

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE
ANTIGUA AND BARBUDA
8th – 12th FEBRUARY 2021

JUDGMENTS

Case Name:

[1] SARAH TANNIS-JOSEPH
(EXECUTRIX OF THE ESTATE OF THERESA
JOSEPH)
[2] AGATHA DE COTEAU
V
DOROTHY ABRAHAM

(GDAHCVAP2018/0016)
(GRENADA)

Date:

Wednesday, 10th February 2021

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Alban John and Ms. Vern Ashby
Respondent: Mr. Ruggles Ferguson

Issues:

Civil appeal — Adverse possession — Paper titles — Relativity of titles — Fraud — Sections 22(f) and 28 of the Trustee Act, Cap. 329 of the Laws of Grenada — Section 20 of the West Indies Associated States Supreme Court (Grenada) Act, Cap 336 of the Revised Laws of Grenada — Whether judge erred in not treating case as one based on adverse possession — Whether judge erred in not finding that respondent's claim was based on fraudulent documents and setting aside the documents — Whether judge erred in dismissing appellants' claim to be declared

as owners of the disputed properties — Having dismissed the claim and counterclaim, whether judge erred by not fashioning a remedy for the matters in dispute between the parties as required by section 20 of the Supreme Court Act

**Result and
Reason:**

HELD: dismissing the appeal, setting aside the judgment and orders of the trial judge, remitting the case to the High Court to be tried before a different judge and ordering that each party shall bear their own costs of the appeal and in the court below, that:

1. In circumstances where both parties claimed the disputed properties by paper titles and yet relied, in varying degrees, on possession, the judge did not err in not deciding the case on adverse possession when that remedy was not pleaded or claimed.
2. Allegations of fraud must be fully, clearly and distinctly pleaded and particularised. The appellants' pleadings and witness statements were bereft of any particulars of fraud or evidence to substantiate this allegation. In the circumstances, the judge was correct to find that the appellants failed to substantiate the allegation of fraud. The appellants' claim that the statutory declaration and the respondent's Deed of Conveyance be struck out of the Deeds and Land Registry in Grenada as being fraudulent is therefore without merit and is refused.

Donovan Crawford and Others v Financial Institutions Services Limited [2005] UKPC 40 applied; Thomas v Stoutt and others (1997) 55 WIR 112 applied; St. Lucia Motor & General Insurance Co. Ltd v Peterson Modeste [2010] ECSCJ No. 8 applied.

3. A good root of title, must, among other things, show that the grantor has the full legal and equitable interest in the property conveyed. There is no evidence that the legal title to the disputed properties was conveyed to Adella from Joseph's estate and therefore she had only an equitable

interest to convey and no legal title to pass to the appellants as her legatees. The judge therefore correctly found on the evidence that the Deeds of Assent conveying the disputed properties to the appellants did not constitute a good root of title and on that basis the appellants could not be declared owners of the disputed lands.

Halsbury's Laws of England, Vol. 23, para 114 considered.

4. The learned judge did not err in dismissing the respondent's claim for a documentary title.
5. The relativity of titles principle is not applicable to this case since the paper titles of both parties failed, there was no pleading or claim for a possessory title, and there was uncertainty about what constitutes the lands in dispute. However, the judge's conclusion in not declaring an owner of the disputed properties did not resolve the dispute between the parties. Accordingly, the judge's orders should be set aside.

Dean and another v Arawak Homes Ltd 2014 UKPC 24 distinguished; Ocean Estates Limited v Norman Pinder [1969] 2 AC 19 distinguished.

6. This Court can only act under section 20 of the Supreme Court Act to deal with the unjust result if there is a proper legal foundation with appropriate evidence. This is not an appropriate case for this Court to fashion a remedy under the Trustee Act or one based on possession. In the circumstances, this Court cannot make an order concerning title to the disputed properties and, regrettably, the case must be remitted to the High Court for a retrial.

Section 20 of the West Indies Associated States Supreme Court (Grenada) Act, Cap 336 of the Revised Laws of Grenada considered; Sections 22(f) and 28 of the Trustee Act Cap. 329 of the Laws of Grenada considered.

Case Name:	INTERNATIONAL TRADING HOLIDNG CO. LIMITED V MED TRADING LIMITED (BVIHCMAP2020/0020) (TERRITORY OF THE VIRGIN ISLANDS)				
Date:	Thursday, 11th February 2021				
Coram:	The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.] The Hon. Mr. Dexter Theodore, QC, Justice of Appeal [Ag.]				
Appearances:	<table border="0" style="width: 100%;"> <tr> <td style="padding-right: 20px;">Appellant:</td> <td>Mr. Andrew Willins</td> </tr> <tr> <td style="padding-right: 20px;">Respondent:</td> <td>Mr. John Carrington, QC</td> </tr> </table>	Appellant:	Mr. Andrew Willins	Respondent:	Mr. John Carrington, QC
Appellant:	Mr. Andrew Willins				
Respondent:	Mr. John Carrington, QC				
Issues:	Interlocutory appeal — Summary judgment — Refusal of application for summary judgment — Test of summary judgment — Realistic prospect of defending claim — Whether learned judge erred in refusing application for summary judgment — Whether learned judge misapplied the test of summary judgment — Permission to file amended defence and counterclaim — Whether learned judge erred in exercise of discretion in granting permission to file amended defence and counterclaim — Validity of shareholder resolution amending articles of association — Interpretation of arbitration clause in articles of association — Whether judge erred in concluding that there were questions of law and fact better suited for determination at trial				
Result and Reason:	HELD: dismissing the appeal; affirming the order of the learned judge dismissing the appellants' application for summary judgment and permitting the respondent to file its amended defence and counterclaim; ordering costs to				

Med Trading to be assessed at no more than two-thirds of its costs in the court below, that:

- 1. While there may have been some basis for complaint as to the lateness of the amended pleading filed by Med Trading, it was within the judge's power and discretion to permit Med Trading to file its amended pleading retrospectively, Med Trading having sought such permission during the hearing of the application for summary judgment. In accordance with the well-settled principles upon which an appellate court can review a judge's exercise of discretion, there is no basis upon which this Court ought to disturb or set aside the judge's order granting permission to amend, the exercise of which discretion was within the generous ambit of disagreement.**

**Dufour et al v Helenair Corporation Ltd et al (1996)
52 WIR 188 applied.**

- 2. Where a claimant has established the right or interest upon which a declaration sought is based, it is wrong in principle to refuse to grant the declaration unless the claimant has done something or there exist special considerations which would disentitle him to the declaration, or some good reason why the court ought to exercise its discretion not to grant the declaration sought. In this case, the appellants have effectively delayed since the first action was brought by Med Trading before the courts in Dubai in 2013, in commencing any claim and in seeking declaratory or anti-suit injunctive relief against the respondent in the BVI; and is only seeking, at this stage, to obtain an order of this Court for the declared purpose of using it in the on-going (or any future) proceedings brought against the appellants by Med Trading in Dubai. Given the delay and the appellants' declared purpose, the declaration sought by Intraco is arguably academic as there exists currently no on-going proceedings before the courts in Dubai in which Intraco is a defendant, the claim against it in case 351/2020 having been dismissed on limitation grounds. The learned judge was therefore correct**

in declining to grant the declaration sought at this stage.

Zamir & Woolf – The Declaratory Judgment 4th Edition, Sweet & Maxwell (2011) at 4-17, 4-30 and 4-31 applied.

3. The anti-suit injunction sought by Intraco depended on the grant of the declaratory relief which it sought. Accordingly, if it was not proper for the court to grant summary judgment for the declaratory relief sought by Intraco, then equally so, it would not have been correct, as a matter of principle, for the court to grant summary judgment for the anti-suit injunction. In any event, the court will only grant an anti-suit injunction where the proceedings in a foreign court, if pursued, would be vexatious or oppressive. Contrary to the appellants' argument, there was nothing unconscionable in Med Trading's pursuit of its claims before the courts in Dubai in circumstances where the laws of Dubai permit such a claim to be brought against ITHC and Intraco. The learned judge's refusal to grant summary judgment on Intraco's claim was therefore not plainly wrong and was, in any event, correct.

Societe Nationale Industrielle Aerospatiale v Lee Kui Jak and another [1987] AC 871 applied.

4. A resolution to amend ITHC's articles of association, must be passed by an 'absolute majority' of ITHC's shareholders, that is, by a majority of the total number of ITHC's shareholders entitled to vote, irrespective of the number of members who actually vote on the resolution. It is clear that the 2018 shareholders' resolution to amend ITHC's articles was signed by an absolute majority of the shareholders, as required by the articles. In the circumstances, however, the judge did not err in concluding that the question of the validity of the shareholders' resolution was one which was not suited for disposal on a summary judgment application. It is more than merely arguable that there is a requirement under the articles of association for a proposed written resolution to be circulated to all shareholders for their consideration and signature. Furthermore, the

issues, both legal and factual, raised by Med Trading's defence, including whether there was a requirement under the articles to give prior notice to it, as one of the shareholders of ITHC, of the proposed written resolution; and the correctness or legitimacy of the note 'not available to sign' recorded on the signature block of the resolution next to Med Trading, are matters which were not addressed in the appellants' statement of claim or their evidence in support of the summary judgment application, and therefore require fuller investigation at trial.

Charrandas Persaud v Compton Herbert Reid and Other [2019] CCJ 10 (AJ) applied; Section 13 of the BVI Business Companies Act, 2004 Act No. 16 of 2004 considered; *Browne v La Trinidad* (1887) 37 ChD 110 distinguished.

5. There is nothing inherently wrong with the shareholders of a company amending the company's articles of association to stipulate that disputes concerning the affairs of the company are to be determined by arbitration. As foreshadowed, the questions of improper purpose and oppression raised in relation to 2018 amendments (which are related to the purpose and validity of the directors' and shareholders' resolutions), are not as simple, straightforward or unanswerable as the appellants contend, so as to give rise to summary judgment on ITHC's claim. On a summary judgment application, and at this stage of the proceedings, before the usual pre-trial procedures have been embarked upon, the learned judge was simply not required to weigh the relative strengths or merits of each party's case on these issues, which are usually fact sensitive.

Enka Insaat Sanayi A.S. v OOO "Insurance Company Chubb" and Others [2020] EWCA 574 considered; *O'Neill and Another v Phillips and Others* [1999] 1 WLR 1092 distinguished.

6. The learned judge did not adopt an overly cautious approach to deciding issues of construction or issues of pure law. In all the circumstances, it is clear that the judge did not misapply the test and

principles applicable to the grant of summary judgment, and that he correctly decided that there were issues of fact and questions of law which require fuller investigation and consideration at trial and, accordingly, that this was not a proper case upon which to grant summary judgment for the declarations and anti-suit injunctions sought by ITHC and Intraco in their respective claims.

Saint Lucia Motor & General Insurance Co. Ltd. v Peterson Modeste [2010] ECSCJ No.8, delivered 11th January 2010 applied; Doncaster Pharmaceutical Group Ltd and Ors v Bolton Pharmaceutical Company 100 Ltd [2006] EWCA 661 Civ applied.

APPLICATIONS AND APPEALS

Case Name:

FRANCIS TRADING AGENCY LTD

V

HOLLIS E FRANCIS JR

**(ANUMCVAP2019/0003)
(ANTIGUA AND BARBUDA)**

Date:

Monday, 8th February 2020

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mr. Dexter Theodore, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Justin L. Simon, QC

Respondent: Mr. George Looby IV

Issues:

Application to strike out notice of appeal — Sections 170(1) and (2) of Magistrate Code of Procedure Act, Cap 255 of the Laws of Antigua and Barbuda — Late service of notice of appeal without an extension of time — Rule 62.4(6) of the Civil Procedure Rules 2000 — Whether

appellant's notice of appeal ought to be struck out having been served out of time without leave of court — Whether grounds of appeal sustainable in law or in fact — Whether grounds of appeal meritorious or have prospect of success — Whether the appellant's notice of appeal ought to be struck out for disclosing no reasonable ground of appeal — Oral application by appellant to extend time for serving notice of appeal — Whether the Court of Appeal can exercise its discretion to extend time for service of notice of appeal — Section 30 of Eastern Caribbean Supreme Court (Antigua and Barbuda) Act, Cap 143 of the Laws of Antigua and Barbuda — Whether appeal possesses strong chances of success — Prejudice to respondent

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application to strike out the Notice of Appeal is refused with no order as to costs.
2. An extension of time for filing and serving the Notice of Appeal is hereby granted and accordingly the Notice of Appeal filed 10th July 2019 is deemed to be timely filed and served.
3. The appellant shall bear the costs on the application to extend time to be paid to the respondent in the sum of \$2000.00, no later than 15th February 2021.

Reason:

The Court considered an application to strike out the notice of appeal as well as an oral application made by counsel for the appellant for an extension of time to serve the notice of appeal which, as conceded by the appellant, was served two days out of time. In respect of the grounds of the application to strike, the respondent/applicant relied mainly on two grounds; (i) that the notice of appeal was a nullity for being served out of time; and (ii) that the notice of appeal did not disclose grounds of appeal in the nature of the grounds set out under section 170(2) of the *Magistrates Code of Procedure Act, Cap 255 of the Laws of Antigua and Barbuda* (“the Code”).

The Court considered firstly the failure to provide grounds of appeal as required under section 170 of the Code. That

section sets out a number of grounds on which a decision of a magistrate may be challenged in the Court of Appeal. Sections 170(2)(j) and (k) are particularly important in these circumstances. The Court considered that the grounds of appeal advanced by the appellant in grounds A, B and C, of the notice of appeal fell broadly within section 170(2)(k) of the Code, which refers to where some other specific illegality not hereinbefore mentioned and substantially affecting the merits of the case was committed in the course of the proceedings in the case. By those grounds of appeal, the appellant complained that his constitutional right to be heard had been infringed by the learned magistrate by the manner in which she proceeded to hear the claim, and complained further of the procedure adopted by the magistrate in arriving at her decision. The Court had regard to the record of appeal which was produced by the magistrate, and noted that it does not contain any reasons for the magistrate's decision and does not, on its face, set out whether or not the magistrate followed the correct procedure of taking evidence, on oath or otherwise in respect of the claim, or precisely how she arrived at her decision. The Court took the view that these were serious irregularities, which were challenged by the notice of appeal and which fell within the provisions of the Code.

The Court further considered the grounds setting out the fact that there was communication to the magistrate in relation to counsel for the appellant appearing and attending late in time before the court. The right to be heard is a fundamental right, and a fundamental tenet of justice and fairness and the Court therefore considered that this raised very serious grounds in that regard. It appeared to the Court that grounds A, B and C would also fall under section 170(2)(j) which refers to instances where the decision was erroneous in point of law, given those various irregularities appearing on the record.

The Court was of the view that these matters which have been raised are sufficiently grounded in the provisions of section 170 of the Code and the Court was not minded to strike out the notice of appeal on that ground.

In relation to the late service, which was the other ground of challenge to the notice of appeal, the appellant conceded that service of the notice of appeal was two days

outside of the fourteen day period prescribed in section 170(1) of the Code. While there is no prescribed power under the Code to extend time, section 30(2) of the *Eastern Caribbean Supreme Court (Antigua and Barbuda) Act, Cap 143 of the Laws of Antigua and Barbuda* (“the Supreme Court Act”) provides that the Court of Appeal has the power to extend the time to appeal from the Magistrate’s Court. Counsel for the appellant also relied on the decision of the Caribbean Court of Justice in the case of *Deane v Allamby* (2016) 89 WIR 193, where the court held that even where there is no prescribed or statutory power given under a particular enactment, the court has jurisdiction to extend time for the making of an appeal. Counsel for the appellant urged that *Deane* is of persuasive authority on this Court. The Court took the view that the very specific section 30(2) of the Supreme Court Act makes the Court’s power of extension of time clear and beyond doubt, and this Court is bound to apply the law as it stands.

While there was no written application for extension of time, the appellant by oral application invited the Court to exercise its discretion to extend the time and thereby treat the filing and service of the notice of appeal, which was served two days out on 10th July 2019, as being filed and served within time.

The Court noted that the principles applied to applications for extension of time are well known as to be considered trite and relied on its decision in *Hyacinth v Joseph GDAHCVAP2015/0025* (delivered 20th June 2016, unreported) where it was held that the court must engage in a balancing exercise taking all relevant factors into account.

The Court accepted that no explanation for the delay had been put forward by the appellant in this case, given that the extension of time was sought by an oral application made to the Court. However, the Court did not consider that the failure of any one factor makes it fatal to the exercise of its discretion. The Court considered that the delay in serving the notice of appeal may not be considered to be inordinate, as it was two days out, however the delay in making this oral application may be considered to be inordinate. Nonetheless, the Court was of the view that those factors of themselves do not render the Court unable to exercise its discretion when taking all

of the various factors in the round. The Court found that it must also look at the degree of prejudice, if any, and also the prospects of success since those factors may very well outweigh the question and factor of delay in relation to the exercise of the Court's discretion.

The Court was of the view that the delays, even though they may ordinarily militate against the exercise of the discretion to grant an extension, were outweighed by the strong prospects of success of the appeal, having regard to the matters appearing on the record of the proceedings below. It is in these circumstances that the Court considered that it was in the interest of justice to exercise its discretion to extend the time and deem the filing and service of the notice of appeal as being timely filed and served as of 10th July 2019.

Case Name:

**JOSEPH W HORSFORD AS SOLE
ADMINISTRATOR OF THE ESTATE OF WILLIAM
HORSFORD
(DECEASED)**

V

**[1] GEOFFREY CROFT
[2] ERIC CONSTRUCTION & HEAVY EQUIPMENT
SERVICES LTD**

**(ANUHCVP2014/0028)
(ANTIGUA AND BARBUDA)**

Date:

Monday, 8th February 2020

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mr. Dexter Theodore, QC Justice of Appeal [Ag.]**

Appearances:

Appellant: Joseph W. Horsford, in person

Respondents: Mr. Sylvester Carrot for the first respondent

No appearance for the second respondent

Issues: Applications to reopen appeal, adduce fresh evidence and to discharge leave to appeal to the Privy Council — Adjournment

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The hearing of the applications to adduce fresh evidence, reopen the appeal and discharge leave to appeal is adjourned for the purposes of the court being provided with the relevant documents.
2. In relation to the applications to adduce fresh evidence and re-open the appeal, the applicant, Mr. Croft shall provide the court with a transcript of the proceedings in the court below and a transcript of the proceedings before the Court of Appeal as well as the judgment of the Court of Appeal and shall also produce a properly paginated bundle of the applications, the application for final leave to appeal to Her Majesty in Council, the affidavits in support, the affidavits in response, the transcripts of the various proceedings and the judgment of the court, to be filed to constitute a hearing bundle.
3. In respect of the applications to adduce fresh evidence and re-open the appeal, the 1st respondent, Mr. Croft shall file and serve a hearing bundle comprising the documents listed above, by 31st March 2021.
4. The applicant/1st respondent, Mr. Croft, shall file and serve written submissions with authorities by 31st March 2021.
5. Mr. Horsford, the respondent, shall file and serve any written submissions in response by 26th April 2021.
6. Mr. Horsford shall furnish a filed copy of the order of the court granting to Mr. Croft conditional leave to appeal to Her Majesty in Council by 26th April 2021.
7. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal for the State of Antigua

and Barbuda during the week commencing 17th May 2021.

Reason: The Court considered that it had not been furnished with certain relevant documents for the hearing of the appeal. The Court was of the view that directions were necessary in the circumstances for the parties to provide these documents and that the hearing of the applications to adduce fresh evidence, to reopen the appeal, and to discharge leave to appeal to the Privy Council ought therefore to be adjourned until the next sitting of the Court in Antigua and Barbuda.

Case Name: [1] LIHUA TIAN
[2] ROUXI TIAN
(BY HER NEXT FRIEND LIHUA TIAN)

V

**PRIME MINISTER AND MINISTER RESPONSIBLE
FOR CITIZENSHIP**

**(ANUHCVP2020/0039)
(ANTIGUA AND BARBUDA)**

Date: Monday, 8th February 2020

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Gerard St. C Farara, Justice of Appeal [Ag.]
The Hon. Mr. Dexter Theodore, Justice of Appeal [Ag.]

Appearances:

Appellants: Dr. David Dorsett

Respondent: Ms. Carla Brookes-Harris

Issues: Civil appeal — Citizenship deprivation order — Exercise of judge's discretion — Appeal to the High Court by way of

Part 60 of the Civil Procedure Rules 2000 — Whether learned judge erred in dismissing appellants’ application that the first hearing of the matter be the trial of the matter when no timely defence was filed and the issue to be resolved in the claim was one that could have been dealt with summarily in accordance with CPR 27.2(1) — Whether learned judge erred in granting the respondent an extension of time to file a defence — Whether learned judge erred in dismissing the appellants’ application and granting the respondent’s application upon consideration of the case of *Attorney General of Trinidad and Tobago v Universal Projects Ltd* [2011] UKPC 37

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The respondent will have until 4:00pm on Friday 12th February 2021 to file and serve any further evidence by way of affidavit in relation to the appeal.
3. The Registrar of the High Court shall give Notice fixing an expedited date for the hearing of this appeal by the High Court, such notice to be given no later than Friday 19th February 2021.
4. There is no order as to costs.

Reason: The Court was unanimous in its decision that this appeal against a decision made by the learned judge not to treat the first hearing of the fixed date claim by way of appeal as the hearing of that appeal, should be dismissed for the single reason that the Court was not satisfied that the appellant had shown any sufficient basis for the Court to interfere with that decision.

Rule 60.7 of the Civil Procedure Rules 2000 (“the CPR”), under which this appeal falls by way of rehearing, is clear in its terms and clearly contemplates the judge being able to exercise the plenitude of case management powers that are given to a judge on a first hearing to decide whether the hearing of a substantive matter ought to take place at that first hearing or whether to give certain directions for a full hearing to take place. The Court adopted and applied the Court of Appeal’s learning in the case of *Peter Toussaint et al v Martine Johnson* SLUHCVP2018/0024

(delivered 16th September 2020, unreported), which is among many other cases of this Court that recite the same principles, that where a case management decision is given, being the exercise of the judge's discretion, appellate courts are very slow to interfere with such decisions and an appellant must cross a high threshold in order for the court to do so. This appeal clearly flows from the exercise of a case management discretion exercised by the learned judge, and the threshold which permits this Court to interfere with it has not been met in the circumstances of this case.

The Court, however, considered further the nature of the matter before the court below acting in its appellate jurisdiction under CPR Part 60, being one which should be heard without delay as it deals with the question of the appellants' citizenship in Antigua and Barbuda. Under CPR 60.7, when the court did not conduct the first hearing then a fixed date should have been given for the full hearing of the appeal. The Court was therefore of the view that it was appropriate also to give directions for the fixing of the hearing date.

Case Name:

[1] Neil Cave
[2] Simon Butler
[3] Jude Jolie
[4] Darren Weste
[5] Linda Da Costa
[6] Kevin Simon
[7] Desroy Demming
[8] St. Rose Verneuil
[9] Richard Jumi
[10] Jospeh Nixon

v

Liat 1974 Limited
[ANUHCVP2020/0031]
(Antigua and Barbuda)

Date:

Monday, 8th February 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:
Applicants: Mr. Ruggles Ferguson and Ms. Luann De Costa

Issues: Application for leave to appeal – Leave to appeal against order of learned judge – Section 564 of the Companies (Amendment) Act No. 17 of 2020 – Whether learned judge miscredited herself and committed an error of law in concluding that the combined effect of the automatic stay granted to the respondent by order of the court and the provisions of section 564(1)(a) prevent the trial from proceeding – Whether learned judge miscredited herself and committed an error of law in concluding that the applicants fall under the ambit of creditors for the purposes of section 564

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

The application for leave to appeal against the order of Robertson J dated 11th August 2020 is dismissed.

Reason: By notice of application, which was filed by 26th August 2020, the applicants sought the leave of the Court, to appeal against order of Robertson J made 11th August 2020. The grounds of the application as stated in the notice of application, were principally that the judge misdirected herself and committed an error of law in concluding, firstly, that the combined effect of the automatic stay granted to the respondent by the order of

24th July 2020 and the provisions of section 564(1)(a) of the Companies (Amendment) Act No. 17 of 2020 prevent the High Court trial from proceeding and secondly, that the applicants fell under the ambit of creditors for the purposes of section 564 of the Act. These were the two principal grounds stated by the applicants in their application for leave to appeal.

The Court noted that, in fact, a petition for the appointment of an administrator of the respondent was filed under the provisions of section 556 of the Companies Act, as amended and that the order was made by the court appointing an administrator. The Court noted too that section 551 of the Act defines a claim as including the right to payment whether or not such right is reduced to judgment. The Court also noted that section 551 of the Act describes or defines a creditor as 'an entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor.' It is also to be noted that the section defines an entity as including 'a person'.

By operation of law, the proceedings which were brought by the applicants against the respondent, in the High Court, are in fact automatically stayed in accordance with section 564 of the Act and the judge clearly therefore, did not misdirect herself or commit any error of law in making the order, which it is sought to appeal. The other two grounds of the application as stated, in the notice of application were not properly pursued by counsel for the applicants, that being the prejudice ground and the constitutional ground.

In the Court's view, Robertson J clearly did not misdirect herself, in the determinations which she made and the applicants had no prospect, therefore of success in appeal against the order. In the circumstances, the application for leave to appeal against the order of Robertson J dated 11th August 2020 was accordingly denied.

For the record, the Court noted the presence of counsel for the respondent, it being an ex parte application.

Case Name:

Washington Emanuel Bramble

v

The Commissioner of Police

[ANUMCRAP2016/0002]

(Antigua and Barbuda)

Date:

Monday, 8th February 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:

Appellant: In person

Respondent Mr. Anthony Armstrong and Mrs. Shannon Jones-Gittens

Issues:

Magisterial criminal appeal – Appeal against conviction – Abuse and bad language – Section 9 of the Small Charges Act of Antigua and Barbuda – Arms and other offensive weapons – Section 12 of the Small Charges Act – Statutory interpretation - Whether Guinness bottle an offensive weapon within meaning of section 12 of the Act – Whether there was sufficient evidence before learned magistrate to convict the appellant of offences of using indecent and threatening language

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against conviction for the offence of being in possession of an offensive weapon is allowed.**
- 2. The conviction for the offence of being in possession of an offensive weapon is quashed and the sentence of the learned magistrate is set aside.**
- 3. The appeal against conviction for the offences of indecent language and threatening language is dismissed.**
- 4. The conviction and sentence for the offences of indecent language and threatening language are affirmed.**

Reason:

The appellant was found guilty of indecent language, threatening language and being armed with an offensive weapon. He appealed against his conviction in relation to all three (3) offences. The learned Director of Public Prosecutions has properly conceded that the conviction against being armed with an offensive weapon cannot be sustained and asked this Court to allow the appeal in relation to that offence. In relation to the offences of indecent language and threatening language, the appellant, in his notice of appeal, advanced two grounds namely, that: (i) illegal evidence was admitted by the court and that there is not sufficient legal evidence to sustain the decision after rejecting such illegal evidence and (ii) the decision is unreasonable and cannot be supported having regard to the evidence.

The Court considered the oral and written submissions of both sides. At the hearing of the appeal, the appellant submitted that no evidence was given by the virtual complainant whom he alleged to be a schoolboy and that the charges were all fabricated. The Court considered the

record and was of the view that the appeal is wholly unmeritorious. The Court was satisfied that there was sufficient evidence before the learned magistrate for him to convict the appellant of the offences of using indecent and threatening language. The Court therefore dismissed the appeal in relation to those offences.

Case Name:

**The Director of Public Prosecutions
v**

Randy Edwards

**[ANUHCRA2019/0015]
(Antigua and Barbuda)**

Date: **Monday, 8th February 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:

Appellant: **Mrs. Shannon Jones-Gittens holding for Ms. Rashida Jonas**

Respondent **Mr. Lawrence Daniels**

Issues: **Criminal appeal - Manslaughter - Appeal against sentence
- Approach of appellate court in reviewing sentence imposed by trial judge - Whether learned judge erred in law by imposing a sentence of six and a half years – Whether sentence imposed by learned judge was manifestly excessive in the circumstances**

Type of Order: **Oral judgment**

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The Director of Public Prosecution's appeal against sentence is allowed and the sentence of the learned trial judge is set aside.**
- 2. The respondent is sentenced to 14 years and 4 months reduced by time spent of remand of 3 years and 3 months for a sentence of 11 years and 1 month to commence from 11th June 2019.**

Reason:

The respondent was charged in the murder of Elvis Daisy. The background is that on two occasions in March 2016, the deceased grabbed the buttocks of the respondent's girlfriend, Ms. Altesha Shaw. Both incidents happened at a shop in the presence of other persons. The two incidents occurred approximately six days apart. The respondent's girlfriend reported both incidents to the respondent. On the second occasion, the respondent, having been found, went to his grandmother's home, armed himself with a cutlass and went in search of the deceased. He met him in a public place and in broad daylight he inflicted a vicious chop to his head. The deceased attempted to run away after being chopped and the respondent chased him, telling him that he was going to kill him. The deceased received extensive medical treatment for his injuries, but he did not recover; he died approximately 8 months after he was chopped. At commencement of the trial, the prosecution accepted the respondent's plea of guilty of manslaughter on the basis that there may have been some provocation in the killing of the deceased.

Following a sentencing hearing, the respondent was sentenced to six and a half years in prison by the trial judge. The prosecution appealed against the sentence. This Court recognised that the issue of sentencing is

entirely in the province of the sentencing judge, and that this Court will only interfere with the sentence imposed if it is satisfied, on the facts of this case, that the judge erred by taking into consideration matters he should not have or failed to consider matters that he should have and or that the sentence imposed was manifestly lenient. The prosecution relied on two grounds of appeal. Firstly, that the learned judge erred in principle in imposing a sentence of 6 and a half years imprisonment and secondly, that the sentence imposed was manifestly lenient having regard to all the circumstances of the case.

In support of the first ground, Mrs. Shannon Jones-Gittens, who appeared for the prosecution, submitted that the learned judge erred in the following ways; firstly, the record shows that the judge considered the benchmark of the offence of manslaughter in the Eastern Caribbean as a starting benchmark of 16 years. He then, without giving any reasons, reduced the benchmark to 12 years and treated that as the starting point. The learned judge noted in his deliberations that: "Manslaughter carries a benchmark of somewhere between 15 and 18 years and I will treat the benchmark in this case as 16 years and I will take the starting point as 12 years.". The judge did not explain why he reduced the benchmark to 12 years, which could only have occurred on account of mitigating factors that he found, in fact the judge stated that there were no mitigating factors in this case.

Learned counsel submitted that this was a serious error by the sentencing judge and that there was no basis for reducing the benchmark, if anything, the aggravating circumstances of the offence would point to an increase of the benchmark. Mrs. Jones-Gittens also submitted that the judge erred in taking into consideration the treatment of the deceased that was provided by the respondent's mother before the deceased died. The judge reduced the sentence by 18 months on account of the mother's treatment. This, counsel submitted, is not a factor which can be attributed to the respondent in the sentencing process. Mr. Lawrence Daniels who appeared for the

respondent, conceded in his oral submissions that the sentencing judge erred in principle in respect of both of these matters; the reduction of the benchmark without giving a reason and taking into consideration the treatment of the deceased by the respondent's mother, as a mitigating factor.

The errors made by the sentencing judge mean that this court is entitled to set aside the sentence of 6 and a half years and impose a sentence that we consider to be the appropriate sentence in this case. The benchmark for the offence of manslaughter is generally accepted to be 15 years and the Court will adopt that amount as a starting point. There are numerous aggravating circumstances in relation to both the offence and the offender.

In relation to the offence, we took into consideration the manner in which the offence was committed. The respondent armed himself with a cutlass, viciously attacked the deceased in broad daylight in a public place, by delivering a severe chop wound to his head. He then chased the deceased and threatened to kill him. The Court was of the view that these very serious aggravating factors would increase the sentence from the starting point of 15 years to 20 years.

In relation to the aggravating factors in relation to the respondent himself, we note that he was on bail for a robbery offence when he chopped the deceased, secondly that the respondent has a recent conviction for robbery, he was charged for aggravated robbery, pleaded guilty to robbery and was sentenced to 3 years imprisonment. The aggravating factors in relation to the respondent would increase his sentence by a further 18 months to 21 years and 6 months.

Mr. Daniels urged the Court to take into consideration, as mitigating circumstances, that the respondent was provoked, which caused him to commit the offence. However, the Court rejected this submission as it is clear from the record that it was already taken into

consideration in the Director of Public Prosecution's acceptance of the guilty plea to manslaughter. Mr. Daniel also asked the Court to take into consideration the age of the respondent. He was 23 years old at the time of the offence. The Court was not of the view that, in all the circumstances of the case, that this is sufficient to reduce the proposed sentence. It is not disputed by counsel on both sides that the respondent offered a plea of manslaughter on the basis of provocation, at the beginning of the trial. The trial was adjourned to allow the prosecutor time to consider the offer which was made. The offer was accepted and on the next occasion, a guilty plea of manslaughter was entered.

In the circumstances, the Court will give the respondent the full benefit of a one third discount for a guilty plea on the first occasion. This will reduce the sentence of 21 years 6 months to 14 years and 4 months. The Court also did not find any mitigating circumstances in relation to either the offence or the offender. The respondent will be given full credit for the time spent on remand which in this case is 3 years and 3 months. The sentence 14 years and 4 months is to be reduced by the remand time of 3 years and 3 months.

Case Name:

**THE DIRECTOR OF PUBLIC PROSECUTIONS
v
ALEXANDER JAMES**

**(ANUMCRAP2019/0010)
(ANTIGUA AND BARBUDA)**

Date:

Tuesday, 9th February 2021

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mr. Dexter Theodore, QC Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mrs. Shannon Jones-Gittens holding papers for Ms. Rashida Jonas

Respondent: Mr. Lawrence Daniels

Issues: Criminal Appeal — Appeal against sentence — Causing death by dangerous driving — Sections 52, 58(2) and 69(1) of the Vehicles and Road Traffic Act, Cap 460 of the Laws of Antigua and Barbuda — Whether the sentence of the suspension of the respondent's driver's license under section 58(2) of the Vehicles and Road Traffic Act was bad in law — Whether, in handing down a sentence, a court can impose a sentence suspending a person's driver's permit for a period commencing before the date of sentence — Whether the sentence was manifestly lenient

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The sentence imposed by the magistrate is set aside.
3. The respondent is to pay a fine of \$2,500.00 to be paid on or before 3rd day of May 2021 and in default six (6) months imprisonment.
4. The respondent is sentenced to a period of 10 months and 9 days of disqualification from holding or obtaining a driver's license, commencing from the date of his sentence on 24th July 2019 and ending 2nd June 2020.

Reason: On 12th April 2019 the respondent pleaded guilty to a charge of causing the death of Geraldo Knight by dangerous driving on 31st December 2013. On 24th July 2019, the learned judge sentenced the respondent to a disqualification from holding or obtaining a driver's permit for a period of twelve (12) months from the date of his conviction on 12th April 2019. The judge purported to impose this sentence in accordance with section 58(2) of the *Vehicles and Road Traffic Act, Cap 460 of the Laws of Antigua and Barbuda* ("the Act").

Section 58(2) of the Act deals with offences relating to persons promoting or taking part in a race or trial of speed between motor vehicles on a road, whereas the power of

the court to disqualify persons from holding or obtaining a driver's license is contained in section 69(1) of the Act and not section 58(2). Significantly, section 69(1) authorizes the court to disqualify the convicted person from holding or obtaining a driver's permit in addition to any other penalty provided for the offence for which the person was convicted. The learned judge erred in so far as the he purported to impose disqualification pursuant to section 58(2) as opposed to section 69(1). Furthermore, if a sentence of disqualification pursuant to section 69(1) is to be imposed, the clear words of section 69(1) require that any such disqualification be imposed, not instead of but, in addition to any other penalty provided for the offence. The learned judge did not impose any penalty other than the one-year disqualification and erred in failing to do so. The Court further considered that the judge purported to impose a penalty for a period commencing before the imposition of the penalty. Cases such as *R v Gilbert [1975] 1 All ER 742* indicate that this is not the proper approach.

In the circumstances, the Court concluded that the sentence of one year disqualification from holding or obtaining a driver's permit, commencing not from the date of sentence but from the date of conviction, was bad in law as it was instead of and not in addition to another penalty, and because it purported to impose a penalty commencing from a date preceding the handing down of the penalty. The Court was of the view that the sentence imposed by the learned judge must therefore be set aside and a new sentence imposed.

The Court did not consider that in all the circumstances of this case that a sentence of imprisonment would be appropriate. The Court had regard to all of the pertinent facts, in particular, that the respondent who is a bus driver, was unable to ply his trade for a period of nearly six (6) years before the sentence was passed on him in 2019. Further, that when the total period of disqualification, which ended on 2nd June 2020 is added to that time, the result is that the respondent was unable to ply his trade for a period in excess of six (6) and a half years.

Taking these factors into consideration, and taking into consideration that the respondent was a person who was otherwise of good character with no previous convictions, the Court considered that an appropriate sentence would

be, as proposed by counsel for the respondent, a fine of \$2,500.00 and a period of disqualification of the respondent from holding or obtaining a driver's permit for a period of ten (10) months and nine (9) days, which would be the period commencing from the date of his sentencing on 24th July 2019 to the date when his driver's permit was restored on 2nd June 2020.

The Court stated clearly, however, that the low fine imposed in this appeal was due to the special circumstances of this case, in particular, the fact that the respondent was unable to ply his trade for a period in excess of six (6) years and his otherwise clean record. Taking these factors into consideration, the Court was minded to impose a fine of only \$2,500.00, however, this was not to be taken by any means as the standard to be applied in imposing penalties for causing death by dangerous driving.

Case Name:

LEON RILEY

v

THE QUEEN

(ANUHCRA2019/0004)

(ANUHCRA2019/0003)

(ANTIGUA AND BARBUDA)

Date:

Tuesday, 9th February 2021

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

The Hon. Mr. Dexter Theodore, QC, Justice of Appeal

[Ag.]

Appearances:

Appellant: Mr. Lawrence Daniels

Respondent: Mr. Anthony Armstrong

Issues:

Criminal appeal — Appeal against conviction and sentence — Whether conviction unsafe and unsupported by evidence — Whether learned judge erred in permitting evidence of recent complaints made by virtual

complainant — Section 28 Sexual Offences Act — Whether evidence of recent complaint in sexual case is inadmissible in trial for rape — Whether learned judge was required to give special direction to jury to disregard evidence of recent complaints — Lucas direction — Whether learned judge erred in failing to give a Lucas direction in relation to lies by accused relied upon by prosecution — Good character — Whether failure of counsel in court below to raise issue of good character renders conviction unsafe — DNA Evidence — Whether learned judge erred in failing to direct jury on lack of DNA evidence — Whether alleged improper, inflammatory and prejudicial comments by prosecution rendered trial unfair — Whether learned judge failed to summarise appellant's defence in balanced and fair-handed manner — Sentencing — Whether sentence imposed by judge was excessive in the circumstances — Whether learned judge failed to give sufficient weight to mitigating factors when sentencing appellant

Type of Order

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name:

[1] SYLVESTER SPENCER
[2] HONORA THOMAS

v

REGINO NICHOLAS

(ANUHCVP2019/0022)
(ANTIGUA AND BARBUDA)

Date:

Tuesday, 9th February 2021

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mr. Dexter Theodore, QC, Justice of Appeal [Ag.]

Appearances:

Appellants: Dr. David Dorsett and Mr. Jarid Hewlett

Respondent: Mr. Lawrence Daniels

Issues: Civil appeal — Oral application for adjournment

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 17th May 2021.

Reason: Counsel for the respondent requested an adjournment on the basis that he had been unable to take instructions from the respondent, who was incarcerated, due to visiting restrictions during the COVID-19 pandemic. The Court was minded to grant the adjournment, having taken into consideration also the late hour at which the appeal was slated to commence and the extant curfew restrictions in Antigua and Barbuda as a result of the COVID-19 pandemic.

Case Name:

**ALVIN THOMAS
v
KAREN CABRAL THOMAS

(ANUMCVAP2016/0001)
(ANTIGUA AND BARBUDA)**

Date: Tuesday, 9th February 2021

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mr. Dexter Theodore, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Hugh Marshall

Respondent: No appearance

Issues:

Magisterial civil appeal — Adjournment

Type of Order:

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 17th May 2021.
2. The Registrar of the High Court shall cause a notice of the hearing of the appeal to be served on the respondent personally and provide proof of service thereof.

Reason:

The Court considered it unwise to begin the hearing of a contentious appeal at the time and was minded to adjourn the matter, having regard to the fact that it was already 5pm and taken into consideration that there were extant curfew restrictions in place in Antigua and Barbuda as a result of the COVID-19 pandemic.

Case Name:

CONROY JONES

V

THE QUEEN

**(ANUHCRA2020/0013)
(ANTIGUA AND BARBUDA)**

Date:

Wednesday, 10th February 2021

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

Appearances:
Applicant: Mr. Warren Cassell
Respondent: Ms. Shannon Jones-Gittens

Issues: Application for an extension of time to seek leave to appeal against conviction and sentence — Application for leave to appeal — Delay — Whether the delay in seeking leave to appeal was intentional or inordinate — Whether the appeal has a good prospect of success

Type of Order Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application for an extension of time to seek leave to appeal is granted.
2. The applicant is granted leave to appeal.
3. The Notice of Appeal filed on 2nd December 2020 is hereby deemed to be regularly filed.
4. The applicant shall obtain, prepare and file a full transcript of the proceedings in the court below on or before 15th March 2021.
5. The applicant shall file and serve written submissions in support of the appeal on or before 6th April 2021.
6. The respondent shall file and serve written submissions in response on or before 27th April 2021.
7. The appeal shall be set down for hearing during the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 17th May 2021.

Reason: The Court considered applications to extend time to seek leave to appeal and for leave to appeal against sentence passed on the applicant on 19th July 2020. The Court was

of the view that in the peculiar circumstances of this case, as set out in the affidavit of the applicant, and in the exercise of the Court's discretion, the applications for an extension of time for seeking leave to appeal and for leave to appeal ought to be granted. Accordingly, the notice of appeal filed on 2nd December 2020 was deemed regularly filed. The Court took the view that it was also necessary to provide directions to the parties and to fix of a hearing date for the progress of the appeal.

Case Name:

[1] JOHN MUSSINGTON

[2] JACKLYN FRANK

V

[1] DEVELOPMENT CONTROL AUTHORITY

**[2] THE ANTIGUA AND BARBUDA AIRPORT
AUTHORITY**

[3] THE ATTORNEY GENERAL

(ANUHCVP2020/0005)

(ANTIGUA AND BARBUDA)

Date:

Wednesday, 10th February 2021

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellant: Mr. Leslie Thomas, QC, with him, Ms. Michelle Sterling

**Respondent: Mr. Anthony Astaphan, SC and Ms. Gayle Christian for the
first respondent**

Mr. Hugh Marshall for the second respondent

**Mr. Anthony Astaphan, SC, Ms. Carla Brookes-Harris and
Dr. David Dorsette for the third respondent**

Issues:

**Civil appeal — Judicial Review — Application for an
Interim Injunction — Duty of Candour — Lawfulness of the
actions of the respondent in constructing an airport in
Barbuda — Whether or not the judge erred in refusing to
grant the injunction — Whether the appellant has standing**

to bring an application for judicial review of the decision of the Government of Antigua and Barbuda via the Antigua and Barbuda Airport Authority to construct an airport on Barbuda — Rule 56(2) of Civil Procedure Rules 2000 — Sections 23(1) and 69 of the Physical Planning Act — Whether the appellants can be considered adversely affected by the construction of the airport — Whether the appellants have a sufficient interest in the matter of the construction of the airport — Whether the learned judge erred in law by failing to direct herself that a purported Environmental Impact Assessment (EIA) must be adequate in order to meet the requirements of section 23(1) of the Physical Planning Act — Whether, in circumstances where the respondents had failed to provide the second EIA to the court, the judge erred in law in simply accepting the views of the respondents' expert witnesses in assessing where the balance of convenience lay — Whether the learned judge wrongly regarded the letter of 10th September 2018 purporting to grant "conditional approval", requiring the developer to comply with reporting, mitigation and monitoring conditions, as being effective in law — Whether the judge failed to refer to aspects of the respondents' expert witness report which gave cause for grave concern about the adequacy of the second EIA — Whether construction of the airport has caused severe irreparable harm — Whether judge failed without explanation to adjudicate on some of the matters before her

Type of Order

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name:

DANTE TAGLIAVENTI
v
THE DIRECTOR OF THE OFFICE OF NATIONAL
DRUG AND MONEY LAUNDERING CONTROL
POLICY

(ANUHCVP2020/0014)
(ANTIGUA AND BARBUDA)

Date: Thursday, 11th February 2021

Coram: The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mr. Dexter Theodore, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Hugh Marshall

Respondent: Mr. Wesley George

Issues: Civil appeal — Part 26 of the Civil Procedure Rules 2000 — Whether the judge erred in law by striking out the substantive claim on the court's own initiative under Part 26 of Civil Procedure Rules 2000 — Whether the judge acted without judicial authority in that he made a decision to strike out the appellant's case without any case management order giving notice that the matter be tried summarily

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The constitutional motion is restored and remitted to the High Court to be dealt with by another judge of the High Court.
3. There is no order as to costs.

Reason: The Court noted the indication by counsel for the respondent that there had been communication between the parties by which they arrived at a concession on grounds one and two of the notice of appeal. The Court was of the view that the concession was properly made and was therefore minded to allow the appeal as it relates to grounds one and two, with no order as to costs, and to remit the matter to the lower court to be heard before a different judge.

Case Name: **THE DIRECTOR OF PUBLIC PROSECUTIONS**
v
[1] ALPHONSO RYAN
[2] LARRYDOW JACOBS
[3] KENNETH HUGHES
(ANUHCRA2019/0001)
(ANTIGUA AND BARBUDA)

Date: Thursday, 11th February 2021

Coram: The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mr. Dexter Theodore, QC, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Anthony Armstrong, Director of Public Prosecutions
Respondent:	Mr. Alphonso Ryan, in person Mr. Lawrence Daniels for the second and third respondents

Issues: Criminal appeal — Permanent stay of indictments — Part VIA, sections 50B(1)(b) and 50B(2)(b) of the Criminal Procedure (Amendment) Act 2004 — Whether judge erred in law by staying indictments as an abuse of process — Whether learned judge applied correct principles of law applicable to granting of a stay of criminal proceedings — Whether learned judge erred in exercising his jurisdiction by staying indictments filed against each respondent — Whether learned judge erred in staying indictments of own motion, without proper notice to prosecution or respondents

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed in relation to all three matters.
2. The learned judge's order staying the indictments is set aside and the indictments are to be set down for trial before a different judge of the High Court.

Reason:

The Court considered the appeal which related to the same issue as against the three respondents. There were two issues raised by the learned Director of Public Prosecutions in his notice of appeal, that being whether the learned judge in staying the indictments filed against each respondent erred in exercising his jurisdiction and, secondly, whether the learned judge erred in not applying the correct principles of law applicable to the grant of a stay of criminal proceedings. The Court further considered the record and the submissions made on behalf of the Director of Public Prosecutions, the submissions of the first respondent who appeared in person, and those of Mr. Lawrence Daniels, counsel for the second and third respondents.

Having considered the record, the Court was satisfied that the learned judge adopted the wrong procedure in exercising the court's jurisdiction to deal with abuses of the court's process. The Court was satisfied that both grounds raised by the learned Director of Public Prosecutions were successful. While it is true that the indictments were only filed in 2019 following committal to the High Court in 2017, these indictments were not listed for hearing before the judge, the parties were not notified of the judge's intention to consider them, and there was no application to stay the indictments before the learned judge. This was not the correct procedure to be adopted in the circumstances.

In terms of the second ground, the Court was satisfied that the test which was applied by the judge was incorrect. The test applied by the judge was whether a third party sitting in a court room would say it brings the administration of justice into disrepute, that a simple case had arrived at the High Court in June of 2017 and had not been indicted so that it could move forward onto the list until 21st January 2019. The Court was of the view that this was an incorrect approach and the learned judge failed to apply the principles applicable to the abuse of process jurisdiction. In this regard, the Court noted its decision in the case of *Urban St. Brice v The Attorney General* SLUHCVP2018/0036 (delivered 31st July 2020, unreported), a judgment of Baptiste JA, which outlines the principles upon which the court would be guided in

making a determination whether to permanently stay an indictment for abuse of process.

The Court found that the learned judge did not apply the correct principles in arriving at his decision to stay the indictments in relation to all three respondents. The Court further noted Mr. Daniels' concession of the appeal on behalf of the second and third respondents, and accordingly allowed the appeal.

Case Name:

**OSCAR VARGAS
V
[1] BARBARA VARGAS [NEE PIERRE]
[2] CIBC FIRST CARIBBEAN INTERNATIONAL
BANK (BARBADOS) LIMITED
[3] CARIBBEAN UNION BANK**

**(ANUHCVP2020/0034)
(ANTIGUA AND BARBUDA)**

Date:

Friday, 12th February 2021

Coram:

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

Appearances:

Appellant: Mr. Hugh Marshall and Ms. Chantal Thomas

**Respondents: Ms. Mandi A. Thomas for the second respondent
No appearance for the first and third respondents**

Issues:

**Application for extension of time to file notice of appeal —
Adjournment**

Type of Order

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The application for an extension of time to appeal is adjourned for hearing before a single judge at the next Chamber hearing date fixed for 30th March 2021.
2. The Registrar of the High Court is directed to give notice of the said hearing date to the 1st respondent, Barbara Vargas, and to furnish the Court with proof of such service.
3. Service by the Registrar shall be effected no later than Friday 26th February 2021.
4. The hearing of the application shall be by way of oral hearing.

Reason:

In circumstances where the first respondent is a litigant in person and where she had not been served with notice of the hearing, the Court was of the view that the matter ought to be adjourned to give the first respondent an opportunity to be served.

Case Name:

**SHAISTA TRADING COMPANY LIMITED
D.B.A
DIAMOND REPUBLIC
V
FIRST CARIBBEAN INTERNATIONAL BANK
(BARBADOS) LIMITED**

**(ANUHCVP2018/0021)
(ANTIGUA AND BARBUDA)**

Date:

Friday, 12th February 2021

Coram:

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

Appearances:

Appellant: Mr. Hugh Marshall and Ms. Chantal Thomas
Respondent: Mr. James Bristol, QC, with him, Ms. Eleanor Solomon

Issues: Civil Appeal — Breach of Contract — Whether the respondent committed a breach of contract by failing to comply with the pre-requisites for a charge back before initiating and completing a charge back to the appellant — Whether the judge erred in law by failing to find that there was no material misdescription as asserted in the charge back and that the conditions upon which the charge back was founded were unsubstantiated, therefore the respondent was not entitled to make a chargeback as it did — Whether the judge erred in law by allowing the respondent to deprive the appellant of his merchandise and still remove the price of his merchandise from his account contrary to the rules of unjust enrichment — Whether the judge erred in law by ruling against the weight of the evidence

Type of Order N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:
Judgment is reserved.