

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE
SAINT LUCIA
8th - 11th MARCH 2021

APPLICATIONS

Case Name:

Al's Investments Ltd.
v
Q Homes Ltd.

[SLUHCVAP2020/0005]
(Saint Lucia)

Date:

Monday, 8th March 2021

Coram:

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

Appearances:

Applicant:

Mrs. Wauneen Louis-Harris

Respondent:

Mr. Kerron Bruney

Issues:

Motion for leave to appeal to Her Majesty in Council
– Whether leave to appeal to Her Majesty in Council should be granted against order of Court of Appeal refusing leave to appeal – Appeal as of right – Section 108(1)(a) of the Constitution of Saint Lucia
– Whether proposed appeal is final appeal in civil proceedings where the matter in dispute is valued in excess of prescribed value – Section 108(2)(a) of the Constitution of Saint Lucia – Whether the interpretation application of rule 26.8 of the Civil

Procedure Rules, 2000 by the Court of Appeal produces a draconian effect and therefore raises a question of great general or public importance

Type of Order

Oral Decision

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The motion for leave to appeal to Her Majesty in Council is refused.**
- 2. No order as to costs.**

Reason:

This was a motion for leave to appeal to Her Majesty in Council in respect of an order by the Court of Appeal refusing the applicant leave to appeal against an interlocutory order made by the court below. The motion for leave to Her Majesty was refused as it did not meet the threshold test set out in section 108(1)(a) of the Constitution of Saint Lucia in that it was not an appeal as of right which would be one in respect of a final decision of the prescribed value as set out in that provision of the Constitution. Further, it did not meet the threshold set out in section 108(2)(a) of the Constitution of Saint Lucia, in that it raised no point or question of great general or public importance or which otherwise ought to be referred to Her Majesty in Council. Accordingly, the motion was refused and the Court considered that the appropriate costs order was that there should be no order as to costs.

Case Name:

PIC Insurance Company Ltd

V

**[1] Zona Barthley and Zorol Barthley
(Personal Representatives of the Estate
of Dr. Rolston Barthley, Deceased)**

[2] Zorol Barthley

[ANUHCVP2019/0003]

(Antigua and Barbuda)

Date: Monday, 8th March 2021

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

Appearances:

Applicant: Mr. Anthony Astaphan, SC with him Dr. David Dorsett

Respondents: Mr. Kendrickson Kentish and Ms. Kathleen Bennett

Issues: Motion for conditional leave to appeal to Her Majesty in Council – Section 122 (1)(a) of the Constitution of Antigua and Barbuda – Whether proposed appeal is a final appeal in civil proceedings directly or indirectly concerning a question of or right to property in excess of prescribed value – Whether proposed appeal raises a genuinely disputable issue – Claim to question or right to allocation of 55% of the shareholding of applicant – Application for stay of execution of judgment pending hearing and determination of appeal to Her Majesty in Council – Whether proposed appeal to Her Majesty in Council will be rendered nugatory unless a stay is granted

Type of Order Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The motion for leave to appeal to Her Majesty in Council is granted; that the appeal be prosecuted with expedition to Her Majesty in Council and therefore upon the following conditions-

- (a) the appellant within 30 days of the date hereof, to enter into good and sufficient security in the sum of £500 for the due prosecution of the appeal, such security to consist of a deposit of the said amount at the court office;
 - (b) within 30 days of the date hereof the appellant takes the necessary steps for the purposes of procuring the preparation of the records, the settling of such records with the solicitors for the respondent to this application and the certification of the record by the Registrar of the Court of Appeal; and
 - (c) the record shall be prepared in accordance with rules 18 to 20 of the Judicial Committee Appellate Jurisdiction Rules Order 2009 and its Practice Direction 4.2.1 to 4.3.2 and Practice Direction 5 and shall be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay, where final permission to appeal has been granted.
- 2. The appellant shall make application to the Court for the grant of final leave to Her Majesty in Council supported by the Certificate of the Registrar, that the security for costs ordered herein has been given within the time prescribed by this order to the satisfaction of the Registrar
- 3. A stay is hereby granted in respect of paragraphs 4 and 5 of the orders made by the learned trial judge below pending the hearing and determination of the appeal to the Privy Council.
- 4. The costs of this motion shall be costs in the appeal to Her Majesty in Council.

Reason:

By way of Notice of Motion filed 1st February 2021, the applicant applied to the Court for leave to appeal to Her Majesty in Council pursuant to section 122(1)(a) of the Constitution of Antigua and Barbuda against the judgment and orders of the Court made on 28th January 2021, and also for a stay of execution of the said judgment and order pending the determination of the proposed appeal to the Privy Council.

Learned Senior Counsel for the applicant submitted before the Court that, the judgment and orders of the Court made on 28th January 2021, finally disposed of the matter and as such met the requirements of section 122(1)(a) of the Constitution of Antigua and Barbuda. Section 122 of the Constitution of Antigua and Barbuda provides that an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in final decisions in any civil proceedings where the matter in dispute on the appeal to Her Majesty in Council is of the prescribed value or upwards or where the appeal involves directly or indirectly a claim to or question respecting property of the prescribed value or more. Section 122(5) of the Constitution of Antigua and Barbuda states that 'the prescribed value' means the value of \$1500.00.

Learned Senior Counsel for the applicant argued that the outcome of the appeal, among other things, concerned the claim to or question of the right to the allocation of 55% of the shareholding in the applicant, which is valued in excess of \$1500.00. Further, learned Senior Counsel argued that 'an appeal as of right' requires that the proposed appeal raise a genuinely disputable issue. He submitted that the ongoing dispute between the shareholders as to the allotment of the shares to the various parties, raised such an issue.

In relation to the application for the grant of the stay of execution of the said judgment, learned Senior Counsel submitted that if the said judgment was not stayed it would render the proposed appeal to the Privy Council nugatory as shares would be

allotted pursuant to the orders of the High Court and the Court of Appeal prior to the Privy Council hearing.

Counsel for the respondents opposed the application for leave to appeal to Her Majesty in Council and application for the stay of execution of the said judgment. Counsel for the respondents submitted that there was no reason to disturb the findings of the Court, as the applicant had not made out a case for the grant of conditional leave. Counsel for the respondents argued that the company did not own any of its issued shares and that the case didn't concern any property of the applicant.

In relation to the application for the stay, counsel for the respondent argued that there could be no stay on a declaratory judgment.

The Court, in its unanimous decision was satisfied that on this motion for conditional leave to appeal to Her Majesty in Council, that the applicant had met the threshold stated in section 122(1)(a) of the Constitution of Antigua and Barbuda and accordingly conditional leave was granted. The Court stated however, that grant of leave was conditional upon the appellant proceeding with the appeal expeditiously. The Court was also satisfied that the balance of harm in the circumstances of this case favoured the grant of a stay of the orders contained in paragraphs 4 and 5 of the orders made by the learned trial judge in the court below, in the judgment delivered on 19th December 2018.

Case Name:

Clint Louis
v
Miguel Jeffrey

[SLUHCVP2018/0010]

(Saint Lucia)

Date: Monday, 8th March 2021

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

Appearances:

Appellant	Mr. Alvin St. Clair
Respondent/Applicant:	Mr. Dexter Theodore, QC with him Ms. Sueanna Frederick

Issues: Application to strike out notice of appeal – Rules 62.11(1) and 62.12(3) of the Civil Procedure Rules 2000 – Delay by appellant in filing skeleton arguments and record of appeal – Application by appellant for extension of time to file record of appeal and skeleton arguments – Length of delay – Whether the delay was inordinate – Reasons for delay – Whether there were good and sufficient reasons for delay – Whether there was a reasonable prospect of success on appeal – Whether applicant prejudiced by failure of appellant to prosecute appeal in accordance with Part 62 of the Civil Procedure Rules 2000 – Whether in the circumstances the Court should exercise its discretion to extend time for the appellant to file the record of appeal and skeleton arguments

Type of Order Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application by the respondent to strike out the appeal is dismissed.

2. The application by the appellant to extend time to file the record of appeal and skeleton argument is granted.
3. The appellant shall file the record of appeal and skeleton arguments by 4pm on Monday, 22nd March 2021.
4. The appellant shall pay the respondents costs of both applications in the sum of \$2500.00 to be paid by Wednesday, 31st March 2021.

Reason:

There were two applications before the Court. The first in time, was an application by the respondent to strike out the appeal for failure to file the record of appeal and skeleton arguments, within the time prescribed by the Civil Procedure Rules 2000. The second application is by the appellant, for an extension of time within which to file the record of appeal and skeleton arguments. As of the date of the hearing, neither the record of appeal nor the skeleton argument had been filed by the appellant.

It was common ground that this Court has a discretion to extend time within which to file the record of appeal and skeleton arguments. It was also common ground that the factors to be considered by the court in determining whether to exercise that discretion are: (i) whether the delay was inordinate; (ii) the reasons for the delay; (iii) the chances of success of the appeal; and (iv) the degree of prejudice to the respondent.

It was accepted by both sides that the delay in the filing of the record of appeal and skeleton arguments, after the filing of the notice of appeal was inordinate, being some 17 months. Learned counsel for the respondents accepted that the reasons for delay advanced by the appellant, in support of its application, while not as fulsome as they could be, were nevertheless satisfactory. Accordingly, the main thrust of the arguments centered on the chances of success of the appeal.

Having heard counsel for both parties, the Court was unable to say that the chances of success of the appeal were hopeless. Accordingly, this Court refrained from striking out the appeal, the notice of which was filed was timely filed. Having considered all of the relevance factors, this Court determined that in the exercise of its discretion, it ought to extend time for the appellant to file the record of appeal and skeleton arguments.

Case Name: **Brian Samuel**
v
The Public Service Commission
[SLUHCVAP2018/0028]
(Saint Lucia)

Date: **Tuesday, 9th March 2021**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]
The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]

Appearances:
Appellant: **Mr. Leslie Prospere**
Respondent: **Mr. Vilan Edward and Mrs. Grace Ward-Glasgow**

Issues: **Civil appeal - Judicial Review - dismissal of claim for judicial review of decision of Public Service Commission not to appoint appellant as a Superintendent of Police of the Royal Saint Lucia Police Force- Irrationality - Procedural impropriety - Whether there was procedural impropriety in recruitment process employed by the Public Service Commission - Whether procedure used by Public Service Commission to secure polygraph testing adversely impacted appellant's chance of succeeding to post of Superintendent of Police -**

Unfairness - Wednesbury unreasonableness - Whether the decision not to appoint appellant was unfair or Wednesbury unreasonable - Reasons for decision not to appoint - Whether Public Service Commission was required in this case to give reasons for decision not to appoint appellant - Whether Court of Appeal should interfere with learned judge's decision not to grant relief; whether granting of relief should still be considered in circumstances where the appellant is no longer serving as a member of the Royal Saint Lucia Police Force having since retired and where claim for damages not maintainable.

Type of
Order:

N/A

Result /
Order:

[Oral delivery]
IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

[1] Emmerson International Corporation
[2] Mikhail Abyzov

v

[1] Viktor Vekselberg
[2] Gothelia Management Limited
Integrated Energy Systems Limited

[BVIHCMAP2020/0011]
(The Territory of the Virgin Islands)

Date:

Tuesday, 9th March 2021

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.]

Appearance:

Applicant: Mr. Philip Marshall, QC, with him, Mr. Robert Weekes, Ms. Colleen Farrington and Mr. Ajay Ratan

Respondents: Mr. Simon Birt, QC, with him, Ms. Arabella Di Iorio, Mr. Michael Bolding and Mr. Shane Quinn

Issues: Application to adduce fresh evidence

Type of Order: N/A

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

Case Name: [1] Emmerson International Corporation
[2] Mikhail Abyzov

v

[1] Viktor Vekselberg
[2] Gothelia Management Limited
Integrated Energy Systems Limited

[BVIHCMAP2020/0011]
(The Territory of the Virgin Islands)

Date: Tuesday, 9th March 2021

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:

Mr. Philip Marshall, QC, with him, Mr. Robert Weekes, Mr. Ajay Ratan and Ms. Colleen Farrington

Respondent:

Mr. Simon Birt, QC, with him, Ms. Arabella Di Iorio, Mr. Michael Bolding and Mr. Shane Quinn

Issues:

Commercial appeal – Interlocutory appeal – Application for anti-suit injunction – Whether learned judge erred in dismissing application for anti-suit injunction to prevent first respondent from issuing or continuing claims in respect of issues in BVI proceedings – Whether learned judge applied wrong test to the grant of a world-wide anti-suit injunction – Whether there was a real risk the first respondent would repeat vexatious conduct – Whether learned judge erred in approach to question of whether Russian proceedings instituted by first respondent were vexatious or oppressive – Whether learned judge misdirected himself as to findings of the Second Court of Cassation in Russia – Whether judge failed to consider or give any sufficient weight to other evidence relied on by appellant as evidence of vexation or oppression – Whether learned judge erred in failing to give any proper reasons for rejecting evidence and submissions of appellants as demonstrative of vexatious or oppressive conduct by first respondent

**Type of
Order:**

Adjournment

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

The hearing of the appeal is adjourned until Wednesday, 10th March 2021 at 9am.

Reason: Counsel in the appeal had not concluded their oral submissions. The Court was therefore of the view that it was necessary for the matter to be adjourned to the following day for the hearing of the appeal to be completed.

Case Name:

**[1] Emmerson International Corporation
[2] Mikhail Abyzov**

v

**[1] Viktor Vekselberg
[2] Gothelia Management Limited
Integrated Energy Systems Limited**

**[BVIHCMAP2021/0004]
(The Territory of the Virgin Islands)**

Date: Tuesday, 9th March 2021

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: Mr. Philip Marshall, QC, with him, Mr. Robert Weekes, Mr. Ajay Ratan and Ms. Colleen Farrington

Respondent: Mr. Simon Birt, QC, with him, Ms. Arabella Di Iorio, Mr. Michael Bolding and Mr. Shane Quinn

Issues: Commercial appeal – Interlocutory appeal – Anti-suit injunction – Whether Cyprus proceedings brought by respondents is frivolous and vexatious – Whether judge erred by declining to take into account the merits and conduct of the Cyprus proceedings in his consideration of the anti-suit injunction application – Whether judge erred in finding that there was no evidence that the first

respondent could have caused CJSC Kes-Holding or LLC T Plus Invest to discontinue the Cyprus proceedings – Whether judge erred in finding that no useful purpose would be served if the injunction sought by the appellants resulted in the discontinuance of the Cyprus proceedings by Gothelia Management Limited, Integrated Energy Systems Limited and Brookweed Trading Limited – Whether the judge erred in law by declining the anti-suit injunction having held that the Cyprus worldwide freezing order risks interfering with the Receiver appointment in the BVI High Court – Whether judge failed to take into account material relevant to the anti-suit injunction application – Whether judge erred in declining to find that the Cyprus proceedings involved a collateral attack on the BVI court’s judgment and processes – Whether judge erred in finding that there was no sufficient overlap of issues between the Cyprus proceedings and the BVI proceedings to justify the relief sought – Whether the judge erred in law in holding that the first respondent was not in breach of the assurance he gave to the BVI court

Type of Order

Adjournment

Result /
Order:

IT IS HEREBY ORDERED THAT:

The hearing of the appeal is adjourned until Wednesday, 10th March 2021 at 9am.

Reason:

Counsel in the appeal had not concluded their oral submissions. The Court was therefore of the view that it was necessary for the matter to be adjourned to the following day for the hearing of the appeal to be completed.

JUDGMENT

Case Name:

Gael Dariah

v

The Queen

[SLUHCRA2017/0012]

(Saint Lucia)

Date:

Wednesday, 10th March 2021

**Coram for
delivery of
judgment:**

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of
Appeal [Ag.]**

Appearances:

Appellant:

Mr. Alberton Richelieu and Mr. Leslie Mondesir

Respondent:

Mr. Bernick Faisal

Issues:

Criminal appeal – Rape – Appeal against conviction and sentence – Section 136 of the Evidence Act – Unreliable evidence — Warning to jury in respect of potentially unreliable evidence – Recent complaint – Section 53 of the Evidence Act - Whether learned judge properly directed the jury in accordance with section 136(2) of the Evidence Act in relation to the evidence of the virtual complainant and the evidence of the virtual complainant’s husband — Section 35(1) of the Eastern Caribbean Supreme Court Act – If the learned judge failed to warn the jury in accordance with section 136(2)(b), whether the learned judge’s failure to state any reason for not giving the section 136(2) warning was fatal

**Result and
Reason**

Held: dismissing the appeal and affirming the conviction, that:

1. The fact that evidence falls within the ambit of one of the sub-paragraphs in section 136(1) of the Evidence Act does not automatically require a judge to give the section 136 (2) warning about the potential unreliability of evidence. The judge is required to consider the evidence and use his discretion as to whether the warning is necessary. In doing so, the judge should hear submissions from both sides. If the judge determines that a warning is necessary, then the judge must give the jury all three limbs of the warning in section 136 (2). If the judge determines that a warning is not required, then the judge should give reasons for this decision.

Sections 136(1) and (2) of the Evidence Act, Cap 4.15 of the Revised Laws of Saint Lucia applied.

2. In the present case, the appellant's arguments that the fact that the virtual complainant may have been seen in the company of the appellant alone by persons who knew the virtual complainant's husband and that because the virtual complainant was wearing jeans, the likelihood of non-consensual intercourse was highly unlikely, required the judge to give a warning in accordance with section 136(2)(b), cannot be sustained. In relation to the first argument, the virtual complainant and the appellant's evidence conflicted on this issue. However, a mere conflict in evidence would not be a matter which would cause the virtual complainant's evidence to be unreliable and therefore engage section 136. In relation to the second argument, section 136 is only engaged when there is an evidential basis.

The mere suggestion by counsel to a witness that it was difficult to have non-consensual sex in the type of car, is not a sufficient basis to engage the section 136 warning. The learned judge therefore did not err by not giving a section 136(2) warning.

Gerald Joseph v The Queen SLUHCRA2006/0002 (delivered 15th January 2007, unreported) distinguished; Kyon Frederick v The Queen SLUHCRA2006/0008 (delivered 25th March 2009, unreported) distinguished; Vincent Leroy Edwards and Richard Orlando Haynes v the Queen [2015] CCJ 17 (AJ) applied; R v Stewart [2001] NSWCCA 260 considered.

3. Section 53 of the Evidence Act allows evidence of recent complaint to be admissible. Therefore, the evidence of the virtual complainant's husband that, upon arriving at the virtual complainant's mother's home, he saw the virtual complainant and was told by her that the appellant raped her (recent complaint), was admissible evidence in accordance with section 53. This meant that the evidence would be of a kind that fell within the ambit of section 136 and therefore section 136(2) would apply. The learned judge gave a direction in relation to the recent complaint evidence, however, this was not in compliance with section 136(2). As indicated above, section 136 is not a mandatory but discretionary provision. However, the learned judge should have given his reasons as to why no warning was necessary. In view of the strong case put forward by the prosecution and having found that in the circumstances of this case that there were good reasons for the learned judge to exercise his discretion and not give the section 136(2) warning, the failure to give reasons did not lead to a miscarriage of justice and therefore the proviso in section

35 (1) of the Eastern Caribbean Supreme Court Act should be applied. The learned judge's failure to give reasons for not giving a section 136(2) warning, is therefore not fatal.

Section 53 of the Evidence Act, Cap 4.15 of the Revised Laws of Saint Lucia applied; Section 35 (1) of the Eastern Caribbean Supreme Court (Saint Lucia) Act, Cap 2.01 of the Revised Laws of Saint Lucia considered; Gerald Joseph v The Queen SLUHCRA2006/0002 (delivered 15th January 2007, unreported) followed; Kyon Frederick v The Queen SLUHCRA2006/0008 (delivered 25th March 2009, unreported) followed; Crossdale v R [1995] UKPC 1 considered; Stafford v The State [1999] 1 WLR 2026 considered; Michael Freemantle v The Queen [1994] 1 WLR 1437 considered; Stubbs v The Queen [2020] UKPC 27 considered.

APPEAL

Case Name:

[1] Francis Chitolie

[2] Vance Chitolie

v

St. Lucia National Housing Corporation

[SLUHC2020/0022]

(Saint Lucia)

Date:

Wednesday, 10th March 2021

Coram:

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]

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

Appearances:

Appellant: Dr. Lloyd Barnett, QC with him Mr. Weiden Daley

Respondent: Mr. Dexter Theodore, QC with him Ms. Sueanna Frederick

Issues:

Application for adjournment – Application for stay of execution pending hearing and determination of appeal– Whether appeal presents an arguable case – Whether in the absence of the stay, there will be serious prejudice to the appellant – Consent order – Agreement between the parties for extension of time for period for compliance with judgment and orders

Type of Order

Adjournment

Result/Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. That on the respondent's application by consent, the hearing of this appeal is adjourned to the next sitting of the Court of Appeal during the week commencing 28th June 2021 with the following conditions:
 - (a) that the period of nine months for compliance with the judgment of and orders of Cenac-Phulgence J dated 16th July 2020 is hereby extended to the date of the determination of this appeal.
 - (b) Further, the respondent undertakes not to take any steps to demolish any existing structure on nor effect any mutation, conveyance, hypothecations, sale charge, lease or incumbrance or disposition of any other lands, the subject matter of this appeal.
2. No order as to costs.

Reason:

By letter dated 5th March 2021, the law firm of Green, Nelson and Associates, wrote on behalf of the respondent requesting an adjournment of the matter to the next sitting of the Court in Saint Lucia, due to both counsel in conduct of the matter, being on sick leave. Counsel for the appellants by letter dated 7th March 2021, opposed the respondent's request for an adjournment stating that any further delay of the appeal would gravely prejudice the appellants. Counsel for the appellants acknowledged that on 15th January 2021, they filed an application for a stay of execution of the judgment of Cenac-Phulgence J dated 16th July 2020 and that it was subsequently denied by a single judge of this Court on 16th February 2021. However, counsel for the appellants requested that if this Court was in fact minded to grant an adjournment, that the adjournment be granted on the condition that the Court stay the execution of the said judgment pending the hearing and determination of the appeal. The Court minded to grant the adjournment, invited the parties to make submissions on the application for a stay.

Learned Queen's Counsel, Dr. Llyod Barnett, for the appellants submitted that there are two considerations when determining whether to grant a stay of execution, those being: (1) whether the appeal presents is an arguable case; and (2) in the absence of the stay, whether there would be serious prejudice to the appellant. Learned Queen's Counsel argued that based on the factual circumstances surrounding the matter, there was absolutely no question as to the adverse consequences facing the appellants. There were clear indications to show that the appellants wanted to proceed with the sub-division and subsequent sale of the property to other parties.

Learned Queen's Counsel, Mr. Dexter Theodore, for the respondent submitted that, the respondent was opposed to the Court granting an order whereby the respondent would be excluded altogether from the property. However, the respondent was not opposed to an order whereby the period for

compliance with the judgment and orders be extended.

The Court having heard from both counsel for the appellants and respondent on the respondent's application for an adjournment, invited the parties to make a consent order. The parties subsequently agreed by consent, to the adjournment subject to the conditions as expressed in the consent order.

Case Name:

**[1] Emmerson International Corporation
[2] Mikhail Abyzov**

v

**[1] Viktor Vekselberg
[2] Gothelia Management Limited
Integrated Energy Systems Limited**

**[BVIHCMAP2020/0011]
(The Territory of the Virgin Islands)**

Date:

Wednesday, 10th March 2021

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:

Mr. Philip Marshall, QC, with him, Mr. Robert Weekes, Mr. Ajay Ratan and Ms. Colleen Farrington

Respondent:

Mr. Simon Birt, QC, with him, Ms. Arabella Di Iorio, Mr. Michael Bolding and Mr. Shane Quinn

Issues:

Commercial appeal – Interlocutory appeal – Application for anti-suit injunction – Whether learned judge erred in dismissing application for

anti-suit injunction to prevent first respondent from issuing or continuing claims in respect of issues in BVI proceedings – Whether learned judge applied wrong test to the grant of a world-wide anti-suit injunction – Whether there was a real risk the first respondent would repeat vexatious conduct – Whether learned judge erred in approach to question of whether Russian proceedings instituted by first respondent were vexatious or oppressive – Whether learned judge misdirected himself as to findings of the Second Court of Cassation in Russia – Whether judge failed to consider or give any sufficient weight to other evidence relied on by appellant as evidence of vexation or oppression – Whether learned judge erred in failing to give any proper reasons for rejecting evidence and submissions of appellants as demonstrative of vexatious or oppressive conduct by first respondent

Type of
Order:

N/A

Result /
Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

[1] Emmerson International Corporation
[2] Mikhail Abyzov

v

[1] Viktor Vekselberg
[2] Gothelia Management Limited
Integrated Energy Systems Limited

[BVIHCMAP2021/0004]

(The Territory of the Virgin Islands)

Date: Wednesday, 10th March 2021

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: Mr. Philip Marshall, QC, with him, Mr. Robert Weekes, Mr. Ajay Ratan and Ms. Colleen Farrington

Respondent: Mr. Simon Birt, QC, with him, Ms Arabella Di Iorio, Mr. Michael Bolding and Mr. Shane Quinn

Issues: Commercial appeal – Interlocutory appeal – Anti-suit injunction – Whether Cyprus proceedings brought by respondents is frivolous and vexatious – Whether judge erred by declining to take into account the merits and conduct of the Cyprus proceedings in his consideration of the anti-suit injunction application – Whether judge erred in finding that there was no evidence that the first respondent could have caused CJSC Kes-Holding or LLC T Plus Invest to discontinue the Cyprus proceedings – Whether judge erred in finding that no useful purpose would be served if the injunction sought by the appellants resulted in the discontinuance of the Cyprus proceedings by Gothelia Management Limited, Integrated Energy Systems Limited and Brookweed Trading Limited – Whether the judge erred in law by declining the anti-suit injunction having held that the Cyprus worldwide freezing order risks interfering with the Receiver appointment in the BVI High Court – Whether judge failed to take into account material relevant to the anti-suit injunction application – Whether judge erred in declining to find that the Cyprus proceedings involved a collateral attack on the BVI court’s judgment and processes – Whether judge erred in finding that there was no sufficient overlap of issues between the Cyprus proceedings and the BVI proceedings to justify the relief sought

– Whether the judge erred in law in holding that the first respondent was not in breach of the assurance he gave to the BVI court

Type of
Order:

N/A

Result /
Order:

IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name:

Vandyke Jude
v
[1]Della Vallery Nolan nee Jude
[2] Beverley Jude-Porter

[SLUHCVAP2017/0025]
(Saint Lucia)

Date:

Thursday, 11th March 2021

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief
Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of
Appeal [Ag.]

Appearances:

Applicant:

Mr. Dexter Theodore, QC

Respondents:

Ms. Maureen John-Xavier

Issues:

Motion for leave to appeal to Her Majesty in Council
- Whether proposed appeal to Her Majesty in
Council satisfies section 108(1)(a) of the
Constitution of Saint Lucia; whether the claim
meets prescribed value threshold; Whether
proposed appeal to Her Majesty in Council raises a

genuinely disputable issue - Whether Court is required to consider reasonable prospects of success of proposed appeal in granting conditional leave to appeal to Her Majesty in Council

Type of Order

Oral decision

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The appeal to Her Majesty in Council is hereby granted subject to the following conditions:**
 - a. the appellant shall within 30 days from the date of this order enter into good and sufficient security in the sum of £500 for the due prosecution of the appeal, such security to consist of a deposit of the said amount into the court office.**
 - b. within 90 days of this order the appellant shall take the necessary steps for the purpose of procuring the preparation of the record, the settling of such record with the solicitor for the respondents to this application and the certification of the record by the Registrar of the Court of Appeal.**
 - c. the record shall be prepared in accordance with rules 18 to 20 of the Judicial Committee Appellate Jurisdiction Rules Order, 2009 and its Practice Direction 4.2.1 to 4.3.2 and Practice Direction 5 and shall be submitted to the Registrar of the Judicial Committee of the Privy Council without delay where final permission to appeal has been granted.**
- 2. The appellant shall make an application to this Court for grant of final leave 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.

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

Reason:

The Court was of the unanimous view that the motion for conditional appeal ought to be granted as having met the threshold set out in section 108(1)(a) of the Constitution of Saint Lucia. The Court was satisfied that the appeal was a final appeal in civil proceedings where the matter in dispute on the proposed appeal is of the prescribed value or upwards. The Court was also satisfied in the circumstances that the appeal raised a genuinely disputable issue that should be referred to Her Majesty in Council.

Case Name:

Glenroy Shawn Victor

v

The Queen

**[SLUHCRA2014/0001]
(Saint Lucia)**

Date:

Thursday, 11th March 2021

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

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

Appearances:

Appellant:

Mr. Leslie Mondesir

Respondent:

Ms. Isa Cyril and Ms. Tanya Alexis

Issues:	Criminal appeal - Murder - Section 85(b) of the Criminal Code Cap 3:01 - Appeal against conviction and sentence - Abandonment of appeal against conviction - Sentence - Failure of trial judge to express arithmetical calculation of custodial sentence - Time spent on remand - Whether time spent on remand taken into account by trial judge in calculation of custodial sentence
Type of Order	Oral judgment
Result / Order:	IT IS HEREBY ORDERED THAT: 1. The appeal against conviction is dismissed and the conviction is affirmed. 2. The appeal against sentence is dismissed and the sentence is affirmed.
Reason:	This was an appeal against conviction and sentence of 30 years' imprisonment imposed by the learned judge against the appellant for murder. The Court heard submissions from counsel for the appellant, Mr. Leslie Mondesir, who submitted firstly that, having reviewed the file and the appellant's grounds of appeal against conviction, and having consulted with the appellant, that there were no sustainable grounds of appeal. Mr. Mondesir indicated therefore that the appellant was no longer pursuing the grounds of appeal against his conviction and sentence. The Court was of the view that Mr. Mondesir's concession was properly made, and accordingly dismissed the appeal against conviction. In relation to the appeal against sentence, Mr. Mondesir pointed out to the court that although the learned judge stated that all time spent on remand was to be credited in respect of the sentence of 30 years, the learned failed to state with precision the precise number of days on remand which was to be deducted and the balance to be then recorded as the sentence.

The Court noted that when a party appeals against their sentence, it may also take that opportunity to correct that sentence and increase it, if it is considered that that sentence was unduly lenient. The Court found that there was nothing in the appellant's sentence that was excessive or inappropriate having regard to the facts and circumstances of the case and therefore this was not an appropriate case in which to substitute the sentence imposed in the court below with a more lenient sentence. In relation to the appellant's time spent on remand, the Court was satisfied that the learned trial judge did, in fact, state very clearly that all time spent on remand was to be deducted from the sentence of 30 years, but that the learned trial judge failed to expressly carry out the arithmetical calculation exercise required when calculating the sentence, in order to arrive at the precise period of time to be served by the appellant.

Based on the record before the Court, the appellant spent five years and seven days on remand. Therefore, the Court in conducting that arithmetical calculation required of the judge in the court below, deducted that period from the 30 years to which the appellant was sentenced, which left a sentence imposed upon the appellant of 24 years, 11 months and 23 days to run from 28th of January 2014.

The appeal against sentence was therefore dismissed, with the Court placing on record the precise period which the appellant was required to serve, in light of the time already spent on remand.