

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT KITTS AND NEVIS
VIDEOCONFERENCE
21st – 25th March 2022

APPLICATIONS/APPEALS

Case Name:

Joel Caines
v
Lloyd Williams
[SKBMCVAP2018/0020]
(St. Kitts and Nevis)

Date:

Monday 21st March 2022

Coram:

The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Applicant/Respondent: **Mr. Patrice Nisbett**

Appellant/Respondent: **In person**

Issues:

Application to withdraw appeal

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. With the leave of the court, the appeal filed on 5th December, 2018 is withdrawn.
2. Costs to be paid by the appellant to the respondent fixed in the sum of \$750.00 to be paid on or before 16th May 2022.

Reason:

The application before the Court was one to strike out the notice of appeal filed by the appellant/respondent on 5th December 2018. The appellant/respondent however indicated that he no longer wished to prosecute his appeal and made an oral application to withdraw the appeal.

Counsel for the applicant/respondent asked for costs in the sum of \$1,000.00 to be paid within one month, however the appellant/respondent prayed for costs to be in the sum of \$750.00 to be paid within two months.

Upon consideration, the Court found that the sum of \$750.00 to be paid within 6 weeks was reasonable and so ordered.

Case Name:

**The Bank of Nevis International
Limited
v
Cheryl Moses
[SKBMCVAP2021/0003]
(St. Kitts and Nevis)**

Date:

Monday 21st March 2022

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Respondent/Applicant: Ms. Kurlyn Merchant

Appellant/Respondent: Mr. Yuri Saunders holding for Mr. Tim Prudhoe

Issues:

Interlocutory appeal - Application to strike out notice of appeal for failure to serve within prescribed time - CPR 62.7- Section 168 of the Magistrate's Code of Procedure Act

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The notice of appeal filed herein on 17th March 2021 is hereby struck out for failure to serve the notice of appeal in accordance with the rules of Court and the Magistrates Code of Procedure Act and there having been no application by the appellant for an extension of time within which to do so.

2. The appellant shall pay the costs of the respondent/applicant fixed in the sum of \$1000.00 to be paid on or before 11th April 2022.

Reason:

The Court considered an application filed by the respondent/applicant to strike out the notice of appeal filed by the appellant/respondent on 17th March 2021.

The notice of appeal was served on the respondent/applicant on 5th November 2021, outside of the 14 days prescribed by both the rules of the Court and the

Magistrate's Code of Procedure Act and without an application for or order granting an extension of time.

The Court also considered that no steps were taken by the respondent/appellant prior to the date of the hearing upon receiving the notice of application to strike out the notice of appeal. In all the circumstances, the Court was of the view that the application to strike out the notice of appeal ought to be granted.

Case Name:

**Michael J. Prest
v
The Director of Public Prosecutions
[NEVHCVAP2022/0002]
(St. Kitts and Nevis)**

Date:

Monday 21st March 2022

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Terence Byron

Respondent:

Dr. Henry Browne QC.

Issues:

Interlocutory appeal - Application for the consolidation of appeals.

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED BY CONSENT THAT:

1. The first appeal and the second appeal be consolidated i.e. NEVHCVAP2021/0008 and NEVHCVAP2022/0002 and that the two appeals do proceed as one appeal which is to be prosecuted under the title set out in the Schedule hereto.
2. The consolidated appeals be heard during the Court of Appeal sitting in another member State of the Court before the June 2022 sitting of the Court of Appeal for St. Christopher and Nevis with a total time estimate of 2 hours.
3. The Respondent in the consolidated appeals be at liberty to file legal submissions with authorities in 14 days of the date of this order.
4. Counsel for the Appellant will have conduct of the preparation of the hearing bundle, which will be finalized within 21 days of the date of this order.
5. The Chief Registrar will give the parties notice of a date and state or territory for the hearing and disposal of the consolidated appeals before June 2022 within 7 days after the finalization of the hearing bundle ordered in paragraph 4.

Reason:

The Court considered an application dated 11th March, 2022, and filed on 14th March, 2022, of the appellant for an order that Civil Appeal No. NEVHCV AP2021/0008 and Civil Appeal No. NEVHCV AP2022/0002 be consolidated and the consent of the Respondent to consolidation of the appeals

The Court was of the view that in the circumstances the two appeals ought to be consolidated and proceed as one appeal.

APPEALS

Case Name:

Applewaite Lake

v

[1] Barbara Hardtman

[2] Laughton Browne

[3] Kirtley Hardtman

**[NEVHCVAP2020/0005]
(Saint Christopher and Nevis)**

Date:

Monday, 21st March 2022

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste,
Justice of Appeal**

**The Hon. Mde. Gertel Thom, Justice of
Appeal**

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

Appearances:

Appellant:

**Mr. John Jeremie SC with him Mr. Ricaldo
Caines**

Respondents:

Ms. M. Angela Cozier

Issues:

Application for adjournment

Type of Order:

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

The matter is adjourned to Tuesday 22nd March 2022 at 9:00am.

Reason:

Mr. Caines, counsel for the appellant, informed the Court that Senior Counsel, Mr. John Jeremie was not in a position to argue before the Court due to a scheduling conflict. Counsel intimated that Senior Counsel was of the belief that the appeal was set for hearing on Tuesday 22nd March 2022 and it would be difficult for Senior Counsel to be present to prosecute the appeal a day earlier on Monday 21st March 2022. Counsel, as such, asked the Court for its indulgence to have the matter adjourned to Tuesday 22nd March 2022 instead.

The Court upon hearing the request and the reply of counsel for the respondent to the adjournment application, acceded to Mr. Caines' request.

Case Name:

**Rudolph Morton
v
Frigate Bay Development
Corporation**

**[SKBHCVAP2021/0018]
(Saint Christopher and Nevis)**

Date:

Monday, 21st March 2022

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste,
Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of
Appeal
The Hon. Mr. Gerard Farara, Justice of
Appeal [Ag.]**

Appearances:

Appellant: Ms. Keisha A. Spence and Mr. Jason Hamilton

Respondent: Mr. Garth Wilkin

Issues: Interlocutory appeal - Extension of time - Variation of case management orders - Relying on expert witnesses - Exercise of the master's discretion - Whether the learned master erred in law and fact when he held that reference to statutory rules regarding the management of the Covid 19 pandemic provided sufficient explanation for the failure of the respondent to provide evidence to support the applications for an extension of time to file a list of documents having regard to the provisions in the said statutory rules and Practice Direction 1 of 2021 - Whether the learned master erred in law and fact when he failed to appreciate the provisions under the statutory rules in that the rules did not mandate a 'blanket' lockdown and in fact mandated statutory bodies to work remotely from the office and private offices to work virtually from home - Whether the learned master erred in law when he ruled that the list of documents filed on behalf of the respondent was properly filed despite that the said document did not comply with rule 28.7(6) of the Civil Procedure Rules 2000 - Whether the learned master erred in law and fact when he held that the defence filed on behalf of the respondent was not hopeless - Whether the learned master misdirected himself in law regarding the appellant's submissions in relation to the defence and counterclaim filed by the respondent and the use of the witness statement to assess the defence - Whether the learned master misdirected

himself as to the provisions under rule 29.9 of the Civil Procedure Rules 2000 - Whether the learned master erred when he held that rule 3.2 was not applicable to the computation of time with respect to the time for filing any interlocutory applications - Whether the learned master erred in law and misdirected himself that the appellant's oppositions to the respondents applications were unreasonable - Whether the learned master erred in law when he awarded the respondent costs on each application, which said applications were in breach of Part 65 of the Civil Procedure Rules 2000 - Whether the learned master erred in fact when he held that the sole basis for the appellant's opposition to the respondent's application under Part 32 of the Civil Procedure Rules 2000 was that the evidence was not reasonably required - Whether the learned master erred in law and in fact when he reasoned that the experts had useful evidence which could assist the court

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed in respect of the applications to extend time and the order appointing the experts and the master's orders in that respect are affirmed.**
- 2. The orders for costs are set aside.**
- 3. No order as to costs on appeal.**

Reason:

This was an appeal against the case management orders of a master and the exercise of the master's discretion with respect to cost. The master had three applications before him, two which dealt

with the extension of time and the other dealt with application to appoint two experts. He made orders granting the applications. This led to 12 grounds of appeal filed by the appellant alleging various errors of law and misdirection on the part of the master.

Being essentially an appeal against case management decisions, the Court found it useful to set out the law pertaining to appellate interference with case management decisions. It has always been the case that a case management decision is peculiarly that of the first instance judge and the appeal court will be slow to interfere with such a determination. The appeal court will interfere when it is proper to do so. However, it must be understood that in cases of appeals from case management decisions, the instances in which the appeal court can interfere are limited. A judge making a case management decision has a very wide discretion and anyone seeking to appeal such a decision has an uphill task. The Court can interfere if the case management judge is plainly wrong, otherwise the whole purpose of case management which is to move cases forward as quickly as possible would be frustrated because the cases are likely to be derailed into interlocutory appeals. As Lady Arden said in Royal & Sun Alliance plc v T & N Limited [2002] EWCA Civ 1964:

“I accept without reservation that this court should not interfere with case management decisions made by a judge who has applied the correct principles and who has taken into account matters which should be taken into account and left out of account matters which are irrelevant unless satisfied that the decision is so plainly wrong that it must be regarded as outside of the generous ambit of the discretion entrusted to the judge.”

The principle that an appellate court should only interfere with the matters of case management where a judge has gone plainly wrong are established and has been emphasised many times. Case management should not be interrupted by interim appeals as this would lead to satellite litigation and delays in the litigation process. Moreover, the judge dealing with case management is often better equipped to deal with case management issues. The judge may well be acquainted with the proceedings as he may have had to deal with several interim applications before the applications which are the subject of the appeal.

Case management decisions are discretionary decisions. They often involve an attempt to find these least worst solutions where parties have diametrically opposed interests. The discretion involved is entrusted to the first instance judge and the appeal court does not exercise the discretion for itself. It can interfere with the exercise of the discretion by the first instance judge where he has misdirected himself in law, failed to take relevant factors into account, has taken into account irrelevant matters or come to a decision that is plainly wrong in the sense of being outside of the generous ambit where reasonable decision makers may disagree. So then, the question is not whether the appeal court would have made the same decision as the master, the question is whether the master was wrong in the sense explained.

The Court listened to the submissions of both counsel on this appeal in regard to the master's findings and the appeal grounds. Having regard to the principles which pertain to appellate intervention, the Court was not satisfied that in respect of the applications to extend time and the appointment of the expert witnesses that the

master was plainly wrong. The Court did not discern any error on the part of the master in principle or otherwise which would engage appellate interference. The Court heard the submissions of the appellant in the context of the evidential affidavit evidence in support of the applications, and the response from the respondent. In the circumstances, the Court did not find that the decision of the master was one which was plainly wrong. In respect of the expert evidence also, the Court did not find any basis for appellate interference. The Court noted the submissions of the appellant in the context of whether there was any expert evidence needed to resolve the crux of the claim. However, the Court, having considered the matter, did not see that the judge was plainly wrong in his decision to appoint the experts.

With respect to the appeal against the order on costs, the Court was of the view that the master was plainly wrong in this regard. The Court noted that the orders arose in case management and in the context of rule 65.11(1) of the Civil Procedure Rules 2000. The Court was also of the view that the opposition to the applications was not unreasonable. Accordingly, the Court set aside the order of the master in respect of costs.

For the reasons advanced the Court ordered that the appeal was dismissed in respect of the application to extend time and the order appointing the experts and the orders of the master were affirmed in this respect. The order for costs was set aside for the reasons indicated. As both parties had achieved some measure of success on appeal, there was no order made as to costs on appeal.

Case Name:

[1] Renika Daniel

[2] Akeno Gordon

v

Jabulani Martin

[NEVMCVAP2021/0001]

(Saint Christopher and Nevis)

Date: Monday, 21st March 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste,
Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of
Appeal
The Hon. Mr. Gerard Farara, Justice of
Appeal [Ag.]

Appearances:

Appellants: Ms. Marlene Uter Bent

Respondent: Mr. Oral Martin with Ms. Anmarieta M.
Staines

Issues: Magisterial civil appeal - Vehicular accident
- Claim for damages for negligent driving -
Damages for loss of use of chattel - Whether
magistrate erred in dismissing the 1st
appellant's claim on the ground that she
gave no evidence at the trial - Whether 1st
appellant obligated to give evidence in her
claim - Section 145 of the Magistrate's Code
of Procedure Act Chap. 3.17 - Whether
magistrate erred in striking out 2nd
appellant as a party to proceedings on the
basis that he had no cause of action -
Whether 2nd appellant could claim damages
for loss of use of vehicle - Vehicle owned by
1st appellant - No proof of actual loss of use
sustained

Type of Order

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal by the 1st appellant Renika Daniel is allowed and the order of the learned magistrate dismissing her claim is set aside.
2. The appeal by the 2nd appellant Akeno Gordon is dismissed and the order of the learned magistrate dismissing his claim is affirmed.
3. The claim by the 1st appellant is remitted to the magistrate's court for a new trial before a different magistrate.
4. No order as to costs on the appeal.

Reason:

This was an appeal from the decision of the learned magistrate in relation to a civil claim brought by way of summons filed on 20th October 2020. The plaintiffs in that summons were Renika Daniel as the 1st plaintiff, who it is accepted is the owner of the motor vehicle PA5840, which at the time was being driven by Akeno Gordon, the 2nd plaintiff.

The accident involved another vehicle, P4856, which at the time of the accident on the 5th May 2020 was being driven by the defendant, Jabulani Martin, who was the respondent in the appeal. At the trial and hearing before the learned magistrate, it was accepted, and this has been confirmed by learned counsel for the parties, that the said vehicle, PA5840, was indeed owned by the 1st plaintiff at the time of the collision, the subject of the claim.

By the summons, filed in the magistrate's court, both plaintiffs claimed, on the basis of negligence, damages for the loss and damage to the motor vehicle owned by the 1st plaintiff who is the 1st appellant. Particulars of the loss and damage to the said motor vehicle were set out in the

summons and the total sum claimed was \$12,003.29. That included a claim for loss of use in the sum of \$460.00. The learned magistrate dismissed the claim.

In relation to the 1st plaintiff, the learned magistrate dismissed her claim on the basis that she had not given evidence on oath in the proceedings. In relation to the 2nd plaintiff, the learned magistrate accepted the submission made on behalf of the defendant that the 2nd plaintiff had no cause of action and therefore his claim ought to be dismissed. In doing so, the learned magistrate held that the 1st plaintiff was the only person who had a cause of action in the case. She did not make any claim against the defendant in court and the matter was accordingly dismissed. Both the 1st and 2nd plaintiffs appealed the magistrate's decision and relied on a number of grounds of appeal as set out in the notice of appeal filed in this matter on 12th May 2021.

The Court heard submissions made by learned counsel on behalf of the appellants and learned counsel on behalf of the respondent and also read and considered the written submissions of learned counsels for the parties. The court was satisfied that the learned magistrate erred in dismissing the claim of the 1st plaintiff, the 1st appellant Renika Daniel.

In particular, having considered the provision of section 145 of the Magistrate's Code of Procedure Act Chap. 3.17 which states, in part, that both the plaintiff and defendant may give evidence on oath, the Court was of the view that there was no mandatory requirement under the Magistrate's Code of Procedure Act Chap. 3.17 for a plaintiff or a defendant to give evidence in support of or in defence of a civil claim. Furthermore, in the instant matter, the 1st plaintiff, as the record of the

proceedings clearly showed, was present in court and, along with the 2nd plaintiff, represented by counsel. It was also clear from the record in the proceedings below that evidence was led on behalf of the plaintiffs from 4 witnesses which included evidence on oath by the 2nd plaintiff, Akeno Gordon, evidence of a police officer and evidence from a mechanic. The evidence of these witnesses was led on behalf of the plaintiffs and in support of the claim. As it had been accepted that the 1st plaintiff was the owner of the motor vehicle, there was no other material evidence essential to establishing a claim in negligence or a claim for damages and loss which the 1st plaintiff could have given, as she had not been present at the time of the accident and evidence as to loss and damage had been provided by other witnesses. Accordingly, the learned magistrate erred in dismissing the claim of the 1st plaintiff and that order was therefore set aside.

In relation to the 2nd plaintiff, learned counsel for the plaintiffs/appellants accepted that the 2nd plaintiff had no cause of action in relation to all aspects of the claim except the claim for loss of use of \$460.00 which learned counsel submitted was a claim made jointly by both plaintiffs. However, the record revealed that the only evidence adduced before the learned magistrate was of a rental agreement between the 2nd plaintiff and a 3rd party in relation to a motor vehicle, and covering a period different from the period with respect to which the loss of use of the 1st plaintiff's vehicle was being claimed. Essentially, the loss of use claimed was said to relate to the period of some 4 days during which it would have taken for the mechanic to undertake and complete the repairs to the 1st plaintiff's vehicle. Learned counsel for the appellants was unable to provide the Court with any authority upon which to ground, in law, a

claim by the 2nd appellant for the loss of use of the 1st appellant's vehicle. In the circumstances, the Court was of the view that the magistrate did not err in finding that the 2nd plaintiff, Akeno Gordon, had no cause of action. Accordingly, the learned magistrate was correct in dismissing the claim by Akeno Gordon and that order by the magistrate was sustained.

As to costs, having considered the submissions of either party, the Court was of the view that since either party succeeded in some respect in terms of the appeal, no order as to costs would be an appropriate order in the circumstances.

APPLICATIONS/APPEALS

Case Name:

**Dr. The Hon. Timothy Harris
v
Dr. The Right Hon. Denzil Douglas**

**[SKBHCVAP2019/0026]
(St. Kitts and Nevis)**

Date:

Tuesday 22nd March 2022

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant/Applicant:

Mr. Dane Hamilton QC with him Mr. Victor Elliot Hamilton

Respondent: Mr. Anthony Astaphan SC with him Ms. Angelina Gracy Sookoo- Bobb

Issues: Motion for conditional leave to appeal to Her Majesty in Council - Section 99 (2) (a) of the Constitution of St Christopher and Nevis - Whether an issue of great public importance arises on the decision being appealed - Whether the Court erred in law in finding that no error of law was committed by the judge in finding that the documents were within the possession and control of the applicant within the meaning of CPR 28.2. - Whether the documents were not subject to the oath of secrecy - Whether the documents were directly relevant - Whether documents are reasonably required for the purpose of fair disposal of proceedings for pleaded defence of fair comment - Application for a stay of execution of the order of Ventose J until the determination of the appeal.

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. Conditional leave to appeal to Her Majesty in Council is granted to the applicant/appellant pursuant to section 99 2 (a) of the Constitution on the following conditions:
 - 1.1 The applicant within 90 days of the date hereof shall lodge the EC dollar equivalent of £300.00 for the due prosecution of the appeal at the Court office.
 - 1.2 Within 90 days of the date hereof the applicant must take the necessary steps for the purposes

of procuring the preparation of the records, the settling of such records with solicitors for the respondent of this application and the certification of the record by the Registrar of the Court of Appeal.

1.3 The record shall be prepared in accordance with rules 18 to 20 of the Judicial Committee Appellate Jurisdiction Rules Order 2009 and its Practice Direction 4.2.1 to 4.3.2 and Practice Direction 5 and shall be submitted to the Registrar of the Judicial Committee of the Privy Council without delay where final permission to appeal has been granted.

1.4 The applicant shall make an application to the Court for final permission to appeal to Her Majesty in Council supported by the Certificate of the Registrar that the security for costs ordered herein has been given within the time prescribed by this order and to the satisfaction of the Registrar.

2 The orders of the Honourable Justice Ventose dated the 21st of August 2019 and the Judgment of the Court of Appeal dated 9th of December 2021 be stayed until the appeal is determined by Her Majesty in Council.

3 That the cost of this motion shall be cost of the appeal to Her Majesty in Council.

Reason:

The Court considered a motion for conditional leave to appeal to Her Majesty in Council pursuant to section 99 (2) (a) of the Constitution of St Christopher and Nevis against the decision of the Court of Appeal delivered on the 9th December 2021. The applicant also made an application for stay of execution of the order of Ventose J dated

22nd July 2019 until the determination of the appeal.

On the motion for conditional leave to appeal to Her Majesty in Council, counsel for the applicant argued that an issue of great or public importance arises within the meaning of section 99 (2) on the decision being appealed against.

He submitted three arguments to support his assertion:

(i) The Court erred in law in finding that the judge in the court below did not err in holding that the documents were within the possession and control of the applicant within the meaning of CPR 28.2. Counsel relied on the decisions of Lonrho Ltd v Shell Petroleum Co. Ltd and another [1908] 1 W.L.R 627 and Unilver Ltd v Gillete (UK) Ltd [1983] R.P.C 80.

(ii) The Court erred in holding that the documents were not subject to the oath of secrecy made by the applicant pursuant to section 60 of the Constitution of Saint Christopher and Nevis.

(ii) The Court erred in law in finding that the documents were directly relevant having regard to the pleadings before the court and whether or not documents are reasonably required for the purpose of fair disposal of proceedings where the respondent has pleaded a defence of fair comment without disputing the meaning the of words contended by the applicant.

Learned Counsel for the respondent asserted that the applicant did not satisfy the conditions as set out in the Constitution for leave to appeal to Her Majesty in Council because they failed to demonstrate that the question involved in the appeal is one that, by reason of its great general or public

importance or otherwise, ought to be submitted to Her Majesty in Council.

Learned Counsel for respondent further stated that there was no objection to the imposition of a stay pending the determination of the appeal once conditional leave was granted to the applicant.

The Court considered the principles in the cases of Martinus Francois v The Attorney General SLUHCVP2003/0037 (delivered 7th June 2004, unreported and Pacific Wire & Cable Company Limited v Texan Management Limited et al British Virgin Islands HCVAP2006/019 (delivered 6th October 2008, unreported) and was of the view the issues raised are questions in respect of which the court would benefit from guidance of the Privy Council and concluded that conditional leave to appeal to Her Majesty in Council should be granted pursuant to section 99 2 (a) of the Constitution.

Case Name:

[1] The Estate of Atiana Madeline
Francis, deceased
[2] Christina Francis
(executor of the estate of Richard
Francis)
v
Stella Patricia Francis
[SKBHCVAP2021/0019]
(St. Kitts and Nevis)

Date:

Tuesday 22nd March 2022

Coram:

The Hon. Dame Janice M. Pereira, Chief
Justice
The Hon. Mde. Louise Esther Blenman,
Justice of Appeal
The Hon. Mr. Paul Webster, Justice of
Appeal [Ag.]

Appearances:

Appellant: Mr. Jason Hamilton and Ms. Keisha Spence

Respondent: No appearance

Issues:

Application for leave to appeal

Type of Order:

Directions

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The appellant is directed to produce the draft grounds of appeal contained in a draft notice, the transcript of the proceedings relevant to the application for leave, the order of the court dealing with the application for relief from sanctions and the relevant documents in respect of that application in a bundle properly paginated and sequenced in chronological order and upon completion, to inform the Court's Headquarters in Saint Lucia that the bundle has been prepared as directed.

Reason:

The Court was of the view that it was not in possession of the relevant documents needed to determine the appellant's application for leave to appeal.

APPEALS

Case Name:

Applewaite Lake

V

[1] Barbara Hardtman

[2] Laughton Browne

[3] Kirtley Hardtman

[NEVHCVAP2020/0005]

(Saint Christopher and Nevis)

Date:

Tuesday, 22nd March 2022

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste,
Justice of Appeal**

**The Hon. Mde. Gertel Thom, Justice of
Appeal**

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

Appearances:

Appellant:

**Mr. John Jeremie, SC with him Mr. Ricaldo
Caines and Ms. Keesha Carty**

Respondents:

Ms. M. Angela Cozier

Issues:

**Interlocutory appeal - Approach of appellate
court to challenges of findings by judge -
Whether learned judge fell into error and
made incorrect findings of fact - Restraint by
appellate court in interfering with trial
judge's findings of fact, evaluation and
inference from facts - Whether learned judge
failed to place sufficient/any weight on facts
and evidence - Whether judge pre-
determined the outcome of the case
disposing of facts central to the
determination of the case in a peremptory
fashion - Exercise of discretion afresh
by appellate court - Whether learned
judge incorrectly stated the law with respect
to his jurisdiction to set aside consent order
- Whether learned judge failed to consider**

the settled grounds upon which a consent order could be set aside such as lack of authority, collusion, illegality, supervening events, misrepresentation and conflict of interest

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal to set aside the consent order dated 24th February 2020 is dismissed.
2. Costs to the respondents on the appeal being $\frac{2}{3}$ of the costs to be awarded upon assessment by a judge in the court below.

Reason:

The Oral Judgment delivered by the Court will be reduced to writing for distribution to the parties and publishing.

Case Name:

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

v

SKN Choice Times Limited

**[SKBHCVAP2019/0045]
(Saint Christopher and Nevis)**

Date:

Tuesday, 22nd March 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: Mr. Terence Byron

Respondent: Ms. M. Angela Cozier

Issues:

Civil appeal - Damages - Breach of Contract - Performance of a contract - Whether the learned judge erred in his interpretation of the agreement between the parties - Whether the learned judge erred, on the basis of the pleadings, evidence and law, in failing to dismiss the respondent's claim on the ground of non-performance of its contractual obligation to carry all broadcasts of the government and of the National Parliament, or as much as reasonably possible - Whether the learned judge made errors of mixed law and fact by finding that partial performance of the respondent of its obligations under clause 1 of the agreement obligated the appellant to pay the agreed monthly sum instead of no payment at all - Whether the learned judge misapplied the concept of the burden of proof - Whether the learned judge made errors of mixed fact and law when he failed to find that there was no evidence that the respondent had carried all or as much as reasonably possible of the broadcasts of the government and of the National Parliament - Whether the learned judge made errors of mixed fact and law by finding that the appellant was in breach of the contract by not paying the monthly stipends - Whether the learned judge erred in not categorizing the contract as a contract for services - Rule 8.6(4) of the Civil Procedure Rules 2000- Whether the learned judge erred in his award of interest - Whether the learned judge erred in law by exceeding his

jurisdiction and thereby acting ultra vires and/or irrationally and/or in breach of natural justice when he ordered the appellant to pay the judgment debt in 14 days

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:
1. Judgment is reserved.
2. Judgment shall be delivered during the week of 4th April 2022 during the Court's next sitting.

Reason: N/A

Case Name: [1] Dwight Harris
[2] Asif McDonald
v
Edsel Procope

[SKBMCVAP2020/0004]
(Saint Christopher and Nevis)

Date: Tuesday, 22nd March 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:
Appellants: Mr. Imru Butler
Respondent: Ms. Jenise Carty

Issues: Application for adjournment

Type of Order: Adjournment

Result / Order: IT IS HEREBY ORDERED THAT:

The matter is adjourned to Thursday, 24th March 2022 at 9:00 am.

Reason: Counsel for the appellant was not in a position to prosecute the appeal and requested an adjournment of the matter. The Court granted the request.

APPEAL

Case Name: [1] 25 Acres Holding Limited
[2] Deon & Associates Limited
[3] Deon Daniel
v
[1] Norbert Klaus
[2] Andrea Klaus-Kalman

[NEVHCVAP2021/0006]
(Saint Christopher and Nevis)

Date: Wednesday, 23rd March 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste,
Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellants: Ms. Talibah Byron with Mr. Terence Byron

Respondents: Mr. Brian Barnes with Mr. John Coombs

Issues: Interlocutory appeal - Exercise of judicial discretion in case management decision - Appellate interference with exercise of judicial discretion - Whether learned judge erred in exercise of discretion in granting extension of time to file witness statements - Evidence as to reasons for delay in filing witness statements - Weight attached to evidence by trial judge - Whether learned judge had sufficient evidence before him to properly exercise his discretion - Relief from sanctions - Whether learned judge erred in exercise of discretion in purportedly granting relief from sanctions - Rule 26.8 of the Civil Procedure Rules 2000 - Application to introduce fresh evidence - Evidence to be introduced rebutting reasons provided by claimants as to delay in filing witness statements - Principles in Ladd v Marshall [1954] EWCA Civ 1 - Whether fresh evidence could have been obtained with reasonable diligence for use in lower court - Whether fresh evidence would have an important influence on the result of the case - Whether fresh evidence credible - Costs at case management - No award of costs - Whether costs at case management ought to be costs in the claim

Type of Order: Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed and the order of the learned judge made on 27th July 2021 is affirmed.
2. Costs of the appeal to the respondents in the sum of \$2,000.00.

Reason:

This was an appeal by the defendants in the court below who are the appellants in the Court of Appeal, against the decision of the learned judge, extending the time for the respondents to file additional witness statements.

The respondents are Swiss nationals who purchased property in Nevis from the appellants and contracted the appellants to construct a house on the property. Unhappy differences developed between the parties and in June 2018 the respondents filed a claim against the appellants for damages for breach of contract. The procedural history of the claim is long and complicated and will only be referred to as necessary. The court had made 3 prior orders extending the time for the parties to file witness statements. The applications were made by the appellants and were uncontroversial and uncontested. The third order was made 16th March 2021 at the pre-trial review when the learned judge granted a further extension of time for the parties to file their witness statements by 30th April 2021. The appellants complied with the deadline. The respondents did not comply and on 20th May 2021, applied for an extension of time to 2nd June 2021 to file their witness statements and for relief from sanctions, having failed to comply with the judge's order. The application was based on the fact that the respondents' witnesses resided in different time zones and language and logistical difficulties, especially in translating witness statements of their witnesses and putting them in a form that would be acceptable to the court. The respondents asserted, and it is not disputed, that English is not the first or native language of the witnesses.

The appellants objected to the extension application and filed evidence in opposition on 26th May 2021, the day before the

hearing. The learned judge who had been managing the case since the beginning of the year and who was presumably very familiar with the details, heard the contested application and made orders as follows:

“Upon this matter coming on for case management and upon hearing counsel for the parties, with counsel for the claimant having requested additional time within which to file additional witness statements, the defendants are opposed to the application and upon the court noting as follows:

- a. That the court is satisfied that the reasons put forward for the delay in filing the witness statements satisfy the test of a good explanation for the failure to file the statements on time;
- b. That the court is satisfied that the failure to file the statements was not intentional;
- c. It is overall in the interests of justice and in keeping with the overriding objective to allow for the statements to be filed out of time; and
- d. That notwithstanding the court’s indication of its intention to allow the additional time to file the witness statements, the court is also of the view that there ought to be no further delays in ensuring that this matter is brought to trial at the soonest

Whereby it is ordered and directed as follows:

1. Time is extended to the claimant within which to file witness statements on or before 30th August 2021.
2. The matter will be listed for a further pre-trial review on a date during the month of October 2021.
3. The claimant will have carriage of time.”

The judge did not make a specific order on the application for relief from sanctions but it is apparent from the recitals in the order and his actual decision that he was satisfied that the conditions for granting relief from sanctions were met and that the application was granted. The appellants' challenge to this decision faced the following obstacles which are based on principles of Eastern Caribbean law and practice that are firmly established by the Civil Procedure Rules 2000 and decided cases.

As to the first obstacle, the appeal was largely against findings of fact by the trial judge. The cases are replete with examples and illustrations of the principle that the appellate court will not lightly interfere with findings by the judge of the lower court. This is so even when the evidence in the lower court was documentary and there was no oral evidence or cross examination.

The second obstacle is the reluctance of an appellate court to interfere where the decision appealed is a case management decision, (as in this case). This is because the managing judge is more familiar with the details of the case than the Court of Appeal and he is also familiar with the court's calendar and the need to deal with the substantive issues in the trial.

Having considered the oral and written submissions of counsel for the parties, the Court agreed with learned counsel for the appellants' criticism of the evidence in support of the application that the reasons for the failure to meet the filing deadline could have been more particularized. However, the Court disagrees with counsel that the evidence consisted of bald assertions only. There was sufficient evidence before the judge of the reasons for the delay and there is no basis for the Court to interfere with his findings.

Managing judges have a wide latitude in making case management decisions. In this regard, the Court noted the judge's findings that "(c) It is overall in the interests of justice and in keeping with the overriding objective to allow for the statements to be filed out of time" and "(d) That notwithstanding the court's indication of its intention to allow for additional time to file the witness statements, the court is also of the view that there ought to be no further delays in ensuring that this matter is brought to trial at the soonest."

The judge was obviously concerned with the delays in bringing the case to trial. This is in keeping with the overriding objective of dealing with cases justly, including, ensuring that cases are dealt with expeditiously. Accordingly, the appeal is dismissed.

As to the fresh evidence application, the application was premised on an allegation that the two witnesses that were the subject of the relief from sanctions application, are able to speak fluent English and so the fact that English was not their first language should not have caused any delays in preparing and finalizing the witness statements. The appellants submitted that, had the judge considered the fresh evidence, it would have made a difference to his decision.

The Court opined that the appellants' view of the reason for the fresh evidence application was narrow. The respondents' position on the application was that the fact that English was not the native language of their witnesses caused delays in the translation and finalising of the witness statements. The respondents did not say that the witnesses do not speak or write English.

The Court was not of the view that the fresh evidence would have had an important influence on the judge's decision to exercise his case management powers to extend the time to file the witness statements and thereby pave the way for the matter to proceed to trial. This finding means that the appellants did not satisfy the 3rd limb of the test in *Ladd v Marshall* [1954] EWCA Civ 1, and as all 3 limbs must be satisfied, the application failed. Accordingly, the application to adduce fresh evidence was also dismissed.

In relation to costs, there was also an appeal that the learned judge did not make a costs order in the court below. The appellants also appealed against the fact that the judge did not award them their costs in the application even though they were not the successful party. They relied on CPR 26.8 which provides that, "in an application for relief from sanctions, the applicant having failed to comply with the rules or an order must pay the respondents' cost of the application in any case". However, the principle does not apply when the judge or master is making a case management decision. Case management decisions fall under CPR rules 65.7 and 65.11(a), which provide that costs are to be costs in the cause, in particular CPR rule 65.7. The judge did not err in not awarding costs in the lower court to the appellants. However, the rule does not apply to appeals and the general rule that costs follow the event, applies in appeals.

The respondents, being the successful parties on the appeal, were awarded costs of the appeal. Having considered the oral submissions of the parties and the fact that the appeal was an interlocutory appeal against a case management decision of the judge, costs were awarded to the respondents in the sum of \$2,000.00.

APPEAL

Case Name:

**[1] 25 Acres Holding Limited
[2] Deon & Associates Limited
[3] Deon Daniel
v
[1] Norbert Klaus
[2] Andrea Klaus-Kalman**

**[NEVHCVAP2021/0006]
(Saint Christopher and Nevis)**

Date:

Wednesday, 23rd March 2022

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste,
Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of
Appeal
The Hon. Mr. Paul Webster, Justice of
Appeal [Ag.]**

Appearances:

Appellants: Ms. Talibah Byron with Mr. Terence Byron

Respondents: Mr. Brian Barnes with Mr. John Coombs

Issues:

**Interlocutory appeal - Exercise of judicial
discretion in case management decision -
Appellate interference with exercise of
judicial discretion - Whether learned judge
erred in exercise of discretion in granting
extension of time to file witness statements
- Evidence as to reasons for delay in filing
witness statements - Weight attached to
evidence by trial judge - Whether learned
judge had sufficient evidence before him to
properly exercise his discretion - Relief from**

sanctions - Whether learned judge erred in exercise of discretion in purportedly granting relief from sanctions - Rule 26.8 of the Civil Procedure Rules 2000 - Application to introduce fresh evidence - Evidence to be introduced rebutting reasons provided by claimants as to delay in filing witness statements - Principles in Ladd v Marshall [1954] EWCA Civ 1 - Whether fresh evidence could have been obtained with reasonable diligence for use in lower court - Whether fresh evidence would have an important influence on the result of the case - Whether fresh evidence credible - Costs at case management - No award of costs - Whether costs at case management ought to be costs in the claim

Type of Order:

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 3. The application to adduce fresh evidence is dismissed.**
- 4. The appeal is dismissed and the order of the learned judge made on 27th July 2021 is affirmed.**
- 5. Costs of the appeal to the respondents in the sum of \$2,000.00.**

Reason:

This was an appeal by the defendants in the court below who are the appellants in the Court of Appeal, against the decision of the learned judge, extending the time for the respondents to file additional witness statements.

The respondents are Swiss nationals who purchased property in Nevis from the appellants and contracted the appellants to

construct a house on the property. Unhappy differences developed between the parties and in June 2018 the respondents filed a claim against the appellants for damages for breach of contract. The procedural history of the claim is long and complicated and will only be referred to as necessary. The court had made 3 prior orders extending the time for the parties to file witness statements. The applications were made by the appellants and were uncontroversial and uncontested. The third order was made 16th March 2021 at the pre-trial review when the learned judge granted a further extension of time for the parties to file their witness statements by 30th April 2021. The appellants complied with the deadline. The respondents did not comply and on 20th May 2021, applied for an extension of time to 2nd June 2021 to file their witness statements and for relief from sanctions, having failed to comply with the judge's order. The application was based on the fact that the respondents' witnesses resided in different time zones and language and logistical difficulties, especially in translating witness statements of their witnesses and putting them in a form that would be acceptable to the court. The respondents asserted, and it is not disputed, that English is not the first or native language of the witnesses.

The appellants objected to the extension application and filed evidence in opposition on 26th May 2021, the day before the hearing. The learned judge who had been managing the case since the beginning of the year and who was presumably very familiar with the details, heard the contested application and made orders as follows:

“Upon this matter coming on for case management and upon hearing counsel for the parties, with counsel for the claimant having requested additional time within

which to file additional witness statements, the defendants are opposed to the application and upon the court noting as follows:

- e. That the court is satisfied that the reasons put forward for the delay in filing the witness statements satisfy the test of a good explanation for the failure to file the statements on time;
- f. That the court is satisfied that the failure to file the statements was not intentional;
- g. It is overall in the interests of justice and in keeping with the overriding objective to allow for the statements to be filed out of time; and
- h. That notwithstanding the court's indication of its intention to allow the additional time to file the witness statements, the court is also of the view that there ought to be no further delays in ensuring that this matter is brought to trial at the soonest

Whereby it is ordered and directed as follows:

- 4. Time is extended to the claimant within which to file witness statements on or before 30th August 2021.
- 5. The matter will be listed for a further pre-trial review on a date during the month of October 2021.
- 6. The claimant will have carriage of time."

The judge did not make a specific order on the application for relief from sanctions but it is apparent from the recitals in the order and his actual decision that he was satisfied that the conditions for granting relief from sanctions were met and that the application was granted. The appellants' challenge to this decision faced the following obstacles which are based on principles of Eastern Caribbean law and practice that are firmly

established by the Civil Procedure Rules 2000 and decided cases.

As to the first obstacle, the appeal was largely against findings of fact by the trial judge. The cases are replete with examples and illustrations of the principle that the appellate court will not lightly interfere with findings by the judge of the lower court. This is so even when the evidence in the lower court was documentary and there was no oral evidence or cross examination.

The second obstacle is the reluctance of an appellate court to interfere where the decision appealed is a case management decision, (as in this case). This is because the managing judge is more familiar with the details of the case than the Court of Appeal and he is also familiar with the court's calendar and the need to deal with the substantive issues in the trial.

Having considered the oral and written submissions of counsel for the parties, the Court agreed with learned counsel for the appellants' criticism of the evidence in support of the application that the reasons for the failure to meet the filing deadline could have been more particularized. However, the Court disagrees with counsel that the evidence consisted of bald assertions only. There was sufficient evidence before the judge of the reasons for the delay and there is no basis for the Court to interfere with his findings.

Managing judges have a wide latitude in making case management decisions. In this regard, the Court noted the judge's findings that "(c) It is overall in the interests of justice and in keeping with the overriding objective to allow for the statements to be filed out of time" and "(d) That notwithstanding the court's indication of its intention to allow for additional time to file the witness

statements, the court is also of the view that there ought to be no further delays in ensuring that this matter is brought to trial at the soonest.”

The judge was obviously concerned with the delays in bringing the case to trial. This is in keeping with the overriding objective of dealing with cases justly, including, ensuring that cases are dealt with expeditiously. Accordingly, the appeal is dismissed.

As to the fresh evidence application, the application was premised on an allegation that the two witnesses that were the subject of the relief from sanctions application, are able to speak fluent English and so the fact that English was not their first language should not have caused any delays in preparing and finalizing the witness statements. The appellants submitted that, had the judge considered the fresh evidence, it would have made a difference to his decision.

The Court opined that the appellants’ view of the reason for the fresh evidence application was narrow. The respondents’ position on the application was that the fact that English was not the native language of their witnesses caused delays in the translation and finalising of the witness statements. The respondents did not say that the witnesses do not speak or write English.

The Court was not of the view that the fresh evidence would have had an important influence on the judge’s decision to exercise his case management powers to extend the time to file the witness statements and thereby pave the way for the matter to proceed to trial. This finding means that the appellants did not satisfy the 3rd limb of the test in Ladd v Marshall [1954] EWCA Civ 1, and as all 3 limbs must be satisfied, the

application failed. Accordingly, the application to adduce fresh evidence was also dismissed.

In relation to costs, there was also an appeal that the learned judge did not make a costs order in the court below. The appellants also appealed against the fact that the judge did not award them their costs in the application even though they were not the successful party. They relied on CPR 26.8 which provides that, “in an application for relief from sanctions, the applicant having failed to comply with the rules or an order must pay the respondents’ cost of the application in any case”. However, the principle does not apply when the judge or master is making a case management decision. Case management decisions fall under CPR rules 65.7 and 65.11(a), which provide that costs are to be costs in the cause, in particular CPR rule 65.7. The judge did not err in not awarding costs in the lower court to the appellants. However, the rule does not apply to appeals and the general rule that costs follow the event, applies in appeals.

The respondents, being the successful parties on the appeal, were awarded costs of the appeal. Having considered the oral submissions of the parties and the fact that the appeal was an interlocutory appeal against a case management decision of the judge, costs were awarded to the respondents in the sum of \$2,000.00.

APPEALS

Case Name:

[1] Digital Security Services Limited

[2] Michael Peets

v

**Nevis International Bank & Trust
Limited
(also known as Hamilton Reserve
Bank)**

**[NEVHCVAP2021/0003]
(Saint Christopher and Nevis)**

Date: Thursday, 24th March 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:

Appellants: Ms. M. Angela Cozier

Respondent: Ms. Dahlia Joseph Rowe and Ms. Asha
Joseph

Issues: Interlocutory appeal - Judgment entered in
default of defence - Rule 13.1 of Civil
Procedure Rules 2000 - Appeal against
judge's refusal to set aside judgment in
default - Exercise of judicial discretion -
Whether judge properly exercised his
discretion in refusing to set aside the default
judgment - Exceptional circumstances -
Rule 13.3(2) of the CPR

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: [1] Peter Dupre

**[2] Marian Dupre
v
[1] Arthur Sharpe
[2] S.P.A.S. Limited
[3] Windsor Developments
Ltd**

**[SKBHCVAP2021/0009]
(Saint Christopher and Nevis)**

Date: Thursday, 24th March 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:

Appellants: Ms. Jordanne-Marie Ebanks

Respondents: Mr. Damian Kelsick

Issues: Interlocutory Appeal- Whether learned master erred in failing to grant the appellants' application to strike out parts of the respondents' defence- Whether the learned master erred in finding that the respondents' defence provided complete answers to the substantive allegations made in the statement of claim- Whether learned judge erred in finding that the respondents were not in breach of rules 10.5(3) and 10.5(4) of the Civil Procedure Rules 2000- Consequences of failure to respond to allegations pleaded in statement of claim- Whether failure to respond to pleadings in a statement of claim warrants a strike out penalty

Type of Order: Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. No order as to costs.**

Reason:

Upon considering the submissions on both sides, hearing the brief submissions of counsel, reading the notice of appeal and the order of the learned master dated 9th March 2021, the Court was satisfied that the learned master did not err in his order where he determined that the application to strike out parts of the defence filed on 21st December 2018 should not be granted.

The Court was in agreement with the master and saw no reason to interfere with the orders made. Accordingly, the appeal was dismissed, with no order as to costs.

APPLICATION AND APPEAL

Case Name:

**Nardis Maynard
v
The Queen
[SKBHCRAP2004/0012]
(Saint Christopher and Nevis)**

Date:

Friday 25th March 2022

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, 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. Valston Graham, The Director of Public Prosecutions and Ms. Terrilyn Hunte

Issues: Criminal appeal - Permission for appellant's appeal to be reopened - Whether the purported abandonment of the original appeal against appellant's conviction should be rendered a nullity - Application to adduce fresh evidence of alibi witness - Whether evidence was credible and likely to be admissible at trial - Whether there is a reasonable explanation for failure to adduce evidence - Alibi witness - Whether failure to call alibi witness to support the appellant's testimony renders the conviction unsafe - Identification evidence - Whether learned judge failed to direct the jury on serious inconsistencies and weaknesses in the identification evidence - Whether learned judge failed to tailor R v Turnbull [1977] Q.B. 224 principles to evidence of identification - Good character direction - Whether learned judge erred by not giving a good character direction to the jury on behalf of the appellant - Whether learned judge's failure to give good character direction fatal in the circumstances. Whether proviso should be applied.

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application to render the abandonment given by counsel for the appellant orally a nullity in respect of his appeal is granted.
2. The appeal against conviction is reopened.
3. The court will give reasons for this decision at a later date

4. Judgment on the re -opened appeal is reserved.

Reason:

The Court was of the view that in light of the concession by the Director of Public Prosecutions and the evidence which had been filed, the position that related to whether the abandonment was the informed decision of the appellant had been placed in serious doubt. Accordingly, the Court acceded to the appellant's application to render the abandonment given by counsel for the appellant orally a nullity. The Court therefore proceeded to hear the appeal against conviction and the application to adduce fresh evidence in relation to the affidavit of Ms. Yvette Maynard.

Case Name:

**[1] Minister of Agriculture, Lands,
Housing Cooperatives and Fisheries
[2] Nevis Housing and Land
Development Corporation
v
Eustace Nisbett
[SKBHCVAP2019/00020]
(Saint Christopher and Nevis)**

Date:

Friday, 25th March 2022

Coram:

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

Appearances:

Appellant/Applicant: Mr. Patrice Nisbett

Respondents: Mr. Terrance Byron

Issues: **Withdrawal of motion for leave to appeal to Her Majesty in Council - Withdrawal of application for extension of time - Costs**

Type of Order: **Oral Decision**

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

- 1. With the court's leave, the motion for conditional leave to appeal to Her Majesty in Council, filed by the respondent/applicant on 6th April 2021 and the application to extend time for the filing of the said motion or to declare it properly filed are hereby withdrawn at the request of the respondent/applicant.**
- 2. 2. The respondent/applicant shall pay the costs of the applications to the appellants/respondents, fixed in the total sum of \$2000 on or before 25th April 2022.**

Reason: **The Court considered counsel for the appellant/ applicant's request to withdraw his motion for leave to appeal to Her Majesty in Council and the application for an extension of time in which to do so. In the circumstances, the Court dismissed the motion and the application, both having been withdrawn and awarded costs to the respondents**