

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
VIDEOCONFERENCE

SAINT LUCIA
7th- 10th MARCH 2022

APPLICATIONS/MOTIONS

Case Name:

[1] ANTHONY HENRY
[2] FRANCIS NOEL
v
THE ATTORNEY GENERAL

[SLUHCVAP2020/0004]
(SAINT LUCIA)

Date:

Monday, 7th March 2022

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]

Appearances:

Appellants:	Mr. Anand Ramlogan with him Ms. Lydia B. Faisal
Respondent:	Mrs. Tina Louison with her Mrs. Rochelle John-Charles

Issues:

Application for directions for payment of awards to respondents/claimants - CPR 2.4 and 23.13(1) - Money recovered by or for the benefit of a patient

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The awards made by the Court of Appeal in its judgment delivered on 10th November 2021 be paid into court on or before 22nd April 2022.**

2. Thereafter, the application for further directions as to the treatment of the funds comprising the awards be remitted to the court below.
3. There shall be no order as to costs on the application.

Reason:

This is an application by the applicant, the Attorney General, filed on 3rd February 2022 seeking directions for the payment of awards made by this Court in its judgment delivered on 10th November 2021. Counsel for the applicant made an oral application for the Court to remit the application for further directions to the High Court which would be better seized to hear the evidence in light of the fact that a curator(s) has yet to be appointed on behalf of the respondents/ claimants who are mental patients. There was no objection to this application by counsel for the respondents. The Court also considered that the awards made in its judgment ought to be paid into court prior to the further determination of the application, a course to which counsel for the parties agreed.

Case Name:

**[1] ANTHONY HENRY
[2] FRANCIS NOEL
v
THE ATTORNEY GENERAL
[SLUHCVAP2020/0004]
(SAINT LUCIA)**

Date:

Monday, 7th March 2022

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]**

Appearances:

Applicants:

Mr. Anand Ramlogan with him Ms. Lydia B. Faisal

Respondent:

Mrs. Tina Louison with her Mrs. Rochelle John-Charles

Issues:

Petition by appellants for conditional leave to appeal to Her Majesty in Council - Sections 108(1)(a) and 108(2)(a) of the Constitution of Saint Lucia - Value of the claim - Appeal as of right - Whether there is a right to damages for breaches of constitutional rights - Whether Court can grant leave under section 108(1)(a) in circumstances where matter in dispute on appeal concerns whether there was a breach of constitutional rights for which no monetary value has been ascribed - Issue of great or general public importance or otherwise - Whether the Court's finding in respect of the Criminal Code and the Mental Hospitals Act raises an issue of great general or public importance or otherwise ought to be submitted to Her Majesty in Council.

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Leave to appeal is granted under section 108(2)(a) of the Constitution of Saint Lucia to Her Majesty in Council.**
- 2. Leave is granted on the following conditions:**
 - (i) That the applicants/intended appellants shall within 90 days of the date hereof enter into good and sufficient security to the satisfaction of the Registrar in the sum of five hundred pounds sterling for the prosecution of the appeal, the payment of all costs as may be payable by the applicants/intended appellants in the event of not obtaining an order granting final leave to appeal or of the appeal being dismissed for want of prosecution or in the event that the Privy Council orders the applicants/intended appellants to pay costs of the appeal.**
 - (ii) The attorneys-at-law for the applicants/intended appellants shall take all necessary steps to prepare the record of appeal in accordance with the provisions of rules 18 to 20 of the Judicial Committee Rules 2009 and Practice Directions 4.2.1 to 4.3.2 and 5; the same**

to be transmitted to the Registrar of the Court immediately upon final leave to appeal being granted and shall include the copy of the orders granting conditional leave and final leave.

- (iii) The applicant/intended appellant shall apply to this Court within 30 days of receipt of the certificate of the Registrar that the security for costs on the hearing had been given within the time prescribed to the satisfaction of Registrar and that the applicants/intended appellants have otherwise complied with this order for an order for final leave to appeal to Her Majesty in Council which application shall be supported by the certificate of the Registrar.

Costs on this petition shall be costs in the appeal to Her Majesty in Council.

Reasons:

This is a petition for conditional leave to appeal to Her Majesty in Council against the Court of Appeal's decision delivered on 10th November 2021 primarily on two bases. Firstly, that it is an appeal as of right under section 108(1)(a) of the Constitution of Saint Lucia ("the Constitution") which allows appeals from final decisions in any civil proceedings where the matter in dispute on the appeal to Her Majesty in Council is of the prescribed value or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards. Secondly, the petition is made on the basis that the decision is one which attracts section 108(2)(a) of the Constitution by which the Court in its discretion may grant leave to appeal to Her Majesty in Council in respect of decisions in any civil proceedings, where in the opinion of the Court of Appeal, the question involved in the appeal is one that by reason of its great general or public importance or otherwise ought to be submitted to Her Majesty in Council.

Notwithstanding the persuasive arguments of counsel for the applicants in terms of the innate value which must be ascribed to fundamental rights, the Court was persuaded by the arguments of counsel for the respondent, that the matters in issue do not meet the

threshold value as contemplated by section 108(1)(a) of the Constitution. The Court agreed with counsel for the respondent's argument that it would be inappropriate to ascribe a monetary value to such rights. In any event, the questions in issue before the Court were whether or not various rights of the applicants under the Constitution were breached which may or may not be visited with a compensatory award reflecting the gravity of such breach, if found. The Court was of the view that the applicants failed to satisfy this gateway under the Constitution and leave to appeal on this basis was refused.

The Court then considered the other limb on which the petition was grounded, being section 108(2)(a), which concerns whether the question in the appeal is one which in the opinion of the Court gives rise to a question of great general or public importance or otherwise which ought to be submitted to Her Majesty in Council. The Court was of the view that the constitutional provisions in play in the matter and the question of the application of the provisions of the Mental Hospitals Act in the context of the provisions of the Criminal Code dealing with persons who are deemed mentally unfit to plead, are matters for which the Court can benefit from a consideration by the final appellate Court. Accordingly, the Court was of the unanimous view that the applicants ought to be granted conditional leave to appeal to Her Majesty in Council under section 108(2)(a) of the Constitution.

JUDGMENT

Case Name:

**STEVEN GORAN STEVANOVICH
V
MARCUS WIDE and MARK MCDONALD
(as Joint Liquidators of Barrington Capital
Group Limited) (In Liquidation)**

**[BVIHCMAP2019/0004]
(TERRITORY OF THE VIRGIN ISLANDS)**

Date:

Monday, 7th March 2022

**Coram for
delivery:**

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

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

Appearances:

Appellant: Mr. Andrew Willins
Respondents: Mr. Shane Donovan

Issues:

Commercial appeal — Interlocutory appeal — Insolvency — Application to set aside the order of the joint liquidators — Sections 210 and 273 of the Insolvency Act, 2003 — Locus standi — Meaning of ‘person aggrieved’ in section 273 — Legitimate interest — Perversity test — Whether the judge erred in not granting the application to set aside the joint liquidators’ decision or direct that a section 210 application be made

Result and Reason:

HELD: dismissing the appeal and awarding costs to the respondents to be assessed if not agreed within 21 days, that:

1. A person aggrieved by an act, omission or decision of an office holder within the meaning of section 273 of the Insolvency Act may apply to the court to confirm, reverse or modify the act, omission or decision of the office holder. The applicant must show that they have sufficient interest to make the application in that they are: (i) a person qualified to make the application; and (ii) a proper person to make the application in the sense that they have a legitimate interest in the relief sought. In this case, Stevanovich did not seek relief in his capacity of a former sole director but as a defendant to proceedings brought against him for contribution to the claims which were admitted in the US Court. There was therefore no connection established between his previous directorship of the Company and the section 273 relief sought before the judge. In the premises, he is neither a creditor, contributory nor a debtor to the company in liquidation. Accordingly, in the circumstances, the learned judge did not err in finding that Stevanovich lacked sufficient standing to seek section 273 relief.

Section 273 of the Insolvency Act, No. 5 of 2003, Laws of the Virgin Islands applied; Deloitte & Touche AG v Christopher D Johnson and another [2000] 1 BCLC 485 applied; ABN AMRO Fund Services (Isle of Man) 24 Nominees Limited formerly Fortis (Isle of Man) Nominees Limited and Others v The Kenneth Krys et al BVIHCMAP2016/0011–BVIHCMAP2016/0015, BVIHCMAP2016/0023–BVIHCMAP2016/0028 (delivered 20th November 2017, unreported) applied; Kevin Gerald Stanford v Stephen John Akers et al BVIHCMAP2017/0019 (delivered 12th July 2018, unreported) applied.

2. The test for setting aside an act, omission or decision of an office holder under section 273 is one of perversity. Absent cases involving fraud and bad faith, the court will not interfere with the decision of a liquidator/office holder unless the decision is so perverse that no reasonable liquidator, properly advised, could have taken it. In this case, the question raised by the section 273 application was whether the liquidators were correct to admit the Trustee's claim on the basis that the Trustee's claim, made on the footing of the US default judgment, was enforceable against the Company. Such an evaluation did not involve an exercise of a discretion as to the realisation of assets in satisfaction of the debts of the company's creditors or any similar commercial or administrative function as generally within the unique province of the liquidator. Accordingly, and as the learned judge concluded, the perversity test would not apply to a review of the liquidators' decision to admit the Trustee's claims.

Re Edenote Ltd [1996]2 BCLC 389 applied; Mitchell and another v Buckingham International plc (In Liq.) and others [1998] 2 BCLC 369 applied; Mahomed and another v Morris and others [2000] 2 BCLC 536 applied; Adams and others v Cape Industries plc and another [1990] 1 Ch 433 applied.

3. Section 210(2) of the Insolvency Act gives the court specific powers upon the application of a liquidator or where the liquidator declines to make an application, a creditor, to expunge or amend an admitted claim in liquidation if it is satisfied that the claim should not have been admitted or should be reduced. Section 210 is a tool which a liquidator or, exceptionally, a creditor may seek judicial intervention in the context of a liquidation. The making of an

application under section 210(2) is within the province of the liquidator or a creditor where the liquidator is not minded to make the application. It is not for the court to direct that such an application be made, but for those so empowered by the statute to make that application to address their own concerns and protect their own interests. As Stevanovich is neither a liquidator nor creditor and the respondents' consistent defence of their decision to admit the Trustee's claims is that they do not, at this stage, desire to make a section 210 application, therefore section 210 is not engaged.

Section 210 of the Insolvency Act, No. 5 of 2003, Laws of the Virgin Islands applied.

APPEALS

Case Name:

[1] LAU MAN SANG, JAMES

[2] LUNG HUNG CHEUK

[3] CHEUNG WING SUM, ALBERT

[4] NGAI HIN KWAN, ALBERT

[5] YEUNG YOU CHONG

[6] ZHANG GUO WEI

V

[1] KING BUN LIMITED

[2] KENCY LTD

[3] KAR KWONG DEVELOPMENT
LIMITED (trading as Kai Kwong
Trading Company)

[4] KHI CAPITAL LIMITED

[5] KENTRUE COMPANY LIMITED

[6] HUI PAK KONG

(Suing in the name and on behalf
of themselves and all other
shareholders in Vanway
International Group Limited, except
the First and Second Defendants)

[7] Chau Cheuk Wah, Angua

[8] Vanway International Group
Limited

[BVIHCMAP2021/0045]

(TERRITORY OF THE VIRGIN ISLANDS)

Date: Monday, 7th March 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Richard Hacker Q.C with him Mr. Olivier Kalfon and Mr. Nicholas Brookes

Respondents: Mr. Jern-Fei Ng QC with him Mr. Jerry Samuel, Dr. Alecia Johns and Mr. James Bailey for the 1st -6th respondents
No appearance for the 7th and 8th respondents

Issues: Application for leave to appeal directions given by judge - Whether directions given by learned judge fundamentally inconsistent with established authority - Whether learned judge was obligated to apply the principles of Tang Man Sit v Capacious Investments [1996] A.C. 514 and Island Records Ltd v Tring International plc [1995] 3 All ER 444 in exercising discretion - Whether judge erred in refusing to accept that the relief sought by the respondents was inconsistent and alternative - Whether learned judge was wrong not to make any order providing for the respondents to elect between inconsistent remedies - Whether applicants have met the threshold for leave to appeal - Realistic prospect of success - Joinder - Stay of proceedings pending appeal- Stay of Directions Order pending the determination of the appeal - Test for determining whether stay should be granted – Whether applicants satisfied the test for the grant of a stay - Whether applicants provided cogent evidence that appeal would be stifled or rendered nugatory if stay not granted

Type of Order: Oral Decision

Result: IT IS HEREBY ORDERED THAT:
1. The application for leave to appeal the Directions Order dated 10th December 2021 is granted.

2. The notice of appeal is to be filed in accordance with the Civil Procedure Rules 2000.
3. Costs on the application for leave to appeal the Directions Order to be costs in the appeal.
4. The application for a stay of the substantive proceedings or alternatively the Directions Order is refused.
5. The application that the substantive appeal, consequential appeal and the directions appeal be joined under Civil Appeal No. 34 of 2021 is granted.
6. Costs to the 1st, 2nd, 3rd, 4th, 5th, and 6th respondents on the stay applications, such costs to be assessed by a judge of the Commercial Court if not agreed by the parties within 21 days of the date of this order.
7. Costs on the application for joinder of the appeals to be costs in the appeal.

Reason:

Before the Court was a notice of application filed on behalf of six applicants, who are the appellants in what has been described as the ‘substantive appeal’, which is an appeal filed on 17th November 2021 by which the said six applicants, who were defendants in the court below, appealed against the order and written judgment of a judge of the Commercial Court, Wallbank J dated 5th October 2021 and 20th July 2021, respectively. By the notice of application, the said six applicants sought certain orders of the Court of Appeal with respect to the orders made by the learned judge in the substantive proceedings on 10th December 2021, in respect of matters consequent upon judgment.

These orders fell into two categories. The first, described as the “Consequential Orders”, were orders made by the learned judge consequent upon his written judgment on liability only in the substantive proceedings before the Commercial Court. The second set of orders are referred to as the “Directions Orders”,

which were made by the learned judge also on 10th December 2021. By those orders, the judge gave certain directions relative to the second part of the trial, that is, the trial of the issues relating to the appropriate remedies and quantum of damages. Copies of both orders formed part of the record of appeal before the Court.

By the notice of application, the applicants/appellants first sought, on an urgent basis, an interim stay of the proceedings in BVIHC (Com)2017/0086 or, alternatively, the order for directions made by the learned judge on 10th December 2021. By an order of a single judge of this Court, made on 18th January 2022, that limb of the application for a stay on an urgent basis was refused.

By the said order of a single judge, the application for leave to appeal the Directions Order was adjourned for consideration by the Full Court, as was the application for a stay of the substantive proceedings and of the Directions Order. The said order of the single judge dated 18th January 2022 determined, effectively, that leave was not required by the applicants/appellants to appeal the Consequential Orders made by the learned judge on 10th December 2021. During the course of this hearing, the Court was informed by learned counsel for the applicants/appellants, that the said parties had in fact filed a notice of appeal against the said Consequential orders.

Early on in the proceedings, the Court, having heard submissions from learned counsel for the applicants/appellants, with respect to the limb of their application seeking leave to appeal the Directions Orders, granted leave and ordered that the matter of the filing of the notice of appeal and other aspects of that appeal, would proceed in accordance with the Civil Procedure Rules 2000.

That left for consideration by the Court, the limb of the application for a stay of the substantive proceedings and, alternatively, of the Directions Order and the application for joinder of these appeals with the hearing of the substantive appeal. Having considered the submissions, both in writing and those made orally by learned counsel for the applicants/appellants and learned counsel for the 1st, 2nd, 3rd, 4th 5th and 6th respondents (the 7th respondent not taking part in the proceedings), and having considered the principles of

law as set out in Tang Man Sit v Capacious Investments [1996] A.C. 514 which was a decision of the Privy Council and the case of Island Records Ltd v Tring International plc [1995] 3 All ER 444, both of which were alluded to and relied on by counsel for the parties in the course of their submissions, and having considered the Court's powers with regard to the granting of a stay of proceedings or a stay of an order made by a court below, and in particular, having considered the five principles set out in the case of C-Mobile Services Limited v Huawei Technologies Co. Limited BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported) (a decision of this Court), it was the Court's unanimous decision that the application for a stay of the substantive proceedings or alternatively, of the Directions Order, should be refused.

In relation to the five principles set out in C-Mobile, the first being that the court must take into account all the circumstances of the case, the Court had regard to the circumstances of the case, particularly as it related to the application of the principles guiding the disclosure of information and documents as set out in the two cases of Tang Man Sit and Island Record Ltd previously mentioned. The second limb of the test is that a stay is the exception rather than the general rule. The Court was of the opinion that that limb spoke for itself and went on to consider the third limb of the test, that is, that the party seeking the stay should provide cogent evidence that the appeal would be stifled or rendered nugatory unless the stay is granted.

Having considered the grounds for the application for a stay, the affidavit in support and submissions of learned counsel for the applicants, the Court was not satisfied that the applicants had provided cogent evidence that the appeal, that is, the judgment in the substantive matter or the Directions Order would be rendered nugatory or stifled unless a stay was granted.

The fourth limb of the test in C-Mobile is that in exercising its discretion, the Court applies, what is, in effect, a balance of harm test, in which the likely prejudice to the successful party must be carefully considered. Having considered this test and the submissions on both sides in relation to balance of harm and the issue of prejudice, the Court was satisfied that the balance of harm lay in favour of the respondents who would, in the Court's view, be

prejudiced if the Court were to grant a stay of the Directions Order. In addition, the court did not discern any real prejudice, should a stay of the judgment in the substantive matter not be granted.

The fifth principle is that the Court must take into account the prospects of the appeal succeeding, but only where there are strong grounds of appeal or a strong likelihood the appeal would succeed which would usually enable a stay to be granted. The Court considered the submissions by learned counsel for the applicants, in which he submitted that the applicants had strong grounds of appeal against the Directions Order made by the learned judge. In the Court's view, those grounds, whilst they met the threshold test of a realistic prospect of success sufficient to grant leave to appeal, the Court was not satisfied that they rose to the level of strong grounds of appeal such that would propel the Court to grant a stay of either the Directions Order or of the substantive proceedings, particularly having regard to the appeal against the judgment on liability which was in large measure an appeal against findings of fact made by the learned judge.

In the circumstances, and applying the principles as set out in Novel Blaze Limited (In Liquidation) v Chance Talent Management Limited BVIHCVAP2020/0006 (delivered 9th July 2020, unreported), the Court reached the unanimous view that the applicants had not satisfied the test necessary for the grant of a stay of either the Directions Order or of the substantive proceedings, a stay being the exception rather than the general rule. Accordingly, those limbs of the applicants' notice of application filed on 23rd December 2021 were refused.

The fifth matter which had been sought in that notice of application, was that upon leave to appeal being granted as it relates to both the Consequential Order and the Directions Order, the substantive appeal, the consequential appeal and the directions appeal be joined under Civil appeal No. 34 of 2021 (currently referred to as the substantive appeal). The Court was satisfied, and there being no real objection to the joinder application, that the consequential appeal and directions appeal ought to be joined with and be heard at the same time as the substantive appeal.

As it relates to cost, in keeping with the Civil Procedure Rules 2000 and applicable jurisprudence, costs follow the event. Accordingly, the 1st- 6th respondents were entitled to their costs on the stay applications.

APPLICATIONS/MOTIONS

Case Name: THERESA MARCELLIN
V
ST. LUCIA ELECTRICITY SERVICES LIMITED
[SLUHCVAP2018/0038]
(SAINT LUCIA)

Date: Tuesday, 8th March 2022

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

Appearances:

Appellant/Respondent:	No appearance
Respondent/Applicant:	Mr. Deale Lee

Issues:

Civil appeal - Application to strike out notice of appeal for want of prosecution - Rules 62.20 and 26.3(1)(a) of the Civil Procedure Rules 2000 ('CPR')- Failure to file record of appeal within stipulated time - Failure to apply for an extension of time - Principles guiding discretion to strike out appeal - Delay - Whether length of delay was inordinate - Whether appellant has reasonable prospects of success on appeal - Overriding objective – CPR Rules 1.1(2) and 1.3

Type of Order: Oral decision

Result: IT IS HEREBY ORDERED THAT:
1. The notice of appeal struck is out.

2. The orders made by the judge on 4th October 2018 are affirmed.
3. The matter will proceed.
4. Cost on the strike out application in the sum of \$1000.00 to be paid within 14 days of the date of this order.

Reason:

On 16th November 2018, Theresa Marcellin executrix of the estate of Joseph St. Rose appealed against the decision of a judge of the High Court contained in a judgment dated 4th October 2018. In her judgment, the learned judge ordered that a dispute between the parties and the respondent, which was referred to arbitration on which the arbitrator had made certain awards, should be remitted to the arbitrator for determination of aspects of the terms of reference which had not been dealt with by the arbitrator.

Notice of availability of the transcript was given to the parties on 14th March 2019. In accordance with rule 62.1(2) of the Civil Procedure Rules 2000, within 42 days of receipt of the notice of the availability of the transcript, the appellant must prepare and file the record of appeal. This means that the record of appeal in this matter had to have been filed no later than 26th April 2019. To date, which is nearly three years on, the appellant has failed to file the record of appeal.

The appeal came up for status hearing before the Chief Registrar on 21st June 2021. The appellant did not attend and was not represented at the status hearing. The appeal was adjourned to the next status hearing for Saint Lucia which was scheduled for 1st November 2021, for the appellant to indicate whether she was still interested in prosecuting the appeal. In the meantime, on 25th October 2021, the respondent to the appeal, who is the applicant in the matter before us, filed an application to strike out the notice of appeal on the grounds that the appellant has not prepared and filed the record of appeal and the overriding objective requires that cases be dealt with justly and expeditiously and that this Court is empowered to strike out the appeal where, as in the present case, there has been a failure to comply with the rules.

The strike out application was supported by an affidavit sworn to by the respondents' general counsel

or company secretary. The application to strike out the appeal was served on the appellant on 3rd November 2021 and was listed for hearing at this sitting of the court. Also, on 3rd November 2021, both parties were notified of the hearing today. The submissions in support of the application were filed on 18th February 2022 and was served on the respondent on 28th February 2022. The case management notes for this sitting of appeal, indicate that the appellant was not represented at the case management conference. At the said case management conference, counsel for the respondent informed the Court that the respondent/applicant will file submissions in support of the application by 18th February 2022. On 17th February 2022, the respondent did file the skeleton arguments in support of his application.

To date, the appellant has taken no steps, responded to no notices, attended no case management conferences or status hearings in relation to her appeal since the filing of the notice of appeal some 3 years and 4 months ago to date when the appellant/respondent was served to appear. There is still no appearance by/of the appellant/respondent and no documentation filed by the appellant/respondent and no indication whatsoever that respondent intends to proceed with the appeal.

Consequently, the notice of appeal filed on 16th November 2018 was struck out and the appeal dismissed.

Case Name:

**ADELA SAMANTHA FREDERICK
v
ALBAN POLEON**

**[SLUMCVAP2021/0003]
(SAINT LUCIA)**

Date:

Tuesday, 8th March 2022

Coram:

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

Appearances:

Appellant:	Mr. Tiris Frederick
Respondent:	Mr. Eghan Modeste

Issues: **Application to discontinue appeal - Consent order**

Type of Order: **Oral decision**

Result: **IT IS HEREBY ORDERED BY CONSENT THAT:**

1. The appeal is discontinued.
2. Costs to the respondent fixed in the sum of \$1000.00 to be paid by the appellant on or before 22nd March 2022.

Reason: **The Court considered that the parties agreed to a consent order that the appeal be discontinued and that the appellant pay the sum of \$1000.00 to respondent on or before 22nd March 2022. The Court accordingly so ordered.**

Case Name:

**SYLVESTER JAMES
v
ANSELMA MEDERICK**

**[SLUHCVAP2020/0019]
(SAINT LUCIA)**

Date: **Tuesday, 8th March 2022**

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

Appearances:

Appellant/Respondent:	Mr. Duane Jn. Baptiste
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Respondent/Applicant: Mr. Tiris Frederick

Issues: Application to strike out notice of appeal- Rules 62.9 and 62.11 (a) of the Civil Procedure Rules 2000- Failure to file skeleton arguments and record of appeal- Unavailability of transcript

Type of Order: Adjournment

Result: IT IS HEREBY ORDERED THAT:
1. The hearing of the application is adjourned to Thursday 10th March 2022 at 9: 00 a.m. for a report by counsel on both sides on their agreement on the inclusion of the notes of the proceedings before the learned master.

Reason: The application before the court was for the striking out of the notice of appeal. Counsel for the respondent/applicant contended that the appeal should be struck out for non-compliance with the Civil Procedure Rules 2000 ('CPR') since the appellant/respondent had not filed skeleton arguments in accordance with CPR Rule 62.11(a). The court was of the view that a more appropriate course of action was to make an order that allows the matter to proceed and upon failure to comply with the order, the appeal may be struck out. In addition, CPR Rule 62.9 could not be complied with as the proceedings before learned master were not recorded. Thus, the court, acting within its powers to put matters right, gave counsel the opportunity to consider their respective notes in relation to the proceedings to determine whether an agreement could be arrived at on what occurred on the day of hearing.

Case Name:

**[1] DELLA VALLERY NOLAN nee JUDE
[2] BEVERLY JUDE- PORTER**

Appellants

And

**[1] DIAN JUDE
[2] VANDYKE JUDE**

Respondents

And

**[1] MARIGOT VIEW PROPERTY LTD.
[2] IAIN JAMES KER FIELDER**

Applicants

**[SLUHCVAP2017/0025]
(SAINT LUCIA)**

Date: **Tuesday, 8th March 2022**

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

Appearances:

Appellants/Respondents: **Mrs. Maureen John-Xavier**

Respondent: **Mrs. Edith Petra Jeffrey- Nelson for the 2nd respondent Vandyke Jude**

Respondents/Applicants: **Ms. Natalie Augustin**

Issues: **Application for cancellation of an inhibition- Section 85 (d) of the Land Registration Act Cap 5.01- Inhibition arising from order of Court of Appeal- Whether Court of Appeal made an order on insufficient evidence- Whether Court of Appeal can conduct a hearing of its own decision and set aside its own order**

Type of Order: **Oral Decision**

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

- 1. The application is dismissed.**
- 2. Costs to the appellants/respondents, fixed in the sum of \$1,000.00 to be paid by the**

applicants within 28 days of the date of this order.

Reason:

The Court considered an application for the removal of an inhibition on a parcel of land registered as Block 0443B Parcel 211 pursuant to Section 85 (d) of the Land Registration Act Cap 5.01 of the Laws of Saint Lucia. Counsel for the applicants submitted that removal of the inhibition would not prejudice the appellants, that the inhibition may have been issued by this Court because of insufficient evidence before the Court and that the applicants have an overriding interest in the property registered (as a caution) since 2008.

However, upon hearing counsel for the applicants' preliminary submissions, the court was of view that the main issue for determination was whether the Court can remove an inhibition arising directly as a consequence of an order of this Court? The Court indicated to counsel that the inhibition was placed on the said parcel of land as a consequence of an order of the Court dated 18th September 2021 as evidenced by the Certificate of Result of Appeal and which set aside all instruments by which various parcels of lands were transferred to Vandyke Jude and Dian Jude (the respondents), on account of undue influence. The Court cannot overturn its own decision. If that were to be allowed, there would never be an end to litigation. The Court was of the view that it was not the appropriate court to grant the remedies which the applicants sought and that the applicants would have to seek its remedies from a higher court, namely the Privy Council. The Court also indicated that in the circumstances, it was not necessary to hear the respondents on the matter.

Accordingly, the appeal was dismissed and costs awarded to the respondents.

JUDGMENTS

Case Name:

CHERYL THOMSON

V

THE QUEEN

**[ANUHCRA2021/0003]
(ANTIGUA AND BARBUDA)**

Date: Wednesday, 9th March 2022

**Coram for
Delivery:** The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Mr. Fitzmore Harris
Respondents:	Mr. Sean Nelson holding for Ms. Rily Adams

Issues:

Criminal appeal – Appeal from order made in criminal cause or matter - Appeal as of right – Whether appeal lay as of right - Section 121(a) of the Constitution of Antigua and Barbuda – Right to appeal where question concerning the interpretation of the Constitution arises – Whether any question properly arose as to the interpretation of section 15(1) of the Constitution – Section 121(b) of Constitution – Right to appeal in cases concerning exercise of High Court’s jurisdiction conferred by section 18 of the Constitution – Whether judge’s order was a final decision given in the exercise of High Court’s jurisdiction conferred by section 18 of the Constitution – Rule 62.1(3) of the Civil Procedure Rules 2000 – Test to determine whether an order or judgment is final or interlocutory – Application Test - Leave to appeal – Whether leave to appeal should be granted - Section 31(2)(a) of the Eastern Caribbean Supreme Court Act – Bar on appeals from orders made in criminal cause or matter

**Result and
Reason:**

Held: dismissing the appeal and the application for leave to appeal, that:

- 1. The question whether a case has received a fair hearing within the meaning of section 15(1) of the Constitution is not a question of interpretation of that enactment. It is a question of the application of these words to the facts of the particular case. Despite counsel's argument that the appellant's right to a fair hearing was violated, this did not warrant leave pursuant to section 121(a) of the Constitution. Whilst the application of section 15(1) of the Constitution may have been in issue, on the facts, no question arose as to the interpretation of that section. Consequently, no appeal lay as of right pursuant to section 121(a).**

Eric Frater v The Queen [1981] 1 WLR 1468 applied; Eric Joseph v The State [1988] UKPC 20 applied.

- 2. For an appeal to lie as of right pursuant to section 121(b) of the Constitution, there must have been a final decision given in exercise of the jurisdiction conferred on the High Court by section 18 of the Constitution. To determine whether a decision is final, the applicable test is the application test, and the court will examine the application pursuant to which the order was made. If the decision made would be determinative of the issues that arise on the claim, whichever way the application could have been decided, then the decision would be a final one. On the facts, the questions at issue in the proceedings before the High Court included, inter alia, whether the decision of the magistrate to commit was lawful, whether the magistrate wrongly admitted evidence and whether the appellant's constitutional rights were breached. Applying the application test, the judge's decision was not a final one since it would not**

have determined the matter in litigation for whichever side the decision had been given. Consequently, no appeal lay as of right pursuant to section 121(b) of the Constitution.

Jacpot Ltd. v Gambling Regulatory Authority [2018] UKPC 16 applied; Rule 62.1(3) of the Civil Procedure Rules 2000 applied; Othniel R Sylvester v Satrohan Singh [1995] ECSCJ No. 2 followed; Oliver McDonna v Benjamin Wilson Richardson AXAHC VAP2005/0003 (delivered 29th June 2007, unreported) followed.

3. Counsel for the appellant contended that section 31(2)(a) of the Eastern Caribbean Supreme Court Act contravened section 121 of the Constitution. However section 31(2)(a) conforms with the Constitution by virtue of paragraph 2 of Schedule 2 to the Antigua and Barbuda Constitutional Order 1981. Consequently, section 31(2)(a) operates as a jurisdictional bar in circumstances where an appellant fails to satisfy the requirements of section 121 of the Constitution. On the facts, the appellant failed to meet the requirements for leave as of right as per section 121 of the Constitution. Therefore, the judge's order, having been made in a criminal cause or matter, is caught by the prohibition contained in section 31(2)(a). Consequently, no leave to appeal can be granted as no appeal lies.

Section 31(2)(a) of the Eastern Caribbean Supreme Court Act Cap. 23, Revised Laws of Antigua and Barbuda 1992 applied.

APPLICATIONS/MOTIONS

Case Name:

[1] FRANCIS CHITOLIE
[2] VANCE CHITOLIE

V
ST. LUCIA NATIONAL HOUSING
CORPORATION

[SLUHCVAP2020/0022]
(SAINT LUCIA)

Date: Wednesday, 9th March 2022

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

Appearances:

Appellants: Dr. LLOYD Barnett and Mr. Weiden Daley and Dr. Synther Chitolie

Respondent: Mrs. Edith Petra Jeffrey-Nelson and Mrs. Esther Green-Ernest

Issues: Motion for conditional leave to appeal to her Majesty in Council- Section 108(1)(a) of the Constitution of Saint Lucia- Stay pending appeal to Her Majesty in Council- Whether applicants satisfied the test for the grant of a stay- Test for grant of stay in C-Mobile Services Limited v Huawei Technologies Co. Limited- Whether injunction restraining the respondent pending the determination of the appeal should be granted

Type of Order: Oral Decision

Result: IT IS HEREBY ORDERED THAT:

1. Leave to appeal is granted under section 108(1)(a) of the Constitution of Saint Lucia to Her Majesty in Council.
2. Leave is granted on the following conditions:
 - (a) That the applicants/intended appellants shall within 90 days of the date hereof enter into good and sufficient security to the satisfaction of the Registrar in the

sum of five hundred pounds sterling for the prosecution of the appeal, the payment of all costs as may be payable by the applicants/intended appellants in the event of not obtaining an order granting final leave to appeal or of the appeal being dismissed for want of prosecution or in the event that the Privy Council orders the applicants/intended appellants to pay costs of the appeal.

(b) The applicants/intended appellants shall take all necessary steps to prepare the record of appeal in accordance with the provisions of rules 18 to 20 of the Judicial Committee Rules 2009 and Practice Directions 4.2.1 to 4.3.2 and 5; the same to be transmitted to the Registrar of the Court immediately upon final leave to appeal being granted and shall include the copy of the orders granting conditional leave and final leave.

(c) The applicants/intended appellants shall apply to this Court within 30 days of receipt of the certificate of the Registrar that the security for costs ordered herein had been given within the time prescribed to the satisfaction of Registrar and that the applicants/intended appellants have otherwise complied with this order for an order for final leave to appeal to Her Majesty in Council which application shall be supported by the certificate of the Registrar.

3. A stay of execution of paragraphs 2-6 inclusive of paragraph 204 of the judgments and orders of the High court as affirmed by the decision of the Court of Appeal is granted to wit:

“2. The defendants shall at their own cost demolish and remove all structures including houses, fences, animal pods or any other structure whatsoever on Block 1020B Parcels 441, 444, 446 and 447 (“the Property”) and give up vacant possession thereof, after the lapse of nine (9) months

from the date of this judgment, **UNLESS** the defendants sooner purchase from NHC at market value the occupied area as shown and determined by the lodged survey plan number VF2237T dated 20th August 2013 by Allan Hippolyte (“the Survey”) subject to a valuation to be conducted by a valuer to be agreed by the parties.

3. The valuer is to provide a valuation of the market value of the area of the Property occupied by the defendants as shown and determined by the Survey.

4. The cost of the valuation is to be borne by NHC and the defendants equally.

5. Should the defendants agree to purchase the occupied area as shown and determined by the Survey, the defendants shall demolish and remove all structures, whatever they may be, erected outside of that occupied area.

6. Should the defendants agree to purchase the occupied area as shown and determined by the Survey and the transaction would not be fully completed by the end of the nine (9) month period stated in paragraph 2, the parties are at liberty to apply to the Court for an extension of the nine (9) month period, prior to the expiration of that period”.

4. The application for an injunction is dismissed.

5. Costs in the appeal to Her Majesty in Council.

Reason:

The court considered a notice of motion filed by the applicants/intended appellants on 21st January 2022. By way of that application, the applicants/intended appellants sought conditional leave to appeal to Her Majesty in Council from the decision of the Court of Appeal delivered on 13th January 2022 in Civil Appeal No. 22 of 2020. The court was of the view that the

applicants/intended appellants met the threshold for the grant of conditional leave to appeal to Her Majesty in Council and granted that limb of their application subject to the conditions which are set out in paragraph 2 (a)-(c) in the Order of the Court above.

The second limb of the application by the applicants/intended appellants was that there be a suspension of execution or a stay pending the determination of the appeal to Her Majesty in Council of:

- (a) The judgment and orders of Justice Cenac-Phulgence dated 16th July 2020 in the High Court Claim No. 263 of 2009 as set forth in subparagraphs 1 to 8 (inclusive) of paragraph 204 of the written judgment of the learned judge, and**
- (b) The judgment and orders of the Court of Appeal delivered on 13th January 2020 in Civil Appeal No. 22 of 2020.**

By the third limb of the application, the applicants/intended appellants, sought, effectively, an injunction restraining the respondent pending the determination of the appeal to Her Majesty in Council from:

- (a) Entering or remaining upon or taking any steps or action for the removal or eviction of the applicants/intended appellants or either of them from any of the lands being the subject matter of Civil Appeal No. 22 of 2020;**
- (b) Take any steps to demolish any existing structures on, nor to effect any mutation, conveyance, hypothecation, sale, charge, lease, encumbrance or disposition of any of the lands, the subject matter of Civil Appeal No. 22 of 2020;**
- (c) Costs incidental to the application be costs in the appeal to her Majesty in Council.**

Having given careful consideration to the written and oral submissions of learned counsel for the applicants/intended appellants and learned counsel for the respondent, and also having considered the principles relating to the grant of a stay of execution as set out in the written submissions of both parties, which principles it has been accepted by learned counsel are not in dispute or controversy. In particular, having considered the principles applicable to a grant

of a stay as set out in C-Mobile Services Limited v Huawei Technologies Co. Limited BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported), the Court concluded and was satisfied that a limited stay of certain orders of the High Court, as affirmed by the Court of Appeal, ought to be granted pending the determination of the appeal to Her Majesty in Council. More specifically the Court was of the view that a stay ought to be granted of sub-paragraphs 2 to 6 inclusive of the orders of the High Court set out in paragraph 204 of the judgment, which sub-paragraphs were affirmed by the decision of the Court of appeal.

With regard to the third limb of the applicants'/intended appellants' application, which effectively sought an injunction, that limb of the application was dismissed. The only issue which remained for the Court's determination was the issue of costs. It was noted in the applicants'/intended appellants' notice of motion that they had offered that the costs of or incidental to their application should be costs in the appeal to Her Majesty in Council. In those circumstances, learned counsel for the respondent was invited to state their position on the question of costs. Counsel made no objection to the position taken by the applicants/intended appellants.

In light of this, the Court ordered that the costs of and incidental to the application, including costs relating to the application for conditional leave to appeal to Her Majesty in Council and the application for a stay, would be costs in the appeal to Her Majesty in Council.

Case Name:

[1] FRANCIS MAURICE

[2] LEO WILLIAMS

Applicants/Intended Appellants/Claimants
and

[1] JULIANA JOSEPH

[2] NYRON TAYLIAM

Respondents/Second and Third Named Defendants
and

**[1] AL HAMID HOUSING CONSTRUCTION
COMPANY LIMITED**

First Named Defendant

**[SLUHCVAP2021/0005]
(SAINT LUCIA)**

Date: Wednesday, 9th March 2022

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

Appearances:

Applicants/ Intended Appellants:	Mrs. Wauneen Louis-Harris and Ms. Mertle John
Respondents:	Mr. Leslie Prospere

Issues: Motion for leave to appeal to Her Majesty in Council-
Section 108(2)(a) of the Constitution of Saint Lucia-
Criteria for great general or public importance-
Whether the interpretation and application of rule
26.1(k) led to draconian consequences so as to be of
great general or public importance

Type of Order: Oral Decision

Result: IT IS HEREBY ORDERED THAT:
1. The motion is dismissed.

2. Costs to the 2nd and 3rd respondents
fixed in the sum of \$2,500.00 to be paid on
or before the 31st March 2022.

Reason: Before the Court was a motion for leave to appeal to
Her Majesty in Council against a decision of the Court
dated 8th November 2021 in which it refused to vary an
order of a single judge of the Court. The single judge,
by an order dated 25th May 2021, refused an application
by the applicants for an extension of time for leave to
appeal against the order of the Master which struck out
the applicants' claim against the 2nd and 3rd
respondents.

Early in the proceedings, counsel for the applicants conceded that the circumstances of the case do not fall within the scope of Section 108(1)(a) of the Constitution of Saint Lucia for a grant of leave to appeal to Her Majesty in Council as of right and withdrew that limb of the application. Counsel therefore proceeded under Section 108(2)(a) of the Constitution of Saint Lucia which deals with civil proceedings where the matter in the opinion of the Court gives rise to an issue of great general or public importance or which otherwise ought to be submitted to Her Majesty in Council. In her submissions, counsel for the applicants argued before the Court that, the refusal of the application for an extension of time to appeal by the single justice of appeal, led to an interpretation and application of Rule 26.1(k) of the Civil Procedure Rules 2000 which had draconian consequences and was therefore of great general and public importance. Counsel sought to rely on the case of Barbuda Enterprises Ltd. V. Attorney General of Antigua and Barbuda (1993) 42 WIR 183 to support these submissions.

However, the Court was not satisfied that the circumstances of this case met the threshold for a grant of leave to appeal to Her Majesty in Council under section 108(2)(a) of the Constitution of Saint Lucia, on any of the bases contained therein, either collectively or individually. The Court was of the view that the principles governing an extension of time are well settled and a complaint which is in reality about the manner in which the court exercised its discretion is not one on which leave would ordinarily be granted. The Court cited and relied on paragraph 10 of the decision in Commodo Holdings Limited v Renaissance Ventures Limited and Joseph Katz BVIHCMAP2014/0032 (delivered 3rd May 2016, unreported).

Accordingly, the motion was dismissed. The Court indicated that it was not necessary to hear the respondents on the matter save as to the issue of costs. Costs were awarded to the respondents.

JUDGMENTS

Case Name:

KENNETH M. KRYS

(as Liquidator of Fairfield Sentry)

V

FARNUM PLACE LLC

[BVIHCVAP2013/0014]

(TERRITORY OF THE VIRGIN ISLANDS)

Date: Thursday, 10th March 2022

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

Appearances:

Appellant:	Mr. Alistair Abbott
Respondent:	Ms. Allana-J Joseph

Issues: *Civil appeal – Exercise of discretion by trial judge - Appellate interference with exercise of judicial discretion – Refusal of sanction to appeal to US Second Circuit Court of Appeals – Section 186(3) of the Insolvency Act 2003 – Whether learned judge erred in exercise of his discretion in refusing sanction to appeal to US Second Circuit*

Result/Reason: Held: Dismissing the appeal, and ordering that the costs in the appeal be costs in the liquidation, that:

1. An appellate court would not interfere with the exercise of a trial judge's discretion unless it can be shown that the trial judge was plainly wrong, or that he took into account matters he should not have taken into account or disregarded matters which he should have regarded. The burden for the appellant is a high one and an appellate court should resist the temptation to substitute their own discretion for that of the judge. On the facts, the learned judge examined the matter holistically, and took into account all the circumstances. He rightly recognised that the question of whether to sanction the appeal was a matter for

determination by reference to BVI law. Furthermore, he did not err in considering it inappropriate for the court to sanction attempts to cause the agreement to become frustrated. The learned judge did the necessary evaluation, paid regard to the material factors and attributed such weight as he thought necessary. The judge clearly explained the factors which informed his decision and thus, it cannot be said that he was plainly wrong or that he erred in his discretion in refusing to sanction the Liquidator's appeal.

Dufour and others v Helenair Corporation Ltd. and others (1996) 52 WIR 188 followed; Piglowska v Piglowski [1999] 1 WLR 1360 applied.

Case Name:

ELIZABETH DARIUS-CLARKE

V

THE ATTORNEY GENERAL OF SAINT LUCIA

**[SLUHVAP2020/0002]
(SAINT LUCIA)**

Date:

Thursday, 10th March 2022

Coram for
Delivery:

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

Appearances:

Appellant:

Mr. Horace Fraser

Respondents:

Mrs; Rochelle John-Charles

Issues:

Civil appeal – Termination of an ambassador without cause – Dismissal at pleasure - Section 87(2)(c) of the Constitution of Saint Lucia – Court's reluctance to interfere with political decision - Whether the termination of Mrs. Clarke as ambassador without cause breached section 87 of the Constitution –

Definition of public office – Whether position of ambassador is a public office within the meaning of the Constitution – Principle of fairness – When duty to act fairly arises - Whether Mrs. Clarke's termination was unfair as she was not given an opportunity to be heard – Non-justiciability of Governor General's actions – Section 121(3) of the Constitution

Result and Reason:

Held: Dismissing the appeal and making no order as to costs, that:

1. Where a decision that is influenced by political considerations is challenged, the courts should be reluctant to interfere with the political judgment. Ambassadors represent the state in a foreign country and are responsible for carrying out government's policies. They are expected to command the Prime Minister's trust and confidence and the Prime Minister should be given a free hand in appointing and removing such persons. The appointment and removal of an ambassador under section 87(2) of the Constitution is a decision influenced by the Prime Minister's political considerations and a court of law would be reluctant to challenge what is essentially a political judgment.

Permanent Secretary Ministry of Foreign Affairs & Prime Minister Patrick Manning v Feroza Ramjohn and Ganga Persad Kissoon [2011] UKPC 20 applied; R (on the application of Bancourt) v Secretary of State for Foreign and Commonwealth Affairs [2008] UKHL 61 applied.

2. Under the Constitution, a public officer is a person who holds a public office. A public office is one that (i) is established with a sufficient degree of permanence and which exists apart from the office holder, (ii) has an appointment effected by the relevant public service commission, (iii) is an office of emolument and (iv) involves service to the government in a civil capacity. All four conditions must exist for an office to be considered a public office. As an ambassador, Mrs. Clarke was not appointed by or on behalf of the Public Service Commission or any other commission or body. As such she did not meet

the second condition and she was not a public officer or a person holding a public office.

Yaw v Correia (1975) 65 WIR 144 applied.

3. **Section 87(2)(c) of the Constitution distinguishes between ambassadors who held public office before their appointment as ambassador, and ambassadors who were not public officers before their appointment. In the case of ambassadors who were public officers and who were appointed to public office on the recommendation of the Public Service Commission, the Prime Minister must consult the Public Service Commission before tendering advice to the Governor General to terminate the appointment of such ambassadors. In the case of ambassadors who did not hold public office before being appointed, such consultation would not be necessary. They are appointed at the Prime Minister's pleasure and in that respect their appointments are political. Therefore, they can be dismissed at pleasure since they do not enjoy the same security of tenure as their counterparts who were appointed from public office. Mrs. Clarke did not hold public office before her appointment as ambassador and she was dismissible at pleasure. Consequently, the termination of her appointment as ambassador without cause, and without her having an opportunity to be heard, did not breach section 87 of the Constitution, nor any of her natural justice rights.**

Section 87(2)(c) of the Constitution of Saint Lucia Chap. 1.01, Revised laws of Saint Lucia 2019 applied; Endell Thomas v The Attorney General [1981] UKPC 28 distinguished; Fraser v Judicial and Legal Services Commission and another [2008] UKPC 25 distinguished; Inniss v Attorney General of Saint Christopher and Nevis (2008) 73 WIR 187 distinguished; Bain-Thomas v Attorney General and another (2017) 91 WIR 324 distinguished.

4. **The duty to act fairly would have arisen if the decision to terminate Mrs. Clarke's appointment was based on a specific allegation made against her. In that situation, she would**

have been entitled to respond to the allegation. On the facts, there was no evidence of the advice given by the Prime Minister to the Deputy Governor General. In the absence of evidence of allegations against Mrs. Clarke in the termination process the principle of fairness did not apply to her and there was no requirement that she be heard before her termination.

Ministry of Foreign Affairs & Prime Minister
Patrick Manning v Feroza Ramjohn and Ganga
Persad Kissoon [2011] UKPC 20 applied.

5. Section 121(3) of the Constitution is an ouster clause which creates a presumption of regularity as to the Governor General's decisions. This presumption can be rebutted if there is a manifest, glaring or capricious exercise of discretion. On the facts, having found that Mrs. Clarke was dismissible at pleasure, and that her termination was not unfair, there was no room for finding that the termination was glaring or capricious as to take it out of section 121(3). Consequently, section 121(3) applied and the Court would not enquire into the Deputy Governor General's decision.

Section 121(3) of the Constitution of Saint Lucia
Chap. 1.01, Revised laws of Saint Lucia 2019
applied.

APPLICATIONS/MOTIONS

Case Name:

SYLVESTER JAMES

v

ANSELMA MEDERICK

**[SLUHCVAP2020/0019]
(SAINT LUCIA)**

Date:

Thursday, 10th March 2022

Coram:

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

Appearances:

Appellant/Respondent: Mr. Duane Jn. Baptiste

Respondent/Applicant: Mr. Tiris Frederick

Issues:

Report by counsel on agreement to include notes of the proceedings in the court below in the record of appeal- Consent Order

Type of Order:

N/A

Result:

IT IS HEREBY ORDERED THAT:

- 1. The parties are to file a draft consent order by 10:00am on 14th March 2022 for consideration.**

Reason:

The matter was adjourned from Tuesday 8th March 2022 to today's hearing to allow counsel for the parties to confer, with a view to agree on what, if anything, should be included in the record of appeal as notes of the proceedings in the court below.

Counsel for the appellant/respondent indicated that the parties had agreed on a draft consent order which will effectively dispose of the matter in its entirety.

Case Name:

BASTON DUNCAN

V

THE POLICE

**[SLUMCRAP2018/0015]
(SAINT LUCIA)**

Date:

Thursday, 10th March 2022

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. David Moyston

Respondent: Ms.Chanika Carrington and Ms. Tanya Alexis Fraser

Issues: Application for an Adjournment

Type of Order: Oral Decision

Result: IT IS HEREBY ORDERED THAT:
The application for an adjournment is refused.

Reason: Counsel for the appellant made an oral application for the adjournment of the matter. Counsel indicated that despite being involved in the matter previously, it was only in early February 2022 that the appellant took the necessary steps for counsel to be in a position to represent him. Counsel for the respondent indicated that the respondent wished for the matter to be proceeded with, noting that counsel for the appellant had been involved in the matter from the beginning. The Court considered the fact that the matter involved an accident which took place on 1st May 2014, almost 8 years ago and that a traffic matter has taken almost 8 years to drive through the system from when the time the accident occurred to the present time. It took 4 years to get to the point of a decision by the magistrate which was delivered on 17th October 2018 however the notice of appeal was produced a very short time thereafter on 26th October 2018. The Court went on to note that Counsel for the appellant appeared to have been representing the appellant not only throughout the course of the trial but up to the time the appeal was filed. While the notice of appeal was not signed by counsel or any counsel, a document from the court administrator was addressed to counsel Mr. Moyston, on 5th November 2018 shortly after the appeal was filed, indicating the cost of the recognisance of the appeal as indicated by the magistrate. In those circumstances, despite the fact that counsel had only recently been fortified by the appellant to retain him as counsel in the appeal, it appears that counsel had every opportunity to pursue and proceed with what the court described as “a very simple traffic matter”. The

Court was of the view that it would not be justified to further adjourn the matter and counsel having been involved in the matter for almost 8 years ought to be in a position to pursue the appeal on its sole ground of appeal.

The application for an adjournment was refused.

APPEALS

Case Name:

**[1] NATIONAL CONTRACTORS
LIMITED**

**[2] DAVE BORIEL
(Administrator of the Estate of the Late
THOMAS BORIEL)**

**[3] DAVE BORIEL
and
RAYMOND BORIEL**

**[SLUHCVAP2021/0010]
(SAINT LUCIA)**

Date: Thursday, 10th March 2022

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Sydney A. Bennett, Justice of Appeal [Ag.]

Appearances:

Appellants:	Ms. Kimberley Roheman
Respondent:	Mr. Gerard R. Williams

Issues: Application for an adjournment

Type of Order: Adjournment

Result: IT IS HEREBY ORDERED THAT:

1. Upon application by counsel for the respondent for an adjournment and there being no objection by counsel for the appellant, the hearing of the appeal is adjourned to the next sitting of the

Court in Saint Lucia scheduled for the week commencing 6th June 2022.

2. There shall be no order as to costs on the application.

Reason:

The Court considered that counsel for the respondent was recently retained and therefore was not in a position to proceed with the appeal since he needed time to review the appeal documents. There were no objections from counsel for the appellants and no request for a consequential costs order flowing from the respondent's request for an adjournment. In the circumstances, the Court was of the view that the adjournment ought to be granted and there ought to be no order as to costs.

Case Name:

NEW INDIA CO. LIMITED

V

TRIDENT LIMITED

**[SLUHCVP2021/0013]
(SAINT LUCIA)**

Date:

Thursday, 10th March 2022

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]**

Appearances:

Appellants: Mr. Mark Maragh and Ms. Candace Fletcher

Respondents: Mr. Duane Jn Baptiste

Issues:

Interlocutory appeal - Striking out - Rule 9.7 of the Civil Procedure Rules 2000 - Refusal of application pursuant to CPR 9.7 - Whether judge erred in concluding that court had jurisdiction to hear and determine matter - Amendment of claim - Whether leave was required to amend claim form and statement

of case - Whether leave is required to amend claim where an application to strike pursuant to rule 9.7 had been filed - Whether judge erred in permitting respondent to amend claim - Rule 26.2 of the Civil Procedure Rules - Whether learned judge erred in amending claim on his own volition - Whether amendment to claim in the interests of justice - Costs - Whether the judge erred in his order as to costs

Type of Order:

Oral decision

Result:

IT IS HEREBY ORDERED THAT:

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

Reason:

On 18th December 2020, the respondent Trident Limited (“Trident” or “the respondent”) filed a claim against the appellant, New India Co. Limited (“New India” or “the appellant”) and served New India with the claim on 21st December 2020. An acknowledgement of service was filed by New India on 22nd December 2020. In column five of the document, in answer to the query: “Are your names properly stated on the Claim Form”, New India answered ‘No’. To the follow up question “If not, what are your full names”, New India answered ‘New India Assurance Company (Trinidad & Tobago) Ltd.’.

On 19th January 2021, after no amended claim had been filed by Trident, the present application disputing the court’s jurisdiction was filed pursuant to rule 9.7(1) of the Civil Procedure Rules 2000 (‘CPR’). By the application, the New India sought a declaration that the court had no jurisdiction to hear the claim and that accordingly the claim against it should be struck out pursuant to 9.7(6)(c) of the CPR with costs. The contentions were that ‘New India Co. Limited’ does not exist as a legal entity; that a claim against such an entity was a nullity and; that accordingly the court had no jurisdiction to deal with such a claim. The judge rejected that argument, as did this Court.

The appellant’s application was supported by the affidavit of Mikael Bernabe, Senior Claims Officer of New India Assurance Company (Trinidad & Tobago) Ltd. Mr. Bernabe’s affidavit confirmed, in paragraph 7, that the contract, which was the subject matter of the

claim, had been made between the respondent and New India Assurance Company (Trinidad & Tobago) Limited, who had been served. No issue arose as to whether there was a case of misidentification in consequence of which, the wrong party (New India being the defendant in the court below) had been sued. Again, the Court reiterated that this was not an instance in which it was or could have been asserted that the proper party [defendant] did not exist. In substance, the correct and intended party was named as a defendant in the claim form. The claim form was served upon the intended defendant but there had been a misstatement as to its name. This misstatement had created no doubt as to the identity of the proper defendant to the claim.

The claim in question concerned a contract made in the jurisdiction between persons carrying on business in the jurisdiction and involved an allegation that one of the parties had committed a breach of that contract within the jurisdiction. The misnomer of the party to that contract against whom a claim was being made did not render the claim a nullity nor did it affect the jurisdiction of the court to hear and determine the matter. In circumstances where there was no question as to whether New India had been identified as a proper defendant in the claim in the court below, the misnomer of the defendant [New India] was curable by an amendment. The appellant's complaint was that despite having been notified of the error in the name of the defendant, no amendment had been made, or at any rate, no amendment was made until after an application to strike out the matter for want of jurisdiction. The appellant argued that the amendment cannot be done in cases where an application had already been made to strike out the claim. Assuming that to be so, in any event, even in a situation where the court held that there was a deficit in the claim, if there was reason to believe that the party concerned would be able to put the deficit right, the court would refrain from striking out the proceedings until the court had given that party an opportunity of putting right the deficit by amendment.

The main issue before this Court was whether the judge had followed the correct procedure in an instance where the defendant in the claim below had been misidentified. Both parties admitted that there was little guidance as to the correct procedure.

The judge's approach to the matter was seen in paragraph 17 and 18 of the judgment. There he said:

“ [17] As alluded to before there seems not to be no [sic] clear rule, practice, or procedure for correction of a misnomer as identified by an acknowledgement of service. For my part, the approach that seem to best accord with the overriding objective will be simply to make the corrections in the intituling going forward. There is already a filed record of the corrected name in the acknowledgement of service provided by the defendant so there can be no issue of prejudice, hardship, or injustice to the defendant in permitting such a course. Also, it saves costs and time - rather than having to file an amended claim and statement of claim and have the time for the filing of the defence starting afresh as contemplated by CPR.

[18] However, considering the facts of this case the more appropriate case management directions will be to deem the purported amendment of the claim and statement of claim properly made and progress the matter forward.”

In our view it was clearly correct and in keeping with the overriding objective for the learned judge to have disposed of the matter as he did. It is trite that the appellate court will be very slow to interfere with a case management decision made by the judge in such a circumstance. Therefore, in those circumstances the appeal was dismissed.

As it relates to costs, the Court took into account the fact that the appellant sought a declaration that the court had no jurisdiction to deal with a case in which a party (the defendant in the court below) had been misnamed. Such an application could not have succeeded in any event and dismissal would have had cost consequences. The respondent, Trident, on the other hand filed an amendment in circumstances which the judge found to be allowed. The Court was of the view that there should be no order as to costs, either in the court below or this Court.

Case Name:

BASTON DUNCAN

**V
THE POLICE**

**[SLUMCRAP2018/0015]
(SAINT LUCIA)**

Date: Thursday, 10th March 2022

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. David Moyston

Respondent: Ms.Chanika Carrington and Ms. Tanya Alexis Fraser

Issues: Criminal Magisterial Appeal- Whether magistrate erred in law in respect of the standard of proof required to find the Appellant guilty of the offence of driving without due care and attention

Type of Order: Oral Judgment

Result: IT IS HEREBY ORDERED THAT:
1. The appeal is dismissed.
2. The decision of the magistrate is affirmed.

Reason: The court considered an appeal from a traffic case instituted by the Police against the appellant. In the court below, the magistrate heard the evidence of the witnesses for the prosecution, namely the investigating officer and the virtual complainant and the sole witness for the defence, who was not the appellant himself (the defendant in the court below) but the driver of a motor vehicle driving behind the virtual complainant's vehicle at the time of the accident. The magistrate found at page 6 of the record that "the prosecution had proved beyond a reasonable doubt that this collision was caused by the defendant at a high speed, veering into the path of the virtual complainant who was stopped in his lane but poised and ready to turn right". Further, the learned

magistrate concluded in her reasons for decision at page 17 of the record as follows “I harbored no doubt about the defendant’s fault and had no option to find him guilty as charged”. This was a straight question of fact determined by the magistrate with evidence before her on the basis of which she could make the decision that she did. It was also clear that the magistrate was very alive to the standard of proof applicable to the case before her and in fact stated more than once that she was satisfied beyond reasonable doubt that the accident was occasioned by the appellant driving his vehicle on the night in question without due care and attention.

There was no basis for the Court to interfere with the finding of the magistrate that the appellant was guilty of the offence for which he was charged. The appeal was accordingly dismissed and the decision of the magistrate affirmed.