

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
(VIDEOCONFERENCE)
SAINT LUCIA
MONDAY, 28TH JUNE – THURSDAY 1ST JULY 2021

JUDGMENTS

Case Name: **Paul Chet Greene**

v

[1] Omari Samuel
[2] Ansley Charles

[ANUHCVP2018/0019]
(Antigua and Barbuda)

Date: **Tuesday, 29th June 2021**

Coram for delivery of judgment: **The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal**
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:
Appellant: **Ms. Chantal Thomas**

Respondents: **No appearance**

Issues: **Interlocutory appeal — Insurance law — Section 7(1) of the Motor Vehicles Insurance (Third Party Risks) Act — Permanent stay of proceedings of assessment of damages — Whether the master failed to consider section 7(1) of the Motor Vehicles Insurance (Third Party Risks) Act in arriving at her decision — Whether the master erred in failing to find that upon entry of the default judgment the insurer shall pay to the first respondent any sum payable thereunder in respect of the liability — Whether the appellant was liable to pay**

the first respondent any sum payable from the default judgment — Whether the master erred in failing to rule that the insurer acted as the appellant's agent both with respect to the Release and the Commercial Motor Bodily Injury Release documents, thereby binding the appellant who was the insurer's principal — Whether the master erred in failing to find that the insurer had no legal authority to contract on its own behalf with the first respondent to limit its liability for bodily injuries given section 7(1) of the Motor Vehicles Insurance (Third Party Risks) Act — Whether the payment of \$250,000.00 by the insurer to the first respondent, and the construction of the Commercial Motor Bodily Injury Release and the Release documents establish that the claim was fully settled as against the appellant and should be permanently stayed

**Results and
Reasons:**

Held: dismissing the appeal, affirming the order of the learned master and ordering Mr. Greene to pay the costs of the appeal to Mr. Samuel to be assessed by the master if not agreed within 21 days of the date of this order, that:

- 1. The effect of section 7(1) is to impose liability upon insurers directly to injured third parties. It requires that the insurer shall pay to the person entitled to the benefit of a judgment obtained any sum payable thereunder in respect of the liability as is required to be covered by the policy. The terms and effect of section 7(1) do not preclude the insurer from contracting on its own behalf with Mr. Samuel to limit its liability for bodily injuries. Accordingly, the complaint that the insurer had no legal authority to contract on its own behalf with Mr. Samuel to limit its liability for bodily injuries, given section 7(1) of the MVITPRA, is not made out. Further, even if the master had considered section 7(1), by reason of sections 4(1)(a) and (b)(v), such a policy shall not be required to cover liability in respect of any sum in excess of \$10,000.00 for any one claim. As for the related complaint that the master failed to find that Mr. Greene was not liable to pay Mr. Samuel any**

sum payable from the default judgment, section 7(1) does not operate to exclude, neither does it preclude Mr. Samuel's ability to claim payment directly from Mr. Greene to recover damages in excess of \$10,000.00.

Sections 7(1), 4(1)(a) and (b)(v) of the Motor Vehicles Insurance (Third Party Risks) Act Cap. 288, Laws of Antigua and Barbuda applied; *The Free Lanka Insurance Company Limited v AE Ranasinghe (Ceylon)* [1963] UKPC 37 considered.

2. From the moment of the accident, Mr. Greene's insurer had actual authority, derived from clause 5 of the insurance policy, to take over and conduct the defence and had full discretion in the conduct of any proceedings and in the settlement of the claim. However, clause 5 is not carte blanche to insurers to conduct proceedings in their own interests, without regard to reality or to their insured's account of events or to the fact that here the claim was likely to severely affect the insured as well as the insurer. While the insurer is capable of acting in the dual role of agent for Mr. Greene and in its own interest, there is, however, no evidence that it was acting other than as the agent for Mr. Greene, nor that it acted in a manner that was detrimental to him.

Ramsook v Crossley (Trinidad and Tobago) [2018] UKPC 9 applied; *Groom v Crocker* [1939] 1 KB 194 applied.

3. A disclosed principal may sue or be sued on any contract made on his behalf by his agent acting within the scope of his actual authority or whose acts are validly ratified. There is no doubt that Mr. Greene was a disclosed principal with the rights attendant upon that office, and the insurer was his agent. The master, however, correctly indicated that the Commercial Motor Bodily Injury Release did not state that the receipt of the money acts as a discharge of liability from any proceedings or further proceedings capable of arising out of the consequences of the accident. Furthermore, there were no parties to the Release which was only

signed by Mr. Samuel's counsel on his behalf. The master was therefore also correct in finding that the insurer's failure to expressly contract with Mr. Samuel to fully discharge the matter, upon receipt of the \$250,000.00, meant that there was no full and final settlement of the claim and that the purported release of the insurer alone from any further liability cannot be extended to Mr. Greene. In the absence of a release from liability, the payment of the contractual maximum sum can only serve as a measure to reduce the potential financial liability for damages for Mr. Greene. He therefore remains liable for any damages exceeding the sum paid by the insurer.

Basma v Weekes and others [1950] AC 441 applied; Hugh Beale: Chitty on Contracts (33rd edition, Sweet & Maxwell UK 2020) considered; Bowstead & Reynolds on Agency (Edited by Peter G. Watts & F.M.B. Reynolds: 21st ed, Sweet & Maxwell Ltd. 2018) considered; Filatona Trading Ltd and another v Navigator Equities Ltd and others; Danilina v Chernukhin and others [2020] 2 All ER (Comm) 851 followed; Hon Professor Francis M.B. Reynolds DCL FBA: Bowstead & Reynolds on Agency, (18th Edn, Sweet & Maxwell, 2006) considered.

Per Webster JA (concurring):

4. The meaning of the Release is clear and unambiguous, releasing only the insurance company from further liability. Mr. Greene's liability under the default judgment continued subject only to Mr. Samuel giving credit for the \$250,000.00 paid to him by the insurance company.

Kenneth Kryz and another v New World Value Fund Limited and others [2014] ECSCJ No. 108 (delivered 26th May 2014) followed; Ramsook v Crossley (Trinidad and Tobago) [2018] UKPC 9 applied.

5. There is nothing in clause 5 of the insurance policy that suggests that the insurance company could not look after its own interest by paying the \$250,000.00 to Mr. Samuel and securing a release from him. Therefore, the learned master did not err in taking into consideration that the insurance company was

acting in its own interest in settling the claim against it for the maximum amount of the policy.

Case Name:

Stephen Molyneaux
v
[1] Her Majesty's Prison
[2] Superintendent of Prisons
[3] Head of Prison Function, Eustace Allen

[MNIHCVAP2019/0010]
(Montserrat)

Date:

Wednesday, 30th June 2021

**Coram for
delivery of
judgment:**

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Appellant:

In Person

Respondent:

Ms. Renee Morgan

Issues:

Civil appeal – Incentives and Earned Privileges Scheme ('IEPS') – Prison Act Cap. 10.04 – Prison Rules Cap. 10.04 – Whether the IEPS is ultra vires the Prison Rules – Whether there is a legal basis for the establishment of the IEPS – Section 21 of the Prison Act – Rule 6 of the Prison Rules – Whether appellant's confinement during specific period amounted to cellular confinement and was therefore unlawful – Whether appellant's confinement during specific period amounted to removal from association with other inmates and was contrary to Rule 26 of the Prison Rules – Whether learned judge erred in his finding that confinement in a cell in excess of twenty-two hours amounted to cellular confinement – Whether learned

judge erred in his finding that 'basic level' under the IEPS was equivalent to cellular confinement under the Prison Rules – Appellate interference with trial judge's findings of fact – Whether learned trial judge erred in refusing to order any declarations or make any award of damages to appellant

Type of Order:

Oral Decision

Result and Reason:

Held: allowing the appeal in part; allowing the counter appeal; and making the orders set out in paragraph 77 of this judgment, that:

- 1. The IEPS was legally implemented pursuant to section 21 of the Prison Act and rule 6 of the Prison Rules. The effect of section 21 of the Prison Act is that Parliament delegated, to the Governor-in-Council ('Executive Branch'), the power to make rules for the management of the prison. While pursuant to rule 6 of the Prison Rules, the Executive Branch granted to the Superintendent of Prisons, with the approval of the Governor, the power to establish a system of privileges for inmates of the prison. As such, when read conjointly, section 21 and rule 6 provide the legal basis for the establishment of the IEPS.**

Section 21 of the Prison Act Cap. 10.04, Revised Laws of Montserrat 2013 applied; Rule 6 of the Prison Rules Cap. 10.04, Revised Laws of Montserrat 2013 applied; R (on the application of Potter and ors.) v Secretary of State for the Home Department [2001] EWHC Admin 1041 applied; R (on the application of Barrie Hewlett) v The Secretary of State for Justice [2009] EWHC (Admin) 2979 applied.

2. In the exercise of the power under rule 6, the IEPS was created by the Superintendent of Prisons with the approval of the Governor. The provisions of the IEPS outline in detail, the privileges to be afforded to inmates at various levels. The creation of the IEPS did not however, amend any portion of the Prison Rules nor create a separate system of discipline. The IEPS simply provides additional support to the existing prison system as regulated by the Prison Act and Prison Rules. As such, for the most part, the IEPS is not contrary to the provisions of the Prison Act and Prison Rules and is therefore not ultra vires. However, insofar as the IEPS, as it stood at the time of the institution of these proceedings, permitted at the basic level, only 1 hour of recreation, it was inconsistent with rule 17 of the Prison Rules, which provides that a prisoner was to be afforded no less than 1 hour recreation when he was not engaged in outdoor activities with other inmates. Therefore, in this limited form, this specific provision in the IEPS was ultra vires and therefore of no effect.

Rule 17 of the Prison Rules Cap. 10.04, Revised Laws of Montserrat 2013 applied; R (on the application of Barrie Hewlett) v The Secretary of State for Justice [2009] EWHC (Admin) 2979 applied.

3. Cellular confinement is not defined in the Prison Act or in the Prison Rules. It is however defined in the Mandela Rules as confinement in a cell over a period of time for more than 22 hours per day and that the confinement must be without meaningful human contact. While, neither the Prison Act nor the Prison Rules define cellular confinement, on a careful reading of the Prison Rules and the Code of Conduct for Prison Officers, it shows that rules 21(10), 31(1), 33(1)

and 34(1) and (3) of the Prison Rules and rules 14 and 43 of the Code of Conduct for Prison Officers when read conjointly, embrace the concept that confinement without meaningful human contact would amount to cellular confinement. These rules provide that cellular confinement could only be imposed on a prisoner where the prisoner is found guilty of an offence against discipline either by the Superintendent of Prisons or Senior Officer in charge for a limited period of no more than 3 days and by the Prison Visiting Committee for a period of 56 days.

UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly, 8 January 2016, A/RES/70/175 applied; Rules 21(10), 31(1), 33(3) and 34 of the Prison Rules Cap. 10.04, Revised Laws of Montserrat 2013 applied; Rules 14 and 43 of the Code of Conduct for Prison Officers, Cap. 10.04, Revised Laws of Montserrat 2013 applied.

4. In the case at bar, Mr. Molyneaux, was not convicted of any offence against discipline and was therefore not sentenced by the Superintendent or the Prison Visiting Committee. However, he was confined in the juvenile cell, on three separate occasions for 30, 43 and 46 days respectively, without meaningful human contact. He was also not let out his cell except when offered 1 hour recreation. While in the juvenile cell, Mr. Molyneaux was not let out to have meals with other inmates, he was not permitted purposeful activity as permitted by rule 18, he had no access to reading materials, television and radio and his only association was with the prison officer who gave him meals and took him for 1 hour recreation. It follows,

that these circumstances amounted to cellular confinement and his cellular confinement was unlawful since he was not convicted of any offence against discipline contrary to rule 30 and his cellular confinement was not imposed in accordance with rule 34 of the Prison Rules.

UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly, 8 January 2016, A/RES/70/175 applied; Rules 31(1), 33(3) and 34(1), and (3) of the Prison Rules Cap. 10.04, Revised Laws of Montserrat 2013 applied; *Shahid v Scottish Ministers* [2015] UKSC 58 applied; *Prison Officers Association v Iqbal* [2009] EWCA Civ 1312 considered.

5. The IEPS, unlike cellular confinement, is not a disciplinary measure, rather it is a scheme that allows inmates to enjoy certain privileges if they are of good behaviour. An inmate at the basic level enjoys all the privileges afforded under the Prison Rules, in addition to those privileges outlined in the IEPS for inmates at the basic level. An inmate in cellular confinement on the other hand is being punished and does not enjoy the normal privileges accorded to an inmate, until the expiration of his cellular confinement. Critically during this period, he does not enjoy meaningful human contact. Therefore, the learned judge erred when he found that the 'basic level' under the IEPS was the same as cellular confinement under the Prison Rules.

Prison Rules Cap. 10.04, Revised Laws of Montserrat 2013 applied.

6. The Prison Rules recognise the importance of prisoners being able to associate with each

other. Notwithstanding this, rule 26 of the Prison Rules permits the Superintendent of Prisons, with the approval of a member of the Prison Visiting Committee or Governor, to remove an inmate from association with other inmates in excess of twenty-four hours, for the maintenance of order and discipline in a prison. This removal from association means complete removal from all contact with other prisoners.

Rule 26 of the Prison Rules Cap. 10.04, Revised Laws of Montserrat 2013 applied; Syed v Secretary of State for Justice [2019] EWCA Civ 367 applied.

7. In this case, the learned trial judge having heard the evidence before him, found that Mr. Molyneaux was not removed from association as contemplated by rule 26 of the Prison Rules. It is well settled that an appellate court would only be compelled to interfere with a trial judge's finding of fact where there is no evidential basis to support the findings of the trial judge. As such, where there was a sufficient evidential basis to support the finding that during Mr. Molyneaux's time spent in the cells other than the juvenile cell, he was able to associate with other inmates, the appellate court is not so compelled to interfere with the judge's findings. In this regard rule 26 of the Prison Rules was not breached. However, there was uncontroverted evidence that when Mr. Molyneaux was kept in the juvenile cell, he was not able to associate with other prisoners. In those circumstances, and with no approval having been given for Mr. Molyneaux to be removed from association, the Court is entitled to interfere with the trial judge's findings of fact and find that Mr. Molyneaux's removal during this period was contrary to rule 26 and thus unlawful.

Rules 17, 18, 19, 21 and 26 of the Prison Rules Cap. 10.04, Revised Laws of Montserrat 2013

applied; R (on the application of Bourgass and another) v. Secretary of State for Justice [2015] UKSC 54 applied; Syed v Secretary of State for Justice [2019] EWCA Civ 367 applied; Ming Siu Hung v JF Ming Inc 2021 UKPC 1 applied.

8. A prisoner does not have a cause of action in damages where there is a breach of the Prison Rules. A prisoner's recourse would be a remedy applicable to an administrative action. In the circumstances of this case, where the prison authorities misapprehended the effect of the IEPS and the Prison Rules, Mr. Molyneaux is entitled to declaratory orders and an award of costs both in the lower court and in this Court.

R v Deputy Governor of Parkhurst Prison and others, ex parte Hague [1991] 3 All ER 733 applied; R (on the application of Bourgass and another) v. Secretary of State for Justice [2015] UKSC 54 applied.

APPLICATIONS AND APPEALS

Case Name:

**Cable & Wireless (St. Lucia) Limited
v
Steward Bernard**

**[SLUHCVP2019/0011]
(Saint Lucia)**

Date:

Monday, 28th June 2021

Coram:

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

Appearances:

**Applicant /
Respondent:**

Mr. Gerard Williams

**Respondent /
Appellant:**

Mr. Deale Lee

Issues:

Civil appeal – Application to strike out appeal – Failure to prosecute appeal – Whether the appellant’s failure to prosecute appeal amounted to an abuse of process – Extension of time – Inordinate delay - Length of delay – Reasons for delay – Whether applicant provided good explanation for delay – Whether appeal has real prospect of success – Prejudice to respondent

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is struck out.**
- 2. The application for extension of time is refused.**
- 3. The appellant/respondent shall pay to the respondent/applicant costs fixed in the sum of \$1,500.00 in respect of both applications on or before Monday 12th July 2021.**

Reason:

There were two applications heard before the Court. Firstly, an application to strike out the appeal by the applicant/respondent for failure by the respondent/appellant to proceed with prosecuting its appeal in accordance with the rules of Court and secondly, an application by the respondent/appellant to extend the time for filing the record of appeal, that application being filed belatedly in March 2021.

The Court considered both applications together and arrived at the view based on the affidavits which were put forward by both sides that, the delay was inordinate, the reasons given for the delay by the respondent/appellant were unsatisfactory and were therefore not good reasons. The Court was also satisfied that the applicant/respondent had been prejudiced by the delay, given the nature of the matter, in relation to his pension benefits. Further, the Court

was of the considered view, that even if it were to overlook those aspects of the matter or to give them less prominence in weighing the circumstances in the scale, the prospects of success were not good prospects in relation to the appeal, especially given the exercise which the court below had of interpreting a deed of settlement agreement which states in its recitals, that it is governed by the laws of Saint Lucia. Therefore, in accordance with the principles that have been well expounded in the line of cases such as Joseph Hyacinth v Allan Joseph GDAHCVAP2015/0025 (delivered 20th June 2016, unreported) and Lindsay F.P. Grant et al v Tanzania Tobin Tanzil SKBHCVAP2020/0004 (delivered, 6th July 2020, unreported), the Court was of the view that the appeal should be struck out and the extension of time for filing the record of appeal be dismissed.

The Court stated that it must exercise its powers not to allow appeals with no good prospects or real prospects of success, to proceed in circumstances where the Court's indulgence is being sought, when there has been undue delay without any good explanation. Therefore, the Court held that the appeal be struck out and that the application for an extension of time be refused. The Court also held that the costs of the application to strike out the appeal and the application for the extension of time, should be borne by the respondent/appellant fixed in the sum of \$1,500.00 to be paid on or before 12th July 2021.

Case Name:

**Dr. Keith Mondesir
v
Hyacinth Dwarkasingh
[SLUHCVAP2018/0023]
(Saint Lucia)**

Date:

Monday, 28th June 2021

Coram:

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

Appearances:

**Applicant /
Respondent:**

Mr. Sahleem Charles

**Respondent /
Appellant:**

Mr. Horace Fraser

Issues:

**Civil appeal - Application to strike out notice of appeal
for want of prosecution**

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

**The appeal, on the application of the respondent is
dismissed for want of prosecution with costs to the
applicant/respondent fixed in the sum of \$1,500.00 to
be paid on or before Monday 12th July 2021.**

Reason:

**The Court noted that the appellant appears to have no
interest in pursuing his appeal. There was no objection
to the application to strike out the appeal from counsel
for the appellant.**

Case Name:

**Alban James
trading as Bigguy Construction**

v

[1] Jasdip Limited

[2] David Jackson

**[SLUHCVAP2021/0003]
(Saint Lucia)**

Date:

Monday, 28th June 2021

Coram:

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

The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Horace Fraser

Respondents: No appearance

Issues:

Application for leave to appeal – Rule 62.2 of the Civil Procedure Rules 2000 – Whether application for leave to appeal was filed out of time.

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

The application for leave to appeal the order of St. Rose- Albertini J dated the 10th of February 2021 is dismissed.

Reason:

The Court considered that the applicant had filed his application on 26th February 2021 for leave to appeal against an order of the court below dated 10th February 2021. The application was therefore filed one day outside of the 14 days allowed under rule 62.2 of the Civil Procedure Rules within which to seek leave to appeal. The Court considered further that there was also no application before it for an extension of time within which to seek leave to appeal. In the circumstances the Court was of the view that the application for leave to appeal ought to be dismissed.

Case Name:

**[1]Norton Gaspard
[2]Elfridge Gaspard
[3]Heirs of Evariste Gaspards represented by
Vivianne Gaspard- Aimable**

v

**Barnard Isidore representative of the Heirs of
Zephern Mathieu**

[SLUHCVAP2021/0010]

(Saint Lucia)

Date: Monday, 28th June 2021

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

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mr. Alvin St. Clair

Issues: Civil appeal – Rectification - Section 98 Land Registration Act Chapter 5.01- Sections 20, 22 and 23 of Land Adjudication Act Chapter 5.06 – Whether the learned judge misdirected herself and erred in law in her interpretation of section 22 of the Land Adjudication Act – Whether learned judge failed to distinguish between the adjudicator’s administrative and judicial functions as set out in sections 15 and 23 of the Land Adjudication Act – Whether section 22 of the Land Adjudication Act ascribes unto the adjudication officer the function of review – Whether the learned judge ought to have found that the second decision of the Adjudication Officer which was eventually certified as the final adjudication record was a nullity- Rights of appeal against decision of Adjudication Officer

Type of Order: N/A

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

**Joseph Cadette
v
St. Lucia Motor & General Insurance Company
Limited**

**[SLUHCVAP2018/0039]
(Saint Lucia)**

Date:

Tuesday, 29th June 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price -Findlay, Justice of Appeal
[Ag.]**

Appearances:

Applicant: Mr. Leslie Prospere

Respondent: Ms. Sueanna Frederick

Issues:

Petition for conditional leave to Her Majesty in Council

**Type of
Order:**

Oral Decision

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

**Leave is granted to the petitioner to withdraw the
petition and accordingly the application for
conditional leave to appeal to Her Majesty in Council
is dismissed.**

Reason:

**The Court was to consider a petition by the applicant for
conditional leave to Her Majesty in Council against the
decision of the Court delivered on the 22nd of February 2021.**

The applicant, however, indicated to the Court that the petition was not filed within the time required and therefore requested to withdraw the petition. The Court accordingly granted leave to withdraw the application and dismissed it.

Case Name:

Simon Marius

v

The Queen

**[SLUHCRAP2017/0002]
(Saint Lucia)**

Date:

Tuesday, 29th June 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
[Ag.]**

Appearances:

Appellant/Applicant: In person

Respondent: Mr. Stephen Brette

Issues:

Application for waiver of cost of transcript

**Type of
Order:**

Oral Decision

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

**The application for waiver of costs of transcripts is
dismissed.**

Reason:

**The Court considered an application by Mr. Simon Marius
for a waiver of the costs of transcripts in relation to his
appeal against sentence, his appeal against conviction**

having been dismissed in 2012. The Court was of the view that the record which was used in 2012 in relation to the appeal against conviction is the same record. In those circumstances, the Court was of the view that there was no reasonable basis to order a new record to be prepared for the appellant/applicant, rather the record which was handed to his counsel should be retrieved and provided to him. The Court considered that such assistance could be provided through the prison services with assistance of the Registrar of the High Court.

In view of those circumstances the Court dismissed the application for waiver of transcript made by the appellant/applicant.

Case Name:

Adelaide Joseph
v
Computron Limited
[SLUHC VAP2019/0017]
(Saint Lucia)

Date: Tuesday, 29th June 2021

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

Appearances:

Appellant: Ms. Natalie Da Breo

Respondent: Ms. Paulette Francis

Issues: Civil appeal – Land law – Indefeasibility of title – Overriding interest – Nature of occupation of land – Claim for possession of land – Claim to overriding interest by prescription under section 28 of Land Registration Act Chapter 5.01 – Actual occupation – Whether learned judge

failed to consider respondent's failure to make necessary enquiries pursuant to section 28 of the Land Registration Act prior to completion of sale – Section 28(g) -Proprietary interest – Whether trial judge failed to investigate appellant's proprietary interest in land - Land adjudication process – Section 23 of Land Adjudication Act Chapter 5.06 – Process of first registration under Land Registration Act – Whether first registration interrupts prescription – Whether first registration was made by mistake and therefore subject to rectification – Section 98 of Land Registration Act – Whether court was required to go behind land register.

Type of
Order:

N/A

Result /
Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Clint Louis
v
Miguel Jeffrey

[SLUHCVAP2018/0010]
(Saint Lucia)

Date:

Tuesday, 29th June 2021

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mde. Esco Henry, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Alvin St. Clair

Respondent: Mr. Dexter Theodore QC, with him, Ms. Sueanna Frederick

Issues: Civil appeal - Personal Injury - Approach of appellate court to findings of fact - Appellate court's interference of an award of damages - Apportionment of liability - Whether judge erred in finding that appellant was liable in the circumstances - Whether learned judge erred in assessment of damages for pain and suffering and loss of amenities - Whether learned judge failed to draw reasonable inferences - Whether learned judge went against weight of evidence in arriving at his decision - Quality of evidence - Whether it was open to judge to reject the evidence before him

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: [1]Curlan Joseph
[2]Clinton Gilbert
v
The Queen

[SLUHCRA2015/0005, 0004]
(Saint Lucia)

Date: Tuesday, 29th June 2021

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price - Findlay, Justice of Appeal
[Ag.]

Appearances:
Appellants: Mr. David Moyston for the first appellant
Mr. Lorne Theophilus for the second appellant

Respondent: Ms. Isa Cyril and Ms. Tanya Alexis-Francis

Issues: Criminal appeal – Identification evidence – Section 100 of the Evidence Act, Cap 4.15 – Whether the judge erred by failing to apply section 100 of the Evidence Act in admitting identification evidence – Adequacy of the judges summation – Whether the learned judge failed to adequately direct the jury pursuant to section 102 of the Evidence Act — Whether allowing the evidence of Garvin Bellase was more prejudicial than probative – Whether the learned judge failed to apply the correct principles in sentencing the appellant

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgement is reserved.

Case Name: [1] Francis Chitolie
[2] Vance Chitolie
v
St. Lucia National Housing Corporation

[SLUHCVAP2020/0022]
(Saint Lucia)

Date: Wednesday, 30th June 2021

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

Appearances:
Appellants: Dr. Lloyd G. Barnett, Mr. Weiden Daley and Dr. Synther Chitolie

Respondent:

**Mrs. Petra Nelson-Jeffrey, Mrs. Esther Greene-Ernest and
Mr. Sahleem Charles**

Issues:

Civil appeal - Land law - Indefeasibility of Title- Claim for possession of land - Extent of occupation - Actual possession - Claim to overriding interest by prescription under section 28 of Land Registration Act cap. 5.01 - Whether appellants are entitled to the subject land by virtue of their long possession - Sections 27 and 28(f) and (g) of the Land Registration Act Chapter 5.01 - Whether first registration of land interrupts prescription period prior to Land Registration Title - Jurisdiction to determine claims for prescriptive title - Article 2103A of Civil Code of Saint Lucia - Challenges to findings of fact - Approach of appellate court to findings of fact - Whether learned judge's findings of fact inconsonant with evidence

**Type of
Order:**

N/A

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

**[1] Darlington Noel
[2] Jan Isidore
v
The Queen
[SLUHCRA2016/0007]
[SLUHCRA2016/0008]
(Saint Lucia)**

Date:

Wednesday, 30th June 2021

Coram:

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

The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Alberton Richelieu

Respondent: Ms. Kelly Thomson

Issues:

Criminal appeal – Appeal against conviction and sentence – Hearsay evidence – Whether the judge misdirected himself in law in exercising his discretion to admit hearsay evidence – Whether the learned judge misdirected the jury on the witness statement of Chris Eletheure – Oral confession – Whether the judge misdirected himself when he permitted the oral evidence of Bertrand Biscette PC 175 to be admitted in evidence as an oral confession – Evidence of the identification parade – Sections 100 and 102 of the Evidence Act, Cap 4.15 – Whether the identification parade was unfairly conducted – Whether the judge failed to direct the jury that if they found the identification parade was unfairly conducted then it was their duty to attached very little weight to the identification in court – Whether the sentence was excessive – Whether the judge failed to adopt an approach which would have given the appellant credit for the time spent on remand

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgement is reserved.

Case Name:

**Elizabeth Darius-Clarke
v
The Attorney General of Saint Lucia
[SLUHCVP2020/0002]**

(Saint Lucia)

Date: Thursday, 1st July 2021

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

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mr. Seryozha Cenac and Ms. Rochelle John Charles

Issues: Civil appeal – Sections 87 and 121(3) of the Constitution of Saint Lucia, SI 1978 No. 1901 – Whether the judge misdirected herself and therefore erred in law by holding that the appellant was dismissible at the Governor General’s pleasure – Whether the judge erred by ruling that the appellant’s appointment by the Governor General is non-justiciable – Whether the judge’s finding that the appellant was not entitled to fairness is wrong in law

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: [1]Flatpoint Development Limited
[2]Emerald Cove Consortium Limited
v
Fairlight Limited
[ANUHCVP2020/0037]
(Antigua and Barbuda)

Date: Thursday, 1st July 2021

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

Appearances:

Appellants: Ms. Leonora Walwyn

Respondent: Ms. E. Ann Henry QC, with her, Ms. Mandi Thomas

Issues: Interlocutory appeal – Extension of time and relief from sanctions to file and serve witness statements – Whether the learned master erred in principle when exercising her discretion to dismiss the appellants’ application for an extension of time – Whether the learned master failed to consider all relevant factors in determining the appellant’s application for an extension of time to file witness statements as part of an assessment of damages – Whether the learned master failed to consider that at the time of the filing of the application for an extension of time and relief from sanctions that the Covid 19 pandemic practise regulations would have deferred the filing of affidavits in support of application in favour of witness statements- Whether the learned master failed to consider that the appellants filed their application for an extension of time promptly – Whether the learned master failed to consider that the appellants had already filed witness statements and skeleton arguments at the time when the application for an extension was being considered – Whether the learned master failed to consider the respondent would suffer no prejudice if the Appellants’ application was granted – Whether the learned master failed to exercise her discretion in determining the appellants application in keeping with the overriding objective especially when the appellants’ witness statements were before the court

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for the extension of time for filing and serving witness statements in respect of damages is hereby granted and are deemed properly filed as of the 25th of August 2020.
2. The appeal is allowed and the learned masters order of the 29th of October 2020 is hereby set aside in its entirety.
3. The assessment of damages is set aside and the assessment of damages hearing shall commence de novo and shall be expedited.
4. The appellant shall bear the cost of the application to extend time in the sum of \$1,500.00 to be paid on the 30th of July 2021.
5. No order as to costs on this appeal.

Reason:

The Court considered an interlocutory appeal by the appellants against the decision of the learned master in which she refused an application for an extension of time, filed 23rd April 2020, to file witness statements in respect of an assessment of damages which was scheduled to take place on the 29th October 2020. On that day, although it appeared to the Court that the application for an extension was before the learned master, it was not clear, based on the terms of her order, whether she was aware of the witness statement filed in support of the application for an extension, or if she was aware, whether she had regard to it. The master merely recited in her order that she had no evidence before her on which to exercise her discretion. If it was the former, then there would have been an error since the witness statement bears the same filing date of 23rd April 2020 as the application for an extension. If it was the latter, then the learned master ought to have had regard to it and considered the options which were open to her to treat with the witness statement in the exercise of her discretion and in the furtherance of the overriding objective of dealing with cases justly. It would have been open to her, given the currency of the Covid-19 pandemic and the Covid-19 regulations, all of which were set out in the grounds to the application, to have put matters right by allowing the maker of the statement, if it was in fact before her, an opportunity to place the witness statement into

evidence in the circumstances as they then existed. When this course is juxtaposed against the greater prejudice to the appellant of being unable to fully participate in the assessment hearing, the exercise of the discretion in furthering the overriding objective would have required the master to have regard to the course which would have caused the least injustice in the circumstances. The Court was accordingly of the view that the learned master erred in the exercise of her discretion.

Case Name:	Antigua Flight Training Center v [1] Deidre Pigott Edgecombe [2] Nordel Edgecombe [ANUHCVP2020/0017] (Antigua and Barbuda)
Date:	Thursday, 1 st July 2021
Coram:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Applicant:	Mr. Warren Cassell
Respondents:	Dr. David Dorsett
Issues:	Application to strike out appeal on the grounds of illegality – Adjournment
Type of Order:	Oral Decision
Result / Order:	IT IS HEREBY ORDERED THAT: 1. The hearing of the appeal is adjourned with costs of the adjournment to be paid by the respondent in the sum of \$1,500.00 on or before 30 th July 2021

2. The respondent shall pay to the appellant all amounts outstanding in respect of those prior cost orders on or before the 30th of July 2021, failing which, the respondent's application to strike filed herein on the 24th of June 2021 shall stand struck out without further order
3. If the cost orders are paid the appellant shall be at liberty to respond to the appellants application to strike out on or before the 31st of August 2021
4. The hearing of the application to strike out and if necessary filed herein shall take place during the next sitting of the Court for the State of Antigua and Barbuda scheduled to commence during the week of the 18th of October 2021.

Reason:

The Court considered an application to strike out the appeal filed 24th June 2021 from the respondents. The Court noted that the late filing caused the matter to be adjourned once again – the matter having been adjourned previously in May 2021.

Accordingly, the Court ordered that the hearing of the appeal is adjourned with costs of the adjournment to be paid by the respondent in the sum of \$1,500.00 on or before 30th July 2021. Additionally, as consequence of this adjournment and having regard to the outstanding cost orders on record against the respondents remaining unpaid, the respondents were ordered to pay the appellant all amounts outstanding in respect of those prior cost orders on or before the 30th of July 2021, failing which the respondent's application to strike filed herein on the 24th of June 2021 shall stand struck out without further order.

In the event that the cost orders are paid, the Court ordered that the appellant shall be at liberty to

respond to the application to strike out on or before the 31st of August 2021.

The hearing of the application to strike out and, if necessary, the substantive appeal filed herein, shall take place during the next sitting of the Court for the State of Antigua and Barbuda scheduled to commence during the week of the 18th of October 2021.