

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

MONTSERRAT
VIDEO CONFERENCE
7th – 11th FEBRUARY 2022

APPLICATIONS/ MOTIONS

Case Name:

Ingrid Branford-Hughes
v
Golden Years Home For The Elderly

[MNIMCVAP2021/0001]
(MONTSERRAT)

Date:

Monday, 7th February 2022

Coram:

The Hon. Mde. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. John Carrington, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. David Dorsett

Respondent: Ms. Chivone Gerald

Issues:

Application to set aside judgment and order –
Application to remit the matter to a properly constituted Labour Tribunal for determination--
Consent Order

Type of Order:

Oral Decision

Order:

IT IS HEREBY ORDERED BY CONSENT THAT:

1. The judgment and order appealed against is set aside and the matter is remitted to a properly constituted Labour Tribunal for determination.
2. All outstanding applications by the parties are withdrawn.

3. No order as to costs.

Reason:

The Court considered an application made by the appellant for an order to set aside the judgment and order appealed against and for the matter to be remitted to a properly constituted Labour Tribunal for determination.

The appellant based the application on the grounds that: (i) the Labour Tribunal is a body constituted by section 24 of the Labour Code Cap 15:03 of Revised Laws of Montserrat 2019, (ii) the Labour Tribunal that rendered the decision appealed against is not one that was constituted in accordance with section 24 of the Labour Code Cap 15:03 of Revised Laws of Montserrat 2019, (iii) in the circumstances the Labour Tribunal was not lawfully constituted and all of its actions were a legal nullity and must be set aside and, (iv) the applicant is entitled to have her dispute adjudicated by a lawfully constituted Labour Tribunal.

The Court noted that the parties were both cognisant of the recent decisions of the Court finding that proceedings before a 3-member Labour Tribunal are a nullity in that such a tribunal is not lawfully constituted in accordance with section 24 of the Labour Code Cap 15:03 of Revised Laws of Montserrat 2019 and that the parties also consented to an order to set aside the judgment and order appealed against and for the matter to be remitted to a properly constituted Labour Tribunal for determination.

The Court approved the consent order in the terms submitted by the parties.

Case Name:

APPEAL
David Duberry
v
Glenworth Prince

**[MNILTAP2016/0002]
(MONTSEERRAT)**

Date: Monday, 7th February 2022

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

Appearances:

Appellant:	Mr. Kenroy Hyman
Respondent:	Mr. Warren Cassell

Issues: Application to set aside judgment and to remit matter to Labour Tribunal- Whether Labour Tribunal was properly constituted

Type of Order: Oral Judgment

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

1. The matter is to be remitted to the Labour Tribunal to be heard by a Labour Tribunal properly constituted in accordance with the provisions of the Labour Code.
2. No order as to costs.

Reason: The Court considered an application made by the respondent for an order to set aside the judgment and for the matter to be remitted to a properly constituted Labour Tribunal for determination.

There was no objection by counsel for the appellant to the application. Noting that both parties agreed that the matter was one that should be dealt with by a properly constituted Labour Tribunal, the Court was of the view that the application should be allowed.

APPLICATIONS/MOTIONS

Case Name:

Mildred Kirwan

v

Neville Kirwan

**[MNIHCVAP2020/0001]
(MONTSERRAT)**

Date:

Monday, 7th February 2022

Coram:

The Hon. Dame Janice Pereira, DBE, Chief Justice

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

The Hon. Mr. John Carrington, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Lawrence Daniels

Respondent:

Ms. Chivone Gerald

Issues:

Interlocutory appeal - Application to strike out notice of appeal - Failure to prosecute appeal - Rule 62.10(1) and (2) of the Civil Procedure Rules 2000 - Realistic prospect of success of appeal

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application by the respondent to strike out the Notice of Appeal is allowed.
2. The appeal is dismissed.
3. Costs to the respondent fixed in the sum of \$1500.00 to be paid on or before the 25th February, 2022.

Reason:

There was before the Court, an interlocutory appeal filed by the appellant who was the defendant in the court below, against the decision of the Honourable Justice Morley dated 14th January 2020. The respondent to the appeal, applied to strike out the appeal for failure of the appellant to comply with the requirements of Rule 62.10 of the Civil Procedure Rules 2000 which requires the filing of skeleton arguments in support of the appeal, and other documents required on the filing of an interlocutory appeal. The appeal was filed approximately two years ago and up to the date of the hearing of the application to strike out on 7th February 2022, Rule 62.10 had still not been complied with.

The Court was of the view that two years was an inordinate delay and noted that there was neither any good explanation for the delay nor was there an application by the appellant to extend the time for complying with Rule 62.10.

The Court also considered the prospects of success of the appeal and was of the view that it did not rise to the threshold to outweigh the blatant disregard by the appellant of the rules of the CPR. In the circumstances, the Court was minded to grant the application to strike out the notice of appeal as there was nothing before the Court to assist it in exercising its discretion in favour of the appellant.

Case Name:

Fotis Andrianakos

V

Financial Services Commission

**[MNIHCVAP2021/0008]
(MONTSERRAT)**

Date: Monday, 7th February 2022

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

Appearances:

Applicant: Mr. Warren Cassell

Respondent: No appearance

Issues: Application for leave to appeal - Application for leave to appeal filed out of time

Type of Order: N/A

Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

 1. The application for leave to appeal, being filed out of time, is a nullity.

Reason:

The application for leave to appeal was not filed in accordance with the time prescribed by Rule 62.2 of the Civil Procedure Rules 2000 and was therefore a nullity. No application to extend time for seeking leave was made.

Case Name:

**Ivor Greenaway
v
Oslyn Greenaway**

**[MNIHCVAP2021/0002
(MONTSERRAT)]**

Date:

Monday, 7th February 2022

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief
Justice
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]
The Hon. Mr. John Carrington, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Warren Cassell

Respondent:

Ms. Chivone Gerald

Issues:

**Civil Appeal - Application to strike out appeal-
CPR 62.11- Application for extension of time -
Application to adduce further evidence**

Type of Order:

Oral Decision and Directions

Order:

IT IS HEREBY ORDERED THAT:

- 1. The application to strike out the Notice of Appeal is refused, with no order as to costs.**
- 2. The application for an extension of time to file written submissions by the appellant is granted.**
- 3. The written submissions filed by the appellant on 18th January 2022 are deemed properly filed.**

4. The application to adduce further evidence is refused, with no order as to costs.
5. The respondent shall file and serve written submissions in response to the appeal with authorities relied upon on or before 18th March 2022.
6. The appellant shall file and serve written submissions with authorities in reply on or before 8th April 2022.
7. The matter shall proceed in accordance with the Civil Procedure Rules 2000.
8. The hearing of the appeal is fixed for the next sitting of the Court of Appeal in Territory of Montserrat scheduled for the week commencing 4th July 2022.

Reason:

The Court heard the application by the respondent to strike out the notice of appeal for breach of Rule 62.11(1) of the Civil Procedure Rules 2000 and the appellant's application for an extension of time. The Court noted that although the appellant defaulted when he failed to file skeleton arguments in the time stipulated by CPR Rule 62.11(1), that he did attempt subsequently to remedy this default by filing an application for an extension of time and filing the skeleton arguments. The Court also considered the prospects of success of the appeal and in the circumstances refused the application to strike out the appeal and granted the application for an extension of time.

The Court also heard the appellant's application to adduce further evidence in respect of matters that took place after the judgment of the Honourable Justice Morley, in respect of the acquisition of further property by the respondent. Counsel for the parties agreed that the subject matter of the appeal is governed by the common law, pursuant to section 19 of the Married Women's Property Act and that there are no other applicable statutory

provisions in Montserrat's legislation. The common law principles of constructive trust therefore apply and the Court must consider whether her contribution to the acquisition of these properties had been established by the appellant. Accordingly, evidence of the fact that the respondent may have purchased further property has no relevance to the subject matter of the appeal.

Case Name:

[1] Karen Allen

[2] Steven Fagen

[3] Marie Carole Lidbetter

v

[1] Registrar of Companies

[2] Government of Montserrat

**[3] Krys Global, Greig Mitchell &
Kenneth Krys (Joint Liquidators)**

**[MNIHCVAP2020/0021]
(MONTSERRAT)**

Date:

Monday, 7th February 2022

Coram:

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

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

**The Hon. Mr. John Carrington, Justice of Appeal
[Ag.]**

Appearances:

1st Appellant:

In person

2nd Appellant:

In person

3rd Appellant/ Applicant

In person

Respondents:

**Ms. Renee Morgan for the 1st and 2nd
Respondents**

No appearance for 3rd Respondent

Issues: Application to set aside decision made in party's absence- CPR rule 62.22- whether litigants in person can use a third party to act on their behalf

Type of Order: Adjournment

Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The application filed on the 10th August 2021 is hereby adjourned for the purpose of the applicant, Marie Carole Lidbetter, instructing a legal practitioner licensed to practice in Montserrat for the purpose of representing her at the adjourned hearing of her application.
2. The hearing of the application is adjourned to the next sitting of the Court of Appeal in the Territory of Montserrat scheduled for the week commencing 4th July, 2022.

Reason: The applicant who is the 3rd appellant sought to have the 1st appellant, Ms. Karen Allen represent her at the hearing of the application. The Court elucidated that litigants in person can represent themselves or hire an attorney to represent them, but the rules do not allow a litigant in person to use another person who is not admitted to practice at the Bar to represent them or address the court on their behalf.

The Applicant/ 3rd Appellant therefore sought an adjournment of the hearing of her application to enable her to instruct a legal practitioner to represent her in relation to the application to set aside the decision made in her absence. The Court heard counsel for the respondents who opposed the request for the adjournment. However, the Court considered that it was in the interest of justice to grant the applicant/3rd appellant the adjournment to seek representation by a legal practitioner.

JUDGMENTS

Case Name:

Royal Bank of Canada

v

Demornea Armstrong

[MNILTAP2019/0001]

(MONTSERRAT)

Date:

Tuesday, 8th February 2022

**Coram for
delivery of
judgment:**

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

Appearances:

Appellant:

Mr. Jean Kelsick

Respondent:

**Ms. Marcelle Watts holding papers for Ms. Chivone
Gerald**

Issues:

**Civil appeal - Labour dispute- Labour Tribunal-
Sections 23 and 24 of the Labour Code -
Jurisdiction - Whether the Tribunal was lawfully
constituted in accordance with the applicable
legislative provision at the hearing of the labour
dispute**

Order:

**Held: allowing the appeal, quashing the order of the
Tribunal dated 7th December 2018, remitting the
matter for hearing and determination before a
properly constituted quorum of the Tribunal and
making no order as to costs, that:**

- 1. In accordance with the presumption against
the retrospectivity of legislation, at the time
of the hearing on 10th May 2018, the
composition and ultimately the lawful
constitution of the Tribunal was governed by
section 24 of the Labour Code 2012 and not
section 24 as effected under the Labour Code
(Amendment) Act 2021. Therefore, the**

Tribunal would only have been considered lawfully constituted where it was composed of the Chief Magistrate as the Chairperson of the Tribunal, or another magistrate to whom he or she has delegated the function, and six appointed members, with three members representing the interests of employers and three members representing the interests of employees.

Section 24 of the Labour Code, Cap 15.03, Act No. 20 of 2012, Laws of Montserrat applied; Gany Holdings (PTC) SA and another v Zorin Sachak Khan and others [2020] ECSCJ No. 105 (delivered 30th March 2020) followed.

2. The Tribunal as constituted at the hearing on 10th May 2018 comprised of the Chief Magistrate as the Chairperson of the Tribunal and two Tribunal members. That quorum did not accord with the composition which was mandated under section 24 of the Labour Code 2012. Therefore, the Tribunal was not properly constituted during the hearing on 10th May 2018 and had no jurisdiction to adjudicate on the respondent's application before it. Accordingly, the decision of the Tribunal dated 7th December 2018 is void and of no effect.

APPEALS

David Dorsett

v

Attorney General

[MNIHCVAP2020/0026]

(MONTSERRAT)

Case Name:

Date:

Tuesday, 8th February 2022

Coram:

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

Appearances:

Appellant: In person

Respondent: Ms. Renee Morgan

Issues:

Civil appeal - Appointment of attorney amicus curiae - Clause 9 of part A of the Code of Ethics in Schedule Three of the Legal Profession Act 2014 - Whether the court may properly appoint an attorney amicus curiae against his/her will - Whether an attorney may decline employment as assigned by the court - Whether the judge erred in dismissing the appellant's application for an administrative order by failing to adjudicate upon the issue brought before the court by the appellant

Type of Order:

N/A

**Result /
Order:**

IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name:

Denise Tuitt

v

Rosanna Tuitt

**[MNIHCVAP2021/0003]
(MONTSEERRAT)**

Date:

Tuesday, 8th February 2022

Coram:

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

Appearances:

Appellant: Mr. Jean Kelsick

Respondent: Mr. Sylvester Carrott

Issues: Civil Appeal- Presumption of Marriage- Whether there must be cohabitation for the validity of a marriage to be presumed- Whether learned judge erred in holding that the respondent's affidavit evidence rebutted the presumption of marriage of the deceased to the appellant- Whether judge erred in holding that the burden of proof of the validity of the second marriage rested on the appellant- Whether the judge erred in applying a preponderance test in establishing whether the second marriage was invalid rather than a decisive test thereby setting the threshold too low- Whether the judge failed to address his mind to the conflict of the 2nd marriage certificate and the certificate of no divorce- Section 37(4) of the Matrimonial Causes Act

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

1. The respondent's application for an extension of time to file skeleton arguments is granted.
2. The skeleton arguments filed by the respondent on 21st January 2022 is deemed properly filed.
3. Judgment is reserved.

Case Name:

APPLICATIONS/MOTIONS
Howard Mark Rotherham
v
Anthony Jonathon Nunns
[MNIHCVAP2021/0007]
(MONTSERRAT)

Date: Wednesday, 9th February 2022

Coram:	The Hon. Dame Janice Pereira DBE, Chief Justice The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]		
Appearances			
	Applicant:	Dr. David Dorsett	
	Respondent:	Mr. Jean Kelsick	
Issues:	Application for extension of time to seek leave to appeal, leave to appeal and stay of proceedings below - Whether judge erred in refusing to grant summary judgment- - Whether the delay in filing the application for leave to appeal was inordinate - Whether the applicant has a good reason for the delay in seeking leave to appeal - Whether the appeal has a good prospect of success - Whether granting an extension of time would prejudice the respondent - Whether it is in the interest of justice and in keeping with the overriding objective that the proceedings in the court below be stayed pending the appeal		
Type of Order:	Oral Decision		
Order:	IT IS HEREBY ORDERED THAT: 1. The application for an extension of time within which to obtain leave to appeal is refused. 2. The application for leave to appeal is refused. 3. The application for a stay of proceedings in the court below is refused. 4. Costs to the respondent fixed in the sum of \$3000.00 to be paid, together with the costs, in the court below on or before 25 th March 2022.		
Reasons:	The court heard the applications for an extension of time within which to appeal and for leave to appeal and for a stay of the proceedings in the court below. The court read the written submissions filed by both counsel as well as heard the oral arguments		

of counsel for the appellant. The court considered that it did not need to hear from the respondent on advancing oral arguments on the applications.

The principles for the grant of an extension of time are well settled and considered trite. These principles were again recently expressed in the case of Lindsay F.P. Grant et al v Tanzania Tobin Tanzil SKBHCVAP2020/0004 (delivered 6th July 2020, unreported), where the court indicated and observed the principles that the court would look to in the exercise of the overriding objective. The court should weigh all the relevant factors including the failure and the consequential effect of the failure, the length of the delay, whether any good explanation had been put forward for the delay, whether the parties would suffer prejudice and in the case where an extension is sought for leave to appeal, whether the appeal has a realistic prospect of success.

The applicant sought an extension of time to seek leave to appeal and for leave in relation to the issue of the learned trial judge failing to accede to his application for summary judgment. The test in relation to a summary judgment application is normally put higher than when one is simply showing an arguable case. The Court looked at the principles in relation to summary judgment in the Didier v Royal Caribbean Cruises Ltd (2016) 89 WIR 277 case. Additionally, in the case of Baldwin Spencer v AG of Antigua and Barbuda Antigua and Barbuda High Court Civil Appeal No. 20A of 1997 (delivered 8th April 1998, unreported) which is still good law, Sir Dennis Byron of the Eastern Caribbean Supreme Court stated that this summary procedure under CPR Part 15 should only be used in clear cases when it can be seen on the face of it that the claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court. The operative issue for determination is whether there is even a scintilla of a cause of action. If the pleadings disclose any viable issue for trial, then the court should order the trial to proceed but if there is no cause of action then the court should be equally resolute in making

that declaration and dismissing the claim. The case which had been brought for summary judgment in the court below did not fall within this category nor did it come near to being a clear and obvious case either on its face or even in relation to evidence which may be brought at trial, which warranted a summary judgment application succeeding in all the circumstances of the case.

There is accordingly no basis on which this Court could say that there is any realistic prospect of showing that the learned judge erred in the exercise of his discretion in refusing to grant summary judgment. The applications to extend time and to seek leave to appeal, even if all other factors were considered, and even where the court did not consider the delay to be inordinate in the circumstance, should not be granted if the court is of the view that any appeal would be hopeless. This case is one in which the court considers the prospects of success on appeal would be hopeless in overturning the learned judge's discretion in refusing the grant of summary judgment.

The applications were accordingly refused.

Case Name:

APPEALS
The Attorney General
v
Simon Riley
[MNIHCVAP2019/0008]
(MONTSERRAT)

Date:

Wednesday, 9th February 2022

Coram:

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

Appearances:

Appellant:

Ms. Sherree Jemmotte-Rodney

Respondent:

Mr. Sylvester Carrott

Issues: Underpayment of salary- Whether judge erred in finding there was an error in the calculation of the respondent's salary- Whether the judge erred in finding there was a shortfall in the respondent's salary- Whether judge erred in quantifying the respondent's overtime losses at \$100,000.00, if they were reclaimable- Whether the respondent was entitled to overtime pay upon appointment to a higher public service salary scale- Section 410 of the General Orders for the Public Service- Counter Appeal- Whether there was a breach of contract which warranted the cross appellant being awarded damages- Whether the judge erred in dismissing the cross appellant's claim for overtime payment as being double compensation

Type of Order: N/A

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

Case Name: **APPLICATIONS/ MOTIONS**
Mary Hogan
v
Wilston Johnson
[MNIMCVAP2021/0010]
(MONTSERRAT)

Date: Thursday, 10th February 2022

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

Appearances:
Appellant: Mr. Jean Kelsick
Respondent: Dr. David Dorsett

Issues: Application for extension of time to file chronology of events, appeal record and supplementary written

submissions- Application for appellant to include transcript in appeal bundle- CPR 62.10

Type of Order:

Oral Decision

Order:

IT IS HEREBY ORDERED BY CONSENT THAT:

- 1. The applications for an extension of time to file the chronology of events, appeal record and supplementary written submissions and for including the transcript of hearing are granted.**

Reason:

The applications before the Court were an application by the appellant for an extension of time to file the chronology of events, appeal record and supplementary written submissions and an application by the respondent for the appellant to include the transcript in the appeal bundle. Counsel for the respondent indicated that a transcript had been subsequently included when the appellant filed the hearing bundle and consequently there was no need for an order on this application.

As it relates to the application for an extension of time, the court considered that the respondent had no objection to the application and granting the extension did not prejudice the parties in the substantial appeal. The application for an extension of time was accordingly granted.

Case Name:

[1] Karen Allen

[2] Steven Fagan

[3] Marie Carole Lidbetter

v

Registrar of Companies

**[MNIHCVAP2019/0006]
(MONTSERRAT)**

Date: Thursday, 10th February 2022

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

Appearances:

1st Appellant:	In person
2nd Appellant:	In person
3rd Applicant:	In person
Intended appellant/ Respondent:	Ms. Renee Morgan

Issues: Notice of Motion by Respondent for conditional leave to appeal to Her Majesty in Council - Section 3(1)(a) and 3(2)(a) of the Montserrat (Appeals to the Privy Council) Order 1967 against decision of Court of Appeal delivered 14th January 2022- Application for stay of execution - Application to strike out notice of motion for conditional leave to appeal to Her Majesty in Council- Notice of Motion by Appellants in person for conditional leave to appeal to Her Majesty in Council

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. Leave to appeal the decision of the Court of Appeal made on 14th January 2022 is granted to the intended appellant/ first respondent on the following conditions:
 - a.) The intended appellant/first respondent shall within 90 days of the date hereof lodge with the court office the EC dollar equivalent of £300.00 as security for the prosecution of its appeal to Her Majesty in Council and the payment of all such costs as may be payable by the intended appellant in the event of her not obtaining

an order granting final leave to appeal or the appeal being dismissed for non-prosecution or of the Judicial Committee ordering the intended appellant to pay the costs of the appeal as the case may be. Such security and the payment of all such costs to consist of the payment of the said amount of security at the court office.

b.) Within 90 days of the date hereof, the intended appellant/ first respondent must take the necessary steps for the purpose of procuring the preparation of the record of appeal and the settling of such record with the appellants, the pro se litigants/ intended respondents and the certification of the record by the Registrar of the Court of Appeal.

c.) The record of appeal shall be prepared in accordance with Rules 18 to 20 of the Judicial Committee Appellate Jurisdiction Rules 2009 and its Practice Direction 4.2.1 to 4.3.2 and Practice Direction 5 and shall be submitted to the Judicial Committee of the Privy Council without delay when final permission to appeal has been granted.

d.) The intended appellant/ first respondent shall apply to the Court for final permission to appeal to Her Majesty in Council supported by the Certificate of the Registrar that the security for costs ordered herein has been given within the time prescribed by this order to the satisfaction of the Registrar.

2. The Court of Appeal's decision made on 14th January 2022 is stayed pending the determination of the intended appellant/ first respondent's appeal to Her Majesty in Council.

3. The costs of the motion shall be costs in the appeal to Her Majesty in Council.

4. The Appellants' Application to strike out the Respondent's Notice of Motion for conditional leave to appeal to Her Majesty in Council is refused.
5. Costs on the strike out application awarded to the intended appellant/ first respondent fixed in the sum of \$750.00 to be paid by the first, second and third appellants on or before 14th March 2022.
6. The second and third Appellants' Notice of Motion for conditional leave to appeal to Her Majesty in Council is refused with costs fixed in the sum of \$750.00 to be paid on or before 14th March 2022 by the second and third appellants to the intended appellant/first respondent.

Reason:

The Court heard three applications. The first application was a motion by the intended appellant/first respondent for conditional leave to appeal to Her Majesty in Council against the decision of the Court of Appeal made on 14th January 2022. The second application was a motion by the second and third appellants, seeking conditional leave to appeal to Her Majesty in Council against the Court of Appeal's decision of the same date. Additionally, the Court heard an application made on the 31st January 2022 by the first, second and third appellants for an order striking out the intended appellant/first respondent's motion for conditional leave to appeal to Her Majesty in Council.

Upon considering the first application, the Court was not satisfied that the intended appellant/ first respondent met the test for leave to appeal under section 3(1)(a), being an appeal as of right, of the Montserrat (Appeals to the Privy Council) Order 1967 and accordingly refused leave under this limb. The Court was however of the view that the intended appellant/ first respondent met the test for leave under section 3(2)(a), being an issue of great

general or public importance, of the Montserrat (Appeals to the Privy Council) Order 1967. The Court was guided in so finding by the learning of the Court in Martinus Francois v The Attorney General Civil Appeal No. 3 of 2003 (delivered 7th June 2003, unreported), which is considered the *locus classicus* in the Eastern Caribbean on this limb. Saunders JA at paragraph 13 in that case, outlined that:

“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...”

The Court was satisfied that the requirements of section 3(2)(a) were met by the intended appellant/ first respondent and granted leave to appeal the decision of the Court of Appeal made on 14th January 2022 on the conditions set out in paragraphs 1 (a)- (d) of the order of the Court above.

In light of the Court’s decision to grant conditional leave to the intended appellant/first respondent to appeal to Her Majesty in Council and being of the view that the appellants’ application to strike out the intended appellant/ first respondent’s notice of motion was without merit, the Court refused the appellants’ application to strike out.

In respect of the second and third appellants’ notice of motion for conditional leave to appeal to Her Majesty in Council, the Court was of the view that the first limb under section 3(1)(a), being an appeal as of right, was not met. In respect of their motion for leave on the basis of great general or public importance under section 3(2)(a), the Court considered the bases put forward by the second and third appellants and upon being guided by the decision of Martinus Francois v The Attorney

General Civil Appeal No. 3 of 2003 (delivered 7th June 2003, unreported), was not satisfied that the second and third appellants had met the threshold for the grant of conditional leave under this limb of the Appeals to the Privy Council Order. The motion was accordingly refused.

The Court also considered an application by the intended appellant/ first respondent for a stay of execution of the Court's decision dated 14th January 2022 and granted the application pending the determination of the intended appellant/ first respondent's appeal to Her Majesty in Council.

Case Name:

APPEAL
Mary Hogan
v
Wilston Johnson

[MNIHCVAP2021/0010]
(MONTSERRAT)

Date:

Thursday, 10th February 2022

Coram:

The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, Justice of Appeal
[Ag.]

Appearances:

Appellant:

Mr. Jean Kelsick

Respondent:

Dr. David Dorsett

Issues:

Interlocutory Appeal- Default Judgment- Failure to file Form 7 request for default judgment- Whether failure to file a Form 7 request for default judgment makes a request for default judgment irregular or a nullity under CPR rules 13.2 and 12.5- Whether learned master erred in setting aside the default judgment on this basis in circumstances where the point was neither raised nor put forward as a ground for setting aside. - Whether the learned master breached the rules of natural justice by not giving the appellant an opportunity to address the point being the sole basis on which master set aside the judgment- Masters' coordinate jurisdiction.

Type of Order:

Oral Judgment with written reasons to follow

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The decision of the master of 4th November 2021, specifically the orders made at paragraphs 14 (1) (b), (c), (d) and (e) are set aside in their entirety.
2. The respondent shall bear the cost of the application in the court below and on appeal fixed in the sum of \$3,500.00 to be paid on or before 31st March 2022.
3. The court will provide written reasons for its decision at a later date.

Case Name:

APPLICATIONS/ MOTIONS

John Allen

v

The Queen

[MNIHCRAP2021/0003]

(MONTSEERRAT)

Date:

Friday, 11th February 2022

Coram:

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

**The Hon. Mr. John Carrington, Justice of Appeal
[Ag.]**

Appearances

Applicant: Mr. Warren Cassell

Respondent: Mr. Oris Sullivan, Director of Public Prosecutions

Issues: Application for extension of time to appeal-
Application for leave to appeal against conviction
and sentence

Type of Order: Oral Decision

Order: IT IS HEREBY ORDERED THAT:

1. The application for an extension of time to file the notice of appeal is granted.
2. The notice of appeal filed on 5th July 2021 is deemed properly filed.

Reason:

The application before the court was for an extension of time to appeal against conviction and sentence. The applicant was convicted of rape, buggery, indecent assault and burglary with intent to rape on 14th November 2018 and was sentenced on 11th March 2019. The applicant filed his notice of appeal on 5th July 2021, approximately 2 years, 5 months after his sentence. The notice of appeal was therefore filed out of time. Consequently, the applicant sought an extension of time to file the notice of appeal. Although the delay was inordinate, the court considered the reasons for the delay and that there was a reasonable prospect of success on appeal. The Court was of the view that the application for an extension of time should be granted.

Case Name:

Oris Sullivan

v

Dagrie Wilson

**[MNIHCVAP2019/0009]
(MONTSERRAT)**

Date: Friday, 11th February 2022

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

Appearances:

Appellant: Mr. Sylvester Carrott

Respondent: Mr. Jean Kelsick

Issues: Application to strike out notice of appeal-
Application for an extension of time to serve the
notice of appeal and deem the notice of appeal
properly filed- Application to amend the application
for an extension of time- Whether notice of appeal
was filed in time- Whether bank holidays and
weekends are included in the computation of time
when the time for filing is more than seven days-
CPR rule 3.2- Whether late service is a ground on
which a notice of appeal should be struck out

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application to strike out the notice of appeal is refused.
2. The application to amend the application for an extension of time is granted.
3. The application for an extension of time for the filing and serving of the notice of appeal is granted.
4. The filing and service of the notice of appeal are deemed to have been properly effected.

5. The appellant shall pay the respondent's costs of these applications fixed in the sum of \$2,000.00 to be paid on or before 18th February 2022.

Reason:

Three applications were brought before the Court. The first application was an application by the appellant to strike out the notice of appeal. The second was an application by the respondent for an extension of time to serve the notice of appeal and deemed the notice of appeal properly served. Lastly, the third application was an oral application made by the respondent late into the hearing, for an amendment of the extension of time application to include an extension of time to file the notice of appeal and to deem the notice of appeal properly filed.

The respondent's strike out application was based primarily on the appellant's failure to file and serve the notice of appeal in time. Namely, the notice of appeal was filed three days late and, according to the respondent, the notice of appeal was served sixty-nine days late as at the time of first service, an authorization code had not accompanied the notice of appeal. The Court agreed that the notice of appeal was filed late as the date for filing the notice of appeal ended on 3rd September 2021 whilst the notice of appeal was filed on 6th September 2021 with the intervening days being the weekend. The Court noted that the respondent did not claim to have suffered any prejudice from the delay in the filing but he raised the issue of prejudice in the administration of justice. The Court agreed that there is an obligation on the parties to comply with the rules of court, however on carrying out a balancing act, the Court found that the default was not so egregious as to result in the applicant being shut out from prosecuting his appeal on this ground only. The Court also had regard to the prospects of success on the appeal and was of the view that the prospects of success on the appeal were not merely fanciful.

With respect to the applications for an extension of time for filing and serving the notice of appeal, the Court was satisfied that with respect to filing, there was a genuine error of calculation on the part of the legal practitioners for the appellant of the time within which the appeal should be filed. In this regard, the Court examined rule 3.2 of the Civil Procedure Rules 2000. With respect to service, it appears that some confusion arose as to the authorization code that had been provided and the acceptance by the lawyers for the respondent of the notice of appeal without the authorization code. In exercising its discretion, the court had regard to the overriding objective and granted the appellant permission to amend its application and granted its applications for an extension of time to file and serve the notice of appeal and deem the notice of appeal properly filed and served. As a consequence the respondent's strike out application was refused.

In accordance with CPR Part 65.11(3), the appellant was ordered to pay the costs of the applications.

APPEALS

Case Name:

[1] Martin Jno Baptiste

[2] Danny Henry

v

Wilston Johnson

[MNIHCRAP2019/0004]
(MONTSEERRAT)

Date:

Friday, 11th February 2022

Coram:

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

Appearances:

Appellant:

Mr. Warren Cassell

Respondent:

Mr. Oris Sullivan, Director of Public Prosecutions

Issues: Criminal appeal - Appeal against conviction - Smuggling migrants contrary to section 210 (1) of the Penal Code 2013 - Jurisdiction - Whether court had jurisdiction to hear the matter - Section 9(1)(b) of the Criminal Procedure Code- Whether section 9(1)(b) of the Criminal Procedure Code is unconstitutional - Submission to jurisdiction of the court by virtue of guilty plea - Undisputed evidence - Whether or not the offence of smuggling was established on the facts - Whether the learned judge erred in finding that the facts alleged amounted to a criminal offence under the Penal Code - Section 71 of Montserrat Constitution Order - Duplicity - Whether or not the indictment is duplicitous - Section 100 of the Criminal Procedure Code

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Ashel Bramble

V

The Queen
[MNIHCRAP2020/0013]
(MONTSERRAT)

Date: Friday, 11th February 2022

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

In person

Mr. Oris Sullivan, Director of Public Prosecutions

Application for adjournment

Adjournment

IT IS HEREBY ORDERED THAT:

- 1. On the application of the appellant for an adjournment to enable him to retain counsel to represent him at the hearing of the appeal, and there being no objection by the learned Director of Public Prosecutions, the application for an adjournment is granted.**
- 2. The appellant shall file submissions with authorities on or before 30th April 2022.**
- 3. The respondent shall file submissions with authorities in response to the appeal on or before 15th May 2022.**
- 4. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Territory of Montserrat during the week commencing 4th July 2022.**

The appellant indicated that he required additional time in order to retain legal representation to represent him at the hearing of the appeal. The learned Director of Public Prosecutions did not oppose the application for an adjournment.

Case Name:

Daphne Furlonge

V

Commissioner of Police

**[MNIMCRAP2021/0001]
(MONTSERRAT)**

Date:

Friday, 11th February 2022

Coram:

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

Appearances: Appellant:

In person

Respondent:

Mr. Andrew Horton

Issues:

**Application to strike out appeal – Contravention of
curfew order – Section 35 of the Penal Code –
Whether the appellant was actually convicted in the
court below – Whether the proceedings below
would affect the appellant's criminal record -
Withdrawal of appeal**

Type of Order:

Oral decision

Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is withdrawn and accordingly dismissed.**

2. No conviction is recorded against the appellant, Ms. Daphne Furlonge.
3. Ms. Daphne Furlonge shall pay the sum of \$100.00 as ordered by the magistrate on or before 28th February 2022.

Reasons:

This is an appeal by Ms. Daphne Furlonge against the ruling of the learned magistrate. At the hearing of the appeal, learned counsel for the Crown drew the Court's attention to the order which was made by the learned magistrate in this matter. The learned magistrate made an order pursuant to section 35 of The Penal Code, Cap 4.02 Laws of Montserrat where no conviction was recorded, but rather the appellant was ordered to pay the sum of \$100.00 within one month or in default one week's imprisonment. This having been drawn to the Court's and Ms. Furlonge's attention, Ms. Furlonge indicated to the Court, in effect, that she would no longer wish to pursue the appeal since there was no conviction against her. In those circumstances, the Court granted leave to the appellant for the withdrawal of the appeal.