

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE
SAINT CHRISTOPHER & NEVIS
6th to 10th DECEMBER 2021

JUDGMENTS

[1] Jenny Lindsay
[2] Jenny Lindsay and Associates

v

Harriet Carty
(Representative of the estate of Thomas
Edward Carty)

[AXAHCVAP2015/0007]
(Anguilla)

Date:	Tuesday, 7th December 2021
Coram for delivery of judgment:	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:	
Appellants:	Ms. Jenny Lindsay
Respondents:	Ms. Navine Fleming
Issues:	Civil Appeal - Slander - Defamation Actionable per se - Presumption of injury to reputation - Principles governing appellate court's interference with findings of fact by lower court - Whether master erred in finding that the slander complained of caused the appellant to suffer no or minimal actual damage - Whether master erred in the assessment and award of damages - Whether master failed to place sufficient weight on aggravating conduct

of respondent - Whether judge erred in awarding prescribed costs vs assessed costs - Costs on discontinuance of claim

Order:

Held: dismissing the appeal and affirming the award of damages for slander in the sum of \$15,000.00; ordering the appellant to pay the respondent's costs of the appeal being two-thirds of the prescribed costs in the counterclaim and making an order as to costs on the assessment of damages hearing in the court below, that:

1. It is a well-established principle that findings of fact made by lower courts should not be disturbed by an appellate court except in very limited circumstances. To be overturned on appeal, a finding of fact must be one which no reasonable judge, based on the evidence before him, could have reached. This principle extends to instances where the findings of fact are made on written rather than oral evidence. Accordingly, where the findings of fact and the inferences drawn therefrom involve the trial judge's assessment of different factors, the correctness of the assessment is not merely undermined by the appellant challenging the weight given to any particular factor unless it is shown that the judge was clearly wrong. It is pellucid from a perusal of the judgment of the lower court that the master embarked on a thorough evaluative exercise of the evidence before her on paper and in so doing acknowledged that the defamatory statements did hurt Ms. Lindsay's feelings and caused her embarrassment and distress however there was no or minimal actual damage to her reputation and business. Additionally, the law is clear that while there is an irrebuttable presumption that reputational damage is presumed in cases of slander which are actionable per se, pecuniary loss caused by the publication of the slanderous words may be recovered in addition to general damages but must be proved. The master's observation that there was no proof of a 'drop off of work' was merely that, an observation in response to Ms. Lindsay's assertion that she suffered a 'drop off of work' which implies pecuniary loss. The master did not require Ms.

Lindsay to prove a 'drop off of work' nor did the learned master consider it as a factor in making the award of general damages. Consequently, there is nothing from the master's findings which warrants appellate interference.

Lachaux v Independent Print Ltd and Another [2019] UKSC 27 considered; Fage UK Limited v Chobani Limited [2014] EWCA Civ 5 applied; Langsam v Beachcroft LLP [2012] EWCA Civ 1230 considered; Wheeldon Brothers Waste Limited v Millennium Insurance Company Limited [2018] EWCA Civ 2403 applied; Perry v Raleys Solicitors [2019] UKSC 5 applied; DB v Chief Constable of Police Service of Northern Island [2017] UKSC 7 considered; Dow Jones & Co Inc v Jameel [2005] EWCA Civ 75.

2. Similarly, the appellate court is chary to interfere with the assessment of damages by a lower court unless it is satisfied that the trial judge erred in principle or, having regard to all the circumstances of the case, made an award so inordinately low or unwarrantably high that it cannot be permitted to stand. This court is not justified in substituting a figure of its own simply because it would have awarded a different figure if it had tried the case at first instance. There is no precise arithmetical formula which a court can employ when assessing damages in defamation however the guiding principle is that the award must be proportionate to the injury and no more than is necessary to compensate for damage to reputation; vindication of good name; and the distress, hurt and humiliation caused by the defamatory publication. The master considered all the circumstances including Ms. Lindsay's position and standing; the nature of the libel; the mode and extent of the publication; the impact on Ms. Lindsay's feelings, reputation and career and the respondent's motive of malice and weighed them against each other to arrive at a global figure inclusive of aggravated damages. The master engaged in a careful account of the evidence, applied correct legal principles and adopted a correct approach to the assessment of damages.

Accordingly, there is no basis for this court to disturb the award.

Calix v Attorney General of Trinidad and Tobago [2013] UKPC 15 applied; Cairns and Modi; and KC and MGN Limited [2012] EWCA Civ 1382 considered; Alphonso et al v Ramnath British Virgin Islands Civil Appeal No. 1 of 1996 applied; Lachaux v Independent Print Ltd and Another [2019] UKSC 27 considered; Bray v Ford [1896] AC 44 at 53 considered; John v MGN Limited [1997] QB 586 considered; Sir Kevin Barro MP et al v Jane Collins MEP [2017] EWHC 162 (QB) applied; Phonographic Performance Limited and Andrew Ellis Trading [2018] EWCA Civ 2812 considered; Bristol v St. Rose [2005] ECSCJ No. 268 considered.

3. Ms. Lindsay contended that the learned master failed to give any or any sufficient weight to certain factors in assessing damages. As enunciated above, a challenge to the weight the master gave to certain elements is not enough to undermine the correctness of the master's evaluation. It must be shown that the master was plainly wrong or reached a conclusion not supported by the evidence. It was clear that the master made a thorough examination of all factors. Critically, Ms. Lindsay failed to present any evidence of the other factors such as Mr. Carty's threats to kill her, which she claims the master failed to consider. Therefore, there was no basis on which this ground of appeal could succeed.

Manzi v King's College NHS Foundation Trust [2018] EWCA Civ 1882 considered; Langsam v Beachcroft LLP [2012] EWCA Civ 1230 considered.

4. The appellate court is constrained from interfering with the judge's exercise of the discretion in the lower court on costs matters unless it is satisfied that the conclusion on costs was not open to him to make. There was nothing to show that the master incorrectly exercised her discretion in

awarding prescribed costs on Ms. Lindsay's counterclaim as opposed to assessed costs on the whole proceedings. In the same vein, the court has a discretion whether or not to order costs on the discontinuance of a claim and the absence of such an order, having regard to all the circumstances, is not an indication of an error on the part of the master. Notwithstanding, having regard to Rule 37.6 (1) of the Civil Procedure Rules 2000, the appropriate costs order on the discontinuance is prescribed costs and not assessed costs. Consequently, there is no merit in these grounds of appeal. However, in the exercise of this court's discretion, costs were awarded on the assessment of damages hearing which was not dealt with in the judgment of the court below.

R (Parveen) v Redbridge LB [2020] EWCA Civ 194 applied; Rule 64.4 of the Civil Procedure Rules 2000 considered; Rule 37.6 (1) of the Civil Procedure Rules 2000 applied.

Case Name:

1Globe Capital LLC

v

Sinovac Biotech Ltd.

**[ANUHCVAP2019/0005]
(Antigua and Barbuda)**

Date:

Thursday, 9th December 2021

**Coram for
delivery of
judgment:**

**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. Lenworth Johnson

Respondent:

**Mr. Stuart Alford QC with Mr. Satcha Kissoon
Mr. Craig Jacas holding a watching brief for the
interested parties**

Issues:

**Civil appeal – Validity and effect of vote to determine
company's directors at shareholders' annual general**

meeting - Power of court to determine any controversy surrounding an election or appointment of directors - Section 122 of the International Business Corporations Act – Whether the learned judge’s refusal to grant relief under section 122 plainly wrong - Whether specific notice required to directors whose re-election is contested at forthcoming annual general meeting - Section 71 of the International Business Corporations Act – Shareholders’ right to full and fair information - Whether court may insist on a basic standard of fairness being afforded to shareholders to reconcile online voting in advance of an annual general meeting with the right to move an amendment to a motion at an annual general meeting – Whether learned judge erred in his interpretation of regulation 15 of the International Business Corporation Regulations 1985 – Regulation 15 of the International Business Corporation Regulations 1985 - Whether the learned judge erred in finding that Sinovac did not waive any legal defect in the proxy forms used by the dissenting shareholders – Conduct of party seeking section 122 relief - Whether the learned judge erred by considering 1Globe’s knowledge of the secret plan to oust the incumbent directors of Sinovac in refusing to grant relief under section 122 – Whether the learned judge erred in finding that the rights agreement between 1Globe and Sinovac was valid under Antiguan law

Result and Reason:

Held: dismissing the appeal; affirming the order of the learned judge and awarding prescribed costs to the respondent in the court below and costs in the appeal in the sum of 2/3 of the prescribed costs in the court below, that:

1. Absent local authority and case law on the interpretation of a particular section in legislation, authorities from another jurisdiction on corresponding legislative provisions are instructive. The learned judge found that the IBCA was modelled on corresponding Canadian legislation and section 71 mirrored section 110 of the Canada Business Corporations Act. Whilst section 71 of the IBCA had never been considered by the Eastern Caribbean Supreme Court, the corresponding legislative provisions had been the subject of judicial decision in Canada.

Consequently, the learned judge did not err when he relied on and sought guidance from Canadian authorities dealing with similar provisions.

2. In construing legislation, the court's task is to give effect to Parliament's purpose. Provisions should be read in light of the statute as a whole, which, in turn, should be read in light of its historical context. The IBCA was modelled on Canadian legislation and Canadian authorities showed that the appropriate model was for full and fair disclosure of information to all shareholders. Thus, where shareholders are called to vote on important company matters, they are entitled to expect a process that is fair, transparent and democratic, and in which all the information necessary to make an informed decision has been provided to them. Whilst section 71 of the IBCA did not make it mandatory to give notice to the incumbent directors that there was a proposal by the dissenting shareholders to elect other persons in their place, in order to give meaningful effect to section 71, it must be construed to mean that a director whose re-election is contested must be given some kind of notice. If no notice is given, then he would not be able to submit a written statement of his objections as per section 71(2) and the company would not be able to send that statement to the shareholders as per section 71(3). Consequently, shareholders would not have received full and fair disclosure to make an informed decision on an important company matter. The learned judge therefore did not err in his interpretation of section 71 in holding that the spirit and intention of the section had been breached by the dissenting shareholders' failure to give notice of the proposal to elect the new directors.

Section 71 of the International Business Corporations Act Cap. 222, Revised Laws of Antigua and Barbuda 1992 applied; *Kluwak v Pasternak* 2006 CanLII 41292 (ON SC) applied; *Regina (Quintavalle) v Secretary of State for Health* [2003] UKHL 13 applied.

3. Where a company's articles of association and the governing law are silent as to how one may reconcile online voting in advance of an annual general meeting with the right to move an amendment to a motion at an annual general meeting, the court will insist on a minimum standard of basic fairness being afforded to all shareholders. Whilst there was nothing in the IBCA, the IBC Regulations or Sinovac's articles of association prohibiting an amendment to an ordinary resolution being proposed by the dissenting shareholders attending the AGM, by amending the company's motion to include their alternative slate without notice to the other shareholders and after so many had voted in advance of the AGM, this undermined the basic fairness to which the shareholders, as a whole, were entitled. It would generally be in the company's best interests for shareholders to make fully informed decisions regarding the election of directors. The learned judge therefore did not err when he distinguished the case of *Betts & Co. Ltd. v Macnaghten* from the present facts since that was a 1910 case, before the internet had been invented and the possibility of voting online and in advance of the annual general meeting did not exist.

Betts & Co. Ltd. v Macnaghten [1910] 1 Ch. 430 distinguished.

4. Where a proxy form is called into question the court is concerned with examining the position of all shareholders and not just those who signed the proxy in question. A plain reading of regulation 15 of the IBC Regulations reveals that it applies to all proxies and that its object is to ensure that on important matters such as the election of directors, the will of the proxy giver, the shareholder, is effected and that all shareholders have been provided with full information concerning the election of directors. The learned judge therefore did not err in his interpretation of regulation 15. Furthermore, contrary to 1Globe's assertion, the learned judge expressly declined to make a ruling on the validity of the proxy forms.

Instead, he considered the defective proxy forms as a factor to be considered when exercising the court's discretion under section 122.

Regulation 15 of the International Business Corporation Regulations 1985 S.I. No. 43 of 1985 applied; *Ambassador Industries Ltd. v Camfrey Resources Ltd.* [1991] CanLII 593 (BC SC) applied.

5. Waiver refers to a voluntary, informed and unequivocal election by a party not to claim a right or raise an objection which it is open to that party to raise or claim. The words voluntary, informed, and unequivocal capture the essence of what is needed for a waiver of any kind to be valid. The learned judge found that at the AGM, the inspector of the election said nothing about the proxy forms and reserved a declaration as to result of the election. The inspector's evidence as well as the fact that the dissenting shareholders had a secret plan which neither the other shareholders nor the incumbent directors knew of, meant that the criteria for a valid waiver were not met. Consequently, Sinovac did not waive any technical deficiency in the proxy forms used by the dissenting shareholders by counting such votes as present for the purposes of declaring a quorum at the AGM.

Millar v Dickson [2002] 1 WLR 1615 applied; *McGowan v B* [2011] UKSC 54 applied.

6. An appellate court is constrained in interfering with findings of fact by a trial judge and must not interfere with such findings unless compelled to do so. This applies not only to findings of primary facts but also to the evaluations of those facts and to inferences to be drawn from them. Appellate interference requires a finding that there was no evidence to support the challenged factual finding or that the finding was one which no reasonable trial judge could have made. Further, an appellate court is rarely justified in overturning findings of fact made by a trial judge which turn on the credibility of a witness. On the facts, the trial judge listed the items of written evidence relied on by Sinovac in support of its contention that the

dissenting shareholders were parties to a secret plan, and the documents were put to 1Globe's sole witness. The trial judge set out the witness' evidence in relation to each item and concluded that on the facts, the witness was not credible and there was a secret plan to take control of Sinovac which 1Globe knew of and acquiesced in. Such findings were open to the learned judge based on the evidence. Further, the court's exercise of its discretion under section 122 involves consideration of the facts and circumstances of the case at hand, with the conduct of the parties being one of the factors relevant to the exercise of the court's discretion.

Fage UK Ltd. and another v Chobani UK Ltd. and another [2014] EWCA Civ. 5 applied; Mutual Holdings (Bermuda) Limited and others v Diane Hendricks and others [2013] UKPC 13 applied.

7. For a rights agreement to have been validly entered into, it ought not be contrary to the governing law or the company's constitution. In coming to his decision that the rights agreement was valid under Antiguan law, the learned judge found that the rights agreement was not contrary to the IBCA or Sinovac's articles of association and bye-laws and that it was not entered into to entrench the incumbent directors. The learned judge did not err in his decision and the agreement was validly entered into since it was within the powers afforded to the directors under Sinovac's constitution and the IBCA.

Stena Finance BV and Another v Sea Containers Ltd. and Others (1989) 39 WIR 83 applied.

8. An appellate court will not interfere with the exercise of a discretion entrusted to a trial judge unless the judge has misdirected himself in law, taken account of irrelevant matters, failed to take account of relevant matters, or has made a decision which has exceeded the generous ambit within which reasonable disagreement is possible. Section 122 of the IBCA confers a very broad discretion in determining any controversy

and on its plain wording, the court has a broad remedial discretion to make any order it sees fit. The exercise of the court's discretion in granting relief under section 122 and the form of that relief are inextricably linked to the facts of the particular case. Such facts necessarily include equitable principles such as the conduct of the party seeking relief. In refusing to grant relief under section 122, the learned judge considered the relevant factual context including 1Globe's conduct, the scale and detail of the secret plan and the absence of full and fair information to shareholders. Consequently, the learned judge did not err in his interpretation and exercise of discretion under section 122 in refusing to grant the section 122 relief.

Dumont v Manitoba Metis Federation [2004] MBCA 149 applied.

Case Name:

Dr. Timothy Harris

v

Dr. Denzil Douglas

[SKBHCVAP2019/0026]

(Saint Christopher and Nevis)

Date:

Thursday, 9th December 2021

**Coram for
delivery of
judgment:**

**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. Victor Elliot- Hamilton

Respondent:

Ms. Angelina Gracy-Sookoo

Issues:

Interlocutory appeal — Order for specific disclosure of documents — Part 28 of the Civil Procedure Rules 2000 — Whether the learned judge erred in law in holding that the documents were in the possession and control of Dr. Harris within the meaning of CPR 28.2 — Sections 60 and 119 of the Constitution of Saint Christopher and Nevis —

Whether the learned judge erred in law in holding that the documents were not subject protected from disclosure by virtue of the duty of confidentiality set out in oath of secrecy taken by Dr. Harris pursuant to section 60 of the Constitution — Whether the learned judge erred in law in holding that the documents were directly relevant within the meaning of CPR 28.1(4)

**Result and
Reason:**

Held: dismissing the appeal and ordering the appellant to pay costs of the appeal to the respondent in the sum of \$1,000.00, that:

1. While cognising that the claim was brought against Dr. Harris in his personal capacity, the judge concluded that the statements related to him as Prime Minister and Head of Cabinet and the various ministerial portfolios held by him. He further reasoned that it was unrealistic to suggest that as Prime Minister, Dr. Harris is not entitled to the documents, pointing out that ministers' reports to him for matters falling under their ministerial portfolios. Accordingly, the judge's analysis and finding with respect to CPR 28.2, that the appellant must disclose the documents which he has or has had a right to inspect or take copies of, or has had a right to possession of them, cannot be faulted, having been properly reasoned.

Rule 28.2 of the Civil Procedure Rules 2000 applied.

2. In addressing the issue of whether the documents are privileged and cannot be disclosed, the learned judge referred to section 60 of the Constitution which bars a minister or Parliamentary Secretary from entering upon the duties of his office until he has taken and subscribed to the oaths of allegiance, office and secrecy. He further referenced section 119 of the Constitution which defines 'oath of secrecy' as oath of secrecy as set out in Schedule 4 of the Constitution; it bars disclosure of any counsel, advice, opinion, or vote given by any minister as a member of Cabinet except with the authority of the

Cabinet and also prohibits the minister, except with the authority and to such extent as may be required for the proper conduct of the government, from revealing directly or indirectly the business or proceedings of the Cabinet or any matter coming to his knowledge as a member of Cabinet. Accordingly, the judge's decision disallowing the disclosure of the minutes of Cabinet but allowing disclosure of the decisions of Cabinet made in relation to the 'Stem Cell Research Centre' of the Institute on the respective dates and the associated documents so tabled were also properly reasoned and similarly cannot be faulted.

Sections 60 and 119 of the Constitution of Saint Christopher and Nevis, Schedule 1 to the Saint Christopher and Nevis Constitution Order 1983 SI No. 881 applied; Barnett, Lloyd G, Constitutional law of Jamaica, Oxford [Eng.]; New York: Published for the School of Economics and Political Science by Oxford University Press, 1977 considered.

3. In setting out the test relating to disclosure of documents, the CPR specifically disappplied the Peruvian Guano rule, which is significant, in that it has changed the definition of 'relevance'. The test for relevance is now more issue-oriented, thus avoiding the 'train of inquiry' cases that served to expand discovery under the Peruvian Guano rule. For the purpose of disclosure, the relevance of the documents is analysed by reference to the pleadings and the factual issues that would arise for decision at the trial. The critical question is whether the documents are directly relevant to those issues, and if they are, the court is enjoined to consider whether the order is necessary to dispose of the case fairly or to save costs. It is necessary to pay regard to the overriding objective of the CPR which is to enable the court to deal with cases justly; this also engages the issue of proportionality. The court has a discretion as to whether to make an order for specific disclosure and will need to be satisfied that the documents are directly relevant within the

parameters of the rule. However, the test for relevance is not a matter for the exercise of discretion. What documents parties are entitled to is a matter of law, not discretion.

Rules 28.1(4) and 28.6 of the Civil Procedure Rules 2000 applied; Harrods Ltd v Times Newspaper Ltd [2006] EWCA Civ. 294 considered; Flood v Times Newspaper Ltd. [2009] EWHC 411 QB considered; The Compagnie Financière et Commercial du Pacifique v The Peruvian Guano Co (1882) 11 QBD 55 disapproved.

4. The learned judge considered the application before him, the pleadings and submissions of the parties. He was cognisant of and applied the correct legal principles relating to specific disclosure. He also recognised the importance of identifying the factual issues which would arise for decision at the trial and that specific disclosure must be limited to documents relevant to these issues. The learned judge's finding that the documents requested were directly relevant is not one this Court should interfere with.

APPLICATIONS AND APPEALS

Case Name:

Alexis Jeffers

V

[1] Eustice Nisbett

[2] Mark Brantley

[3] Troy Liburd

**[4] Nevis Broadcasting
Company Limited**

[SKBHCVAP2021/0015]

(Saint Christopher and Nevis)

Date:

Monday, 6th December 2021

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

Appearances:

Applicant: Mr. Terrence Byron

Issues: Application for stay of application for leave to appeal pending determination of appeal – Rule 26.1(2)(q) of the Civil Procedure Rules 2000

Type of Order: Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

The application for leave to appeal filed herein on 3rd September 2021 is stayed at the request of the applicant pending the hearing and determination of the appeal in respect of the strike out application which appeal is currently pending.

Reason: Counsel for the applicant intimated to the Court that, the applicant sought leave to appeal two decisions of the learned judge in the court below. These were the learned judge's: (a) decision to grant the 1st respondent permission to amend his claim form and statement of claim and (b) refusal of the applicant's strike out application. While leave was granted by this Court on 26th October 2021 to appeal the learned judge's refusal to grant the strike out application, the Court put the application to amend to the Full Court for determination. However, having come up for determination before the Full Court, counsel for the applicant asked the Court to stay the application for leave to appeal the amendment application until the hearing and determination of the appeal concerning the learned judge's refusal to strike out, the claim on the basis that it would be a better use of the Court's time and resources.

The Court, upon hearing counsel for the applicant, was in agreement and acceded to the applicant's application to stay the application for leave to appeal the learned judge's decision in respect of the amendment.

Case Name:

**Sheldon Hamilton dba Hammy's
Construction Services**

V

**Creative Engineering and Construction
Services Limited**

**[SKBHCVAP2021/0008]
(Saint Christopher and Nevis)**

Date:

Monday, 6th December 2021

Coram:

**The Hon. Dame Janice M. Pereira, DBE Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]**

Appearances:

Applicant: Ms. Renal Edwards

Respondent: Mr. Terrence Byron and Ms. Indira Butler

Issues:

Civil appeal – Application to withdraw appeal

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

With the leave of the Court the application for leave to appeal and a stay of the proceedings in the court below

pending the hearing of the appeal is, at the request of the applicant, withdrawn with no order as to costs in respect of the applications.

Reason:

Counsel for the applicant intimated to the Court that the applicant was of the view that the application for leave to appeal should be withdrawn. Counsel for the respondent indicated that he agreed with the applicant's intended course of action and made no application for costs in respect of the applications. The Court, having heard the applicant, made the above order.

Case Name:

**[1] Digital Security Serviced Ltd
[2] Michael Peets**

V

Nevis International Bank & Trust Ltd

**[NEVHCVAP2021/0003]
(Saint Christopher and Nevis)**

Date:

Monday, 6th December 2021

Coram:

**The Hon. Dame Janice M. Pereira, DBE Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]**

Appearances:

Applicants: Ms. M. Angela Cozier

Respondent: No appearance

Issues:

Application for leave to appeal – Set aside default judgment – Rule 13.3(1) of the Civil Procedure Rules 2000 – Whether the learned judge incorrectly exercised his discretion in finding that the applicants did not provide a good explanation for failing to file their defence

on time - Whether the appeal has a reasonable prospect of success

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Leave is granted in respect of the order of the learned judge in relation to his order dated 15th February 2021 refusing to set aside the default judgment entered on 6th July 2020.**
- 2. The appeal shall follow the Civil Procedure Rules in respect of the filing of the notice of appeal.**

Reason:

The Court was of the view that in the circumstances the applicant ought to be granted leave to appeal having shown a reasonable prospect of success on appeal.

Case Name:

**[1] Barbara Hardtman
[2] Laughton Browne
[3] Kirtley Hardtman**

V

Applewaite Lake

**[NEVHCVAP2020/0005]
(Saint Christopher and Nevis)**

Date:

Tuesday, 7th December 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:

**Applicants/
Respondents:**

Ms. Angela Cozier

**Respondent/
Intended
Appellant:**

**Mr. John Jeremie, SC with him Mr. Ricaldo Caines and
Ms. Keesha Carty**

Issues:

Civil appeal - Application to vary or discharge order of single judge of the Court of Appeal - Exercise of judicial discretion - Grant of extension of time within which to file notice of appeal - Whether in the circumstances single judge erred by granting an extension of time - Exercise of discretion afresh - Application for an extension of time – Delay – 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 – Prejudice to respondent – Inordinate delay

Type of Order:

Oral decision

Result / Order:

IT HEREBY ORDERED THAT:

- 1. The application by the applicants/respondents to discharge the order of the single judge is granted, and the order of the single judge made on 20th April 2021 is discharged.**
- 2. The application by the intended appellant for an extension of time to file his notice of appeal is granted.**
- 3. The draft notice of appeal filed on 2nd March 2021 is deemed to be properly filed.**
- 4. Costs of the discharge application to the respondents in the sum of \$1,000.00 to be paid within 14 days of the date of this order.**

5. Costs of the extension application to the respondents in the sum of \$1,000.00 to be paid within 14 days of the date of this order.

Reason:

On 26th March 2021, the intended appellant, Applewaite Lake applied for an extension of time to file the notice of appeal against the decision of the learned trial judge dated 27th November 2020. The application was considered by a single judge in chambers on 20th April 2021. The learned judge granted the extension of time to file the notice of appeal. The respondents applied under rule 62.16A of the Civil Procedure Rules 2000 (“CPR”) for an order discharging the order of the single judge. The discharge application disclosed that the respondents had in fact filed an affidavit opposing the application. Unfortunately, this evidence was not brought to the attention of the single judge. She dealt with the application on the basis that it was not opposed. The intended appellant took the position, correctly, that the order of the single judge should be discharged. Accordingly, this court discharged the order and at the request of the applicants/respondents, and the intended appellant not objecting, the Court proceeded to consider the application for an extension of time and exercise discretion afresh.

Applications for an extension of time to file an appeal are frequently heard by this Court and the principles are settled. These applications are considered under rule 26.1(2) and rule 62.5(3) of the CPR. These rules taken together or individually give the court a wide discretion in considering applications to extend time. The principles were laid down by Sir Dennis Byron CJ in John Cecile Rose v Ann Marie Rose St Lucia Civil Appeal HCVAP 2003/19 delivered on 22nd September 2003 and repeated in several judgments of the Court including Joseph Hyacinth v Allan Joseph GDAHCVAP2015/0025 (delivered 20th June 2016). The principles are: (i) the length of delay (ii) the reasons for delay (iii) the chances of the appeal succeeding if the extension is granted and (iv) the degree of prejudice to the respondent if the application is granted.

Dealing firstly with the length of delay and the reason for delay, the intended appellant, Mr. Lake was granted leave to appeal on 19th January 2021. The time for appealing expired on 20th February 2021. On 26th March 2021, on becoming aware that the time for appealing had expired, the intended appellant, applied for an extension of time to file the notice of appeal. The application was 19 days out of time. The reason for the delay was that there was a miscalculation of the dates for filing on the part of instructing counsel. A delay of 19 days though not short is not inordinate. The reason for delay is not exceptional but shows that the intended appellant always intended to pursue the appeal. It is important to consider these factors in conjunction with the other principles set forth in the applied cases. For example in Joseph Hyacinth, the delay was 20 months but the court was satisfied that the applicant had good prospects of succeeding on the appeal and granted the extension.

In this case, the intended appellant filed his draft notice of appeal in which he complained about 9 errors in the learned judge's judgment and listed 9 grounds of appeal (incorrectly listed in the notice of appeal under the heading "The Appeal"). The Court was satisfied that the grounds of appeal disclose a reasonable prospect of succeeding on appeal including the ground in paragraph 17 which challenges the consent order which is the subject of the judgment as having been entered into by counsel for the intended appellant without authority. Counsel for the intended appellant relied on the decision of this Court in Cecelia Francis v Louis Boriol SLUHCAP No. 13 of 1995 (delivered 20th January 1997) and the decision of the Court of Appeal of British Columbia in Racz v Mission (District) 1988 Carswell BC13 in support of this ground of appeal. Counsel also referred to paragraph 10 of the learned judge's judgment where the learned judge acknowledged the binding force of a consent order entered into by counsel for the parties but noted that there are limited circumstances where that authority can be impeached.

This Court was satisfied that the intended appellant has reasonable prospects of success on the appeal and that the grant of an extension of time to file the appeal would not seriously prejudice the respondents. The Court took into consideration the modern approach to applications

for an extension of time as stated by the Court of Appeal of Trinidad and Tobago in Martin v Chow (1985) 34 WIR 379:

“Courts today are loathe to drive litigants from the judgment seat without affording them, within reason, an opportunity to ventilate their cause; but, at the same time, the courts must, of necessity, seek to balance this against their paramount duty to insist on the observance of the rules, or otherwise there would be “no timetable for the conduct of litigation”.

This passage was adopted with approval by this Court in Joseph Hyacinth. In the circumstances the Court was satisfied that the extension of time should be granted.

Case Name:

[1] Pinneys Hotel Development Limited
[2] The Nevis Club Company Limited

v

[1] Alexis Jeffers, Minister of Agriculture,
Communications, Works, Public Utilities
[2] Theodore Hobson
[3] The Nevis Island Administration

[SKBHCVAP2020/0011]
(Saint Christopher and Nevis)

Date:

Tuesday, 7th December 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

Applicants:

Ms. M. Angela Cozier

Respondents:

Ms. Rhonda Nisbett- Browne, Senior Crown Counsel

Issues: Civil Appeal - Interlocutory Appeal - Application to discharge order of single judge - Rule 62.16 of the Civil Procedure Rules 2000 - Application for stay of assessment of costs order - Whether application for a stay can be granted where no appeal or cross appeal has been filed

Type of Order: Oral Decision

Result/ Order: IT IS HEREBY ORDERED THAT:

1. The order made by the single judge staying the assessment of costs to be paid by the respondent to the applicants is discharged.
2. In the exercise of the Court's discretion, the application made by the respondent for a stay of the assessment of costs to be paid by him to the applicant is denied.
3. Costs of the appeal in the sum of \$1,000.00 to be paid by the respondent within 1 month of today's date.

Reasons: A stay pending an appeal must be founded on an appeal by the party seeking the stay. In this case, the applicant for a stay, who was the respondent to the discharge application, had not filed an appeal or cross appeal, and the application should have been dismissed. This principle of an appeal by a party being the foundation of an application by the party for a stay was brought out in Cage St. Lucia Limited v Treasure Bay (St. Lucia Limited) & others (SLUHCVP2011/0045 unreported, (delivered 23rd January 2012) where this Court held "with no notice of appeal having been filed subsequent to the order granting CAGE leave to appeal, there was no appeal pending before the Court of Appeal when the order which stayed the judicial review proceedings was made. Consequently, this court had no jurisdiction to make that order, which would be a nullity". Rule 62.16(1)(b) of the Civil Procedure Rules 2000 ("CPR") states that:

“A single judge of the court may make orders for-

...

(b) a stay of execution on any judgment or order against which an appeal has been made pending the determination of the appeal”

There being no order against which an appeal has been made, a single judge cannot therefore make an order for a stay.

Rule 62.16A (1) of the CPR states:

“Any order, direction or decision made or given by a single judge may be varied, discharged or revoked [by the full court]...in any case.”

The order of the single judge was accordingly discharged and in the exercise of the Court’s discretion, the application for a stay of an order which was not appealed by the party seeking the stay was denied.

Case Name:

Raheem Crossley

v

The Director of Public Prosecutions

**[SKBHCRAP2015/0010]
(Saint Christopher and Nevis)**

Date:

Tuesday, 7th December 2021

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Dr. Henry Browne, QC with him Mr. O’Grenville Browne

Respondent:

**Mr. Valston M. Graham, Director of Public Prosecutions
with him Ms. Terrilyn Hunte, Crown Counsel**

Issues:

Criminal appeal – Appeal against conviction and sentence – Whether learned judge erred by failing to direct jury on the appellant’s alibi defence – Whether learned judge erred in failing to adequately direct jury on the law of circumstantial evidence – Whether learned judge failed to adequately direct the jury on the identification issue - Retrial - Factors to be considered in ordering retrial - Whether retrial should be ordered in the circumstances

Type of order:

Oral judgment

Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against conviction and sentence is allowed.**
- 2. The Director of Public Prosecutions is at liberty to have a retrial of the appellant, Mr. Raheem Crossley.**

Reasons:

The appellant was found guilty of murder by a unanimous jury on 15th May 2015 and sentenced to life in prison. He filed 4 grounds of appeal which were abandoned and thereafter three new grounds were filed. The bases of those grounds were the learned judge’s failure to give alibi directions, the judge’s failure to address circumstantial evidence and the failure of the judge to address the issue of identification. The appellant has filed extensive submissions by which they ask the Court to quash the conviction and the sentence on the basis of errors that were committed by the learned judge. The learned Director of Public Prosecutions (“the DPP”) quite properly conceded that the learned judge made errors. In the Court’s view, the errors were quite egregious in relation to all three matters. The learned DPP also conceded that the Court ought to have quashed the conviction and sentence. That being the case and in view of the Court’s own finding that the judge did not properly address the three matters, namely, the issue of circumstantial evidence, the issue of alibi relied on by the appellant and the issue of identification

evidence, the appeal against conviction and sentence is allowed.

The only question that remained is whether this Court ought to have ordered a retrial. The learned DPP advanced that the Court ought to have ordered a retrial and pointed the Court to the reasons for that. Learned Queen's Counsel has properly and professionally conceded that in the circumstances of this matter, a retrial ought to be ordered. The principles enunciated in *Sherfield v The Queen* [2007] ECSCJ No. 89 (delivered 20th June 2007) by Rawlins JA, as he then was, are applicable to this case. At paragraph 46, he stated as follows:

“The question which arises is whether this case should be remitted to the High Court for a retrial. In *Andre Bennett and Another v The Queen*, the Privy Council reiterated that the issue of a retrial order depends upon whether the interest of justice and the public interest would be served by such an order. The main consideration is whether in the interest of the community and the family of the victim, a person who is convicted of a serious crime should be brought to justice and not escape merely because of some technical shortcoming in the conduct of the trial or in the directions to the jury. Their Lordships said that a critical factor is the seriousness of the crime. A countervailing consideration is fairness to the accused.”

These principles were subsequently and recently relied on in the decisions of *Leon Riley v The Queen* [2021] ECSCJ No. 743 (delivered 8th November 2021), *Danny Benjamin v The Queen* [2016] ECSCJ No. 49 (delivered 6th April 2016) and *Spencer v The Director of Public Prosecutions* [2014] 5 LRC 613. This shows that the Court has applied a consistent stream of jurisprudence in determining whether or not a retrial should be ordered.

The main issue is whether the interest of justice warrants a retrial. In the circumstances of the matter, given the fact that there is a serious offence that was committed, the fact that the Crown has indicated the availability of

the witnesses, the interest of the community and society in Saint Christopher and Nevis in having these matters ventilated and not having persons who have committed offences be freed on matters of technicalities or errors of the judge. Critically, the Court must pay regard to the victim in this matter, the deceased. Even though a number of years have elapsed, the Court looked at the matters that are in the appellant's interest and the countervailing matters and was of the considered view that the interest of justice weighs heavily in the Court granting leave to the DPP to bring the matter for a retrial.

Case Name:

**[1] Tenielle Percival
[2] Kenrick Simmonds
v
Chief of Police**

**[SKBMCRAP2017/0004]
[SKBMCRAP2017/0005]
(Saint Christopher and Nevis)**

Date:

Wednesday, 8th December 2021

Coram:

**The Hon. Dame Janice M. Pereira, DBE Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]**

Appearances:

**Appellants: Dr. Henry Browne, QC with him Mr. O'Grenville Browne
Respondent: Mr. Valston M. Graham, Director of Public Prosecutions
and Ms. Terrilyn Hunte**

Issues:

Magisterial criminal appeal – Adjournment

Type of Order:

Adjournment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Saint Christopher and Nevis during the week commencing 21st March 2022.
2. Counsel for the parties undertake to provide the Court with the full and complete record of appeal, properly paginated, including the notice of appeal and the submissions of both parties.

Reason:

The Court was of the view that it would not be able to proceed with the matter given that the record of appeal was incomplete. The Court also considered and agreed with the indication from both counsel that in the interest of justice, the matter ought to be adjourned until the full record of appeal can be provided.

Case Name:

Ursaline Scott
(by her Executrix Jeannie Graham)
v
[1] The Attorney General of St. Christopher and
Nevis
[2] The Registrar of Titles
[SKBHCVAP2021/0014]
(Saint Christopher and Nevis)

Date:

Wednesday 8th December 2021

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellant:

Ms. M. Angela Cozier

Respondents:

Mrs. Simone Bullen -Thompson, Solicitor General

Issues:

Civil appeal - Interlocutory appeal - Land law - Judge's refusal of application for First Certificate of Title - Section 12(9) of the Title by Registration Act Cap. 10.19 - Whether it was open to the learned judge to find that the

evidence in support of the request for a First Certificate of Title was deficient in satisfying section 12(9) of the Title by Registration Act - Section 15 of the Title by Registration Act - Whether learned judge failed to state a case for the consideration of the Court of Appeal pursuant to section 15 of the Title by Registration Act - Appellate court's exercise of discretion - Inordinate delay in request being submitted by High Court for First Certificate of Title - Whether in the circumstances the request for a First Certificate of Title should be reinstated

Type of Order:

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal is allowed, only to the extent that the request for a First Certificate of Title be reinstated upon the following conditions:

- 1. That the appellant/applicant files with the court below in support of her request, such further evidence by affidavit for the purpose of satisfying the provisions of section 12(9) of the Title by Registration Act Cap. 10.19. Such further evidence shall be filed on or before Monday 31st January 2022.**
- 2. The request and all evidence in respect of the matter, shall be placed before a judge for consideration of the request forthwith upon compliance with paragraph 1.**
- 3. In the event that the appellant/applicant fails to file the further evidence as hereby permitted pursuant to paragraph 1, the request for a First Certificate of Title, shall stand dismissed without further order.**
- 4. There shall be no order as to costs on this appeal.**

Reason:

The Court gave full consideration to the issues raised on this appeal, heard counsel for the parties and had regard

to the powers of the Court of Appeal contained in Section 35 of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act Cap. 3.11. Those powers set out under section 35(1) of the Supreme Court Act are:

“On the hearing of an appeal from any order of the High Court in any civil cause or matter, the Court of Appeal shall have power to -

- a. confirm, vary, amend or set aside the order or make such order as the High Court might have made, or to make any order which ought to have been made, and to make such further or other order as the nature of the case may require;”.

In exercise of those powers, the Court also had regard to the reasons provided by the learned judge in holding that the evidence produced by the appellant/applicant in support of her request for a First Certificate of Title was deficient in satisfying section 12(9) of the Title by Registration Act Cap 10.19. The Court also noted that the learned judge expressly recognised that whereas it was open to the appellant/applicant to make the request for a First Certificate of Title, which failed only by reason of a lack of sufficiency of evidence, he expressly stated that the refusal of the request was without prejudice, in essence to make a fresh application.

This Court considered that there had been an inordinate delay in the request of the appellant/applicant being submitted to a judge of the High Court, to consider the request for a First Certificate of Title. That unexplained delay spanned over some 18 years. The Court also had regard to the fact that to commence the process *de novo* would involve further and additional expense to the appellant/applicant in circumstances where all notices had been duly published and the request duly advertised. Therefore, in the exercise of this Court’s powers and in considering what would be just in the circumstances of this case, the Court allowed the appeal only to the extent that the request for a First Certificate of Title be reinstated upon the conditions stated within the Court’s order.

Case Name:

Anthony Morton

V

Shalimar Williams

**[SKBMCRAP2018/0008]
(Saint Christopher and Nevis)**

Date: Wednesday, 8th December 2021

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

Appearances:

Appellant: Ms. Renal Edwards

Respondent: Ms. Giselle Mills with her Mrs. Marisa Hopson Newman

Issues: Magisterial civil appeal - Child Maintenance - Maintenance of Children Act Cap. 12.07 - Whether magistrate had jurisdiction to make child maintenance order - Means of parents - Whether magistrate erred in the award of child maintenance in all the circumstances

Type of Order Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The costs on this appeal are awarded in the sum of \$750.00 pursuant to CPR rule 65.13 being $\frac{2}{3}$ of the costs below, to be paid by the appellant to the respondent on or before 30th December 2021.

Reason: The Court was of the view that the magistrate had jurisdiction to treat with the application under the Maintenance of Children Act Cap. 12.07. The Court was satisfied that the magistrate, in making her order for maintenance of \$200.00 per week by the appellant,

considered all the relevant factors and viewed the matters in the round as she was required to do, and had regard to the best interests of the child. The Court therefore found no basis for interfering with the order of the magistrate, affirmed the decision made by the magistrate and dismissed the appeal.

Case Name:

[1] Exclusive Retreats Limited

[2] Kevin Andrew Horstwood

V

**First Caribbean International Bank (Barbados)
Limited**

**[SKBHCVAP2020/0008]
(Saint Christopher and Nevis)**

Date:

Thursday, 9th December 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:

Applicants:

Mr. Kevin Andrew Horstwood in person

Respondent:

Mr. Garth Wilkin holding watch brief for the respondent

Issues:

Application to discharge order of single judge – Whether the Eastern Caribbean Supreme Court’s Electronic Litigation Filing and Service Procedure Rules 2019 are prejudicial to litigants in person – Whether the learned judge erred in making his decision to deny the applicant temporary access to the E-Litigation portal by failing to consider relevant factors

Type of Order:

Directions

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The Chief Registrar is directed to file and serve a comprehensive affidavit which indicates the**

manner in which the E-Litigation portal works in St. Kitts and Nevis, paying particular regard to the service bureau and also how pro se litigants are to be treated and how payments are to be made in relation to pro se litigants and the service of documents on pro se litigants together with their access to documents they have filed by 24th December 2021.

2. Having received the Chief Registrar's affidavit, the applicants are granted until 11th January 2022, if necessary, to file an affidavit in answer.
3. Having filed the affidavit in answer, if necessary, the applicants are granted until 18th January 2022, to file any further submissions occasioned as a consequence of the Chief Registrar's affidavit evidence.
4. Thereafter, the application is to be continued on paper and a ruling rendered by the Court after having deliberated on paper.

Reason:

The Court was of the view that based on the matters raised before the Court and the fact that the application was made ex-parte, it was in the interest of fairness that it receives evidence from the Chief Registrar as to the operation of the E-Litigation portal. The Court therefore was of the view that directions ought to be given to the Chief Registrar to provide such evidence in the form of an affidavit, to allow the Court to be advised as to what occurs in relation to E-Litigation portal.

Case Name:

Ingrid Dyer
v
Elmond Coram
(as executor to the estate to Evelyn Coram)

[NEVMCVAP2020/0001]
(Saint Christopher and Nevis)

Date: Thursday, 9th December 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: Ms. Joanne Flemming

Respondent: Mr. Patrice Nisbett

Issues: Whether learned magistrate exceeded her jurisdiction in awarding possession to the respondent - Whether the magistrate erred in her decision to make a ruling on possession of the property in light of competing claims to the property - Whether the matter of title to the property should have been determined by the High Court first - Whether learned magistrate ought to have adjourned the matter pending the determination by the High Court of the issue of title to the property - Section 19 of the Small Tenements Act Cap. 10.18

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The decision of the learned magistrate is set aside in its entirety.
3. Costs are awarded to the appellant in the sum of \$800.00 on the appeal.

Reason: Before the appeal was heard, the Court considered the fact that the respondent failed to comply with the court's order to file skeleton arguments and also failed to make an application for an extension of time to file skeleton arguments. In the circumstances, the court was of the view that where the rules require skeleton arguments be filed and a specific court order was made for the filing of same, it was not open to learned counsel to simply state that he only wished to address the court on a point of law. Accordingly, the application for the respondent not to be heard is granted.

Turning to the substantive appeal, this was an appeal by Ingrid Dyer against the decision of the learned magistrate in which the learned magistrate ordered the appellant to give up possession of the land within 6 months. Being aggrieved by the decision of the learned magistrate, the appellant has appealed and filed written submissions.

The court considered the oral submissions of Ms. Flemming, counsel for the appellant and also the appellant's written submissions. Based on the interaction between the bench and learned counsel, the court had no doubt that the learned magistrate erred in circumstances where the question of title to the property was in issue, yet the magistrate felt able to be able to determine the question of possession. The court found that section 19 of the Small Tenements Act Cap. 10:18 was instructive in this regard. The magistrate was required, at the very least, to adjourn the matter in order for those issues to be ventilated before the High Court. The magistrate had no jurisdiction to hear the matter.

The Court also noted that in a written judgement that seemed to have materialized approximately a year after possession was given and which was forwarded to the Court on 8th December 2021, the learned magistrate had quite properly indicated at paragraph 5 of the said judgment that the "issue between Elmond Coram, the Executor and his sister, Florestine Woodley cannot be determined by this court as it has no jurisdiction to hear such matters". The learned magistrate should have declined to adjudicate on the matter of possession until the issue of ownership of the property had been properly ventilated and determined by the High Court.

Case Name:

**The Attorney General of Saint Christopher and
Nevis**

v

Jahmana Walters

**[SKBHCVAP2020/0026]
(Saint Christopher and Nevis)**

Date: Thursday 9th December 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: Ms. Rivi Lake with her Ms. Eshe Hendrickson Johnson

Respondent: Ms. Marsha Henderson

Issues: Civil appeal - Quantum of damages - Principles of tapering of an award of damages - Whether or not the Attorney General was correct in asserting that the learned judge was wrong in coming to the conclusion that the Privy Council did not indicate that the question of tapering should be applicable in circumstances where the sum awarded for compensation is a large one which covers a longer period of time

Type of Order: Oral Decision

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

1. The appeal is allowed.
2. The matter is remitted to a judge of the High Court for the tapering exercise to be conducted in the determination of the question of quantification/compensation utilizing the agreed starting point of \$500.00 per day and applying the principles of tapering as set out in Atain Takitota v The Attorney General et al [2009] UKPC 11.

Reason: The Court was of the view that the appeal should be allowed because it is agreed by counsel on both sides that the learned judge erred in failing to apply the clear ruling of the Privy Council in relation to the question of tapering of an award of damages as enunciated in the decision of Atain Takitota v The Attorney General et al [2009] UKPC 11.

Case Name:

**Exclusive Retreats Limited
v
First Caribbean International Bank (Barbados)
Limited**

**[SKBHCVAP2021/0013]
(Saint Christopher and Nevis)**

Date:

Thursday 9th December 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:

Applicant: Mr. Kevin Horstwood in person

Respondent: No appearance

Issues:

**Application for leave to appeal - Test for leave to appeal
- Whether the appeal has a reasonable prospect of
success - Whether the learned master erred in the
application of the Title by Registration Act Cap. 10.19 -
Whether the learned master erred in dismissing the
application to set aside the auction**

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

**The application for leave to appeal the decision of
the learned master is refused on the basis that the
appeal has no reasonable prospects of success.**

Reason:

**The Court was of the view that, having heard the
submissions of the applicant and having read the
judgment of the learned master, the threshold for the
grant of leave to appeal had not been met by the
applicant.**

Case Name:

**Nevis Housing and Land Development
Corporation**

v

Eustace Nisbett

**[NEVHCVAP2021/0001]
(Saint Christopher and Nevis)**

Date:

Friday, 10th December 2021

Coram:

**The Hon. Dame Janice M. Pereira, DBE Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant/Respondent: Mr. Terence V. Byron

Respondent/Applicant: Mr. Patrice Nisbett

Issues:

**Application to strike out notice of appeal for lack of
timely service - Application to extend time to deem
notice of appeal properly served**

Type of Order:

Directions

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The respondent/applicant, Eustace Nisbett, shall have until 24th December 2021 to file affidavit evidence in opposition to the application to extend time deeming the notice of appeal served made by the appellant/respondent, Nevis Housing and Land Development Corporation.**
- 2. The respondent/applicant shall also file by 24th December 2021, written submissions in respect of the application for extension of time.**

3. The hearing of the application to strike out and the application for extension of time is adjourned to a date to be fixed by the Chief Registrar.

Reason:

Counsel for the respondent/applicant indicated to the Court that on 29th November 2021, the appellant/respondent filed very lengthy written submissions in support of the application for an extension of time to deem the notice of appeal properly filed. Counsel for the respondent/applicant further stated that in light of the lengthy written submissions and the short period within which same had been served on him, he would need more time to respond to those submissions. Counsel for the respondent/applicant intimated that he would need 14 days to properly do so. The Court, noting that counsel for the appellant/respondent made no objection to this, and being of the view that both the application to strike out and the application for extension of time should be heard together, acceded to the respondent/applicant's request.

Case Name:

Nagico Insurance Company Ltd.

V

Carino Hamilton Development Company Ltd.

[SKBMCVAP2018/0005]

[SKBMCVAP2018/0006]

[SKBMCVAP2018/0007]

[SKBMCVAP2018/0008]

(Saint Christopher and Nevis)

Date:

Friday 10th December 2021

Coram:

**The Hon. Dame Janice M. Pereira, DBE Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Ms. Jordanne-Marie Ebanks

Respondent: No appearance

Issues: Magisterial civil appeal - Non-payment of insurance premiums - Whether the learned magistrate erred by failing to consider the existence of a contract of insurance - Whether learned magistrate erred by failing to give sufficient weight to the partial payments made by the respondent - Whether the learned magistrate erred in focusing on the issue of cancellation of the policies when the issue was not challenged by either party nor raised at trial - Costs in magisterial civil proceedings

Type of Order Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The decision of the magistrate is set aside and judgment is entered for the appellant as follows:
 - (i) In respect of insurance policy number SKF0269/09, the sum of \$15,412.88 being the balance due and owing on that insurance policy;
 - (ii) In respect of insurance policy number SKF0268/09, the sum of \$15,412.89 being the balance due and owing on that insurance policy;
 - (iii) In respect of insurance policy number SKF0263/09, the sum of \$25,000.00 being the balance due and owing on that insurance policy;
 - (iv) In respect of insurance policy number SKF0267/09, the sum of \$15,412.89 being the balance due and owing on that policy.
3. Costs are awarded to the appellant in the sum of \$2,000.00 in the magistrate's court and \$1,500.00 in the appeal.

Reason:

This is a consolidated appeal against the magistrate's decision dismissing four claims brought for the balances owed on four contracts of insurance in respect of the annual premiums agreed between the appellant and the respondent in relation to each policy.

The Court firstly noted the non-appearance of the respondent but was satisfied that there had been service of the notice of hearing on the respondent. In the circumstances, the Court decided to proceed with the appeal in the absence of the respondent.

Upon hearing counsel for the appellant, the Court was of the view that the magistrate erred by relying on facts and evidence that were not before her and by treating with issues which were not raised by either of the parties in the court below. The Court noted that there was no evidence led with regard to the suspension or cancellation of the policies. To the contrary, the uncontroverted evidence led by the appellant, was that there were contracts of insurance which came into existence as between the appellant and the respondent for agreed annual premiums and that the respondent made partial payments in respect of each of the contracts of insurance with balances owing on each of the policies remaining unpaid.

The insurer, having claimed the balance and in the absence of any evidence that the policies had been cancelled, the learned magistrate could not find evidence of such cancellation or suspension. The insurer therefore had standing to bring the claim in respect of the balance due in respect of the premiums due and owing on the policies. The Court was of the view that the appeal ought to be allowed and the magistrate's decision be set aside. The Court entered judgment on behalf of the appellant as follows:

- (i) In respect of insurance policy number SKF0269/09, the sum of \$15,412.88 being the balance due and owing on that insurance policy;**
- (ii) In respect of insurance policy number SKF0268/09, the sum of \$15,412.89 being the balance due and owing in respect of**

- the outstanding premium on that insurance policy;
- (iii) In respect of insurance policy number SKF0263/09, the sum of \$25,000.00 being the balance due and owing on that insurance policy;
- (iv) In respect of insurance policy number SKF0267/09, the sum of \$15,412.89 being the balance due and owing on that policy.

In considering the issue of costs, the Court heard counsel for the appellant and had regard to the fact that the claims were consolidated and heard together. The Court also noted that the aggregate amount awarded in favor of the appellant is an amount in excess of \$65,000.00 in respect of the four claims. In exercising its discretion, the Court considered that an appropriate award for costs in respect of the claims in the magistrate's court should be \$2,000.00 in total and the sum of \$1,500.00 should be awarded as costs in the consolidated appeals in aggregate.

Case Name:

Nardis Maynard

V

The Queen

**[SKBHCRAP2004/0012]
(Saint Christopher and Nevis)**

Date:

Friday 10th December 2021

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Applicant:

Ms. Siobhan Grey, QC with her Ms. Talibah Byron

Respondent:

Mr. Valston M. Graham, Director of Public Prosecutions and Ms. Terrilyn Hunte

Issues: Application to render abandonment of appeal against conviction and sentence a nullity – Application to reopen appeal – Whether the applicant was aware of the abandonment of his appeal - Whether appeal was effectively abandoned – Rule 59(1) of the Court of Appeal Rules

Type of Order: Directions

Result / Order: IT IS HEREBY ORDERED THAT:

1. The Registrar of the High Court shall serve on Dr. Henry Browne, lead counsel at the time on the record for the appellant Nardis Maynard, the affidavit of the appellant sworn herein on 14th June 2021, together with the hard copies of the hearing bundles volumes 1 and 2 in this application by Friday 17th December 2021.
2. Dr. Browne is at liberty to respond to the said affidavit either by affidavit or in writing to the court on or before 31st January 2022 with a copy to counsel for the appellant and the Director of Public Prosecutions.
3. The appellant shall then be at liberty to file and serve further written submissions on or before 21st February 2022.
4. The respondent shall be at liberty to file and serve a reply on or before 28th February 2022.
5. Thereafter the court will further consider the matter and give any further directions as to the further hearing of the matter.

Reason:

The Court considered the allegations made by the applicant in his affidavit sworn herein on 14th June 2021, particularly that he was not advised by his counsel at the time of his appeal, Dr. Henry Browne, that the appeal was being abandoned. In the circumstances the Court was of the view that in order to further assist the Court with more fulsome details in consideration of the applications before it, Dr. Browne ought to be given an opportunity to review the applicant's affidavit and to provide a response to it in respect of the applicant's allegations. The Court therefore gave appropriate directions for the further consideration of the application.