

EASTERN CARIBBEAN SUPREME COURT

COURT OF APPEAL SITTING

(VIDEOCONFERENCE)

SAINT CHRISTOPHER AND NEVIS

MONDAY, 12th – FRIDAY, 16th JULY 2021

JUDGMENT

Case Name:

Paul Eloise

V

1st National Bank St. Lucia Limited

[SLUHCVAP2018/0007]

(SAINT LUCIA)

Date:

Monday, 12th July 2021

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

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

Appearances:

Appellant:

Ms. Sardia Cenac

Respondents:

Ms. Antonia Charlemagne

Issues:

Civil appeal – Vacation of sheriff’s sale – Code of Civil Procedure Chapter 4:01A – Interpretation of articles 530, 534 and 558 of the Code of Civil Procedure – Appellate court’s approach to interference with lower court’s exercise of discretion – Did the judge err in principle by considering whether appellant had suffered prejudice in the execution of the sheriff’s sale – Québec Code of Civil Procedure – Provisions under Québec Code of Civil Procedure are in pari materia to those under Saint Lucian Code of Civil Procedure – High threshold to be met to vacate sheriff’s sale – Condition or formality which has been breached must go to the root of the sale or has caused sufficient prejudice to warrant vacation – Prejudice in the execution of the sheriff’s sale – Did the judge wrongly conclude that appellant failed to demonstrate prejudice sufficient to warrant the annulment of the sheriff’s sale

Result and Reason:

Held: dismissing the appeal; discharging the stay granted by this Court on 27th March 2018 in relation to the Castries Property; and making no order as to costs, that:

- 1. An appellate court ought not to set aside a lower court's exercise of discretion on the basis, that it would have exercised the discretion in a different way were it vested with the discretion in the first place. Rather, an appellate court should only interfere with a lower court's exercise of discretion if satisfied: (i) that in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and (ii) that, as a result of the error or the degree of the error, in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong.**

Showa Holdings Co., Ltd. v Nicholas James Gronow and John David Ayres [2021] ECSCJ No. 571, (delivered 31st May 2021) followed; Edy Gay Addari v Enzo Addari [2005] ECSCJ No. 125, (delivered 27th June 2005) followed; Michel Dufour and Others v Helenair Corporation Limited and Others (1996) 52 WIR 188 followed.

- 2. The Code of Civil Procedure does not speak to the circumstances which should cause a judge to exercise his discretion under article 558 in favour of annulling a sheriff's sale. However, as the provisions of the Québec Code of Civil Procedure are in *pari materia* to those under the Saint Lucian Code of Civil Procedure, this Court can look to the case law concerning article 698 of the Québec Code of Civil Procedure, for the approach to the exercise of judicial discretion under article 558.**

Article 558 of the Code of Civil Procedure Cap. 4:01A of the Revised Laws of Saint Lucia 2017 applied; Article 698 of the Code of Civil Procedure, CQLR c C-25.01 applied; Civil Code of Saint Lucia Cap. 4.01, of the Revised Laws of Saint Lucia applied; Voice Buildings Ltd v Canadian

Imperial Bank of Commerce and Others (1992) 43 WIR 132 at 138 followed; Polinere and Others v Felicien (2000) 56 WIR 264 applied; Prospere v Prospere and Another [2007] 69 WIR 278 applied and National Insurance Corporation v Winmark Ltd [2009] UKPC 9 applied.

3. Article 698 of the Québec Code of Civil Procedure provides that an interested person who seeks to vacate a sheriff's sale must meet a high threshold, as the discretion vested in the courts, does not, without more, operate in favour of vacating a sheriff's sale upon the happening of some breach of procedure. A failure to comply with the essential conditions and formalities of a sheriff's sale does not, *ipso facto*, entitle a party to annulment of a sheriff's sale. As such, a party who seeks to vacate a sheriff's sale must go further to show that the condition or formality which has been breached goes to the root of the sale or has caused sufficient prejudice to warrant vacation. In determining this, the court must examine the nature and purpose of the condition or formality, and also the extent of the breach which has occurred. The applicant must also be sure to avail himself of earlier opportunities to challenge the sale as this will fundamentally undermine an application to vacate a sheriff's sale. In this case, the judge clearly recognised that she had a discretion to exercise on the annulment application and the caution which traditionally attaches to the vacation of sheriff's sales under Québec law, and by extension to the annulment of sheriff's sales under Saint Lucian law. The judge correctly considered that a breach of a condition or formality, alone, did not provide a sufficient basis to annul the sale of the Castries Property, and that she was required to consider whether the breaches of articles 530 and 534 went to the 'heart' or the 'root' of the validity of the sale or whether there was some prejudice to Mr. Eloise. It follows that the judge did not err in her approach to Mr. Eloise's annulment application.

Articles 530, 534 and 558 of the Code of Civil Procedure Cap. 4.01A, of the Revised Laws of Saint Lucia 2017 applied; Article 698 of the Code of Civil Procedure, CQLR c C-25.01 applied; Anjou (Town of) v C.A.C. Realty Ltd. and et al [1978] 1 SCR 819 applied; Garcia Transport Ltée v Royal Trust Co. [1992] 2. SCR 499 applied; First Caribbean International Bank (Barbados) Limited

formerly CIBC (Caribbean) Limited v Jacob Morille et al [2004] ECSCJ No. 330, (delivered 17th September 2004) followed; Bank South Pacific v Ifira Port Development and Services Company Limited Case No. 212 of 2017 applied.

4. In the absence of judicial pronouncement, it is clear that the Code of Civil Procedure contemplates that sheriff's sales are to be executed in a manner that is fair to the judgment debtor and in manner that ensures that a judgment creditor obtains as good a chance as possible at full satisfaction of the debtor's debt. It would not further those objectives were a sheriff's sale permitted to be annulled simply on the basis that a bidder, who had every intention of participating in the bidding process as lawful bidder and was successful in his or her bid, was deprived of the ownership of the property because he or she paid less than a 1/10 deposit. This is even more so in this case, as the judge observed, that the purchaser's failure to pay the 1/10 deposit was directly attributable to an error in the advertisement for the sale and was not intentional.

Articles 530 and 534 of the Code of Civil Procedure Cap. 4.01A, of the Revised Laws of Saint Lucia 2017 applied.

5. The prejudice to be shown on an application to vacate or annul a sheriff's sale, cannot be that which naturally arises from the fact that a sheriff's sale has taken place or that there has simply been non-compliance with a formality or condition under law. The prejudice suffered must be of the nature which undermines the entire process and fundamentally undermines the purposes of the enforcement jurisdiction of the court. As such where Mr. Eloise's averments fell short of demonstrating any such degree of prejudice, the judge was entitled to reason that there was no prejudice sufficient to warrant the annulment of the sale of the Castries Property. The judge was entirely correct in light of the applicable principles in her conclusion.

Articles 530 and 534 of the Code of Civil Procedure Cap. 4.01A, of the Revised Laws of Saint Lucia 2017 applied; Anjou (Town of) v C.A.C. Realty Ltd. and et al [1978] 1 SCR 819 applied; Garcia Transport Ltée v Royal Trust Co. [1992] 2. SCR 499 applied; Bank South Pacific v Ifira Port

**Development and Services Company Limited Case No.
212 of 2017 applied.**

APPLICATIONS AND APPEALS

Case Name: Construction Technologies Limited
v
Delano F. Bart
[SKBHCVAP2021/0006]
(SAINT KITTS AND NEVIS)

Date: Monday, 12th July 2021

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

Appearances:

Applicant: Dr. Henry Browne QC, with him, Mr. O' Grenville Browne

Respondent: Ms. Midge Morton and Ms. Maurisha Robinson

Issues: Application for an extension of time to file an application for filing notice of appeal – Whether the test of an extension of time has been satisfied by the applicant – Whether the applicant has a reasonable prospect of success – Whether the judge allowed evidence which was not properly put before the court – Whether the process in the lower court was fair in the circumstances – Application for an order of stay pending the determination of the appeal against the order – Rule 26 I (2) (9) of the Civil Procedure Rules 2000.

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The time for filing the notice of appeal is extended to today, 12th July 2021.
2. A stay of proceedings is granted on the condition that the applicant pays at least the minimum sum of \$100,000.00 to the respondent as at least the minimum sum he would be entitled to on assessment or eventually, as the case may be, the

said sum of at least a minimum of \$100,000.00 to be paid to the respondent on or before 16th August 2021.

3. The costs of the application to extend time shall be borne by the applicant fixed in the sum \$2,500.00, to be paid to the respondent on or before Friday, 23rd July 2021.

Reason:

The Court first considered an application for an extension of time within which to file the notice of appeal by the appellants. The appellants argued that although the order of the court was made on the 12th of February 2021, they received the order of the Court on the 30th of March 2021 by which time the time for filing the notice of appeal would have expired.

The applicant relied on the following principles to persuade the Court to grant the application: (i) the length of delay (ii) the reasons for the delay (iii) the prospects of success and (iv) the degree of prejudice.

The applicant focused on the prospect of success and asserted that the applicant had a reasonable prospect of success on appeal as the process engaged by the judge in the conduct of the assessment was unfair in that he did not allow them to put forward their case and, that the judge allowed evidence which was not properly put before the court.

The Court then considered an application for stay on the Judgement/Order of Ventose J dated 12th February 2021 pursuant to Rule 26 I (2) (9) of the CPR pending the determination of the Applicants' appeal against the said Order. The appellants argued the following grounds:

- (i) If Judgment is not stayed a successful appeal may be rendered nugatory in the absence of a Grant of Stay;
- (ii) The Judgment/Order should be stayed because of the hardship that the intended Appellant would suffer if the Judgment/Order were to be executed at this time. Without the stay, compliance with the impugned "Ruling" can result in irreparable harm to the business if the Judgement/Order of the

Learned Trial Judge was made in defiance of Rules CPR;

- (iii) If Stay is not granted this would fortify the lack of due process given that the Learned Judge gave no reasons for his 'Ruling' thus denying this Appellate Court from effectively reviewing his decisions; and**
- (iv) It is axiomatic that the Learned Judge having failed in his duty to give a reasoned Judgment in the circumstances of this case the Intended Appellants have more than an arguable case; the prospects of success are high.**

In the circumstances of the case, the Court was persuaded that the process which took place in the court below may not have been fair. The Court therefore concluded that an extension of time ought to be granted to the applicant for the filing of notice of appeal.

With regard to the application for a stay of proceedings, the Court gave regard to the issue of quantum and the basis at arriving at quantum. The Court noted that it was clear that the applicant was liable to the respondent based on the agreement. The Court was of the opinion that an order for stay should be granted on the condition that a minimum sum no less than \$100,000.00 be paid to the respondent within 30 days.

Case Name:

Showa Holdings Co. Ltd.

v

**Nicholas James Gronow and John David Ayres (as
Receivers of the Second Defendant)**

and

JTrust Asia Pte. Ltd

[BVIHCMAP2020/0031]

(TERRITORY OF THE VIRGIN ISLANDS)

Date:

Monday, 12th July 2021

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

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

Appearances:

Applicant: Mr. Adrian Francis

Respondents: Mr. Hefin Rees QC, with him, Ms. Meenaa Azmayesh and Ms. Yegane Guley for the respondents the receivers.

Mr. Vernon Flynn QC, with him, Ms. Lucy Hannett and Ms. Marcia McFarlane for the respondents

Issues:

Notice of motion for conditional leave to appeal to Her Majesty in Council – Stay of judgment – Article 4 of The Appeals to the Privy Council Order 1967 – Whether the motion for leave to appeal was filed within time – Part 26 of the Civil Procedure Rules 2000 – Whether the Court has the power under Part 26 of the CPR to extend the time to file in contradiction with the time provided for of 21 days in The Virgin Islands Order 1967

**Type of
Order:**

Oral Decision

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

1. The motion for conditional leave to appeal to Her Majesty in Council filed on 22nd June 2021 against the decision of the Court of Appeal delivered on 31st May 2021 is dismissed as being out of time by reference to the plain and ordinary words of section 4 of the Virgin Islands (Appeals to Privy Council) Order 1967.
2. The further application filed on 8th July 2021 for a declaration that the motion for conditional leave to appeal to Her Majesty in Council filed on 22nd June 2021 was issued within the time stipulated by section 4 of the Virgin Islands (Appeals to Privy Council) Order 1967 accordingly falls away and is dismissed.
3. The application for a stay is also dismissed having regard to section 7 of the Virgin Islands (Appeals to Privy Council) Order 1967.
4. The applicant shall pay the respondents costs associated with and occasioned by responding to both applications dated 22nd June and 8th July 2021

and for the respondents' costs for attending the hearing on 12th July 2021 to be assessed by a judge of the Commercial Division if not agreed within 21 days.

Reason: The applicant filed a motion for conditional leave to appeal to Her Majesty in Council on 22nd June 2021 against the decision of the Court of Appeal delivered on 31st May 2021.

The Court was of the opinion that the application was out of time by reference to the plain and ordinary words of section 4 of the Virgin Islands (Appeals to Privy Council) Order 1967 and that the application should accordingly be dismissed.

Case Name: Doche & Doche Inc
v
[1] Heritage Plantation Condominiums Ltd.
[2] Heritage Plantation Inc.
[3] Mervin Grant
[SKBHCVAP2021/0010]
(SAINT KITTS AND NEVIS)

Date: Tuesday, 13th July 2021

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Applicant: Dr. Henry Browne QC, with him, Mr. O'Grenville Browne

Respondents:

Issues: Application for leave to appeal – Expiration of orders appealed – Withdrawal of application for leave to appeal

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

The application for leave to appeal against the order of Justice Ward dated 21st May 2021 as varied by his order of 3rd June 2021, is withdrawn with no order as to costs.

Reason:

The applicant made an application to appeal to orders of Justice Ward made on the 21st of May 2021 and varied on an oral application on 3rd June 2021.

The applicant explained that at the time the application was made for leave to appeal, the orders were alive, however the orders have now expired by effluxion of time. The applicant sought the Court's guidance on whether there was a need to proceed with the application having regard to the fact that the orders no longer exist.

The applicant then withdrew his application for leave to appeal given the circumstances and the Court ordered the application withdrawn.

Case Name:

**Caribbean Building Systems (St. Kitts) Limited
v
First Caribbean International Bank (Barbados)
Limited
[SKBHCVAP2021/0001]
(SAINT KITTS AND NEVIS)**

Date:

Tuesday, 13th July 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Victor Elliot- Hamilton

Respondents: Mr. Garth Wilkin

Issues:

Interlocutory Appeal – Appeal against the order a master – Title by Registration Act – Reduction of upset price with respect to property held by respondent – Whether the master erred in law by the weight which he attached to factors in his evaluation

**Type of
Order:**

Oral Decision

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed with costs to the respondent of \$2,000.00;**
- 2. The respondents counter appeal is allowed with no order as to costs;**
- 3. Order 3 of the master's order is quashed and order 2 is replaced by the following:**

The day and time of the sale of the property shall be fixed by the Registrar of the High Court no earlier than 30th November 2021.

Reason:

The Court considered an appeal against the order of the Master which reduced the upset price of property under the Title by Registration Act of Saint Kitts and Nevis.

The appellants argued that the following grounds on appeal:

- 1. The Master erred in law by failing to attach sufficient weight to the fact that the respondent had not provided any evidence that the property had been adequately advertised, in light of the matters that it was at liberty to carry out in the order dated 19th October 2016.**
- 2. The Master erred in law by failing to make mandatory conditions of the announcement suitable and reasonable given the Property's value and best use.**
- 3. The Master erred in law by attached too much weight upon previous order of Master Actie.**

Counsel for the appellant asserted that there was no evidence that the bank took any of the methods of advertisement that it was at liberty to take and no evidence as to why it failed to do so. He argued that the bank appeared to have done the bare minimum in publishing the sale of the property on the newspaper. Counsel submitted that the respondent's application was premised on the fact that the sale was adjourned, and the bank obtained a valuation with the reduced upset price.

He further argued that there is no indication in the affidavits submitted by the bank that it took any steps to advertise the property beyond the bare minimum set out in the Order of the Master. Counsel also argued that the Master's failure to attach significant weight to this factor was a serious error of law. Relying on the case of Cuckmere Brick Co v Mutual Finance [1971] EWCA Civ 9 he stated that it is implicit that the manner in which a mortgagee is to advertise property has a direct relationship with the price obtained at sale.

The respondent submitted that the appellant conflated the common law duties of a mortgagee when exercising the power of sale and that ground 1 was misconceived. He also contended that whether or not the property was adequately advertised, the respondent's application only sought an assignment of a reduced upset price for the property based on the new appraisal which the Master was guided to consider and did.

The respondent's application sought to reduce the upset price of the sale value estimated in the valuation of October 28th 2019, which he argued was reasonable as it was the only appraisal in evidence seeing that the appellant did not present one or seek to challenge the court's sale value from that appraisal.

The Court considered the relevant statute and noted that the Title by Registration Act allows for sale of mortgaged property by way of auction through the Registrar of the High Court.

When assessing the appellants' arguments, the Court found that ground 1 and 3 of the appeal both concerned the weight attached by the Master and therefore considered them together. In light of this, the Court noted that it is inappropriate for the Court to interfere with the master's evaluation unless it is perverse – Manzi v King's College Hospital NHS foundation Trust [2018] EWCA Civ 1882.

The Court was of the opinion that the Master was correct in reducing the upset price based on his review of the new appraisal of the mortgaged property. The Master would have been cognizant of the fact that previous sales of the property did not take place as no prospective buyers attended. With respect to the statutory adjustment the Master agreed with

the pronouncements made by the previous Master's and added one further mandatory mode of advertisement.

The Master in the Courts view acted based on his discretion after properly considering the provisions of statute, previous announcements of sale and the evidence before him. The Master was entitled to take the view he did in reducing the upset price, it cannot be said that he erred in the exercise of his discretion or reached a decision that was plainly wrong. The Court was of the opinion that there was no basis for appellate review and grounds 1 and 3 were accordingly dismissed.

The Court, in assessing ground 2 of the appellants arguments found that the Master's order was reasonable given the circumstances.

Case Name:

Sandy Nisbett

v

The Director of Public Prosecutions

[SKBHCRA2012/0014]

(SAINT KITTS AND NEVIS)

Date:

Wednesday 14th July 2021

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellant: Ms. Natasha Grey

Respondent: Mr. Teshaun Vasquez

Issues:

Criminal appeal – Appeal against sentence – Whether the sentence imposed by the judge was manifestly excessive – Assessment of psychiatric report on the appellants' condition

**Type of
Order:**

Oral Decision

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The sentence imposed by trial judge is affirmed.**
- 3. The relevant authorities are urged to ensure that the words of the trial judge in passing sentence, that there should be a periodic evaluation of the appellant and an annual report to the court below by a psychiatrist on the condition of the appellant are carried out, and that the court below receives those annual reports on the condition of the appellant.**

Reason:

The Court considered a criminal appeal against sentence made by the appellant. The appellant was charged on the 30th of October 2008 for the death of his uncle. There was some delay in receiving the plea of the appellant after which his psychiatric evaluation was ordered and undertaken. The report of the psychiatrist determined that the appellant was fit to stand trial where he pleaded not guilty to murder but guilty to manslaughter.

The trial judge determined that the appellant should be sentenced to life imprisonment with opportunity for parole after 20 years with the requirement to undergo medical evaluation by a trained psychiatrist and monitored on a constant basis with a report to the court annually.

This matter was appealed, and a further psychiatric report was made available to the court within which the psychiatrist reported that given his propensity for violence the appellants release from prison would be not without likely and unacceptable risk to the society.

In those circumstances the Court considered that there was nothing wrong in principle, fact or otherwise with the sentence imposed by the trial judge and found no basis to interfere with the judge's sentence.

The Court accordingly dismissed the appeal.

Case Name:

Kevin Merchant

v
The Queen
[SKBHCRAP2019/0001]
(SAINT KITTS AND NEVIS)

Date: Wednesday 14th July 2021

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Kevin Merchant, in person

Respondent: Ms. Laneine Blanchette

Issues: Appeal against sentence – Wounding with intent to cause grievous bodily harm – Whether the sentence imposed was excessive

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.

2. The sentence imposed by the judge of 10 years and 10 months in prison is affirmed.

Reason: The Court considered the appellants’ appeal against a sentence of 20 years imprisonment imposed upon him for the offence of wounding with intent to cause grievous bodily harm which carries a maximum sentence of 20 years in prison.

The Court was of the opinion that the judge took into account all of the important and relevant factors in initially arriving at an appropriate sentence of 12 years; there were several aggravating factors present given the manner in which the offence was committed and found there were no mitigating factors. The Court was also satisfied that the judge discounted the sentence by one year and two months

after the appellant entered a guilty plea after the trial started making the total sentence 10 years and 10 months.

The Court looked at the judgment in the court below and the surrounding factors and found no basis to interfere with the sentence imposed by the trial judge.

Case Name:

**Qin Hui
v
[1]Goldteam Group Limited
[2] Dayspring Investments Limited
[3] King Fame Trading Ltd**

**[BVIHCMAP2020/0023]
(TERRITORY OF THE VIRGIN ISLANDS)**

Date:

Tuesday, 14th July 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Qin Hui in person with Mr. Benjamin Xue acting as his McKenzie friend

**Respondents: Mr. Robert Nader for the 1st respondent
No appearance for the 2nd and 3rd respondents**

Issues:

Commercial appeal against interlocutory judgment – Oral application of Mr. Xue to act as a friend of the appellant – Whether there was bias and/or apparent bias on the part of the learned judge – Whether the judge should be recused from the proceedings and the matter heard by another judge.

**Type of
Order:**

Oral Decision

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.

2. Costs to the respondent to be assessed in the court below if not agreed within 14 days.

Reason:

The Court first heard the oral application of Mr. Benjamin Xue to act as McKenzie friend to Mr. Qin Hui and granted the application.

The Court then considered a commercial appeal against the interlocutory judgment and order of Jack J by which he refused to recuse himself from the matter.

The substantive proceedings are enforcement proceedings based on a judgment in default obtained in Hong Kong against the appellant, which he has sought to set aside based on irregularity.

The appellant requested that the Court set aside the order of Jack J refusing to recuse himself and that no further proceedings in the matter be listed for him and that the injunction application that was subject of the order of 13th August 2020 be reconsidered by another Judge.

The appellant contends that the primary allegation of bias is that the Judge found in his judgment a prima facie case that the appellant was dishonest. This finding was based on the view taken by the judge that the appellants' signature on the loan agreement was a forgery. Jack J accepted that the appellant was committing the offence of forgery on the loan agreement when in fact the allegation of forgery was on a different agreement where the appellant was not a party but a witness.

It was accepted that this ground was the main subject of the appeal and the other grounds either together or individually would not sustain a claim of apparent bias. Jack J made no express finding of dishonesty against the appellant within his judgment.

It is the Court's judgment that the fair-minded person having considered the facts would not conclude that there was a real possibility that the Judge was biased to the appellant, accordingly the ground fails.

In the Courts view the Judge was entitled to consider the evidence most relating to honesty and credibility and in

finding that there was no arguable case does not prove the existence of bias to the appellant.

The Court was not satisfied with the appellants' argument that the judge was likely to reach a decision in the matter based on preferences. With ground 1 having failed, and the other grounds individually and collectively unable to prove apparent bias; the appeal was dismissed.

Case Name:	KHT Land Holdings Limited v St. Kitts-Nevis-Anguilla National Bank Limited [SKBHCVAP2021/0005] (SAINT KITTS AND NEVIS)
Date:	Thursday, 15th 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:	Ms. Kayla Theeuwen instructed by Ms. Joanne Flemming
Respondent:	Mr. Terence Byron
Issues:	Interlocutory Appeal – Sections 75 and 76 of the Title by Registration Act – Fixing of an upset price for the sale of a property – Judicial discretion – Factors used to determine fixing the upset price by the court – Whether the property evaluation presented to the Master were unreliable – Whether the Master should have given reasons for arriving at her decision – Whether the Master erred in making findings of fact – Whether an independent valuator should be appointed by the Court to obtain a further evaluation by the court to fix another upset price for the sale of the property
Type of Order:	Oral Decision

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The Appeal and the Counter-Appeal are allowed for the reason that the learned master erred in the exercise of her discretion by fixing the upset price for the Subject Property (defined below) at US\$25 million without providing adequate reasons for doing so.**
- 2. The matter is remitted to the court below to fix the upset price of the subject land in the Application filed by the Respondent ("Subject Property") to settle articles of sale pursuant to sections 75 and 76 of the Title by Registration Act, Cap 10.19 ("Act").**
- 3. The parties shall, on or before Monday, 16th August 2021, conduct investigations into suitably qualified, independent and impartial land valuers having as a minimum the Prudential Standards set out by the Eastern Caribbean Central Bank, for the purpose of valuing the Subject Property and assisting the court as an expert, mindful of his or her duties under Part 32 of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000.**
- 4. The parties shall thereafter exchange their lists of valuers and seek to agree a list of up to four (4) valuers for submission to the court below by Tuesday, 31st August 2021.**
- 5. Failing agreement of a list, the parties shall submit to the court below up to two (2) valuers each by no later than Monday, 6th September 2021; thereafter, the matter shall be listed before a different Master for Wednesday, 29th September 2021 for the purpose of selecting a valuer from the list or lists submitted by the parties.**
- 6. The parties are at liberty to file and serve written submissions in respect of the list of valuers so submitted no later than Monday, 20th September 2021.**
- 7. The court below may make any further orders or give any further directions which it considers necessary in assisting the exercise required under sections 75 and 76 of the Act.**
- 8. The marketing plan currently being undertaken by B. Kassab and Associates shall not be approved by the**

Court until such time that the Court fixes the new upset price in respect of the Subject Property.

- 9. With respect to paragraph 66 of the decision of the learned Master dated 16th March 2021 in the court below:
a. Paragraph 66(1) is hereby set aside; b. Paragraph 66(2) is varied in paragraph 8 above; c. Paragraph 66(3) remains; and d. Paragraph 66(4) the date has been overtaken by the date stipulated.**
- 10. Having regard to all the circumstances of the case, there shall be no order as to costs on the Appeal or the Counter-Appeal.**

Reason:

The Court considered an interlocutory appeal made by the appellant against the decision of the Master dated 16th March 2021.

The specific orders appealed against were that in paragraph 57 of the decision which concluded that the valuation report prepared by the Appellants expert was not reliable and paragraphs 61 and 66(1) of the decision that the upset price for the property be fixed at US\$25 million.

The appellant argued the learned Master: (i) made findings that were not supported by the evidence, which led her to disregard the valuation report in its entirety; (ii) relied on evidence that was not before her in finding that the valuator was not credible; and (iii) gave no reasons to justify her decision on the upset price.

The Court allowed the appeal and counter appeal having been persuaded by the appellant that the learned Master ought to have given reasons for arriving at the upset price and that in the circumstances the matter should be remitted to the court below to fix the upset price of the property.

The Court felt that the appropriate course of action would be for the parties to investigate and find suitably qualified, independent and impartial land valuers having as a minimum the Prudential Standards set out by the Eastern Caribbean Central Bank and thereafter provide a list to the Master for the selection of a valuator to carry out further valuation on the property for the fixing of a new upset price on the property.

Case Name: **The Attorney General of St. Christopher and Nevis**
v
[1] Carmel Bernadette Agnes McGill
[2] Laszlo Stephen Siegmund

[SKBHCVAP2020/0024]
(Formerly SKBHCVAP2018/0026)
(SAINT KITTS AND NEVIS)

Date: **Friday, 16th July 2021**

Coram: **The Hon. Mr. Mario Michel, Justice of Appeal**
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard Farara QC, Justice of Appeal [Ag.]

Appearances:

Appellant: **Mr. Douglas Mendes SC, with him, Ms. Rivi Lake**

Respondents: **Mr. Anthony Ross QC, with him, Ms. Katrina Marciniak**

Issues: **Civil Appeal – Acquisition of Land – Quantum of damages – Vindictory Damages – Damages for failure of the Government to notify the respondents of the acquisition – Prompt payment – Whether the trial Judge erred in law in awarding damages to the respondents based upon incorrect legal principles and by awarding damages that it alleges were excessively high**

Type of Order: **N/A**

Result / Order: **IT IS HEREBY ORDERED THAT:**
Judgment is Reserved.