

THE EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

MONTSERRAT
27th to 30th January 2020

APPLICATIONS AND APPEALS

David Brandt

v

The Queen:

**[MNIHCRAP2019/0001]
(Montserrat)**

Date:	Monday, 27th January 2020
Coram:	The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.] The Hon. Mr. John Carrington, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Dr. David Dorsett
Respondent:	Ms. Anesta Weekes QC
Issues:	Criminal Appeal – Application to withdraw appeal
Type of Order:	Oral judgment
Result and Reason:	[Oral Delivery] IT IS HEREBY ORDERED THAT: The appeal, having been withdrawn by the

appellant, is discontinued.

Case Name:

David Brandt

v

[1] The Commissioner of Police

[2] Attorney General

[3] Director of Public Prosecutions

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

Date:

Monday, 27th January 2020

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. John Carrington, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Dr. David Dorsett

Respondent:

Ms. Anesta Weekes, QC

Issues:

Civil appeal – Constitutional proceedings —Search and seizure —Search warrant issued by magistrate permitting police to search appellant’s premises and seize articles relevant to inquiry into criminal offences — Whether search warrant permitted police to search cell phones seized from appellant’s premises — Constitutional right to privacy —Section 9 of the Constitution of Montserrat —Whether search of cell phones breached appellant’s constitutional right to privacy —Limitation on right to privacy — Whether search of cell phones without prior authorisation is unlawful — Abuse of process — Whether appellant’s claim for constitutional relief constitutes an abuse of process

Type of order:

N/A

Result/Reasons:

[Oral Delivery]

IT IS HEREBY ORDERED:

Judgment on the matter is hereby reserved to be delivered within two weeks, at the latest at the Court of Appeal sitting to be held in St. Kitts in the week of 10th February 2020.

Case Name:

**Terrance Wade
(The Sole Executor of The Late William
Anthony Tuitt)**

V

James Weekes

**[MNIHCVAP2019/0002]
(MONTSERRAT)**

Date:

Tuesday, 28th January 2020

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. John Carrington, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Jean Kelsick

Respondent:

Mr. Kenroy Hyman

Issues:

**Civil appeal – Application by respondent for an
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 the Territory of Montserrat in the week commencing 15th June 2020.
2. Costs to the appellants in the sum of \$500.00 to be paid by 7th February 2020.

Result and Reason:

The respondent requested an adjournment of the hearing of the appeal.

Case Name:

Keston Riley

V

**[1] The Attorney General
[2] Superintendent of Prisons**

**[MNIHCVAP2019/0014]
(MONTSEERRAT)**

Date:

Tuesday, 28th January 2020

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. John Carrington, Justice of Appeal [Ag.]**

Appearances:

Applicant:

Mr. Warren Cassell

Respondents:

Ms. Korah Galloway

Issues:

Application for leave to appeal - Whether learned judge erred in law by striking out the applicant's claim without considering any alternatives suggested by the applicant - Whether learned judge failed to consider that neither respondent made a strike out application – Whether applicant has a realistic prospect of success

Type of order:

Oral decision

Result/Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. Leave is granted to the applicant to appeal the Order of His Lordship The Hon Justice Iain Morley QC made on 4th March 2019.**
- 2. The notice of appeal is to be filed within 21 days.**
- 3. The appeal is to proceed thereafter in accordance with Part 61 of the Civil Procedure Rules 2000.**

Reason:

The Court was satisfied that the applicant met the threshold requirement for the grant of leave to appeal.

Case Name:

**Millicent Bass Lawful Attorney
(In The Estate of Joseph Benjamin Daly)
Deceased) By Her Lawfully appointed
Agent Joseph W. Bass**

v

Julian Daniel

**[MNIHCVAP2019/0012]
(MONTSERRAT)**

Date:

Tuesday, 28th January 2020

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. John Carrington, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Jean Kelsick

Respondent:

Mr. Kharl Markham

Issues:

Civil appeal – Application to strike out claim - Whether sum awarded by learned master as costs was disproportionate to extent and complexity of work done – Whether learned master failed to properly consider or give adequate weight to the fact that the claim was struck out due to technical error – Whether learned master failed to consider or give effect to principles enunciated in Snell v Evans – Whether learned master erred in exercising his discretion under parts 64 and 65 of the Civil Procedure Rules 2000

Type of order:

Oral judgment

Result/Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The order of the learned Master is set aside and replaced by an order for costs, in the sum of \$4,125.00 being 55% of \$7,500.**
- 3. The costs in the sum of \$4,125.00 is to be paid from funds from the Estate.**
- 4. Costs in the appeal to the appellant in the sum of \$500.00.**

Reason:

The Court, having regard to the provisions of rule 65.5(2) of Civil Procedure Rules 2000 (“CPR”) and Appendix C of Part 65 of the CPR. The Court considers that the learned Master erred in the quantification of the Prescribed Costs on the Strike Out Application.

Case Name:

Ingrid Branford Hughes

v

Golden Years Home For The Elderly

**[MNILTAP2019/0002]
(Montserrat)**

Date: **Tuesday, 28th January 2020**

Coram: **The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. John Carrington, Justice of Appeal [Ag.]**

Appearances:
Appellant: **Mr. Ralph A. Francis**
Respondent: **Ms. Chivone Gerald**

Issue: **Civil Appeal - Employment Law – Summary dismissal – Labour Code of Montserrat – Section 61(1) of Labour Code – Gross misconduct – Section 61(2)(a) of Labour Code – Unfair dismissal – Termination based on warning – Section 61(3) of Labour Code – Whether the Tribunal was entitled to refer to the previous warnings – Entitlement of Court to review the decision of the Labour Tribunal – Section 26 of Labour Code – Findings of fact based on printed evidence**

Type of Order: **N/A**

Result / Order: **[Oral delivery]**

IT IS HEREBY ORDERED THAT:

Judgment in the matter is hereby reserved.

Case Name: **Director of Public Prosecutions**

v

Elorine Aymer

**[MNIMCRAP2019/0005]
(Montserrat)**

Date: Tuesday, 28th January 2020

Coram : The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. John Carrington, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Oris Sullivan

Respondent: Ms. Chivone Gerald

Issue: Magisterial criminal appeal - Whether decision of Chief Magistrate dismissing the charge of Driving without Due Care and Attention against the Respondent on the basis that the charge was time barred was correct in law - Whether on a strict calculation of the date, the complaint was laid within six months of the date of the offence - Whether section 13 of the Interpretation Act applies in calculating the time period

Type of Order: Oral judgment

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The appellant shall pay costs to the respondent in the sum of \$1,000.00**

Reason: The evidence is that the complaint had been made on 23rd April 2019. The language of the complaint is clear and as a result the Magistrate, in delivering her ruling, indicated that she did not have jurisdiction to hear the matter. The Complaint as filed was on the face of it filed out of time and the matter was properly dismissed.

Case Name: Director Of Public Prosecutions
V
Juniah Allen
[MNIMCRAP2019/0006]
(Montserrat)

Date: Tuesday, 28th January 2020

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. John Carrington, Justice of Appeal [Ag.]

Appearances:
Appellant: Mrs. Kristen Taylor Hilton with Ms. Safiyah Moore
Respondent: Mr. Kenroy Hyman

Issues: Magisterial criminal appeal – Application to withdraw appeal

Type of Order: Oral Judgment

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:
1. The appeal having been withdrawn by the appellant stands dismissed.

2. Costs to the respondent in the sum of \$750.00