

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE

SAINT LUCIA

6th to 10th July 2020

JUDGMENTS

Case Name:

**IN THE MATTER of the Registered Land Act, Revised
Statutes of Anguilla, Chapter R30, Section 147**

and

**IN THE MATTER of an Appeal by Collins Richardson,
Carolyn Richardson (Administrator of the Estate of
John Samuel Richardson); Boswell Richardson;
Calvin Richardson; Leslie Richardson as
Administrator of the Estate Alma Richardson; Margie
Hughes as Administrator of the Estate of Evangeline
Hughes; Estell Hughes as Administrator of the
Estate of Samuel Benjamin Richardson; Calvin
Richardson as Administrator of the Estate of Victor
Richardson; Robert Austin Richardson as
Administrator of the Estate of Eneria Richardson;
Royston Richardson as Administrator of the Estate
of James Richardson; Oliver MacDonna as
Administrator of the Estate of Jane Rebecca
Richardson and Sybil Ryhmer as the Administrator
of the Estate of Florence Richardson against a
decision of the Registrar of Lands dated 28th
September 2010 and 7th July 2011**

**[AXAHCVAP2016/0011]
(Anguilla)**

Date:

Wednesday, 8th July 2020

Coram for

The Hon. Mde. Gertel Thom, Justice of Appeal

**delivery of
judgment:**

**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St. C. Farara, QC Justice of Appeal [Ag.]**

Appearances:

Appellants: Mr. Alex Richardson

**Respondents: Mr. Kerith Kentish for the 1st to 6th Respondents/Counter
appellants**

Issues:

Civil appeal – Interlocutory appeal – Whether the learned master ought not to have proceeded to hear the long-standing application for valuation of the claim after the trial – Rule 65.6(1)(a) of the Civil Procedure Rules 2000 – Whether the application to value the claims were overtaken by the judgment of Combie-Martyr J after the full trial of the claims – Costs – Quantification of costs on a prescribed costs – Whether costs ought to be quantified on a prescribed costs basis in relation to the Benjamin Richardson Appellants – Rule 65.5(2)(b) of the Civil Procedure Rules 2000 – Whether the Court of Appeal judgment delivered 24th May 2019 overturned the High Court’s costs order in favour of the Benjamin Richardson Appellants – Variation of order from assessed costs to prescribed costs

Result/Order:

Held: dismissing the interlocutory appeal filed by the Collins Richardson Appellants and the counter-interlocutory appeal filed by the Benjamin Richardson Appellants; setting aside the order made by the learned master on 6th December 2016; and ordering that the appellants/respondents and counter-appellants/respondents shall bear their own costs in the appeal and counter-appeal, that:

- 1. It is clear that this Court, in its judgment in Civil Appeal No. AXAHCVAP2016/0002, having dismissed the appeal and counter appeal, affirmed the judgment of Combie-Martyr J and did so in terms and language which was unqualified. The clear effect of that ruling is that all aspects of the judgment below were upheld, including the learned judge’s determination of the incidence of costs in favour of the Benjamin Richardson Appellants. The 7th respondent, being the only successful party in the appeal, was entitled to its costs in the appeal. Accordingly the Court, in awarding costs to the 7th**

respondent, was deliberate when formulating the costs order in saying explicitly that the costs below must be on the correct basis of prescribed costs. This in no way meant that the Court was overturning or altering the incidence of costs in the court below so as to only award costs to the 7th Respondent.

2. The application made pursuant to rule 65.6(1)(a) of the CPR to value the claims/appeals for the purpose of determining prescribed costs, not having been heard or determined prior to the trial, and only after delivery of the judgment of the court below on the twelve claims/appeals, was rendered otiose or overtaken and foreclosed by the said judgment, which was upheld by the Court of Appeal. In this instance, the parties themselves were clearly at fault in not pursuing the application and in not having it listed for hearing before the court in a timeous manner, in advance of the trial. Rule 65.6(1)(a) of the CPR not only stipulates that an application for a claim to be valued must be made before the trial, but contemplates that it ought to be heard and determined before commencement of the trial. Were it otherwise, this would undermine the purport of 65.6(1)(a) and the overriding objective to do justice between the parties.

Rule 65.6(1)(a) of the Civil Procedure Rules 2000 applied.

3. It would be in exceptional circumstances that a court ought to proceed to value a claim under rule 65.6(1)(a) after the trial, where the application had been made prior to commencement of the trial. The instant matter is not such an exceptional circumstance. The delay is of the kind which this Court deprecates and will not permit or sanction. It was not open to the Benjamin Richardson Appellants, having received the judgment of the court, to revive and to pursue their long dormant application which they, by their own admission, had ignored or forgotten about, allowing it to be overtaken by the trial itself in which all the issues between the parties were fully ventilated and judgment rendered, including an award of costs on the full claims/appeals. Therefore, it was not open to the learned master in these circumstances to proceed to hear and to make orders on the application to value the claims/appeals,

and in so doing he erred.

Rule 65.6(1)(a) of the Civil Procedure Rules 2000 applied.

4. While the judgment of this Court did not expressly make an order varying the basis of the costs order in the court below from assessed costs to prescribed costs, it is sufficiently clear that the Court had concluded that the correct approach was that of prescribed costs in accordance with rule 65.5. To conclude otherwise would be to make a nonsense of the ruling of the Court on the matter of costs, producing an unsatisfactory and disquieting dichotomy whereby one respondent's costs in the court below is to be quantified on one basis and the other respondents on a different basis. We are satisfied that this was not the purport of the judgment of the Court of Appeal, a matter on which counsel for both sides were *ad idem*. Accordingly, the quantum of costs in the High Court to be awarded to the Benjamin Richardson Appellants is to be determined under the prescribed costs regime.
5. The Benjamin Richardson Appellants have the benefit of a costs order in the High Court, which costs are to be quantified on the prescribed costs basis pursuant to rule 65.5(2)(b), that is, the default provision, whereby a claim is treated as a claim for EC\$50,000.00. The effect of the High Court order was to award costs to each of the Benjamin Richardson Appellants as defendants/respondents in the claims below, and not one costs order covering all of the Benjamin Richardson Appellants and all twelve claims/appeals. Accordingly, the Benjamin Richardson Appellants, as defendants/respondents, are entitled under the order of the High Court, to have their costs quantified in those of the twelve claims in which they were, individually or together with other Benjamin Richardson Appellants, defendants/respondents, on the prescribed costs basis, that is, a presumed value of EC\$50,000.00, pursuant to rule 65.5(2)(b).

Rule 65.5(2)(b) of the Civil Procedure Rules 2000 applied.

Case Name:

The Attorney General of Saint Lucia

V

Darrel Montrope

[SLUHCVAP2019/0021]

(Saint Lucia)

Date:

Thursday, 9th July 2020

**Coram for
delivery of
judgment:**

**The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Garth Patterson, QC, with him, Mr. Rene Williams

Respondent:

Mr. Kendrickson Kentish

Issues:

Interlocutory appeal — Procedure applicable to claims by way of originating motion — Requirement for leave to amend statement of case — Whether leave was required to amend originating motion — Effect of ambiguous notice of hearing issued by court office — Whether notice of hearing fixed date for first case management conference or for hearing of preliminary objection — Whether leave is required to amend statement of case where an application to strike out the statement of case has been filed but not determined — Effect of application pursuant to rule 9.7 of the Civil Procedure Rules 2000 — Whether an application to strike pursuant to rule 9.7 operates as a stay of all further proceedings pending the determination of the application — Whether learned judge erred in permitting amendments to statement to case — Whether amendments to statement of case in the interest of justice

**Result and
Reason:**

Held: allowing the appeal; setting aside the decision of the learned judge; disallowing the amendments made by Mr. Montrope to his originating motion; striking out Mr. Montrope's amended originating motion; remitting the appellant's CPR 9.7 application to the court below; and making no order as to costs, that:

1. CPR 20.1 requires a party to obtain leave to amend its statement of case at any time after the date fixed for the first case management conference, which, in the case of an originating motion, is the date fixed for the first hearing of the motion. As the court office invariably schedules the hearing of applications in accordance with the chronological order of their filing, the learned judge ought to have construed the notice of hearing as the notice of first hearing for the originating motion, which was filed prior in time to the application to strike. In the circumstances, a date had been fixed by the court office for the first case management conference in this matter. Accordingly, Mr. Montrope required the court's leave to properly amend his pleadings, as the date fixed for the first case management conference had already passed by the time he amended his originating motion.

St. Kitts Nevis Anguilla National Bank Limited v Caribbean 6/49 Limited Saint Christopher and Nevis High Court Civil Appeal No. 6 of 2002 (delivered 31st March 2003, unreported) applied; Comodo Holdings Limited v Renaissance Ventures Limited and Joseph Katz BVIHCMAP2014/0032 (delivered 3rd May 2016, unreported) applied; Rules 8.4, 20.1, 27.2, 56.7 and 56.11 of the Civil Procedure Rules 2000 considered.

2. The principle in Index Communication Network Limited v Capital Solutions Limited and others and Maria Agard v Mia Mottley and Anor is that the filing of an application to strike has the effect of prohibiting a party whose pleadings are under attack from amending its pleadings without the court's leave. While it is true that there is no rule in the CPR which imposes such a requirement for leave, if leave to amend were not required, a party seeking to attack or strike out pleadings would have to address any subsequent amendments made without the court's leave, by perhaps mounting subsequent applications if there remained any basis for doing so. Such an approach would sanction one party 'stealing a march' on the other by curing defects in its pleadings which the application to strike sought to impugn, and would not be in keeping with the overriding objective. The learned judge ought to have been alive to the unfairness which would result in such circumstances, and accordingly

erred by failing to apply the principle set out in the Index and Maria Agard decisions. Applying Index and Maria Agard to this case, even if no date had been fixed for the first case management conference, Mr. Montrope would still have required leave to amend his pleadings, he having sought to do so after the appellant had filed the application to strike.

Index Communication Network Limited v Capital Solutions Limited and others [2012] JMSC Civ No. 50 followed; Maria Agard v Mia Mottley and Anor Barbados High Court Claim No 1753 of 2015 (unreported) followed; Dr. Ralph E. Gonsalves v Elwardo Lynch et al Saint Vincent and the Grenadines Civil Appeal No. 9 of 2003 (delivered 2nd July 2003, unreported) distinguished; Diamantis Diamantides v JP Morgan Chase Bank and others [2005] EWCA Civ. 1612 considered; Real Time Systems Limited v Renraw Investments Limited and others [2014] UKPC 6 considered.

3. It is settled that the effect of an application under CPR 9.7 seeking to dispute the jurisdiction of the court is to stay proceedings pending the determination of the application. Such an application ought to be determined by the court before any other issue arising on a claim is dealt with. The learned judge accordingly erred when he heard and determined Mr. Montrope's oral application to amend his originating motion before he considered the application to strike pursuant to CPR 9.7, which was filed before the oral application was made.

St. Kitts Nevis Anguilla National Bank Limited v Caribbean 6/49 Limited Saint Christopher and Nevis High Court Civil Appeal No. 6 of 2002 (delivered 31st March 2003, unreported) applied; Diamantis Diamantides v JP Morgan Chase Bank and others [2005] EWCA Civ 1612 distinguished.

4. Even if leave of the court was not required to amend Mr. Montrope's originating motion (which it was), the judge ought only to have permitted the amendments if it was in the interest of justice to do so, and if the amendments were not fanciful or served some real purpose. The amendments permitted by the judge were

either factually unsubstantiated by Mr. Montrope, expressly found to be fanciful by the learned judge, or outside the scope of the preliminary objection filed by the respondent and therefore served no real purpose. In the circumstances, the learned judge improperly exercised his discretion by permitting the amendments.

George Allert et al v Joshua Matheson et al GDAHCVAP2014/0007 (delivered 24th November 2014, unreported) applied; Comodo Holdings Limited v Renaissance Ventures Limited and Joseph Katz BVIHCVAP2014/0032 (delivered 3rd May 2016, unreported) applied; Three Rivers District Council and others v Bank of England (No.3) [2001] 2 All ER 513 considered; Practice Direction 20 No. 5 of 2011 considered.

Case Name:

- [1] National Bank Of Anguilla Limited (In Receivership)
- [2] Caribbean Commercial Bank (Anguilla) Limited (In Receivership)
- [3] National Commercial Bank of Anguilla Limited
- [4] Eastern Caribbean Central Bank
- [5] Martin Dinning
- [6] Hudson Carr
- [7] Shawn Williams
- [8] Robert Miller

v

- [1] National Bank Of Anguilla (Private Banking And Trust) Limited (In Administration)
- [2] Caribbean Commercial Investment Bank Limited (In Administration)

[AXAHCVAP2019/0004]
(Anguilla)

Date: Thursday, 9th July 2020

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

Appearances:

Appellant: Mr. William Hare and Mr. Alex Richardson

Respondent: Mr. Ronald Scipio, QC with him, Ms. Eustella Fontaine and Ms. Yanique Stewart

Issues: Civil appeal – Interlocutory Appeal – Application for security for costs – Companies Act of Anguilla – Civil Procedure Rules 2000 – Breach of CPR 62.4(3) – Application for security for costs pursuant to Section 278 of Companies Act of Anguilla – Whether respondents’ non-payment of costs in previous judgment a basis for court awarding security for costs – Whether the respondents’ undertaking to cover costs of other defendants relevant factor to be considered by the court – Breach of natural justice principles – Whether learned master breached natural justice principles – Whether learned master took into account reports of the court appointed administrator in the administration file of the respondent companies which was under seal – Impecuniosity threshold test – Whether section 278 of the Companies Act was engaged – Presumption of insolvency – Whether the fact of the respondent companies being in court insolvent administration gave rise to a presumption of impecuniosity – Rebuttal of presumption of insolvency – Whether the presumption of insolvency was rebutted

Result / Order: Held: dismissing the appeal; affirming the order of the learned master; and ordering that the respondents have their costs in the court below and of the appeal assessed at two-thirds of the costs below, which costs are to be assessed by a judge or master within 21 days, if not agreed, that:

1. The respondents did not pursue, before this Court, their preliminary point that the appellant was in breach of CPR 62.4(3), having not attached to their notice of appeal a copy of the order granting them leave to appeal the decision of the learned master refusing the application for security for costs. Accordingly, the Court can only

conclude that the preliminary point was no longer being relied upon by the respondents and may have been rendered impotent by subsequent developments referenced by the appellant in their written submissions. In any event, the appellant's notice of interlocutory appeal was filed within the 21-day period prescribed by CPR 62.5(1)(a).

Rules 62.4(3) and 62.5(1)(a) of the Civil Procedure Rules 2000 applied.

2. The relevance to the appellant's application for security for costs of the respondents having, on the day the learned master rendered his decision dismissing the said application, presented to the master the undertaking reached with the 4th, 5th, 6th and 7th defendants as to the payment of their costs in the proceedings below, resulting in these defendants withdrawing their application for security, is marginal at best. The failure to reach a similar accommodation and undertaking with the appellant may very well be a by-product of the way in which the appellant and the respondent have conducted the litigation between them and based upon the timelines involved, it may not have been possible for the master to take the undertaking reached with the other defendants into account before making his decision of the appellant's application. This is not the test to be applied when considering an application for security for costs. The sole test is the claimant company's impecuniosity and the fact that the claimant company has given an undertaking to another defendant, satisfactory to them to meet any costs order made in their favour, is not necessarily evidence of the claimant company's impecuniosity and may be viewed as evidence of its ability to meet any such order.
3. The function of this Court is to review the learned master's decision in light of the grounds of appeal and the points of challenge relied upon by the appellant in support of their contention that the learned master erred in refusing the application for security for costs. In discharging its review function, the respondents' undertaking to cover the costs of some of the defendants is, at this stage, irrelevant. The fact that some defendants

in these proceedings were able to reach an accommodation with the respondents, giving rise to an undertaking to cover their costs, does not lead inexorably to a court making an order for security for costs in favour of the appellant.

4. The argument advanced by the appellant that the respondents' non-payment of costs flowing from the previous judgment and order is indicative of the respondents' being unlikely to pay any costs which may be awarded to the appellant, is premature and misconceived. This is so since no sum has been agreed by the parties and no sum has as yet been quantified by the court following the assessment proceedings, such as would obligate the respondents to make either payment in full or a part payment. Furthermore, based upon the conclusions reached in this judgment in relation to the respondents' ability to pay any adverse cost awarded to the appellant in the event that their defence is successful, this point is without merit.
5. The appellant's contention that the decision of the learned master was contrary to the principles of natural justice in that the learned master based his decision on evidence under seal in the administration file which neither the appellant nor those representing them were privy to, is without merit. Such a conclusion is not supported by a reading of the learned master's Reasons for his decision. The Court rejects the appellant's invitation to draw such an inference, as nowhere in the learned master's Reasons for his decision does he allude to or state that he looked at the documents in the sealed administration file, or read or relied upon the reports of the administrator in those proceedings. What the Reasons do disclose is that the learned master relied upon the evidence given at paragraph 28 of the affidavit of the court appointed administrator, Mr. William Tacon. The Court is of the view that absent any clear statement or compelling inference that the learned master did examine and rely upon the reports of the administrator in the sealed court file, it is not prepared to find, and there is no basis upon which to find, that there was a breach of natural justice committed by the master thus rendering

this Court compelled to set-aside the order dismissing the application for security for costs. Accordingly, the Court dismisses this ground of appeal by the appellant.

Al Rawi and others v The Security Service and others [2011] UKSC 34 applied.

6. It is well settled that the sole test where an application for security for costs is made pursuant to section 278 of the Companies Act, is the impecuniosity of the claimant company. The requirements under section 278 are not the same as those under part 24 of the CPR. Accordingly, under section 278, it matters not whether the claimant company is resident or has its controlling interest in the particular jurisdiction in which the claim has been commenced. Likewise, it is not a requirement that its assets or most of them must be within the jurisdiction. Thus, for a defendant to be successful in their application, they must first lead credible evidence of the claimant company's impecuniosity. This may include proof of the insolvency of the claimant company giving rise to a presumption that it will be unable to pay an adverse costs award made in favour of the defendant/applicant. If the claimant company's impecuniosity has not been established on cogent evidence as a real possibility or probability, then section 278 is not engaged and the court cannot proceed to the exercise of its discretion, and the application must be dismissed.

Ultramarine (Antigua) Ltd v Sunsail (Antigua) Ltd ANUHC VAP2016/0004 (delivered 7th April 2017, unreported) applied.

7. Where an applicant for security for costs has been able to satisfy the court as to the claimant company's impecuniosity, the court is then required under section 278, in the exercise of its undoubted discretion, to determine whether it is just in all the circumstances to make an order for security. The court is not compelled to do so and may decline to do so in circumstances where an order for the payment of security would stifle a genuine claim. In the instant matter, the latter consideration does not arise as there is no suggestion

that an order for security for costs, even in the sum requested by the appellant, would stifle the respondents' claim. In determining whether in the exercise of its discretion the court ought to make an order for security for the a defendant's costs, the court must balance any detriment to the claimant company against any detriment to the applicant/defendant if such an order is made. Accordingly, each application for security for costs must be decided on its merits.

Section 278 of the Companies Act Chapter C65 of the Revised Statutes of Anguilla 2014 applied; Keary Developments Ltd v Tarmac Construction Ltd and another [1995] 3 All ER 534 applied.

8. The Court is of the view that this threshold test of impecuniosity was not engaged in the application for security for costs, as there was no evidence led by the appellant that demonstrated the impecuniosity of the respondents, save for a reliance upon the presumption that the respondent companies being in insolvent administration would be unable to pay any costs awarded to the appellant if they were successful in their defence against the claim. The respondents by their own evidence, showed clearly that they would be able to pay any costs award made in favour of the appellant in the proceedings below. The respondents' evidence shows that the first respondent had, at the time, cash in the sum of US\$3,465,000.00, and the second respondent cash in the sum of US\$176,000.00. In the Court's view these sums are more than sufficient to meet any costs award made in the High Court proceedings in favour of the appellant, bearing in mind that the aggregate sum sought by the appellant as security is US\$860,725.00. Furthermore, the Court is of the view, that the absence of any mention of liabilities or of creditors in the administration of the respondent companies, other than administrative costs and realisation costs for projected recoveries in the respondents' evidence, does not significantly undermine or detract from the evidence of the court appointed administrator as to the financial position of these two companies, and their ability to pay a cost award made in favour of the appellant at the conclusion of the trial.

Additionally, there is no requirement that the funds or assets of the respondents must be held in the jurisdiction, otherwise an order for security must be made against them. Accordingly, the Court finds that the learned master was entitled to rely upon the respondents' evidence and reach his conclusion as to the ability of the respondents to pay any such costs award.

Section 278 of the Companies Act Chapter C65 of the Revised Statutes of Anguilla 2014 applied; *Keary Developments Ltd v Tarmac Construction Ltd and another* [1995] 3 All ER 534 applied.

9. The Court is satisfied that the learned master did not err in reaching his conclusion based on the evidence before him that the respondent companies had the assets and financial resources, and was likely to have the assets financial resources, which would enable it to pay any costs award made against it and in favour of the appellant, including the cost order of this Court on the previous interlocutory appeal, in respect of which the appellant claims some US\$207,000.00. Furthermore, the Court is also satisfied that the learned master was correct in concluding, on the evidence of the court appointed administrator of the respondents, that the respondents had sufficiently rebutted the *prima facie* presumption that they would be unable to pay any adverse costs award. The respondents' evidence as to the respective current and future financial positions of each respondent company, was sufficient to rebut that presumption.

Northampton Coal, Iron & Waggon Co v Midland Waggon Co (1878) 7 Ch. D 500 considered; *Friendship Bay Hotel v Branganza AB et al Saint Vincent and the Grenadines High Court Claim No. 396 of 2010* (delivered 24th March 2011, unreported) considered; *Globe-X Canadiana Limited v Clifford Johnson et al Anguilla Civil Appeal No. 4 of 2003* (delivered 20th September 2004) considered.

10. In all the circumstances, it is the Court's considered view, that the master did not take into account irrelevant factors or evidence, nor did he fail to take into consideration relevant factors in reaching his decision to dismiss the appellant's application for security for costs.

In our judgment, there is no basis upon which to conclude that the learned master's decision exceeded the generous ambit within which reasonable disagreement is possible, nor is his decision plainly wrong. Accordingly, there is no basis upon which this Court ought to set aside the decision of the master and we decline to do so.

Peter Thomas v Desireen Douglas et al
GDAHCVAP2014/0036 (delivered 15th February 2016, unreported) applied.

APPLICATIONS AND APPEALS

Case Name:

**Justina Samuel
v
Bank of Saint Lucia Limited**

**[SLUHCVP2019/0022]
(Saint Lucia)**

Date:

Monday, 6th July 2020

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal [Ag.]**

Appearances:

Applicant:

Mr. Leevie Herelle

Issues:

Application for leave to appeal against decision of learned judge entering judgment in default of acknowledgment of service against applicant — Whether proposed appeal has realistic prospect of success — Whether request for entry of judgment by way of Form 7 appropriate method of seeking judgment against applicant — Whether respondent ought to have made an application for judgment to be entered in default of acknowledgment of service instead of a request for entry of judgment by Form 7, on the basis that the claim was against more than one defendant — Whether rule 12.9 of the Civil Procedure Rules 2000 engaged in circumstances where judgment was previously entered on admission against the first defendant in the court below — Whether learned judge

erred in considering respondent's Form 7 request for entry of judgment instead of applicant's application for extension of time to file defence filed after request was made

Type of Order: Oral Decision

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:
The application for leave to appeal is refused.

Reason: The Court, having considered the application for leave to appeal and the arguments of counsel, was not persuaded that this matter would have a realistic prospect of success. Accordingly, the application for leave to appeal was refused.

Case Name:

[1] Richard Frederick
[2] Almus McDowall trading as
McDowall Broadcasting Corporation
v
Agnes Francis

[SLUHCVAP2019/0024]
(Saint Lucia)

Date: Monday, 6th July 2020

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

Appearances:

Petitioners: Mr. Horace Fraser

Respondent: Ms. Renee St. Rose and Mr. Andrae Silburn

Issues: Petition for conditional leave to appeal to Her Majesty in Council as of right — Whether appeal to Her Majesty in Council lies as of right pursuant to section 108(1)(c) of the Constitution of Saint Lucia — Whether decision which

petitioner proposes to appeal is a final or interlocutory decision — Application test — Decision of trial judge entering default judgment on defamation claim — Whether decision of trial judge would have finally determined the issues arising on the claim whichever way it was decided — Court of Appeal refused leave to appeal against decision of trial judge — No appeal heard in Court of Appeal from which to appeal to Her Majesty in Council — Application to withdraw petition for conditional leave to appeal to Her Majesty in Council

Type of Order:

Oral Decision

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. With the leave of the Court, the petition for leave to appeal to Her Majesty in Council filed by the petitioners is withdrawn.
2. The petitioners shall bear the costs of the respondent on the petition in the amount of \$2,500.00 to be paid by 20th July, 2020.

Reason:

In determining whether the petitioners' appeal to Her Majesty in Council was as of right, the Court considered that the decision of the Court of Appeal which the petitioners sought to appeal was one refusing leave to appeal and therefore there was no appeal heard in the Court of Appeal from which to appeal to Her Majesty in Council.

Furthermore, the decision which the petitioners sought to appeal to the Court of Appeal was a decision entering default judgment on a defamation claim. The Court noted that, if the petitioners' attempt to have the default judgment obtained by the respondent set aside had succeeded, the claim would have proceeded to trial. Applying the application test, the Court stated that the decision of the trial judge entering default judgment on a claim is an interlocutory decision. Therefore, even if an appeal in this matter had been heard by the Court, the petitioners could not appeal as of right to Her Majesty in Council pursuant to section 108(1)(c) of the *Constitution of Saint Lucia, Cap. 1.01, Revised Laws of Saint Lucia 2017*.

Counsel for the petitioner acceded to the position of the

Court and sought the leave of the Court to withdraw the petition. Counsel for the respondent asked for costs to be awarded in the sum of \$2,500.00 on the basis that written submissions and a witness statement had been filed on behalf of the respondent in contesting the application.

Accordingly, the Court granted leave to the petitioner to withdraw the petition for conditional leave to appeal to Her Majesty in Council and awarded costs on the petition to the respondent in the sum of \$2,500.00 to be paid by 20th July 2020.

Case Name:

Allen Chastanet

v

Ernest Hilaire

[SLUHCVAP2019/0005]

(Saint Lucia)

Date:

Monday, 6th July 2020

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal [Ag.]**

Appearances:

Petitioner:

**Mr. Anthony Astaphan, SC, with him, Mr. Thaddeus Antoine,
Ms. Renee St. Rose and Ms. Ann-Alicia Fagan**

Respondent:

Mr. Garth Patterson, QC with him, Mr. Mark Maragh

Issues:

Petition for conditional leave to appeal to Her Majesty in Council as of right — Whether appeal to Her Majesty in Council lies as of right pursuant to section 108(1)(c) of the Constitution of Saint Lucia — Whether decision of Court of Appeal final or interlocutory — Whether decision which petitioner proposes to appeal from involved a question as to the interpretation of a provision of the Constitution of Saint Lucia or as to the application of a constitutional provision — Petition for conditional leave to appeal to Her Majesty in Council pursuant to section 108(2)(a) of the Constitution of Saint Lucia — Whether question involved in appeal is one

that by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council — Whether UK Defamation Act 2013 imported into Saint Lucian law by virtue of article 917A of the Civil Code of Saint Lucia — Whether article 917A of the Civil Code of Saint Lucia properly construed in light of the Constitution of Saint Lucia, imports into Saint Lucia the statute law of England relating to contracts, quasi contracts and torts — Whether issue of importation of English statute law by virtue of article 917A would benefit from the guidance of Her Majesty in Council particularly where there is conflicting dicta on the effect of article 917A

Type of Order:

Oral Decision

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. Conditional leave to appeal against the decision of the Court delivered on 16th January 2020, is granted to the petitioner pursuant to section 108(2)(a) of the Constitution of Saint Lucia upon the following conditions:
 - a. That the petitioner shall within 90 days of the date hereof do enter into good and sufficient security in the sum equivalent to £500 pursuant to section 5(a) of the West Indies Associated States (Appeals to the Privy Council) Order No. 224 of 1967 for the due prosecution of the appeal, such security to consist of a deposit of the said amount at the court office.
 - b. The petitioner does, within 90 days hereof, take the necessary steps to procure the preparation of the records of proceedings and the dispatch thereof to the Registrar of the Privy Council. The said records which are to be settled with the solicitors for the respondent and transmitted to the Registrar of the Privy Council shall be comprised of the record used at the hearing of the appeal, save documents of a formal nature and those documents omitted by consent of the parties, the judgments, the orders of the Court of Appeal and the Orders granting conditional and final leave to appeal to Her Majesty in Council.
 - c. The record shall be prepared in accordance with

rules 18-20 of the Judicial Committee (Appellate Jurisdiction) Rules Order 2009 and Practice Directions 4.3.1 to 4.3.2 and Practice Direction 5 (as amended in 2013) and shall be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay where final permission to appeal has been granted.

2. The petitioner shall make an application to the Court for final permission to appeal supported by the certificate of the Registrar that security for costs has been given by the time prescribed by this Order to the satisfaction of the Registrar of the High Court once the matters set out in subparagraphs a, b and c have been completed.
3. The costs of the petition for conditional leave shall be costs in the appeal to Her Majesty in Council.

Reason:

In relation to the petition for leave to appeal to Her Majesty in Council on the basis that the appeal lies as of right pursuant to section 108(1)(c) of *Constitution of Saint Lucia, Cap 1.01 Revised Laws of Saint Lucia 2017*, the Court was not satisfied that this threshold was met in terms of the decision being sought to be appealed is one from a final decision or that it is one on a question involving the interpretation of the Constitution. Accordingly, the petitioner did not succeed through that gateway.

As it relates to the petition for leave to appeal to Her Majesty in Council pursuant to section 108(2)(a) of the Constitution, the Court relied on the pronouncement in *Renaissance Ventures Limited and Another v Comodo Holdings Limited* (BVIHCMAP2018/0005 and BVIHCMAP2018/0008, delivered 8th October 2018, unreported) that:

“[w]here the principle is one established by this Court but is either unsettled, in the sense that there are differing views or conflicting dicta, or there is some genuine uncertainty surrounding the principle itself, or it is considered to be far reaching in its effect, or given to harsh consequences, or for some other good reason would benefit from consideration at the final appellate level, this Court would be minded to seek the guidance of their Lordships’ Board.”

Applying that dicta to the circumstances of this case as well

as following the decisions of *Olasemo v Barnett Ltd (1995) 51 WIR 191* and *Attorney General of Trinidad and Tobago v Lennox Phillip et al Civil Appeal No. 155 of 2006, delivered 6th June 2007*, the Court was of the view that the issues in this appeal raise questions of great general or public importance in the sense that there are issues which are raised in the context of constitutional provisions and also on the fact that it is the first time that the question as to the importation of the 2013 UK Defamation Act has been raised as being imported by way of article 917A of the *Civil Code of Saint Lucia, Cap. 4.01, Revised Laws of Saint Lucia 2017*.

The Court also considered, having regard to the fact that there is conflicting dicta on the question of whether article 917A of the *Civil Code of Saint Lucia* imports only the common law or imports also the English statute law relating to contracts, quasi-contracts and torts into Saint Lucia, that these are issues from which this Court would benefit from the guidance of Her Majesty in Council, being the final appellate court for Saint Lucia.

Case Name:

Lux Locations Limited
v
Yida Zhang

[ANUHCVP2020/0010]
(Antigua and Barbuda)

Date:

Monday, 6th July 2020

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. Thomas Roe, QC, with him Mr. Andrew O’Kola

Issues:

Application for leave to appeal

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Leave is granted to the applicant to appeal the decision of the learned judge made on 28th February 2020.**
- 2. The applicant shall file the notice of appeal within 14 days of the date of this order.**

Reason:

This was an application to seek leave to appeal against the decision of the learned judge dated 28th February 2020 by which she dismissed the applicant's application to adduce further affidavit evidence in support of its summary judgment application. The Court noted that subsequently, the learned judge rendered a decision dated 20th March 2020 on the substantive summary judgment application and granted leave to the applicant to appeal her decision in the summary judgment application on 18th June 2020. In the circumstances, the Court granted leave to appeal the judge's decision dated 28th February 2020 which related to the application to adduce further affidavit evidence.

Case Name:

Lance Wilson

v

The Queen

**[SLUHCRA2015/0006]
(Saint Lucia)**

Date:

Tuesday, 7th July 2020

Coram:

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

Appearances:

Appellant: Mr. David Moyston

Respondent: Mr. Stephen Brette

Issues: Application for adjournment and directions – Mental incapacity of appellant

Type of Order: Directions

Result / Order: IT IS HEREBY ORDERED THAT:

1. The Registrar of the High Court shall make arrangements for the appellant to be examined by a psychiatrist and for a medical report to be submitted to the Court and to counsel for the appellant and the respondent on or before 15th November 2020.
2. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 7th December 2020.

Case Name: Juliet Sutherland
v
Bank of Saint Lucia

[SLUHCVP2016/0005]
(Saint Lucia)

Date: Tuesday, 7th July 2020

Coram: The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Alfred Alcide

Respondent: Mr. Leslie Prospere

Issues: Civil Appeal – Approach of appellate court to learned judge's findings of fact – Bill of sale executed in bank's favour to secure loan to purchase motor vehicle - Bill of sale

subsequently registered under Bill of Sale Act of Saint Lucia – Borrower defaulting on loan payments to the bank – Motor vehicle subsequently sold to appellant – Validity of Bill of Sale – Bank’s ownership rights to motor vehicle under the Bill of Sale – Article 283(1) of the Commercial Code of Saint Lucia – Breach of implied condition for sale of motor vehicle – Whether seller had title at the time of the purported sale of motor vehicle to the appellant – Whether appellant acquired possessory title of motor vehicle notwithstanding prior Bill of Sale executed in bank's favour – Article 296 of the Commercial Code of Saint Lucia – Whether appellant's purchase of motor vehicle in good faith defeats bank's right to repossess – Article 2130 of the Civil Code of Saint Lucia – Whether appellant acquired title by prescription – Whether it was open to learned judge to find that there was a criminal conspiracy in circumstances where there were no pleadings or evidence to that effect

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. There is no order as to costs.

Reason:

On 15th April 2006, Mr. Charles Simon, a car dealer in Saint Lucia sold a vehicle to Mr. Johnson Mondesir. Following the sale, Mr. Simon the seller retained possession of the vehicle. Mr. Mondesir obtained a loan from the Bank of Saint Lucia (“the Bank”) secured by a bill of sale over the vehicle. The bank duly registered the bill of sale.

On 11th January 2007, Mr. Simon sold the same vehicle to the appellant, Ms. Juliet Sutherland, who registered the vehicle in her name. In December 2009, the appellant sold the vehicle to the second claimant, Mr. Derrick Satchell. It appears that on becoming aware, the Bank exercised its rights under the bill of sale and took possession of the vehicle from Mr. Satchell, following the default of Mr. Mondesir on his loan payments, which through the usual course would give the Bank the right to retain possession pursuant to the bill of sale.

The claimants in the court below, Ms. Sutherland and Mr.

Satchell, filed a claim in the High Court claiming delivery of possession of the vehicle, damages for loss of use, general and aggravated damages, interest and costs. The claim was heard by the trial judge who dismissed all of the claims and entered judgment for the Bank. The learned trial judge found that the registration of the bill of sale was notice to the world and that the appellant, by virtue of the registration, had notice of the bill of sale. The learned trial judge also confirmed the validity of the bill of sale, as such Mr. Simon did not have title to the vehicle to pass to the appellant.

In support of the position taken by the Bank, the Court referred to the case of Tara Ermine Leevy v Rosanna St. Martin SLUHCVAP2015/0005 (delivered 14th May 2018, unreported) which was also referred to by the learned trial judge. At paragraph 10 of the judgment, Pereira CJ referred to the text *Benjamin's Sale of Goods* and continued:

“[10] The authors explained that an innocent buyer will acquire good title to goods where the title to the goods is voidable, but not where the seller has no title at all.

[11] In the present case, the title of the impugned vehicle remained good title which was subject to a Bill of Sale in favour of the Bank. Intrinsically, Ms. Francis transferred title to the Bank and retained an equitable right to redemption of her title exercisable upon fulfillment of her obligations under the Bill of Sale. Possession of the vehicle itself remains in the grantor (Ms. Francis) of the Bill of Sale unless circumstances arise giving the grantee (the Bank) the power to seize the vehicle, such a circumstance being the default by the grantor in making payments of sums so secured.

[12] Such a circumstance did arise as Ms. Francis' obligations to the Bank remained unfulfilled. In those circumstances, the Bank retained its title to the vehicle and became entitled to repossess the vehicle the subject of the Bill of Sale. At no time did title pass to Ms. Francis which could then be considered at that point voidable title which could have the effect of being under the umbrella of article 294(2). The sale of the vehicle to Ms. Leevy in the first instance passed mere possession. Accordingly, counsel for Ms. Leevy could not pray in aid article 294(2).”

The learned judge relied on the decision of *Tara Ermine Leevy* to arrive at the conclusion that Mr. Simon, who had already sold the vehicle to Mr. Mondesir when he sold the vehicle to the appellant, did not have title to pass to the appellant and therefore she did not acquire title to the vehicle. This finding has been challenged on appeal.

Counsel for the appellant, Mr. Alcide relied on article 283(1) of the Commercial Code Cap. 13.31, Revised Laws of Saint Lucia 2017 in support of the argument that the learned judge, who on his own found the conduct of the seller and Mr. Mondesir to be a criminal conspiracy, had failed to consider the consequences of this finding to the detriment of the appellant. The learned judge at paragraph 11 of his judgment found:

“I must say at the outset that I am totally satisfied based on the evidence before the court that Mr. Mondesir and Mr. Simon entered into criminal conspiracy to defraud the bank and that Mr. Simon remained in possession of the vehicle to prevent the Bank from taking possession of the vehicle and to consequently enable the fraudulent sale to an unsuspecting purchaser...The Bill of Sale was valid and Mr. Mondesir therefore was liable to pay the loan pursuant to the said Bill of Sale.”

The Court had difficulty with this finding by the learned judge. Firstly, because it was not pleaded in the proceedings in the lower court, it was not made a part of either parties' case and it appears that the learned judge made this finding of his own motion. Nonetheless, Mr. Alcide relied on the learned judge's finding of fraud and submitted that it means that the transfer to Mr. Mondesir was ineffective and therefore the appellant acquired good title to the vehicle. However, the Court was mindful of the fact that the finding of fraud was not pleaded or argued in the lower court and that the learned judge did not use that finding in coming to his conclusion. His conclusion was that the Bill of Sale was registered and was effective and that the appellant did not acquire title to the vehicle.

The Court could not upset the learned judge's findings that Mr. Simon did not have title to the vehicle to transfer the vehicle to the appellant. Such title resides with the bank under the bill of sale. The Court also had regard to a previous decision of the Court of Appeal in this matter. The

issue of the validity was raised, and it was decided to deal with the issue of validity as a preliminary issue. The issue was heard before the learned master in 2012 and she found that the bill of sale was valid. The matter went on appeal to the Court of Appeal and Mitchell JA [Ag.] confirmed the finding of the learned master.

The effect of the judgment of Mitchell JA [Ag.] and the learned master's judgment is to the effect that the bill of sale was a valid bill of sale. It follows therefore that this Court is not in a position to set aside the validity of the bill of sale.

The Bank's title to the vehicle was also challenged by the appellant on the ground that the appellant was in possession of the vehicle for the prescribed period and therefore had acquired prescriptive title to the vehicle. The required period under article 2130 of the *Civil Code of Saint Lucia, Cap. 4.01, Revised Laws of Saint Lucia 2017* is that a person claiming title by possession must be in possession for three years. In the Court's view, this ground failed on a purely factual basis in that the appellant was not in possession of the vehicle for the required three-year period. She acquired the vehicle from the seller on 11th January 2007 and in December 2009, which is close to the three years, she sold the vehicle to Mr. Satchell and in fact pleaded in the statement of claim that it was a sale and that Mr. Satchell took possession (as stated at paragraphs 2 and 3 of the statement of claim filed on 9th June 2010). Based on the Court's assessment of the facts and the statement of claim, the Court was of the considered view that possession of the vehicle was effectively delivered to Mr. Satchell in December 2009 which is before the three-year period had elapsed. Therefore, on that basis, the claim for possession through prescriptive title failed.

Mr. Alcide also raised the issue of what could be described as fairness. The Court shared Mr. Alcide's concerns that the system of bills of sale can cause severe hardship. It is inherent in the system of issuing chattels as security, that this is a system which protects the bank in that it gives the bank title over an asset which is transferred by delivery. It is not a system that works flawlessly, but it is the existing framework and as shown in cases such as this case and the Tara Ermine Leevy case, it can cause hardship.

The duty of the court quite often is to decide where the hardship falls. In this case, the Court could not set aside the

learned judge's finding that based on the law and the facts the bill of sale was effective and therefore the Bank has title to the vehicle. The Court also noted that the appellant was not entirely without recourse because she could have brought a claim against the seller Mr. Simon. As it stands, that policy is in place and it is not the duty of the Court to change policy but to administer the law.

Finally, the Court was of the view that given the circumstances there ought to be no order as to costs pursuant to rule 64.6 (2) of the Civil Procedure Rules 2000.

Case Name: Glenroy Shawn Victor

v

The Queen

**[SLUHCRAP2014/0001]
(Saint Lucia)**

Date: Wednesday, 8th July 2020

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Stephen Brette

Issues: Adjournment

Type of Order: Directions

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. Having regard to the fact that the appeal is from a conviction and sentence of murder, the appellant shall be further legally aided by the State of Saint Lucia by the appointment of another duly qualified legal practitioner for the conduct of the appeal during the week commencing 7th December, 2020.
2. The Registrar of the High Court shall ensure that such arrangements are put in place, including the furnishing of a copy of the record of appeal and written submissions filed in respect of the said appeal to the legal practitioner so assigned.
3. The hearing of the appeal is adjourned to the next sitting of the Court in Saint Lucia during the week commencing 7th December, 2020.

Reason:

The Court was informed on the day of the hearing of the appeal that counsel on record for the appellant, Mr. Alfred Alcide had no right of audience before the Court on the basis of failure to comply with section 21 of the Legal Profession Act, Cap. 2:04 of the Revised Laws of Saint Lucia, 2017 which provides that, 'A person shall not practise law unless - (a) his or her name is entered on the Roll in accordance with this Act; and (b) that person is the holder of a valid practising certificate.'

The Court was mindful that to hear someone not duly qualified to appear before it would be sending the wrong message to the public and to other members of the legal profession, and that such conduct would risk bringing the entire administration of justice into disrepute. The Court could not therefore agree to hear counsel when he was not in a position to be or appear before the Court on behalf of any person.

Being aware that the appeal was one against a conviction and sentence of murder, the Court was of the view that another counsel, duly qualified to appear and conduct the appeal on the appellant's behalf, ought to be appointed. In circumstances where such counsel would need to review the

record of appeal, notice of appeal and other documents filed in the matter to understand the proceedings below and the issues on appeal, conduct of the appeal would not have been possible on the date set for hearing. Having been advised of the situation with former counsel for the appellant and the time which would be required by any future counsel, the Court was of the view that the only appropriate course would be to adjourn the appeal and give directions for appointment by the State of new counsel on the appellant's behalf.

Case Name:

Catherine Sealys

v

Kelvin Peter PC 871

**[SLUMCRAP2018/0011]
(Saint Lucia)**

Date:

Wednesday, 8th July 2020

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

Appearances:

Appellant:

**No appearance on behalf of the appellant
Ms. Alghitha Richelieu appearing amicus curiae**

Respondent:

Mr. Linton Robinson

Issues:

Adjournment

Type of Order:

Directions

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The appellant files and serves written submissions in support of her appeal no later than 5th August, 2020 failing which the appeal shall stand dismissed.**
- 2. In the event that written submissions are filed and served as stipulated in paragraph 1, the appeal shall be fixed for hearing at the next Court of Appeal Sitting in Saint Lucia during the week commencing 7th December, 2020.**
- 3. Should the appellant fail to appear either in person or by a duly qualified legal practitioner, the appeal shall stand dismissed.**

Reason:

The appellant failed to make an appearance in this matter, either in person or by counsel who had no right of audience before the Court on the basis of failure to comply with section 21 of the Legal Profession Act, Cap. 2:04 of the Revised Laws of Saint Lucia, 2017 which provides that, 'A person shall not practise law unless - (a) his or her name is entered on the Roll in accordance with this Act; and (b) that person is the holder of a valid practising certificate.'. There was evidence, by an affidavit of service sworn on 1st July 2020, proving that the appellant had been duly served with the notice of hearing of the appeal. The Court therefore considered the fact of the appellant's absence and her delay in prosecuting her appeal, the appeal having been filed two years prior.

The Court was mindful that where an appellant shows no interest in the prosecution of their appeal, the court is entitled to strike it out under its case management powers. The Court was, however, minded to give the appellant a final opportunity to prosecute her appeal.

The Court further noted that notwithstanding the appeal having been filed since June 2018, the appellant had not filed and served any legal submissions in support of her appeal. In the circumstances, the Court was of the view that directions were appropriate to progress the hearing of the appeal.

Case Name:

[1] Network Construction Maintenance & Rehabilitation Limited

[2] Gregory Laughan Fevrier

v

Cable & Wireless (St. Lucia) Limited

[SLUHCVAP2020/0015] formerly

[SLUHCVAP2016/0001]

(Saint Lucia)

Date: **Wednesday, 8th July 2020**

Coram: **The Hon. Mde. Gertel Thom, Justice of Appeal**
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St. C. Farara, QC Justice of Appeal [Ag.]

Appearances:

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

Issues: **Civil appeal – Whether factual findings by learned judge were unsupported by evidence – Whether learned judge mischaracterised central contentions in the appellant’s claim – Whether there was an agreement as to the rates at which the appellants were required to charge for work done – Whether the judge erred in characterising an internal document as an inducement to the appellants to enter into an agreement under which a certain volume of work and revenue would be assured – Whether learned judge erred in determining that whether the appellants were entitled to the amounts invoiced was to be determined by the rubric of reasonableness – Prescription under article 2121 of the Civil Code of Saint Lucia – Whether learned judge erred in finding that any breach of contract in respect of work done before 29th September 2003 was prescribed by virtue of Article 2121 – Whether learned judge erred in failing to take account articles 2081 and 2088 of the Civil Code of Saint Lucia in determining whether the contract breaches were prescribed – Whether pleading in the respondent’s defence filed after the end of the prescription period under article 2121 amounts to an acknowledgement of debt and can be said to have interrupted prescription**

Type of Order N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name: Duncan Charles
v
The Commissioner of Police
[SLUMCRAP2018/0006]
(Saint Lucia)

Date: Thursday, 9th July 2020

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal [Ag.]

Appearances:
Appellant: In person
Respondent: Ms. Stacey-Anne St. Ville

Issues: Adjournment

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:
The hearing of this appeal is adjourned and traversed to the next sitting of this Court in Saint Lucia during the week commencing 7th December, 2020 in order to enable the appellant to retain the services of an attorney-at-law who can appear in the court.

Reason: The Court was informed on the day of the hearing of the

appeal that counsel on record for the appellant, had no right of audience before the Court on the basis of failure to comply with section 21 of the Legal Profession Act, Cap. 2:04 of the Revised Laws of Saint Lucia, 2017 which provides that, 'A person shall not practise law unless - (a) his or her name is entered on the Roll in accordance with this Act; and (b) that person is the holder of a valid practising certificate.'

Accordingly, there being an application by the appellant for an adjournment with no objection from the Crown, the Court was of the view that an adjournment was appropriate in the circumstances.

Case Name:

**Forns Arlette
v
CLP 205 Marvin Herman
[SLUMCRAP2018/0014]
(Saint Lucia)**

Date:

Thursday, 9th July 2020

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal [Ag.]**

Appearances:

**Appellant: Mr. Bertrand Xavier and Mr. Ferguson John
Respondent: Mr. Stephen Brette**

Issues:

Magisterial Criminal Appeal – Appeal against conviction – Unlawful Carnal Knowledge – Section 215 of the Criminal Code of Saint Lucia 1992 – Indictable charges laid against the appellant – Application by appellant querying whether charges were properly and lawfully made – Whether magistrate had jurisdiction to entertain applications or objections in relation to indictable charges – Extent of magistrate's jurisdiction to deal with indictable matters

Type of Order:

Oral Judgment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The criminal complaints are remitted to the Magistrate's Court to be dealt with in accordance with the law.**

Reason:

This was an appeal against the decision of the learned magistrate in which the magistrate, having given an earlier ruling gave a subsequent one which the appellant complained has the basis of overruling the first decision. Accordingly, the appellant complains that the learned magistrate had no jurisdiction to give the second ruling and as a consequence erred in law in so doing.

The underlying circumstances of this appeal concerned two indictable charges that were laid against the appellant and for which there were applications made by the appellant as to whether or not those charges were properly and lawfully made. The Court notes that both of those charges are indictable charges and therefore the question of whether or not the magistrate had jurisdiction in the first place to entertain any applications or objections in relation to those charges which were laid indictably come into sharp focus. The Court has given deliberate consideration to the written and oral submissions of learned counsel for the appellant and has read the very comprehensive submissions that were authored by Ms. Tania Alexis and submitted by the Assistant Director of Public Prosecutions, Mr. Stephen Brette, which the Court found to be very helpful.

It is trite law that magistrates are creatures of statute and they only have jurisdiction to entertain applications which have been properly given to them as a consequence of either statute or substantive law. In this particular matter, in so far as the applications touch and concern indictable matters, it is settled that magistrates do not have jurisdiction to entertain that type of application. There is a strong stream of jurisprudence which bears this out and if any authority is needed for this proposition, it can be found in the case of Olvin Jn. Baptiste v Inspector Peter Ermay [Ag.] MCRAP2011/20, a case from this jurisdiction in which the Court of Appeal pronounced that a magistrate's court is an

inferior court without any inherent jurisdiction and with only such jurisdiction as is conferred upon it by statute.

Magistrates may exercise only such powers as are given to them by statute and in doing so they are required to act in accordance with the procedures laid down in the statute and not otherwise. The magistrate's powers at the initial hearing include fixing a date for a sufficiency hearing before a judge; he is not entitled to give directions or to take steps which are in conflict with the specific powers given to them by the statute.

At the initial hearing, where the appellant was charged with a purely indictable offence, the learned magistrate's jurisdiction did not permit him to amend the charge as if it was a summary charge. Similarly, in the case of David Brandt v The Director of Public Prosecutions MNIMCRAP2017/0001 (delivered 6th November 2017, unreported) this Court pronounced on the jurisdiction of magistrates. His Lordship Justice of Appeal Webster speaking on behalf of the Court pronounced as follows:

“...The scheme that was introduced by the new system of an initial hearing followed by a sufficiency hearing contemplates that the magistrate's powers are limited to the matters listed in section 67(3). He or she is not required to review the evidence to be led by the prosecution, nor to question the validity of the charges against the defendant...”

It is clear that these authorities underscore the well settled principle that magistrates have no jurisdiction to entertain the applications and seek to determine whether or not indictable charges are valid or otherwise. These are matters which historically fell within the purview of the High Court, and nothing in the Criminal Code or the Rules of Procedure has changed that. Accordingly, the appellant's arguments have not fallen on fertile ground and in these circumstances, the appeal is dismissed and the criminal complaints are remitted to the Magistrate's Court for them to be dealt with in accordance with the law.

The Court thanks both sides for their assistance and specifically wishes to place on record its gratitude to Ms. Tania Alexis for her very helpful submissions.

Case Name:

**Dr. Shaelle Durand
v
St. Jude Hospital Board
[SLUHCVAP2019/0020]
(Saint Lucia)**

Date:

Thursday, 9th July 2020

Coram:

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

Appearances:

**Appellant: Ms. Lydia Faisal
Respondent: Ms. Leandra Verneuil**

Issues:

**Civil Appeal – Employment law – Termination of Contract-
Assessment of damages – General damages – Application for
assessment of general damages to be remitted to High Court**

Type of Order:

Oral Judgment

Result / Order:

**[Oral delivery]
IT IS HEREBY ORDERED THAT:
1. The appeal is allowed.
2. The matter is to be remitted to the High Court to be
heard by another trial judge.
3. No orders as to costs.**

Reasons

This was an appeal against the decision of a learned judge dated 22nd July 2019. The appellant by her notice of appeal sought orders setting aside the decision of the learned judge and remitting the matter for an assessment of damages to be conducted by a different judge on the basis that the learned judge erred by failing to address the issue of general damages pleaded in relation to anxiety and pain suffered by the appellant.

The respondent by way of notice filed on 19th June 2020 indicated its non-objection to the appeal, and joined with the appellant in her prayer that the matter be remitted to the High Court to be dealt with by another judge. Counsel for the respondent directed the Court to pages 32, 41, and 42 of the Transcript of Proceedings whereby the learned judge referenced the relevant general damages issue, and submitted that, despite being aware of the issue, the judge failed to traverse it in her judgment. It was for this reason, as well as undue delay in the production of the learned judge's decision, that counsel for the respondent beseeched the Court to have the matter remitted to the High Court before another judge.

On the issues of costs, counsel for the respondent also submitted that no orders as to costs ought to be made in the circumstances – the appellant did not object.

Case Name:

**The Attorney General
v
KCL Money Market Limited**

**[SLUHCVP2019/0007]
(Saint Lucia)**

Date:

Friday, 10th July 2020

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Rene Williams and Mr. George K. Charlemagne

**Mr. Calvin Lee Deputy Permanent Secretary of the
Department of Infrastructure, present**

Respondent:

Mr. Leslie Prospere and Ms. Kristian Henry

**Mrs. Stacy Ann Ramkhelawen and Mr. Dave Williams
representatives for the respondent present**

Issues:	Civil appeal – Jurisdiction of Court of Appeal – Whether appellant satisfied test to determine whether Court of Appeal should hear and give judgment on an academic appeal – Section 30 of the Crown Proceedings Act
Type of Order	Oral Judgment
Result / Order:	IT IS HEREBY ORDERED THAT: 1. The appeal is dismissed and the order of the judge in the court below is affirmed. 2. Costs to the respondent in the sum of \$1000.00.
Reason:	This was an appeal by the Attorney General against the order of the learned judge, essentially giving permission to the Registrar of the High Court to produce a certificate under section 20 of the <u>Crown Proceedings Act Cap. 2:05 of the Revised Laws of Saint Lucia</u> in circumstances where the Registrar refused to issue the said certificate, on the basis that the form of the certificate had not been prescribed by the relevant persons in accordance with the Act. Both sides pursued the matter in the context of the appeal being academic. The Court noted that the law as to academic appeals is quite clear. The position was set out by Neuberger MR in <u>Hutcheson v Popdog Ltd (Practice Note) [2011] EWCA Civ 1580</u>, and is that, save in exceptional circumstances, the Court may only entertain an academic appeal where three conditions are met. The first condition is where the appeal raises a point of some general importance; the second condition is where the respondent agrees to the appeal, or is at least completely indemnified on costs or is not otherwise inappropriately prejudiced; and the third condition is where the court is satisfied that both sides of the argument will be fully and properly ventilated. The Court was of the view that the second criterion as well as the third criterion had been satisfied. However, the Court was not of the view that the first criterion had been satisfied. The first criterion, as indicated, is that where the appeal raises a point of some general importance. The Court is of the view that no point of general importance is raised on the appeal.

In his oral submissions, counsel for the appellant, Mr. Rene Williams, stated that the Registrar's issuance of or refusal to issue a certificate under section 20 of the Crown Proceedings Act has implications for all judgment creditors who wish to enforce their money judgments and argued that, on that basis, the issue is one of general importance. Mr. Williams referred to paragraph 60 of the judgment where the learned judge gave the Registrar permission to produce the certificate under section 20 and indicated the particulars that ought be in it. Mr. Williams argued that the requisite power to prescribe the form of the certificate resides with the Rules Committee or with the Governor General and in essence, therefore, the learned judge could not direct the Registrar to produce that certificate. It was noted that a certificate of that nature existed in the 1970 Rules of the Supreme Court but was somehow was omitted from the Civil Procedure Rules 2000. The position of the appellant was in essences that, in the absence of the Rules Committee prescribing the form or the Governor General in so doing, the judge was essentially in error for ordering that the Registrar may produce the form.

The Court did not accept that position, and found that the learned judge was certainly have been cognisant of the injustice which would have been perpetuated in that situation and simply felt it was inequitable and unjust that the claim would be defeated because of the absence of form for the certificate.

The Court noted that it is completely within the remit of the appellant to initiate the requisite mechanisms which could and would ensure that the relevant certificate is produced by the Governor General. The Court observed that it was peculiar that the Crown would seek to defeat a matter by invoking in essence it's in action or inactivity. The Crown ought not to benefit from its own inaction or inactivity – the consequences would evidently lead to a great injustice, which the Court noted was a matter evidently operating on the mind of the judge when she gave permission to the Registrar to produce the certificate. The Court stated that it could not countenance or support the position of the Attorney General in that regard.

The Court was satisfied that the first limb of the tripartite test, which engages the Court's jurisdiction to hear such an appeal has not been satisfied, that is where the appeal

reaches a point of some general importance. The Court was therefore satisfied that it had not been demonstrated, in the present appeal, that an issue of general importance was engaged.

Case Name:

[1] Roger Goring
[2] Claver Estaphane
[3] Melba Sony

V

[1] Florence Chedy
[2] Tedburt Theobalds

[SLUHCVP2014/0017]
(Saint Lucia)

Date:

Friday, 10th July 2020

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, QC Justice of Appeal [Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Appellants:

Mr. Gerard Williams

Respondents:

Mr. Tedburt Theobalds appearing in person

Issues:

Civil appeal – Special damages – Whether learned trial judge erred in quantum of award for special damages made – Whether appellants provided sufficient evidentiary basis for the award of special damages sought in the court below

Type of Order

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The order of the learned trial judge of \$10,000.00 in relation to the claim for the pre-accident value for the vehicle is set aside and is substituted with the sum of \$29,750.00 as the pre-accident value of the vehicle.
3. No order as to costs

Reason:

This was an appeal from the decision of a learned trial judge by which she made an order for special damages for the pre-existing value of the appellant's vehicle in the sum of \$12,000.00. The appeal was on the grounds that the learned trial judge erred in failing to make an appropriate award in the sum of \$29,750.00, having concluded that the appellants had failed to provide documentary evidence as to the pre-accident value of the vehicle.

Having reviewed the submissions of the appellants, the respondents not having opposed the appeal, and having regard to the documentary evidence filed showing that the appellant not only provided the documentary evidence at trial but also pleaded the sum as special damages in his pleadings in the court below, the Court was minded to allow the appeal.

Case Name:

[1] Peter Toussaint
[2] Terentia Nigel Toussaint-Carroll
[3] The Heirs of Thelma Toussaint

V

Peter Michael Barnard

[SLUHCVAP2018/0024]
(Saint Lucia)

Date:

Friday, 10th July 2020

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:

Mrs. Terentia Nigel Toussaint-Carroll in person
Mr. Peter Toussaint in person

Respondent:

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

Issues:

Civil appeal – Oral application for substitution of deceased respondent

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:
For the purposes of this appeal, Martine Johnson is substituted was the representative of the estate of Michael Bernard (deceased).

Reason: The Court dealt with an oral application by counsel for the respondent, Mr. Dexter Theodore, QC, to have Ms. Martine Johnson substituted as respondent in the proceedings, the appeal having originally been intituled in the name of Peter Michael Barnard, who is now deceased. The Court was provided with an order from the High Court, by which Ms. Johnson was appointed representative for Michael Barnard for the purpose of these proceedings. The Court was satisfied in the circumstances that the oral application of counsel ought to be granted.

Case Name: [1] Peter Toussaint
[2] Terentia Nigel Toussaint-Carroll
[3] The Heirs of Thelma Toussaint
v
Martine Johnson as representative of the estate of
Peter Michael Barnard (deceased)
[SLUHCVAP2018/0024]
(Saint Lucia)

Date: Friday, 10th July 2020

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, QC Justice of Appeal [Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

Appearances:

Appellants:	Mrs. Terentia Nigel Toussaint-Carroll in person Mr. Peter Toussaint in person
Respondent:	Mr. Dexter Theodore, QC with him, Ms. Sueanna Frederick

Issues:

Civil appeal – Whether the learned judge erred in striking out the appellants’ statement of claim – Whether the learned judge erred in permitting the respondent to file a notice of discontinuance as opposed to dismissing the respondent’s claim – Costs – Whether the learned judge erred in making an order for prescribed costs in circumstances where a notice of discontinuance had been filed

Type of Order

N/A

Result / Order:

[Oral delivery]

**IT IS HEREBY ORDERED THAT:
Judgment is reserved.**