

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
VIDEOCONFERENCE

ANGUILLA
27th – 30th July 2021

APPEALS

Case Name: [1] Webster Dyrud Mitchell (a
Partnership)
[2] John Dyrud
[3] Palmavon Webster

v
Jenny Lindsay

[AXAHCVAP2017/0001]
(Anguilla)

Date: Tuesday, 27th July 2021

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.
The Hon. Mr. Dexter Theodore, Justice of Appeal [Ag.]

Appearances:

Appellants:	Mr. John Carrington, QC
Respondent:	Ms. Jenny Lindsay, Litigant in person

Issues: Civil appeal – Challenges to findings of fact –
Approach of appellate court to findings of fact –
Whether learned judge erred in her finding that the
appellants had failed to prove the claim for the

reimbursement of excess vacation leave taken by the respondent – Whether there was cogent evidence before learned judge to substantiate appellants' claim – Costs – Appellate interference with trial judge's exercise of discretion – Whether judge's approach in making costs order can be impugned – Whether this Court should exercise discretion afresh – Whether at the end of a trial where a judge is inclined to depart from the general rules as to costs, he or she is required to afford the parties a hearing before so doing – Whether Court in exercising its discretion afresh should make an order for prescribed costs – Whether the Court has jurisdiction to entertain respondent's submissions where there has been no cross appeal filed

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The parties shall, within 14 days, provide to the Court written submissions of no more than 4 pages, together with authorities on the point of whether at the end of a trial where a judge is inclined to depart from the general rule as to costs, he or she is required to afford the parties a hearing before so doing.
2. The decision is reserved.

APPEALS

Case Name:

Joseph Brice

v

The Attorney General

[AXAHCVAP2014/0006]
(ANGUILLA)

Date:

Wednesday, 28th July 2021

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:

Appellant: In person

Respondent: Mr. Ivor Green

Issues:

Civil appeal – Public law – Breach of constitutional rights – Sections 1 and 3(1) of the Anguilla Constitution Order 1982 – Unlawful arrest – Section 24 of the Police and Criminal Evidence Act 1984 (PACE) of the United Kingdom – Whether PACE applies to the laws of Anguilla – If PACE applies, whether section 24 of PACE operates to require an arresting officer to satisfy certain imperatives in order for an arrest to be lawful – Whether officer Marsden, in effecting the arrest of the appellant, failed to satisfy the relevant legal requirements under section 24 of PACE so as to render the arrest unlawful – If PACE does not apply to the laws of Anguilla, are there any requirements at common law which needed to be satisfied for the arrest to be lawful – Whether there was a lack of even-handedness in how the judge conducted the hearing of the matter and whether the trial proceeded in a manner that was contrary to the Civil Procedure Rules 2000 and the rules of natural justice which govern the procedure for the fair and proper disposal of claims – Whether the judge erred in the exercise of her discretion in failing to allow the appellant to adduce further evidence at trial

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.

2. The matter is remitted for hearing by a judge of the High Court.
3. Costs to the appellant in the agreed sum of EC\$3,000.00

Reason:

This is an appeal against the judgment of Justice Mathurin dated 20th October 2014 wherein the learned judge dismissed the appellant's claim against the respondent for relief from the court in respect of matters arising from the arrest without warrant of the appellant on 7th January 2009. The judge found that there was not sufficient evidence or factual basis to the claim. The Court considered that having heard the judge's views on the matter, counsel for the appellant did seek to make an application to the judge to adduce further evidence in the matter to cure the defects the judge indicated. The learned judge declined counsel's request to adduce further evidence in this matter. In so doing there was no express reason why the judge declined the request, albeit that the reasons may arise by implication. It was not a case where the judge said that the application to adduce further evidence came too late or it would have been unfair to the respondent if it were allowed, or it would disturb the court's calendar having to vacate the trial date. The judge did not address any of these issues in her decision to refuse the application made by the appellant's counsel to adduce further evidence. In fact, the judge's decision really meant the matter was at an end and the Court was of the view that less draconian measures could have been used. It appeared to the Court that the judge, in that regard, erred in the exercise of her discretion and the clearest way in the Court's mind to redress that situation was to remit the matter to be considered afresh by a judge of the High Court. For the reasons indicated, the Court allowed the appeal and remitted the hearing of the matter to the High Court.

Case Name:

Palmavon Webster

v

[1] WDM Limited

[2] John O. Dyrud
(as a shareholder and director of
WDM Limited)

[AXAHCVAP2021/0002]

And

Palmavon Webster

v

[1] Sea Island Realities Ltd

[2] John O. Dyrud
(as a shareholder and director of
Sea Island Realities Limited)

[AXAHCVAP2021/0003]
(ANGUILLA)

Date: **Wednesday, 28th July 2021**

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:

Appellant: **Ms. Yoshabelle Emanuel**

Respondents: **Ms. Jean Dyer and Mr. Theon Tross for the second respondent/applicant**
No appearance by or on behalf of the first respondent

Issues: **Applications to strike out the notices of appeal – Application for an extension of time – Application for leave to file notices of appeal – Section 27 of the Eastern Caribbean Supreme Court (Anguilla) Act – Rule 12.61 of the UK Insolvency Rules 2016 – Rules 2.2(3)(b) and (e) of the Civil Procedure Rules 2000 – The Interpretation and General Clauses Act, Cap I25 – Whether the practice and procedure for challenging by way of an appeal a compulsory winding up judgment/order is governed by the Civil Procedure**

Rules 2000 or the UK Insolvency Rules 2016 – Whether leave of the court is required to bring an appeal against the winding up judgment – Whether the notice of appeal filed by Ms. Webster is a nullity for failure to comply with the requirements of the UK Insolvency Rules – Computation of time – Whether the length of delay in filing the notice of appeal was inordinate – Whether the applicant provided a good reason for the delay in filing the notice of appeal – Whether there would be any prejudice to the respondent and the degree of prejudice which would be caused to the respondent by the extension of time – Whether the applicant had a reasonable prospect of success on the appeals

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The applications to strike out the notices of appeal are dismissed.**
- 2. The applications filed by Palmavon J. Webster for an extension of time to file the notices of appeal are granted.**
- 3. The notices of appeal filed by Palmavon J. Webster on 17th February 2021 are deemed properly filed.**
- 4. Costs of the applications to Palmavon J. Webster in the sum of EC\$2,000.00 to be paid by the 2nd respondent within 14 days.**

Reason:

On 5th January 2021, the learned judge made orders winding up WDM Limited and Sea Island Realities Limited, both on the just and equitable ground. On 17th February 2021, the appellant, Palmavon Webster, appealed against both orders. Mr. John Dyrud is the substantive respondent in the appeals. Mr. Dyrud and Ms. Webster are shareholders in both companies.

On 20th March 2021, Mr. Dyrud applied to strike out both appeals. He submitted that the Insolvency Rules 2016 of the United Kingdom (“the UK”) applied in Anguilla pursuant to the reception provisions in section 27 of the Eastern Caribbean Supreme Court (Anguilla) Act (“the Supreme Court Act”). The applicability of the UK Insolvency Rules in Anguilla was not disputed by Ms. Webster. However, the UK Insolvency Rules only apply if there is no local law or practice governing the issue in question. Mr. Dyrud’s position was that the appeals should be struck out for two reasons: (i) the UK Insolvency Rules state that an appeal against a winding up order must be made with the leave of the court, and (ii) the UK Insolvency Rules prescribe that the appeal must be filed within 21 days of the date of the order appealed. The Court found, and it appeared to have been conceded, that there is a provision in the local laws of Anguilla dealing with leave to appeal from orders and judgments of the High Court. That provision applies in this case. It is section 29 of the Supreme Court Act. The section provides, in effect, that leave is not required to appeal against final orders and judgments of the High Court. The Court found that this applies to a winding up order and therefore leave to appeal is not required.

The other ground of the strike out application is that the UK Insolvency Rules provides that the notice of appeal must be filed within 21 days of the order appealed. Mr. Dyrud argued that the 42 day time limit for appealing in rule 62 of the Civil Procedure Rules 2000 (“the CPR”) does not apply to insolvency proceedings because CPR 2.2(3)(b) states that “[t]hese rules do not apply to the following: ... (b) insolvency proceedings (including winding up of companies)”. However, CPR 2.2(3)(e) has a carve out for insolvency proceedings on appeal. CPR 2.2(3)(e) reads: “[t]hese rules do not apply to the following: ... (e) any other proceedings in the Supreme Court instituted under any enactment, in so far as Rules made under that enactment regulate those proceedings, except that Part 62 shall apply to sub-paragraphs (a) and (b)...”. The effect of the carve out in sub-paragraph (b) is that, while the CPR does not apply to winding up proceedings, Part 62 dealing

with appeals does apply to appeals in insolvency matters. It follows that the time limit of 42 days in Part 62 applies to these appeals.

The Court then considered how the 42 days were to be calculated. CPR 62.5(1), which sets out the time period, reads: “the notice of appeal must be filed at the appropriate court office - ... (c) in the case of any other appeal, within 42 days of the date when judgment is delivered or the order is made, whichever is earlier”. The Court considered that the words “within 42 days” were particularly important, as emphasised by counsel for Mr. Dyrud. If the Court were to apply the method of calculation in the CPR which is found in rule 3.2, the date when the judgment was delivered would not be included, nor the 42nd day after the delivery of judgment. This would result in time expiring on 17th February 2021, which is the day that the notices of appeal were filed, and they would therefore have been filed within time. However, CPR 3.2, which deals with the computation of time, is caught by CPR 2.2(3)(b). It follows that the Court could not use the method of computation in CPR 3.2 to count the time for appealing against the winding up order. CPR 2.3 provides that “[t]he Interpretation Act of the Member State or Territory where a claim proceeds applies to the interpretation of these Rules in those proceedings”. However, even without that provision in the CPR, the Court was of the view that it was quite clear that the Interpretation Act and General Clauses Act, Cap 125 (“the Interpretation Act”) does apply to proceedings generally. The Interpretation Act provides that in counting time, the court ought not to count the date of the judgment, but the date when time runs out is counted, which means that the 42nd day would be counted. Applying that method of counting, the 42 days would run out on the 16th February 2021. That being the case, the notices of appeal would have been filed one day out of time. This brings into play the application by Ms. Webster for an extension of time to file the notices of appeal. On such an application, the Court considers four factors, (i) the length of delay, (ii) the reason for the delay, (iii) the degree of prejudice caused to the respondent by the extension of time,

and (iv) the prospects of success. The Court considered that there are numerous cases dealing with these four factors. The case which is most often cited is John Cecil Rose v Ann Marie Rose Saint Lucia Civil Appeal No. 19 of 2003 (delivered 22nd September 2003, unreported). Applying the principles in this case, the delay was actually the minimum delay that one could have in an application of this nature - one day. The reason for the delay can be inferred from what appears to be a either a miscalculation of the 42 days or a misapprehension of the interpretation of the CPR as well as the Interpretation Act. While mistakes are not generally a good excuse for missing a deadline, in this case where the deadline was missed by only one day, the Court was prepared to find that there was a good reason for the delay. There appeared to the Court to be no evidence of prejudice to the respondent if the application was granted. On the fourth element, being whether there is a reasonable prospect of success, the Court reviewed the notices of appeal filed in both appeals and was satisfied that Ms. Webster has a reasonable prospect of success on appeal. The notices of appeal challenge issues relating to the interrelationship between the parties and the related companies. The notices of appeal also challenge the effect of the breakdown of the relationship between Ms. Webster and Mr. Dyrud in relation to the companies and the availability of available remedies. In the circumstances, where there is no evidence of prejudice the Court was satisfied that the extension ought to be granted. Accordingly, the applications to strike out the appeals were dismissed, Ms. Webster was granted an extension of time to appeal, and the notices of appeal that were filed on 17th February 2021 were deemed properly filed. The Court also awarded costs to the appellant in the amount of EC\$2000.00 to be paid within 14 days.

APPLICATIONS AND APPEALS

Case Name:

Carl Palmer

v

[1] The Superintendent of
Prisons

[2] The Attorney General

**[AXAHCVAP2018/0013]
(ANGUILLA)**

Date: Thursday, 29th July 2021

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: Ms. Merlanih Lin appearing amicus

Respondents: Mr. Sasha Courtney

Issues: Civil appeal – Oral application for an adjournment

Type of Order: Adjournment

Result / Order: IT IS HEREBY ORDERED THAT:

The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Anguilla during the week commencing 7th February 2022.

Reason: The Court considered the application of Ms. Lin appearing amicus on behalf of the appellant for an adjournment in order to be instructed in this appeal. There being no objection from the respondent, it was ordered that the hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Anguilla during the week commencing 7th February 2022.

Case Name: Ian Hope Ross
v
[1] Martin Dinning
[2] Hudson Carr

[3] Shawn Williams
[4] Robert Miller
[5] Eastern Caribbean
Central Bank

[AXAHCVAP2020/0005]

And

[1] Christopher Liss
[2] Kathy Liss
[3] Yellow Wood Houses
Limited
[4] Tirdeo Dharamraj
[5] Summer Breeze Ltd.
[6] Ocean Investment
Limited
[7] North Eastern Insurance
Services
[8] Nivek Limited
[9] Ermanno Galli
[10] Sunil Pishu Khatnani
[11] Martin Oliver
[12] Ian Gurr
[13] Rendezvous Tour
Company Ltd.
[14] William Dorsey
[15] Longwall Investments
N.V.
[16] DWS Group Limited
[17] Jurgen Kurt Schwirtlich
[18] Winchester Corp.
Limited
[19] Dr Ahmet Baydar
[20] Teri Baydar
[21] Kenneth R. Lang
[22] Tomaz Slivnik
[23] Monique Baussan
[24] Richard Holubowicz

[25] Little Bay Venture
Capital Ltd
[26] Kevin Gavin
[27] Lena Gavin
[28] Daniel Gavin
[29] Darlene Spicer
[30] Marie Thérèse Robert
[31] Mary Van Den Berg
[32] Robert Horvath
[33] Danielle Horvath
[34] Roach Merle
[35] Judett Black
[36] Dr. Catherine Vuala
[37] Josette Sophia
Peterson
[38] International Mortgages
Ltd.

v

[1] Martin Dinning
[2] Hudson Carr
[3] Shawn Williams
[4] Robert Miller
[5] Eastern Caribbean
Central Bank
[AXAHCVAP2020/0006]

And

[1] Satay Limited
[2] United Duty Free
Concessionaries Ltd.
[3] Helen Bayer Constable,
Patrick Constable and
Walter Bayer II.
[4] Helen Bayer Constable,
Teresa Bayer and
Walter Bayer II
[5] Cadiz Holdings Ltd
[6] Chantal Cloutier
[7] CMS Management Ltd

- [8] David Crowley**
- [9] D.N.A. Patents, Inc**
- [10] dCipher Inc.**
- [11] Vodaco Limited**
- [12] Diamont Company N.V.**
- [13] Duna Holding Limited**
- [14] Equipment Leasing Ltd**
- [15] Van Veen Caribbean Holdings**
- [16] Jason Freeman**
- [17] HBM(Anguilla) Ltd**
- [18] Heidi Hobgood**
- [19] Hope-Ross and Thompson**
- [20] Ihatsu Fudosan Capital Limited**
- [21] Sean Kennelly**
- [22] A & A Limited**
- [23] Edouard Ledee**
- [24] Anthony Marini**
- [25] Mars Exploration Inc**
- [26] Lisa Marshall**
- [27] Latin Retreats**
- [28] Frank Oliviero**
- [29] Colin Percy**
- [30] Francis Raineau**
- [31] NECOL Limited**
- [32] RHINO LLC**
- [33] FSC Management Attorney LLC**
- [34] Canon Limited**
- [35] Sunny Days Management Corporation**
- [36] Synetics Capital Corp Limited**
- [37] Glenys Taillon**
- [38] TSS LLC**
- [39] Robert Velasquez**
- [40] Annette Krabbe**
- [41] Simon Drake**

[42] John Michael Victory
[43] Lorraine Tyson
[44] Stephen Joseph
Cavagnaro
[45] Gary Charkham
[46] Sunshine Properties
Limited
[47] Laura F. E. Van Hoeve
[48] Vanita Mirchandani
[49] Sharron Yuan-Sam
[50] Angela Tyler
[51] The Little Ship Company
Ltd
[52] Jerri-Lyn Zimmerman
[53] Raymond Longbottom
[54] Manning Kong
[55] Pamela Yee Lawrence
[56] Isabelle Patry
[57] Marlam Ltd.
[58] Darline DeStephens
[59] Holly Haven, Ltd
[60] Habib Jiha
[61] Menavia Langlais
[62] Hiroko Yoshida

V

[1] Martin Dinning
[2] Hudson Carr
[3] Shawn Williams
[4] Robert Miller
[5] Eastern Caribbean
Central Bank

[AXAHCVAP2020/0007]
(ANGUILLA)

Date: Thursday, 29th July 2021

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:

Appellants/applicants: **Mr. Ian Benjamin, SC with him Ms. Rayana Dowden**

Respondents: **Mr. Paul B. Dennis, QC with him, Mrs. Nadine Whyte Laing and Ms. Navine Fleming**

Issues:

Application for conditional leave to appeal to Her Majesty in Council – Sections 72(1)(b) and 72(2) of the Anguilla Constitution Order 1982 – Sections 3, 4 and 5 of the Anguilla (Appeals to Privy Council) Order 1983 - Whether the applicant's appeal is of right where the value of the matters in dispute on appeal exceed \$2500 - Whether the appeal involves an issue of great general or public importance or otherwise, ought to be submitted to Her Majesty in Council – Application test – Whether the decision being appealed is final or interlocutory – Application for a stay of costs order

Type of Result / Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The Appellants/Applicants in Civil Appeal Nos AXAHCVAP2020/0005 as consolidated with AXAHCVAP2020/0006 and AXAHCVAP2020/0007 are hereby granted leave to appeal to Her Majesty in Council from the decision of the Court of Appeal delivered on 30th April 2021, upon the following conditions:**

(a) The Appellants/ Applicants shall within 90 days of the date of this order enter into good and sufficient security in the sum of £500.00 for the due prosecution of the appeal and the payment of such costs as

may become payable by the Appellants/ Applicants in the event of them not obtaining an order granting them final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Privy Council ordering them to pay costs of the appeal.

(b) The Appellants/Applicants shall within 90 days of this order, take the necessary steps to settle the record with the Solicitors for the Respondents and to prepare and file the record with the Registrar of the Court of Appeal.

(c) The parties shall abide by 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 the record shall be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay once final permission to appeal has been granted.

(d) The Appellants/Applicants shall within 21 days from the date on which the record is filed with the Registrar of the Court of Appeal, make an application to the Court for final leave to appeal to the Judicial Committee of the Privy Council supported by the certificate of the Registrar of the High Court or Registrar of the Court of Appeal of payment for security for costs of the prosecution of the appeal as described in this Order.

2. The costs order of the Court of Appeal dated 30th April 2021 in this matter is stayed pending the hearing and determination of the appeal by the Privy Council.
3. The costs of and occasioned by this Notice of Motion shall be costs in the appeal to Her Majesty in Council.

4. Each party shall be at liberty to apply.

Reason:

The Court considered an application by the applicants, seeking conditional leave to appeal pursuant to section 72(1)(b) of the Anguilla Constitution Order 1982 and sections 4 and 5 of the Anguilla (Appeals to Privy Council) Order 1983 (“the Privy Council Order”) against the decision and order of the Court of Appeal made on 30th April 2021. The Court listened to and read the submissions of learned Queen’s Counsel for the applicants and similarly for the submissions of learned Queen’s Counsel for the respondents. The Court was of the unanimous view that the applicants had satisfied the threshold to enable the Court to grant leave to appeal to Her Majesty in Council pursuant to section 3(2) of the Privy Council Order on the basis that the matters raised issues of great general and public importance which ought to receive the guidance of Her Majesty on Council. In coming to this conclusion, the Court applied the well-known and helpful pronouncements of Saunders JA, as he then was, in Martinus Francois v The Attorney General [2004] ECSCJ No. 126 (delivered 7th June 2004). Conditional leave was accordingly granted to the applicants to appeal to Her Majesty in Council.

Further, there being no objection by the respondents to the application for the costs order made by the Court of Appeal being stayed, the Court accordingly ordered that the costs order be stayed pending the hearing and determination of the appeal.

JUDGMENTS

Case Name:

[1] National Bank of Anguilla
(Private Banking and Trust) Limited
(in administration)
[2] Caribbean Commercial Investment
Bank Limited (in administration)
v

[1] Chief Minister of Anguilla

**[2] Attorney General of Anguilla
(Sued as the legal
representative of the
Government of Anguilla/
Executive Council)**
**[3] Gary Moving as Receiver of
National Bank of Anguilla Limited
(in receivership) and Caribbean
Commercial Bank (Anguilla)
Limited (in receivership)**
[4] Eastern Caribbean Central Bank

**[AXAHCVAP2020/0001]
(ANGUILLA)**

Date: Friday, 30th July 2021

**Coram for
delivery of
judgment:** The Hon. Mr. Davidson Kelvin Baptiste, Justice of
Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Dexter Theodore, Justice of Appeal [Ag.]

Appearances:

Appellants:	Ms. Yanique Stewart
Respondents:	Dr. Francis Alexis QC with him Dr. Nakishma Rogers Hull for the first and second respondents Ms. Navine Fleming for the third and fourth respondents

Issues: *Civil appeal - Judicial review - Application by
appellants for leave to seek judicial review - Rule
56.3 of the Civil Procedure Rules 2000 - Threshold
test for leave to apply for judicial review - Dismissal
of application by learned judge - Whether learned
judge erred in dismissing application for leave to
seek judicial review against third and fourth
respondents - Whether learned judge wrongly
considered threshold test despite non-appearance of
third and fourth respondents - Whether learned judge
erred in striking out the Attorney General and Chief
Minister as parties to the proceedings - Whether
Attorney General and Chief Minister made any
decision which can be subject to judicial review*

and are thereby necessary and proper parties to the judicial review application - Whether the Executive Council of Anguilla made any decision subject to judicial review and should therefore be substituted in place of the Attorney General - Whether learned judge erred in dismissing disclosure application - Costs - Rule 56.13(6) of the CPR - Whether appellants acted unreasonably in making application or in their conduct of the application to justify departure from general rule - Appellate court's approach to interference with lower court's exercise of discretion

Result and Reason:

HELD: dismissing the appeal; affirming the orders of the learned judge save and except that the costs awarded to the respondents is set aside; and making the orders set out in paragraph 206 of the judgment, that:

1. The issue before the learned judge, namely the consideration of an application for leave to seek judicial review, required him to exercise a judicial discretion. It is well-settled that an appellate court will interfere with a judge's discretion only if satisfied that the judge erred in principle by failing to take into account or giving too little or too much weight to relevant factors, or by having regard to irrelevant factors; and by reason of such error in principle, the learned judge's decision exceeded the generous ambit within which reasonable disagreement is possible and is therefore plainly wrong.

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

2. The correct defendant in judicial review proceedings is the person or authority who made the impugned decision. Accordingly, the Attorney General should only be named if he made the decision for which judicial review is being sought. In this case, the appellants have

failed to establish that the Attorney General made any decision, took any action or refrained from taking a relevant decision or any action in relation the exclusion, transfer, deposits or BBVO decisions about which they complained. It follows that in the circumstances where the learned judge has applied the correct legal principles and gave deliberate consideration to the relevant factors, there is no basis for this Court to interfere with his decision to strike out the Attorney General as a party to the proceedings.

Elmoalis Ltd v The Attorney General of Anguilla AXAHC VAP2019/0002 (delivered 21st May 2021, unreported) followed; *Quorum Island (BVI) Limited v Virgin Island Environment Council and Another* [2011] ECSCJ No. 182 (delivered 12th August 2011) followed; *Bahamas Hotel Maintenance and Allied Workers Union v Bahamas Hotel Catering and Allied Workers Union and Others* [2011] UKPC 4 applied; *Minister of Foreign Affairs v Vehicles and Supplied Limited* [1991] 1 WLR 550 applied; *Dufour and Others v Helenair Corporation and Others* (1996) 52 WIR 188 followed.

3. The law and the evidence led in the court below point to the reasonable conclusion that no BBVO or exclusion decision had been made by the Chief Minister. In relation to the BBVO, this is due to the fact there was no evidence that the receiver made any application to the ECCB for the approval of a BBVO; or of an investigation by the ECCB arising from such application; or of any recommendation by the ECCB to the Minister of Finance to grant a BBVO, as contemplated by section 174 of the

Banking Act. Regarding an exclusion decision by the Chief Minister, the learned judge properly considered the provisions of the TCOBA, the FSC Act, the appointment of the Administrator by court order and recognised that in light of the appointment of the administrator, he or his designee would be a necessary party to any PAA with NCBA. He correctly concluded that such a PAA could not be achieved between the receiver and NCBA without the administrator's imprimatur, and in the circumstances the appellants' deposits did not fall to be transferred by the receiver under section 142 of the Banking Act under either of the two PAAs he executed with NCBA; and it was therefore by operation of law and not by reason of any exclusion decision made by the Chief Minister that the deposits were excluded from the DPTs. Accordingly, the learned judge's determination that the Chief Minister made no judicially reviewable exclusion decision and that the leave application is premature in respect of the BBVO, cannot be faulted.

Section 174 of the Banking Act, Cap. B11 Revised Statutes of Anguilla as amended by Act No. 6 of 2015 considered; Section 7 of the Bank Resolution Obligations Act, Act No. 4 of 2016, Statutes of Anguilla considered.

- 4. The obligation to make disclosure of information and materials within one's own possession or knowledge will only be granted to the extent necessary to fairly and justly dispose of the issues. The learned judge acknowledged that it was incumbent on the court to consider whether disclosure was necessary to resolve the issues fairly and justly. Although he did not express it in so**

many words, the disposition of the application by the learned judge suggests that he considered it unnecessary for the fair and just disposal of the application to order disclosure by the Attorney General, the Chief Minister, the receiver or the ECCB. In the premises, the learned judge did not err in dismissing the application for disclosure.

Belize Alliance of Conservation v Department of Environment et al [2004] UKPC 6 applied; Joshua Francis v The Chief Magistrate et al DOMHCV2016/0017 (delivered on 24th June 2016, unreported) considered; R (al Sweady & Others) v Secretary of State for Defence [2009] EWHC 2387 (Admin) considered; SOF 82 Anguilla Holdings v The Attorney General[2019] ECSCJ No. 102 (delivered 27th March 2019) considered; Tweed v Parades Commission for Northern Ireland [2006] UKHL 53 applied; Marshall v Deputy Governor of Bermuda(2010) 77 WIR 182 applied; R v Lancashire CC, Ex P Huddleston[1986] 2 All ER 941 considered.

5.The appellants' complaint that the judge failed to appreciate the entirety of their case in that their application was not limited to a positive decision being made by the Chief Minister, is without merit. A comprehensive review of the judgment makes it pellucid that the learned judge fully understood that the multi-faceted nature of the claim encompassed the exclusion of their deposits from transfer to the NCBA and from the DPTs.

Manning v Sharma [2009] UKPC 37 applied.

6. The learned judge's reference to the appellants as 'offshore companies' and 'offshore subsidiaries' and their deposits as 'offshore deposits' are indeed - mischaracterisations and consequently raised the question of whether in so describing them, he made a finding of fact or law that they were 'offshore companies' or 'offshore subsidiaries'. However, an analysis of the judgment demonstrates that the judge made no findings of fact that the subsidiary banks are such offshore entities in the sense that they were incorporated in another country or incorporated in Anguilla as international business companies, foreign companies or foreign subsidiary companies. The terms were merely descriptive and used in the narrative of the background. Similarly, his reference to the deposits as 'offshore deposits' was not indicative of a finding that the subsidiary banks (as non-residents) made deposits to the parent banks in a currency other than Eastern Caribbean dollars. For this reason, the learned judge correctly concluded, (having considered the relevant legislative framework in relation to who was authorised to deal with the subsidiary banks, their deposits and assets generally), that the exclusion of those deposits from the DPT was not brought about by any decision of the Chief Minister, the receiver or the ECCB but rather by operation of law.

Sections 1, 4, 5 and 6 of the Trust Companies and Offshore Banking Act, Cap. T 60, Revised Statutes of Anguilla considered; Financial Services Commission Act Cap. F28, Revised Statutes of Anguilla considered.

7. Implicit in the appellants' argument is that by directing Mr. Harrigan to execute the DPTs, EXCO selected the primary beneficiaries or

made some decision with respect to their eligibility or selection. However, save and except for their insistence that EXCO played a role in implementing the Resolution Plan, the appellants made no assertion in their application that EXCO had made any specific decision that could be made the subject of judicial review nor is such a contention supported by the evidence. It follows that as with the case with the Attorney General and the Chief Minister, absent a decision by EXCO, the case for its substitution in place of the Attorney General has not been established. Therefore, the judge's refusal to substitute EXCO cannot be faulted on the ground that he erred in principle and consequently made a decision which was manifestly wrong.

Elmoalis Ltd v The Attorney General of Anguilla AXAHCVAP2019/0002 (delivered 21st May 2021, unreported) followed; Quorum Island (BVI) Limited v Virgin Island Environment Council and Another [2011] ECSCJ No. 182 (delivered 12th August 2011) followed; Bahamas Hotel Maintenance and Allied Workers Union v Bahamas Hotel Catering and Allied Workers Union and Others [2011] UKPC 4 applied; Minister of Foreign Affairs v Vehicles and Supplied Limited [1991] 1 WLR 550 applied.

8. The threshold test for the grant of leave to apply for judicial review is whether the applicant has a good arguable case with a realistic prospect of success. In the instant case, notwithstanding the non-appearance or non-objection by the ECCB or the receiver, the judge was still required to exercise his discretion and assess whether the threshold for leave as against these parties was met.

Having correctly concluded that there was no evidence that the receiver and the ECCB made any decision which excluded the appellants' deposits from the PAA and the DPTs, the learned judge did not err in denying the leave application in relation to them. Additionally, the appellants' contention that they had not been afforded an opportunity to address the court on R v Industrial Disputes Tribunal (ex parte J. Wray and Nephew Limited) in so far as it concerns the threshold test and that this amounted to a breach of natural justice, is unjustified and unreasonable. The record reveals that the appellants were presented with this authority almost a month before they filed submissions in response and therefore had an opportunity to make counter submissions either orally or in writing had they wished to do so. It is not the function of the judge to direct counsel's attention to authorities proffered by another party and invite response line by line. That would be both onerous and run counter to the overriding objective of the CPR.

Sharma v Brown-Antoine and Others [2006] UKPC 57 applied; R v Industrial Disputes Tribunal (ex parte J. Wray and Nephew Limited) Claim No. 2009 HCV 04798 Supreme Court of Jamaica (delivered 23rd October 2009, unreported) considered.

9. The court may award costs against an unsuccessful applicant for judicial review only where it is satisfied that the applicant acted unreasonably in making the application or in the conduct of the application. A critical and objective assessment of the appellants' claims demonstrates that they advanced weighty factual and legal assertions and did not

engage in frivolous or vexatious excursions. Their submissions before the court delved into substantive areas of the law which required a comprehensive analysis of the averred factual underpinnings and relevant law. The application to commence judicial review proceedings by them and their conduct of such proceedings cannot be justifiably characterised as being unreasonable. Nothing has been urged on the court to warrant a departure from the general rule. In the circumstances, there is no basis in law for doing so and the judge's order must be set aside.

Rule 56.13(6) of the Civil Procedure Rules 2000 applied.

APPLICATIONS/MOTIONS

Case Name:

**[1] Jenny Lindsay
[2] Jenny Lindsay & Associates**

v

**Harriet Carty
(Representative of the Estate of Thomas
Edward Carty)**

**[AXAHCVP2015/007]
(ANGUILLA)**

Date:

Friday, 30th July 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of
Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Dexter Theodore, Justice of Appeal [Ag.]**

Appearances:

Appellants/Respondents: Ms. Jenny Lindsay, litigant in person
Respondent/Applicant: Ms. Navine Fleming

Issues: Application to strike out appeal- Oral request to withdraw application to strike out the appeal
Application to deem respondent's submissions properly filed

Type of Order: Oral Decision

Order/Result: IT IS HEREBY ORDERED THAT:
1. The application to strike out the appeal is withdrawn.
2. The application to deem the respondent's submissions properly filed is granted.

Reason: Coming on before the court was an application by the respondent filed on 31st December 2020 to strike out the notice of appeal for failure to comply with an order of the single judge dated 28th July 2020. However, at the time of the hearing, counsel for the respondent/applicant made an oral request to withdraw the application to strike out the notice of appeal. The court granted the application.

The Court also heard an application by the respondent/applicant seeking that the respondent's submissions filed on 23rd July 2021 be deemed properly filed. The Court had no objection to this application and accordingly granted the said application.

APPEALS

Case Name: [1] Jenny Lindsay
[2] Jenny Lindsay & Associates

v

**Harriet Carty
(Representative of the Estate of Thomas
Edward Carty)**

**[AXAHCVAP2015/007]
(ANGUILLA)**

Date: Friday, 30th July 2021

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

Appearances:

Appellants/Respondents:	Ms. Jenny Lindsay, litigant in person
Respondent/Applicant:	Ms. Navine Fleming

Issues: Civil appeal – Defamation - Whether the learned master erred in finding that the slander complained of had caused the appellant to suffer no or minimal actual damage – Whether the learned master erred in awarding the manifestly low sum of \$15,000 damages including aggravated damages for slander – Rule 65.12 of the Civil Procedure Rules 2000 - Whether the learned master erred in awarding prescribed costs on the appellant’s slander claim rather than assessed costs – Whether the learned master erred in failing to award assessed costs in respect of the respondent’s discontinued claim- Whether the learned master erred in the exercise of her discretion in assessing damages

Type of Order: N/A

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