on the Registrar of Lands and on the respondents' representative Egbert Joseph on or before 30th June 2022.

Reason: This was an appeal against the order of the learned trial judge made on 26th May 2021 wherein, on an application made by the respondent to substitute seven (7) named persons, namely, Marilyn Hippolyte, Nigel Irvin Hippolyte, Spencer Hippolyte, Antoine Hippolyte, Emmanuel Hippolyte, Michael Winston Hippolyte and William Gomez, all persons who were not parties to the

proceedings below or parties in the claim as filed on 24th May 2017. The order of 26th May 2021 stated that:

“The Registrar of Lands is directed to rectify the following parcels of land, namely, parcel 1053 B 846 same block parcel 1053B 847, 848, 849, 870, 871 and 872 to insert the name Egbert Joseph court appointed representative of the heirs of Florita Hippolyte nee Joseph also known as Josephine Hippolyte as co-owner of the said parcels pursuant to the order of the court dated 25th January 2018.”

It was clear that these persons, each of whom were registered proprietors of the subject parcels of land, were never served with the claim or any documents in the proceedings, never summoned to appear before the court and were never heard by the court in breach in Article 21 of the Code of Civil Procedure of Saint Lucia and in breach of the rules of natural justice.

It was for this reason that the appeal was allowed and the order of the learned trial judge made on 26th May 2021 was set aside in its entirety. Further, the Court ordered that any and all steps undertaken by the Registrar of Lands or by or on behalf of the respondents were set aside and deemed of no effect.

Case Name:

**[1] Raphael Charlemagne
[2] Marilyn Martin aka Marilyn Charlemagne
v
[1] The Attorney General
[2] Saint Lucia National Housing Corporation
formerly St. Lucia Housing Authority
[SLUHCVAP2019/0025]
(Saint Lucia)**

Date:

Friday 10th June 2022

Coram:

**The Hon. Dame Janice M. Pereira, DBE Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellants/Respondents: Ms. Natalie DaBreo

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

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

Issues:

Application by 1st respondent to strike out notice of appeal - Request by counsel for the appellants to be removed from record - No formal application made pursuant to Part 63 of the Civil Procedure Rules 2000 to be removed from record - No certainty that appellants served with notice of hearing

Type of Result/Order:

Directions

Order:

IT IS HEREBY ORDERED THAT:

1. The matter is fixed for hearing on Thursday 23rd June 2022 during the next sitting of this Court for the territory of Saint Christopher and Nevis.
2. The court office shall serve the appellants with a notice of hearing setting out the date of hearing as Thursday 23rd June 2022. That notice will specify that the appellants may attend the court office in Castries where they can appear and be heard via Zoom, in the event that they are unable to do so elsewhere.
3. The Attorney General shall serve the application to strike out the notice of appeal, together with the affidavit in support and other supporting documents on the appellants and shall provide proof of service thereafter by filing an affidavit of service.

Reason:

Counsel for the appellants indicated that she had withdrawn herself as counsel on record from the E-litigation portal. However, the Court noted that this was not the formal procedure and that an application must first be made under Part 63 of the Civil Procedure Rules

2000. In the circumstances, the Court noted that there was no certainty that the appellants themselves had notice of the hearing of the application to strike out the notice of appeal, since an affidavit of non-service on the appellants had been filed at the court office. The Court therefore decided to fix the hearing of the application for the next sitting of the Court of Appeal for the territory of Saint Christopher and Nevis scheduled to commence the week of 20th June 2022.

Case Name:	Jonathan Edward v The Queen [SLUHCRA2022/0002] (Saint Lucia)
Date:	Friday 10th June 2022
Coram:	The Hon. Dame Janice M. Pereira, DBE Chief Justice The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:	
Appellant/Applicant:	Mr. Leslie Prospere and Ms. Britney Barnard
Respondent:	Mrs. Tanya Alexis-Francis
Issues:	Application to adduce fresh evidence - Application for bail pending appeal - Section 41 of the Eastern Caribbean Supreme Court (Saint Lucia) Act - Whether the Court has jurisdiction to consider an application for bail pending appeal where the applicant has not yet been sentenced - Application to withdraw applications as filed
Type of Result/Order:	Oral Decision

Order:

IT IS HEREBY ORDERED THAT:

The application to withdraw the applications for adducing fresh evidence and bail pending appeal is granted.

Reason:

The Court considered whether it had jurisdiction to consider the applications before it to adduce fresh evidence and for bail pending appeal in circumstances where the applicant had not yet been sentenced. The Court referred to the principles governing interlocutory appeals and the bifurcation of criminal proceedings as set out in the cases of *Gavin Scott Hapgood v The Commissioner of Appeal et al AXAHCVAP2020/0003* (delivered 24th June 2020, unreported) and *David Brandt v Regina MNIHCRA2020/0012* (delivered 11th November 2020, unreported).

In the circumstances, counsel for the applicant conceded that the applications were not properly before the Court and sought the leave of the Court to withdraw. Accordingly, the Court granted leave to withdraw the applications.

Case Name:

The Attorney General

v

[1] Anthony Henry

[2] Francis Noel

[SLUHCVAP2020/0004]

(Saint Lucia)

Date:

Friday 10th June 2022

Coram:

The Hon. Dame Janice M. Pereira, DBE Chief Justice

The Hon. Mr. Mario Michel, Justice of Appeal

**The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant/Respondent:

Ms. Tina Louison and Mrs. Rochelle John-Charles

Respondents/Applicants: Mr. Horace Fraser holding papers for Ms. Lydia B. Faisal

Issues: Application seeking clarification of status of costs order - On hearing the appeal Court of Appeal made no mention as to the status of the order for costs in the court below - Court of Appeal made no order as to costs on the appeal

Type of Result/Order: Oral decision

Order: IT IS HEREBY ORDERED THAT:

The Court affirms the costs order made in the High Court on 19th February 2020.

Reason: Counsels for the parties indicated that there was some confusion and uncertainty amongst themselves as to the status of the costs order made in the high court as a result of the outcome of the appeal in the Court of Appeal. The Court was of the opinion that the costs order made in the appeal was clear. Whilst the costs order in the appeal made no mention as to costs in the court below, the Court stated that this meant that the costs order in the high court remained intact.