

THE EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT VINCENT & THE GRENADINES
VIDEOCONFERENCE
14th – 16th June 2021

JUDGMENT

Case Name:

Patricia Anne Huggins

v

Lloyd Browne

[SVGHCVAP2018/0007]

(Saint Vincent & The Grenadines)

Date:

Monday, 14th June 2021

**Coram for
delivery:**

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

Appearances:

Appellant: Ms. Danielle France with Mr. Richard Williams

Respondent: Ms. Suenel Fraser

Issues:

**Civil appeal – Wasted costs – Non-compliance with
court's order – Rule 64.9 of the Civil Procedure Rules
2000 – Whether an appropriate case to impose a wasted
costs order – Natural justice – Procedural fairness –
Prior notice and reasonable opportunity to be heard
before imposing a wasted costs order under rule 64.9(2)
of the CPR – Whether prior notice and reasonable
opportunity to be heard given to appellant –**

**Result and
Reason:**

Held: allowing the appeal; setting aside the wasted costs order made against the appellant; and awarding costs of the appeal to the appellant summarily assessed at \$1,500.00, that:

1. A party whose interests or rights may be affected by the imposition of wasted costs order under CPR 64.9 should be given adequate notice to apprise himself of the case that he has to meet and a reasonable opportunity to be heard and to defend himself. In this case, there is no evidence that the appellant was aware of the non-compliance with the judge's order by her legal representative; that the court was minded to make a wasted costs order against her; and she was not given a reasonable opportunity to be heard. It follows that the appellant was not given a fair hearing and the wasted costs order was imposed against her in breach of the rules of natural justice.

Rule 64.9 of the Civil Procedure Rules, 2000 considered; Gempride Limited v Jagrit Bamrah & Anor [2018] EWCA Civ 1367 applied; Halsbury's Laws of England 5th edn. Vol. 61A (2018) considered.

2. Where the Court finds that there is non-compliance with one of its orders, it must decide whether the non-compliance is sufficiently serious to impose a sanction under CPR 64.9. In this case, although the judge found that the appellant had failed to comply with the courts' order, she did not proceed to consider whether the non-compliance was sufficiently serious for the appellant to be sanctioned by imposing a fine, resulting in a further breach of the appellant's right to a fair hearing.

Rule 64.9 of the Civil Procedure Rules 2000 considered; Gempride Limited v Jagrit Bamrah & Anor [2018] EWCA Civ 1367 applied.

APPLICATIONS AND APPEALS

Case Name:

Nam Tai Property Inc.

v

Iszo Capital LP

v

Greater Sail Limited

West Ridge Investment Company Limited

[BVIHCMAP2021/0010]

(Territory of the Virgin Islands)

Date: Monday, 14th June 2021 to Wednesday 16th June 2021

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

Appearances:

Appellant: Mr. Matthew Hardwick, QC with him Ms. Rosalind Nicholson and Mr. Renell Benjamin for Nam Tai Property Inc.

Respondent: Mr. Martin Moore, QC and Mr. Edward Davies, QC with them Mr. Ben Griffiths and Mr. Nick Burkill for Iszo Capital LP

Second Defendant: Mr. Vernon Flynn, QC and Mr. Gerard Clarke, Ms. Gurprit Mattu and Mr. Andrew Emery for Greater Sail Limited

Issues: Commercial appeal – Appellate interference with trial judge’s exercise of discretion – Appellate interference with trial judge’s findings of fact – Sections 120(1) and 121 of Business Companies Act – Duty to exercise

powers for a proper purpose – Duty to act honestly and in good faith in the best interests of the company – Whether allotment of shares by directors was for improper purpose in breach of sections 120(1) and 121 of the Companies Act – Liquidity crisis – Whether judge erred in finding that there was no liquidity crisis – Approach trial court should take in determining whether there was a liquidity crisis – Whether judge erred in his evaluation and analysis of chronology of events in relation to the liquidity crisis – Whether Private Investment in Public Equity (PIPE) was proper purpose for dealing with liquidity crisis – Whether purpose of the PIPE was board entrenchment rather than raising capital – Whether the learned judge failed to take into account the relevant timeline in his evaluation of the liquidity crisis – Fresh evidence – Criteria to be satisfied in order to adduce fresh evidence – Principles in Ladd v Marshall – Whether fresh evidence could have been obtained with reasonable diligence for use at the trial – Whether bank demands would have had an important influence on the result of the case – Whether bank demands are credible evidence – Whether fresh evidence provides compelling evidence that a liquidity crisis existed – Whether judge went beyond pleaded case – Whether the directors' decision-making process flawed – Exercise of discretion afresh – Whether appellate court ought to exercise discretion afresh in the circumstances

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

The decision is reserved.

Case Name:

Reynold Young
v
The Queen

**[SVGHCRA2016/0009]
[St. Vincent and the Grenadines]**

Date: Monday, 14th June, 2021

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Mrs. Tammika DaSilva McKenzie

Issues: Appeal against sentence – Application to dismiss appeal for want of prosecution

Type of Oral Result Order Delivered: Oral Judgment

Result / Order: [Oral delivery]

The appeal is dismissed for want of prosecution.

Reasons: On 4th July 2013, the appellant Reynold Young was convicted in the High Court for the offence of theft and was sentenced to 5 years' imprisonment. By notice of appeal filed on 12th July 2016, the appellant appealed against his sentence on the ground that 'the punishment is too excessive in all of the circumstances'. Since the filing of the appeal, it appeared to the Court that the appellant took no steps to advance his appeal. He filed no submissions in support of his appeal nor did he appear at any status hearings concerning the appeal.

The appellant had served his sentence and was discharged from prison on 3rd November 2016. The appeal came up for status hearing before the Chief Registrar on 7th June 2021 whereupon the matter was listed for the sitting of the Court on 14th June 2021 for its disposition. In the meantime, the respondent filed submissions on 11th

June 2021 detailing the background of the appeal and applying to dismiss the appeal for want of prosecution. Also, on 11th June 2021, the appellant was served with notice of the hearing.

The Court was satisfied that: (i) the appeal was against sentence only; (ii) the appellant had served his sentence and was discharged from prison some 4 years and 7 months ago; (iii) he had taken no steps to advance his appeal just under 5 years since the filing of the notice of appeal; (iv) he was served to attend court on 14th June 2021 and had failed to do so. In all the circumstances, the appeal was dismissed for want of prosecution.

Case Name:

**Osrick Young
V
The Queen**

**[SVGHCRAP2017/0002]
[Saint Vincent and the Grenadines]**

Date:

Monday, 14th June, 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: No appearance

Respondent: Mrs Tammika DaSilva McKenzie

Issues:

Appeal against sentence - Application to dismiss appeal for want of prosecution

**Type of Oral
Result Order
Delivered:**

Oral judgment

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

The appeal is dismissed for want of prosecution.

Reasons:

On 17th November 2016, the appellant was convicted in the High Court for manslaughter and possession of a firearm and on 2nd December 2016 he was sentenced to 12 years' imprisonment for manslaughter and 5 years for possession of a firearm with the two sentences to run concurrently. By notice of appeal filed on 9th January 2017 the appellant appealed against his sentence of 12 years imprisonment for manslaughter on the grounds that (i) the learned judge did not take into consideration upon sentencing, the appellant's time spent on remand for his conviction, and (ii) the sentence of 12 years' imprisonment is manifestly excessive in all of the circumstances.

Since the filing of the appeal on 9th January 2017, it appeared to the Court that the appellant took no steps to advance his appeal. He never filed any submissions in support of his appeal or attended any hearings concerning the appeal. Meanwhile the appellant had served his sentence and was discharged from prison on 6th April 2017. The sentence of 7 years and 4 months was in fact deducted from the sentence of the appellant for the time that he stayed in prison before his conviction. In other words, the time which he spent on remand was taken into consideration. The appeal came up for status hearing before the Chief Registrar on 7th June 2021 whereupon, still with no appearance by the appellant, the matter was listed for the sitting of the Court on 14th June 2021 for its disposition.

The respondent filed submissions on 11th June 2021 detailing the background of the appeal and applying to dismiss the appeal for want of prosecution. Meanwhile on 10th June 2021 the appellant was informed of the hearing of this appeal on 14th June 2021 and had not appeared. The Court was satisfied that the appellant's appeal was of sentence only, that he had served his sentence and was discharged from prison over 3 years ago, that he had taken no steps to advance his appeal over 4 and a half years since the filing of his notice of appeal and that he had apparently shown no interest in pursuing the appeal, the pursuit of which would probably be of no value to him

in any case having served out his sentence. The appellant was informed on 10th June 2021 that his appeal was scheduled for hearing on 14th June 2021. He did not appear, and the appeal was accordingly dismissed for want of prosecution.

Case Name:

**Tedford Baptiste
V
The Commissioner of Police**

**[SVGMCRAP2017/0044]
[St. Vincent and the Grenadines]**

Date:

Monday, 14th June, 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: In person

Respondent: Ms. Shackell Bobb

Issues:

**Magisterial appeal against sentence – Assault with intent
– Burglary – Request by appellant for Magistrate Court sentences to run concurrently with High Court sentence –
Whether Court has juridical basis to order sentences imposed by courts of separate jurisdictions for different offences committed 5 years apart to run concurrently**

**Type of Oral
Result Order
Delivered:**

Oral Judgment

Result / Order:

[Oral delivery]

The appeal against sentence is dismissed.

Reasons:

This is an appeal by the appellant, Mr. Tedford Baptiste, against his sentences of 1 year for assaulting Amron Sutherland, another year for assaulting Jenique May and 4 years' imprisonment for burglary, with the three sentences to run concurrently. The appellant requested that these sentences, which run concurrently with each other, should run concurrently with a different sentence imposed by a different court at a different time. In fact, these sentences were imposed a year apart and the offences were committed 5 years apart.

Accordingly, there is no legal basis upon which this Court could determine that sentences imposed by different courts at different time with no connection to each other should be made to run concurrently on the basis that the person who committed these offences is the same person.

In these circumstances, this Court could find no basis on which to accommodate the appellant's appeal in having the magisterial court sentences run concurrently with the sentences before the High Court.

Case Name:

Cardel Jacobs

v

The Commissioner of Police

[SVGMCRAP2019/0029]

[St. Vincent and the Grenadines]

Date:

Monday, 14th June, 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Ms. Charmine Walters

Respondent: Ms. Renee Simmons

Issues:

Application by counsel for the appellant to be removed from the record – Application by appellant for an adjournment

Type of Oral
Result Order
Delivered:

Oral Decision

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

1. The application by Ms. Charmine Walters to be removed as counsel for the appellant Cardel Jacobs is granted.
2. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the state of Saint Vincent and the Grenadines during the week commencing 24th January 2022.

Reasons:

This is an application by learned counsel Ms. Charmine Walters to be removed from the record where she appears for the appellant Mr. Cardel Jacobs. The Court has considered the oral submissions made by counsel and the submissions made by the appellant. The Court was of the view that the application for removal from the record as counsel for the appellant should be granted.

In relation to the application by the appellant that the hearing of the appeal be adjourned to the next sitting of the Court in the State of Vincent and the Grenadines, the Court considered that in light of the application for removal of counsel, which was only made on the date set for the hearing of the appeal, and that application having been granted, it would not be fair and just for the appellant to prosecute the appeal on his own behalf. The Court also noted the non-opposition by the Crown to the application for an adjournment.

Case Name:

**Glenroy Browne
v
The Commissioner of Police**

**[SVGMCRAP2019/0039]
[St. Vincent and the Grenadines]**

Date:

Monday, 14th June, 2021

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Ms. Shackell Bobb

Issues: Oral application to withdraw appeal

Type of Result/Order Delivered: Oral judgment

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

The appellant, having indicated his desire to withdraw the appeal, the appeal is accordingly dismissed.

Reasons: Following a trial on 14th August 2018, the appellant, Glenroy Browne, was convicted of burglary and damage to property and sentenced to 4 years and 9 months respectively. The sentences were to run concurrently.

On 12th February 2020, the appellant filed a notice of appeal containing the following grounds of appeal: (i) insufficient evidence to substantiate the charges; (ii) unsafe conviction; and (iii) the sentence is too harsh and excessive. The appellant had filed no submissions in support of his appeal and had not done anything, according to the record, to advance his appeal since filing the notice of appeal 16 months ago. In the meantime, the appellant had served his sentence in full and was discharge on 18th February 2021.

The appellant appeared before the Court and informed that he wished to withdraw the appeal. In the circumstances, the appeal was accordingly dismissed.

Case Name:

**Raul Boyde
v
The Commissioner of Police**

**[SVGMCRAP2018/0034]
[St. Vincent and the Grenadines]**

Date:

Monday, 14th June, 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: In person

Respondent: Ms. Allana Cumberbatch

Issues:

Magisterial appeal against sentence – Whether sentences manifestly excessive in all the circumstances – Whether sentences should be served concurrently, consecutively, or be a combination of both

**Type of Oral
Result Order
Delivered:**

Oral Judgment

Result / Order:

[Oral delivery]

The appeal is allowed to the extent that the sentences totaling 7 years and 6 months' or 90 months' imprisonment imposed by the magistrate are varied in that the aggregate sentences to be served by the appellant is 4 years and 6 months or 54 months' imprisonment.

Reasons:

This is an appeal against sentence which was filed on 2nd July 2017 wherein the appellant stated that his sentences were excessive. The sentences arose out of 10 different charges proffered against the appellant for incidents which occurred between 24th March 2018 and 1st July 2018. The appellant broke into vehicles and stole various items from them over that period of time.

The appellant pleaded guilty to 4 charges of theft, 4 charges of damage to property and 2 charges of handling stolen goods at the Magistrates Court and was sentenced to 9 months' imprisonment for each of the charges and the sentences were to run consecutively. This meant that he would serve a total of 90 months in prison or 7 years and 6 months.

The respondent conceded the appeal in a number of respects. Learned counsel submitted that of the 10 offences for which the appellant pleaded guilty and was sentenced, two of the offences ought not to have been convicted and sentenced as they were in respect to receiving stolen property which same property he was charged and convicted for stealing. Therefore, there should only be 8 of 10 offences.

Of these 8, the prosecution conceded that in fact, there are 2 instances in which these sentences should run concurrently and not consecutively as they arose from a single incident. The first is with respect to damage to the motor car of Teresa Daniel where the appellant broke the rear triangle glass and then stole items from the vehicle. Therefore, the 2 sentences of 9 months for these offences should run concurrently as it was one incident which gave rise to the charges. The second instance is for 2 offences which occurred on 1st July 2018 for 2 cell phones and cash that were stolen as a result of a break in of a vehicle. The respondent conceded that it arose from a single transaction and that in accordance with the principles which govern consecutive and concurrent sentences, the sentences should run concurrently.

Accordingly, the respondent conceded that the aggregate sentence of 90 months for these 10 convictions should be reduced to 4 years and 6 months with two of the sentences being set aside all together in respect of the handling of

stolen property and 2 of the sentences in 2 instances running concurrently instead of consecutively.

These concessions were accepted by the Court and would result in the appellant serving a total of 4 years and 6 months instead of 7 years and 6 months as imposed by the magistrate.

Case Name:

Kemiah Nichols

v

The Commissioner of Police

[SVGMCRAP2020/0013]

[St. Vincent and the Grenadines]

Date:

Monday, 14th June 2021

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Ms. Rose-Ann Richardson

Issues:

Magisterial appeal against sentence – Whether appeal should be dismissed for want of prosecution

**Type of Oral
Result Order
Delivered:**

Oral Decision

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

The appeal is dismissed for want of prosecution.

Reasons:

The appellant was granted bail pending appeal and had absconded Saint Vincent and the Grenadines on a British passport. There was no record of his return into the State. The appellant appealed his sentence and the respondent

conceded that the sentence was excessive in the circumstances and that in lieu of incarceration, the appropriate fines should be substituted.

However, the appellant is absent and there was no reason advanced for his absence. Accordingly, the Court dismissed his appeal for want of prosecution.

Case Name:

Patricia Williams-John

v

Relton John

[SVGMCVAP2020/0006]

[St. Vincent and the Grenadines]

Date:

Monday, 14th June, 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: In person

Respondent: No appearance

Issues:

Oral application to withdraw appeal

**Type of Oral
Result Order
Delivered:**

Oral Judgment

**Result /
Order/Reasons:**

[Oral delivery]

IT IS HEREBY ORDERED THAT:

The appeal is dismissed having been withdrawn by the appellant on account of the fact that the respondent has, since the filing of the appeal, been deceased.

Case Name:

Lamond Barker

v

[1] Mary O'Garro

[2] Donna O'Garro

[SVGHCVAP2015/0021]

[Saint Vincent and the Grenadines]

Date:

Monday, 14th June, 2021

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Roderick Jones

Respondents: Ms. Paula David

Issues:

Civil appeal – Approach of appellate court to review of findings of fact by trial judge - Possessory title – Section 2 of Possessory Titles Act - Whether learned judge erred in concluding that appellant was not entitled to a declaration of possessory title – Whether learned judge failed to properly consider the weight of the evidence

**Type of Oral
Result Order
Delivered:**

Oral Judgment with written reasons to follow

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. Grounds 1, 2, 3 and 5 of the grounds of appeal are dismissed.**
- 2. Ground 4 of the grounds of appeal is allowed.**
- 3. The appellant is to pay the respondent's costs of the appeal in the sum of \$3,750 being 50% of the costs allowed in the court below.**
- 4. The Court will furnish written reasons for its decision at a later date.**

Case Name:

**C & W Antigua and Barbuda Limited
v
Antigua and Barbuda Workers Union**

**[ANULTAP2016/0003]
[Antigua and Barbuda]**

Date:

Tuesday, 15th June 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Applicant: Mr. Roger C. Forde, QC with Ms. Christel Wilson

Respondent: Mr. Justin L. Simon, QC

Issues:

Application for final leave to appeal to Her Majesty in Council – Application by respondent for sum to be placed in escrow pending hearing and determination of appeal

**Type of Order/
Result:**

Oral Decision

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. Final leave be granted to the applicant to appeal to Her Majesty in Council against the decision of the Court of Appeal of the Eastern Caribbean Supreme Court delivered on 23rd May 2019.**
- 2. The costs of this motion do abide the final determination of the appeal.**

Reasons:

This was a motion by the applicant for final leave to appeal to Her Majesty in Council. The motion was not opposed by the respondent. However, the respondent sought a condition that some amount of money be placed in escrow given the time lapse between the grant of conditional leave to appeal and the present motion for final leave.

The Court, having heard the submissions of learned Queen's Counsel, found no proper basis for imposing the proposed condition that the respondent suggested in the grant of the order of final leave.

Case Name:

**Saville Thomas
v
The Commissioner of Police**

**[SVGMCRAP2016/0042]
[St. Vincent and the Grenadines]**

Date:

Tuesday, 15th June, 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: In person

Respondent: Mrs. Tammika DaSilva McKenzie

Issues:

Magisterial appeal against sentence – Possession of firearm without licence – Section 4(3) of Firearms Act – Whether sentence imposed was manifestly excessive in the circumstances

**Type of Oral
Result Order
Delivered:**

Oral judgment

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

The appeal against sentence is dismissed.

Reasons:

The appellant, by way of notice of appeal filed on 3rd June 2018, appealed against his sentence of 5 years' imprisonment for possession of firearm and ammunition. The appellant indicated that he has served his time but had still pursued his appeal against sentence. The respondent, in its submissions, indicated that the sentence of 5 years imprisonment is in keeping with sentences imposed for an offence of that nature. In other words, it is not manifestly excessive.

The Court, having heard the submissions of the appellant and the Crown, was of the considered view that the sentence imposed was not manifestly excessive. The appeal against sentence was accordingly dismissed.

Case Name:

Okeno Fergus

v

[1] Mohammed Lavia

**[2] The Attorney General of Saint Vincent and the
Grenadines**

[SVGHCVP2021/0002]

[Saint Vincent and the Grenadines]

Date:

Tuesday, 15th June, 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Mr. Jomo Thomas with him, Ms. Shirlan Barnwell

Respondents: Mrs. Cerepha Harper-Joseph with Ms. Gabrielle Myers

Issues:

Interlocutory appeal – Section 3 of the Public Officers Protection Act – Whether learned master erred in concluding that Attorney General must be served with written notice within prescribed time pursuant to section 3 of the Act – Whether learned master erred in striking out claim for failure to serve the Attorney General – Section 5(a) of the Act – Requirement of party bringing action to prove service of notice under section 3 of the Act

**Type of Oral
Result Order
Delivered:**

Oral judgment

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The appeal against the order of the master made on 29th July 2020 is allowed.**
- 2. The appellant's claim is reinstated and set down for case management before the High Court.**
- 3. There is no order as to costs.**

Reasons:

This is an appeal against the decision of a master contained in a judgment delivered on 29th July 2020. In her judgment, the master concluded that the claimant, who is the appellant in this appeal, had failed to satisfy the mandatory conditions precedent to the filing of the claim and that based on the unchallenged evidence of the Attorney General that he was not served and the failure of the appellant to prove that he was, the master found that the claimant was in breach of sections 3 and 5(a) of the Public Officers' Protection Act. Section 5 having mandated that the claim be dismissed or otherwise terminated, the master held, that the court had no discretion in the matter. She held that the claim is obviously unsustainable and must be struck out as an abuse of the process of the court. The master accordingly struck out the claim and made no order as to costs.

By notice of interlocutory appeal filed on 1st February 2021, the appellant appealed against the order of the master

citing two grounds of appeal and asking that the Court set aside the order of the master dated 29th July 2020, that the claim be reinstated and that it be set down for case management.

By notice filed on 11th May 2021, the Attorney General's gave notice of its non-opposition to the appeal. Mr. Thomas presented brief oral submissions further advancing his submissions filed on 1st February 2021 and on an indication from Mrs. Harper-Joseph of the Attorney General's chambers that the respondents do not oppose the appeal, the Court accordingly ordered that the appeal is allowed, that the claim is reinstated and shall be set down for case management before the High Court and that there shall be no order as to costs.

Case Name:

Danrick Williams

v

Daron Andrews

[SVGHCVAP2017/0007]

[St. Vincent and the Grenadines]

Date:

Tuesday, 15th June, 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Ms. Ashelle Morgan

Respondent: Mr. Richard Williams

Issues:

Civil appeal – Exercise of judicial discretion - Claim for recovery of possession initiated by Fixed Date Claim - Whether learned judge had jurisdiction to grant summary judgment to the respondent given rule 15.3(c) of the Civil Procedure Rules 2000 – Rules 26.5(1) and 27.2(3) of the Civil Procedure Rules 2000 – Whether the trial judge erred in the procedure for awarding summary judgment by entering summary judgment without hearing evidence in support of the respondent's claim – Whether the trial judge erred in finding as a fact that the respondent is the paper title owner of the disputed land – Whether the trial judge erred in

finding that the defence and counter claim disclosed no real grounds for defending the claim – Whether the trial judge erred in finding that the defence and counter claim were an abuse of the process of the court – Whether the trial judge improperly exercised his discretion to strike out the defence and counter claim – Whether in absence of evidence to substantiate the respondent's ownership of the disputed land, the trial judge ought to have struck out the respondent's claim

Type of Oral
Result Order
Delivered:

Oral Judgment

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The matter is remitted to the High Court for case management.
3. Each party shall bear its own costs.

Reasons:

This was an appeal against the decision of the learned judge, by which the judge struck out the defence and counterclaim of the appellant and granted summary judgment to the respondent. The respondent conceded that the judge erred in doing so and the Court was of the considered view that he was correct in making that concession.

Case Name:

Michael Ullman
v
[1] Lars G Abrahamsson
[2] Luma Limited

[SVGHCVAP2018/0010]

[St. Vincent and the Grenadines]

Date: Tuesday, 15th June, 2021

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Richard Williams

Respondents: First respondent in person

Issues: Civil appeal - Application for adjournment by respondent –
Application for directions by appellant

**Type of Oral
Result Order
Delivered:**

Directions

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. The respondent shall file and serve written submissions with authorities on or before 31st August 2021.
2. The appellant is at liberty to file and serve written submissions with authorities in reply, if necessary, on or before 15th September 2021.
3. All documents for service shall be served at the email address xxxxx@xxx.com
4. There is no order as to costs.
5. The hearing of the appeal is adjourned to a date to be fixed by the Chief Registrar once the time for the filing of written submissions has expired.

Reasons:

This is an appeal against orders made by the judge contained in a judgment dated 30th July 2018. The notice of appeal against the judgement was filed on 11th September 2018 but when the matter came up for status hearing on 6th January 2021, no submissions had been filed by either side. The Court, on that occasion, gave directions for the appellant to file and serve written submissions on or before

26th March 2021 and for the respondent to file and serve written submissions on or before 26th April 2021 with liberty to the appellant to file and serve written submissions in reply on or before 11th May 2021. The appeal was then set down for hearing at this sitting of the Court.

The appellant duly filed his submissions on 26th March 2021 but served them on 5th April 2021. The respondents have not filed and served any submissions. The 1st respondent appeared in Court today without counsel and indicated that he is being represented by Mr. Joseph Delves who was not present. Mr. Abrahamsson requested an adjournment of the appeal to allow him to put his house in order in relation to this matter. Mr. Williams requested that if an adjournment were to be granted, it should be a short adjournment for hearing in another jurisdiction of this Court.

The Court noted the fact that although the appeal was filed since 11th July 2018, the appellant's submissions were only filed in March 2021 and served in April 2021 and that this is the first hearing of the appeal before the Full Court. In the circumstances, the Court was minded to grant an adjournment of the hearing of the appeal upon the oral application of the first respondent and the appeal was adjourned to a date to be fixed by the Chief Registrar in any jurisdiction of this Court once the dates fixed for the filing of the submissions and reply have passed.

Case Name:

Gabrielle M. Hill-Junke

v

[1] Sea Grape Limited

[2] Mustique Company Limited

[3] William B. Morton, Jr

[4] Leila S. Morton

[SVGHCVAP2021/0001]

[St. Vincent and the Grenadines]

Date:

Wednesday, 16th June, 2021

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Floyd Ronald Jenkins with him, Mr. Joseph Delves

Respondents: Mr. Akin John holding a watching brief for the first respondent

Ms. Mandella Peters with her, Ms. Cheryl Bailey for the second respondent

Mr. Sten Sargeant and Mr. Mikhail Charles for the third and fourth respondents

Issues:

Interlocutory appeal – Review of exercise of discretion - Restraint of appellate court in interfering with master’s exercise of discretion – Application by appellant for specific disclosure filed first in time – Application by third and fourth respondents for summary judgment – Whether the master erred in exercising her discretion in deciding to hear the application for summary judgment first

Type of Oral
Result Order
Delivered:

Oral judgment

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

6. The appeal stands dismissed.
7. The matter is remitted to the master for further directions to give effect to the order of 10th December 2020.
8. The appellant shall pay costs of \$2,500 to the second respondent and also costs in the sum of \$2,500 to the third and fourth respondents.

Reasons:

This is an appeal against the order of a master. The appeal challenges the exercise of discretion of the master to determine the order in which various applications should be taken up. The applications were for summary judgment and specific disclosure. The latter application was filed first in time. Four grounds of appeal were filed against the master's order. Ground one essentially states that the master failed to properly consider and apply St. Kitts Nevis Anguilla National Bank Limited v Caribbean 6/49 Limited [2003] ECSCJ No. 26 (delivered 31st March 2003) which the appellant states establishes that applications filed first in time ought to be heard first. The appellant asserts that although the master said that she was guided by the line of cases namely Caribbean 6/49 and The Attorney General of Saint Lucia v Darrel Montrope [2020] ECSCJ No. 235 (delivered 9th July 2020), she erred by finding that because of the wide-ranging nature of the request for information, the appellant's application should not have 'any priority in these proceedings'. On ground 3, the appellant states that the master failed to properly consider or give sufficient weight to the learning of Darrel Montrope that applications challenging the court's jurisdiction are threshold applications and are entitled to jump the queue but that an application like that of the third and fourth respondents, being the summary judgment application was not a threshold application. It was contended that notwithstanding the fact that the master agreed that the

third and fourth respondents' application was not a threshold application, her approach that she would exercise her discretion and hear the application for summary judgment first, that it made no sense to order standard disclosure as this was 'merely another version of the application for specific disclosure' and that the appellant's application should be stayed, erroneously elevated the third and fourth respondents' summary judgment application to a threshold application.

The central issue in this appeal is whether the master erred in exercising her discretion in deciding to hear the application for summary judgment first. The appellant did not dispute that the master had a discretion in the matter nor does the appellant dispute the law which applies to the exercise of discretion. It is not therefore that the master was acting in the exercise of a discretion. The grounds upon which an appellate court can interfere with such a discretion are well-known. An appellate court cannot interfere with the exercise of discretion by a judge or master who has applied the correct principles and who has taken into account matters which should be taken into account and left out of account irrelevant factors. Unless the Court is satisfied that the decision is so plainly wrong that it must be regarded as being outside the ambit within which reasonable disagreement is possible. The Court is of the view that the master's decision was within the plenitude of her discretionary powers. The master properly pointed out that she had a discretion to decide which issues are to be resolved and that ultimately the court must carry out this function in the individual circumstances of each case and importantly in furtherance of the overriding objective to deal with cases justly.

In exercising her discretion, the master is not necessarily bound by the date of filing of the application; meaning that it is not a first in time, first in right matter. The nature of the application is the relevant matter. It is important that the master pays regard to the overriding objective of dealing with cases justly when exercising a discretion.

The Court, having heard the oral submissions of the appellant in support of the appeal and having read the written submissions of the respondents, is not satisfied that the appellant has met the strong threshold so as to enable this Court to interfere with the exercise of the

master's discretion. It is well-known that an appellant who invites this Court to interfere with the exercise of discretion faces a very serious task; it is a very high hurdle. In the circumstances, it cannot be contended that the master exceeded the generous ambit within which reasonable disagreement was possible. Accordingly, the Court has no alternative but to dismiss the appeal.