

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE
ANTIGUA AND BARBUDA
21st – 25th February 2022

JUDGMENTS

Case Name:

Akim Monah

v

The Queen
[GDAHCRAP2021/0015]
(Grenada)

Date:

Wednesday, 23rd February 2022

Coram for
delivery:

The Hon. Mde. Louise Esther Blenman, Justice of
Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Ruggles Ferguson

Respondent: Ms. Rilys Adams

Issues:

Criminal appeal – Appeal against sentence – Failure of sentencing judge to provide reasons for sentence – Whether sentence manifestly excessive in the circumstances – Constitutional law – Sections 8 and 16 of the Constitution of Grenada – Right to fair hearing within a reasonable time – Unjustified delay in the production of transcript of proceedings – Whether unjustified delay in production of transcript of proceedings by State gives rise to breach of the right to a fair hearing within reasonable time - Redress for breach of fundamental rights – Whether Court can

reduce sentence as redress for breach of constitutional rights

Result and Reason:

Held: dismissing the appeal against sentence on the basis that it was not excessive but allowing the appeal against sentence on the basis that the delay by the State in providing the transcript of proceedings infringed Mr. Monah's fundamental right to a fair hearing within reasonable time and making the orders as set out in paragraphs 87(2)(a) and (b), that:

1. Where a sentencing judge fails to provide reasons for the imposition of a sentence, the onus falls on the Court of Appeal to determine whether the sentence was just and appropriate as if the judge had provided reasons. However, the Court will only interfere with a sentence passed by a judge in the court below if there is an error in principle. In this case, it is inappropriate to utilise the new Sentencing Guidelines of the court, which were promulgated several years after the date of Mr. Monah's sentencing, to determine whether the judge committed an error of principle. It therefore falls to this Court in determining whether or not the sentence imposed was excessive, to apply the guidelines that were provided by this Court in the cases and which were applicable at that the time of the sentencing hearing. Accordingly, the Court is obliged to give deliberate consideration to the circumstances of both the offender and the circumstances in which the offence was committed. The Court is further required to apply the principles of sentencing namely retribution, deterrence, prevention and rehabilitation. The Court is enjoined to consider the maximum penalty for the offence and the appropriate notional sentence. The Court is required to weigh the mitigating against the aggravating factors. The Court is also mandated to give credit to the guilty plea entered on rearraignment and to the time Mr. Monah spent in custody awaiting sentence. In all of the circumstances of this case and applying the

principles stated above, there is no basis upon which the Court can properly conclude that the sentence of 18 years is manifestly excessive. The appeal against sentence on the basis that the sentence of 18 years imprisonment is manifestly excessive is accordingly dismissed.

Section 230 of the Criminal Code Cap 72 of the Laws of Grenada as amended by the Criminal Code Amendment Act applied; R v Ball (1951) 35 Cr App Rep 164 applied; R v Newsome; R v Browne [1970] 2 QB 711 applied; Romeo DaCosta v The Queen [2011] CCJ 6 (AJ) applied; Callachand & Anor v The State of Mauritius [2008] UKPC 49 applied; R v Sergeant (1974) 60 Cr App R 74 considered; Desmond Baptiste v The Queen High Court Criminal Appeal No.8 of 2003 (delivered 6th December 2004, unreported) applied; Desmond Fletcher v The Queen GDAHCRAP2015/0011 considered.

2. Section 8(1) of the Constitution of Grenada guarantees the right to a fair hearing within a reasonable time. This includes the appellate process. Indeed, the main objective of the reasonable time guarantee in relation to the right to a fair hearing is to ensure that there is efficient disposition in criminal cases. In this case, the State of Grenada's conceded that the unjustified delay in the provision of the transcript of proceedings in the court below occasioned a delay in excess of 7 years of the prosecution of Mr. Monah's appeal. This unjustified post sentence delay amounts to an egregious breach of Mr. Monah's fundamental right to a fair trial within a reasonable time as guaranteed by section 8(1) of the Constitution of Grenada. The situation is further compounded by the fact that this matter was not complex and there was not a full trial in the court below as Mr. Monah pleaded guilty to the offence of non-capital murder. Further, the transcript which was eventually produced consisted of only 7 pages of the judge's notes which indicated no reason for the imposition of the sentence.

Section 8(1) of the Grenada Constitution Act Cap. 128A, Revised Laws of Grenada 2010 applied; Singh v Harrychan [2016] CCJ 12 (AJ) applied; Marin v The Attorney General [2021] CCJ 6 (AJ) applied; Rashid Pigott v The Queen ANUHCRA2009/0009 (delivered 13th April 2015, unreported) applied.

- 3. The Court has a broad discretion to fashion effective redress to secure the enforcement of fundamental rights. However, the redress which the Court provides is fact sensitive. Furthermore, the fact that the Court finds that a sentence imposed in the court below was not manifestly excessive, does not restrict the remedies this Court may grant. Additionally, there is a consistent stream of jurisprudence which has established that a breach of the fundamental right to a fair hearing within a reasonable time of a convicted person can result in the reduction of his or her sentence. In this case, there are therefore no impediments which prevent this Court from fashioning redress which includes a reduction in Mr. Monah's sentence in addition to making a declaration to that effect. Mr. Monah has not withdrawn his appeal and is still serving the sentence of 18 years imprisonment.**

Section 16 of the Grenada Constitution Act Cap. 128A, Revised Laws of Grenada 2010 applied; Maya Leaders Alliance v Attorney General of Belize [2015] CCJ 15 (AJ) applied; Rashid Pigott v The Queen ANUHCRA2009/0009 (delivered 13th April 2015, unreported) applied; AG's Reference (No. 2 of 2001) [2004] 2 AC 72 applied; Singh v Harrychan [2016] CCJ 12 (AJ) applied; Frank Errol Gibson v Attorney General of Barbados (2010) 76 WIR 137 applied; Marin v The Attorney General [2021] CCJ 6 (AJ) applied; Boolell v The State [2006] UKPC 46 applied; Elaheebocus v The State of Mauritius [2009] UKPC 7 applied; Tapper v DPP [2012] UKPC 26 considered; Evans v The Attorney General SCCrApp. No 181 of 2010 (delivered 6th

December 2018, unreported) applied;
Rambarran and others v R [2019] 5 LRC 431
applied.

4. Taking into account the totality of the circumstances of the breach of Mr. Monah's fundamental right to a fair hearing within a reasonable time and the consistent stream of jurisprudence from the Caribbean Court of Justice and Her Majesty's Privy Council, this Court is of the clear view that the appropriate redress that should be granted to Mr. Monah is a reduction of his sentence of 18 years imprisonment by 2 years or 24 months. Consequently, his sentence of 18 years is set aside and a sentence of 16 years is substituted therefor. In addition, the Court grants a declaration that Mr. Monah's fundamental right to a fair hearing within a reasonable time has been breached by the State of Grenada.

Case Name:

KENYATTA BOYNES

V

THE QUEEN

**[BVIHCRA2017/0001]
(TERRITORY OF THE VIRGIN ISLANDS)**

Date:

Wednesday, 23rd February 2022

Coram:

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

Appearances:

Appellant:

Mr. Paul Taylor, QC

Respondent:

Ms. Kellee-Gai Smith

Issues:

Criminal appeal — Appeal against conviction — Murder — Attempted murder — Identification evidence — Recognition evidence — Supporting Evidence — Admissibility of CCTV Evidence — Whether the judge failed to give directions pursuant to section 112 of Evidence Act/Turnbull guidelines – Whether direction as outlined in section 112 or in accordance with the Turnbull guidelines required in relation to inanimate object —Whether judge’s failure resulted in a substantial miscarriage of justice

Result and Reason:

Held: dismissing the appeal and affirming the appellant’s conviction that:

1. A failure to fully comply with the provisions of section 112(1) of the Evidence Act would not automatically result in a conviction being quashed. The court is required to consider whether the safety of the conviction has been affected. Pursuant to section 112(1)(f) of the Evidence Act the judge is required to warn the jury that mistaken recognition can occur. The judge in so doing must identify not only the weaknesses in the evidence but also to the fact that mistakes could be made in recognition cases even of close relatives or friends. The judge is not required to use a specific form of words, however section 112(1)(f) requires the direction to encompass both close relatives and friends. The learned judge’s direction only made mention of close friends and in dealing with mistaken identity, the learned judge did not specifically stress that it occurred also in recognition cases, this omission however was not fatal, as the evidence was that Thomas and the appellant were close friends before the incident, he knew the appellant very well, they socialized with others and the learned judge gave a very detailed summary of the identification evidence including all of the weaknesses of the identification.

Section 112(1) of the BVI Evidence Act No. 15 of 2006, Laws of the Virgin Islands applied.

2. Sections 112(1)(g) and (h) of the Evidence Act require a judge to identify to the jury evidence which supports the identification of the accused, and where there is evidence which appears to support the evidence of identification of the accused, but it does not in fact possess the quality of supporting evidence, the learned judge is required to so direct the jury. Supporting evidence may support the identification fully or only in a limited way. The learned judge having identified the limited way in which Kevin Gill's evidence supported the identification evidence of Thomas and identified the aspects in which his evidence did not amount to supporting evidence, the criticism of the learned judge's direction on this issue is not well founded.

Section 112(1) of the British Virgin Islands Evidence Act No. 15 of 2006, Laws of the Virgin Islands applied; R v Adejo and another [2013] EWCA 41 applied; R v Gray [2018] EWCA Crim 2083 applied.

3. Where the primary or sole challenge by a defendant to the identification evidence is the veracity of the identifying witness, and the issue of mistaken identity is not raised, the approach to be adopted is the learned judge is required to first direct the jury on the credibility of the accused and secondly on the reliability of the evidence. It is only in exceptional cases the warning should be entirely displaced with. The learned judge adopted the correct approach and directed the jury on the credibility of Thomas' evidence and on its reliability. In doing so the learned judge pointed out the various areas of weakness in the identification evidence.

Beckford and Shaw v R [1993] 42 WIR 291 applied; Arthur Mills and Others v The Queen [1995] 1 WLR 511 applied; Capron v The Queen [2006] UKPC 34 applied.

4. Section 112 (1) of the Evidence Act requires a judge to give the warning in relation to the evidence that identifies the accused as the person who committed the crime. Thomas' evidence that he

saw the appellant driving the bus earlier in the evening was not evidence by which he identified the appellant as the gunman who shot the deceased and who shot at him. The learned judge was therefore not required to give an identification direction as outlined in section 112 or in accordance with the Turnbull guidelines in relation to the evidence of Thomas that he had seen the appellant driving the minibus earlier in the evening on the day of the shooting.

Section 112 (1) of the BVI Evidence Act No. 15 of 2006, Laws of the Virgin Islands applied.

5. Neither Section 112 of the Evidence Act nor a Turnbull direction is required in relation to an inanimate object which supports identification evidence. The learned judge therefore did not err when she omitted to give a section 112 warning in relation to the identification of the grey minibus in the CCTV images. However, it may be necessary in some cases for a judge to exercise his discretion and remind a jury of the circumstances in which the identification of the object was made.

Hampton and another v R [2004] EWCA Crim 2139 applied.

6. Evidence of identification based on CCTV images is admissible provided the person conducting the analysis is an expert in the field or has acquired special knowledge of the images by viewing them several times and has taken measures to safeguard the reliability of the evidence such as making contemporaneous notes of viewing, outline the methodology used and software used to enhance the images. The images must also be of good quality

R v Yaryare and others [2020] EWCA Crim 1314 followed.

7. It is well settled that a judge has a duty to ensure that a trial is conducted fairly and that duty includes preventing inadmissible evidence going before a jury. The omission of trial

counsel's objection to admission of such evidence may impact whether the defendant was really prejudiced or the extent of the prejudice. Trial counsel did not object to the evidence of DS Shortte and DC Bakker in relation to the CCTV images. Further, it was not open on appeal to raise the issue of admissibility of the evidence as counsel cross-examined the witnesses on the evidence and urged the jury to consider the evidence carefully. Counsel also invited the jury to find that certain aspects of the evidence weakened the reliability of the identification evidence.

Phipson on Evidence; R v Hooks [1994] Lexis Citation 2034 considered.

8. The trial judge, in summarising DC Bakker's evidence in relation to the timings when the bus was seen in the CCTV images, misstated the evidence in the way she expressed it. However, the jury having heard the evidence, seen the CCTV footages and they were given the CCTV images to review whilst they deliberated on their verdict, could not have been misled as to what was the evidence. Consequently, the error on the part of the judge was not sufficient to render the conviction unsafe or unsatisfactory.

9. The duty of the trial judge is to put the case, including the defence, fairly before the jury; the judge is not obliged to reiterate all the points made by the prosecution or defence during the trial. The learned judge clearly outlined to the jury in the summation that the appellant's defence was alibi. The judge reminded the jury that there was no burden on the appellant to prove the alibi but rather the burden was on the prosecution to disprove the alibi. The judge also urged the jury to carefully examine the interview of the appellant in which he raised the defence of alibi, the transcript of which was provided to the jury for them to consider during deliberation. The appellant's defence was there not undermined.

ORAL JUDGMENT

Case Name:

COLLIN HOPE JR

V

EDMOND LAKE

**[ANUHCVP2020/0022]
(ANTIGUA & BARBUDA)**

Date:

Friday, 25th February 2022

Coram:

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

Appearances:

Appellant: Dr. David Dorsett

Respondent: No appearance

Issues:

Civil appeal- Personal Injury- Assessment of Damages- Whether master erred in her assessment of damages by applying wrong principles of law - Whether master erred in finding that Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases (England) did not override Eastern Caribbean case law- Whether master erred by not basing award for future loss of income on part of the accepted evidence- Whether master's assessment of the award of damages for future loss of income was inconsistent with the pleaded case upon which default judgment was obtained

**Result and
Reason:**

[1] This is an appeal against the decision of the learned Master Jan Drysdale ("the Master") made on 21st April 2021 on an assessment of damages for personal injuries following the entry of a judgment in

default of appearance against the respondent, Mr. Edmond Lake.

Facts

[2] On 11th November 2015, a motor vehicle driven by Mr. Lake collided with a vehicle in which the appellant, Mr. Collin Hope Jr., was a passenger. Mr. Hope was injured in the accident and claimed damages for personal injuries from Mr. Lake. Mr. Lake did not respond to the claim and on 23rd April 2019, judgment in default of appearance was entered against him for damages to be assessed. Mr. Lake did not participate in the assessment of damages before the Master and the damages were assessed on Mr. Hope's evidence and the law. The Master made the following awards:

- (a) special damages of \$23,772.99 with interest at 2.5% from the date of the accident to the date of the assessment;**
- (b) general damages of \$40,000.00 for pain and suffering and loss of amenities with interest at the rate of 5% per annum from the date of the accident to the date of the assessment;**
- (c) damages for loss of future earnings of \$248,400.00; and**
- (d) costs at the rate of 60% of prescribed costs.**

[3] Mr. Hope was dissatisfied with the damages awarded for pain and suffering and loss of amenities and for loss of future earnings. He appealed on three grounds:

- (i) The Master erred in her assessment of damages by applying a wrong**

principle of law, namely, that case law can override or nullify statute law.

- (ii) The Master erred in her assessment of future loss by applying a wrong principle of law, namely, not basing her award on evidence that she had accepted.
- (iii) The Master erred in her assessment of future loss by applying a wrong principle of law, namely, assessing future loss on a basis inconsistent with the pleaded case upon which Mr. Hope had obtained a default judgment.

Ground 1 – General damages for pain and suffering and loss of amenities

[4] Mr. Hope's position before the Master and this Court is that he is entitled to general damages of \$50,000.00 for the injuries that he sustained based on the Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases ("the Guidelines")^[1] which are a part of the common law of England. His counsel, Dr. David Dorsett, submitted that the Common Law (Declaration of Application) Act^[2] of Antigua and Barbuda, imported into the State the common law of England. The Guidelines, being a part of the common law of England, are a part of the common law of Antigua and Barbuda and they are not merely persuasive but are binding authority and must be followed subject to a discount of 15-20% to reflect local conditions. In fact, Dr. Dorsett went so far as to submit in his written submissions that "[c]ase law from other jurisdictions cannot undermine the statutory regime that governs domestic law and its application",^[3] and that any change to the Guidelines, which we take to mean any departure from the

Guidelines, must be done by Parliament and not by judicial activism. [4]

[5] We reject this submission entirely. It is trite that the common law is the law made by judges through their decisions. It is the antithesis of statute law which is made by Parliament. The Guidelines are, as the name suggests, a book of principles and decided cases to guide courts and tribunals in assessing the quantum of damages in personal injury cases. They are just that - guidelines. As a part of the common law of England and therefore the common law of Antigua and Barbuda, they can be referred to and relied on by the local courts but they are not binding, certainly not in the sense that exclusive resort must be had to them in making an award in personal injury cases. The well-known and established practice in the Eastern Caribbean courts in assessing damages is to look first to similar cases in the region and apply them to the cases being decided. If there are no local comparable decisions, the assessing court will undoubtedly refer to the decided cases in the Guidelines and make the necessary adjustments which, Dr. Dorsett submitted, is a discount of 15-20%. However, this is done only where there are no local comparable cases.

[6] The approach of the courts of the Eastern Caribbean to the assessment of damages and the courts' reliance on the Guidelines is admirably summed up by the Privy Council in the case of *Scott v Attorney General of the Bahamas*, a case cited by Dr. Dorsett, as follows -

“What those guidelines can provide, of course, is an insight into the relationship between, and the comparative levels of compensation appropriate to different types of injury. Subject to that local courts remain best placed to judge how changes in society can be properly catered for. Guidelines from different

jurisdictions can provide insight but they cannot substitute for the Bahamian courts' own estimation of what levels of compensation are appropriate for their own jurisdiction. It need hardly be said, therefore, that a slavish adherence to the JSB guidelines, without regard to the requirements of Bahamian society, is not appropriate.”^[5]

In other words, the Guidelines can be resorted to in appropriate cases but they should not be used in place of or to contradict local decisions that are applicable to the case being decided.

[7] With these preliminary observations, we now turn to the Master's approach to the assessment of damages in this case. Firstly, we reject entirely the allegation in ground 1 that the Master applied a wrong principle of law that case law can override or nullify statute law. She approached the assessment by firstly rejecting counsel's submission that the assessment should be done solely by reference to the Guidelines. She referred to three cases decided by the courts of the Eastern Caribbean where the Guidelines were applied and noted that -

“[I]n each case there was a paucity of comparable cases in the region. This is not the situation in this case.... The Court wishes to reiterate that whilst the guidelines have their place in the law it is not to the preference of local and or regional cases similar in context to the case at bar”^[6].

[8] The Master then referred to the cases of *Peter Winston v Dianne Telemaque*^[7] from the High Court of the Commonwealth of Dominica and *Simon Sparman v Jolly Beach Resort & Spa*^[8] from the High

Court of Antigua and Barbuda and noted that the injuries in these cases were similar to those suffered by Mr. Hope and the awards made by the courts in these cases. Guided by those cases, the Master awarded \$40,000.00 as general damages for the pain and suffering and loss of amenities suffered by Mr. Hope.

[9] This is the classic approach to the assessment of general damages for personal injuries in the courts of the Eastern Caribbean. The Master did not apply a wrong principle of law in the assessment of general damages. She noted the relevance of the Guidelines in assessing damages in personal injury claims and proceeded to assess the damages based on comparable decisions of the High Courts of the region. She cannot be faulted for this approach and ground 1 is dismissed.

Grounds (2) and (3) - Loss of future income

[10] Mr. Hope's case is that he was a student pilot at the time of the accident and his loss of future income should have been assessed on his uncontested evidence that as a pilot, he would have earned \$7,000.00 per month or \$84,000.00 per annum. This would thereby entitle him to damages for loss of future income of \$1,653,881.42. As a result of his injuries he asserted that he could not become a pilot and that Mr. Lake was responsible for his entire loss of future income. The Master found that he had not provided sustainable evidence of this assertion and declined to award damages for loss of future income based on Mr. Hope becoming a pilot. Instead, she accepted his other evidence that he at the relevant time was a construction worker, whose income when discounted, was approximately \$10,800.00 per annum. Applying a multiplier of 23 years, she awarded \$248,400.00 for loss of future income.

[11] Mr. Hope complained in grounds 2 and 3 that the Master applied wrong principles of law in assessing the loss of future income loss in this way.

[12] In ground 2, learned counsel argued that this was an assessment of damages following a default judgment and therefore there was no issue of liability. Mr. Hope having stated in his pleadings and witness statement that he was a trainee pilot, and the Master having stated in an Order on 20th February 2020 that she accepted his unchallenged evidence, was bound to assess his future earnings as if he was a pilot and not a construction worker. We do not accept this submission. The issue of Mr. Hope's occupation is not a matter of liability – it goes to the quantum of damages to be awarded and the Master was required to examine and assess the evidence on the assessment and decide if it supports the damages being claimed. As Edwards JA said in Michael Laudat and The Attorney General of the Commonwealth of Dominica v Danny Ambo^[9].

“The issue of the defendant's liability having been settled by the default judgment, the only issue for the court is how much in compensatory damages is due to the claimant upon the evidence adduced by the claimant in proof of any special damages claimed and the general damages. Where damages for any pleaded causes of action have not been proven by the evidence, the claimant would generally not be entitled to damages under that head of claim.”

[13] The Master's approach to the assessment in this case is consistent with the guidance from Edwards JA in the Laudat v Ambo case. She was not bound to accept everything that Mr. Hope said in his evidence on the issue of damages. We are satisfied that the evidence before the Master on the issue of Mr. Hope being a student pilot was such that she was not bound to accept it. This is even more so when it became clear

during the hearing before this Court that the student visa on which Mr. Hope placed heavy reliance, showed that it expired more than three years before the accident. This casts great doubt on his evidence that he was a student pilot at a flying school in Canada at the time of the accident and was on a break in Antigua to earn money. The Master took note that Mr. Hope had not produced any independent evidence of being a student such as a letter from the flying school or indeed we would add, any documentation showing enrollment at the flying school.

[14] It cannot be said that there was no evidence to support the Master's finding of fact that Mr. Hope "failed to produce any tangible evidence which the Court can rely on to found loss of income on this basis". The basis that the Master was referring to was Mr. Hope's claim that he was a student pilot. The Master proceeded to assess his loss of future income based on the evidence placed before her by Mr. Hope that he was a construction worker. This is an unimpeachable finding of fact with which this Court will not interfere. Ground 2 is accordingly dismissed.

Ground (3)

[15] It follows from our reasoning and findings on ground 2 that ground 3 must also fail. The finding of loss of future income is not inconsistent with the pleaded case. Following the reasoning of Edwards JA in the *Laudat v Ambo*^[10] case the default judgment settled the issue of liability for the losses suffered by Mr. Hope. However, the assessment of damages was decided on the evidence in the assessment proceedings which the Master was required to assess and make her findings. The submission that the Master made a finding on a different issue is rejected as being wholly unconvincing and lacking in merit.

Conclusion

[16] This Court finds that the grounds of appeal are entirely without merit and the appeal is dismissed.

[1] 15th Edition, Oxford University Press.

[2] CAP 92 of the Laws of Antigua and Barbuda.

[3] Paragraph 15 of the appellant's submissions.

[4] Paragraph 18 of the appellant's submissions.

[5] [2017] UKPC 15 at paragraph 25.

[6] Paragraphs 17 and 18 of the Decision.

[7] DOMHCV 2005/0029 (delivered 10th September 2012, unreported).

[8] ANUHCV2012/0292 (delivered 4th December 2018, unreported).

[9] HCVAP2010/016 (delivered 15th December 2010, unreported) at paragraph 30.

[10] Supra, paragraph 12.

APPLICATIONS AND APPEALS

Case Name:

Clinton Softleigh

v

Ermalie Espirit- Softleigh

(ANUHCVAP2021/0024)

(Antigua and Barbuda)

Date:

Monday, 21st February 2022

Coram:

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

Appearances:

Applicant:

Mr. Cosbert Cumberbatch

Respondent: Ms. Gail Pero Weston

Issues: Application to withdraw application for leave to appeal and stay of execution

Type of Order Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. With the approval of the Court, the application for leave to appeal filed on 19th November 2021 is hereby withdrawn.
2. The application for a stay of execution having been refused, the costs of the application agreed in the sum of \$1200.00 is to be paid by the applicant to the respondent on or before 8th March 2022.

Reason: The Court considered an application by the applicant to withdraw the application for leave to appeal and the application for stay. The parties indicated to the Court that they mutually agreed to mediate. The Court was therefore of the opinion that in the circumstances, the application should be allowed.

Case Name: WD Intercontinental Construction Limited

v

Winston Edwards

**[ANUMCVAP2020/0001]
(Antigua and Barbuda)**

Date: Monday, 21st February 2022

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal

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

Appearances:

Appellant: No appearance

Respondent: Mr. George Looby IV

Issues:

Application to strike out notice of appeal - Section 170(1) of the Magistrate's Code of Procedure Act Cap 225 of the Laws of Antigua and Barbuda – Whether the grounds of appeal set out in the in the notice of appeal were unmeritorious

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The notice of appeal filed on 19th March 2020 is struck out.**
- 2. Costs to be paid by the appellant to the respondent fixed in the sum of \$2000.00, to be paid on or before 8th March 2022.**

Reason:

This is an application by the respondent to strike out the notice of appeal filed by the appellant on the 19th March 2020 from a decision of the learned magistrate made on 20th February 2020 in respect of a judgment debt on a judgment summons filed subsequently to the entering of the judgment.

The Court was satisfied that the appeal is out of time having been filed contrary to the time prescribed under section 170(1) of the Magistrate's Code of Procedure Act Cap 225 of the Laws of Antigua and Barbuda. Furthermore, the Court was of the view that the grounds of appeal that were set out in the in the notice of appeal were unmeritorious in the sense that the factual bases for the grounds of appeal were contradicted by the official notes of proceedings in the Magistrate's Court.

Case Name: Peta-Ann Kelsick

v

Mario Winter T/a Island Press

**[ANUMCVAp2019/0002]
(Antigua and Barbuda)**

Date: Monday, 21st February 2022

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Kema Benjamin

Respondent: Mr. Kwame L. Simon

Issues: Civil appeal - Procedural irregularities - Jurisdiction of Magistrate - Whether court exceeded its jurisdiction by hearing a summons in excess of \$7500.00 in breach of section 22 of the Magistrate's Code of Procedure Act - Whether judgment was obtained by fraud due to the absence of the appellant when judgment was entered against appellant - Section 77 of Magistrate's Code of Procedure Act - Whether there is jurisdiction for magistrate to proceed *ex parte* in civil proceedings - Whether Court should set aside the decision of the magistrate

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:
1. The appeal is allowed.
2. The magistrate's order giving judgment in the sum of \$17,535.00 is a nullity as one which is in excess of the magistrate's jurisdiction.

3. Costs to the appellant to be paid by the respondent, fixed in the sum of \$1500.00 to be paid on or before 8th March 2022.

Reason:

Counsel for the respondent conceded to the appellant's submissions in support of the appeal, agreeing that there were several procedural irregularities as it related to the decision of the learned magistrate. Counsel for the respondent intimated to the Court that, the learned magistrate did in fact exceed her jurisdiction by hearing a summons in excess of \$7500.00 in breach of section 22 of the Magistrate's Code of Procedure Act Cap. 255. He further intimated that, the learned magistrate had no jurisdiction pursuant to section 77 of the Magistrate's Code of Procedure Act to proceed *ex parte* in civil proceedings. Counsel for the respondent was therefore of the view that the matter should be set aside by the Court.

The Court upon considering the submissions of both counsel for appellant and the respondent, was of the view that the appeal should be allowed and that the proceedings and the magistrate's order giving judgment on the summons in respect of the sum of \$17,535.00 be deemed a nullity. Upon an oral application for costs from counsel for the appellant, the Court was also of the view that costs should be awarded to the appellant fixed in the sum of \$1500.00.

Case Name:

**Antigua and Barbuda Fishermen Cooperative
Society**

v

1. Phillip Athanaze
2. Gary Gore
3. Colin Francis
4. John Browne
5. John Tomlinson

**[ANUHCVAP2021/0016]
(Antigua and Barbuda)**

Date: Monday, 21st February 2022

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

Appearances:

Applicant: Dr. David Dorsett

Respondents: Mr. Justin L. Simon, QC

Issues: Application for leave to appeal - Preliminary issue - Locus standi – Withdrawal of application for leave to appeal

Type of Order Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. At the request of the applicant, the application for leave to appeal is hereby withdrawn.
2. Costs to the respondent on the appeal fixed in the sum of \$2000, these costs along with the costs of \$3000 ordered in the court below to be paid on or before 8th March 2022.
3. The issue of the claimant's authority or standing to bring these proceedings shall be tried as a preliminary issue and the trial of that issue shall be conducted expeditiously.
4. Either party shall file and serve an application for the trial of this preliminary issue by no later than 1st March 2022 together with supporting evidence in respect of this issue.

Reason: The Court observed that the proceedings in the matter were protracted notwithstanding that the threshold

issue in the case is the question of the authority or locus standi of the applicants to bring the proceedings on behalf of the society. The Court also considered that the proceedings have been protracted notwithstanding the clear orders of the Court of Appeal.

The Court accordingly directed that the issue of the claimant's authority or standing to bring the proceedings, be tried as a preliminary issue and that the trial of that issue be conducted expeditiously. In the circumstances, the Court therefore directed that either party to the matter shall file an application for the trial of the preliminary issue no later than the 1st March 2022 together with supporting evidence in respect of the issue.

Case Name: Francis Trading Agency Ltd.

v

Hollis E. Francis Jr

**[ANUMCVAP2019/0003]
(Antigua and Barbuda)**

Date: Monday, 21st February 2022

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Mr. Justin L. Simon, QC with him Mr. Kwame L. Simon
Respondent:	Mr. George Looby IV

Issues: Civil appeal - Default judgment - Absence of reasons given by the magistrate - Whether the failure to give reasons by the magistrate and the lack of evidence

given by the respondent constitutes a specific illegality substantially affecting the merits of the proceedings pursuant to section 170(2)(k) of the Magistrate's Code of Procedure Act Cap. 255 - Whether adjudication of matter in the absence of the appellant was unnecessary and highly prejudicial to the appellant

Type of Order

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. By consent there is no order as to costs.

Reason:

The Court was of the view that the appeal should be allowed on the basis that the learned magistrate fell into error by conducting the proceedings without the claimant leading any evidence on the claim. The Court held that it was necessary for evidence to be taken by the magistrate in order to satisfy herself that the claim had been proved. The Court further held that there is no procedure in the Magistrate's Code of Procedure Act Cap. 225 which provides for the entering of a default judgment. The magistrate being a creature of statute must therefore conduct proceedings in accordance with Magistrate's Code of Procedure Act. It was for those reasons that the Court allowed the appeal and with the consent of the parties made no order as to costs.

Case Name:

THE QUEEN

V

[1] HAROLD LOVELL

[2] JACQUI QUINN

[3] WILMOTH DANIEL

[ANUHCRA2021/0012]
(ANTIGUA & BARBUDA)

Date: Monday, 21st February 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:

Appellant: Mrs. Shannon Jones-Gittens holding papers for the Director of Public Prosecutions

Respondents: Mr. Charlesworth Tabor and Mr. Sherfield Bowens for the 1st Respondent
Mr. Dane Hamilton, QC for the 2nd Respondent
Mr. Justin L. Simon, QC for the 3rd Respondent

Issues: Criminal Appeal- Adjournment

Type of Order Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The application for an adjournment is granted.
2. The hearing of the application is adjourned to the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing 23rd May 2022.

Reason:

The appellant indicated to the court that it sought an adjournment of the hearing of the applications on the basis that the Director of Public Prosecutions, who had conduct of the matter, was suddenly absent, being on leave. There were no objections to the adjournment by the respondents.

Accordingly the application for the adjournment was granted.

Case Name: THE QUEEN

V

[1] HAROLD LOVELL

[2] JACQUI QUINN

[3] WILMOTH DANIEL

**[ANUHCRA2022/0005]
(ANTIGUA & BARBUDA)**

Date: Monday, 21st February 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:

Appellant: Mrs. Shannon Jones-Gittens holding papers for the Director of Public Prosecutions

Respondents: Mr. Charlesworth Tabor and Mr. Sherfield Bowens for the 1st Respondent
Mr. Dane Hamilton, QC for the 2nd Respondent
Mr. Justin L Simon, QC for the 3rd Respondent

Issues: Criminal Appeal- Adjournment

Type of Order Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The application for an adjournment is granted.**
- 2. The hearing of the application is adjourned to the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing 23rd May 2022.**

Reason:

The appellant indicated to the court that it sought an adjournment of the hearing of the applications on the basis that the Director of Public Prosecutions, who had conduct of the matter, was suddenly absent, being on leave. There were no objections to the adjournment by the respondents.

Accordingly, the application for the adjournment was granted.

Case Name:

KATAMWA BRIGHT

V

THE QUEEN

**[ANUHCRA2018/0005]
(ANTIGUA & BARBUDA)**

Date:

Monday, 21st February 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:

Appellant:

Mr. Warren Cassell

Respondent:

**Mrs. Shannon Jones-Gittens holding papers for the
Director of Public Prosecutions**

Issues:

Criminal Appeal - Adjournment

Type of Order

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing 23rd May 2022.
2. The Crown shall file submissions in response with authorities on or before 15th March 2022.
3. The appellant has leave to file submissions with authorities in reply if necessary, on or before 31st March 2022.

Reason:

On the application of the Crown for the adjournment of the hearing of the appeal, the Court noted Mr. Warren Cassell, for the appellant, and his submission that the matter should be listed for later this week or alternatively at the sitting of the Court in another jurisdiction.

The Court, having considered the submissions of both sides, was of the view that it would not be unreasonable, in all the circumstances, for the appeal to be adjourned to the next sitting of the Court of Appeal in the state of Antigua and Barbuda, during the week commencing 23rd May 2022.

Case Name:

NDRU GREAVES

V

THE QUEEN

**[ANUHCRA2021/0001]
(ANTIGUA & BARBUDA)**

Date:

Monday, 21st February 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:

Appellant: Mr. Wendel Robinson

Respondent: Mrs. Shannon Jones- Gittens

Issues:

Criminal appeal - Adjournment

Type of Order

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

**The hearing of this appeal is adjourned to
Thursday 24th February 2022 at 9am.**

Reason:

**The Court indicated that its panel as constituted at the
time of the hearing of the appeal could not hear the
matter and therefore the hearing of the appeal was
adjourned to Thursday 24th February 2022 at 9am.**

Case Name:

CONROY JONES

V

THE QUEEN

**[ANUHCRA2020/0013]
(ANTIGUA & BARBUDA)**

Date:

Monday, 21st February 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:

Appellant: Mr. Warren Cassell

Respondent: Mrs. Shannon Jones-Gittens

Issues: Criminal appeal - Appeal against sentence - -
Wounding with intent - Whether the learned judge erred in his treatment of the various mitigating factors that were advanced at the trial on behalf of the appellant - Whether the appellant's sentence was grossly excessive in all the circumstances taking into consideration the appellant's age and and other factors such as his previous good character - Whether the learned judge erred by failing to order a social enquiry report

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:
1. The appeal against sentence is dismissed.
2. The sentence of 12 years imposed by the learned judge is affirmed.

Reason: This is an appeal against the sentence of the learned judge in which he imposed a sentence of 12 years on the appellant, the appellant having been convicted of the offence of wounding with intent. Mr. Cassell, who appeared for the appellant submitted that the learned judge erred in his treatment of the various mitigating factors that were advanced at the trial. He also submitted that the learned judge failed to order a social enquiry report which would have informed the court of the circumstances of the appellant and enabled the court to impose a just sentence in all of the circumstances.

The Court considered the written and oral submissions of both the appellant and the respondent and considered the sentencing remarks of the learned judge. The Court was of the view that it could determine no error in principle that the learned judge made in sentencing the appellant. The Court considered that all of the matters raised by Mr. Cassell were taken into account by the learned judge. The

various factors which would normally have been included in a social enquiry report were advanced on behalf of the appellant by his counsel at trial. Having regard to the numerous aggravating factors in this case where the wounding took place in the presence of the appellant's young children, where there were several injuries to the virtual complainant and having taken all of the various factors into account, the Court took the view that the sentence of 12 years was a just sentence and this Court had no reason to interfere with that sentence considering the circumstances in which the Court of Appeal will interfere with a sentence passed by a learned judge which are now well-settled. The appeal was therefore dismissed.

Case Name:

EDWIN GOMEZ

V

THE QUEEN

[ANUHCRA2014/0012]

consolidated with

ISAIAH BENJAMIN

V

THE QUEEN

[ANUHCRA2014/0013]

(ANTIGUA & BARBUDA)

Date:

Monday, 21st February 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:

Appellant: Mr. Sherfield Bowen appearing for Edwin Gomez
Mr. Wendel Robinson appearing for Isaiah Benjamin
Respondent: Mrs. Shannon Jones-Gittens holding papers for the
Director of Public Prosecutions

Issues:

Criminal appeal - Adjournment

Type of Order

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The application for an adjournment is granted.**
- 2. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing the 23rd May 2022.**

Reason:

On the hearing of the application by counsel for the respondent for an adjournment of the hearing of the appeal due to the sudden absence of the Director of Public Prosecutions, and the Court noting that counsel for the appellants had no objection to the application, the application for an adjournment was granted.

Case Name:

MIGNON STAFFORD

V

THE COMMISSIONER OF POLICE

**[ANUMCRAP2020/0004]
(ANTIGUA & BARBUDA)**

Date: Monday, 21st February 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:

Appellant: Mr. Cosbert Cumberbatch

Respondent: Mrs. Shannon Jones-Gittens

Issues: Criminal appeal - Appeal against conviction and sentence - Whether the decision of the learned magistrate went against the weight of the evidence - Whether the learned magistrate erred in his treatment of the prosecution's case against the appellant - Whether the learned magistrate erred in his treatment of the appellant's defence of self defence - Whether the sentence was excessive

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against conviction is allowed.
2. The conviction is quashed and the sentence set aside.

Reason: On the hearing of the appeal, learned counsel for the respondent submitted to the Court that the respondent concedes that the learned magistrate erred in a number of respects in finding the appellant guilty. The respondent conceded that the magistrate, in his treatment of the prosecution's case, erred in finding as a matter of fact that the evidence of the Crown was consistent, where there were several discrepancies in the evidence led by the Crown. The respondent also conceded that the magistrate's treatment of the appellant's defence of self defence was wrong in law.

The Court considered the submissions made by both sides and the concession made by learned counsel for the respondent and the Court agreed with the respondent that in all of the circumstances the errors committed by the learned magistrate warranted the intervention of this Court to allow the appeal and to quash the conviction and set aside the sentence of the learned magistrate.

Case Name:

Carlton Lewis

v

**Neil Cochrane
(As President of Antigua Turf Club)**

**[ANUHCVP2018/0039]
(Antigua and Barbuda)**

Date:

Wednesday, 23rd February 2022

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Hugh Marshall

Respondent: Mr. George Lake

Issues:

Civil appeal - Land law - Legal and equitable interest in land - Proprietary estoppel - Whether the learned trial judge erred in law by determining that the respondent, had or has the legal capacity to own or acquire property including an equitable interest in land, where the respondent is an unincorporated entity without legal personality - Tenancy at will - Whether the learned trial judge erred in law by failing to apply the principles of the hierarchy of laws, as specified in

sections 19 and 21 of the Eastern Caribbean Supreme Court Act (Cap. 143) - Whether the Learned Trial Judge erred in the application of section 4 of The Crown Lands (Regulation) Act (ap. 120) - Whether the learned trial judge failed to apply the Statute Law of the Crown Lands (Regulation) Act (Cap. 120) and the statutory authority of the Cabinet - Whether the learned trial judge erred in Law by failing to find that Cabinet had exercised its statutory authority under section 4 of The Crown Lands (Regulation) Act (Cap, 120) to retain control, subject to its lease to the appellant of the said lands - Recovery of possession of crown lands - Whether the registered owner of a property (the Government of Antigua and Barbuda) has the power to divest itself of the same where the respondent had no leasehold interest or an agreement for lease

Type of Order

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name:

Cerise Jacobs

v

- 1. Minister of Tourism**
- 2. Commissioner of Police**
- 3. Chief Magistrate**

**[ANUHCVP2019/0011]
(Antigua and Barbuda)**

Date:

Wednesday, 23rd February 2022

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Dr. David Dorsett

Respondent: Mrs. Carla Brookes-Harris

Issues: Civil appeal – Statutory interpretation – Interpretation Act Cap. 224 – Whether the learned judge erred in law when she failed to find that the appellant had been subject to criminal proceedings in circumstances where there was no statutory authority for the creation of criminal offences - Whether Section 70 of the Interpretation Act permits the creation of criminal offences – Whether parliament is precluded from properly delegating its power to make criminal offences to a subsidiary body- Whether in the circumstances of this case the delegation was proper and appropriate - Whether learned judge erred in law in failing to find that the power of the 1st respondent does not extend to creating criminal offences – Whether the learned judge erred in law in failing to consider whether the actions of the 2nd and 3rd respondent were lawful

Type of Order N/A

Result / Order: IT IS HEREBY ORDERED THAT:

1. The parties are asked to provide written submissions within 14 days of today's date on the following:
 - a. Whether or not parliament can properly delegate some of its law-making powers to create a criminal offence.
 - b. Whether in the circumstances of this case the delegation was proper and appropriate.
2. The Court shall render its judgment thereafter.

Case Name: COLLIN HOPE JR

EDMOND LAKE

**[ANUHCRA2020/0022]
(ANTIGUA & BARBUDA)**

Date: Wednesday, 23rd February 2022

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

Appearances:

Appellant: Dr. David Dorsett

Respondent: No appearance

Issues: Civil Appeal- Personal Injury - Assessment of Damages- Whether master misapplied principles of the assessment of damages by giving priority to Eastern Caribbean case law and not the Judicial College Guidelines of England for the Assessment of General Damages in Personal Injury Cases. - Whether learned master erred in her assessment of future loss of income by not basing her award on the unchallenged evidence that the appellant was a student pilot - Whether the master's assessment of the award of damages for future loss of income was inconsistent with the pleaded case upon which default judgment was obtained

Type of Order N/A

Result / Order:

IT IS HEREBY ORDERED THAT:
The oral judgment of the Court is reserved to a later date to be fixed by the Chief Registrar.

Case Name: ALISON SEBASTIAN

V

**THE CHIEF TOWN AND COUNTRY PLANNER
OF THE DEVELOPMENT CONTROL
AUTHORITY**

**[ANUHCRAP2020/0038]
(ANTIGUA & BARBUDA)**

Date: Wednesday, 23rd February 2022

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

Appearances:

Appellant:	Mr. Peyton Knight
Respondent:	Ms. Gail Christian

Issues: Civil appeal - Leave to apply for judicial review - Whether the learned judge erred by concluding that the development permit could have been submitted after development commenced - Whether the learned judge erred by concluding that the respondent had complied with sections 17, 22, 24 and 25 of the Physical Planning Act 2003 - Whether the learned judge failed to take into consideration the argument of the applicant in so far as the sections outlined in the application

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:
1. The appeal is dismissed.
2. No order as to costs.

Reason: The Court heard this appeal, which is related to the decision of the trial judge in the court below refusing leave to the appellant to bring a claim for judicial review in respect of her complaints related to sections

17, 22, 24 and 25 of the Physical Planning Act 2003, Laws of Antigua and Barbuda in relation to the Town and Country Planner.

Having heard the parties, counsel for the appellant and counsel for the respondent, as well as having read all of the legal arguments put forward in their submissions, the Court was of the unanimous view that there was no merit in this appeal. There was no basis for this Court to disturb the decision arrived at by the trial judge, who set out in his order the basis for having refused leave. The Court noted particularly paragraph 4 of the judge's ruling which sets out the way the judge approached the application for leave, and noted that counsel for the appellant had failed to demonstrate that the learned judge was wrong in ruling the way he did. The appeal was accordingly dismissed.

The Court further noted that the court does not normally award costs unless there are special circumstances in relation to claims for judicial review. The Court therefore made no order as to costs.

Case Name:

1GLOBE CAPITAL LLC

V

SINOVAC BIOTECH LLC

**[ANUHCVP2019/0005]
(ANTIGUA & BARBUDA)**

Date:

Thursday, 24th February 2022

Coram:

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

Appearances:

Appellant:

Mr. Stephen Houseman, QC with him Mr. Lenworth Johnson

Respondent: Mr. Stuart Alford, QC with him Mr. Satcha Kissoon

Issues: Application for conditional leave to appeal to Her Majesty in Council - Sections 122(1)(a) and 122(2)(a) of the Constitution of Antigua and Barbuda - Leave as of right - Whether the appeal involves directly or indirectly a claim to or a question respecting property which has a value equal to or exceeding the prescribed value of \$1500 - Whether the appeal involves a decision in civil proceedings where the questions involved are of great general or public importance, or otherwise

Type of Order: Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. Leave is granted to appeal the judgment of the Court of Appeal delivered on 9th December 2021 on the following conditions:
 - (i) the applicant within 90 days of the date hereof, do enter into good and sufficient security in the sum of £500 for the due prosecution of the appeal, such security to consist of a deposit of the said amount at the court office;
 - (ii) within 30 days of the date hereof the applicant do take the necessary steps for the purposes of procuring the preparation of the records, the settling of such records with the solicitors for the respondent to the application and the certification of the record by the Registrar of the Court of Appeal; and
 - (ii) 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 transmitted to the Registrar of the Judicial Committee of the Privy Council without delay, where final permission to appeal has been granted.
2. The applicant shall make an application to the Court for the grant of final leave 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 to the satisfaction of the Registrar.

3. The costs of this motion for conditional leave to appeal shall be costs of the appeal to Her Majesty in Council.

Reason:

The Court took time to consider the various arguments by counsel for both parties, including all of the skeleton arguments and oral arguments made in respect of 1Globe Capital LLC's motion to appeal to Her Majesty in Council. The motion was made on two grounds: (i) as an appeal as of right pursuant to section 122(1)(a) of the Constitution of Antigua and Barbuda ("the Constitution"), and (ii) under section 122(2)(a) in terms of whether the questions involved in the appeal are of great general or public importance or otherwise, making it fit for this Court to exercise its discretion in granting leave to appeal to Her Majesty in Council.

The Court was not satisfied that the applicant had made out a case for leave as of right under section 122(1)(a) of the Constitution. The Court was however satisfied that leave ought to be granted to the applicant pursuant to section 122(2)(a) of the Constitution in that the Court was of the opinion that the appeal involves a question of great general or public importance in respect of section 71 of the International Business Corporations Act, Cap 222 of the Laws of Antigua and Barbuda ("the IBCA") and the application of the case of Betts & Co. Ltd v MacNaghten 1910 1 Ch 430 within the context of section 71 of the IBCA. Accordingly, the Court granted leave under that head in respect of grounds 2,3,4 and 5 of the applicant's draft notice of appeal against the judgment of the Court of Appeal delivered on 9th December 2021.

Case Name:

KHARIM BAPTISTE

V

NARISSA BROWNE

**[ANUMCVAP2020/0002]
(ANTIGUA & BARBUDA)**

Date: Thursday, 24th February 2022

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

Appearances:

Appellant: Mr. Leonard Moore

Respondent: Ms. Sherrie Ann Bradshaw

Issues: Civil magisterial appeal - Maintenance order - Maintenance of a minor child - Removal of minor from jurisdiction subsequent to maintenance order - Best interest of minor child - Section 8(1) of Maintenance of and Access to Children Act 2008 - The United Nations Convention on the Rights of the Child - The Hague Convention on the Civil Aspects of International Child Abduction - Whether the learned magistrate erred in her decision that the obligation of the appellant to continue to make child maintenance payments to the respondent remained in effect indefinitely despite the respondent relocating the minor child outside of the jurisdiction without the appellant's knowledge or approval while both parents continue to reside in Antigua and Barbuda - Whether the learned magistrate erred in her decision that, in circumstances where the minor child has been relocated outside of the jurisdiction, access arrangements which were largely being frustrated provided sufficient opportunity for the appellant to participate in the upbringing of the child - Whether the learned magistrate erred in her decision, in circumstances where maintenance payments were calculated and ordered in favour of the respondent while the child resided in the jurisdiction, that the said calculation and order remained indefinitely in effect despite the relocation of the child outside of the jurisdiction - Whether the learned magistrate had jurisdiction to make orders in relation to the

maintenance of and access to a minor child outside of the jurisdiction

Type of Order:

Directions

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The appellant and respondent shall jointly instruct the Antigua and Barbuda Family and Social Services Department to:

a. conduct an assessment, to ascertain the adequacy and suitability of any proposed living arrangements for the minor child KAMILLE JENORE BAPTISTE were she to be returned to the jurisdiction, and present a report of its findings along with any recommendations, by the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 23rd May 2022.

b. request an assessment, to be conducted by the Child Services Department in the Bronx, New York, or any similar agency where the minor child KAMILLE JENORE BAPTISTE may at the time reside, to ascertain all matters as regards to the welfare of the said child in her place of domicile and present a report of its findings along with any recommendations by the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 23rd May 2022.

2. The joint instruction and request in 1a and 1(b) above shall be made within seven (7) days of the date of this order.

3. The appellant and respondent shall make any and all good faith efforts to facilitate the preparation of the said reports.

4. The Court shall consider the matter further at the next sitting of the Court of Appeal for Antigua and Barbuda during the week commencing 23rd May 2022.

Reason: The Court was of the view that in the circumstances, before any decision on the appeal could be made, an assessment was necessary to ascertain the adequacy and suitability of both the present and any proposed living arrangements for the minor child concerned in this appeal, Kamille Jenore Baptiste.

Case Name: Ndrú Greaves
v
The Queen
(ANUHCRA2021/0001)
(ANTIGUA AND BARBUDA)

Date: Thursday 24th February 2022

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

Appearances:
Appellant: Mr. Wendel Robertson
Respondent: Mrs. Shannon Jones Gittens

Issues: Criminal Appeal - Whether the sentence imposed was excessive - Whether pre trial delay warrants a reduction of sentence - Whether the sentence should be reduced due to the ongoing Covid 19 pandemic

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:
1. The appeal is allowed to the extent that the sentence of 7 years imprisonment imposed on the appellant for the offence of possession with intent to supply is reduced to 3 years.

2. The fine of \$2,028,000.00 is also set aside.
3. The 12 month remand is to be deducted from the 7 year sentence.

Reason:

The Court considered a criminal appeal against sentence on the ground that the sentence imposed is manifestly excessive. The appellant was sentenced to 7 years imprisonment for the offence of drug trafficking and 7 years imprisonment for the offence of possession with intent to supply, both sentences run concurrently.

The Court was of the view that the judge did not err in principle or committed any other error to allow the Court to disturb the sentence for 7 years imprisonment for the offence of drug trafficking. The appellant submitted and the respondent agreed that the judge erred in principle in imposing a substantial sentence of 7 years imprisonment for the offence of possession with intent to supply as both offences flowed from the same situation. The Court was of the view that the judge did err.

The learned judge also imposed a fine of \$2,028,000.00 on the appellant who submitted to the Court that this fine ought to be vacated. The respondent conceded as circumstances indicated that the appellant did not have the means to satisfy the fine. The appellant advanced other issues namely that of delay and the effect of the Covid 19 pandemic on the sentence of the appellant. The Court was of the view that in the absence of evidence of delay it was not in a position to entertain the appellant's position on the point of delay to reduce his sentence.

On the point of the effects of Covid 19, learned counsel relied on R v Christopher Manning [2020] EWCA Crim 592 and Regina v Crosswell Fisher [2021] ECSCJ No. 510 and invited the Court to exercise its discretion in favour of the appellant by reducing his sentence taking into account the issue of Covid 19. Upon hearing the submissions on this point, the Court was not of the view that there was an appropriate basis for the Court to reduce the sentence of the appellant.

Case Name:

**[1] Lihua Tian
[2] Rouxi Tian (By her next friend Lihua Tian)**

V

**[1] The Attorney General
[2] The Chief Immigration Officer
[3] The Commissioner of Police**

**(ANUHCVP2019/0017)
(ANTIGUA AND BARBUDA)**

Date:

Thursday 24th February 2022

Coram:

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

Appearances:

Appellants: Dr. David Dorsett

Respondents: Mrs. Carla Brookes-Harris

Issues:

Breach of sections 3, 5(7), 8(1) and 9 of the Antigua and Barbuda Constitution Order 1981 - Assessment of Damages - Whether master made awards for damages that were inordinately low so as to make an erroneous estimate of the damages to which the appellants were entitled to - Principles guiding the award of vindicatory damages - Whether appellate court should interfere with the exercise of discretion of master in the award of damages - Whether decision of the master is outside the generous ambit of reasonable disagreement so as to be plainly wrong

Type of Order

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. Each party is to bear its own cost on the appeal.**

Reason:

This was an appeal against the assessment of damages by the learned master. The appellants are citizens of Antigua and Barbuda having obtained citizenship pursuant to the Antigua and Barbuda Citizenship by Investment Act, 2013. Upon their arrival in Antigua on 15th January 2016, they were detained by the immigration authorities and their passports were confiscated. They issued Habeas Corpus proceedings and they were then released and their passports were returned to them.

Pursuant to proceedings brought in the court below, a consent order was reached between the parties and several declarations and orders were made against the respondent. The consent order included orders for damages that:

- The applicants [the appellants] are entitled to compensation pursuant to section 5(7) of the Constitution for deprivation of their right to personal liberty from 15th-25th January 2016.
- The 1st respondent [The Attorney General] do pay compensation as provided for by section 5(7) of the constitution for the unlawful detention of the applicants by the 2nd and 3rd respondents, the quantum of such compensation in the form of damages, and to include vindictory damages, to be assessed.
- Damages for false imprisonment to be assessed in accordance with the law and is appropriate in the circumstances of the case.
- Damages to be assessed for contravention of the Applicants' [appellants'] right to freedom of movement.
- Damages to be assessed for the contravention of the applicants' right to freedom of movement (occasioned by the withholding of the appellants' passports constituting a contravention of the right of freedom of movement as guaranteed by Section 8(1) of the Constitution).
- Compensation for the compulsory possession of their Antiguan and Barbudan passports, the quantum in the form of damages inclusive of vindictory damages, to be assessed.

The hearing on the assessment of damages came up before the learned master Drysdale and the following orders, *inter alia*, were made:

“[i] The sum of \$3,000.00 for violation of the right to protection of the law.

[ii] The sum of \$4,000.00 for violation of the right to family life.

[iii] The sum of \$28,000 for unlawful detention and deprivation of liberty.

[iv] The sum of \$5,000.00 for violation of the right of freedom of movement.

[v] The sum of \$4,000.00 for violation of breach of the right to property.”

The appellants challenge the quantum of the awards. They appealed on the ground that the learned master acted on the wrong principle of law and made awards of damages which were so very small so as to make a highly erroneous estimate of damages to which the appellants were entitled.

It must be noted that this being an appeal which challenged the discretion of the master, the scope for interference by the appellate court is limited. The guiding principle is that the appellate court is reluctant to interfere with the assessment of damages of a lower court unless it is satisfied that the judge erred in principle or, having regard to all the circumstances, made an award inordinately low or so exceedingly high that it cannot be permitted to stand. The appellate court is not justified in substituting a figure of its own simply because it would have given a different figure if it had tried the case at first instance. There is no precise arithmetical formula which the court can employ when assessing damages. In this regard, the Court pointed to the importance of paying regard to the well-known principles which govern appellate interference with the award of damages as established in several cases.

Dr. Dorsett referred to the master’s judgment where she stated that “it is clear that the premise under which the servants or agents of the Crown acted were done without malice and not intended to be an arbitrary exercise of power. However, their rights were violated and a modest sum of \$3000.00 in recognition of the violation is reasonable.” Dr. Dorsett contended that

while the servants of the Crown may not have been actuated by malice and may not have intended to arbitrarily exercise power, consideration must be given to what actually happened, not just what was or may have been intended. Counsel posited that the action of the authorities was irrational, unreasonable, fundamentally unfair and an arbitrary exercise of power. He further argued that that to recognize a gross violation of a constitutional right by the modest sum of \$3000.00 for both appellants, was to cheapen, debase and devalue the constitutional right to the protection of law. He submitted that the quantum to be awarded for its violation must be on par with stature in the constellation of constitutional rights.

With respect to the award for detention and deprivation of liberty, Dr. Dorsett referred to the master's finding that because the premises of the detention was a hotel, no evidence that the reputation of the appellants was affected, no assertion that they were mistreated, abused or harmed in any manner, the appellants were essentially entitled to a diminution in the award against them. Dr. Dorsett pointed to the shock of the arrest and detention in being new citizens coming to the island for the first time and being stripped of the incidents of citizenship; being welcomed by being arrested as if they were fugitives when they were not; and asked: What can be more shocking than that?

Dr. Dorsett stated that in Wakeem Guishard v The Attorney General of the British Virgin Islands [2018] ECSCJ No. 277 the shock value was set at \$US20,000.00 (\$EC 54,000.00) while in the instant case the "shock" value was put at EC10,000.00. Although recognizing that the circumstance of the shock value in the two cases were not the same, Dr. Dorsett contended that the shock was just as real, powerful and jolting; and submits that the amount awarded was wholly out of proportion, liable to be set aside and was outside the general ambit of reasonable disagreement. Dr. Dorsett also complained that the judge made no award for vindictory damages in accordance with the consent order.

With respect to the award for breach of the right to property / possession of passports, the master

awarded the total sum of \$4,000.00 as reasonable compensation for vindication and violation of the appellants' fundamental rights. Dr. Dorsett took issue with the sum awarded, submitting that the sum of \$2,000.00 was inordinately low for compulsory possession of a person's passport having regard to the level awarded in 2009 in Oliveira v The Attorney General ANUHCv2008/0449 (delivered 26th May 2009, unreported), where \$5,000.00 was awarded by the High Court for unlawfully impounding a passport and pointed out that the consent order contemplated a separate award for vindictory damages distinct from an award for violation of the right to property. Dr. Dorsett's assertion that the order did not cover vindictory damages was not borne out by the terms of the order.

Ms. Brookes-Harris, the respondents' counsel, invited the Court to dismiss the appeal with costs. Counsel posited that the issue to be determined on this appeal was whether the damages awarded by the learned master for breaches as outlined in the consent order were inordinately low. Counsel submitted that the learned master properly applied the principles applicable to the determination of awards on general damages as set out in Flint v Lovell [1935] 1 KB 354. Further, she submitted that the appellants had not identified or established any error of principles made by the master which would lead the Court of Appeal to disturb the award of \$3,000.00 in respect of the violation of the right to the protection of the law. The Court agreed with this contention.

With respect to the award of \$28,000.00 for unlawful detention and deprivation of property, Ms. Brookes pointed out that this sum represented \$20,000.00 for the initial breach, \$3,000.00 for 10 days the appellants were detained and \$5,000.00 as vindication and also for being falsely imprisoned. Ms. Brookes noted Dr. Dorsett's contention that the amount of \$20,000.00 for the initial breach was wholly out of proportion.

Ms. Brookes asserted that the learned master relied on Everette Davis v The Attorney General SKBHCv 2013/0220 (delivered 30th June 2014, unreported) and correctly applied the principles as it relates to the

factors to be taken into account and took into account relevant factors in arriving at her decision. In the premises, she submitted that the master correctly applied the principles in arriving at the sum of \$20,000.00 for the initial breach and therefore the award made was not inordinately low or wrong in principle, consequently, there was no basis for this Court to set aside the award.

Ms. Brookes rejected the contention that the daily rate of \$150.00 awarded by the master was outside the generous ambit of reasonable disagreement and submitted that the factual context and circumstances in Guishard are not comparable to the case at bar. Ms. Brookes submitted that the master considered the relevant factors and circumstances of the case and conditions under which the appellants were detained in conjunction with the daily rate applied in the case of Davis.

Ms. Brookes submitted that the master did not commit any error in principle in arriving at a daily rate of \$150.00, and further denied that the master failed to award vindictory damages. It was clear from the master's decision that vindictory damages were awarded. The master ruled that "... for the unlawful detention of the Claimants the court awards the total sum of \$23,000.00 with an uplift of \$5,000.00 as vindication and also for being falsely imprisoned." With respect to the award for breach of the right to property/possession of passports, the respondents contend that the master applied the correct principles; and distinguished the case of Oliveira in arriving at the sum awarded and submitted that there is no basis to disturb the award granted.

In this appeal, the Court was particularly cognizant of the fact that compensatory damages for the breach of the rights given by the constitution would be assessed on ordinary principles as settled in the local jurisdiction, taking into account all the relevant facts and circumstances of the particular case and the particular victim. Thus, the sum assessed as compensation would take into account all the aggravating features that may be in the case as per paragraph 11 of Subiah v Attorney General of Trinidad and Tobago [2008] UKPC 47. An award of vindictory

damages was not to punish but to vindicate the rights of the victim to carry on his/her life free from unjustified executive interference, mistreatment or oppression. The quantum of the vindictory award was likely to be influenced by the quantum of the compensatory award and the gravity of the violation in question, to the extent that this was not regularly reflected in the compensatory award as per paragraph 11 of Subiah. The quantum of a vindictory addition to compensation cannot be calculated with scientific accuracy as per paragraph 13 of Subiah.

The award of vindictory damages for breach of the constitution is to be distinguished from compensation pure and simple. As explained by the Board in Attorney General v Ramanoop v [2005] UKPC 15, at paragraph 19, an award of compensation will go some distance towards vindicating the rights that have been violated. How far it will go depends on the circumstances, but in principle it may well not suffice. The fact that the right violated is granted by the Constitution adds an extra dimension to the round. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasize the importance of the right and the gravity of the breach and to deter further breaches. All of these elements have a place in this additional award.

In the case of Merson v Cartwright & Anor [2005] UKPC 38 from the Bahamas, the Board stated that the purpose of a vindictory award is not punitive. "It is not to teach the executive not to misbehave. The purpose is to vindicate the right of the complainant, whether a citizen or visitor, to carry on his or her life in the Bahamas free from unjustified executive interference, mistreatment or oppression. The sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement. It will be a sum at the discretion of the trial judge."

In her assessment, the Court found that the learned master considered the respective heads. The master stated that the protection of law "prohibits acts of the government which arbitrarily and unfairly deprive individuals of their basic constitutional rights to life, liberty or property. It also encompasses a person's

right to afford adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.” The master went on to state that the premise on which the servants or agents of the Crown acted was without malice and was not intended to be an arbitrary exercise of power. However, the master recognized the violation of the appellants’ rights and took into account the various violations mentioned above, along with the appropriate amounts awarded and in those premises awarded the sum of \$3,000.00 in recognition of this violation. As noted prior, the appellants took issue with the quantum awarded, however this Court did not detect any error in principle which the master had committed and which would warrant this Court to intervene with the sum of \$3,000.00 awarded by the master for the violation of appellants’ right to protection of the law. It was an amount awarded in the exercise of discretion after the master considered all the circumstances.

In relation to the award for unlawful detention/deprivation of liberty, the master noted that the period of the detention was 10 days. The appellants were not incarcerated but were detained at various hotels in St. Johns, Antigua. The master was cognizant of the suggestion by counsel for the appellants that damages should be in the amount of \$49,000.00. Half of that amount going to each appellant. The master also considered the respondent’s proposal of \$24,500.00 as reasonable compensation. The master noted that each party had agreed that the case of Davis was an apt authority for considering damages. In that case the court considered that, where the detention was not a short one as in a few hours or days, an initial sum should be given for the initial period of detention, coupled with a sum for each day spent detained. The master accepted that position but found that the circumstances of the appellants’ detention did not accord with what was suffered by Davis who was imprisoned for 8 months on a murder charge to which there was no evidence or reasonable suspicion to have him charged or detained. Further, the conditions of the prison are not comparable to a hotel. The appellants not being incarcerated were not subject to prison rules or discipline and were not faced with the stigma of being housed at such a facility. The master also stated

there was no assertion of the appellants being mistreated, abused or harmed in any manner. Having considered the case of Davis, the master considered the sum of \$20,000.00 granted there as recognition of the breach, is not to be applied carte blanche once there has been a breach. The master stated correctly that an assessment of the circumstances of the case to determine the appropriate sum for this initial breach was warranted. Having regard to the differences between the two cases, the master considered the sum of \$10,000.00 per appellant was justifiable for the initial breach. Having regard to marked differences between the cases, the sum of \$500.00 per day in Davis was not justified but a modest sum of \$150.00 per day is reasonable compensation. The master proceeded to award a total sum of \$23,000.00 for unlawful detention with an uplift of a further sum of \$5000.00 as vindication and for also being falsely imprisoned. In his submissions on appeal, counsel for the appellants, referred to the case of Guishard and compared the sums which were ordered there to what the master ordered and insisted that the sums awarded by the master were inordinately low so as to cause this court to interfere with the award. The Court was of the view that the master carried out an evaluative assessment. The learned master clearly explained how she arrived at the quantum, she considered the cases before her and distinguished them. The Court was not of the view that the master was plainly wrong in the exercise of her discretion nor that this ground was one for which called for appellate intervention.

With respect to damages for freedom of movement, undoubtedly the seizure of the passports amounted to interference with movement and inhibited travel overseas, the master considered that a sufficient award of damages was \$5,000.00. The master went on to award the sum of \$4,000.00 for the breach of the right to property/possession of the passports. Both parties referred the master to the case of Oliveira as guidance on the amount to be awarded. The master noted pertinent differences between the present case, notably the length of the seizure of the passport and the non-compliance of the Crown to return the same. This resulted in Oliviera being deprived of his property for almost a year. The master contrasted the case with

the present case, where the appellants' passports were held for a period of 4 months and returned immediately upon the issue of a court order. Having considered the submissions and having perused the master's judgment, reasons, analysis and relevant law, the court was not of the view and it was not satisfied that it had been demonstrated, that the master erred in principle in her judgment or in the exercise of her discretion, made an award that was inordinately low or plainly wrong. It cannot be said that the amount awarded exceeded the generous ambit within which reasonable disagreement was possible. Consequently, the ground of appeal challenging the quantum of damages for this violation of the appellants' rights was dismissed. Accordingly, the Court ordered that the appeal be dismissed. In relation to costs, counsel for the appellants drew to the Court's attention that this was an administrative law matter and asked the court to consider rules 56.13 (5) and (6) of the Civil Procedure Rules 2000 and to make a cost order that each party should bear its own costs. Counsel for the respondent had no objections. The Court therefore ordered that each party should bear its own costs on appeal.

Case Name:

[1] Jayson Stickings

[2] Sharon Allen

v

**RBC Royal Bank of Canada
(now doing business as ACB Caribbean)**

**(ANUHCVAP2021/0023)
(ANTIGUA AND BARBUDA)**

Date:

Thursday 24th February 2022

Coram:

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

The Hon. Mde. Louise Esther Blenman, Justice of Appeal

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

Appearances:

Appellants:

Dr. David Dorsett with Ms. Latoya Letlow and Ms. Kerry Ann Reynolds

Respondent: Mr. Benjamin Drakes with Ms. Andrene Vanriel

Issues: Preliminary application by respondent - Rule 26.9(3) of the Civil Procedure Rules 2000 - General power of court to rectify matters where there has been a procedural error - Extension of time to file the notice of opposition and written submissions - No objection by appellants

Type of Order Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:
The application filed on 18th February 2022, as amended, is granted.

Reason: The Court was of the view that the application should be granted as there was no objection to the granting of the application by the appellants.

Case Name: [1] Jayson Stickings
[2] Sharon Allen
v
RBC Royal Bank of Canada
(now doing business as ACB Caribbean)
(ANUHCVP2021/0023)
(ANTIGUA AND BARBUDA)

Date: Thursday 24th February 2022

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

Appearances:
Appellants: Dr. David Dorsett with Ms. Latoya Letlow and Ms. Kerry Ann Reynolds

Respondent: Mr. Benjamin Drakes with Ms. Andrene Vanriel

Issues: Interlocutory appeal - Dismissal of application to set aside judgment in default of acknowledgement of service - Whether learned Master erred in dismissing application to set aside default judgment - Rule 5.15 of the Civil Procedure Rules - Proof of service by a specific method - Service via Fedex out of the jurisdiction - Claim form and statement of claim served via Fedex at address at which appellants no longer lived - Rule 12.4(a) of the CPR - Proof of service of claim form and statement of claim as condition precedent for grant of judgment in default of acknowledgement of service - No proof of service of claim form and statement of claim on appellants - Finding by learned Master that appellants unaware of claim in lower court - Whether application for default judgment should have been granted in light of learned Master's finding that the appellants were unaware of the claim in the lower court

Type of Order Directions

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. The parties are to file written submissions on the following authorities on or before 11th March 2022:
 - i. Abela and others v Baadarani [2013] UKSC 44;
 - ii. Barton v Wright Hassall LLP [2018] UKSC 12;
 - iii. Dubai Financial Group LLC v National Private Air Transport Company [2016] EWCA Civ 71
2. The Court shall render its judgment thereafter.

Reason: The Court was of the view that it would be fair and just for parties to be allowed to consider the principles set forward in the cases Abela and others v Baadarani [2013] UKSC 44, Barton v Wright Hassall LLP [2018]

UKSC 12 and Dubai Financial Group LLC v National Private Air Transport Company [2016] EWCA Civ 71
and further address the Court by way of written submissions.

Case Name:

**THE ATTORNEY GENERAL OF
ANTIGUA & BARBUDA**

V

HMB HOLDINGS LIMITED

**[ANUHCVAP2020/0011]
(ANTIGUA & BARBUDA)**

Date:

Friday, 25th February 2022

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Anthony Astaphan, SC with him Mrs. Carla Brookes- Harris , Mrs. Sherisa Thomas and Dr. David Dorsette

Respondent:

Mrs. Tana'ania Small-Davis, QC with her Mr. Jomokie Phillips

Issues:

Civil appeal - Appropriation by a debtor - Whether the judge erred when he failed to properly apply the evidence that the appellant had made an appropriation from at least 2015 when he insisted that the payments made by the government were to be appropriated to capital and not interest - Whether the judge erred when he ruled that the respondent had, despite the appropriation on payments made by the appellant, the right to allocate all payments prior to his judgment to interest and not capital and made the findings and orders in paragraphs 45 to 47 of his judgment - Whether the judge's ruling will lead to the exaggeration of the amounts lawfully due to the appellant and/or an

unjust enrichment - Limitation of action - Sections 9 and 13 of the Constitution of Antigua and Barbuda - Section 26 of the Limitation Act 1997 - Whether the respondent is by law not permitted or unable to recover arrears of interest for periods of time or years beyond the expiration of six years from the date on which the interest became due as prescribed by section 26(2) of the Limitation Act 1997

Type of Order

N/A

Result / Order:

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