

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

ANTIGUA AND BARBUDA
VIDEOCONFERENCE
18th – 22nd October 2021

JUDGMENTS

Case Name:

[1] ADAM BILZERIAN
[2] LEMON GROVE COMPANY LIMITED
[3] CARIBBEAN BUILDING SYSTEMS (ST KITTS)
LTD
v
[1] TERRENCE V. BYRON
[2] BYRON & BYRON
[3] KEVIN HORSTWOOD

[SKBHCVAP2020/0003]

[1] GREGORY GILPIN-PAYNE
[2] INTERNATINOAL INVESTMENT & CONSULTING
LIMITED
v
[1] STEPHEN FIRST
[2] CORPORATE CAPITAL (ASIA) LIMITED

[SKBHCVAP2019/0028]

ADAM BILZERIAN
v
[1] ZACHARY GETZ
[2] ST. CHRISTOPHER CLUB CONDOMINIUMS [3]
ST. CHRISTOPHER CLUB CONDOMINIUMS
HOMEOWNERS ASSOCIATION

[SKBHCVAP2019/0029]

ADAM BILZERIAN

v
KEVIN HORSTWOOD

[SKBHCVAP2019/0030]

[1] KEYAPAHA INTERNATIONAL LTD
[2] DAN BILZERIAN

v
[1] LAURA GETZ
[2] ROBERT GETZ
[3] VICTOR DOCHE
[4] VISTAS INTERNATIONAL, LLC
[SKBHCVAP2019/0031]

1] ADAM BILZERIAN
[2] LEMON GROVE COMPANY LIMITED
[3] CARIBBEAN BUILDING SYSTEMS (ST.KITTS
LTD)

v
[1] TERRENCE V. BYRON
[2] BYRON & BYRON
[3] KEVIN HORSTWOOD
[SKBHCVAP2019/0032]

ADAM BILZERIAN
v
[1] GERALD LOU WEINER
[2] KATHLEEN WEINER
[SKBHCVAP2019/0033]

ADAM BILZERIAN
v
[1] GERALD LOU WEINER
[2] KATHLEEN WEINER
[SKBHCVAP2019/0040]

[1] GREGORY GILPIN-PAYNE
[2] INTERNATIONAL INVESTMENT & CONSULTING
LIMITED
v

**[1] STEPHEN FIRST
[2] CORPORATE CAPITAL (ASIA) LIMITED
[SKBHCVAP2019/0044]**

Date: Friday 22nd October 2021

Coram: The Hon. Mde. Louise Ester Blenman, Justice of Appeal
The Hon. Mario Michel, Justice of Appeal
The Hon. Mr. John Carrington, QC , Justice of Appeal
[Ag.]

Appearances:

Appellants: Mr. Victor Elliot-Hamilton for the Appellants in Appeal No. 3 of 2020 and Appeal Nos. 28, 29, 30, 31, 32, 33, 40, 44 of 2019

Respondents: Mr. Terrence Byron for the Respondents in Appeal No. 3 of 2020 and Appeal Nos. 30 and 32 of 2019

Ms. Jean Dyer for the Respondents in Appeal No. 33 of 2019 and holding a watching brief for the Respondents in Appeal No. 40 of 2019

Ms. Miselle O'Brien for the 1st and 3rd Respondents in Appeal No. 29 of 2019

Ms. Vanessa Fennell for the Respondents in Appeal No. 28 of 2019 and holding a watching brief for the Respondents in Appeal No. 44 of 2019

Ms. Renal Edwards holding papers for Ms. Angelina Sookoo-Bobb holding watching brief for the 3rd Respondent in Appeal No. 31 of 2019

Issues: Interlocutory appeals- Appeal against refusal of applications for recusal – Apparent bias – Whether learned judge erred in refusing recusal application – Whether fair-minded informed observer would conclude that there was real possibility of bias – Whether power of attorney confers right of audience – Rule 26.2(2) of Civil Procedure Rules 2000 – Right to be heard – Whether appellant given reasonable opportunity to make

representations – Whether supporting affidavit must be made by applicant himself – Whether judge erred in exercise of his discretion

Result and Reason:

Held: dismissing Appeal No. 3 of 2020, Appeal Nos. 28 to 33 of 2019 and Appeal No. 44 of 2019; allowing Appeal No. 40 of 2019 and making the orders set out in paragraph 68(5) and (6) of the judgment, that:

1. The test for apparent bias is well-settled. Essentially, the question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. Having reviewed the complaints made by Paul and the explanations offered by the learned judge in his decision on the recusal applications as well as considering the context of the state of the proceedings in the various matters and the right and powers of the judge to case manage these matters, it is unlikely that a fair-minded and informed observer would come to the conclusion that there was a real possibility that the learned judge was biased against Paul or those he purported to represent.

Porter v Magill [2002] 2 AC 357 applied; Keston Riley v The Attorney General and Director of Public Prosecutions [2020] ECSCJ No. 313 (delivered 17th September 2020) followed; Vance Amory v Thomas Sharpe, QC et al Saint Christopher and Nevis High Court Civil Appeal No. HCVAP2009/0013 (delivered 27th August 2012, unreported) followed; Walsh v Ward and others (2015) 87 WIR 101 applied.

2. The only persons at common law who have rights of audience are duly admitted legal practitioners or the litigants in person subject to the specific provisions of Part 22 of the CPR. Parts 22 and 27 cannot be relied on to show that our procedural rules provide for representation of a litigant otherwise than by a legal practitioner. Part 22 deals with specific

situations where third parties may represent parties, none of which applies in the circumstances of this case. Similarly, rule 27.4 allows a representative of a party to attend a case management conference or pre-trial review but this person attends in addition to and not in place of the legal practitioner, where the party is represented by one. Further, rule 63.4 which is applicable to these facts does not refer to allowing the party to act through an agent. It follows then that the judge correctly concluded that Paul has no right of audience on behalf of Adam and Dan in the proceedings below.

Parts 22, 27 and rule 63.4 of the Civil Procedure Rules 2000 considered; In the Matter of Applications for Orders in Relation to Costs in Intended Proceedings by Coffey and others [2013] IESC 11 applied.

3. In relation to Appeal No. 3 of 2020, when the order is read as a whole, it is evident that the judge intended to give the appellants the opportunity to make representations why the claim should not be struck out for failure to have legal representation at the adjourned hearing. This is clear from the fact that the judge gave the appellants the opportunity to file submissions in respect of the proposed strike out order prior to the next hearing date on which the order would take effect, if there were non-compliance. This was sufficient to protect their fundamental right to be treated fairly as it is the striking out rather than the unless order that was likely to affect them.

Rule 26.2(2) of the Civil Procedure Rules 2000 considered.

4. In so far as it concerns Appeal No. 40 of 2019, a review of the set aside and stay applications show that they were both made and signed by Adam. It also reveals that that the affidavits in support were made by Paul who indicated that he is not a party to the proceedings but

is duly authorised by Adam, that the matters sworn to are within his personal knowledge and stated why Adam was not present at trial. Furthermore, there is no requirement by the relevant rules of the CPR that a supporting affidavit must be made by the applicant himself. It is quite evident that the judge incorrectly read the papers before him and based on this misapprehension, incorrectly exercised his discretion on the applications.

Rule 11.9 of the Civil Procedure Rules 2000 considered; *Dufour and others v Helenair Corporation Ltd and others* (1996) 52 WIR 188 followed.

5. A judge's decision to hear an application on paper is the exercise of a case management power with which an appellate court is normally reluctant to interfere unless it is shown that the judge exceeded the generous ambit within which reasonable disagreement is possible and is therefore blatantly wrong. In the circumstances of this case, there was nothing either application which gave rise to the complaints which merited an oral hearing.

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

6. There is no proper basis on which this Court could set aside the judge's decision striking out the second appellant's defence. A judge is entitled to reverse his decision before it is perfected based on a carefully considered change of mind. In the instant appeal, this Court is unconvinced that the judge did not exercise his discretion to reconsider the previous order. Instead, he did in fact exercise his discretion in that he refused to change his mind; a decision which is well within the scope of his discretion. In circumstances where Paul failed to establish his authority to represent the second appellant in court proceedings pursuant to rule 22.3 of the CPR at the adjourned hearing,

nothing necessitated the judge inviting the parties to address him on the exercise of his discretion to reconsider the previous order. Further, if the learned judge exercised his discretion to refuse the application for reconsideration of the said order, there was nothing precluding him from proceeding to strike out.

Re L and B (children) (care proceedings: power to revise judgment) [2013] 2 All ER 294 applied.

7. It is well established that every person against or in respect of whom a court of competent jurisdiction makes an order must obey that order unless and until it has been discharged. Accordingly, where the court signals, as in this case, that it would make a strike out order at the next hearing if certain conditions were not complied with, the litigant has the choice and opportunity to meet those conditions or to make representations as to why the consequences should not follow. The lack of success of the appellants' course of action in directing the court's attention to rule 22.3 of the CPR in response to the original order does not render the judge's decision incorrect.

Isaacs v Robertson (1984) 43 WIR 126 applied.

Case name:

Sylvester Spencer et al
v
Regino Nicholas
[ANUHCVP2019/0022]

Date:

Friday 22nd October 2021

Coram:

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

Appearances:

Appellant: Dr. David Dorsett

Respondent: No appearance

Issues: Interlocutory appeal –Statutory Interpretation -Fatal Accidents Act – Section 4 of the Fatal Accidents Act – Assessment of damages –Assessment of damages by a jury in fatal accident claims - Eastern Caribbean Supreme Court (Antigua and Barbuda) Act - Section 23 of the Supreme Court Act – Discretion of a judge to appoint a jury in a civil claim - Whether the learned master erred in her interpretation and application of section 4 of the Fatal Accidents Act and section 23 of the Supreme Court Act - Plain ordinary meaning of section 4 – Whether the express mention of ‘jury’ in section 4 excluded an assessment of damages by a court or judge - Expressio unius est exclusio alterius – Presumption against implied repeal - Whether section 23 of the later Supreme Court Act impliedly repealed section 4 of the earlier Fatal Accidents Act - Whether the general provision in a later Act derogates a specific provision in an earlier Act - Generalia specialibus non derogant – Whether the absence of an enabling provision to apply for a jury in section 4 meant that a party could not apply for a jury to consider the issue of damages in a fatal accident claim – Section 16(3) of the Interpretation Act

Results and Reasons: Held: allowing the appeal; setting aside the order of the learned master dated 30th September 2019and ordering that the damages in claim ANUHCV2018/0370 be assessed by a jury with no order for costs in this Court or the court below:

1. When construing and applying legislation, the court must first give effect to the natural and ordinary meaning of the words used by the drafter. The court may only depart from the natural and ordinary meaning of the words used when they lead to some result which cannot reasonably be supposed to have been the intention of the drafter. Section 4 of the Fatal Accidents Act is clear and unambiguous. In its plain and ordinary

meaning, the section identifies a jury as the authority to assess and apportion damages among relatives of the deceased in fatal accident claims. There is no absurdity in section 4 and the language used is mandatory and not discretionary. The general rule of statutory construction *expressio unius est exclusio alterius* (express mention of one thing excludes all others) also aids in the interpretation of the plain meaning of the words in section 4. The express mention of 'jury' indicates the exclusion of all other forms of tribunals for assessing damages in fatal accident claims.

Joseph Cadette v The St. Lucia Motor & General Insurance Company Limited [2021] ECSCJ No. 472 followed; *Williams v Central Bank of Nigeria* [2014] UKSC 10 applied; *Attorney General of the Turks and Caicos Islands v Misick and others* [2020] UKPC 30 applied; *Leonart Matthias v Antigua Commercial Bank* [2020] ECSCJ No. 173 followed.

2. Section 2 of the United Kingdom Fatal Accidents Act 1846, upon which section 4 is based, specifically referenced a jury as the authority for the assessment of damages in fatal accident claims. Section 3 of the United Kingdom Fatal Accidents Act 1976 repealed section 2 of the 1846 Act and omitted the use of the word 'jury'. The Antiguan Fatal Accidents Act deliberately retains the use of the term jury. If it were Parliament's intention to make the use of a jury optional or to make the Court or judge an alternative authority for the assessment of damages in fatal accident claims, an equally deliberate approach to the wording of section 4 would have been adopted to achieve this.

O'Loughlin v Cape Distribution Ltd. [2001] EWCA Civ 178 applied.

3. Where the provisions of an Act are inconsistent with the provisions of an earlier

Act, the earlier provisions may be impliedly repealed by the later. However, there is a general presumption against implied repeal embodied in the latin maxim 'generalia specialibus non derogant' (meaning a general provision does not derogate from a special one). The plain reading of section 4 of the Fatal Accidents Act conflicts with section 23 of the Supreme Court Act since section 4(2) specifies a jury as the sole authority for the assessment of damages in fatal accident claims and section 23(2) stipulates that the granting of a jury shall in every case be discretionary. Section 4 predates section 23 and creates a special procedure for damages to be assessed and apportioned by a jury in fatal accident claims. This special procedure which was deliberately created by Parliament has not been derogated from by section 23. There has not been any express revocation under section 23 of what has been specially provided for under section 4. Further, there is nothing in section 23 which specially declares an intention to include fatal accident claims as being part of the general provision that the granting of a jury shall in every case be discretionary. Thus, both section 4 and section 23 can stand together and effect may be given to both.

Diggory Bailey and Luke Norbury: Bennion on Statutory Interpretation (7th edition, Lexis Nexis Butterworths UK, 2017) applied; Seward v the Vera Cruz (owners)(1884)10 App Cas 59 applied; Blackpool Corp v Starr Estate Co Ltd [1922] 1 AC 27 applied.

4. Where a statute empowers an authority to do an act, it is deemed to include all such powers as are incidental to the exercise of that power. Whilst section 4 of the Fatal Accidents Act did not have an enabling provision to apply for a jury, the Act confers authority on the jury to assess damages in fatal accident claims. Consequently, an enabling provision in the Act is not necessary.

**Section 16(3) of the Interpretation Act 1982
Cap.224, Laws of Antigua and Barbuda
applied.**

Case Name:

**Donald Bridgeman
(Also called Earl Gerald Bridgeman)**

v

HKZ Inc.

**[GDAHCVAP2021/0011]
(GRENADA)**

Date:

Friday, 22nd October 2021

**Coram for
delivery of
judgment:**

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]
The Hon. Mr. Trevor Ward QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Ruggles Ferguson and Mr. Andre Thomas

Respondent:

Ms. Gennilyn Ettienne

Issues:

**Interlocutory appeal – Elements of a valid contract –
Offer and invitation to treat – Law applicable to
advertisements for sale of a property – Section 4 of
the Real and Personal Property (Special Provisions)
Act – Requirements for an oral contract for sale of
land to be enforceable by action before the courts –
Section 24 of the Eastern Caribbean Supreme Court
(Grenada) Act – Principles applicable to the grant of
interim injunction – Whether there was a serious
issue to be tried – Whether oral agreement pleaded**

by claimant – Whether the letter and receipt created a binding agreement – Whether there was part performance – Balance of convenience – Whether damages is an adequate remedy

Result and Reason:

Held: allowing the appeal; dismissing the counter-appeal; setting aside the order of injunction made 31st March 2021; and ordering that the respondent pay the appellant's costs of the appeal and in the court below, the costs in the appeal to be no more than two-thirds of the costs in the court below, and such costs to be assessed by a judge of the High Court if not agreed within 21 days, that:

1. The essential elements of a valid contract are trite. There must be an offer, an unconditional acceptance of that offer by another person, and there must be consideration flowing from the promisor to the promisee. To give rise to a binding agreement, the contracting parties must evince an intention to create legal relations with each other. Accordingly, where there is no intention to create legal relations, a contract does not come into existence.

Keith Garvey v Ricardo Richards [2011]
JMCA Civ 16 applied; Treitel Law of Contract 8th Ed. 1991 Chapter Two pages 10-11 applied;

2. The law of contract draws an important distinction between an offer and an invitation to treat. The question as to whether a statement made by a person is an offer or an invitation to treat will depend primarily upon the intention with which it was made. An invitation to treat is an invitation for an offer to be made evidenced by an intention to be bound only upon acceptance of such an offer.

Financings Ltd v Stimson [1962] 1 WLR 1184 considered.

3. The law applicable to advertisements for sale of property turns on the intention of the maker of the advertisement. The respondent contends that the appellant's public advertisement of the lots at Conception Village for sale constituted an offer to the world at large, such that the appellant had evinced a clear intention to be bound, with no further bargaining being required, by an acceptance to purchase a lot or lots so advertised giving rise, upon payment of the deposit, to a binding contract for the sale. The respondent's line of argument in reliance upon the advertisement as constituting the offer is misplaced and incorrect as the advertisement was not an offer to the world, in the same way as the advertisement in the *Carlill v Carbolic Smoke Ball Co* case, but rather an invitation to treat. This is made clear from the nature and wording of the advertisement itself.

Carlill v Carbolic Smoke Ball Co [1893] 1 Q. B. 256 applied.

4. It is well established so as to be trite law, that Section 4 of the Real and Personal Property (Special Provisions) Act ("the Act") contains two requirements for a contract for sale of land to be enforceable by action before the courts. The first is that there must either be a written contract for the sale of land or some interest in land or, where the contract is oral only, some memorandum or note in writing evidencing the essential terms of the oral agreement. The second is that the memorandum or written note evidencing the essential terms of the oral contract, must be signed either by the party being charged or by someone authorised to sign it on his behalf. Accordingly, where there is no written agreement between the parties for the sale of land, there must first be in existence an oral contract between the parties. The oral contract is the contract for the sale of the land and not the written

memorandum evidencing its essential terms. It is that oral contract which, by virtue of section 4 of the Real and Personal Property (Special Provisions) Act, is then enforceable by action in the courts against the person to be charged.

Section 4 of the Real and Personal Property (Special Provisions) Act Laws of Grenada applied.

5. In this matter, the respondent did not plead nor does it rely on a written agreement for the sale and purchase of the lots. The respondent also does not plead in its statement of claim nor does it set out in the affidavit of Mr. Bain in support of the interim injunction application, the coming into existence and the terms of any oral agreement between it and the appellant for the sale of the lots. Instead, the respondent relies on its lawyers' letter enclosing payment of a 10 percent deposit on the purchase price for the sale of the lots and the receipt for the payment of the deposit issued by the appellant's lawyers, as giving rise to a contractual obligation binding on the appellant for the sale and purchase of the lots. In this way, the respondent seeks to rely on these documents, not as constituting a sufficient memorandum or note in writing when read together evidencing the existence of a binding oral agreement for the sale and purchase of the lots, but as contracting documents by which an offer said to be made by the appellant by virtue of the advertisement of the lots for sale, was accepted by the respondent. However, the appellant's advertisement for the sale of the lots at Conception Village did not constitute an offer to the world for the sale of the lots such that the letter and receipt could be said to constitute acceptance of such an offer. This plank of the respondent's case was not pleaded and was not put before the learned judge on the application for interim

injunction. This plank is also incongruous to the respondent's pleaded case in the statement of claim that it was it (the respondent) who made an offer to purchase the lots, which offer was accepted by the issuance of the receipt for payment of the deposit. Accordingly, it is unsustainable and not supportive of there being a serious issue to be tried. Moreover, the respondent having not pleaded the existence of an oral contract for the sale and purchase of the lots between it and the appellant, erroneously conflates and relies on the letter and the receipt as satisfying the requirement under section 4 of the Real and Personal Property (Special Provisions) Act for there to be a sufficient memorandum in writing signed by the person to be charged or by someone authorised on his behalf, in order for an oral contract for the sale of the lots to be enforceable by action before the courts.

Section 4 of the Real and Personal Property (Special Provisions) Act Laws of Grenada applied; *Nelson Lewis and Another v Dirk Burkhardt* [2007] ECSCJ No. 40, (delivered 28th March 2007) considered; *Barkworth v Young* (1856) 4 Drew 1) considered; *B.B. Inc v Lewis Hamilton* [2017] ECSCJ No. 88, (delivered 7th April 2017) considered; *Elias v George Sahely & Co (Barbados) Ltd* [1982] 3 All ER 801 considered.

6. The court's jurisdiction and power to grant injunctions, including interim injunctions, is provided for in section 24 of the Eastern Caribbean Supreme Court (Grenada) Act. The power is to be exercised in circumstances where it appears to the court or the judge to be just or convenient to do so. An application for an interim remedy must be supported by evidence on affidavit. It is settled law that in determining an application for an interim injunction, the court must first satisfy itself that there is a serious issue to be tried between the parties to the litigation.

In determining whether there is a serious issue to be tried, the court or judge must investigate the facts of the matter as set out in the claim and affidavits, but only to the extent of ascertaining whether the applicant for the interim injunction has prospects of success which in substance and reality are shown to exist. If the court or the judge hearing the application concludes that there is no serious issue to be tried on the claim, that is the end of the matter and the application for interim injunction must be refused.

Section 24 of the Eastern Caribbean Supreme Court (Grenada) Act Cap. 336 of the Laws of Grenada applied; *American Cyanamid Co. v Ethicon Ltd* [1975] AC 396 applied; *Mungalsingh v Juman* [2015] UKPC 38 considered; *AMEC Properties Ltd v Planning Research Systems Plc* [1992] 1 EGLR 70 at 72 considered.

7. In determining whether there was a serious issue to be tried, the learned judge failed to consider what the respondent's pleaded case was and whether it disclosed a cause of action known to the law or permitted under section 4 of the Real and Personal Property (Special Provisions) Act. The learned judge, having averted to the provisions of section 4 of the Act in her decision, erred in treating the receipt acknowledging payment of the deposit as 'prima facie conclusive of the agreement between the parties' as it 'reasonably identifies the subject matter, that is, the lots of land forming part of the [appellant's] development.' In so reasoning and concluding, the learned judge completely ignored the requirement for a concluded oral agreement, and treated the receipt as a contracting document, when on the respondent's best-case scenario, the receipt could only be a memorandum evidencing some of the essential terms of a contract. Accordingly, in the absence of any

pleaded oral agreement for the sale and purchase of the lots, the learned judge fell into grave error in concluding that there was a serious issue to be tried. This conclusion was plainly wrong as a matter of law and principle.

Choo Loi Poi and another v Donald Frederick [2020] ECSCJ No. 310 (delivered 15th September 2020) considered; American Cyanamid Co. v Ethicon Ltd [1975] AC 396 applied; Carlill v Carbolic Smoke Ball Co [1893] 1 Q. B. 256 considered.

8. In considering the balance of convenience, it is necessary to assess the potential harm to each party if the injunction is granted or not granted. Were the injunction not to be granted, the appellant would proceed to sell the lots and once disposed of, those lots would no longer be available to the respondent were it to succeed in its claim to enforce the alleged contract. Were the injunction to be granted preventing the appellant from disposing by sale or otherwise of the lots prior to the trial and determination of the claim, the appellant would be adequately compensated in damages if the claim were to fail. Furthermore, the judge's conclusion that the lots of land were to be considered as being 'unique' accords with the principle applicable to contracts for the sale of land, whereby it is accepted that damages are not an adequate remedy on the basis that each piece of land is unique. Assuming that there was a serious issue to be tried on the claim, the learned judge did not commit any error in holding that the balance of convenience lies in granting the interim injunction pending trial. Accordingly, the judge was correct in finding that damages would not be an adequate remedy for the respondent if it were to succeed in establishing its claim at trial to specific performance of the alleged agreement for sale of the lots.

Mungalsingh v Juman [2015] UKPC 38 applied; and AMEC Properties Ltd v Planning Research Systems Plc [1992] 1 EGLR considered.

- 9. The principles applicable to appellate restraint when dealing with appeals from the exercise of discretion by a judge of the court below, are trite and have been stated and restated in several decisions of this Court. Accordingly, an appellate court will rarely interfere with the exercise of judicial discretion, and will do so only where it is shown that the judge erred in principle by failing to take into account relevant factors or gave too much or too little weight to relevant factors or took into account irrelevant factors and considerations or that as a result of the errors of fact or errors of principle his decision was plainly or blatantly wrong, such that it exceeded the generous ambit within which reasonable disagreement is permissible. Furthermore, an appellate court when considering whether the judge got it plainly wrong, must caution itself that it is impermissible to come to such a conclusion on the basis that the appellate judges would, on the evidence in the court below, have come to a different conclusion or would have exercised the discretion differently.**
- 10. In the instant matter, the judge erred in concluding that there was a serious issue to be tried and ought to have concluded that the respondent had not pleaded the coming into existence of a binding oral contract for the sale and purchase of the lots between the appellant and the respondent, such as is necessary to satisfy the first requirement of section 4 of the Real and Personal Property (Special Provisions) Act. Accordingly, the learned judge committed a serious error of principle and misapplied or failed to apply the correct principles of law. It follows that**

the judge was plainly wrong in the exercise of her discretion in granting the interim injunction as sought by the respondent. This Court is therefore empowered to interfere with the judge's exercise of discretion in all the circumstances, and to set aside the order of injunction made on 31st March 2021.

Michel Dufour v Helenair Corporation et al (1996) 52 WIR 188 considered; Beryl Isaac and others v The Grenadian Hotel (doing business as the Grenadian by Rex Resorts) [2017] ECSCJ No. 299, (delivered 15th December 2017) considered; Brantley and others v Constituency Boundaries Commission [2015] ECSCJ No. 24, (delivered 5th February 2015) considered; The Attorney General of Grenada and Another v Sebastian Isaac and Another GDAHCVAP2015/0028 (delivered 20th June 2016, unreported) considered.

APPLICATIONS AND APPEALS

Case Name:

Carlton Lewis

v

Neil Cochrane

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

Date:

Monday, 18th October 2021

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Hugh Marshall

Respondent: Mr. George Lake

Issues: Civil Appeal – Application for adjournment of appeal by appellant

Type of Order: Adjournment

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. By consent, the hearing of this appeal is adjourned to the Court of Appeal Sitting for Antigua and Barbuda during the week commencing 21st February 2022, for the purpose of having the Record of Appeal completed.
2. There shall be no orders as to costs on this adjournment.

Reasons: Counsel for the appellant indicated that they had requested the wrong transcript of proceedings in the court below. He therefore requested an adjournment so that the correct transcript could be prepared.

Accordingly, there being an application by the appellant for an adjournment with no objection from the respondent, the Court was of the view that an adjournment was appropriate in the circumstances.

Case Name: Jose Humphreys
v
The Medical Council
[ANUHCVP2020/0003]
(Antigua and Barbuda)

Date: Monday, 18th October 2021

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Kendrickson Kentish, with him, Mr. Kyle Kentish

Respondent: Mrs. E Ann Henry QC, with her, Mrs. Lisa John-Weste

Issues: Interlocutory appeal – Application to strike out notice of appeal - Application for extension of time within which to appeal – Length of delay - Reason for delay - Whether the appeal has a realistic prospect of success – Rule 60.8 of the Civil Procedure Rules 2000 – Meaning of the term ‘rehearing’ – Whether learned judge erred in requiring an appellant to file an affidavit in support of a fixed date claim form

Type of Order: Oral Decision

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. The application to strike out the notice of appeal is withdrawn.
2. The application for an extension of time within which to appeal is refused.
3. Costs on the application to extend time to appeal shall be borne by the applicant, to be

assessed by a master of the court, unless agreed within 21 days of this order.

Reasons:

The Court considered the application for extension of time within which to appeal it being accepted by the Appellant that the appeal was not timely filed in accordance with CPR Rule 62.5.

The appellant was granted leave on 17th December 2019 and filed the notice of appeal on 21st January 2020, out of time. The respondent made an application to strike out the appeal on 28th January 2020 and the appellant filed an application for an extension of time and relief from sanctions on 4th February 2021.

In his application, counsel for the appellant submitted that the delay was not inordinate and that there was a good reason, being a miscalculation of time within which to file the notice of appeal. No further particulars were proffered. Counsel also intimated that the appeal had a realistic prospect of success as the judge erred by ordering that the appeal of a decision of the Medical Council by way of rehearing required the court to receive and hear the evidence afresh and by requiring an affidavit in support of the fixed date claim form. The Court considered that it was within the purview of the judge exercising the case management powers on the first hearing to require further evidence on affidavit if considered necessary to dispose fairly of the matter.

The Court was of the view that the appellant failed to meet the threshold required for the Court to exercise its discretion to grant an extension of time within which to appeal as it had not been demonstrated that the appeal had a realistic prospect of success.

Case Name:

**Antigua and Barbuda Fishermen
Cooperative Society
v
[1] Phillip Athanaze**

[2] Garry Gore
[3] Colin Francis
[4] John Browne
[5] John Tomlinson

[ANUHCVP2021/0016]
(Antigua and Barbuda)

Date: Monday, 18th October 2021

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. David Dorsett

Respondent: Mr. Justin L. Simon, QC

Issues: Application for leave to appeal - Refusal of application for summary judgment - Whether expelled and ex-board members have standing to authorize the appellant to bring the proceedings and to represent the appellant in these proceedings - Whether matter should be remitted to court below so that the threshold issue of standing may be determined – Court’s case management powers under CPR 26.2 - Whether the Court should grant a stay of the application for leave or defer the matter until the threshold issue of standing is addressed. Whether the issue of standing in these proceedings had already been determined – No clear evidence of this before the Court, save in a judgment of the court below of Wilkinson J dated 23rd July 2019 in which she found that the persons purporting to act on behalf of the Appellant had no standing to do so.

Type of Order:

Oral Decision

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The hearing of this application for leave to appeal against the order of Drysdale J dated 7th June 2021 is deferred to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 21st February 2022.**
- 2. The applicant and respondent shall jointly provide the court with a chronology of events supported by all orders of the court below and the court of appeal in respect of Claim No. 585 of 2017 by Tuesday, 30th November 2021.**
- 3. The respondent shall be entitled to be heard on the application for leave and entitled to file and serve written submissions in respect of the application by 10th December 2021.**
- 4. The Court further orders and directs that the parties assist the court in identifying in any orders of the court below or orders of the Court of Appeal where the question of standing of Mr. Mussington in respect of these proceedings have been determined.**

Reasons:

Counsel for the applicant, initially sought to proceed with the application for leave to appeal and argued that the learned judge erred in refusing the applicant's application for summary judgment. However, the Court intimated that it noted that Mr. John Mussington, an expelled board member of the applicant, had sought to represent the applicant in these proceedings despite his status.

To proceed further in determining the application for leave to appeal, the Court found it necessary to ascertain whether Mr. Mussington had been granted authorisation by the applicant to initiate the claim, and had standing in the claim.

Despite its questioning of counsel for the applicant, the Court was unable to ascertain whether the threshold issue of Mr. Mussington's standing had in fact been determined by the court below or the Court of Appeal. In an attempt to assist the Court, the applicant asked that the Court grant a deferral of the matter to the next sitting of the Court in Antigua and Barbuda and that both the applicant and respondent file a joint chronology of events with all supporting documents and orders in order to determine the issue raised. Counsel for the respondent agreed with this approach.

Case Name:

Wayne Worrell

v

The Queen

**(ANUHCRA2019/0012)
(ANTIGUA AND BARBUDA)**

Date:

Monday, 18th October 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Trevor Ward QC, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Warren Cassell

Respondent:

Mrs. Shannon Jones-Gittens

Issues:

Criminal appeal – Appeal against sentence – Unlawful sexual intercourse – Whether judge erred

in not taking into proper account all mitigating factors during sentencing – Whether sentence for unlawful sexual intercourse ought to run consecutively or concurrently with a prior conviction for housebreaking with intent – Whether sentence manifestly excessive – Whether judge erred by using 18 years as the starting point rather than 8 years for the offence of unlawful sexual intercourse – Whether the judge erred when he failed to stipulate the notional sentence having regard to the guilty plea at the first available opportunity

Type of Order

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

4. The appeal against sentence is allowed to the extent that the sentence of 12 years imposed on the appellant is reduced to 10 years.
5. The decision of the judge that the two sentences for housebreaking with intent and for unlawful sexual intercourse shall run consecutively is affirmed.

Reason:

The Court considered the detailed written submissions made by counsel for both parties in support of and in opposition to the appeal. Counsel for the appellant, Mr. Warren Cassell made oral submissions before this Court on the grounds of appeal advanced. Having taken all factors into consideration, this Court accepted the submission by counsel for the appellant and the concession of counsel for the respondent that the learned judge erred in using the starting point of 18 years as the starting point for the offence of unlawful sexual intercourse. Given the nature of the offence and the factors in aggravation a more appropriate starting point would have been 15 years. Discounting that sentence by 1/3 on account of the guilty plea this Court determined that the appropriate sentence for the offence of unlawful sexual intercourse, to which the appellant pleaded guilty, is in fact 10 years imprisonment.

In terms of the complaint by the appellant that the judge did not take into consideration the mitigating factors concerning the appellant, the Court did not find this criticism of the judge's sentence to be appropriate. The Court was of the view that the judge did specifically mention the mitigating factors and that although in actually passing the sentence of 18 years, he did not undertake a mathematical exercise of making deductions for specific and individual mitigating factors. The learned judge clearly indicated that he was aware of the mitigating factors. He itemised them and he was abundantly clear that he did take them into consideration in arriving at his final sentence.

The appellant also submitted that the judge erred in having the sentence of unlawful sexual intercourse run consecutively with a sentence for the offence of housebreaking with intent which the appellant was serving at the time that the judge passed the sentence for the unlawful sexual intercourse. The Court found this criticism of the judge's sentence to be incorrect. There were in fact two separate offences (housebreaking with intent and unlawful sexual intercourse) which were committed on two separate occasions approximately one month apart. Both offences would have involved two separate virtual complainants, one being a 13-year-old child with whom unlawful sexual intercourse was had, and the other would have been the owner of the house broken into. There is no justification therefore for the judge to have imposed concurrent sentences instead of consecutive.

This Court therefore affirmed the judge's decision to have the sentence of 12 years imprisonment, now reduced to 10 years, to run consecutively with the offence of housebreaking with intent, for which the appellant was serving time in prison originally set at 18 months but was subsequently reduced to 1 year. This Court also found that the sentence imposed by the judge, with the correction of the starting point by this Court, was proportionate and just in all the circumstances of this case.

Case Name:

Kaniel Martin

v

The Queen

**(ANUHCRA2012/0001)
(ANTIGUA AND BARBUDA)**

Date:

Monday, 18th October 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Trevor Ward QC, Justice of Appeal
[Ag.]**

Appearances:

Applicant:

Mr. Sherfield Bowen

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions

Issues:

Application to amend notice of appeal – Application for leave to appeal against sentence – Application for adjournment – Section 39 of the Eastern Caribbean Supreme Court (Antigua and Barbuda) Act

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application to amend the notice of appeal to include leave to appeal against sentence is granted.**
- 2. Leave to appeal against sentence is granted.**
- 3. The application for an adjournment is refused.**

Reason:

The Court listened to the applications made by counsel for the appellant and to the responses by the learned Director of Public Prosecutions (DPP). In response to the application for leave to add an appeal against sentence to the appeal against conviction previously filed, the DPP has not objected to this particular application and the Court has granted leave to the appellant to include an appeal against the sentence of three terms of life imprisonment imposed by the trial judge.

There are two other applications which had been made by the appellant. The Court was informed that these applications were made on Friday, 15th October 2021 and served on the DPP sometime just before the close of business for that day. The Court has not had sight of these two applications or any evidence in support of them. The DPP opposes the application for the adjournment on the basis of the amplitude of time and opportunity that the appellant has had to pursue and proceed with this matter and in fact, the DPP's submissions filed in the previous week were virtually responding to the latest grounds of appeal advanced. However, the DPP's Office have filed submissions in response to the appeal since June 2018. Well over three years ago the DPP's Office had responded to the submissions filed on behalf of the appellant.

Having looked at the justice of the case overall and being mindful to do justice to the appellant, the Court considered that the matter involves an incident which took place in 2008 and a trial and conviction which was in July 2011. The Court was mindful that the murders took place 13 years ago, while the trial and conviction which was 10 years ago. The Court now being faced at this time with an application for an adjournment did not consider that the justice of this case justifies that course of action. Counsel for the appellant has been granted leave to proceed with the appeal against sentence. Further, notwithstanding that counsel for the appellant advances that he has not had time to consult with the appellant on the legal grounds on which the submissions have been made, the Court did not see any justification for the indulgence of an

adjournment to be granted to further extend the matter beyond the excess of 10 years for which it has endured.

Case Name:

Kaniel Martin

v

The Queen

**(ANUHCRA2012/0001)
(ANTIGUA AND BARBUDA)**

Date:

Monday, 18th October 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Trevor Ward QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Sherfield Bowen

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions

Issues:

Criminal appeal – Appeal against conviction and sentence – Murder – Whether the verdict was unsafe, unsatisfactory and against the weight of the evidence – Whether the learned judge placed undue pressure on the jury to reach a unanimous verdict – Whether the judge erred by failing to direct the jury on a majority verdict during their extensive deliberation – Whether the sentence is unduly harsh and excessive – Whether the judge erred in failing to consider the relevant factors in sentencing and to justify the factual basis of his approach to determining the sentence – Whether the three life sentences imposed ought to run consecutively or concurrently

Type of Order

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal against conviction is dismissed.
2. The appeal against sentence is allowed to the extent that the sentences imposed in respect of counts 1 and 2 involving Benjamin and Catherine Mullany, is varied so that they run concurrently.
3. The judge's order that the sentence imposed on count 3 in relation to Ms. Wonetta Anderson is to run consecutively to the sentences under counts 1 and 2 is affirmed.
4. Upon the expiration of thirty years from the date of sentencing, the appellant's sentence will be reviewed in accordance with section 3B of the Offences Against the Persons Act.

Reason:

On this appeal, several grounds were argued on behalf of the appellant and at the hearing upon oral application leave was granted to appeal against sentence. This application was not opposed by the learned Director of Public Prosecutions ("DPP"). The first ground alleged that the learned judge placed undue pressure on the jury to return a unanimous verdict. A complaint was made that the judge erred by sending the jury out to consider their verdict at approximately 12:55pm and, compounding this, it is said he failed to enquire as to the welfare of the jury and failed further to instruct them on a majority verdict during the twelve hours that they were out deliberating.

The Court found that there was no error committed by the learned judge in sending the jury out at 12:55pm. This was on the second day of summing up. While it is accepted that it is undesirable to send the jury out late in the afternoon, in context here 12:55pm cannot be characterized as late in the afternoon. It was a matter for the judge's discretion

and the Court cannot say that he exercised that discretion irrationally. Secondly, based on the record of appeal, the Court was satisfied that the jury returned its verdict at 11:18pm and not 1:16am the following day as is contended for by the appellant. The Court rejected the notion that the absence of a notation in the record as to the time the jury may have been fed or offered refreshment leads ineluctably to the inference that they were not in fact fed or provided with refreshments. This is especially so where, in the collective experience of the court, it is not the practice that such occurrences are reflected on the official record. There has been no evidential foundation, therefore, to establish that the jury was not fed or their welfare was not enquired into. Indeed, such evidence as there is, the Court was satisfied that when the judge called the jury into court, the jury made no complaint as to their welfare. In fact, on the evidence as submitted by the learned DPP the jury stated that they were fine and were considering the evidence. This ground of appeal therefore fails.

The second ground related to a majority direction. In oral arguments, learned counsel Mr. Bowen resiled from his original position as contained in his written submissions where in fact he complained that the judge had failed to call the jury out after two hours to give them the promised majority direction. The Court was of the view that he correctly resiled from that position since it was not open to the judge on a charge of murder to leave the majority verdict to the jury. To the extent that the judge purported to suggest to them that a time could come when he would give a majority direction, he plainly fell into error. However, no prejudice was occasioned to the appellant by this since the learned judge never did pursue the issue of a majority direction to the jury and could not in the circumstances of this case, given the clear provisions of section 28(3) of the Jury Act, No. 6 of 2009, Laws of Antigua and Barbuda.

As it relates to the ground that the verdict was unsafe and unsatisfactory and against the weight of the evidence, the Court considered this ground to

be unsustainable. This was a strong case based on powerful circumstantial evidence, buttressed by forensic evidence including cell site analysis, blood spatter evidence and foot impression analysis. The jury were very well entitled to come to the findings that they did, given the strength of the evidence which was deployed by the prosecution.

As it relates to the appeal against sentence, at the hearing, Mr. Bowen admitted that he took no issue with the life sentence per se but with the fact that they were ordered to run consecutively to each other. Additionally, he invited this Court to expressly stipulate that the appellant's sentence should be reviewed upon the expiration of thirty years. The Court considered that there is some merit to the submission in relation to the appeal against sentence and accordingly the Court allowed the appeal against sentence to the extent that the sentences imposed in respect of counts 1 and 2 involving Benjamin and Catherine Mullany, is varied so that they run concurrently. This is due to the fact that the murders were committed at the same time and were a part of the same transaction and therefore the sentences ought to have been ordered to run concurrently. The Court considered however that the sentence imposed in respect of the 3rd count in relation to Ms. Wonetta Anderson, being a distinct event and transaction occurring some two weeks after the commission of the murders under counts 1 and 2 ought to be ordered to run consecutively to the sentences under those counts.

The Court further ordered that upon the expiration of thirty years from the date of sentencing, the appellant's sentence will be reviewed in accordance with section 3B of the Offences Against the Persons Act, Cap 300 Laws of Antigua and Barbuda.

Case Name:

Denise Reid
v
The Supervisory Authority
[ANUMCRAP2020/0003]

ANTIGUA AND BARBUDA

Date: Tuesday 19th October 2021

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Trevor Ward, Justice of Appeal [Ag.]

Appearances:

Appellant/Respondent: Mr. Lawrence Daniels

Respondent/Applicant Mr. Wesley George

Issues: Application to strike out notice of appeal -
Withdrawal of appeal - Failure to serve notice of appeal

Type of Order Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

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

Reason: Counsel for the appellant withdrew the appeal after intimating to the Court that the notice of appeal was in any event, not served on the respondent.

Case Name: The Barbuda Council
V
PLH (Barbuda) Ltd

[ANUHCVP2021/0005]
(ANTIGUA AND BARBUDA)

Date: Tuesday, 19th October 2021

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

Appearances:

Respondent/Appellant: Mr. Sylvester Carrott

**Applicant/
Respondent:** Ms. Kema Benjamin and Mr. Hugh Marshall Jr

Issues:

Application to strike out notice of appeal- Whether a valid appeal exists before the court- Whether appeal is in respect of an interlocutory order or final order- Application Test- Whether notice of appeal should be struck out as a nullity - No extension of time sought. Time limited for filing appeal - Rule 62.5(1) of the Civil Procedure Rules 2000 - Whether notice of appeal should be struck out as a nullity having been filed outside the time limited for filing an appeal from an interlocutory order.

Type of Order:

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application to strike out the appeal is granted.
2. The appeal is accordingly struck out.
3. Costs to the applicant/respondent fixed in the sum of \$2,500.00 to be paid on or before the 10th November 2021.

Reason:

The main issue to be determined was whether the appeal was an interlocutory appeal or an appeal against a final order. In deciding this issue, the court looked at the Application Test as enunciated in the dictum of Barrow JA in the case Oliver McDonna v Benjamin Richardson Civil Appeal No. 3 of 2005 where he said "If whichever way the application was decided, that decision would have brought an end to the issue in the litigation, the decision given on that application is a final order. If, on the other hand,

the proceedings would not have ended if one side as opposed to the other side won, the order is not a final order but is an interlocutory order.” The Application test does not look at the effect of the order but rather the application test looks at the outcomes that were possible on the application. Based on these principles, the court was of the view that the order made by the learned judge would not have brought the proceedings to an end and therefore was an interlocutory order. Consequently, the appeals against the judge’s order in respect of the injunction and the striking out of paragraph 22A of the Defence and Counterclaim are appeals from interlocutory orders which required at the latest, notice of appeal to be filed within 21 days of the order. Therefore, the Respondent/Appellant having filed its notice of appeal and submissions out of time contrary to Rules 62.2, 62.5(1)(a) and 62.10 of the Civil Procedure Rules 2000 and having made no application for an extension of time, the appeal is a nullity and must be struck out.

Case Name:

[1] John Mussington

[2] Jacklyn Frank

v

[1] Development Control Authority

**[2] The Antigua and Barbuda
Airports Authority**

[3] The Attorney General

**[ANUHCVP2021/0013]
(ANTIGUA AND BARBUDA)**

Date:

Tuesday, 19th October 2021

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief
Justice**

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

The Hon. Mr. Trevor Ward, Justice of Appeal [Ag.]

Appearances:

Applicants:

Mr. Leslie Thomas, QC with Ms. Michelle Sterling

Respondents: Dr. David Dorsett holding for Ms. Gale Christian for the first respondent

Mr. Hugh Marshall for the second respondent

Mr. Anthony Astaphan, SC, Dr. David Dorsett, and Mrs. Carla Brookes-Harris, Solicitor General for the third respondent

Issues: Application for conditional leave to appeal to Her Majesty in Council pursuant to section 122(2)(a) of the Constitution of Antigua and Barbuda — Whether question involved in appeal is one that by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council — Judicial Review – Rule 56.2 of the Civil Procedure Rules 2000 – Locus standi – Whether applicants had sufficient interest in the subject matter of the application in order to apply for judicial review – Whether court misapplied the test of sufficient interest as stated in *Walton v Scottish Ministers* [2012] UKSC 44

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application seeking conditional leave to appeal to Her Majesty in Council is dismissed.
2. No order as to costs.

Reason: This is an application, not a motion, although no one takes issue with the form, for conditional leave to appeal to Her Majesty in Council. The applicants clarified that their application is made pursuant to

section 122(2)(a) of the Antigua and Barbuda Constitution Order 1981. That section reads in part as follows:

“...an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases-

- (a) 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;...”

The applicants complain that the Court erred in its application of the decision of the United Kingdom Supreme Court in the case of Walton v Scottish Ministers [2012] UKSC 44, of what constitutes sufficient interest for bringing a judicial review claim, a decision which he urged has been applied in other jurisdictions in the Commonwealth such as Barbados. The applicants’ claim for judicial review was grounded under rule 56.2(2)(a) the Civil Procedure Rules 2000. Rule 56.2(1) provides that, ‘[a]n application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application.’ Rule 56.2(2)(a) states, ‘[t]his includes – (a) any person who has been adversely affected by the decision which is the subject of the application.’ In this jurisdiction, the Court has consistently applied the decision of Martinus Francois v The Attorney General [2004] ECSCJ No. 126 on what constitutes ‘great general or public importance’. At paragraph 13 of that decision, the Court stated,

“Leave under this ground is normally granted when there is a difficult question of law involved. In construing the phrase “great general or public importance”, the Court

usually looks for matters that involve a serious issue of law; a constitutional provision that has not been settled; an area of law in dispute, or a legal question the resolution of which poses dire consequences for the public.”

This Court was of the considered view that the instant case does not meet the threshold set out for the grant of leave to appeal under section 122(2)(a) of the Constitution. While the matter may be of some public interest to the applicants, it clearly does not rise to being one of great general or public importance in the sense as described in Martinus Francois. In fact, at paragraph 12 of that decision, the court went on to say, in part, that:

“But in considering whether to grant leave, judges must perforce put to one side sentimental considerations. Nor can the Court grant leave to appeal merely because a significant section of the people of [Antigua & Barbuda] might think the Court to be wrong and would like an opportunity to see the error corrected. The Constitution that binds everyone, including this Court, states that the Court must only grant leave to appeal in defined circumstances.”

Here the complaint of the applicant reduced to its bare minimum is a complaint about the Court’s misapplication of the decision of Walton or failing to follow the decision of Walton. This does not give rise to a matter of great general or public importance and the Court must be constrained by the provision of the Constitution.

Leave to appeal is accordingly refused. As it is a public law issue, the Court was of the view that there ought to be no order as to costs.

Case Name:

Joel Kwame Seraphin

v

The Queen

**(ANUHCRA2018/0006)
(ANTIGUA AND BARBUDA)**

Date: Tuesday, 19th October 2021

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Andrew O’Kola

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

Issues: Application to amend grounds of appeal – Section 29 of the Eastern Caribbean Supreme Court (Antigua & Barbuda) Act

Type of Order Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:
The application to amend the grounds of appeal is granted.

Reason: The Court considered the submissions by counsel for the applicant/appellant in respect of the application to amend the grounds of appeal. The Court further considered that the Director of Public Prosecutions did not oppose the application.

Having considered the justice of the case, the Court was of the view that the application to amend the appellant’s grounds of appeal ought to be granted.

Case Name:

George Thomas

v

The Queen

**(ANUHCRA2018/0018)
(ANTIGUA AND BARBUDA)**

Date:

Tuesday, 19th October 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

Appearances:

Applicant:

Mr. Andrew O’Kola

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecution and Mrs. Shannon Jones-Gittens

Issues:

Application to adduce fresh evidence – Section 45 of the Eastern Caribbean Supreme Court (Antigua & Barbuda) Act – Whether the evidence to be adduced is necessarily expedient to admit in the interest of justice – Whether the evidence to be adduced is relevant and capable of belief – Whether the relevant evidence may have an impact on the safety of conviction – Whether the relevant evidence might have reasonably affected the decision of the trial jury to convict

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

The application to adduce fresh evidence is dismissed.

Reason: The Court considered the application to adduce fresh evidence and the affidavit in support thereof. Having heard from both counsel for the applicant/appellant and the learned Director of Public Prosecutions, and further having reviewed sections 45 (a) and (b) of the Eastern Caribbean Supreme Court (Antigua and Barbuda) Act, Cap 143 of the Laws of Antigua and Barbuda, the Court was not satisfied that the threshold for the admission of fresh evidence had been met and therefore the application was dismissed.

Case Name: George Thomas

v

The Queen

(ANUHCRA2018/0018)
(ANTIGUA AND BARBUDA)

Date: Tuesday, 19th October 2021

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Andrew O’Kola

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

Issues: Application to amend grounds of appeal – Section 29 of the Eastern Caribbean Supreme Court (Antigua & Barbuda) Act

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

Leave is granted to amend the grounds of appeal.

Reason:

The Court considered the submissions by counsel for the applicant/appellant in respect of the application to amend the grounds of appeal. The Court further considered that the Director of Public Prosecutions did not oppose the application.

Having considered the justice of the case, the Court was of the view that the application to amend the appellant's grounds of appeal ought to be granted.

Case Name:

Joel Kwame Seraphin

v

The Queen

**(ANUHCRA2018/0006)
(ANTIGUA AND BARBUDA)**

Heard together with

George Thomas

v

The Queen

**(ANUHCRA2018/0018)
(ANTIGUA AND BARBUDA)**

Date:

Tuesday, 19th October 2021

Coram:

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

The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Appellants:

Mr. Andrew O’Kola

Respondents:

Mr. Anthony Armstrong, Director of Public Prosecution and Mrs. Shannon Jones-Gittens

**Issues on
Appeal No.
ANUHCRA
2018/0006:**

Criminal appeal – Appeal against sentence – Murder – Whether sentencing of the appellant was passed on the wrong factual basis – Whether the judge erred in sentencing the appellant by taking into account matters which should not have been taken into account and by failing to take into account matters which should have been taken into account – Section 15(1) of the Constitution of Antigua and Barbuda – Whether delay in the trial of the appellant constitutes an infringement of his constitutional rights – Article 7 of the Constitution of Antigua and Barbuda – Whether the conditions of detention at Her Majesty’s Prison should have been taken into account when determining the sentence to be imposed – Whether the judge erred in rejecting evidence given by the appellant’s character witness – Whether sentence was manifestly excessive

**Issues on
Appeal No.
ANUHCRA
2018/0018:**

Criminal appeal – Appeal against conviction and sentence – Murder – Section 37(c) of the Evidence (Special Provisions) Act, 2009 - Whether the witness statement of Andre Nibbs was inadmissible and the directions given on the statement were inadequate – Whether the learned judge failed to direct the jury adequately on bad character evidence – Whether the judge failed to direct the jury properly on the interview of the co-accused – Whether the failure of appellant’s counsel in the court below to call relevant alibi witnesses deprived the jury of crucial evidence - Whether the judge failed to sum up the defence fairly - Whether sentence was manifestly excessive – Whether the judge erred by restricting the necessary inferences which could have been drawn in favour of the appellant due to the way he treated the evidence of officer Grantley Beggs –

Whether the pre-trial delay of eight years warrants a reduction in the sentence – Whether the conditions of detention at Her Majesty’s Prison should have been taken into account when determining the sentence to be imposed

Type of Order

N/A

Result / Order:

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

Case Name:

**Khouly Construction & Engineering Limited
v
Edmond Mansoor**

Date:

**[ANUHCVP2020/0023]
Wednesday, 20th October 2021**

Coram:

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

Appearances:

Applicant:

Mr. Anthony Astaphan SC, with him, Mr. Kendrickson Kentish

Respondent:

Dr. David Dorsett

Issues:

Notice of Motion for leave to appeal to her Majesty in Council - Appeal as of right from a final decision - Section 122(1) of the Antigua (Constitution) Order - Whether the proposed appeal raises a genuine disputable issue - Application for stay of execution - Article 6 of the Antigua and Barbuda Appeals to the Privy Council Order

Type of Order:

Oral decision with written reasons to follow

Result / Order:

[Oral Decision]

IT IS HEREBY ORDERED THAT:

- 1. Conditional leave to appeal to Her Majesty in Council against the judgment of the Court of Appeal delivered on 15th April 2021 is hereby granted on the following conditions:**
 - (a) The Applicant/Intended Appellant shall within 90 days of the date hereof enter into good and sufficient security to the satisfaction of the Registrar in the sum of £500 sterling for the due execution of the appeal, the payment of all costs as may become payable by the Applicant/Intended Appellant in the event of not obtaining final leave to appeal or of the appeal being dismissed for want of prosecution or in the event that the Privy Council orders the Applicant/Intended Appellant to pay the costs of the appeal.**
 - (b) The Applicant/Intended Appellant shall take all necessary steps to prepare the Record of Appeal in accordance with the provisions of Rules 18- 20 of the Judicial Committee Rules 2009 and the Practice Directions 4.2.1- 4.3.2 and 5 and the same to be transmitted to the Registrar of the Court immediately upon final leave to appeal being granted and shall include a copy of the orders granting conditional and final leave.**
 - (c) The Applicant/Intended Appellant shall apply to this Court within 30 days of the 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 the Registrar and that the Applicant/Intended Appellant has 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.**
- 2. The judgment of the Court of Appeal delivered on 15th April 2021 is stayed pending the hearing and determination of the appeal to Her Majesty in Council.**
- 3. The costs of the application shall be costs in the appeal to Her Majesty in Council.**
- 4. The Court will provide written reasons in relation to the principle of a “genuine disputable issue” at a later date.**

Reasons: The Court was of the view that the applicant/ intended appellant has met the threshold for the grant of conditional leave to appeal to Her Majesty in Council pursuant to Section 122(1)(a) of the Constitution of Antigua and Barbuda. The Court was also of the view that it was just in all of the circumstances of this case, that the judgment of the Court of Appeal delivered on 15th April 2021 be stayed pending the hearing and determination of the appeal to Her Majesty in Council. The Court proposed that due to the strenuous arguments made by counsel on the case of Meyers v Baynes [2019] UKPC 3 and whether it expounds a wider principle in relation to the question of a ‘genuine disputable issue’, to provide written reasons for its decision at a later date.

Case Name: **Bondalyn Jacobs**
v
Royal Bank of Canada
[ANUHCVP2018/0036]

Date: Wednesday, 20th October 2021

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

Appearances:
Appellant: Mr. Kendrickson Kentish
Respondent: Ms. C. Debra Burnette

Issues: Civil appeal - Application to withdraw appeal by consent

Result/Order: IT IS HEREBY ORDERED THAT:

With the leave of the Court and by consent the appeal herein is withdrawn and a consent order with terms shall be provided to the Court by the close of business today.

Reasons:

Counsel for the appellant made an oral application to withdraw the appeal. There was no opposition by the respondent. Counsel for the appellant gave an undertaking to file a consent order by the close of the business day.

Case Name:

Caribbean Development (Antigua) Limited

v

[1] Delphi Limited

[2] GAIA Limited

[3] Perla Limited

**[ANUHCVP2021/0008]
(Antigua & Barbuda)**

Date:

Wednesday, 20th October 2021

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellant:

Mr. Hugh Marshall

Respondents:

Mr. Rushaine Cunningham, with him, Ms. Janice Young Christopher

Issues:

Interlocutory appeal - Interim injunction - Section 5 of the Public Utilities Act of the Laws of Antigua and Barbuda - Absence of written agreement for the supply of electricity between utility authority and appellant - Whether learned judge erred in finding that there was a good arguable case for private nuisance in the absence of written agreement - Whether learned judge erred by ordering a

mandatory injunction against the appellant for the supply of electricity to the respondents - Whether terms of mandatory injunction would amount to a breach of the Public Utilities Act

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. Costs on the appeal awarded to the respondent in the sum of \$2500.00 to be paid by the appellant on or before 5th November 2021.

Reasons:

This was an appeal against an interlocutory injunctive order made by Robertson J in the High Court of Antigua. The learned judge ordered a mandatory injunction against the appellant compelling them to reconnect the respondents' electricity supply at their dwellings. Counsel for the appellant submitted that the judge erred in so ordering, as there was no written agreement between the authority and the appellant, which counsel averred, was a statutory requirement that must be satisfied for the court to make such an order. He also argued that the learned judge erred in compelling the appellant to do an act in breach of the Public Utilities Act and therefore illegal.

The Court noted that the learned trial judge considered the seminal authority of American Cyanamid Co. v Ethicon Ltd. [1975] AC 396 which outlined the principles which ought to be adopted when considering interim injunctions and National Commercial Bank of Jamaica Ltd v Olint [2009] UKPC 16 where the principles were also expressed, and was of the view, having regard to the evidence before her, that the learned trial judge did not err in her application of the principles.

The Court considered that the remit of the Court of Appeal as per Hadmor Productions and others v Hamilton [1983] 1 A.C. 191, is to consider whether the learned judge acted outside the generous ambit of the discretion which was entrusted to her. The Court is not at liberty to substitute the trial judge's discretion for its own. To therefore interfere with the judge's exercise of her discretion, the Court would have had to find that the decision to which the trial judge came was outside the ambit of reasonable disagreement. However, the Court did not so find. Accordingly, the Court was of the view that there was no reason to disturb the trial judge's conclusion on the exercise of her discretion.

Case Name:

Geoffrey Croft

v

**[1] Joseph W. Horsford
(As sole administrator of the
estate
of William Horsford (Deceased))**

[2] Eric Construction Limited

**(ANUHCVP2021/0003)
(ANTIGUA AND BARBUDA)**

Date:

Wednesday, 20th October 2021

Coram:

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

Appearances:

Appellant:

Mr. Sylvester Carrott

Respondent:

In person

Issues:

Civil appeal – Interim injunction – Whether the judge erred in law in holding that the order of the court dated 24th November 2017 precluded the appellant from enjoying a supply of electricity via Parcel 281 – Whether the judge erred in failing to have regard to the fact that the first respondent had a contract with Antigua Public Utilities Authority to supply electricity to residents along Parcel 281 – Whether the judge erred in law in holding that the first respondent had no notice that Antigua Public Utilities Authority had provided electricity to the appellant – Whether the judge erred in law in holding that the appellant had purchased his land from Joanna Tobitt – Whether the judge erred in law in holding that the registration of an easement by the Chief Surveyor in respect of all residents living alongside Parcel 281 was not valid – Whether the learned judge failed to have regard or proper regard to relevant facts in determining the application – Whether the judge erred in holding that there was no serious question to be tried

Type of Order

Adjournment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Judgment is reserved and the Court will deliver an oral ruling at 3pm 20th October, 2021.**
- 2. The matter is adjourned until 3pm 20th October, 2021.**

Reason:

The Court adjourned the matter so that it could deliver its ruling at a later time on the day of the hearing of the appeal.

Case Name:

Collin Hope Jr

v

Edmond Lake

**(ANUHCVP2020/0022)
(ANTIGUA AND BARBUDA)**

Date: Wednesday, 20th October 2021

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Gerard St. C Farara QC, Justice of Appeal [Ag.]
The Hon. Mr. Trevor Ward QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. David Dorsett

Respondent: No appearance

Issues: Application for adjournment

Type of Order Adjournment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The hearing of this appeal is adjourned and traversed to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 21st February 2022.
2. The appellant shall serve the respondent with a copy of this order and provide the Court with proof of service on or before 14th February 2022.

Reason: The Court considered counsel for the appellant's oral application for an adjournment on the basis that the appellant has been unable to effect service on the respondent due to an inability to locate him. The Court was of the view that in the circumstances an adjournment ought to be granted.

Case Name:

Geoffrey Croft

v

**[1] Joseph W. Horsford
(As sole administrator of the
estate
of William Horsford (Deceased))**

[2] Eric Construction Limited

**(ANUHCVP2021/0003)
(ANTIGUA AND BARBUDA)**

Date:

Wednesday, 20th October 2021

Coram:

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

Appearances:

Appellant: Mr. Sylvester Carrott

Respondent: In person

Issues:

**Civil appeal – Interim injunction – Whether the judge
erred in law in holding that the order of the court
dated 24th November 2017 precluded the appellant
from enjoying a supply of electricity via Parcel 281
– Whether the judge erred in failing to have regard
to the fact that the first respondent had a contract
with Antigua Public Utilities Authority to supply
electricity to residents along Parcel 281 – Whether
the judge erred in law in holding that the first
respondent had no notice that Antigua Public
Utilities Authority had provided electricity to the
appellant – Whether the judge erred in law in
holding that the appellant had purchased his land**

from Joanna Tobitt – Whether the judge erred in law in holding that the registration of an easement by the Chief Surveyor in respect of all residents living alongside Parcel 281 was not valid – Whether the learned judge failed to have regard or proper regard to relevant facts in determining the application – Whether the judge erred in holding that there was no serious question to be tried

Type of Order

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal against the dismissal of the appellant's application with respect to paragraph 1 of the injunction application is allowed.
2. The appeal against the judge's dismissal of paragraphs 2 and 3 of the injunction application is dismissed.
3. The respondent, whether by himself or his servant, agent or otherwise is restrained from disconnecting or interfering with the appellant's supply of electricity to his land Parcels 292 and 293, Block 342482B pending the hearing and determination by the Privy Council of the appellant's appeal from the judgment and orders of this Court in ANUHCVP2014/0028 and/or until any further order of this Court.
4. The injunction order made at paragraph 3 above shall not take effect unless and until the appellant gives to the Court a written undertaking as to damages within 7 days.
5. The costs order made by the judge below is set aside and an order that both parties bear their own costs is substituted.
6. Each party shall bear its own costs on appeal.

Reason:

Having considered the written and oral submissions of Mr. Carrott, learned counsel on behalf of the appellant, and from Mr. Horsford in person, the

Court was satisfied that the learned judge erred in her decision in so far as she refused the appellant's application for an injunction restraining the respondent, Mr. Horsford, from interfering with Mr. Croft's supply of electricity to his house on Parcels 292 and 293.

The Court was of the view that the judge erred in her interpretation of the decision and orders of the Court of Appeal in ANUHCVP2014/0028, which matter was not concerned with the issue of the supply of electricity to the appellant's property and whether that supply gave rise to an overriding interest pursuant to section 28(h) of the Registered Land Act of Antigua and Barbuda, Cap 374 Laws of Antigua and Barbuda. The Court considered that the said decision of the Court of Appeal concerned the issue of access by Mr. Croft over Parcel 281, the property of Mr. Horsford. As to the balance of convenience or balance of harm, the Court was satisfied that Mr. Croft would suffer considerable harm if his supply of electricity, whether underground on Parcel 281 or otherwise, is disconnected by Mr. Horsford while Mr. Croft's appeal to the Privy Council is being considered.

The Court also considered that there remains certain unresolved factual and legal issues as to the period during which Mr. Croft has been enjoying the electricity connection underground on Parcel 281, Mr. Horsford's property, and whether he has any enforceable rights to do so or has the benefit of an overriding interest under section 28(h) of the Registered Land Act.

Accordingly, the Court found that the interest of justice dictates that Mr. Horsford ought to be restrained by order of the Court from disconnecting Mr. Croft's electricity supply to Mr. Croft's property, Parcels 292 and 293, running underground on Mr. Horsford's land, Parcel 281, until the hearing and determination of Mr. Croft's appeal to Her Majesty in Council.

The Court was further of the view that there was no merit in the appeal against the judge's dismissal of

the appellant's application for injunctive relief at paragraphs 2 and 3 of the injunction application filed 13th February 2020. Accordingly, the appeal against those two limbs was dismissed and the judge's order is to that extent affirmed.

Having heard both parties on the matter of costs, the Court was of the view that the costs order made by the judge below is set aside and an order that both parties bear their own costs is substituted. The Court also considered that in relation to the appeal, both parties should also bear their own costs.

Case Name:

Gaston Browne

v

Isaac Newton

**(ANUHCVP2020/0028)
(ANTIGUA AND BARBUDA)**

Date:

Wednesday, 20th October 2021

Coram:

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

Appearances:

Appellant:

Mr. Anthony Astaphan, SC with him, Ms. Rika A. Bird

Respondent:

Mr. Lawrence Daniels

Issues:

Civil appeal – Defamation – Whether the judge erred in law by failing to consider whether the words complained of by the claimant in the first and second publication did in fact bear the meanings attributed to them by the respondent in his

statement of claim – Whether the judge erred in law when she failed to properly consider and/or construe the pleadings and evidence before her – Whether the judge erred in law when she failed to properly consider that the defence of justification under the common law was not repealed by the defence of truth under section 20(3)(a) of the Defamation Act 2015 – Whether the judge erred by failing to take into account certain relevant facts by which the appellant established on a balance of probabilities that the imputations which he made against the respondent were true or substantially true and therefore his defence of justification under common law, or truth should have succeeded pursuant to section 20(3)(a) of the Defamation Act 2015 – Whether the judge erred by requiring the appellant to prove that the respondent was found guilty of misconduct before an administrative or criminal body in order to establish the defence of justification or truth – Whether the judge in determining the meaning of the words used in the second publication failed to take into account the obvious context in which those words were used – Whether the judge erred in law by holding that the second publication was defamatory of the respondent – Whether the judge erred in holding that the defence of justification or truth was not available to the appellant in relation to the second publication – Whether the judge erred in law when she held that the appellant could not rely on the defence of qualified privilege in relation to the first and second publications – Whether the judge erred in law in awarding the respondent aggravated damages on the second publication

Type of Order

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name:

THE ATTORNEY GENERAL OF ANTIGUA
AND BARBUDA

v

HMB HOLDINGS LIMITED

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

Date: Thursday, 21st October 2021

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. Anthony Astaphan, SC with Ms. Carla Brookes-Harris, Mrs. Cherissa Roberts-Thomas and Dr. David Dorsett

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

Issues: Application to amend notice of appeal – Rule 62.4 of the Civil Procedure Rules 2000 – Whether there would be prejudice occasioned to the respondent if the application to amend the notice of appeal is granted

Type of Order Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. Leave is granted to the applicant to file and serve an amended Notice of Appeal within 7 days of the date of this order, which includes the ground that the judgment is wrong in law is so far as the respondent is precluded from the recovery of interest on the judgment of the Court of Appeal dated 5th January 2011,

- after 6 years, pursuant to section 26(2) of the Limitation Act 1997 of Antigua and Barbuda.
2. The appellant shall file and serve written submissions together with authorities on or before Friday, 19th November, 2021.
 3. The respondent shall file and serve written submissions together with authorities on or before 7th January, 2022.
 4. The hearing of the appeal is adjourned and traversed to the next sitting of the Court of Appeal for Antigua and Barbuda scheduled for the week commencing 21st February 2022.
 5. Costs thrown away for today's hearing fit for Queen's Counsel and a Junior is awarded to the respondent, to be assessed if not agreed within 21 days of this order.

Reason:

This was an application by the Attorney General who sought to rely on an additional ground of appeal. The Court heard submissions of learned Senior Counsel Mr. Anthony Astaphan and heard the submissions of learned Queen's Counsel Mrs. Tana'ania Small-Davis and was of the view that the application should be granted and made the above directions.

The Court also invited the parties to make submissions on the issue of costs and was of the view that in all the circumstances, that costs thrown away fit for Queen's Counsel and a Junior, ought to be awarded to the respondent.

Case Name:

**Alvin Thomas
v
Karen Cabral Thomas
(ANUMCVAP2016/0001)
(ANTIGUA AND BARBUDA)**

Date:

Thursday, 21st October 2021

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: Ms. Chantal Thomas

Respondent: No appearance

Issues:

Magisterial Civil Appeal – Application to set aside Protection Order – Whether the Learned Magistrate erred in Law by failing to apply or appropriately apply the mandatory test specified by section 4 (2) of the Domestic Violence (Summary Proceedings) Act 1999 – Whether the Learned Magistrate erred in Law by failing to take account of all the circumstances of the Case, contrary to sub-subsection 4 (2) (b) of the Domestic Violence (Summary Proceedings) Act 1999 – Section 13 (13) Domestic Violence Act 2015 – Request for the court to give an order that the order given by the Magistrate has expired by effluxion of time.

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal is dismissed.

Reason:

The Court considered an appeal against a protection order made by the Magistrate in the family court prohibiting the appellant from entering or remaining in the respondent's residence, entering or remaining anywhere the respondent happens to be or within 200 yards of the respondent and molesting the respondent by any one of several means specified in the order; breach of which would render the appellant liable to a fine and/or imprisonment.

The Court considered both written and oral submissions made on behalf of the appellant and

concluded that the Magistrate made no error in granting the protection order and that the appeal ought to be dismissed.

Case Name:

Edwin Gomez

v

**The Queen
(ANUHCRA2014/0012)**

Consolidated with

Isiah Benjamin

v

**The Queen
(ANUHCRA2014/0013)**

(ANTIGUA AND BARBUDA)

Date:

Thursday, 21st October 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

Appearances:

Appellants:

Mr. Sherfield Bowen for the first appellant, Mr. Wendel Robinson for the second appellant

Respondent:

Mr. Shawn Nelson holding papers for the Director of Public Prosecutions

Issues:

Application for adjournment

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application by the Crown to adjourn the hearing of this matter is granted, there being no objection by the appellants' counsel.**
- 2. The Director of Public Prosecutions shall file and serve written submissions with authorities in reply on or before 15th December 2021.**
- 3. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 21st February 2022.**

Reason:

The Court considered the request by the Crown for an adjournment on the basis that they had only received the second appellant's submissions on or about 7th October 2021. Counsel for the Crown indicated to the Court that the Crown wished to respond to the submissions by both appellants in one set of submissions, which they intended to file by the end of December 2021.

The Court was of the view that given the circumstances, and there being no objection by counsel for the appellants, that the application for an adjournment ought to be granted.

Case Name:

Cheryl Thompson

v

The Queen

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

Date:

Thursday, 21st October 2021

Coram:

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

**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of
Appeal [Ag.]**

Appearances:

Applicant: Mr. Fitzmore Harris

Respondent: Ms. Rilys Adams

Issues:

Application for leave to appeal – Jurisdiction – Sections 31, 38 and 39 of the Eastern Caribbean Supreme Court (Antigua and Barbuda) Act, Cap 143 - Whether sections 31, 38 and 39 of the Eastern Caribbean Supreme Court (Antigua and Barbuda) Act prevent the Court of Appeal from granting leave to appeal against an order denying a constitutional motion in a criminal cause or matter – Whether an order on a constitutional motion in a criminal matter may be considered a final order – Section 121 of the Constitution of Antigua and Barbuda - Whether the provisions of sections 31, 38 and 39 of the Eastern Caribbean Supreme Court (Antigua and Barbuda) Act are incompatible with or operate in violation of the Constitution of Antigua and Barbuda – Whether the order of the judge concerned the interpretation or the application of constitutional provisions - Whether the appeal has a reasonable prospect of success

Type of Order

N/A

Result / Order:

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

Case Name:

Alison Sebastian

v

**The Chief Town and Country Planner of the
Development Control Authority**

[ANUHCVP2020/0038]

(Antigua & Barbuda)

Date: Friday, 22nd October 2021.

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

Appearances:

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

Issues: Application for an extension of time – Whether the respondent’s application to deem the submissions filed on the 6th October and served on the 7th October as properly filed and served ought to be acceded to – Judicial Review – Whether the learned judge erred in refusing the appellant leave to apply for judicial review of a decision of the respondent granting construction approval in the circumstances of the case.

Type of Order: Oral Decision

Result/ Order: IT IS HEREBY ORDERED THAT:

1. The submissions filed on 6th October 2021 and served on 7th October 2021 are deemed to be properly filed and served on the appellant/respondent, there being no objection by the appellant/respondent.
2. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal for Antigua and Barbuda during the week commencing 21st February 2022.
3. It is further directed that the appellant prepares an index in respect of each part of her hearing bundle identifying separately each document by name and referencing the

PDF page where that document can be found in that part of the electronic hearing bundle and to carry out the same exercise in respect of parts b, c, and d of the hearing bundle and thereafter to file the complete index so referenced for use by the Court and the parties.

Reason:

The Court was of the view that in the circumstances the applicant ought to be granted an extension of time and that the submissions filed on 6th October 2021 and served on 7th October 2021 are to be deemed properly filed and served on the appellant/respondent.

Case Name:

Antigua Flight Training Center

v

[1] Deidre Pigott Edgecombe

[2] Nordel Edgecombe

[ANUHCVP2020/0017]

(Antigua & Barbuda)

Date:

Friday, 22nd October 2021.

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice

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

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

Appearances:

Appellant:

Mr. Warren Cassell

Respondent:

Dr. David Dorsett

Issues:

Withdrawal of application to strike out the notice of appeal – Civil appeal – Default judgment – Whether the learned trial judge erred in setting aside the default judgment in the circumstances of the case.

Type of Order:

Oral Decision

Result/ Order:

IT IS HEREBY ORDERED THAT:

- 1. With the Court's leave, the respondents are allowed to withdraw their application to strike out the Notice of Appeal filed on 24th June 2021.**
- 2. The respondents shall bear the costs of the withdrawal of the said application to strike fixed in the sum of \$2,500.00, the said sum to be paid no later than 8th November 2021.**
- 3. The appeal is allowed.**
- 4. The decision of the learned trial judge dated 4th November 2019, setting aside the default judgment entered in the claim on 21st August 2014, is hereby set aside and the default judgment is restored.**
- 5. The appellant shall have its costs to be paid by the respondents fixed in the sum of \$3,000.00 to be paid on or before 31st December 2021.**
- 6. Written reasons for this decision will follow at a later date.**

Case Name:

Calvin James

v

**The Queen
(ANUHCRA2020/0004)**

(ANTIGUA AND BARBUDA)

Date: Friday, 22nd October 2021

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]
The Hon. Mr. Trevor Ward QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Justin L. Simon, QC

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

Issues: Criminal appeal – Appeal against sentence – Murder – Consent order that confiscation order made by judge was made without jurisdiction and the order ought to be set aside – Section 3B of the Offences Against the Persons Act, Cap 300 – Consent order that the whole of life sentences imposed by the judge for the murder charges are not known to the law of Antigua and Barbuda and ought to be set aside and substituted – Appropriate substitute for whole life sentences imposed for murder charge – Attempted Murder – Causing grievous bodily harm with intent – Whether the sentences imposed by the judge for the charges of attempted murder and causing grievous bodily harm with intent are manifestly excessive – Whether the sentences imposed for the non-fatal offences ought to run consecutively or concurrently to the sentence imposed for the fatal offences

Type of Order Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. For the offence of causing grievous bodily harm with intent to his sister Ineta Liburd , the sentence of 4 years imprisonment imposed by the trial judge is affirmed.
2. For the offence of attempted murder of his niece, Amanda James, the sentence of 11 years imprisonment imposed by the trial judge on the appellant is affirmed.
3. For the offence of shooting with intent to murder his nephew, Lawrence James, the sentence of 15 years imprisonment imposed by the trial judge on the appellant is affirmed.
4. For the murder of Tahisha Thomas, the whole of life sentence imposed by the trial judge is set aside and replaced by life imprisonment.
5. For the murder of Sanchesca Charles, the whole of life sentence imposed by the trial judge is set aside and replaced by life imprisonment.
6. The two sentences of life imprisonment will run concurrently with each other and with the 15 year sentence for shooting with intent to murder, all three of which offences having been committed almost simultaneously on 5th October 2018.
7. The sentences of 4 years and 11 years for the May 2015 crimes shall run consecutively with the 15 years sentences for shooting with intent to murder and the two life sentences for murder, all committed in October 2018.
8. The life sentence for the murder of Tahisha Thomas will be reviewed after the appellant has served 30 years in prison.
9. The life sentence for the murder of Sanchesca Charles will be reviewed after the appellant has served 35 years in prison.

10. The order of the trial judge confiscating and directing the transfer to Ineta Liburd of the appellant's house and land is set aside.

Reason:

This is an appeal against the sentences imposed by a trial judge arising from the appellant's pleas of guilty of five charges, two for murder, one for attempted murder, one for shooting with intent to murder and the other for causing grievous bodily harm with intent. With respect to the murder charges the trial judge imposed "a whole life sentence" for each of them. With respect to the charge of attempted murder the trial judge imposed a sentence of 11 years imprisonment. With respect to the charge of shooting with intent to murder the trial judge imposed a sentence of 15 years imprisonment. With respect to the charge of causing grievous bodily harm with intent the trial judge imposed a sentence of 4 years imprisonment. The trial judge also made an order that the appellant's house and land would be confiscated and transferred to his sister, whom he pleaded guilty to causing grievous bodily harm to and for which he was sentenced to 4 years imprisonment.

With the leave of the Court the appellant appealed against the sentences imposed on him by the trial judge. The appellant's grounds of appeal which were contained in his notice of appeal filed 29th October 2020 were: that (i) the sentences imposed by the trial judge were harsh given the appellant's guilty pleas, and (ii) the trial judge erred in law in ordering the confiscation of the appellant's house and land for transfer to his sister. Submissions were filed by the Director of Public Prosecutions (the "DPP") on 22nd June 2021 on behalf of the respondent in which the DPP conceded that the sentences imposed by the trial judge "warrants court interference" on the basis that the learned judge made several errors in law and in principle in imposing the sentences. Submissions were filed by learned Queen's Counsel ("QC"), Mr. Justin L. Simon on behalf of the appellant on 27th September 2021 in which the DPP's concessions were

gratefully noted and accepted. The learned QC pleaded that “the appeal be allowed by setting aside the property confiscation order and varying the multiple sentences imposed”.

Both sides of this appeal agreed that the trial judge had no authority whatsoever to make the confiscation order that he did and so the Court did not dwell on it. Accordingly, that order was, without more, set aside. Both sides also agreed that the trial judge made several errors of law when he imposed some of the sentences that he did. The most egregious of the errors being the imposition of whole life sentences in respect of each of the two murder charges. The Court noted that there is no provision in the Offences Against the Persons Act, Cap 300 Laws of Antigua and Barbuda, where the offence of murder is charged and sentence provided for whole life sentences. The Court was of the view that the whole life sentences imposed by the trial judge for the murders of Tahisha Thomas and Sanchesca Charles ought accordingly to be set aside and replaced by sentences of life imprisonment. The Court was further of the view that the two life sentences for the almost simultaneous murders of the two sisters in law should run concurrently. In relation to the first in time of the two murders committed by the appellant, that is the murder of Tahisha, the Court considered that the life sentence ought to be reviewed after the appellant has served 30 years in prison. The Court also considered that in the case of the murder of Sanchesca, being committed second in time, and being committed on a fleeing woman unconnected with the appellant’s land dispute between himself and his sister, the life sentence ought to be subject to review after the appellant has served 35 years in prison.

The Court was of the view that in keeping with the principles and practices of the court, the sentences of 4 years and 11 years imprisonment imposed on the appellant for the offences of causing grievous bodily harm with intent and attempted murder, which occurred almost simultaneously on 28th May 2015 ought to run concurrently. The Court also

considered that the sentences of 15 years imprisonment for shooting with intent to kill and the two life sentences for the murder charges which were committed nearly simultaneously ought to run concurrently. The Court also considered that the 4- and 11-year sentences imposed for the crimes committed in May 2015 ought to however run consecutively with the sentences imposed for the crimes committed in October 2018. The appellant was then effectively sentenced to terms of imprisonment which shall run for at least 46 years subject to any revision with respect to the 11 year sentence for the attempted murder of Amanda James.

Case Name:

Octavia Nicholas

v

Joseph Warner

**(ANUMCRAP2020/0002)
(ANTIGUA & BARBUDA)**

Date:

Friday, 22nd October 2021

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]
The Hon. Mr. Trevor Ward QC, Justice of Appeal [Ag.]**

Appearances:

Applicant:

Mr. Justin L. Simon

Respondent:

Mr. George Lake

Issues:

Criminal appeal – Private Criminal Complaint - Section 170(2)(f) of the Magistrate's Code of Procedure Act, Cap 255 - Whether the decision reached by the Chief Magistrate conflicts with the order of the Family Court granting the appellant a protection order against the respondent - Whether the decision reached by the Chief Magistrate was

erroneous in point of law in circumstances where the appellant's no case submission was rejected - Whether the decision reached by the Chief Magistrate is unreasonable and cannot be supported having regard to the evidence

Type of Order

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The conviction is quashed.
2. The sentence imposed is set aside.
3. The respondent is to pay the appellant's costs in the sum of \$3000 within 21 days.

Reason:

The appellant appealed to this Court from the conviction and sentence dated 1st September 2020 made by the Chief Magistrate of the Magistrate's Court District A in St. John's, Antigua and Barbuda. The appellant relied on four grounds of appeal as set out in the notice of appeal filed on 11th September 2020. The Court heard submissions from counsel for both parties in this matter. The crux of the appeal centers on the conflicting decisions of the Family Court and the Magistrate's Court in relation to private criminal charges which were brought against the appellant subsequent to an interim protection order being made in the Family Court based on the affidavit evidence of the appellant in which, among other things, the appellant alleged that she had been assaulted by the respondent with a firearm. The respondent brought four private criminal complaints however only one of those complaints were proceeded with. That complaint filed on 5th March 2020 relates to an allegation of the appellant making false statements verbally and in writing and issued with the intent to prevent the course of justice and to injure the respondent and to deceive various police and court officers, including members of the bench. The specific allegation in that criminal complaint was that the appellant had falsely stated in her affidavit in the matters in the Family Court and in complaint to the police officers at Parham Station, that Mr.

Joseph had assaulted her by aiming his firearm at and threatening her. There was specific reference in that complaint to the affidavit filed 30th August 2019 at paragraph 25. The allegation continued that those false allegations thereby caused Mr. Joseph, the respondent, to be arrested and charged and subjected to a protection order. The allegation is that those matters were contrary to section 57(1) of the Small Charges Act, Cap 405 Laws of Antigua and Barbuda.

Notwithstanding the proceedings in the Family Court having been brought to the attention of the Chief Magistrate in the criminal proceedings and a copy of the interim protection order being exhibited in those criminal proceedings and, further, notwithstanding a no case submission made by counsel for the appellant, as the defendant in those proceedings, that the Chief Magistrate ought not to proceed with those matters as the same factual issue was a live issue in the proceedings before the Family Court, the Chief Magistrate nevertheless proceeded and convicted the appellant of the charge.

It was accepted by learned counsel on both sides that there is a clear conflict between the decision in the Family Court and the decision reached in the Magistrate's Court in the criminal proceedings. This Court was satisfied that there was such a conflict and that this conflict undermines the veracity and fairness of the conviction in the proceedings before the Chief Magistrate which led to the conviction and sentence of the appellant. Accordingly, the Court was of the view that the conviction and sentence ought to be set aside.

Case Name:

Umberto Schenato

v

The Queen

(ANUHCRA2021/0008)

(ANTIGUA AND BARBUDA)

Date: Friday, 22nd October 2021

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]
The Hon. Mr. Trevor Ward QC, Justice of Appeal [Ag.]

Appearances:

Applicant: Ms. Janice Young Christopher

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

Issues: Application for leave to appeal out of time -
Application for leave to appeal against sentence

Type of Order Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal out of time is granted.
2. The application for leave to appeal against sentence is granted.

Reason: The Court considered that in circumstances where the Director of Public Prosecutions had no objections to the applicant's applications for leave to appeal out of time and for leave to appeal against sentence, that both applications ought to be granted in the interest of justice.

Case Name: Umberto Schenato

v

The Queen

**(ANUHCRA2021/0008)
(ANTIGUA AND BARBUDA)**

Date: Friday, 22nd October 2021

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]
The Hon. Mr. Trevor Ward QC, Justice of Appeal [Ag.]

Appearances:

Applicant: Ms. Janice Young Christopher

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

Issues: Criminal appeal - Appeal against sentence- Whether the learned judge committed any error in law in sentencing the appellant – Whether the sentence was manifestly excessive given the age and infirmity of the appellant at the time of sentencing

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:
The appeal is dismissed.

Reason: The Court considered that there was no evidence that the trial judge had taken into consideration any matters which he ought not to have taken into consideration or that he failed to consider matters which he ought to have considered in the sentencing of the appellant. The Court was of the view that the appellant's appeal amounted to a plea for leniency which was outside of the Court's jurisdiction to address. The Court considered that it may only interfere with the sentence in so far as the judge made an error and thereafter it could exercise its own independent discretion. Therefore, in circumstances where the appellant failed to prove that the judge was plainly wrong in his decision, the

Court was of the view that the appeal ought to be dismissed.