

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
VIDEOCONFERENCE

GRENADA

12th October to 16th October 2020

JUDGMENTS

Case Name:

Vladimir Niyazov

v

**Maples and Calder
Agon Litigation**

[BVIHCMAP2018/0051]

(Territory of the Virgin Islands)

Date:

Monday, 12th October 2020

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

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

Appearances:

Appellant:

Mr. Jonathan Crystal

Respondents:

Ms. Martha Ramtahal for the 1st Respondent

**Mr. Michael J. Fay QC with him, Mr. Shane Quinn
for the 2nd Respondent**

Issues:

**Commercial appeal – Recovery of costs – Whether
solicitor and/or barrister acting in person can
recover costs – Interpretation of Legal Profession
Act, 2015 – Whether a firm of legal practitioners is
entitled to recover legal costs in proceedings for
which it acted for itself – Whether the exception to
the rule governing recovery of costs in London
Scottish Benefit Society v Chorley, Crawford and
Chester applies in the Territory of the Virgin
Islands – Chorley exception – Whether Chorley
exception unconstitutional in light of the right to
equality before the law under section 12 of the
Constitution of the Territory of the Virgin Islands**

Result and
Reason:

Held: ordering that the appellant pays the costs of the respondents on their application and such reasonable costs incurred in preparing for the hearing of this appeal to be assessed by a judge of the Commercial Court if not agreed within 30 days of the date of this order, that:

- 1. The Civil Procedure Rules 2000 (“CPR”), which provides the procedural framework, makes it clear that costs are in the discretion of the court. A court has full power to determine by whom, to whom and to what extent costs are to be paid. It is clear that the relevant provisions of the CPR do not reflect any distinction between barristers and solicitors and are therefore clearly inconsistent with the limited application of the Chorley exception. It is also apparent that the BVI has never, as a matter of law or practice, recognised a distinction between solicitors and barristers in so far as the recovery of costs is concerned. Given the peculiar historical context and the evolving and peculiar legislative framework which currently operates in the Virgin Islands, the Court can see no proper basis to refrain from extending the Chorley exception so as to enable self-represented barristers to recover their costs in respect of work undertaken, as if they had been retained as counsel.**

Rule 2.4 and Part 64 of the Civil Procedure Rules 2000 applied.

- 2. Fairness, justice and equality before the law and their reflections in a lack of differential treatment without a reasonable relation to a proper objective, must characterise the judicial process and its expected outcomes. When considering the rationales which underpin the Chorley exception, the Court is satisfied that they do not meet the relevant threshold and that the only logical conclusion which remains is that the exception is grounded in privilege accorded to solicitors. The Chorley exception is inconsistent with the equality of all persons before the law.**

Quincy Mc Ewan v The Attorney General of Guyana [2018] CCJ 30 (AJ) applied; Husbands v Warefact [2003] UKPC 23 distinguished.

- 3. In the Eastern Caribbean, the common law has continued to evolve such that there is no reason to continue to maintain the general rule that a self-represented litigant should not obtain recompense (other than out of pocket expenses) and the common law distinction between barristers and solicitors adumbrated in the Chorley line of authorities. The modern approach reflected in Horsford v Bird [2006] UKPC 55, [2007] 2 Costs LR 245 and in rule 2.4 and Part 64 of the CPR is one which fully remedies the constitutional dilemma fostered by Chorley and its disparate treatment of self-represented lay litigants.**

Horsford v Bird [2006] UKPC 55, [2007] 2 Costs LR 245 applied.

- 4. Section 13 of the Legal Profession Act, 2015 (“the LPA”) was intended to remove any lingering distinctions between barristers and solicitors thus entitling all persons who are admitted to the roll, now referred to as legal practitioners, to have the right of audience before any court; to practise law in the BVI and to sue for and recover their fees for services rendered. However, the transitional provisions introduced shortly after the LPA was passed, effectively suspended the operation of section 13 of the LPA while inadvertently ignoring the fact that section 66 (1) of the LPA had repealed sections 70 and 71 of the Eastern Caribbean Supreme Court (Virgin Islands) Act 1969 which entitled an enrolled barrister to practise as a solicitor, and to sue for and receive his or her taxed costs as such. In temporarily suspending the total fusion of the legal profession in this way, the Legislature could not have intended to deprive enrolled barristers of a long established right which is also reflected in the historical and practical realities which obtain in the Virgin Islands.**

Sections 13, 66(1) and 67(1) of the Legal Profession Act, 2015 No. 13 of 2015, Laws of the Virgin Islands and the Legal Profession (Amendment) Act No. 1 of 2016, sections 70 and 71 of the Eastern Caribbean Supreme Court (Virgin Islands) Act, Cap. 80, Revised Laws of the Virgin Islands 1991 considered.

Case Name:

George Rick James

v

[1]Hon. Gaston Browne (Prime Minister of Antigua and Barbuda)

[2]Hon. Steadroy Benjamin (Attorney General of Antigua and Barbuda)

**[ANUHCVP2016/0015]
(Antigua and Barbuda)**

Date:

Tuesday, 13th October 2020

Coram:

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

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

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

No appearance

Respondent:

Ms. Carla Brookes-Harris

Issues:

Civil appeal – Constitutional motion – Sections 69(3) and 70 of Constitution of Antigua and Barbuda Order, 1981 – Composition of Cabinet — Whether Prime Minister breached sections 69(3) and 70 of Constitution by appointing a Cabinet comprised of a majority of elected members in House of Representatives—Collective responsibility – Whether collective responsibility provision breached by composition of Cabinet

**Result and
Reasons:**

Held: dismissing the appeal with no order as to costs, that:

1. The Constitution expressly provides for the Governor General to establish offices of Minister of Government and to appoint to such offices persons nominated by the Prime Minister from the members of the House of Representatives and/or the Senate. The Constitution further provides for the establishment of a Cabinet from among the Ministers so appointed, and gives the Prime Minister and not the courts the power to determine the composition of Cabinet and the number of Cabinet members. Outside the express provisions of the Constitution, there are no legal restrictions as to the number or qualifications of the members of the Cabinet.

Sections 69(3) and (4), and 70(2) of the Constitution of Antigua and Barbuda Order, 1981 Cap. 23 of the Revised Laws of Antigua, 1992 applied.

2. Notwithstanding their familiarity with the doctrine of collective responsibility, the framers of the Constitution put in place clear arrangements for the establishment of the offices of Ministers of Government, for the appointment of parliamentarians to such offices by the Governor General on the advice of the Prime Minister, and for the formation of the Cabinet and the pre-eminent role of the Prime Minister in that regard. It is not the function of the courts to usurp the discretion expressly given to the Prime Minister by the Constitution to determine the number of ministers in the Cabinet, and it is decidedly not the function of the courts to do so with a view to altering or affecting the balance between the legislative and the executive branches of government.

Sections 70(1) of the Constitution of Antigua and Barbuda Order, 1981 Cap. 23 of the Revised Laws of Antigua, 1992 applied.

3. No award was made as to costs by the trial judge. In this case, the appellant has not acted unreasonably in prosecuting his claim or the appeal. Accordingly, no order for costs should be made against him.

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

Case Name:

Stuart A. Lockhart
v
[1]Valentina Nonini and Maurizio
Pandini
[2]The Disciplinary Committee
[ANUHCVP2019/0004]
(Antigua and Barbuda)

Date:

Wednesday, 14th October 2020

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. Leslie Thomas, QC with him, Dr. David Dorsett**
Respondent: **No appearance**

Issues:

Civil appeal – Disciplinary hearing – Principles of natural justice – Whether the appellant was denied the right to be heard – Whether the appellant was denied the right to a fair hearing — Bias – Whether there was apparent bias on the part of the disciplinary committee – Whether the disciplinary committee failed to give sufficient reasons for its decision

Result / Order:

Held: allowing the appeal in part; setting aside the decision of the Disciplinary Committee; remitting the disciplinary complaint filed on 3rd March 2015 against Stuart A. Lockhart for rehearing by a differently constituted panel of the Disciplinary Committee; and making no order as to costs, that:

- 1. The general rule is that a party is entitled to be present throughout the hearing of a civil trial as he has a right to know the case against him and the evidence on which it is based. The party must also have an opportunity to respond to any evidence and to any submissions made by the other side. Although there are cases where a departure from the general rule may be justified for special reasons in the interest of justice, the instant case is not one where such a departure can be justified as the prejudice to Mr. Lockhart, albeit the interposing of Mr. Young's evidence was done at his request, outweighed the necessity to exclude him from the hearing room during the taking of Mr. Young's evidence.**
- 2. The principles of natural justice require that allegations made against a party should be put to that party by way of formal charge or complaint so that the party would be forewarned and have an opportunity to respond to the charge by contradicting it or giving an explanation. As such, the Disciplinary Committee, by arriving at a conclusion that Mr. Lockhart was engaging in criminal conduct when such a complaint had not been formally put to him, and without affording him a proper opportunity to address such a complaint, breached Mr. Lockhart's right to be heard and the principles of natural justice.**
- 3. Whereas the test for apparent bias is whether a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased, an appellate court is required to look at the whole spectrum of decision-making, as long as it is borne fully in mind that such a test has to be applied in very different**

circumstances and that those circumstances must have an important and possibly decisive bearing on the outcome. In the instant case, there does not appear to be any sufficient nexus between Ms. Burnette's objecting to Mr. Young's admission to the Antiguan Bar in respect of a matter unrelated to this case and the subject matter of the disciplinary complaint against Mr. Lockhart in which Mr. Young gave evidence. Further, the mere fact that another attorney-at-law in Ms. Burnette's firm had acted for the transactional attorney who held the first respondents' escrow account in the transaction, which formed part of the substratum of facts relevant to the subject-matter of the disciplinary proceedings, is not indicative of bias on the part of Ms. Burnette.

4. The appellant's argument that the Committee ought to have elaborated its determination on the hours and fees that should have been allowed for the work done by Mr. Lockhart fail as the Committee appears to have made its determination on the basis of a restructured schedule of fees provided by Mr. Lockhart himself. Furthermore, there is also nothing contained in the Committee's decision which suggests that it had misdirected itself on the applicable burden and standard of proof at the disciplinary hearing

Case Name:

**Barrington Pond
v
Netherland Antilles General Insurance
Corporation N.V**

**[DOMHCVAP2013/0005]
(Dominica)**

Date:

Wednesday, 14th October 2020

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: Mrs. Noelize Knight-Didier and Ms. Joelle Harris
Respondent: Ms. Cara Shillingford

Issues: Civil appeal – Motor vehicle insurance law – Whether a secretary of a company has the capacity to bind the company – Equitable estoppel – Revival of a policy of insurance – Whether paying the balance owing on a premium after the due date and after the policy of insurance is deemed cancelled can result in a revival of the policy of insurance – Whether it would be legitimate to infer an intention to retrospectively cover liability for a total loss by the acceptance of the balance owing on a premium which balance was paid after the total loss occurred and when the item insured effectively ceased to exist before the outstanding balance of the premium was paid– Whether the sending of a renewal notice after a policy has been deemed cancelled can operate as a representation that the policy is still valid – Motor Vehicles Insurance (Third-Party Risks) Act –Whether there is the need to send a notice of cancellation of a policy of insurance for the cancellation of a comprehensive policy of insurance to be valid

Result and
Reasons:

Held: dismissing the appeal, and awarding cost to the respondent of two thirds of the amount awarded in the court below, that:

- 1. An appellate court in reviewing a trial judge's conclusion on the evidence should not vary his conclusion unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the judge's conclusion. The trial judge was entitled to make the finding of fact, on the evidence which was before him, that Ms. Lawrence was being truthful when she denied that she told the appellant that his signing of the undertaking was just a formality and that he didn't have to comply with it strictly. There was clearly evidence on which the trial judge could make this finding, and there was no error of law made by him in doing so.**
- 2. A secretary has no general authority, by virtue of or in the ordinary course of her employment, to make communications to bind a company, and the secretary will only be able to bind the company if she has some general or special authority delegated to her for that purpose. Statements made by the secretary would only bind the company if the statements were within the ordinary domain of a secretary's duties. There was no evidence in this case of any general or special authority delegated to Ms. Lawrence to bind the company by any verbal communication to the appellant, neither was a waiver of the obligation of the insured to pay the premium due on his policy of insurance, whether by a particular date or at all, within the ordinary domain of a secretary's duties. Accordingly, Ms. Lawrence had no authority to bind the respondent company, and the trial judge was entitled to so find.**
- 3. Whilst there may be a revival of a policy which has lapsed, either by agreement between the parties or by conduct of the insurers such as to estop one of the parties from denying that there is a subsisting**

policy, it must be clear from the evidence that this was the intention of the parties or the result of their actions. However, even if a revived policy is antedated to the expiration of the period previously covered, this does not necessarily mean that a loss which occurred before the date of the revival has to be paid for by the insurers; to achieve this there must be clear evidence of the parties having intended to make the revival retrospective so as to cover even interim losses. In the instant case, there was no revival of the policy by virtue of the respondent's acceptance of payment of the outstanding balance and the respondent providing the appellant with a receipt showing payment of the balance of the premium for the period 29th October 1991 to 29th October 1992, as there was no evidence that the parties intended the policy to be revived, or alternatively, for any such revival of the policy to be retrospective so as to cover losses occurring before payment of the balance due on the premium. Moreover, as the loss occurring in this case was a total loss, which would have the effect of obliterating the entirety of the appellant's insurable interest in the truck, it would not appear to be legitimate to infer an intention on the part of the respondent to retrospectively cover a total loss, where the item insured effectively ceased to exist before the outstanding balance of the premium was paid.

4. A party may be estopped from insisting on its rights when it has made a representation to the other party which induced that other party to reasonably believe that the estopped party would not have insisted on its rights and the other party in reliance on that representation, acted to his detriment. A party cannot, however, claim such an estoppel by alleging detrimental reliance on a representation made after the event in respect of which the allegedly estopped party is insisting on its right. Taken at its highest, the appellant's argument is that the respondent sending him renewal notices

reminding him to renew his policy and to pay the balance outstanding on the policy amounted to a representation that his policy would remain valid. In the circumstances, where renewal notices are sent out as a matter of course to persons holding policies of insurance which automatically expire as of a certain date, and which are renewable as of the day following the expiry date, the court was entitled to find that it would be unreasonable on the facts of this case for the appellant to believe, and the trial judge to find, that such a renewal notice was a representation that the policy was still valid notwithstanding the non-payment of the premium and the fact that the balance of the premium was still not paid by the time the truck became a total loss.

5. Whether the respondent failed to give notice to the Licensing Authority of the cancellation of a policy of motor insurance as required by the Motor Vehicles Insurance (Third-Party Risks) Act is of no moment, as that Act relates to the protection of third-party rights and has nothing to do with the liability of insurance companies to their own insureds. The rights of the parties to the contract of insurance are determined by their contract, and any question as to whether coverage is extended or not extended to an insured by his insurer is an issue of contract law and not statute. In any event, there was no requirement for the appellant to be notified that a notice of cancellation was sent to the Licensing Authority and further there was no evidence that the respondent did not send such a notice. A party cannot seek to rely on the doctrine of estoppel where he was not aware of the facts which could have given rise to the estoppel. So, in the absence of any evidence that the appellant knew that the Licensing Authority had not been notified of the cancellation of his policy, if this be the case, the appellant could not rely on the lack of notification of the Licensing Authority to ground any estoppel disentitling the respondent from asserting its right to treat the policy as having been cancelled by the

appellant's non-payment of the outstanding balance of the premium.

APPLICATIONS AND APPEALS

Case Name: Andy John
v
The Queen

**[GDAMCRAP2016/0013]
(Grenada)**

Date: Monday, 12th October 2020

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

Appearances:

Appellant: In person

Respondent: Mr. Howard Pinnock

Issue: Magisterial criminal appeal – Application for extension of time to pay the remaining balance of the fine imposed

Type of Order: Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application for an extension of time to pay the balance of the fine of \$50,000.00 fine imposed upon the appellant/applicant is granted.
2. The terms of the order are varied as follows:
 - i. The appellant/applicant shall pay a monthly sum of \$300.00, the first payment of \$300.00 to be made on the first working day of November 2020, and thereafter on the first working day of each month until the fine is paid in full, in default of any one installment payment, the default term of imprisonment will come into operation, adjusted by the percentage of the sums paid in respect of the fine.

Reason:

The Court noted that the applicant has made some effort to pay the fine, albeit in small amounts and that the COVID-19 pandemic would have affected his ability on his employment prospects. The Court also noted that the applicant has a daughter, who is a dependent and to whom he contributes to maintaining.

The Court was therefore satisfied that the extension ought to be granted and the terms of the order in the court below varied for the applicant to make monthly instalments of a fixed sum. Further, the Court was also of the view that a default provision for imprisonment should be attached to the order to ensure the applicant's compliance in making the monthly payments.

Case Name:

Dwayne Francis

v

The Queen

**[GDAHCRAP2014/0007]
(Grenada)**

Date:

Monday, 12th October 2020

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

Appearances:
Appellant: Mr. Jerry Edwin
Respondent: Mr. Howard Pinnock

Issue: Criminal appeal – Application for bail pending appeal – Whether the circumstances relied on by appellant are exceptional circumstances which justify grant of bail pending appeal – Unavailability of transcript

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appellant is granted leave to appeal against sentence.
2. The application for bail pending the hearing and determination of the appeal is granted on the following conditions:
 - i. The appellant shall enter into a recognisance in the sum of \$24,000.00 with two sureties.
 - ii. The appellant shall surrender all his travel documents, including his passport, to the Registrar of the High Court no later than 14th October 2020.
 - iii. The appellant shall report to the St. Paul's Police station every Friday between the hours of 6:00 a.m. and 6:00 p.m.

Reason: Counsel for the applicant/appellant informed the Court that the transcript of the proceedings in this matter cannot be completed and that it is highly unlikely that one may become available to the Court for hearing of the appeal. Counsel for the respondent also informed the Court that they also do not have any notes to assist the Court. Further, the Court noted that without the transcript it would not have any guide as to how the learned judge arrived at a sentence of 14 years.

The Court was mindful that it was likely that the appeal would be rendered nugatory if it is not heard before the appellant's release date and this would amount to a denial of justice under the constitution. Counsel for the respondent did not object to bail being granted given the above exceptional circumstances. Accordingly, given the circumstances the Court was satisfied that this was an exceptional circumstance for which bail pending appeal is appropriate.

Case Name: Venescia Francis-Banfield
v
The Waston Group Limited
[GDAHCVAP2016/0024]
(Grenada)

Date: Monday, 12th October 2020

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

Appearances:

Appellant/Respondent:	In person
Applicant/Respondent:	Ms. Skeeta Chitan

Issue: Civil appeal – Application to discharge order of single judge of Court of Appeal

Type of Order:

Oral decision

Result / Order

IT IS HEREBY ORDERED THAT:

- 1. The application to discharge the order of Baptiste JA dated 24th September 2019 is granted.**
- 2. The order of Baptiste JA dated 24th September 2019 is set aside.**
- 3. The applications shall not be listed for hearing until there is proof of service of the applications on the respondent/applicant.**
- 4. The appellant/respondent shall pay to the respondent/applicant the costs of this application agreed in the sum of \$1,000.00, such costs to be paid on or before 3rd November 2020.**

Reasons:

The Court noted that the applicant/respondent was not served with the applications for deeming the notices of appeal filed; for service on the respondent company and the application for a stay of the order of Roberts J dated 12th April 2016.

The Court noted that order of Baptiste JA, dated 24th September 2018 was clearly based on the premise of service on the applicant/respondent when in fact there was none and accordingly, the order was set aside.

Case Name:

**Sandiford Ruel Edwards
v
The Integrity Commission

[GDAHCVAP2019/0017]
(Grenada)**

Date:

Monday, 12th October 2020

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

Appearances:

Appellant/Respondent:	Mr. Keith Scotland and Mr. Cajeton Hood
Respondent/Applicant:	Mr. Ruggles Ferguson

Issue: Application to withdraw the appeal – Application to strike out the notice of appeal

Result / Order: IT IS HEREBY ORDERED BY CONSENT THAT:

1. The appeal filed herein on 6th August 2019 is withdrawn.
2. The interim injunction granted by a single judge of the Court on 25th October 2019 is accordingly discharged.
3. The application to strike out the appeal is also withdrawn consequent upon the withdrawal of the appeal.
4. There shall be no order as to costs.

Reason: Counsel indicated that the parties came to a consent position and accordingly informed the Court of its terms.

Case Name:

[1] Errington Charles
[2] Terrence Braithwaite
[3] Patrick Thomas
v
The Public Service Commission

[GDAHCVAP2020/0003]
(Grenada)

Date: Monday, 12th October 2020

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

Appearances:

Appellant: Mr. Alban John with him Ms. Vern Ashby

Respondent: Ms. Maurissa Johnson

Issue: Criminal Appeal – Application for an extension of time within which to appeal – Application for leave to appeal –

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for an extension of time for leave to appeal against the decision of Glasgow H refusing leave to the applicants to bring a claim for judicial review, is dismissed.
2. Each party shall bear their own costs.

Reasons:

The applicants in this matter are prison officers who claim that they have been passed over by junior officers in promotions. In the last round of promotions they were not promoted and junior officers were promoted ahead of them. They applied to this Court challenging the decision of the Public Service Commission not to promote them.

The application which is before the Court is for an extension of time to appeal against the decision of the judge refusing their application to apply for judicial review. The Court noted that in matters like this application the burden of proof lies with the applicants. When the application for leave to apply for judicial review came before the learned judge, he dismissed the application, finding mainly that

the applicants had not passed the issue of delay. There is a delay bar to applying for judicial review and the judge found the delay, by the applicants, which amounts to 22 months from the original decision was an inordinate delay and as a result he refused them leave to apply for judicial review.

The Court having examined the judge's decision was satisfied that there was in fact an inordinate delay in making the application. The Court accordingly found that the judge, in the exercise his discretion, was entirely within his powers and discretion to refuse the application on that basis alone.

Further, the Court also looked at the application in terms of chances of success and prejudice. The Court noted that if the matter was to go forward, was satisfied that the applicants do not have reasonable chances of success on the application for judicial review for two reasons. Firstly, the claim that the composition of the interview panel that interviewed the applicants and other officers who were up for promotion, the allegation is that the panel was not properly constituted and breaches section 84(2) of the Constitution of Grenada. That section stipulates that the Public Service Commission ("PSC") should not delegate any of its powers to persons other than those mentioned in the section and the allegation is that in this case the interview panel did not comprise persons who qualify under the section. However, the finding of this Court on that issue is that this was not a case where the PSC delegated any of its powers to the interview panel. What they did was simply arrange for the interview panel to go through the potential applicants for promotion and then to make recommendation to the PSC and the PSC is the body that decided who was going to be promoted and who was not going to be promoted.

With respect to the complaint that the applicants should not have been passed over in favour of junior officers or any officers, however, the question of who is to be promoted and who is not is a matter for the PSC. If the PSC acted illegally or unfairly in the process then, there may be an argument for judicial review, but the Court is not satisfied that there was any such argument in this case. What the applicants seek to say is that they

were senior officers who had a legitimate expectation and they should not have been passed over. The Court does not think that raises the level of a reasonable ground for challenging the decision of the PSC on a judicial review application.

Secondly, on the question of prejudice, so much time having passed since the promotions were in fact made, the judge was therefore correct in his finding that the grant of judicial review at this stage would eventually lead to a situation where there would be prejudice which would be detrimental to the administration of the public service. The Court agrees with this finding by the learned judge and so in all the circumstances on the judge's refusal to grant leave to apply for judicial review, the Court finds that there is no basis for setting aside the learned judge's decision. The decision was based on the delay, there was prejudice and there was no good prospects of succeeding, even if the application was granted.

In relation to the application seeking leave to extend the time for the applicants to challenge the judge's decision. Again, the applicants would have had to apply to the Court of appeal for leave to bring the appeal. This application was not filed within the prescribed time. However the Court was satisfied that there was a good reason for the delay and also that the delay was not inordinate. Therefore, that in itself was not a bar to this Court in granting the extension of time to apply for leave to appeal against the refusal of leave to apply for judicial review. However, the Court is mindful of the matters in relation to how the court dealt with the refusal for granting of leave to apply for judicial review.

The court takes into consideration that there are no good prospects of the success on the application if the matter goes on appeal. Also, the Court is mindful of the prejudice and in those circumstances the decision of the court is that the application for an extension of time to apply for leave to appeal against the judge's decision not to grant leave to apply for judicial review is dismissed.

The other applications before the Court in terms of what the Court should do in the event that leave to appeal was granted would not arise in view of the fact that the Court is not granting the extension of time for leave to appeal. With respect to cost this is a judicial review application and the court does not find that the applicants behaved unreasonably and therefore each party is to bear their own costs.

Case Name: **Kester Labarrie**
v
The Commissioner of Police
[GDAMCRAP2020/0002]
(Grenada)

Date: **Tuesday, 13th October, 2020**

Coram: **The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal**
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: **Mr. Jerry Edwin**
Respondent: **Mr. Howard Pinnock**

Issue: **Criminal appeal – Joint enterprise – Trafficking a control drug – Appeal against sentence – Whether sentence manifestly excessive – Sentencing guidelines**

Type of Order: **Oral Judgment**

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

The appeal is allowed to the extent that the sentence is varied and a sentence of 18 months imprisonment is substituted in place of the 3 years imprisonment imposed by the learned magistrate.

Reasons:

The appellant pleaded guilty to the offence of drug trafficking, the drug being cannabis, the quantity being 658 pounds. The appellant was sentenced by the magistrate to a term of imprisonment of 3 years. The appellant has appealed the sentence on the ground that the sentence was excessive. Learned counsel for the appellant, Mr. Jerry Edwin, submitted to the Court that the magistrate erred in sentencing the appellant to 3 years on two grounds: (i) that the learned magistrate erred when he found that the appellant played a leading role in the commission of the offence; and (ii) the magistrate failed to indicate what percentage of the sentence was being discounted for the guilty plea and also for the mitigating factor of the appellant's good character.

The Court, having heard submissions from both Mr. Edwin and Mr. Pinnock on these issues, was of the view that having looked at the magistrate's reasons, which were very brief, that indeed the learned magistrate erred as there was no evidence that the appellant had played a major role. When we consider the sentencing guidelines of the Court in the commission of the offence. When the Court considers the guidelines of the court, the facts of this case suggest that the appellant played a rather significant role.

The Court formed the view that the learned magistrate would have erred in so finding that the appellant played a major role; his failure to indicate the discount for the guilty plea and his failure to indicate the discount to mitigating factor of the appellant's good character. In other words, the court prefers the submissions of Mr. Edwin on these issues.

When the Court considers the sentencing guidelines, the starting point would be 35 percent which would amount to 29.4 months. The Court took into account that the appellant was entitled to a discount for his good character and accordingly subtracted another 6 months for that. The Court also took into account that the appellant did plead guilty, although not at the first opportunity, it was before the trial commenced. Therefore, a 25 percent discount should be given in those circumstances. Having regard to those discounts,

the Court arrived at a sentence of 18 months in this case.

Case Name: **Mc Donald Thomas**
v
The Queen
[GDAHCRAP2015/0009]
(Grenada)

Date: **Tuesday, 13th October 2020**

Coram: **The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal**
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: **In person**

Respondent: **Mr. Howard Pinnock**

Issue: **Criminal appeal – Robbery – Attempted rape – Appeal against sentence – Whether sentence excessive**

Type of Order: **Oral Decision**

Result / Order: **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1. The appellant's appeal is dismissed.**
- 2. The sentences of the learned trial judge are affirmed.**

Reason: This is an appeal against the decision of a learned judge in circumstances where the learned judge imposed a sentence of eight years for robbery and thirteen years for attempted rape. The court having heard submissions of the appellant, was of the view that there was no discernible error in principle in his sentencing. The Court noted that the appellant has previous convictions of a similar nature. Therefore, the Court was of the view that there is no basis on which this Court could interfere with the proper exercise of the judge's discretion in the circumstances.

Case Name: Andey Andrew
v
The Queen
[GDAHCRAP2016/0006]

Heard together with:

Garvin Britton
v
The Queen
[GDAHCRAP2016/0009]
(Grenada)

Date: Tuesday, 13th October 2020

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Ms. Crisan Greenidge

Issue: Criminal Appeal – Appeal against sentence

Type of Order: Oral Decision

Result / Order

IT IS HEREBY ORDERED THAT:

Appeal suit number GDAHCRA2016/0006 and GDAHCRA2016/0009 are dismissed for want of prosecution.

Reasons:

The court noted that both appellants, Andey Andrew and Garvin Britton, having served their time, were released from prison on 6th September, 2020 and 2nd March, 2020 respectively. Accordingly, their appeals are dismissed having been rendered nugatory.

Case Name:

**Daren Maitland
v
The Queen**

**[GDAHCRA2019/0023]
(Grenada)**

Date:

Tuesday, 13th October 2020

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Mr. Ruggles Ferguson

Respondent: Ms. Crisan Greenidge

Issue:

Criminal appeal – Manslaughter – Appeal against sentence – Whether the sentence is manifestly excessive –

Type of Order:

Oral Judgment

Result:

It is hereby ordered:

- 1. The appeal against sentence is allowed to the extent that the sentence of life imprisonment imposed by the learned judge is set aside and substituted for a sentence of 17 years.**
- 2. The sentence is to commence from 3rd September 2019.**

Reason:

This is an appeal against sentence. the appellant was initially charged with non-capital murder, but plead guilty to manslaughter on or about 20th October 2017. The appellant was sentenced to life imprisonment upon his plea of guilty for the offence of manslaughter. The appellant has filed several grounds of appeal against his sentence of life imprisonment. Included in these grounds are:

- i. The sentence of the judge was excessive in all the circumstances;
- ii. The judge failed to properly weigh the aggravating and mitigating circumstances;
- iii. The judge failed to take or properly take into account that the appellant was attacked by the deceased with a deadly weapon and that it was the deceased who started the altercation;
- iv. The judge failed to adequately take into the account the positive reports of the prison counsellor and efforts being made by the appellant to improve himself while in prison;
- v. The sentence of the judge militates against the reform of the offender and fails to consider the challenges of his early life. The fact that he is a quite and an easy going individual who is not generally aggressive and that his weakness lies more in his ability to properly manage conflict in the case of aggression;
- vi. The judge gave disproportionate weight to the prior conviction of the appellant;
- vii. The judge failed to take into account that the appellant pleaded guilty to manslaughter almost 2 years before he was actually sentenced through no fault of his; and
- viii. The judge imposed the maximum sentence on the appellant notwithstanding his guilty plea to manslaughter at the earliest opportunity. The issue of provocation accepted by the prosecution and the several other mitigating factors in his favour.

Counsel for the appellant reduced grounds to four issues:

- i. Whether the judge failed to adequately consider that the deceased was the premeditated aggressor at the material

time and that in attacking the appellant, the deceased was engaged in unlawful fight;

- ii. Whether the judge in determining an appropriate sentence placed too much emphasis on the appellant's previous convictions including those matters of harm which were of a separate nature;
- iii. Whether the sentence imposed by the judge was excessive the circumstances; and
- iv. What is an appropriate sentence to be imposed on the appellant in the circumstances.

The sentence of life imprisonment imposed by the judge in the circumstances of this case and given its facts was extravagant and certainly is disproportionate. One considers that in this jurisdiction the sentence of 15 years has long been established as the appropriate starting point in cases of manslaughter and that being the case to arrive at a sentence of life imprisonment given the facts and circumstances and the starting point which the court has established for manslaughter, is indeed out of proportion.

One also notes that the judge did not even indicate a minimum sentence to be served by the appellant before his sentence could even come up for review. In the circumstances, this Court would not support the sentence of life imprisonment imposed by the judge and in the Court's view the judge erred in principle and that sentence was manifestly excessive.

In this case, we shall start with 15 years as the starting point and look at the factors in aggravation. The judge noted that there were 8 previous convictions for offences against the person with one for a similar offence, manslaughter.

It was also noted an offence was committed soon after the conviction while the appellant was subject to an order of the court for offence of grievous harm and that he was on a bond for 3 years in relation to two offences.

It is evident, in the Court's view, that the aggravating factors in this case hinged very much on the prior convictions of the appellant for offences against the person, in particular the fact that the appellant was previously convicted for manslaughter.

Counsel for the appellant's argument that the judge in essence erred in placing too much weight on the appellant's previous conviction, to the Court's mind, is unfounded. Here we have the appellant pleading guilty to manslaughter and the judge had to place weight on the fact that not only he had 8 prior convictions but particularly the conviction concerned the offence of manslaughter.

The Court must consider that the relevant factor in mitigation here, is the fact that the appellant plead guilty for which he was given 25% discount and not the usual 1/3 third discount. Counsel for the appellant made the point that the deceased was the initial aggressor.

The Court also must consider the retaliation meted out by the appellant in the initial aggression and the judge's treatment of the matter. The judge did not place much weight on the issue of provocation. When one considers the situation it is evident that the aggravating factors far outweigh those in mitigation. The submissions of both counsel and hearing their oral submission in respect of their respective positions the Court will start by using the 15 years which has been established by this Court as a starting point in manslaughter cases.

The court is entitled for reasons to go beyond or below that given the circumstances of the case. So, from the 15

years starting the Court is of the view that 7 years should be added as representing aggravation which amounts to 22 years. The Court then subtracts 5 years 4 months from the sentence for the guilty plea, which leaves 16 years 6 months. Further, the Court also considers the issue of dangerousness which has been presented in that regard. The Court is of the view that a further five years ought to be to the dangerousness of the appellant. This takes the Court to 21 years and 6 months. The Court then deducts the 4 years and 6 months the appellant spent on remand and this therefore translates into 17 years.

Case Name:

Kade Richards

v

The Queen

**[GDAHCRAP2017/0010]
(Grenada)**

Date:

Tuesday, 13th October 2020

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Justice Louise Esther Blenman,
Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

Mrs. Sabrita Khan-Ramdhani

Respondent:

Mr. Howard Pinnock

Issue:

Criminal appeal – Appeal against sentence

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. Leave is granted to the appellant to withdraw the grounds of appeal in the notice of appeal filed on 26th July 2017.
2. Leave is granted to the appellant to argue the grounds of appeal filed on 8th October 2020.
3. The appeal against sentence is dismissed and the sentence of the learned judge of 3 years is affirmed.

Reason:

Counsel for the appellant made a preliminary application to the court seeking leave to substitute the grounds filed in the notice of appeal dated 26th July 2017 with additional grounds filed on 8th October 2020.

Having regard to the submissions for the appellant and the respondent, the Court was of the view that the sentence imposed of 3 years is appropriate. The Court sees no reason to disturb the sentence imposed by the learned judge in the circumstances.

Case Name:

Shane Brown

v

The Queen

**[GDAHCRAP2018/0012]
(Grenada)**

Date:

Tuesday, 13th October 2020

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

In person

Respondent:

Mr. Howard Pinnock

Issue: Criminal Appeal – Appeal against sentence – Whether the time spent on remand by the appellant ought to have been taken into account in his sentence

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. the appeal is dismissed.
2. the sentence of years is affirmed.
3. The probationary supervisory period of two years suggested by the learned judge is hereby struck out.
4. The appellant is to be credited the sum of 361 days which represents his period of time spent on remand.

Reason: The Court was of the view that the time spent on remand by the appellant ought to have been factored into his sentencing.

Case Name: Winston Smith
v
The Commission of Police
[GDAMCRAP2019/0008]
Consolidated with:
Winston Smith
v
The Commission of Police
[GDAMCRAP2019/0009]
(Grenada)

Date: Tuesday, 13th October 2020

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

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

Appearances:

**Applicants
/Appellants:**

In person

Respondents:

Mr. Howard Pinnock

Issue:

Criminal appeal – Application for an extension of time to pay the fine imposed by the learned magistrate

Type of Order:

Oral Order

Result / Order:

It is hereby ordered as follows:

- 1. The appellant is to pay the fine of \$500.00 in 9 months and in default one month imprisonment listed in Claim No. GDAMCRAP2019/0008.**
- 2. The appellant is to pay the fine of \$750.00 in 9 months and in default one month imprisonment listed in Claim No. GDAMCRAP2019/0009.**

Reason:

Having regard to the appellant's plea for an extension of time to pay the fine and his proposal make monthly installments in the sum of \$150.00 and there being no objection by counsel for the respondent, the Court was of the view that the extension should be granted for the appellant to pay the fine.

Case Name:

Travis DeRoche
v
The Commissioner of Police
[GDAMCRAP2019/0001]
(Grenada)

Date: Tuesday, 13th October 2020

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellants: No appearance

Respondent: Mr. Howard Pinnock

Issue: Criminal appeal – Appeal against sentence

Type of Order: Oral Order

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal is dismissed for want of prosecution.

Reason: The Court was informed by the Registrar of the High Court that the appellant was served with the notice of hearing on 28th September 2020. However, the appellant made no appearance at the sitting of the Court.

Case Name: Elwin Baptiste
v
The Commissioner of Police

[GDAMCRAP2019/0003]
(Grenada)

Date: Tuesday, 13th October 2020

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: In person
Respondent: Mr. Howard Pinnock

Issue: Application for an extension of time within which to pay the fines imposed by the learned magistrate

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

The appellant is to pay the fine of \$1,000.00 in 9 months and in default one month imprisonment.

Reason: Having regard to the appellant's application to extend the time to pay the fine imposed by the learned magistrate and there being no objection by counsel for the respondent, the Court granted the application to extend the time to pay the fine in 9 months.

Case Name: Elwin Baptiste
v
The Commissioner of Police

[GDAMCRAP2019/0004]
(Grenada)

Date: Tuesday, 13th October 2020

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person
Respondent: Mr. Howard Pinnock

Issue: Application for an extension of time within which to pay the fines imposed by the learned magistrate

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appellant's application to extend the time to pay the fines of \$500.00 and \$1,000.00 respectively is granted.
2. That the appellant is to pay the fine of \$500.00 in 9 months and in default one month imprisonment.
3. The appellant is to pay the fine of \$1,000.00 in 9 months and in default one month imprisonment.
4. The sentences are to run concurrently.

Reason: Having regard to the appellant's application to extend the time to pay the fines imposed by the learned magistrate and there being no objection by counsel for the respondent, the Court granted the application to extend the time to pay the fines in 9 months.

Case Name: Kendall Farray
v
The Commissioner of Police
[GDAMCRAP2020/0001]
(Grenada)

Date: Tuesday, 13th October 2020

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Mr. Howard Pinnock

Issue: Criminal appeal – Appeal against sentence

Type of Order: Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal is struck out due to the absence of the appellant.

Reason:

The appellant was absent for the hearing of the appeal. The court therefore the court struck out the appeal in light of his absence.

Case Name:

Dannel Bonaparte

v

The Queen

**[GDAHCRAP2019/0007]
(Grenada)**

Date:

Wednesday, 14th October 2020

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: Mrs. Sabrita Khan-Ramdhani

Respondent: Ms. Crisan Greenidge

Issue: Application for an adjournment

Type of Order: Adjournment

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:

1. The Court at the request of counsel for the appellant and there being no objection by counsel for the respondent, the hearing of this appeal is adjourned to the next sitting of the Court in the state of Grenada scheduled to commence 12th April 2021.
2. The appellant shall file and serve written submissions on or before 30th November 2020.
3. The respondent shall file and serve written submissions in response on or before 21st December 2020.

Reason: Counsel for the appellant indicated that she did not file any submissions in this matter having only recently been in possession of certain documents provided by the Director of Public Prosecution's office. Therefore, counsel requested an adjournment of the matter to the next sitting of the Court in Grenada in order for her to file her submissions. Counsel for the respondent did not object to the application.

Case Name:	Dannel Bonaparte v The Queen [GDAHCRAP2016/0025] (Grenada)
Date:	Wednesday, 14th October 2020
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:	Mrs. Sabrita Khan-Ramdhani
Respondent:	Ms. Crisan Greenidge
Issue:	Criminal appeal – Application to withdraw the appeal
Type of Order:	Oral decision
Result / Order	IT IS HEREBY ORDERED THAT: With leave of the Court and at the request of counsel for the appellant, the appeal is hereby withdrawn.
Reasons:	Counsel for the appellant made an application to withdraw the appeal and there was no objection by counsel for the respondent.

Case Name:

Isaiah Jones

v

The Queen

[GDAHCRAP2016/0024]

(Grenada)

Date:

Wednesday, 14th October 2020

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. Jerry Edwin

Respondent:

Ms. Crisan Greenidge

Issue:

Application for adjournment

Type of Order:

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. At the request of counsel on behalf of the appellant and there being no objection by counsel for the respondent, the hearing of this appeal is adjourned to the next sitting of the Court for the State of Grenada scheduled to commence 12th April 2021.**
- 2. The appellant shall file and serve written submissions in support of the appeal on or before 15th January 2021.**
- 3. The respondent shall file and serve written submissions in response on or before 12th February 2021.**

Reason: Counsel for the appellant indicated that he did not file any submissions in this matter and having only been recently approached to represent the appellant. Therefore, counsel requested an adjournment of the matter to the next sitting of the court in Grenada in order for him to file his submissions. Counsel for the respondent did not object to the application.

Case Name: **Dixon Lewis**
v
The Commissioner of Police
[GDAMCRAP2014/0010]
(Grenada)

Date: **Wednesday, 14th October 2020**

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: **In person**
Respondent: **Mr. Howard Pinnock**

Issue: **Magisterial criminal appeal – Appeal against sentence – Unavailability of record of proceedings**

Type of Order: **Oral decision**

Result / Order: **It is hereby ordered as follows:**

- 1. The appeal is against sentence is allowed.**
- 2. The sentence is varied to time served.**

Reason: **The Court noted that it had been 7 years since the appeal was filed, the magistrate who had the**

matter had since left the magistracy and that there was no record of proceedings therefore the Court did not have the benefit of what transpired in the court below. Accordingly, the Court having regard to the Crown's concession and in the interests of justice the Court allowed the appeal.

Case Name:	Tamara Brown v The Commissioner of Police [GDAMCRAP2019/0016] (Grenada)
Date:	Wednesday, 14th October 2020
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. Ruggles Ferguson
Respondent:	Mr. Howard Pinnock
Issue:	Criminal magisterial appeal – Traffic offence – Driving without due care and attention – Appeal against sentence – Whether the sentence was manifestly excessive – Unavailability of record of appeal
Type of Order:	Oral Decision
Result / Order:	IT IS HEREBY ORDERED THAT: 1. The appeal is against sentence is allowed. 2. The sentence is varied to time served.
Reasons:	The Court noted that the appeal was filed four years prior however, the record of appeal was

unavailable since the magistrate had already retired. The Court also noted that the appellant had already served 2 days out of the 7-day sentence imposed by the magistrate and therefore it would be disproportionate to impose a fine, as would be done ordinarily. The Court noted that the Crown conceded to the appeal and was also of the view that the sentence of seven days imprisonment was excessive in all the circumstances.

Case Name:	Desmond Fletcher v The Queen [GDAHCRAP2015/0011] (Grenada)
Date:	Wednesday, 14th October 2020
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. Anselm Clouden
Respondent:	Mr. Howard Pinnock
Issue:	Criminal appeal – Murder – Appeal against sentence – Whether sentence was manifestly excessive – Principles of sentencing – Whether learned judge failed to take into account the relevant principles of sentencing
Type of Order:	Oral decision
Result / Order:	IT IS HEREBY ORDERED THAT:

1. The sentence of 18 years in respect of this offence is affirmed.
2. The appeal is dismissed.
3. The sentence of 18 years, the time spent on remand which has been calculated to be two years and two months shall be credited in respect of that 18 year term.

Reason:

The Court was of the unanimous view that there is no basis for disturbing the sentence passed by the trial judge on the appellant of the term of 18 years. The Court was of the view that sentence of 18 years imposed by the learned judge for the offence of murder was not considered to be manifestly excessive in the circumstances. The Court noted that the sentence was in fact on the lenient side however it would refrain from interfering with the sentence by increasing it.

Case Name:

**Ally Mills
v
The Queen**

**[GDAHCRAP2016/0020]
(Grenada)**

Date:

Wednesday, 14th October 2020

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. Jerry Edwin

Respondent: Mr. Howard Pinnock

Issues:

Criminal appeal – Manslaughter – Appeal against sentence – Application for early release – Whether in the circumstances appellant ought to

be released early and sentence substituted as time served

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal is allowed to the extent that the sentence is varied to time served.

Reasons:

The court having noted that Counsel for the respondent conceded to the appeal against sentence to time served, was of the view that the sentence should be varied to time served.

Case Name:

**In the Matter of the Possessory Titles Act
Marjorie Whiteman**

**[GDAHCVAP2010/0005]
(Grenada)**

Date:

Wednesday, 14th October 2020

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. Alban John with him Ms. Vern Ashby

Issue:

Civil appeal – Adverse possession — Whether the learned judge erred in refusing application

for declaration of possessory title – Whether the judge erred in rejecting the evidence provided by the appellant

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed and the order of the learned trial judge made on 25th March 2020 is hereby set aside.**
- 2. It is ordered that the said judgment be entered in favour of the appellant in the form of a Declaration of Possessory Title to the three parcels of land set out in the schedules to the application for possessory title made by the appellant.**
- 3. That the appellant shall bear the costs of this appeal.**

Reasons:

The court advanced the following reasons for its judgment:

- 1. The Possessory Titles Act No. 22 of 2016 defines what is meant by adverse possession within the context of that Act.**
- 2. The appellant had complied with all the requirements under the Act and all the evidence before the court supported the claim to title made by the appellant, including the evidence put forward by Mr. Reuben Andrews, the grandson of Augustine Andrews who was the father of the appellant.**
- 3. There appears to be no basis for rejecting the evidence put forward by the appellant and her witnesses as well as the further evidence provided by the said Reuben Andrews as directed by the learned Judge, who from the evidence appears to be the only other person who may have made an adverse claim against the appellant.**

4. Furthermore, the said Reuben Andrews was duly served with the application and has so confirmed in his affidavit and has made no claim or entered no appearance under the Act.
5. The appellant pursuant to the provisions of the Act appeared then to be entitled to judgment in her favour by default under section 12 of the Act.
6. On the evidence it is clear that Augustine Andrew, the father of the appellant, never held title to the said parcels of land.

Case Name:

Leon Taylor

v

[1]Wilfred Julien

[2]Annette Smith

[3]Carmen Julien Smith

[4]Peter Smith

[5]Phillip Smith

[6]Daphne Anne Vidal

**(Executrix of the estate of
Charles David Williams)**

[7]Michael Julien

[8]Patricia Julien

[GDAHCVAP2016/0019]

(Grenada)

Date:

Thursday, 15th October 2020

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

**Mr. Dickon A. Mitchell with him Mrs. Crystal
Braveboy-Chetram and Ms. Skeeta Chitan**

Respondent:

Mr. Alban John with him Ms. Vern Ashby

Issues:	Civil Appeal — Withdrawal of application to adduce fresh evidence — Company law — Sections 241 and 242 of the Companies Act — Exercise of directorial powers — Oppressive conduct by director — Whether the learned judge misapprehended the nature of the claim by wrongfully treating it as an oppressive claim and in particular, one in which the general affairs of PSDL was being conducted in an oppressive manner — Whether the learned judge erred in his findings of fact so as to warrant appellate interference — Whether the learned judge’s order contravened the established legal principles which circumscribe the amplitude of orders made under section 241 of the Companies Act to what is necessary to rectify the grievance complained of — Whether Felicity was a duly qualified director despite not having resigned or been re-elected and was therefore authorised to execute the impugned conveyances
Type of Order:	N/A
Result / Order:	It is hereby ordered as follows: 1. The application for leave to adduce fresh evidence is withdrawn by consent with agreed costs in the sum of \$1,000.00 to the appellant. 2. Judgment is reserved.
Reasons:	Counsel for the respondents indicated the consent position of the parties in relation to the withdrawing of the application for leave to adduce fresh evidence. With respect to the substantive appeal, the court reserved its judgment.

Case Name:	The Attorney General of Grenada v Muhammad Ehsan [GDAHCVAP2019/0020] (Grenada)
Date:	Friday, 16th October 2020
Coram:	The Hon. Mde. Louise Esther Blenman, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Appellant: Respondent:	Mr. Frank Walwyn with him Ms. Dia Forrester and Ms. Kayla Theeuwen Mr. V. Nazim Burke
Issue:	Whether the power given to the Minister under section 9(2)(b) of the Citizenship Act is unconstitutional – Whether the learned judge erred in concluding that said power to deprive the respondent’s citizenship is not reasonably justifiable in a democratic society – Whether the said power depriving a citizen of his citizenship without a right to heard is rational and proportional in relation to the national security of the country – Whether the learned judge erred in awarding vindictory damages to the respondent – Whether an award of vindictory damages was appropriate given the absence of evidence of bad faith or mala fides by the appellant – Whether there was sufficient evidence available to the learned judge to make the awards of damages that he did in the court below.
Type of Order:	N/A
Result / Order:	IT IS HEREBY ORDERED THAT: Judgment is reserved.

