

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT KITTS AND NEVIS
11th November 2019 to 14th November 2019

High Court Civil Appeals

Case Name: Kenard Byron
v
Eastern Caribbean Amalgamated Bank
(ECAB)
[ANUHCVP2012/0010]
Antigua and Barbuda
Teleconference

Date: Monday 11th November 2019

Coram: The Hon. Dame Janice Pereira, Chief Justice
The Hon. Mario Michel, Justice of Appeal
The Hon. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Dr. Daniel Dorset with Mr. Gerard Hewlett

Respondent: Ms. E Ann Henry with Mrs. Tracey N. Roberts in-house Counsel for Eastern Caribbean Amalgamated Bank (ECAB).

Issues: Whether liability to pay the appellant was retained by The Bank of Antigua or whether it was assigned to ECAB under the Purchase Agreement.

Type of Order: Order/Direction

Result/Order: It is hereby ordered and directed:

1. That the Eastern Caribbean Amalgamated Bank use its best endeavors to produce the underlying

documentation which would assist in determining the liabilities and itemize those liabilities retained by The Bank of Antigua and those liabilities transferred to the Eastern Caribbean Amalgamated Bank on or before 31st December 2019.

2. The court will further consider this matter at the hearing of the sitting of the court in Antigua and Barbuda in January 2020.

Reason:

On the documentation so far produced, the Court was unable to determine the way forward in this matter as it is unclear whether the liability of payment to the appellant Mr. Byron was a liability assigned to the Eastern Caribbean Amalgamated Bank or whether the liability remained with Bank of Antigua.

APPLICATIONS & MOTIONS

Case Name:

Minister of Agriculture, Lands Housing, Cooperatives
& Fisheries et al
v
Eustace Nisbett
SKBHCVAP2019/0020

Date:

Monday 11th November 2019

Coram:

The Hon. Dame Janice Pereira, Chief Justice
The Hon. Mario Michel, Justice of Appeal
The Hon. Gertel Thom, Justice of Appeal

Appearances:

Appellants: Mr. Terence Byron

Respondent: Mr. Patrice Nisbett

Issues:

Application for adjournment based on late service by the Respondent.

Type of Order:

Directions

Result/Order:

- 1) The Appellant shall file submissions by today 11th November 2019.
- 2) The Appellant shall serve the application and affidavit on the Respondent by today 11th November 2019.
- 3) The Respondent shall file reply submissions by Wednesday 13th November 2019.
- 4) The matter is adjourned to Wednesday 13th November 2019.

Reason: The application for adjournment was granted based on the late service on the Respondent.

HIGH COURT CIVIL APPEALS

Case Name:

Vistas Infinitas International LLC
Keyapaha International Ltd
Dan Bilzerian
v
Janine-Harris Lake as Registrar of the High Court
SKBHCVAP2018/0018
St. Kitts and Nevis

Date: Monday 11th November 2019

Coram: The Hon. Davidson K. Baptiste, President of Appeal
The Hon. Mario Michel, Justice of Appeal
The Hon. Gertel Thom, Justice of Appeal

Appearances:

Appellants: Mr. Paul Bilzerian for the 1st appellant
Dr. Henry Browne QC with him Mr. O’Grenville Browne for the 2nd and 3rd appellants.

Respondent: Mrs. Simone Bullen Thompson, Solicitor General

Issues: Application to withdraw matter.

Type of Order: Directions

Result/Order:

IT IS HEREBY ORDERED BY CONSENT of the 1st, 2nd and 3rd Appellants and the Respondent that:

- 1. The Respondent shall cause Civil Claims SKBHCV2015/0087 - Dan Bilzerian and Vistas Infinitas International, LLC v St. Christopher Club, Ltd, SKBHCV2015/0088 – Dan Bilzerian and Keyapaha International Ltd v Laura Getz, Robert Getz, Victor Doche and SKBHCV2015/0089 – Dan Bilzerian and Keyapaha International Ltd v St. Christopher Club, Limited to be listed for consideration by a Master or Judge of the High Court.**
- 2. The 1st, 2nd and 3rd Appellants shall, by filing the relevant documents in the Court Office, within 7 days after Civil Claims SKBHCV2015/0087 - Dan Bilzerian and Vistas Infinitas International, LLC v St. Christopher Club, Ltd, SKBHCV2015/0088 – Dan Bilzerian and Keyapaha International Ltd v Laura Getz, Robert Getz, Victor Doche and SKBHCV2015/0089 – Dan Bilzerian and Keyapaha International Ltd v St. Christopher Club, Limited have been listed for hearing, discontinue the instant appeal.**

Reason:

Counsel for the Appellant and Respondent and Counsel for Mr. Bilzerian were both asked to prepare consent order.

APPLICATION

Case Name:

**Dr. The Honourable Timothy Harris
v
Dr. The Honourable Denzil Douglas
SKBHCVAP2019/0026**

St. Kitts and Nevis

Date: Tuesday 12th November 2019

Coram: The Hon. Davidson K. Baptiste, President of Appeal
The Hon. Louise E. Blenman, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [AG]

Appearances:

Appellant: Mr. Dane Hamilton QC with him Mr. Victor Dane Hamilton

Respondent: Mr. Sylvester Anthony with him Mrs. Angelina Sookoo Bobb

Issues: Application for leave to appeal against the order of the Learned Justice Eddy Ventose dated the 22nd July 2019.

Whether the execution of the orders contained at paragraphs 36 to 39 of the judgment dated the 22nd July 2019 should be stayed until the determination of the appeal as to whether the documents were in the possession and control of the appellant.

Type of Order: N/A

Result/Order: Decision reserved.

Reason: The court having heard Counsel for both sides will take time to consider its decision.

MAGISTERIAL CRIMINAL APPEAL **AGAINST CONVICTION**

Case Name: Sylvester Harris
v

**Chief of Police
SKBMCRAP2017/0002
St. Kitts and Nevis**

Date: Tuesday 12th November 2019

Coram: The Hon. Davidson K. Baptiste, President of Appeal
The Hon. Louise E. Blenman, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [AG]

Appearances:

Appellant: Mr. Sylvester Harris in Person

Respondent: Mr. Vaughn Woodley with him Ms. Greatess Gordon.

Issues: Appeal against conviction and sentence

Type of Order: Oral Decision

Result/Order: Appeal dismissed. Sentence and conviction affirmed.

Reason: The Appellant withdrew the appeal.

JUDGMENT

Case Name: Asiyah Grant
v
Javier Maduro
BVIHCVAP2019/0001
Territory of the Virgin Islands

Date: Wednesday 13th November 2019

Coram: The Hon. Dame Janice Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Eamon H. Courtenay, Justice of Appeal [AG]

Appearances:

Appellant: Dr. Henry Browne QC holding for Gerard Farara, QC

Respondent: Mrs. Sherry Ann Liburd Charles holding for Ms. Asha Johnson

Issues: Interlocutory Appeal – Civil Appeal – Motor Vehicle Insurance (Third-Party Risks) Ordinance – Section 11A(1) – Statutory Interpretation – Section 4(1)(a) of the Limitation Ordinance – Limitation period for negligence claims involving motor vehicles accidents – Whether negligence claim statute barred by section 11A(1) of the Motor Vehicle Insurance (Third-Party Risks) Ordinance – Whether learned master erred in striking out appellant’s claim on the basis of it being statute barred – Purposive interpretation – Marginal and explanatory notes as interpretive tools – Sections 12(2), 42(2) and 42(3) of the Interpretation Act

Type of Order: Judgment

Result/Order: Held: allowing the appeal; setting aside the order of the learned master in its entirety and reinstating the claim; ordering that the claim proceed to case management before a master on a date to be fixed by the Registrar of the High Court; and awarding costs to the appellant on the appeal and on the summary judgment application in the court below to be assessed if not agreed within 21 days

Reason:

APPLICATIONS/MOTIONS

Case Name: Frank Farrell
v
St. Kitts Urban Development Corporation Limited
SKBMCVAP2019/0001

Date: Wednesday 13th November 2019

Coram: The Hon. Dame Janice Pereira, Chief Justice
The Hon. Gertel Thom, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [AG]

Appearances:

Appellant: Mr. John Cato

Respondent: Ms. Miselle O'Brien

Issues: Whether the court ought to grant an extension of time for this appeal in circumstances where Counsel never applied for same.

Type of Order: Oral Decision

Result/Order: The appeal is dismissed. The appellant is ordered to pay \$7,750.00 within 14 days.

Reason: The court considered that a notice of appeal filed ten months later was out of time. There was no written application filed for extension of time. The court held that the Notice of Appeal filed was therefore a nullity.

Case Name:

Ramsbury Properties Limited
v
Ocean View Construction Limited
SKBHCVAP2011/0020

Date: Wednesday 13th November 2019

Coram: The Hon. Dame Janice Pereira, Chief Justice
The Hon. Gertel Thom, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [AG]

Appearances:

Appellant: Ms. Angela Cozier with Mrs. Emily Prentice Blackett of Cozier and Associates.

Respondent: Ms. Rochelle Duncan of Walwyn Law.

Issues: Leave to appeal to Her Majesty in Council/Extension of time to file submissions in response.

Type of Order: Oral decision

Result/Order: IT IS HEREBY ORDERED THAT:

1. Leave to appeal to Her Majesty in Council in respect of the judgment of the Court of Appeal made on the 29th January 2019 and re-issued on the 4th February 2019 is hereby granted subject to the following conditions: -

- i. that the Appellant shall within 90 days lodge with the Court the EC dollar equivalent of GBPSOO as security for the prosecution of the appeal to Her Majesty in Council and the payment of all such costs as may be payable by it in the event of it not obtaining an Order granting it final leave to appeal or the appeal being dismissed for non-prosecution or the Judicial Committee ordering it to pay the costs of the appeal (as the case may be);
- ii. that the Record shall be prepared in accordance with Rules 18 - 20 of the Judicial Committee (Appellate Jurisdiction) Rules Order 2009, Practice Directions 4.2.1, 4.3.2 and Practice Direction 5, to be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay when final permission to appeal has been granted;
- iii. that the Appellant shall make an application to the Court for final leave to appeal to Her

Majesty in Council, supported by the Certificate of the Registrar that the security for costs for the prosecution of the appeal ordered herein has been given within the time frame prescribed by this Order to the satisfaction of the Registrar; and

iv. that the Appellant shall file its notice of appeal to Her Majesty in Council within 56 days of this court granting final leave to appeal to Her Majesty in Council and pursue its appeal to Her Majesty in Council expeditiously.

2. There be a stay of execution in relation to the orders of USD\$56,000.00 and the award of costs pending the appeal to Her Majesty in Council; and

3. The costs of and occasioned by this application be the costs in the appeal to Her Majesty in Council.

Reason:

The Court was of the view that an appeal to the Privy Council lay as of right and the conditions for same were met. The respondent company being struck off the Register of Companies was unable to be heard on the application.

HIGH COURT CIVIL APPEALS

Case Name:

**Gregory Gilpin Payne
International Investment & Consulting Ltd
v
Stephen First
Corporate Capital
SKBHCVAP2019/0011**

Date:

Wednesday 13th November 2019

Coram: The Hon. Dame Janice Pereira, Chief Justice
The Hon. Gertel Thom, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [AG]

Appearances:

Appellants: Dr. Henry Browne, QC

Respondents: No Appearances of or on behalf of the respondent.

Issues: Leave to appeal - Whether or not service ought to have been on the respondents personally – Application for Adjournment

Type of Order: Adjournment

Result/Order: Matter is adjourned.

Reason: The court was of the view that the matter ought to be adjourned generally.

HIGH COURT CIVIL APPEALS

Case Name: Delano Bart
V
Constructions Technologies Ltd.
Lincoln Pemberton
[SKBHCVAP2018/0016]

Date: Wednesday 13th November 2019

Coram: The Hon. Dame Janice Pereira, Chief Justice
The Hon. Gertel Thom, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [AG]

Appearances:

Appellant: Ms. Midge Morton with Ms. Maurisha Robinson

Respondents: Dr. Henry Browne, QC

Issues: Appeal against the decision of Her Ladyship, Madam Justice Pearletta E. Lanns contained in a written judgement dated 24th July 2018.

Type of Order: Directions

Result/Order: It is hereby ordered by Consent:
1) Paragraph 1 of the order of the learned judge covers all of the liabilities for fees.
2) An assessment shall be conducted by a Judge of the High Court who shall be at liberty to determine the bases on which the quantum shall be assessed.
3) Bills of quantities in relation to Beacon Heights contract to be served on the appellants now that the respondent has stated that they are in possession of them within 7 days.
4) The assessment shall be set down before a judge on a date to be fixed by the Registrar of the High Court.
5) There is no order as to costs.

Reason: The court was of the opinion that Counsel for the appellant has raised many issues that can be determined by an assessment judge.

Case Name: Wingrove George
v
The Senior Magistrate
The Director of Public Prosecutions
SKBHCVAP2019/0004

Date: Wednesday 13th November 2019

Coram: The Hon. Dame Janice Pereira, Chief Justice
The Hon. Gertel Thom, Justice of Appeal

The Hon. Paul Webster, Justice of Appeal [AG]

Appearances:

Appellant: Mr. Sylvester Anthony with Mrs. Angelina Sookoo-Bobb

Respondent: Mr. Dane Hamilton QC with Mr. Victor Elliott Hamilton

Issues:

Interlocutory appeal - Whether a charge for an offence committed during an election period must be brought under the Election Act

Type of Order:

Reserved

Result/Order:

The decision is reserved.

Reason:

This was an interlocutory appeal against a decision of the Learned Trial Judge Eddy Ventose delivered on 15th January 2019 where leave to apply for Judicial Review of a decision made by the Senior Magistrate on 15th December 2017 was refused. The appellant was seeking to review the actions of the magistrate in respect of two warrants issued against the Appellant and also sought to review the decision of the Learned Director of Public Prosecutions in respect of 2 criminal information filed against him in relation to the purported offence of misconduct in public office.

The appellant was charged on an information with misconduct for allegedly suspending the announcements of the election results and for failure to take proper steps to ensure the timely announcement of the election results for constituency number 4 and constituency number 8 contrary to common law.

He therefore sought, in the court below, various orders including an order of certiorari quashing the said information and any decision taken or made on the said information pursuant to Part 56 of the Eastern Caribbean Supreme Court Civil Procedure

Rules (2000) as amended.

The appellant argued that there was no jurisdiction to charge him under the common law but any charges should fall under the special and peculiar jurisdiction of the election court and according to the procedure for such election offences.

APPLICATIONS/MOTIONS

Case Name: Minister of Agriculture, Lands Housing,
Cooperatives & Fisheries
Nevis Housing & Land Development
Corporation
v
Eustace Nisbett
SKBHCVAP2019/0020

Date: Wednesday 13th November 2019

Coram: The Hon. Dame Janice Pereira, Chief Justice
The Hon. Gertel Thom, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [AG]

Appearances:
Appellant: Dr. Henry Browne, QC
Respondent: No appearance

Issues: Application a stay of execution

Type of Order: Directions

Result/Order: To enable this appeal to be ready for hearing in February 2020:

1) The respondent shall file by Wednesday 22nd November 2019, (his agreement or otherwise) in respect of the documents to be included in the record and in the event of no agreement the list of

documents as set out by the appellant. The respondent shall identify what documents are to be excluded or added as the case may be by 22nd November 2019.

2) The appellant shall prepare, file and serve the record of appeal no later than Monday 23rd December 2019.

3) Skeletal arguments – The appellant shall file and serve skeletal arguments with authorities in support of the appeal by 23rd December 2019.

4) The respondent shall file and serve submissions together with authorities by Wednesday 15th January 2020.

5) The hearing of the appeal shall take place during the week commencing the 10th February 2020.

6) Accordingly, a stay of the proceedings in the court below is hereby granted until the hearing of the appeal in February 2020.

7) No order as to costs on this application.

Reason:

The court was of the view that the parties were not ready to proceed.

MAGISTERIAL CIVIL APPEAL

Case Name:

**Martin Andrew
v
Derrick Browne
SKBMCVAP2018/0002**

Date:

Wednesday 13th November 2019

Coram:

**The Hon. Dame Janice Pereira, Chief Justice
The Hon. Gertel Thom, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [AG]**

Appearances:

Appellant: Mr. Patrice Nisbett with him Mr. Eustace Nisbett.

Respondent: Ms. Kurlyn Merchant
Mr. Derrick Browne is present.

Issues: Civil appeal

Type of Order: Oral Decision

Result/Order: Appeal dismissed with costs to defendant of \$1000.00
being 2/3rd of the cost below.

Reason: The court was of the view that the Learned Magistrate was entitled to arrive at the decision as she did as there was no challenged evidence. The court found that the respondent did not provide any evidence to contradict the estimate of damages provided by the appellant.

In the circumstances this court could discern no basis upon which to disturb the decision of the Learned Magistrate.

HIGH COURT CIVIL APPEAL

Case Name:

**Diliana Roussev
v
Digital Wings Limited et al
SVGHCVAP2019/0001**

Date: Thursday 14th November 2019

Coram: The Hon. Davidson K. Baptiste, President of Appeal
The Hon. Louise E. Blenman, Justice of Appeal
The Hon. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Jomokie Phillip holding for Mr. Alan Gourgey

Respondent: Mr. Stephen Morverly Smith QC

Issues: Application for an adjournment.

Type of Order: Adjourned

Result/Order:

- 1) The hearing of this appeal is adjourned and traversed to the hearing of the Court of Appeal in St. Kitts during the week of 10th February 2020.
- 2) The court orders that the respondent shall have costs assessed in the sum of \$78,851.54 USD which represents the entire costs paid by the appellant save and except the \$44,975.35, the respondent is awarded half of these costs.
- 3) \$7775.00 which would have been necessary for the attendance of Mr. Freeman whose presence is no longer required tomorrow is disallowed.
- 4) The applicant shall pay the respondent costs in the sum \$78,851.54 within 14 days of this order.

Reason: The court was of the view, having regard to Part 62 (2) (3) and the overriding objective that justice required an adjournment be granted. The court in reaching its decision, considered and followed the principles of stated in Fitzroy Robinson v Mentmore Towers No 2 [2009] EWHC 3070 TCC.

By The Court

Registrar