

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

TELECONFERENCE
ANTIGUA AND BARBUDA
23rd – 27th May 2022

JUDGMENTS

Case Name:

Denise Tuitt

v

Rossanna Tuitt
[MNIHCVAP2021/0003]
(Montserrat)

Date:

Monday, 23rd May 2022

Coram for
delivery:

The Hon. Dame Janice M. Pereira, DBE Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Jean Kelsick

Respondent: Mr. Sylvester Carrott

Issues:

Civil appeal – Grant of letters of administration in deceased's estate – Competing claims by two women claiming to be the lawful widow of deceased – Deceased married twice – Whether deceased was divorced from first wife at time of marriage to second wife – Presumption of marriage – Whether presumption of marriage arose in relation to deceased's second marriage – Burden of proof – Whether burden of rebutting the presumption of marriage on first wife or second wife – Standard of proof – Balance of probabilities – Whether there was clear, positive and compelling evidence to rebut the

presumption of marriage in relation to the deceased's second marriage.

Result/Order:

IT IS HEREBY ORDERED THAT:

The appeal is dismissed. No costs were awarded in the court below and having regard to all of the circumstances, each party shall bear their own costs.

Reason:

Held: dismissing the appeal and ordering that each party shall bear their own costs, that:

- 1. The presumption of marriage may arise in several circumstances. This includes instances where parties have undertaken a ceremony of marriage and subsequently cohabited or where there has been no evidence of a marriage, but the parties have cohabited for such a long period as to have acquired the reputation of being spouses. On the facts, the appellant's marriage certificate and her affidavit evidence, though not very detailed, were sufficient evidence to raise the presumption of marriage in favour of the deceased's second marriage. Whilst counsel for the appellant argued that the burden should have been on the respondent to rebut the presumption, the learned judge, having considered the issue of the burden of proof to be on the respondent, as contended by the appellant and having arrived at the same conclusion, did not err in his decision.**

Chief Adjudication Officer v Bath [2000] 1 FLR 8 applied and Pazpena de Vire v Pazpena de Vire [2001] 1 FLR 460 considered.

2. In order to rebut the presumption of marriage, there must be clear, positive and compelling evidence, which shows that on a balance of probabilities, there was no valid marriage. Even though the learned judge, in referring to the standard of proof, did not explicitly state the standard as being on the balance of probabilities, he applied the correct test and therefore did not err.

Chief Adjudication Officer v Bath [2000] 1 FLR 8 applied; Pazpena de Vire v Pazpena de Vire [2001] 1 FLR 460 considered and Hayatleh v Modfy [2017] EWCA Civ 70 applied.

3. An appellate court will exercise restraint before departing from a trial judge's evaluation of evidence and facts before him. The appellate court will only depart if the trial judge has made an error of law or of principle, or reached a decision which no reasonable court, applying law and principle could have reached. The learned judge had to determine whether the evidence before him was clear, positive and compelling so as to rebut the presumption of marriage in relation to the deceased's second marriage. There was no evidence before him of a divorce between the deceased and the respondent and there was a certificate of "no divorce" from the high court registrar in relation to the deceased's first marriage. This evidence was clear, positive and compelling, and sufficient to rebut the presumption of marriage in relation to the deceased's second marriage. It follows that, there was no error of law or principle in the learned judge's finding and no basis upon

which this Court could interfere with his decision.

Biogen Inc v Medeva plc [1998] 1 LRC 21 applied; Singh v Public Service Commission [2019] UKPC 18 applied and Asaad v Kurter [2013] EWHC 3852 considered.

Case Name:

Cerise Jacobs

v

**[1] Minister of Tourism
[2] The Commissioner of Police
[3] Chief Magistrate
[ANUHCVP2019/0011]
(Antigua and Barbuda)**

Date:

Tuesday, 24th May 2022

**Coram for
delivery:**

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of
Appeal
The Hon. Mde. Louise Esther Blenman, Justice of
Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Dr. David Dorsett

Respondent:

Mrs. Carla Brookes-Harris

Issues:

**Civil Appeal – Constitutional law – Section 46 of the
Constitution of Antigua and Barbuda – Delegation of
legislative power – Delegation of legislative power by
Parliament to Executive – Section 26(d) of The St.
John’s Development Corporation Act - Penal offences
- Whether learned judge erred in finding Minister had
authority to create regulations which imposed penal
offences – Discretion of Minister to fix penalties -
Section 17 of the Interpretation Act of Antigua and
Barbuda - Whether section 26(d) of The St. John’s**

Development Corporation Act violated section 46 of the Constitution of Antigua and Barbuda

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The decision of the learned judge is affirmed albeit on expanded bases.**

Each party shall bear their own costs.

Reason:

- 1. Constitutions which are fashioned on the Westminster model, such as the Constitution of Antigua and Barbuda, recognise the existence of three arms of government namely, the Parliament, the Executive and the Judiciary. Further, the Constitution of Antigua and Barbuda is the supreme law of the state. This written Constitution accepts the doctrine of separation of powers and vests the legislative, executive and judicial powers in the respective institutions. These three arms of government must conform to the dictates of the Constitution of Antigua and Barbuda. The doctrine of separation of powers is critical to the efficient functioning of any constitutionally democratic state, and laws which are inconsistent with the doctrine are void to the extent of that inconsistency.**

Hinds and Others v The Queen [1976] 1 All ER 353 applied; Bata Shoe Company Guyana v Commissioner of Inland Revenue and Others (1976) 24 WIR 172 applied; John v Director of Public Prosecution of Dominica (1985) 32 WIR 230 applied.

- 2. Parliament is constitutionally vested with the power to make law as provided for by section 46 of the Constitution of Antigua and Barbuda and has the power or right to delegate some of its law-making power. There is no restriction on the types of persons or body to whom Parliament may delegate some of its legislative power. Similarly, there is no authority which suggests that it is impossible for Parliament to delegate some of its law-making power to create criminal**

offences to other bodies, including a Minister of State. Criminal penal statutes include every statute that creates an offence against the State. Whatever the character of the penalty, the charge is triable by way of prosecution and can be brought by a public officer. It is also established law that the general penal sanction for disobedience of a prohibition is a conviction. A close review of section 26(d) of The St. John's Development Corporation Act, when read together with regulation 3(1)(a), clearly indicates that the statute in question conferred upon the Minister the power to create a criminal offence. Nothing in section 26(d) of The St. John's Development Corporation Act speaks to civil liability. Accordingly, the learned judge did not err in concluding that the Minister had the authority to make regulations which imposed penal consequences.

Section 46 of The Antigua and Barbuda Constitutional Order 1981, Cap 23 of the Laws of Antigua and Barbuda applied; Section 26(d) of The St. John's Development Corporation Act, Cap. 392 of the Laws of Antigua and Barbuda applied; Regulation 3(1)(a) of The St. John's Development Corporation (Heritage Quay) Regulations, 2010 No. 18 of 2010 applied; The Queen v Hall (1891) 1 QB 747 applied.

3. While Parliament may delegate some of its legislative power to the Executive, there must never be a total usurpation of Parliament's law-making role under the guise of delegated legislation neither should there be any appearance of Parliament abdicating its essential law-making function. Parliament is required to show fidelity to the doctrine of separation of powers and retain effective control over its delegated powers especially in relation to weighty matters such as the creation of a criminal offence. This effective control may be retained by the disjunctive means of circumscribing the delegated power, or by prescribing guidelines or a policy for the exercise of the power. In this appeal, Parliament evidently circumscribed the power granted to

the Minister by virtue of section 26(d) of The St. John's Development Corporation Act and did not abdicate its legislative function. To the contrary, Parliament has provided a clear and intelligible rubric to be followed by the delegated authority, namely the Minister. Towards this end, Parliament described the specific area, being Heritage Quay, for which the Minister is empowered to exercise authority and defined the scope of his power in respect of the specific area for which he may make regulations, being prohibiting the carrying on of business of a vendor. Consequently, Parliament adequately circumscribed the Minister's power in section 26(d) of The St. John's Development Corporation Act. Section 26(d) did not therefore violate the separation of powers doctrine. It is therefore not unconstitutional.

Section 2 of The Antigua and Barbuda Constitutional Order 1981, Cap 23 of the Laws of Antigua and Barbuda applied; Section 46 of The Antigua and Barbuda Constitutional Order 1981, Cap 23 of the Laws of Antigua and Barbuda applied; Section 26(d) of The St. John's Development Corporation Act, Cap. 392 of the Laws of Antigua and Barbuda applied; Regulation 3(1)(a) of the The St. John's Development Corporation (Heritage Quay) Regulations, 2010 No. 18 of 2010 applied; *Carltona Ltd v Commissioners of Works and Others* [1943] 2 All ER 560 applied; *Abel v Lee* (1871) L R 6 CP 365 applied; *J Astaphan & Co (1970) v The Comptroller of Customs of Dominica and Others* (1996) 54 WIR 153 applied; *Re The Delhi Laws Act v The Part C States (Laws) Act 1951* SCR 747 applied.

4. It is a settled principle of statutory interpretation that the chapeau guides the subsequent provisions. In this appeal, the chapeau of section 26 is not couched in mandatory terms. Instead, by the use of the word 'may', Parliament has given the Minister both the discretion to make the prohibition and the discretion to fix the penalty for contravening such provision or the

discretion not to do so. In this appeal, where the Minister exercised his discretion to create a prohibition and exercised his discretion not to fix the penalty, there is no doubt that he acted within the confines of section 26(d) of The St. John's Development Corporation Act. The Minister's exercise of his discretion to create the offence and not to fix the penalty, was not ultra vires section 26(d) of The St. John's Development Corporation Act.

5. Parliament is also presumed to know its laws. Therefore, when Parliament conferred the discretion on the Minister to fix the penalties, it did so with the full knowledge that if the Minister exercised his discretion not to do so, then section 17 of the Interpretation Act would be effective. Accordingly, Parliament would have been aware that conferring the discretion on the Minister to create the prohibition and the discretion to fix the penalty, would not have posed any difficulty since section 17(1) of the Interpretation Act stipulates that if no penalty is fixed for an offence, the penalty is deemed to be a fine not exceeding \$5,000.00. There is nothing inconsistent with the separation of powers doctrine as recognised by the Constitution of Antigua and Barbuda by Parliament stipulating in section 17 of the Interpretation Act, the penalty to be imposed for the particular offence where there is no penalty expressly stated. Section 26(d) of The St. John's Development Corporation Act is not inconsistent with the basic principle of separation of powers and does not contravene section 46 of the Constitution of Antigua and Barbuda.

Section 26(d) of The St. John's Development Corporation Act, Cap. 392 of the Laws of Antigua and Barbuda applied; regulation 3(1)(a) of The St. John's Development Corporation (Heritage Quay) Regulations Act No. 18 of 2010 applied; Section 17 of the Interpretation Act,

Cap. 224 of the Laws of Antigua and Barbuda applied.

Case Name:

The Commissioner of Police

v

**Medical Management Company Limited
[BVIMCRAP2020/0001]
(Territory of the Virgin Islands)**

Date:

Thursday, 26th May 2022

**Coram for
delivery:**

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

Appearances:

Appellant:

Ms. Kellee-Gai Smith

Respondent:

Mrs. Reynela Solomon

Issues:

Magisterial criminal appeal – Mutual Legal Assistance (Tax Matters) Act No.18 of 2003 as amended – Section 5(6)(i) of Mutual Legal Assistance (Tax Matters) Act – Limitation period – Magistrate’s Code of Procedure Act No. 8 of 2006 – Section 73 of the Magistrate’s Code of Procedure Act – Recognisance – Section 165 of Magistrate’s Code of Procedure Act – Prosecution’s failure to enter recognisance – Whether an appeal may be struck out due to the prosecution’s failure to enter recognisance in accordance with section 165 of the Magistrate’s Code of Procedure Act – Whether Crown and its representatives must enter recognisance – Mandatory nature of section 165 of the Magistrate’s Code of Procedure Act – Whether section 165 of the Magistrate’s Code of Procedure Act binds the Crown – Statutory interpretation – Presumption that statutes do not bind the Crown unless express provision to that effect or necessary implication – Continuing offence –

Whether offence created under section 5(6)(i) of Mutual Legal Assistance (Tax Matters) Act is a continuing one – Court’s reluctance to find continuing offences created by statute – ‘Do notice’ – Offence triable either way – Whether the offence created under section 5(6)(i) of Mutual Legal Assistance (Tax Matters) Act is triable either way – Section 230(a) of the Magistrate’s Code of Procedure Act – Whether time limit prescribed by section 73 of the Magistrate’s Code of Procedure Act is inapplicable in the circumstances

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The matter is remitted to the Magistrate’s Court to be heard before a different magistrate.**
- 3. Each party shall bear its own costs.**

Reason:

Held: allowing the appeal; remitting the matter to the magistrates’ court to be heard before a different magistrate; and ordering each party to bear its own costs, that:

1. Section 165 of the Magistrate’s Code provides that an appellant shall enter recognisance within 7 days before a magistrate in order to prosecute an appeal. Section 165 of the Magistrate’s Code is mandatory in nature and an appellant’s failure to comply with this section will result in his/her appeal being struck out.

Section 165 of the Magistrate’s Code of Procedure Act No. 8 of 2006, Revised Laws of the Territory of the Virgin Islands applied; Tomy v Agdoma (1968) 12 WIR 490 applied; Daniel v Elva (No. 1) (1970) 17 WIR 177 applied; Tai v Charles (1959) 1 WIR 346 applied and Ramdwar v Weeks Ors. Julien Reports. Vol. 20, Pt.1, 97 applied.

2. The Magistrate’s Code does not bind the Crown in the BVI and therefore there is no

requirement that the Crown or its representatives must enter into recognisance in accordance with section 165 of the Magistrate's Code to prosecute an appeal. The general presumption in statutory interpretation is that statutes do not bind the Crown unless there is an express provision to that effect, or it arises by necessary implication. In the Magistrate's Code, there are no words to the effect that: "This Act binds the Crown". The legislature would have included that express provision if it so intended that the Magistrate's Code should bind the Crown. Furthermore, the Magistrate's Code does not bind the Crown by necessary implication. Upon considering the surrounding provisions within the act and comparable legislation, it is apparent that there is no need for the Director of Public Prosecutions or Commissioner of Police in the BVI to enter into a recognisance in accordance with section 165 of the Magistrate's Code to prosecute an appeal.

Sections 73 and 165 of the Magistrate's Code of Procedure No. 8 of 2006, Revised Laws of the Territory of the Virgin Islands applied; Section 5(6)(i) of the Mutual Legal Assistance (Tax Matters) Act No. 18 of 2003 as amended by Acts No. 16 of 2005, No. 11 of 2011, No. 11 of 2012 and No. 10 of 2013, Revised Laws of the Territory of the Virgin Islands applied; *Province of Bombay v Municipal Corporation of the City of Bombay* [1947] AC 58 applied; *Lord Advocate v Dumbarton District Council* [1990] 2 AC 580; *R (Revenue and Customs Comrs) v Liverpool Coroner* [2014] EWHC 1586 (Admin) applied and *R (Black) v Secretary of Justice* 27 UKSC 81 applied.

3. The court is cautious not to create a formula to differentiate a continuing offence from a

single offence. Instead, the court determines this on a case-by-case basis. The court is also cautious in its approach to finding continuing offences within statute without express words which make it clear that that was the intention of parliament when the statute was passed. In this case, when looking at the wording of section 5(6)(i) of the MLAA it is clear that there is no obligation that the offence continues indefinitely where requirements of the notice remain unfulfilled. Section 5(6)(i) is simply crafted to state that a person who fails to comply with a notice is liable to be tried summarily or indictably. It goes no further to set out an obligation nor are there surrounding provisions within the legislation that give an indication that the offence is to be interpreted as a continuing one. The learned magistrate did not err in finding that the offence created under section 5(6)(i) of the MLAA was a single offence.

Section 73 of the Magistrate's Code of Procedure No. 8 of 2006, Revised Laws of the Territory of the Virgin Islands applied; Section 5(6)(i) of the Mutual Legal Assistance (Tax Matters) Act No. 18 of 2003 as amended by Acts No. 16 of 2005, No. 11 of 2011, No. 11 of 2012 and No. 10 of 2013, Revised Laws of the Territory of the Virgin Islands applied; *British Telecommunications plc v Nottinghamshire County Council* [1998] EWHC Admin 989 considered; *John Mann International Limited v. Vehicle Inspectorate* [2004] EWHC 1236 (Admin) considered; *R. v. Wimbledon Justices ex parte Derwent* [1953] 1 QB 380 considered; *Hodgetts v Chiltern District Council* [1983] 2 AC 120 applied and *Chandra Silochan et al v Rickie Cedeno POSMG Appeal No. P092 of 2019* applied.

4. The non-compliance with a notice under section 5(6)(i) of the MLAA is triable either way. Section 230(a) of the Magistrate's Code states that matters triable either way are to be dealt with as indictable offences. Further, indictable offences do not have a limitation period or prescribed time within which matters should be prosecuted. In this case, where section 5(6)(i) of the MLAA is a triable either way offence and section 230(a) of the Magistrate's Code provides that these offences are to be treated as indictable offences, there is no time limit for the prosecution of the non-compliance with a notice under section 5(6)(i) of the MLAA. The Commissioner of Police therefore succeeds in their argument that the limitation period prescribed by section 73 of the Magistrate's Code does not apply as it relates to the offence created under section 5(6)(i) of the MLAA. This means that complaint filed on 19th May 2019 by the Commissioner of Police was incorrectly dismissed by the learned magistrate for being filed beyond 29th May 2017, (the 6-month time period mandated by section 73 of the Magistrate's Code). The learned magistrate erred in her determination of this issue.

Section 73 of the Magistrate's Code of Procedure No. 8 of 2006, Revised Laws of the Territory of the Virgin Islands applied; Section 5(6)(i) of the Mutual Legal Assistance (Tax Matters) Act No. 18 of 2003 as amended by Acts No. 16 of 2005, No. 11 of 2011, No. 11 of 2012 and No. 10 of 2013, Revised Laws of the Territory of the Virgin Islands applied; Interpretation Act Cap. 136 Revised Laws of the Territory of the Virgin Islands considered; R. v Thames Metropolitan Stipendiary Magistrate Ex p. Horgan [1998] 1 All ER 559 at 562 considered; Karamchand Bridgemohan v Suresh Hardeo CV

2015-03059 applied; Kemp v. Liebherr (Great Britain) Ltd [1987] 1 All ER 885 considered and R v Clerk to the Medway Justices, ex parte DHSS (1986) 150 JP 401 applied.

Case Name:

Carlton Lewis

v

**Neil Cochrane
(as President of the Antigua Turf Club)
[ANUHCVP2018/0039]
(Antigua and Barbuda)**

Date:

Friday, 27th May 2022

**Coram for
delivery:**

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

Ms. Kema Benjamin

Respondent:

Mr. Kyle Kentish holding papers for Mr. George Lake

Issues:

Civil Appeal - Leasehold interest- Equitable interest- Whether an unincorporated association can own or acquire an estate or proprietary interest in real property- Whether the leasehold interest acquired by the appellant is subject to the equitable interests of the Antigua Turf Club ('ATC')- Whether the equitable interest in land is an overriding interest protected by Section 28(g) of the Registered Land Act- Hierarchy of laws principles- Whether judge's finding of a licence coupled with an equitable interest is in conflict with section 4 of the Crown Lands (Regulation) Act- Proprietary estoppel- Whether the principles of proprietary estoppel apply to Crown Lands- Whether occupation of Crown Lands by the ATC gave rise to an

equitable interest on the basis of proprietary estoppel- Whether proprietary rights in Crown Lands in Antigua and Barbuda can be created by any authority other than by the Cabinet- Power of the Crown to divest itself of its property - Free alienability of land- Whether the judge's finding that the ATC held a licence coupled with an equitable interest created a right or interest in perpetuity and impugned the principles of the free alienability of land

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed and the judgment and orders of the learned judge in the court below are affirmed.
2. The respondent shall have its costs of the appeal to be assessed by a judge of the High Court or Master if not agreed within 21 days from the date of delivery of this judgment, such costs to not exceed two-thirds of the prescribed costs awarded in the court below.

Reason:

Held: dismissing the appeal; affirming the judgment and orders of the learned judge in the court below and awarding costs to the respondent in the appeal to be assessed if not agreed within 21 days from the date of delivery of this judgment, such costs not exceeding two-thirds of the prescribed costs awarded in the court below, that:

1. An unincorporated organisation is not a legal person and does not have the capacity to enter into a binding contract or to sue and be sued. As such, an unincorporated body cannot hold or acquire title or interest in land, legal or equitable, including but not limited to, an overriding interest protected by section 28(g) of the Registered Land Act, unless such interest is

acquired through individuals or trustees on behalf of the unincorporated body.

Halsbury's Laws of England, Volume 34 'Sale of Land', page 225 at paragraph 376 applied.

2. The issue as to the legal capacity of the ATC, as an unincorporated organisation to hold an interest, legal or equitable, in the disputed property was not pleaded by the appellant in the court below. This issue was raised by the appellant for the first time on appeal. No issue was joined with the respondent's defence to the claim that, in any event, it must fail because the ATC does not have the legal capacity to hold the equitable interests or any interest it was contending to have in the disputed property. Likewise, no point was made or sought to be made by or on behalf of the appellant that the respondent's counterclaim for loss and damage must fail because of the ATC's lack of capacity to hold any interest in real property upon which to ground such a claim. Despite its obvious importance, it would be an injustice to the respondent to permit this issue to be raised for the first time at this late stage. There was ample opportunity for the appellant to raise such an important issue, going as it does, to the root of the defence and counterclaim filed by the respondent in the court below, thereby affording to the respondent a fair and adequate opportunity to properly respond to it.
3. The equitable principles of proprietary estoppel are well established. They apply equally to Crown Lands and to lands which are owned by private individuals or corporate entities. In the appropriate circumstances, it may be

established by the evidence that the permission or promises made by the Crown can constitute assurances which, over a significant period of time, lead to a conclusive finding that the occupier of Crown lands, who has acted to his or her detriment, in reliance on such assurances or promises, has acquired an equitable interest in the Crown Lands, such that it would be unconscionable for the Crown to unilaterally act in a way contrary to or to determine such occupation.

4. It is indisputable as a matter of fundamental principle and statutory interpretation that while equity prevails over the common law, equity does not prevail over Acts of Parliament. Section 4 of the Crown Lands (Regulation) Act grants to Cabinet the power to make regulations setting out the terms and conditions under which Crown Lands may be rented, leased, occupied, sold or otherwise dealt with. Section 4 does not itself create or vest the Crown with the power to rent, lease, sell, permit occupation of or otherwise dispose of Crown Lands. This power exists, and already existed, separate from the Crown Lands (Regulation) Act. On its proper interpretation, until the power granted by section 4 is exercised by Cabinet and regulations specifying the terms and conditions are prescribed, the Crown's power to rent, sell, lease or permit occupation and possession of Crown Lands remains unfettered. No such regulations were produced or relied upon in the instant case. In any event, section 4 does not expressly or by necessary implication, exclude or preclude the application of the equitable principles of proprietary estoppel to Crown Lands. It follows therefore that the judge's finding of proprietary estoppel in favour of the

ATC cannot be said to be in conflict with the statutory powers granted by section 4 of the Crown Lands (Regulation) Act or the lease granted to the appellant by the Cabinet. Put another way, the learned judge did not err in failing to apply the hierarchy of laws principles when she found, on the equitable principles of proprietary estoppel, that the ATC acquired a licence coupled with an equitable interest.

Section 4 of the Crown Lands (Regulations) Act, Cap 120 of the Laws of Antigua and Barbuda considered; Sections 19 and 21 of the Eastern Caribbean Supreme Court Act, Cap 143 of the Laws of Antigua and Barbuda considered.

5. A licence coupled with an equitable interest is different in law from a bare or contractual licence. It gives rise to an equitable interest in the real property itself, which equitable interest may be accorded the status and protection of an overriding interest pursuant to section 28 of the Registered Land Act. The grant of a lease to someone over land or property does not, without more, have the effect of determining a licence coupled with an equitable interest in the said land or property already acquired or created by operation of the doctrine of proprietary estoppel.

Section 28 (g) of the Registered Land Act, Cap 374 of the laws of Antigua and Barbuda applied; *Stanford International Bank v Austin Lapps* [2006] UKPC 50 considered.

6. Unconscionability is the bedrock principle of the doctrine of proprietary estoppel. Its applicability or non-applicability is dependent upon the established facts and circumstances of each case. It involves the trial judge making an assessment and judgment based on the evidence adduced. Accordingly, unless there is

no evidence to support the trial judge's conclusion, an appellate court ought to be slow to set it aside. Although there was no formal evidence before the learned judge of any decision made by the Cabinet permitting the ATC or its predecessor in 1964 to occupy and use Crown Lands for the development and promotion of horse racing in Antigua and Barbuda, there was ample evidence of the Government, over a 45 plus year period, dealing with the ATC and its predecessor in relation to the disputed property as if it held such rights. This evidence included, importantly, the Cabinet itself as evinced by the Report of the then President of the Turf Club Mr. Berridge, dated 11th October 1972 and the 22nd February 2008 letter from the Permanent Secretary in the Ministry of Education, Sports & Youth Affairs to Mr. Cochrane of the ATC. Importantly, the Berridge Report recounts the receipt by the predecessor Turf Club of a letter dated 30th June 1972 from the Accountant General of the Government of Antigua and Barbuda requesting immediate payment of all outstanding 'entertainment duty' in respect of race meetings held since Easter 1971, and detailed the efforts made with respect to the Turf Club's application to the Government for an exemption from the payment of entertainment tax, including a promised interview with the then Premier of Antigua and Barbuda. The Berridge Report also evinces that the predecessor Turf Club was required to apply to the Cabinet for a licence to hold race meetings and that such an application had been submitted by Mr. Berridge, on behalf of the Turf Club, to the then Premier as the head of Cabinet. This evidence points to knowledge, acknowledgement, assurances or affirmative consent from the Cabinet to the Turf Club and its successor ATC at various stages in the 45

plus years of its occupation and use of the disputed property. This evidence is not of the character of 'mere negative or silent consent.' Taken collectively it is confirmatory of not just the presence or occupation by ATC of the disputed property, but its long occupation, expenditure on and improvement of the facilities on the disputed property, and its conduct of horse racing therefrom. The Court therefore finds no reason to interfere with the learned judge's finding that the ATC had acquired a licence coupled with an equitable interest based on the principles of proprietary estoppel and that it would be unconscionable for the Crown to defeat such rights for want of formality.

7. A letter is not a regulation. The word 'regulation' is specifically defined in the Interpretation Act and once made in accordance with the powers granted by a particular statute, is considered subsidiary legislation. It is therefore wholly incorrect to classify a letter addressed to the respondent from the Ministry of Education, Sports and Youth Affairs, as indisputable evidence that the Cabinet had exercised its statutory powers under section 4 of the Crown Lands (Regulation) Act to retain control of the disputed property, as the appellant contended. The letter is nothing more than a communication to the ATC of a policy decision taken by the Cabinet with regard to all sporting venues in Antigua and Barbuda, which includes the disputed property. Furthermore, the letter does not speak to or inform of any regulation made by the Cabinet to the effect stated in the letter.

8. A finding by the court that a person has acquired a licence coupled with an equitable interest in land does not divest the owner of the land of their estate and title in the land. The fee simple ownership remains vested in the registered proprietor (in this case, the Crown), which it can freely divest itself of. The court having found that a licence coupled with an equitable interest in the disputed land had been established on the evidence in favour of the respondent, simply means that any subsequent divestment by the registered proprietor of the disputed property would, by operation of the law of Antigua and Barbuda, be subject to such interest. It follows that the finding by the learned judge of proprietary estoppel in favour of the respondent does not offend against the principles of the free alienability of land. Furthermore, the appellant's reliance on sections 16(1)(b) and 16(2) of the Crown Proceedings Act as persuasive authority for the proposition that a finding of equity in favour of the respondent, in effect, grants a right in perpetuity to the ATC to use and occupy the disputed property for horse racing, contrary to the Crown's rights as intended by the said provisions, is entirely misplaced. These provisions concern 'proceedings brought against the Crown for the recovery of land'. They do not pertain, nor do they apply, to a situation where there is a claim in equity to an interest in or over Crown Lands as a defence to a claim to possession of the lands brought by another private individual.

National Provincial Bank v Ainsworth [1965] 2 All ER 472 considered; Halsbury's Laws of England, Volume 32, paragraph 561 considered; Sections 16(1)(b) and 16(2) of the Crown Proceedings Act considered.

Case Name: **The Attorney General of the Federation of St.
Christopher and Nevis**

v

**SKN Choice Times Limited
[SKBHCVAP2019/0045]
(Saint Christopher & Nevis)**

Date: **Friday, 27th May 2022**

**Coram for
delivery:** **The Hon. Mr. Davidson Kelvin Baptiste, Justice of
Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: **Mr. Terrence Byron**

Respondent: **Ms. M. Angela Cozier**

Issues: **Civil appeal — Contract law — Breach of contract —
General damages — Whether the respondent had
complied with the terms of the contract between the
parties — Whether the learned judge erred in his
calculation of damages awarded to the respondent for
breach of contract — Whether the learned judge erred
in his stipulation of the date by which the general
damages awarded to the respondent was payable —
Interest — Pre-judgment interest — Whether the
learned judge erred in his award of interest on
damages payable to the respondent — Costs —
Whether the learned judge erred in awarding
prescribed costs to the respondent**

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against the award by the learned judge for damages for breach of contract is dismissed and the award by him of \$225,000.00 to the respondent to be paid by the appellant is affirmed.**
- 2. The appeal against the fixing by the learned judge of a period of 14 days by which the sum of \$225,000.00 is to be paid is allowed and the award of damages is payable as of the date of the learned judge's order.**
- 3. The appeal against the award by the learned judge of interest at the rate of 5% on the total sum of \$225,000.00 from 15th March 2015 until final payment is set aside and replaced by an award of interest from the date when each payment of \$12,500.00 became due to the date of the judgment in the court below at the rate of 5% per annum.**
- 4. Interest is awarded to Choice on the judgment debt in accordance with section 7 of the Judgments Act.**
- 5. The appeal against the award of prescribed costs to Choice in the court below is dismissed and the award of prescribed costs pursuant to rule 65.5 of the Civil Procedure Rules 2000 is affirmed.**
- 6. Costs to Choice on the appeal is to be assessed by a judge of the High Court or master, if not agreed between the parties within 21 days of the date of this judgment; which costs must not exceed**

two-thirds of the amount awarded in the court below. This final cost award to Choice payable by the Government is to Be discounted by 25% in view of the partial success of the Government on some of the awards made.

Reason:

Held: allowing the appeal in part and making the orders set out at paragraph 33 of this judgment, that:

- 1. Having before him the evidence of Choice's witnesses attesting to the fact that Choice had complied with the terms of its contract, and that it was the Government which was in breach of its contract with Choice, and having no evidence to the contrary, the learned judge did not err in finding in favour of Choice and determining that it was the Government which failed to meet its obligations under the contract. There is no basis therefore for this Court to disturb the learned judge's findings on breach of the contract between the parties.**
- 2. The amount which would have been paid to Choice if the contract had not been breached would be \$12,500.00 on 15th March 2015 and \$12,500.00 on the fifteenth day of each succeeding month until 15th August 2016, totaling \$225,000.00; which is the amount ordered by the learned judge to be paid by the Government to Choice for breach of contract. Therefore, the judge's calculation of damages for breach of contract is affirmed.**
- 3. There is no legally nor logically justifiable basis for a judge to set 'an expiration date' for the payment of an award of damages. Therefore, the learned judge's order that the**

award of \$225,000.00 was to be paid by the Government within 14 days of the date of the order is set aside.

4. The High Court in St. Christopher & Nevis has jurisdiction to award pre-judgment interest and post-judgment interest. However, the learned judge did err when he assimilated pre-judgment interest and post-judgment interest, which are payable from and to different dates and sometimes at different rates, and with pre-judgment interest being discretionary and post-judgment interest being mandatory. By way of pre-judgment interest the judge ought to have ordered interest on each amount of \$12,500.00 from the date when that payment became due until the date of judgment. Therefore, the learned judge erred when he ordered that interest on the entire amount of \$225,000.00 was to be paid from 15th March 2015, because all that was due on 15th March 2015 was \$12,500.00 and not \$225,000.00, and \$25,000.00 was due and not \$225,000.00 on 15th April 2015, and continuing with this arithmetic progression until 15th August 2016. As to the rate of interest to be applied in respect of pre-judgment interest, this can vary, but is essentially a discretionary power to be exercised by the judge. The learned judge chose to apply the same rate to the award of pre-judgment interest as is statutorily applied to post-judgment interest, and no issue can be taken with him on his exercise of discretion in this regard, even though this Court might have applied a different rate.

Section 7 of the Judgments Act Cap 3.14,
Revised Laws of Saint Christopher & Nevis

2002 applied; *Alphonso and Others v Deodat Ramnath* (1997) 56 WIR 183 followed; *Steadroy Matthews v Garna O'Neal* BVIHCVAP2015/0019 (delivered 16th January 2018, unreported) followed; *Andrey Adamovsky et al v Andriy Malitskiy et al* BVIHCMAP2014/0022 (delivered 3rd February 2017, unreported) followed; Section 29 of the Eastern Caribbean Supreme Court (Saint Christopher & Nevis) Act Cap 3.11, Laws of Saint Christopher and Nevis applied.

5. An award of costs, both as to the incidence of it and the quantum of it, is - subject to Parts 64 and 65 of the Civil Procedure Rules 2000 - at the discretion of the trial judge. In this case, the learned judge made an award of prescribed costs to be paid to Choice by the Government and there is no basis for this Court to disturb his order.

Parts 64 and 65 of the Civil Procedure Rules 2000 applied.

APPLICATIONS & APPEALS

Case Name:

Anderson Carty

v

Althea James, Attorney for Sylvia Francis

**[ANUHCVP2022/0004]
(Antigua and Barbuda)**

Date:

Monday, 23rd May 2022

Coram:

**The Hon. Dame Janice M. Pereira, DBE Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant/Respondent: Mr. Wendel Alexander

Respondent/Applicant: Ms. Asheen Joseph

Issues:

Application for an adjournment

Type of Order

Adjournment

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

1. At the request of the appellant/respondent for an adjournment of today's hearing, the hearing of this application to strike out the notice of appeal is adjourned to a date to be fixed by the Chief Registrar.
2. The appellant/respondent shall file and serve written submissions with authorities in response to the application to strike, on or before Wednesday 1st June 2022.

Reason:

Both counsel for the appellant/respondent and respondent/applicant made applications for an adjournment of the matter. Counsel for the appellant/respondent indicated that the respondent/applicant's submissions were only filed on 18th May 2022 and he indicated that he did not have sufficient time to respond to the submissions. Counsel for the respondent/applicant sought an adjournment of the matter to sometime later in the week on the basis of illness.

After hearing counsel for both sides, the Court agreed to adjourn the matter and have it fixed for another date and also gave directions for the filing of the appellant/respondent's submissions.

Case Name:

Lawrence Daniels

v

**[1] The Disciplinary Committee
[2] The Registrar of the High Court
[ANUHCVP2022/0003]
(Antigua and Barbuda)**

Date:

Monday, 23rd May 2022

Coram:

**The Hon. Dame Janice M. Pereira, DBE Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

In person

Respondents:

**Mr. Rushaine Cunningham for the first respondent
Mrs. Carla Brookes- Harris for the 2nd respondent**

Issues:

Application to be removed as a party- Rule 19.3(1) & (2) of the Civil Procedure Rule 2000 - Section 40(1) of the Legal Profession Act, 2008 - Whether the appeal is an exercise of a statutory right of appeal and, if so whether it is inappropriate for the decision-maker to be made a party to the proceedings

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application made by the 1st respondent, the Disciplinary Committee under the Legal Profession Act, to be removed as a party to these proceedings is granted, on the basis that the joinder of the Disciplinary Committee as a party is inappropriate.**
- 2. Costs to be paid by the appellant to the 1st respondent in the sum of \$750.00 on or before Monday, 30th May 2022.**

Reason: The Court considered the application made by the first respondent to be removed as a party to the proceedings. The Court noted that as the decision making body, the first respondent ought not to have been joined as a party in an appeal against its decision. The Court considered the case of *The Labour Tribunal et al v St. Lucia Electricity Services Limited [SLUHCVAP2019/0003]* (delivered, 8th April 2020, unreported) and was of the view that the appellant, being aggrieved by the decision, ought only to have joined the other party to the proceedings below. In the circumstances, the Court considered that the joinder of the disciplinary committee was inappropriate and therefore the application was granted.

Case Name: John James Duffy

v

[1] Mervyn Leigh Gutteridge
[2] Amanda Diana Gutteridge
[ANUHCVP2020/0036]
(Antigua and Barbuda)

Date: Monday, 23rd May 2022

Coram: The Hon. Dame Janice M. Pereira, DBE Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:	Ms. Rose- Mary Reynolds
Respondents:	Ms. Mandi A. Thomas

Issues: Application to strike out notice of appeal- Whether appeal is a nullity- Whether a costs order is a final or interlocutory order- Whether the permission of the court is necessary to appeal against a costs order- Section 31 of the Eastern Caribbean Supreme Court (Antigua and Barbuda) Act- Application to withdraw

**the appeal- Application for removal from record-
Wasted Costs**

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is struck out.**
- 2. Costs of the application to strike out the appeal to be paid by the appellant to the respondents fixed in the sum of \$1,000.00.**
- 3. The application by the appellant to withdraw the appeal falls away as there is no appeal to withdraw.**
- 4. The application by the appellant for removal of the former legal practitioner from the record falls away as new counsel has filed a notice of acting for the appellant.**
- 5. The further application for a wasted costs order against the former legal practitioner for the appellant also falls away in these proceedings having been made in the application for withdrawal.**

Reason:

The Court was unanimous in its view that the appeal should be struck out as a nullity. The appeal was against an order for costs only, which required permission to appeal. This permission was not sought. Counsel for the appellant conceded that the appeal was not properly before the Court, albeit in its application filed to withdraw the appeal. Accordingly, the Court ordered that the appeal be struck out with costs to the respondents/applicants in the sum of \$1000.00 in the circumstances of this case.

Consequently, the application made by the appellant to withdraw the appeal fell away as there was no appeal to withdraw. Additionally, the appellant's application to remove the former legal practitioner from the record also fell away. New counsel had filed

a notice of acting which meant that the further application for a wasted costs order against the former legal practitioner also fell away in these proceedings, having been made in the application for withdrawal which became otiose after the appeal was struck out. The Court was therefore not in a position to go further in relation to the wasted costs matter.

Case Name:

**Leonard Phillip
v
Antigua Public Utilities Authority
[ANUHCVP2022/0006]
(Antigua and Barbuda)**

Date:

Monday, 23rd May 2022

Coram:

**The Hon. Dame Janice M. Pereira, DBE Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

Mr. Wendel Alexander

Respondent:

Ms. Lisa John- Weste and Mr. Loy Weste

Issues:

Interlocutory appeal - Application to strike out notice of appeal - Whether or not appeal is interlocutory - Application test - 62.1(3) of Civil Procedure Rules - Locus standi - Failure to file notice of appeal within stipulated time - Failure to file written submissions together with the notice of appeal - Rule 62.10 of the Civil Procedure Rules - Failure to file notice of opposition to application to strike - Failure to apply for an extension of time to file notice of opposition to strike out application pursuant to rule 26.1(2)(k) of the Civil Procedure Rules 2000 - Prejudice to respondent

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application to strike out the notice of appeal as being out of time and in breach of the Rules of Court, is granted.**
- 2. There shall be no order as to costs as the Court does not consider that there are any exceptional circumstances warranting the exercise of the discretion to award costs to the respondent.**

Reason:

The appellant filed a notice of appeal on 1st March 2022 against an oral decision of the Industrial Court made on 14th January 2022. The Court notes that, in accordance with the Civil Procedure Rules 2000, an oral decision is a decision of the court and the time for filing an appeal would run as from the date of delivery of that decision unless the court or tribunal starts the time running from some subsequent date. The Court was therefore of the unanimous view that in considering the application to strike out the appeal which was filed on 23rd March 2022, the Court must look to see whether or not the appeal is one from an interlocutory decision in terms of computing the time which is the primary basis on which the application to strike out the notice was made in the respondent's application filed on 23rd March 2022. The Court will record also however, that there is no other application filed since the 23rd of March 2022, accordingly there is no proper application to be heard by the respondent/appellant either by way of filing a notice of opposition or filing submissions within the time prescribed by the rules and practice directions, the Court accordingly proceeded on the application to strike as filed, without opposition by the respondent.

Applying the application test, as stated in the CPR 62.1(3), which states that an order or judgment is final if it would be determinative of the issues that arise on the claim whichever way the application could have been decided, that the way in which this test works has been explained in several decisions of this Court but the one most often cited is the case of Oliver McDonna v Benjamin Wilson Richardson Anguilla Civil Appeal No. 3 of 2005 (delivered 29th June 2007, unreported), relied on by counsel for the appellant, as well as, the case of The Barbuda Council v PLH [ANUHCVP2021/0005] (delivered 19th October 2021, unreported). In Barbuda Council, the Court, in its decision made plain that the application test does not look at the effect of the order but rather, the application test looks at the outcomes that were possible on the application. When the application test is applied to the case at bar, it is clear that the application to strike out the reference on the basis of locus standi would yield two possible outcomes, namely a conclusion of standing which would enable the reference to proceed

or a lack of standing which will bring the proceedings to an end. What this means is that the proceedings would not have been brought to an end whichever way the application was decided and accordingly the decision was in the nature of an interlocutory order.

The Industrial Court Act while providing the statutory right of appeal under specified grounds does not set out the time for the bringing of an appeal. Therefore, the time set out in the CPR would apply. CPR 62.5(1) provides that in the case of an interlocutory appeal, where leave is not required, the notice of appeal must be filed within 21 days of the date the decision was made. The Industrial Court gave its decision on the application on 14th January 2022, this would have required that the appeal be filed within 21 days thereafter. The appeal was filed on 1st March 2022 which is clearly outside the time for the filing of the notice of appeal and is accordingly out of time. At the latest, the appeal should have been filed about the 7th or 8th February 2022. Further, there has been no compliance with CPR 62.10 which governs interlocutory appeals and the various documents that are required to be filed within the stipulated time along with the notice of appeal, that also has not been complied with. Accordingly, the Court acceded to the application to strike out the notice of appeal.

Case Name:

Kharim Baptiste

v

**Narissa Browne
[ANUHC VAP2022/0006]
(Antigua and Barbuda)**

Date:

Monday, 23rd May 2022

Coram:

**The Hon. Dame Janice M. Pereira, DBE Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

Mr. R. Leonard Moore

Respondent:

Ms. Sherrie-Ann Bradshaw

Issues:

Magisterial civil appeal - Directions

Type of Order

Directions

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The parties shall continue to make all efforts to obtain the report by the relevant agencies both in Antigua and Barbuda and the Bronx, New York, USA.**
- 2. The parties shall file the report once it has been obtained and shall send a written notice to the Court that the report has been filed and the date of filing and the matter shall thereafter be relisted for hearing.**
- 3. The matter shall be listed for mention at the Court of Appeal sitting for Antigua & Barbuda during the week commencing 17th October 2022**

unless the Court is in earlier receipt of the report and the matter has been relisted for hearing.

Reason: The Court considered that the Court's previous directions for a report on the living conditions of the minor child to be filed with the Court had not been complied with. The Court therefore gave further directions for the report to be furnished to the Court.

Case Name: Cheryl Thompson

v

The Queen
[ANUHCRA2021/0003]
(Antigua and Barbuda)

Date: Tuesday, 24th May 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Applicant: Dr. David Dorsett

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions and Mrs. Shannon Jones-Gittens

Issues: Application for leave to appeal to Her Majesty in Council - Section 122 (1)(c) of the Antigua and Barbuda Constitution Order, 1981 - Appeal as of right - Whether the applicant is entitled to appeal to Her Majesty in Council as of right pursuant to section 122(1)(c) of the Constitution - Whether the decision against which the applicant filed her notice of appeal is a final decision - Application for stay pending hearing and determination of the appeal - Whether the intended

appeal to the Privy Council will be stifled and/or rendered nugatory unless a stay is granted

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal to Her Majesty in Council is dismissed.
2. The application for a stay is also dismissed.

Reason:

The matter before the Court was an application by the appellant/applicant for leave to appeal to Her Majesty in Council against the decision of the Court of Appeal delivered on 9th March 2022. The Court of Appeal dismissed the applicant's application for leave to appeal against the learned judge's decision refusing the applicant's motion to quash the indictments against her. The Court of Appeal ruled that there was no issue of interpretation of the *Antigua and Barbuda and Barbuda Constitution Order, 1981* ("the Constitution"). The appellant/applicant seeks leave to take the matter to the Privy Council for the Board's interpretation of the words "final decision" in section 121 of the Constitution. The words "final decision" have been interpreted by the courts of the Eastern Caribbean on many occasions and the interpretation has been consistent. The Eastern Caribbean courts apply the 'application test'. This is not a proper case to seek the guidance of Her Majesty in Council. The Court also did not find any genuinely disputable issues in the matter. In the circumstances the Court dismissed the application for leave to appeal to Her Majesty in Council. Consequently, the application for a stay was also dismissed.

Case Name:

Katamwa Bright

v

The Queen
[ANUHCRA2018/0005]
(Antigua and Barbuda)

Date: Tuesday, 24th May 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Warren Cassell

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

Issues: Criminal appeal - Aggravated Burglary - Appeal against conviction and sentence - Whether appellant's plea of guilty was improperly entered as a result of his counsel's misleading and wrong advice - Whether conviction is unsafe having regard to all the circumstances - Whether the sentence is excessive in all the circumstances

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against conviction is dismissed and the conviction is affirmed.
2. The appeal against sentence is allowed to the extent that the sentence is varied to 10 years imprisonment and the time of 18 months imprisonment spent on remand is deducted therefrom.

Reason: The appellant appealed against his conviction and sentence. The appellant argued that he pleaded guilty for the offence of aggravated burglary reluctantly as a result of counsel's misleading and wrong advice. The respondent resisted the assertions of the appellant. The court having read the affidavit of the appellant and of Mr. Bowen for the respondent, as well as the transcript of proceedings, found no merit in appeal

against conviction. Further, the appellant did not provide the requisite evidential basis in support of this ground and the transcript did not support the assertions. In respect of the appeal against sentence the court found that although the maximum penalty was 35 years the fact that the appellant pled guilty and having regard to his role in the commission of the offence, the sentence of 18 years imprisonment of the offence was erroneous and was varied to 10 years imprisonment.

Case Name:

Wayne Thomas

v

**Karen Gardner
[ANUMCVAP2019/0004]
(Antigua and Barbuda)**

Date:

Tuesday, 24th May 2022

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: R. Leonard Moore

Respondent: No appearance

Issues:

Magisterial civil appeal - Whether magistrate erred in principle by giving too little weight to the rules of evidence

Type of Order

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal against the decision of the learned magistrate is dismissed.
2. The decision of the learned magistrate is affirmed.

Reason:

This is an appeal against the decision of the learned magistrate, Her Worship Veronica Thomas in relation to the order which was made by the learned magistrate.

The Court reviewed the submissions from learned counsel and the learned magistrate's reasons for decision and was of the unanimous view that the procedure and the position which was taken by the learned magistrate was done with the concurrence of the appellant, who in fact agreed and offered to finance the cost of the DNA test.

The Court was of the view that in the circumstances, there was no basis on which the Court can conclude that the learned magistrate erred as a matter of principle. The Court was of the view that there was no merit in the appeal against the learned magistrate's decision based on the circumstances. The appeal was accordingly dismissed and the decision of the learned magistrate was affirmed.

Case Name:

**Edwin Gomez
v
The Queen
[ANUHCRA2014/0012]**

Consolidated with

**Isaiah Benjamin
v
The Queen
[ANUHCRA2014/0013]
(Antigua and Barbuda)**

Date:

Wednesday, 25th May 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Sherfield Bowen for Mr. Edwin Gomez
Mr. Wendel Alexander for Mr. Isaiah Benjamin

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions and Mrs. Shannon Jones-Gittens and Mr. Sean Nelson

Isaiah Benjamin v The Queen
[ANUHCRA2014/0013] -

Criminal Appeal - Murder - Appeal against conviction and sentence - Whether the sentence was excessively harsh - Whether the court erred in leaving the question of joint enterprises and intention in a joint enterprise to the jury - Whether the judge erred in failing to give specific directions in relation to the police interview and the co-accused persons - Whether the terms and focus of the judge's direction prejudiced the appellant in his trial - Whether the evidence of the co-accused persons required the judge to give adequate warning to the jury - Whether the judge erred in rejecting the no case submission by the appellant - Whether the judge erred in admitting caution statements of co-accused persons as part of the evidence of the case

Edwin Gomez v The Queen
[ANUHCRA2014/0012] -

Criminal Appeal - Murder- Appeal against conviction and sentence - Withdrawal of appeal against conviction - Whether sentence of 30 years imprisonment with review after 23 years was unduly harsh - Whether mitigating factors of the appellant's age, good character and assistance to police, are factors which the learned judge failed to consider in giving sentence - Whether the factors warrant a reduction in sentence

Type of Order: N/A

Result / Order:

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

Case Name:

Cassandra Goodluck

v

**Carlisle Bay Antigua
t/a Carlisle Bay Resorts**

**[ANUHLTAP2018/0001]
(Antigua and Barbuda)**

Date:

Thursday, 26th May 2022

Coram:

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

Appearances:

Appellant:

Mr. Warren Cassell

Respondent:

Ms. Chantal Thomas-Marshall

Issues:

Civil appeal - Notice of discontinuance

Type of Order

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is discontinued.**
- 2. There shall be no order as to costs, there being no exceptional circumstances.**

Reason:

The Court noted that a notice of discontinuance had been filed by the appellant. In the circumstances, the application filed by the respondent to strike out the

appeal therefore fell away. The Court dismissed the matter, having been discontinued.

Case Name:

Bettini & Britto Limited

v

**[1] Dawn Run Limited
[2] Galley Bay Club Limited
[ANUHCVP2019/0012]
(Antigua and Barbuda)**

Date:

Thursday, 26th May 2022

Coram:

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

Appearances:

Appellant:

Mr. Dane Hamilton, QC with Mr. Dane Hamilton Jr.

Respondents:

Mrs. Andrea Roberts-Nicholas and Ms. C. Kamilah Roberts

Issues:

Civil appeal – Contract law – Breach of contract - Termination clause – Whether termination was in accordance with contractual provisions – Terms of contract – Interpretation of contract – Whether appellant had failed to meet its obligations under the contract thus giving rise to respondents’ right of termination under the contract – Findings of fact – Whether judge erred in relying on letter of termination in finding that there had been a breach of contract – Damages – Dismissal of claim for damages

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Azizi Looby Harris

v

Louis Shopping Centre

**[ANUMCVAP2019/0001]
(Antigua and Barbuda)**

Date:

Thursday, 26th May 2022

Coram:

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

Appearances:

Appellant:

Mr. Warren Cassell

Respondent:

**Mr. Kyle Kentish holding papers for Mr. Kendrickson
Kentish**

Issues:

Civil appeal - Consent order

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

**The appeal is allowed with costs to be paid by
the respondent to the appellant, agreed in the
sum of \$1,500.00, to be paid no later than 16th
June 2022.**

Reason:

**The respondent indicated to the Court that it had
conceded the appeal and that the parties had agreed
costs of the appeal. The appeal was therefore allowed
with costs to the appellant as agreed.**

Case Name:

The Queen

v

**[1] Harold Lovell
[2] Jacqui Quinn
[3] Wilmoth Daniel**

**[ANUHCRA2021/0012]
(Antigua and Barbuda)**

Date:

Friday, 27th May 2022

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant/Respondent: **Mr. Gilbert Peterson SC, with him, Mr. Anthony Armstrong, Director of Public Prosecutions, and Mr. Sean Nelson for the appellant**

Respondents: **Mr. Charlesworth Tabor and Mr. Sherfield Bowen for the first respondent
Mr. Dane Hamilton, QC for the second respondent
Mr. Justin L. Simon, QC for the third respondent/applicant**

Issues:

Application to strike out notice of appeal - Whether the notice of appeal is bad in law and should be struck out as a nullity - Section 61B of the Eastern Caribbean Supreme Court Act, Cap 143 - Notification of intention to appeal by prosecutor - The effect in law of the omission to give the oral indication - Whether the right to appeal was extinguished - Section 43 of the Interpretation Act, Cap 224 - Parliamentary Intention when there is an absence of specific words - Section 50B Criminal Procedure Act, Cap 117 - Appeal by Director of Public Prosecutions from acquittal by the High Court

Type of Order	N/A
Result / Order:	IT IS HEREBY ORDERED THAT: Judgment is reserved.
Case Name:	The Queen v [1] Harold Lovell [2] Jacqui Quinn [3] Wilmoth Daniel [ANUHCRA2022/0005] (Antigua and Barbuda)
Date:	Friday, 27th May 2022
Coram:	The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances:	
Applicant:	Mr. Gilbert Peterson, SC, with him, Mr. Anthony Armstrong, Director of Public Prosecutions and Mr. Sean Nelson for the appellant
Respondents:	Mr. Charlesworth Tabor and Mr. Sherfield Bowen for the first respondent Mr. Dane Hamilton, QC for the second respondent Mr. Justin L. Simon, QC for the third respondent
Issues:	Application for extension of time to file notice of appeal - Whether the Criminal Proceedings (Trial by Judge Alone) Act No. 8 of 2021 limits the time frame in which the prosecution may appeal the judgment of the judge - Whether the notice of appeal filed on 19th

**January 2022 should be deemed properly filed -
Whether the delay in filing the notice of appeal was
inordinate**

Type of Order

N/A

Result / Order:

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