

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE
COMMONWEALTH OF DOMINICA
22nd – 24th November 2021

APPEALS

Case Name:

[1] Philomen Nixon
[2] Annette Turney
v
[1] Joseph Nixon
[2] Jason Nixon
[3] Stevor Nixon
[4] Johnnie Nixon

[DOMHCRAP2018/0005]
(Commonwealth of Dominica)

Date:

Monday, 22nd November 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:

No appearance

Respondent:

Ms. Kathy Buffong-Royer for 1st and 3rd respondents
No appearance for 2nd and 4th respondents

Issues:

Civil appeal - Adjournment

Type of Order

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

The hearing of this appeal is adjourned to Wednesday 24th November 2021.

Reason:

Counsel for the 1st and 3rd respondents, Ms. Kathy Buffong- Royer, intimated to the Court that neither she nor the other counsels on record, were in a position to proceed with the appeal before the Court, as it was communicated to them via the Court's cause list dated 18th November 2021, that the matter was scheduled for hearing on Wednesday 24th November 2021. However, Ms. Buffong- Royer was informed moments before the sitting of the Court, that a later cause list had been produced in which the matter had been listed for Monday 22nd November 2021. This list had not been circulated to the counsels on record in this matter, including Ms. Buffong-Royer. Ms. Buffong- Royer therefore made an application to the Court for an adjournment of the matter to Wednesday 24th November 2021.

The Court upon hearing the difficulties communicated by Ms. Buffong-Royer, granted the application for the adjournment of the matter.

Case Name:

Cline Williams

v

The Police

**[DOMMCRAP2015/0001]
(Commonwealth of Dominica)**

Date:

Monday, 22nd November 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:

No appearance

Respondent: Ms. Sherma Dalrymple, The Director of Public Prosecutions [Ag.]

Issues: Criminal appeal – Appeal against conviction and sentence – Magistrate’s failure to give reasons – Mandatory requirement that a magistrate give reasons – Section 146(1) of Magistrate’s Code of Procedure Act 4:20

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The conviction and sentence of the appellant be quashed for the reasons that the Court has given and the appeal be allowed.

Reason: The Court was of the view that in the circumstances where there were no reasons for the decision given by the learned magistrate, who is now deceased; where there had been non-compliance with section 146(1) of Magistrate’s Code of Procedure Act Cap 4:20; and in applying the principles as enunciated in the case of Alexander v Williams (1984) 34 WIR 340, that the conviction and sentence of the appellant should be quashed and the appeal allowed.

Case Name: Darwin Augustus
v
The Police

[DOMMCRAP2015/0006]
(Commonwealth of Dominica)

Date: Monday, 22nd November 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. Peter Alleyne, The Director of Legal Aid

Respondent: Ms. Sherma Dalrymple, The Director of Public Prosecutions [Ag.] and Ms. Daina Matthew

Issues:

Criminal appeal - Possession of an offensive weapon – Wounding – Whether sentences of learned magistrate were excessive and ought to be set aside by the Court – Whether the learned magistrate erred in approach to sentencing a juvenile offender – Whether magistrate's failure to conduct means test for juvenile offender was unfair – Whether the magistrate failed to obtain information in accordance with section 23(7) of the Children and Young Persons Act Cap 37:50 – Substitution of sentence

Type of Order

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal against the sentences of the learned magistrate is allowed.
2. The sentences of the learned magistrate are set aside.
3. The sentence of \$500.00 for the offence of an offensive weapon is substituted. The sentence of \$500.00 is to be paid within 3 months from the date thereof in default 2 months in prison.
4. The sentence of \$1500.00 for the offence of wounding is set aside and a sentence of \$500.00 is to be paid within 5 months from the date thereof in default 2 months in prison.

Reason:

This was an appeal against the decision of a learned magistrate in which the appellant pleaded guilty to being armed with an offensive weapon and wounding and the learned magistrate imposed a fine of \$600.00 to be paid by 31st March 2015 and \$1,500.00 to be paid by 30th June 2015 in default 4 months imprisonment, respectively. The appellant was aggrieved by the

decision of the learned magistrate and appealed against the decision. The appellant filed five grounds of appeal and learned counsel Mr. Peter Alleyne, who appeared for the appellant indicated that the appellant only wished to pursue grounds of appeal 1, 2 and 3. The Court noted the submissions of Mr. Alleyne and the submissions of the Director of Public Prosecutions (“DPP”), in which the learned DPP conceded that the learned magistrate erred in sentencing the appellant in the manner obtained. The Court also noted that the DPP conceded that the sentence ought to be a sentence of \$500.00 for the offence of being in possession of an offensive weapon and \$500.00 for an offence of wounding. Accordingly, the Court allowed the appeal against the two offences, and set aside and substituted the sentences of the learned magistrate.

Case Name:

Joanna Vidal

v

[1] Augustine Auguste

[2] Bernard Auguste

[DOMMCRAP2013/0001]

(Commonwealth of Dominica)

Date:

Monday, 22nd November 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:

No appearance

Respondent:

1st Respondent appearing in person

Issues:

Civil appeal – Whether ground of appeal filed amounts to a good ground – Appellant outside of jurisdiction – Failure to prosecute appeal by appellant – Whether appeal should be struck out for want of prosecution

Type of Order

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal filed by the appellant is dismissed for want of prosecution and that the ground of appeal does not show a reasonable ground of the appeal succeeding.
2. The judgment of the learned magistrate dated 19th July 2011 is affirmed.
3. The appellant shall pay the respondent costs of \$100.00.

Reason:

On 19th February 2011 the learned magistrate entered judgment in a claim filed by the respondent, against the appellant for the sum of \$6427.83, comprising rent of \$5400.00, water \$449.00, electricity \$443.33, stamps \$7.50 and costs \$125.00. The appellant appealed on 28th July 2011 against the sums awarded by the learned magistrate. The Court upon noting the record and having heard from the 1st respondent, was of the view that the appellant had not taken any steps since the filing of the appeal to prosecute the appeal. Further, the Court noted that the appellant was no longer resident in the Commonwealth of Dominica.

In the circumstances, the Court held that there was no alternative but to dismiss the appeal on two grounds: firstly, that upon examining the notice of appeal, there had been no good ground of appeal and secondly, that the matter had been outstanding for over 10 years without any indication from the appellant that she intended to pursue the appeal. Accordingly, the appeal lodged by the appellant against the decision of the learned magistrate was struck out. Additionally, the Court being of the view that the respondent was entitled to costs, awarded the above sum in accordance with the rules of court.

Case Name:

Akimah Monah

V
The Queen

[GDAHCRAP2014/0002]
(Grenada)

Date: Monday, 22nd November 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. Ruggles Ferguson and Ms. Danyish Harford

Respondent: Ms. Crisan Greenidge, The Director of Public Prosecutions [Ag.]

Issues: Criminal appeal – Appeal against sentence – Application for additional ground of appeal – Application for further amendment to the notice of appeal that the sentence imposed on appellant was excessive in all the circumstances – Excessive sentence – Whether learned judge failed to determine the correct sentence in accordance with the Sentencing Guidelines – Breach of constitutional right – Section 8(1) of Constitution – Whether delay in producing transcript of proceedings for hearing of appeal breached appellant’s constitutional right to have a fair hearing within a reasonable time – Whether a discount of 12 months would be an appropriate remedy of the Court in the circumstances

Type of Order: N/A

Result/Order IT IS HEREBY ORDERED THAT:

1. The application for leave to add an additional ground of appeal in relation to sentence is granted, there being no objection by the Crown.
2. The additional ground of appeal shall read as follows “that the delay in providing the appellant

with a transcript of the proceedings of his trial and the consequent delay in the hearing of the appellant's appeal, breached his right to a fair trial within a reasonable time as guaranteed under section 8 of the Constitution and that in the circumstances, the breach of the appellant's constitutional right should be taken into consideration by this Court in determining the appropriate sentence."

3. Leave is granted to the appellant based on the oral application of learned counsel Mr. Ruggles Ferguson and there being no objection by learned prosecutor Ms. Crisan Greenidge, for the appellant to argue an additional ground of appeal, mainly that the sentence of 18 years imposed on the appellant by the learned judge was excessive in all of the circumstances.
4. Leave is granted to the appellant to withdraw the appeal against conviction and to pursue the appeals against sentence in relation to the two grounds.
5. Leave is granted to respondent to file written submissions together with authorities on the ground "that the delay in providing the appellant with a transcript of the proceedings of his trial and the consequent delay in the hearing of the appellant's appeal, breached his right to a fair trial within a reasonable time as guaranteed under section 8 of the Constitution and that in the circumstances, the breach of the appellant's constitutional right should be taken into consideration by this Court in determining the appropriate sentence" on or before 7th December 2021.
6. Leave is granted to the appellant to file and serve written submissions in reply on the same constitutional point only on or before 21st December 2021.
7. Judgment is reserved.

		<u>APPEAL</u>
Case Name:		Flavio Maluf v

		[1] Durant International Corp [2] Matthew Richardson (as Liquidator of Durant International Corp) [3] Kevin Hellard (as Liquidator of Durant International Corp) [BVIHCMAP2021/0025] (Territory of the Virgin Islands)
Date:		Tuesday, 23 rd November 2021
Coram:		The Hon. Mde. Louise Esther Blenman, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. John Machell, QC with him Mr. Timothy de Swardt
	Respondents:	Mr. Adrian Francis
Issues:		Commercial appeal – Interlocutory appeal – Failure to properly serve appellant – Service of claim form through diplomatic channels – Whether learned judge erred in holding that service has been effected as a matter of Brazilian law – Whether service of claim form failed to comply with order for service out – Rule 7.10(2) of the Civil Procedure Rules 2000 – Procedure where claim form is to be served through foreign governments – Waiver of service – Rule 7.8B of the Civil Procedure Rules – Power of court to dispense with service of claim form – Whether learned judge erred in making an order dispensing with service after claim form expired – Exercise of discretion – Whether learned judge erred in exercise of discretion in dispensing with service under rule 7.8B(1) of the CPR – Appellate interference with trial judge’s exercise of discretion
Type of Order:		N/A

Result / Order:		IT IS HEREBY ORDERED THAT: Judgment is reserved.
		<u>JUDGMENT</u>
Case Name:		The Attorney General of St. Christopher and Nevis v [1]Carmel Bernadette Agnes McGill [2]Laszlo Stephen Siegmund [SKBHCVAP2020/0024] (Saint Christopher and Nevis)
Date:		Wednesday, 24th November 2021
Coram for delivery:		The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Ms. La Shaun K. Smart holding for Mr. Douglas Mendes, SC with him Ms. Rivi Lake
	Respondents:	Mr. E. Anthony Ross, QC
Issues:		Civil appeal – Right to protection from the compulsory acquisition of private property by Government except for a public purpose – Section 8(1) of the Constitution – Damages for breach of constitutional right to protection from compulsory acquisition – Requirement to notify landowners of the compulsory acquisition of their property by Government – Sections 4 and 7(3) of the Land Acquisition Act - Whether the failure by the Government to notify the landowners of

		the compulsory acquisition of their property constituted a breach of their constitutional right – Whether an award of damages ought to have been made to the landowners for the failure of the Government to notify them of the compulsory acquisition of their property - Delay in payment of compensation for the compulsory acquisition of private property by the Government - Prejudgment interest on awards of damages – Whether the respondents were entitled to an award of damages in addition to interest on the compensation payable by the Government for the delayed payment of compensation for the compulsory acquisition of the respondents’ property - Vindictory damages – Whether the trial judge erred in the exercise of her discretion in awarding vindictory damages to the respondents - Whether the award of vindictory damages was excessive
Result and Reason:		Held: allowing the appeal to the extent that the award of damages for the failure of the appellant to notify the respondents of the acquisition is set aside, the award of damages for the delay in payment of compensation by the appellant to the respondents is set aside and the award of EC\$175,000.00 as vindictory damages is set aside and replaced by an award of EC\$45,000.00 to be paid by the appellant to the respondents; and awarding costs to the appellant in the High Court in the amount of EC\$44,250.00 and in the Court of Appeal in the amount of EC\$29,500.00, that: 1. Section 8(1) of the Constitution guarantees the right to protection from compulsory acquisition by the Government of a person’s property other than for a public purpose. There is no provision in the Constitution which requires the Government to notify a landowner of the intention to acquire his property for a public purpose or of the fact of it having been acquired. The requirement for notification of the landowner by the Government resides not in the

		Constitution, but in the Act. Under the Act, the onus was on the Government to notify the respondents of the acquisition of their land, however, this was not done. Even so, the failure of the Government to notify the respondents did not constitute a breach of the Constitution for which damages would be awarded. There was no evidence of loss to the respondents over and above the compensation to be paid to them for the acquisition of their land, and so, there was no basis upon which the trial judge ought to have made an award for damages for the Government's failure to notify the respondents of the acquisition. Section 8(1) of the Constitution of Saint Christopher and Nevis, Cap. 1.01, Revised Laws of Saint Christopher and Nevis 2009 applied; Sections 4 and 7(3) of the Land Acquisition Act, Cap. 10.08, Revised Laws of Saint Christopher and Nevis 2002 applied. 2. A delay in the payment of an amount due to a person is compensated by a payment of interest to him on the amount due from the date when it was due to him to the date of judgment. Unless the party, to whom money was owed, suffered some special damage, or damages over and above that which is naturally occasioned by a delay in payment by one party of money due to another, then an award of interest is sufficient to redress the delay in payment. In this case, there was no evidence of compensable loss occasioned to the respondents by the fact that, but for a small prepayment made by the appellant, the amount payable to the respondents had not been paid by the date of the judgment in the court below. The delay in payment between acquisition of the property in 2007, and assessment as of November 2016,
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		was remedied by the application of a November 2016 value for the property, and not a November 2007 value. Furthermore, the delay in payment from November 2016 to the date of judgment was remedied by the award of interest at 5% per annum from November 2016 until the judgement date of 18th March 2018. Consequently, the respondents were entitled to no more than interest on the compensation payable to them and no award of damages for the delay should have been made. Bloomquist v The Attorney General of the Commonwealth of Dominica (1987) 35 WIR 162 applied; The Attorney General of Antigua and Barbuda v The Estate of Cyril Thomas Bufton et al [2006] ECSCJ No. 12 (delivered 6th February 2006) followed; Alphonso and others v Deodat Ramnath (1997) 56 WIR 183 followed; Andrey Adamovsky et al v Andriy Malitskiy et al [2017] ECSCJ No. 12 (delivered 3rd February 2017) followed; Steadroy Matthews v Garna O’Neal [2018] ECSCJ No. 5 (delivered 16th January 2018) followed. 3. An award of vindicatory damages is intended to mark the wrong to the affected party rather than to compensate for the consequences of the wrong. The award is usually made in public law cases where there is a breach of a party’s constitutional right. Despite the Government’s failure to notify the respondents of the acquisition of their land, there was no breach of their constitutional right to protection from compulsory acquisition of their land. However, the appellant in the court below consented to an order that the respondents’ right to protection of their property had been infringed and that damages for this breach should be assessed by the High Court. Consequently, the making of the
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		award of vindictory damages was upheld, and the trial judge's exercise of discretion to make the award was not disturbed. Dufour and others v Helenair Corporation Limited and others (1996) 52 WIR 188 followed; The Attorney General of Antigua and Barbuda v The Estate of Cyril Thomas Bufton et al [2006] ECSCJ No. 12 (delivered 6th February 2006) distinguished. 4. As to the quantum of vindictory damages, the general rule is that similar damage must receive a similar award of damages. However, consistency in awards of damages should not necessarily result in an identical amount as that previously ordered by the same court, but rather in an equivalent amount. The determination of an equivalent amount, however, was not to be found in the arbitrary determination by a judge. Rather, a better approach would be to take judicial notice of the fact that the Eastern Caribbean Central Bank is the authority on the value of the Eastern Caribbean dollar and to source from that body, the upgraded value of an earlier award. Having regard to the circumstances of the present case, and the parties' consent to an award of damages, an award of damages midway between the 2018 upgraded award in the Bufton case and the 2019 award in the Econo Parts case, both of which entailed similar damage, was made. The Attorney General of Antigua and Barbuda v The Estate of Cyril Thomas Bufton et al [2006] ECSCJ No. 12 (delivered 6th February 2006) distinguished; Econo Parts Ltd v Comptroller of Customs and Excise; Mr. Parts Ltd v Comptroller of Customs and Excise (2019) 96 WIR 321 distinguished.
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		<u>APPEALS</u>
Case Name:		[1] Philomen Nixon [2] Annette Turney v [1] Joseph Nixon [2] Jason Nixon [3] Stevor Nixon [4] Johnnie Nixon [DOMHCRAP2018/0005] (Commonwealth of Dominica)
Date:		Wednesday, 24 th November 2021
Coram:		The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:		
	Appellants:	Mr. Mark Douglas
	Respondents:	Ms. Kathy Buffong-Royer for 1st and 3rd respondents Mr. Ronald Charles for 2nd and 4th respondents
Issues:		Civil appeal - Interlocutory appeal - Refusal of application to strike out defence - Appellate interference with trial judge's exercise of discretion - Whether learned judge erred in exercise of discretion by refusing to strike out defence - Whether learned judge failed to give due weight to relevant factors in strike out application - Whether learned judge improperly relied on overriding objective of Civil Procedure Rules 2000 - Whether learned judge failed to address respondents' non-compliance with 10.5(3) and 10.5(5) of Civil Procedure Rules 2000- Whether defence in its entirety disclosed no grounds for

		defending the claim - Application to deem respondents' submissions properly filed - Withdrawal of application to set aside order granting leave to appeal in accordance with 62.2(2) of the Civil Procedure Rules 2000
Type of Order		N/A
Result / Order:		IT IS HEREBY ORDERED THAT: 1. The application filed on behalf of the respondents on 23rd September 2019 to set aside the order of a single judge made on 31st July 2018 granting leave to appeal, is dismissed for want of prosecution following the clear statements by counsel representing the 1st and 3rd respondents and counsel representing the 2nd and 4th respondents, that they do not wish to proceed with the aforesaid application. 2. Judgment is reserved.
Case Name:		[1] Ikana Holdings, S. De R.L. [2] Consorcio Energetico Punta Cana-Macao, S.A. v [1] Putney Capital Management Ltd [2] Basic Energy (BVI) Ltd (now known as Haina Energy Holdings II [3] Snapper Investments, Inc. [BVIHCMAP2021/0027] (Territory of the Virgin Islands)
Date:		Wednesday, 24 th November 2021
Coram:		The Hon. Mr. Mario Michel, Justice of Appeal

		The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:		
	Appellants:	Mr. Ben Valentin, QC with him Mr. Simon Hall
	Respondents:	Mr. David Mumford, QC with him Ms. Laure-Astrid Wigglesworth
Issues:		Commercial appeal - Interlocutory appeal - Refusal of application for specific disclosure of the documents of third party - Requirements for specific disclosure - Rule 28.2 of the Civil Procedure Rules 2000 - Appellate interference with trial judge's exercise of discretion - Whether learned judge erred in decision that third party's documents were not within control of parties to proceedings for disclosure purposes - Whether learned judge failed to properly interpret the control test under CPR 28.2 - Control test - Whether there was a presently enforceable right to access the documents - Whether the learned judge failed to have regard to the true nature of the relationship between the respondents and the third party - Whether the respondents had free access to the documents of the third party and that those documents were therefore within the respondents' control - Whether Court ought to consider the disadvantage faced by the parties due to non-disclosure of third party's documents
Type of Order		N/A
Result / Order:		IT IS HEREBY ORDERED THAT:
		Judgment is reserved.