

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT KITTS AND NEVIS
8th June 2020

APPLICATIONS

Case Name:

Adam Bilzerian

v

1. Gerald Lou Weiner

2. Kathleen Weiner

SKBHCVAP2019/0033

Date:

June 8, 2020

Coram:

The Hon. Mde. Louise Esther Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellant:

Mr. Victor Elliott- Hamilton

Respondents:

Ms. Jean Dyer

Issues:

Applications to admit judgment and orders made by a judge as fresh evidence - Apparent Bias- Rules in Ladd v Marshall - Relaxation of strict rules in interlocutory applications- principles in Hon. Guy Joseph v The Constituency Boundaries

Commission- General discretion to admit fresh evidence - Whether second limb in Ladd v Marshall satisfied - Whether judgment and orders can be looked at cumulatively to support a finding of apparent bias without more - Consideration of principles in Lesage v The Mauritius Commercial Bank - Whether judgment and orders would probably have an important influence on result of the interlocutory appeal

Type of Order

N/A

Result / Order:

Oral Delivery

IT IS HEREBY ORDERED THAT:

The decision is reserved.

Reason:

N/A

Case Name:

- 1. Adam Bilzerian**
- 2. Lemon Grove Company Limited**
- 3. Caribbean Building Systems (St. Kitts) Ltd**

v

- 1. Terrence V. Byron**
- 2. Byron & Byron**
- 3. Kevin Horstwood**

SKBHCVAP2019/0032

Date:

June 8, 2020

Coram:	The Hon. Mde. Louise Esther Blenman, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. Gerard Farara, QC, Justice of Appeal [Ag.]
Appearances:	
Appellants/Applicants:	Mr. Victor Elliott- Hamilton for the Applicant
Respondents:	Mr. Terrence Byron appears on his own behalf and for the 2 nd and 3 rd respondents
Issues:	Applications to admit judgment and orders made by a judge as fresh evidence - Apparent Bias- Rules in Ladd v Marshall - Relaxation of strict rules in interlocutory applications- principles in Hon. Guy Joseph v The Constituency Boundaries Commission- General discretion to admit fresh evidence - Whether second limb in Ladd v Marshall satisfied - Whether judgment and orders can be looked at cumulatively to support a finding of apparent bias without more - Consideration of principles in Lesage v The Mauritius Commercial Bank - Whether judgment and orders would probably have an important influence on result of the interlocutory appeal
Type of Order	N/A
Result / Order:	Oral Delivery IT IS HEREBY ORDERED THAT: The decision is reserved
Reason:	N/A

Case Name:

**1. Gregory Gilpin-Payne
2. International Investments and
Consulting Ltd**

v

**1. Stephen First
2. Corporate Capital (Asia) Ltd**

SKBHCVAP2019/0028

Date: June 8, 2020

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara, QC, Justice of Appeal
[Ag.]

Appearances:

Appellants: Mr. Victor Elliott- Hamilton for the Applicant

Respondents: Ms. Vanessa Fennel for the Respondent

Issues: Applications to admit judgment and orders made by a judge as fresh evidence - Apparent Bias- Rules in Ladd v Marshall - Relaxation of strict rules in interlocutory applications- principles in Hon. Guy Joseph v The Constituency Boundaries Commission- General discretion to admit fresh evidence - Whether second limb in Ladd v Marshall satisfied - Whether judgment and orders can be looked at cumulatively to support a finding of apparent bias without more - Consideration of principles in Lesage v The Mauritius Commercial Bank - Whether judgment and orders would probably have an important influence on result of the interlocutory appeal

Type of Order N/A

Result / Order: Oral Delivery

IT IS HEREBY ORDERED THAT:

The decision is reserved

Reason: N/A

Case Name:

Adam Bilzerian

v

Kevin Horstwood

SKBHCVAP2019/0030

Date: June 8, 2020

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Victor Elliott- Hamilton for the Applicant

Respondent: Mr. Terrence Byron for the Respondent

Issues: Applications to admit judgment and orders made by a judge as fresh evidence - Apparent Bias- Rules in Ladd v Marshall - Relaxation of strict rules in

interlocutory applications- principles in Hon. Guy Joseph v The Constituency Boundaries Commission- General discretion to admit fresh evidence - Whether second limb in Ladd v Marshall satisfied - Whether judgment and orders can be looked at cumulatively to support a finding of apparent bias without more - Consideration of principles in Lesage v The Mauritius Commercial Bank - Whether judgment and orders would probably have an important influence on result of the interlocutory appeal

Type of Order

N/A

Result / Order:

Oral Delivery

IT IS HEREBY ORDERED THAT:

The decision is reserved

Reason:

N/A

Case Name:

1. Keyapaha International Ltd
2. Dan Bilzerian

v

1. Laura Getz
2. Robert Getz
3. Victor Doche
4. Vistas International, LLC

SKBHCVAP2019/0031

Date:

June 8, 2020

Coram:	The Hon. Mde. Louise Esther Blenman, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. Gerard Farara, QC, Justice of Appeal [Ag.]
Appearances:	
Appellants:	Mr. Victor Elliott- Hamilton
Respondent:	Ms. Renal Edwards holding papers for Mrs. Angelina Gracy Sookoo-Bobb holding a watching brief
Issues:	Applications to admit judgment and orders made by a judge as fresh evidence - Apparent Bias- Rules in Ladd v Marshall - Relaxation of strict rules in interlocutory applications- principles in Hon. Guy Joseph v The Constituency Boundaries Commission- General discretion to admit fresh evidence - Whether second limb in Ladd v Marshall satisfied - Whether judgment and orders can be looked at cumulatively to support a finding of apparent bias without more - Consideration of principles in Lesage v The Mauritius Commercial Bank - Whether judgment and orders would probably have an important influence on result of the interlocutory appeal
Type of Order	N/A
Result / Order:	Oral Delivery
	IT IS HEREBY ORDERED THAT:
	The decision is reserved
Reason:	

Case Name:

Kevin Andrew Horstwood

v

- 1. The Attorney General of St. Christopher and Nevis**
- 2. Director of Public Prosecutions**
- 3. Inspector Charles Smithen**
- 4. Constable Greg Glasgow**
- 5. Corporal Fitzroy Morton**
- 6. Inspector Vaughn Henderson**
- 7. Franklin Dorset**
- 8. Constable Green**
- 9. Inspector Rodgers**
- 10. Lyle Rawlins**
- 11. Royal St. Christopher and Nevis Police Force**
- 12. Constable Chelroy Ceasar**

SKBHCVAP2019/0037

Date:

June 8, 2020

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Ransford Braham, QC.

Respondents:

Mr. Dane Hamilton QC. with Mr. Victor Elliott-Hamilton

Issues:

Leave to appeal – Expert evidence – Reasonable prospect of success

Type of Order

Oral Decision

Result / Order:

Oral Delivery

IT IS HEREBY ORDERED THAT:

- 1. The application for leave to appeal is granted.**
- 2. The applicant shall file the Notice of Appeal within 21 days of the date of this order.**
- 3. Thereafter the appeal shall proceed in accordance with the Civil Procedure Rules 2000.**

Reason:

The applicant filed an application requesting leave to appeal (i) the striking out of an application for an amendment to a notice of application, and (ii) a refusal of an application to appoint an expert.

Mr. Braham QC argued that there was no basis for the court to strike out the application to amend as there was not much difference in substance between the original application and the proposed amended application. Mr. Braham QC further argued that there was no evidence that the amendments would have derailed the just determination of the matter and as such that was not a proper basis for the court's refusal to grant the requested amendment.

Mr. Braham QC submitted therefore that there is a reasonable prospect of success in the appeal if leave were to be granted.

The Court was of the view that it was not necessary to hear from Mr. Dane Hamilton QC.

The court took the unanimous view, having read the notice of application for leave to appeal and having

given deliberate consideration to the grounds of the application and the submissions filed on behalf of the applicant and the respondents that the applicant had satisfied the threshold of proving that it has a realistic prospect of success. The Court therefore granted leave to appeal.

Case Name:

- 1. The Nevis Island Administration**
- 2. The Director of Physical Planning**

v

- 1. Nevis Paradise Ltd.**
- 2. Paradise Beach Holdings Limited**

SKBHCVAP2019/0035

Consolidated with

Paradise Beach Holdings Limited

v

Nevis Paradise Ltd.

SKBHCVAP2019/0036

Date:

June 8, 2020

Coram:

**The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

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

Appearances:

**Appellants: Ms. Jean Dyer for the Appellants in
SKBHCVAP2019/0035**

**Mr. Brian Barnes for the Appellants in
SKBHCVAP2019/0036**

**Respondents: Ms. Maurisha Robinson on behalf of the
Respondents**

Issues: Application for a permanent stay

Type of Order Oral Decision

Result / Order: Oral Delivery

IT IS HEREBY ORDERED THAT:

**The application for permanent stay of
execution of the decision made on the 7th
August 2019 is granted.**

**Reason: Based on the application for a permanent stay of
the execution of the decision of the learned Justice
Eddy Ventose dated 7th August 2019 and the court
having read the notice of non-opposition to the
appellant's application for a permanent stay of
execution, the court granted a permanent stay of
execution of the judge's decision.**

**EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING**

SAINT KITTS AND NEVIS

9th June, 2020

APPLICATIONS AND APPEALS

Case Name:

- 1. Gregory Gilpin-Payne**
- 2. International Investments and Consulting Ltd**

v

- 1. Stephen First**
- 2. Corporate Capital (Asia) Ltd**

SKBHCVAP2019/0044

Date:

9th June 2020

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]**

Appearances:

Applicants:

Mr. Victor Elliott-Hamilton

Respondents:

Ms. Vanessa Fennell

Issues:

Application to vacate order of a single judge

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The order of the Single Judge dismissing the application for leave to appeal the order of Ventose J dated 31st October 2019 is set aside.
2. The application for leave to appeal the order of the Ventose J dated 31st October 2019 is deemed properly filed.
3. The application for leave to appeal the order of Ventose J date dated 31st October 2019 is remitted to the next Chamber Hearing of the Court to be dealt with by a single judge.

Reason:

This was an application to vacate the order of Blenman JA in which the learned judge dismissed an application seeking leave to appeal on the basis that it was filed outside the time stipulated for doing so pursuant to Part 62.2 of the Civil Procedure Rules 2000 and the applicants had not filed an application for extension of time within which to seek leave to appeal.

Mr. Elliott-Hamilton outlined to the court that at the time the applicants filed the application seeking leave to appeal they were acting as litigants in person. As litigants in person, they were required to submit their application to the service bureau of the court which they did on time. However, the service bureau encountered technical difficulties in uploading the application to the e-litigation portal within the requisite time period which caused the application to be filed outside of the required time for doing so by the Civil Procedure Rules. Mr. Elliott-Hamilton further indicated that when the application was being considered by Blenman J, she was have been unaware of these circumstances.

Ms. Vanessa Fennel outlined that the respondents were not opposing the application.

The Court considered that, in the circumstances, there was sufficient basis to grant the orders sought.

Case Name:

**1. Exclusive Retreats Limited
2. Kevin Andrew Horstwood**

v

**First Caribbean International Bank
(Barbados) Limited**

SKBHCVAP2019/0050

Date:

9th June 2020

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]**

Appearances:

Applicants:

Mr. Terrence Byron

Respondent:

Mr. Emile Ferdinand QC with Mr. Garth Wilkin

Issues:

Leave to appeal – Extension of time to seek leave to appeal – Reasons for delay – Realistic prospect of success – Effect of a stay of proceedings – Whether an order made in a matter which has been stayed is a nullity

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The applicants are granted an extension of time to apply for leave to appeal the order of Ventose J dated 9th December, 2019.**
- 2. The application for leave to appeal filed on 27th December, 2019 is deemed properly filed.**
- 3. Leave is granted to the applicants to appeal the order of Ventose J dated 9th December, 2019.**
- 4. The applicants shall file the notice of appeal within 21 days of the date of this order.**

Reason:

This was an application for an extension of time within which to seek leave to appeal against the order of Ventose J made on 9th December 2019 in which the learned judge refused to set aside an order made in the absence of the applicants on 26th September 2019. It was also an application for leave to appeal against the said 9th December 2019 order.

Mr. Byron indicated that he appeared in the matter pro bono for the applicants who previously acted as litigants in person.

Mr. Byron submitted to the court that the application for leave to appeal was late as the registrar's office closed early on December 24, 2019, that is Christmas Eve, which rendered it impossible for the applicants to file their application for leave on that day. The application was in fact filed at the next occasion that it was possible to do so, which was the 27th December 2019.

Mr. Byron further submitted that the applicants were delayed in filing their application for leave as the order made on the 9th of December 2019

was only settled on the 18th of December and so, although the rules stipulate 14 days for the filing of the application for leave to appeal, the time in which to do so was significantly curtailed. Furthermore, the applicants, as litigants in person, did not realize that they had to file the application on the e-litigation portal. The applicants requested that Mr. Byron so file for them although he was not yet acting for them.

The applicants, Mr. Byron argued, were one day late as the application was filed on the 27th December 2019, which was in his estimation, a minimal delay.

The applicants contended that there is a realistic prospect of success because at the time in which the order of 9th December 2019 was made there was a stay of proceedings in place since prior to September 2019 and which was only lifted at the hearing of 9th December 2019. Therefore, the applicants argue, the September 2019 order was a nullity and should have been set aside by the learned judge in his December 9, 2019 order.

The respondent, through counsel Mr. Wilkin, contended that the application should not be granted because the content of the application shows that the intended appeal has no chance of success.

The respondent submitted that there is no chance of success of the appeal because at the December 9, 2019 hearing, the judge considered whether the September order could stand. Mr. Wilkin pointed out that Ventose J in fact gave reasons why he wouldn't have made a different order if the 2nd Applicant was present. Furthermore, he argued, the September order has not been appealed.

Mr. Wilkin posited that even if the court were to grant leave to appeal and an extension of time, it would take the applicants no further because they had already ventilated the full application

before Ventose J and they would also be asking the court to reinstate the stay of proceedings.

He submitted that if the September order has not been nullified, then the applicants would have no chance of success.

The court was of the view that an extension of time should be granted to the applicant who had been one day late and provided a good reason as to why they were late. The court considered the application for leave to appeal, noted that the threshold is relatively low and noted that the critical issue was the question of whether the proposed appeal has a realistic prospect of success.

The Court considered that it had the benefit of extensive submissions on this issue and having heard from both sides, was satisfied that the appeal had a realistic prospect of success.

Case Name:

Josephine Huggins

v

SKN Choice Times Limited

SKBHCVAP2019/0049

Date:

9th June 2020

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]**

Appearances:

Applicant:

Ms. Jenise Carty

Respondent:

Issues:

**Leave to appeal – Realistic prospect of success
– Jurisdiction of a high court judge to dismiss
cost orders made by courts of superior
jurisdiction and coordinate jurisdiction**

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The applicant is granted leave to appeal the order of Ventose J delivered on 11th December, 2019 in Claim No. SKBHCV2016/01046 dismissing four judgment summonses filed by the applicant on 26th July, 2019.**
- 2. The applicant shall file the notice of appeal within 21 days of the date of this order.**

Reason:

The applicant sought leave to appeal the order of Ventose J made on 11th December 2019 where he dismissed four judgment summonses which she filed. The applicant submitted that there was a realistic prospect of success on the appeal as the learned judge did not have jurisdiction to dismiss the judgment summonses and cost orders.

Ms. Carty outlined that two of the cost orders were actually orders of a court of coordinate jurisdiction in that they were made by Masters of the High Court, and the other two orders were orders made by the Court of Appeal and therefore orders made by a court of superior jurisdiction. She submitted that Ventose J fell into error in dismissing the orders as he did not have jurisdiction to do so and further as the orders were not appealed.

Ms. Carty submitted that the orders are valid and enforceable and out to have been enforced.

She relied on the authority of Strachan v Gleaner Co Ltd and another [2005] UKPC 33 in support of her contentions.

The court took the view that the applicant demonstrated a realistic prospect of success on the prospective appeal and allowed the application.

Case Name:

Adam Bilzerian

V

- 1. Gerald Lou Weiner**
- 2. Katleen Weiner**

SKBHCVAP2019/0040

Date:

9th June 2020

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Victor Elliott-Hamilton

Respondents/Applicants: Ms. Jean Dyer

Issues:

Whether the order of a judge extending time to file a notice of appeal can itself be appealed – Saint Kitts and Nevis Supreme Court Act

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application is dismissed.**
- 2. No order as to cost.**

Reason:

Mr. Adam Bilzerian was granted leave by the learned Michel J to file a notice of appeal in the instant matter. The applicants sought to discharge it.

Ms. Dyer indicated to the court that the application raised a short point in relation to whether the order of the single judge should be discharged as the applicants were not given an opportunity to be heard on the application.

She noted that the appellant conceded that there was a procedural irregularity in that the matter wasn't ripe for hearing when it came on for hearing. She argued that the single judge, Michel J, granted an extension of time to file a notice of appeal in circumstances where she should not have.

The Court drew counsel's attention to Section 33 (3) (b) of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act Chapter 1.01 Revised Laws of St. Christopher and Nevis 2009 which says:

**“(3) No appeal shall lie under this section—
(a) ...;
(b) from an order allowing an extension of time for appealing from a judgment or order;”**

The Court therefore was of the view that it did not have jurisdiction to entertain the application as

the Supreme Court Act was a bar to appeals in such matters.

Case Name: **The Attorney General of the Federation of
St. Christopher and Nevis**

V

SKN Choice Times Limited

SKBHCVAP2019/0045

Date: **9th June 2020**

Coram: **The Hon. Mr. Davidson Kelvin Baptiste, Justice of
Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]**

Appearances:

Appellant:	Mr. Terrence Byron
Respondent:	Mrs. Angela Cozier

Issues: **Striking out of appeal – Jurisdiction of a single
judge to strike out appeal – Whether a striking out
application should be granted where the appeal
raises issues of mixed law and fact**

Type of Order **Oral Decision**

Result / Order: **IT IS HEREBY ORDERED THAT:**

- 1. The application to strike out the appeal is
dismissed.**

2. No order as to costs, by consent.

Reason:

This was an application made by SKN Choice Times Limited to discharge of the order of a single judge in which he refused to strike out a notice of appeal.

Mrs. Cozier submitted that the court should grant the application as (i) there were no reasons given by the judge for his refusal to strike and (ii) there was an innate flaw in the notice of appeal which makes it bound to fail in that there was no evidence led at trial to ground the appeal.

Mrs. Cozier referred the court to the authority of Three Rivers District Council v Bank of England (No.3) 2001 UKHL 16.

The court was of the view that on an appeal the appellant may raise issues of mixed fact and law and the fact that the appellant did not have evidence at trial does not prevent him from appealing if his appeal was predicated on a legal issue. The court examined the grounds advanced in the notice of appeal and found they were based on facts, law and mixed fact and law.

The Court took the position, guided by National Stadium Project (Grenada) Corporation (Appellant) v NH International (Caribbean) Limited (Respondent) (Trinidad and Tobago) [2015] UKPC 6 that an appellate court should not shut out a serious appeal unless it can be satisfied that it is not realistically arguable.

The Court found the appeal to be realistically arguable.

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

ST. KITTS AND NEVIS
10th June 2020

APPLICATIONS AND APPEALS

Case Name:

**1. Lindsay F. P. Grant
2. Jonel F. H. Powell**

V

Tanzania Tobin Tanzil

SKBHCVAP2020/0004

Date: **10th June 2020**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Gerard Farara, QC, Justice of Appeal [Ag.]**

Appearances:

Applicants: **Mr. Brian Barnes with Dr. Henry Brown QC and Mr. Anthony Ross QC**

Respondent: **Ms. Angelina Gracy Sookoo-Bobb with Mr. Sylvester Anthony**

Issues: **Extension of time to file application for leave to appeal – Application for a stay – Computation of time within which to file an application for leave to appeal – Whether time within which to seek leave to appeal an order starts to run from the date of delivery of the order or from the date of service of the order – Whether the case of Charles De Barbier and another v Roland Leduc [2008] ECSCJ No. 134 represents good law in the Eastern Caribbean Supreme Court jurisdictions – Rule 62.2 (1) of the Civil Procedure Rules 2000 –**

Whether applicants have shown a realistic prospect of success of the appeal – Whether satisfaction of a remedy claimed extinguishes the other causes of action – Reasons for and length of delay in seeking leave to appeal – Part 12.5 of the Civil Procedure Rules – Conditions to be satisfied in order to obtain judgment for failure to defend a claim – Requirements of an affidavit in support of an application to set aside default judgment – Exceptional circumstances which would permit the setting aside of a default judgment –

Type of Order

Oral Decision with written reasons to follow

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application for an extension of time within which to file an application for leave to appeal is refused.**
- 2. The application for leave to appeal and for a stay accordingly fall away and are dismissed.**
- 3. Costs in the agreed sum of \$2000 are awarded to the respondent to be paid by the applicants on or before 2nd July 2020.**
- 4. Written reasons for this decision refusing an extension of time to seek leave to appeal and other relief to be furnished at a later date.**

Reason:

N/A

Case Name:

Akiel Harris

V

The Director of Public Prosecutions

SKBHCRAP2015/0008

Date: 10th June 2020

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

Appearances:

Appellant: Appellant in person

Respondent: Mr. Tessaun Vasquez

Issues: Appeal against conviction

Type of Order Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal being withdrawn is hereby dismissed.

Reason: The appellant indicated that he wished to withdraw appeal.

Case Name: Travis Clarke

V

The Queen

SKBHCRAP2015/0016

Date: 10th June 2020

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

Appearances:

Appellant: Appellant in person

Respondent: Ms. Lanine Blanchett

Issues: Appeal against sentence

Type of Order Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal is withdrawn, the sentence having already been served.

Reason: The appellant indicated that wished to withdraw the appeal as he had already served the sentence which was the subject of this appeal.

Case Name:

1. Lindsay F. P. Grant
2. Jonel F. H. Powell

V

Tanzania Tobin Tanzil

SKBHCVAP2020/0009

Date: 10th June 2020

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

Appearances:

Applicants: Mr. Douglas Mendes SC with Mr. Brian Barnes

Respondent: Ms. Angelina Gracy Sookoo-Bobb with Mr. Sylvester Anthony

Issues: Application for leave to appeal and a stay

Type of Order Adjournment

Result / Order: Oral Delivery

IT IS HEREBY ORDERED THAT:

The application for leave to appeal and a stay is adjourned to the 11th June 2020 at 9:00am with a total time limit of one (1) hour.

Reason:

The Court had regard to the potential duration of the application, the lateness of the hour and the time constraints faced by counsel for the respondents as a result of the curfew in place in St. Kitts and Nevis and was of the view that an adjournment should be taken.

Both counsel for the parties were in agreement with hearing of the application being adjourned to a more convenient date.

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT KITTS AND NEVIS
11th June 2020

APPLICATIONS AND APPEALS

Case Name:

Anne Hendricks Bass

V

- 1. Director of Physical Planning**
- 2. Development Advisory Committee**
- 3. Caribbean Development Consultant Limited**

SKBHCVAP2018/0002

Date:

11th June 2020

Coram:

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

Appearances:

Appellant:

Mr. Garth Wilkin

Respondents:

Ms. Jean Dyer with Ms. Rhonda Nesbitt-Browne

Issues: High court civil appeal

Type of Order Adjournment

Result / Order: Oral Delivery

IT IS HEREBY ORDERED THAT:

The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Federation of St Christopher and Nevis scheduled for the week commencing the 26th day of October 2020.

Reason: Mr. Wilkin made an application for the hearing of the appeal to be adjourned to the next sitting of the Court of Appeal. He indicated that his client, the appellant, had recently passed away and trustees of the estate have not yet been appointed and did not feel comfortable at this stage giving affidavit evidence.

Ms. Dyer indicated that there was no objection to the appellant's application.

The court, in view of the application for an adjournment and in light of the non-objection of Ms. Dyer, was of the opinion that the adjournment should be granted.

Case Name: Kauesi Hanley & Shakespeare Southwell

v

The Chief of Police

SKBMCRAP2015/0008A

Date: 11th June 2020

Coram:	The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances:	
Appellants:	Mr. Jason Hamilton for Kauesei Hanley Dr. Henry Brown QC along with Mr. O’Grenville Browne for Shakespeare Southwell
Respondent:	Ms. Greatess Gordon
Issues:	Appeal against conviction and sentence – Evidence – Whether there was sufficient evidential basis to sustain a charge against the appellant – Sentencing guidelines – Whether the sentence of the appellants was excessive
Type of Order	N/A
Result / Order:	The matter was stood down
Reason:	This was an appeal against conviction and sentence by Mr. Shakespeare Southwell and an appeal against sentence by Mr. Kauesi Hanley. Both men were convicted of possession of cannabis, and possession of cannabis with intent to supply, contrary to sections 6(2) and 6(3) of the Drugs (Prevention and Abatement of Misuse and Abuse of Drugs) Act Cap 9:08 of the Revised Laws of Saint Christopher and Nevis. Dr. Brown QC mounted the challenge to the conviction and sentence of Mr. Southwell.

Dr. Brown QC argued that the ingredients of the offence of possession are physical control of a matter with knowledge that one has it in his control. He argued that these ingredients were not made out on the evidence and, neither was it allowable for the trial judge to draw an inference that they were made out.

Dr. Browne QC submitted that the evidence which was before the magistrate was not sufficient to allow Mr. Southwell to answer the charges of possession.

Dr. Browne QC submitted that the evidence before the court only disclosed that Mr. Southwell was hiding and hiding is not symptomatic of anything sinister. He posited that where the magistrate found that it was clear that both defendants were hiding in the dilapidated building where the marijuana was found and drew the inference that they had knowledge and control of the vegetable matter in the building in which they were hiding, this was not the only reasonable inference which she could have drawn and as such could not be a sufficient evidentiary basis to ground a finding of guilt for the crimes of possession.

There was, in the opinion of Dr. Browne QC, a reasonable inference of innocence which could have also been drawn from the unchallenged evidence before the magistrate. He reminded the court that (i) the premises in which Mr. Southwell was found hiding was not owned by either of the defendants (ii) the owner of the premises, who was seen at the premises in the room which contained the marijuana was seen running away with another man (iii) the evidence before the court was that the defendants were invited there to do something else, that is to trim marijuana leaves (iv) there was no evidence that Mr. Southwell actually trimmed the marijuana, (v) no one saw Mr. Southwell in control of the marijuana and (vi) Mr. Southwell was not found in the same room as the marijuana.

Based on these facts, Dr. Browne QC argued that and that it would be a reasonable reaction to hide when seeing men in plain clothes with guns approaching a building containing marijuana and, although not having committed a crime.

Dr. Browne QC argued that the inference the magistrate drew, that Mr. Southwell was in possession of the marijuana, is an inference which ought to not have been drawn because the evidence before the court did not lead, inexorably, to a finding of Mr. Southwell's guilt. He submitted that for that inference to be drawn to ground Mr. Southwell's guilt, it must have the precision of mathematics that is $2+2 = 4$.

Dr. Browne QC hinged his arguments on the case of *R v Monica Williams* (1970) 16 WIR 74 and submitted that the applicable principle to be extracted was that the mere presence of an accused in a house containing drugs is not enough to convict on, there must be something more.

Dr. Browne submitted that if there is one reasonable inference leading to innocence and another reasonable inference leading to guilt, the magistrate must adopt the one that leads to innocence. His contention was that before one can draw an inference that leads to guilt it must be the only reasonable inference that can be drawn.

Dr. Browne submitted that the question of whether the magistrate had only one reasonable inference to draw from the circumstances must be answered in the negative. And as a result, the magistrate was incorrect in allowing Mr. Southwell to answer the charges of possession.

On the issue of sentence, Dr. Browne QC submitted that a custodial sentence was harsh in the circumstances. He alluded to the fact that Mr. Southwell would be susceptible to contracting Covid-19 in prison. He further intimated that Mr. Southwell had good antecedents, in that: (i) he has been on bail for 5 years without incident (ii) he is young (iii) he has been on excellent behavior since being arrested and (iv) he is gainfully employed. He urged the court not to derail Mr. Southwell's life with a custodial sentence.

Mr. Hamilton then addressed the court on behalf of Mr. Kauesi Hanley .

He, like Dr. Browne QC, submitted that the sentence was unduly harsh in all the circumstances. He submitted that on the sentencing guidelines, a matter with the particulars of the instant case would attract a punishment ranging from a non-custodial sentence and to a maximum of two years imprisonment.

Ms. Greatess Gordon submitted on behalf of the respondent that that there was a sufficient evidential basis on which to convict both appellants. She submitted that the appellants' evidence showed that there was custody, control and knowledge. She argued that there was constructive possession and the fact that the appellants entered the house meant that they were in control of the marijuana.

On the issue of sentencing, Ms. Gordon conceded that the custodial sentences were harsh and she was of the view that a fine would be more appropriate.

She helpfully indicated to the court that Mr. Southwell had spent a little over five months on remand, from 30th June 2015 to 8th January 2016 and Mr. Hanley had spent a little over three months on remand from 30th June 2015 to 2nd November 2015 Ms. Gordon suggested fines in the sum of \$10,000 for both appellants if the court were to allow the appeal in relation to sentence.

The matter was stood down for the court to deliberate and to dispose of other matters.

Case Name:

Lawrington Powell

V

Edmund Slack

SKBMCVAP2018/0016

Date:

11th June 2020

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

Appearances:

Appellant:	Appellant in person
Respondent:	Mr. Oral Martin

Issues: N/A

Type of Order Oral Decision

Result / Order:

Whereas Magistrate Yasmine Clarke granted judgment to the respondent in the sum of \$25,0022.15 with costs in the sum of \$1500 and whereas that judgment has been appealed and whereas the parties have agreed to settle the appeal.

IT IS HEREBY ORDERED BY CONSENT THAT:

1. The appellant shall pay to the respondent the sum of \$15,000 in full and final settlement of the matter.
2. The respondent acknowledges that to date he has received the sum of \$4000 from the appellant toward the payment of the sum of \$15,000.
3. The appellant and the respondent acknowledge that a total \$11,000 is outstanding and by consent it is agreed and ordered that the appellant shall pay the outstanding sum of \$11,000 in the manner hereinafter set out:
 - a. The appellant shall pay the respondent the sum of \$1500 on or before 30th June, 2020.
 - b. Thereafter, the appellant shall pay the respondent the sum of \$1500 on or before

the 30th day of each calendar month until the 30th December 2020.

- c. The appellant shall make a final payment to the respondent of the sum of \$500 on or before the 30th day of January 2021.

Reason:

Counsel for the respondent, Mr. Martin, indicated that there is a signed consent order in place.

The appellant, outlined to the court that he agreed to the terms of the consent order in that the matter should be settled for \$15,000. He further outlined that he had already paid \$4000 of the \$15,000.

Mr. Martin acknowledged the payment of \$4000 but, when asked, revealed that there was no arrangement in place with regard to the payment of the remaining \$11,000.

Mr. Powell intimated to the court that he would be able to pay \$1500 per month moving forward.

The court having heard from both Mr. Powell and from Mr. Martin as to the terms of their agreement and as to their consent as to the termination of this appeal made an order to reflect same.

Case Name:

Kauesi Hanley & Shakespeare Southwell

V

The Chief of Police

SKBMCRAP2015/0008A

Date:

11th June 2020

Coram:

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

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

Appearances:

Appellant: Mr. Jason Hamilton for Kauesei Hanley

Dr. Henry Browne QC along with Mr. O’Grenville Browne for Shakespeare Southwell

Respondent: Ms. Greatess Gordon

Issues:

Type of Order Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The Appellant, Shakespeare Southwell’s appeal against conviction is dismissed.**
- 2. The sentences imposed by the magistrate of 24 months imprisonment on each charge for each appellant were excessive, accordingly, the appeals against sentence by both appellants are allowed.**
- 3. The sentence imposed on the appellant, Shakespeare Southwell, is varied to time served, plus a fine of \$10,000.00, to be paid within 3 months, in default of payment, 6 months’ imprisonment.**
- 4. The sentence imposed on the appellant, Kauesei Hanley, is varied to time served, plus a fine of \$15,000.00, to be paid within 3 months, in default of payment, 6 months’ imprisonment.**

Reason:

This matter was recalled at which point the court enquired of Ms. Gordon as to the applicable sentencing guideless and principles.

On the basis of the representations of Ms. Gordon on the applicable sentencing guidelines and principles which were agreed to by Mr. Hamilton and Dr. Browne QC, the court gave its ruling.

The court reviewed the evidence which is that the police came into the premises, saw a large quantity of marijuana on the floor, searched the house and found the two appellants hiding. Mr. Southwell was in an old bathtub with a piece of board in-front of him and Mr. Hanley was on top of a closet in a bedroom.

The court found that in response to questions by the police both appellants admitted it that there was marijuana but denied that it belonged to them.

The court found that the Defendants had a case to answer based on that evidence because the defendants had legal possession of the marijuana. The court was of the view that the magistrate was entitled to find that the only reasonable inference was that the appellants had legal possession to the marijuana.

The court accordingly could find no fault in the magistrate finding that Mr. Southwell had a case to answer and further finding that he believed the polices' evidence over the appellants'

The court took the view that the judge was entitled to find that the appellants were guilty and accordingly Mr. Southwell's appeal against conviction is denied

With regard to appeal against sentence by both appellants the court found that the sentences imposed were excessive and those appeals should be allowed.

Case Name:

- 1. Lindsay F. P. Grant**
- 2. Jonel F.H Powell**

V

Tanzania Tobin Tanzil

SKBHCVAP2020/0009

Date: 11th June 2020

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Ms. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Gerard Farara, QC, Justice of Appeal [Ag.]

Appearances:

Applicants: Mr. Douglas Mendes SC with Mr. Brian Barnes

Respondent: Ms. Angelina Gracy Sookoo-Bobb with Mr. Sylvester Anthony

Issues: Leave to appeal – Stay of execution – Rules of natural justice – Whether there was an obligation to hear from the applicants prior to referring a matter to the disciplinary tribunal

Type of Order Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. Leave to appeal against the parts of the order contained at paragraphs 68 (4) to 68(10) of the judgment of Ventose J delivered on 27th February, 2020 is hereby granted.
2. The said orders at paragraphs 68 (4) to 68(10) contained in the said judgment are hereby stayed pending the determination of the appeal.
3. No order as to costs.

Reason:

This was an application seeking leave to appeal parts of the judgment of Ventose J delivered on 27th February 2020 and a stay of the execution of those parts of the judgment. The applicants confined this appeal to those parts of the judgment contained at paragraphs 68 (4) to 68 (10) wherein the learned judge directed that the matter proceed to a disciplinary tribunal.

The applicants confirmed to the court that no leave to appeal was being sought in relation to the judge's order refusing to grant leave to extend time for filing a defence and the order striking out the defence.

Mr. Mendes SC pointed out that the order referring the matter to a disciplinary tribunal was one made without any prior notice to the applicants and therefore, the applicants did not have an opportunity to address the judge on this point before the order was made. There was, he argued, no hearing on whether it was appropriate for the judge to make that order when there should have been.

Mr. Mendes SC sought to distinguish the cases of *Wiseman v Borneman* [1971] AC 297 and *Parry-Jones* [1969] 1 Ch 1, which cases outline the general rule that there is no requirement to have a hearing when there is only a preliminary decision being made and the matter would be fully ventilated at a subsequent hearing at which point the parties will be able to make full representations.

Mr. Mendes SC instead sought relief in the authorities of *Rees v Crane* [1994] 2 AC 173 and *Maurice O'Callaghan v Disciplinary Tribunal et al* [2002] 1 IR 1.

He argued that these authorities show that while there are many situations in which the general rule would apply, a decision to hold an inquiry into the alleged misconduct of a professional person was so grave that that person ought to be put on notice of any preliminary inquiry to determine whether there was a *prima facie* case against that person.

Giving regard to the authorities cited, Mr. Mendes SC argued that the matter required full consideration by the court to determine whether the applicants had the right to a hearing before the matters were referred to the disciplinary tribunal. He submitted that the applicants have therefore met the threshold for leave to appeal which is a realistic, as opposed to a fanciful, prospect of success.

Counsel for the respondents Ms. Sookoo-Bobb acknowledged that if the court was minded to grant leave to appeal, there was no objection to the ordering of a stay of those parts of the judgment of Ventose J as prayed by the applicants, as it would be appropriate in the circumstances.

The court was of the view that the proposed appeal had a realistic prospect of success and accordingly granted leave to appeal.

Case Name:

- 1. Minister of Agriculture, Lands
Housing, Cooperatives &
Fisheries**
- 2. Nevis Housing and Land
Development Corporation**

V

Eustace Nisbett

SKBHCVAP2019/0020

Date:

11th June 2020

Coram:

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

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

Appearances:

Appellant: Mr. Terence Byron

Respondent: Mr. Patrice Nisbett

Issues:

N/A

Type of Order

Adjournment

Result / Order:

Oral Delivery

IT IS HEREBY ORDERED THAT:

In as much as the appellant has not had sight of the respondent's submissions which were served by email via an electronic link, the hearing of the appeal is adjourned to the next Sitting of the court of appeal in the Federation of Saint Kitts and Nevis during the week commencing 26th October, 2020.

Reason:

N/A

**EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING**

ST. KITTS AND NEVIS

12th June 2020

JUDGMENTS

Case Name:

1. Fast Kaz Auto Supplies Limited
2. Curtis Hudson
3. Bryan James
4. James Enterprises Limited

V

The Attorney General

SLUHCVAP2018/0040

SAINT LUCIA

Date: 12th June 2020

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Horace Fraser

Respondent: Ms. Karen Bernard with Mr. Kurt Thomas

Issues: Civil Appeal — Statutory Interpretation — Section 94(1)(a) of Customs (Control and Management) Act — Reasonable grounds to believe goods liable to forfeiture concealed — Breach of statutory duty — Whether the Comptroller of Customs had power to authorise entry and search under section 94(1)(a) of Act without a warrant issued by the court — Separation of Powers — Section 7(2)(c) Constitution of Saint Lucia — Whether the exercise of powers by the Comptroller of Customs pursuant to section 94(1)(a) of the Act breached the separation of powers doctrine — Article 2124 of the Civil Code of Saint Lucia — Bad faith — Whether the Comptroller of Customs and by extension the customs officers exercised powers conferred by section 94(1)(a) of Act in bad faith

**Result and
Reason:**

The appellants have appealed against a decision of Justice Kimberly Cenac-Phulgence, in circumstances where customs officers under written direction from the comptroller of customs went to the premises of the appellants and seized, removed and detained vehicles and documents relating to their business which the customs officers reasonably suspected were liable to forfeiture under the Customs Act. As a consequence of the seizure and search, the appellants filed claims in the court below alleging trespass and claiming damages. The claims were filed more than 6 months after the search and seizure and as such, beyond the 6 month period for filing such claims against public officials under Article 2124 of the Civil Code of Saint Lucia and in excess of 6 months . This meant that a statutory limitation would apply unless bad faith could be proven.

The learned judge held that there was no particularization of bad faith and there was a failure to adduce cogent evidence to substantiate the appellants' bald assertions.

Accordingly the judge dismissed their claim on the basis that they were prescribed by Article 2124 of the Civil Code. Being dissatisfied, they appealed.

The issues which arise were as follows:

- i. Whether the comptroller of customs had power to authorize a search under Section 941a without a warrant.
- ii. Whether the exercise of such power breach the separation of powers doctrine.
- iii. Whether the comptroller of customs and the customs officers exercised bad faith

HELD:

Dismissing appeal and ordering that each party bear its own cost, that:

1. Section 7(2)(c) of the Constitution enables Parliament to make laws which grant powers to administrative bodies to search premises, for

the purposes of revenue collection. Section 40 of the Constitution gives Parliament the power to legislate for the country. Cumulatively, these sections give Parliament the right to legislate for the collection and management of duties and revenue. This right has been crystallised in the enactment of the Act, as one of the pieces of legislation aimed at securing revenue and promoting an effective customs administration.

2. The court should approach the interpretation of the legislation with a view to determine and give effect to Parliament's intention. It therefore follows that the Act must be examined having regard to the context, scheme and the purpose of the Act as a whole. An examination of section 94(1)(a) of the Act in this context shows, that the customs officer must first have reasonable grounds for believing that there are goods subject to forfeiture before approaching the Comptroller for authorisation to do any of the acts in sub-paragraphs (a) – (b). Section 94(2) of the Act exhibits Parliament's deliberate intention to create two parallel ways by which the powers of entry and search may be granted to customs officers to search premises which they believe are being used to harbour prohibited goods; the first is by the authorisation of the Comptroller in writing and the second, by a warrant issued by a magistrate upon being satisfied by information on oath that there are reasonable grounds for suspicion. There is no doubt that the learned judge correctly interpreted section 94(1)(a) of the Act and her decision cannot be impugned.
3. Even though it was not specifically pleaded before the learned judge, the separation of powers point was raised by the claimants by way of submissions in the lower court and was addressed by the learned judge. Insofar as the learned judge dealt with the separation of powers point in her judgment and insofar as the appellants appealed the learned judge's ruling in that regard, and bearing in mind that we have heard extensive submissions from both the

appellants and respondent on the separation of powers point, this Court considers that it was open to the appellants to have raised it on appeal. The separation of powers doctrine serves to ensure that one arm of the government does not exercise power or control over another arm. By section 94(1)(a) of the Act Parliament merely provided an alternative method by which the Comptroller can authorise in writing, the search and entry of a citizen's property. Indeed, section 94(1)(a) of the Act enables the Comptroller, to authorise in writing, a customs officer who has reasonable grounds of suspicion, to search for and seize uncustomed goods liable to forfeiture at the premises. The authorisation of the Comptroller to search and seize is not a judicial act in the same way, as there is no basis to assert that there is a breach of separation of powers as a consequence. It is merely a holding measure. Accordingly, there was no breach of the separations of powers doctrine by the Comptroller. It is clear, that the section 94(1)(a) of the Act did not infringe the Constitution.

4. In determining whether an act amounts to bad faith, the court may examine not only the conduct at the time of the act but those actions before and after. The learned judge having examined the conduct of the customs officers, found that they were acting under the authority of a document in writing issued by the Comptroller, who is authorised to do so. A review of the evidence clearly indicates that it was open to the judge to make that finding. As such, the officers' actions could not have constituted bad faith. The judge's decision in this regard cannot be impugned. Insofar as the claims were brought well beyond the 6-month period as stipulated by Article 2124 of the Code, and the appellants failed to particularise the alleged acts of bad faith and to adduce evidence to substantiate their bare allegations of bad faith on the part of the customs officers, the claims were prescribed. The learned judge did not err in so holding that they were prescribed.

APPLICATIONS AND APPEALS

Case Name:

- 1. Adam Bilzerian**
- 2. Lemon Grove Company Limited**
- 3. Caribbean Building Systems (St. Kitts) Limited**

V

- 1. Terrence V. Byron**
- 2. Byron & Byron**
- 3. Kevin Horstwood**

SKBHCVAP2020/0003

Date: **12th June 2020**

Coram: **The Hon. Mde. Louise Esther Blenman, Justice of Appeal**
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Applicants: **Mr. Victor Elliott-Hamilton**

Respondents: **N/A**

Issues: **Leave to appeal – Realistic prospect of success on appeal**

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

Leave to appeal is granted.

Reason:

This was an application for leave to appeal against Paragraph 1 of the order of Justice Eddy Ventose dated 30th January 2020.

The part of the order which was being challenged says “Unless Adam Bilzerian is represented by an Attorney-at-Law, the claim shall be stuck out”.

Mr. Hamilton outlined that the learned judge noted that Mr. Adam Bilzerian cannot be represented by Mr. Paul Bilzerian and was of the view that the way Mr. Paul Bilzerian was conducting himself was an abuse of the process of the court.

The applicants therefore challenged the order and submitted that there is a realistic chance of succeeding on the appeal as:

- 1. The learned judge erred where he failed to give the applicants reasonable opportunity to make representations before making his order.**
- 2. The learned judge erred where he failed to let the defendants represent themselves as litigants in person.**
- 3. The learned judge failed to let the director of a company represent the company.**
- 4. There was no basis in fact which justified the making of the order by the learned judge.**

The Court was of the view, having read the application and supporting affidavit that leave to appeal should be granted as the applicant had met the threshold for a grant of leave to appeal.

Case Name:

**Earl Garfield Jeffers
(Administrator of the Estate of Winston Liddie
and Lawful Attorney for
Miguel Shane Xavier Liddie)**

V

- 1. Shirley Liddie**
- 2. Edwin Liddy**
- 3. Registrar General of Births,
Deaths and Marriages**

SKBHCVAP2019/0051

Date: 12th June 2020

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Terrence Byron

Respondents: N/A

Issues: Application for an extension of time for leave to appeal
and for leave to appeal

Type of Order Directions

Result / Order: Oral Delivery

IT IS HEREBY ORDERED THAT:

1. The applicant shall serve the application for an extension of time along with the E-Litigation Portal authorisation code on the respondents within 3 days of the date of this order.
2. The applicant shall file and serve written submissions together with authorities on the respondent within 7 days of the date of this order.
3. The respondents shall file and serve written submissions together with authorities within 14 days of receipt of the applicant's submissions and authorities.
4. The application for extension of time to apply for leave to appeal is adjourned for further consideration at the Chamber Hearing of the Court scheduled for 28th July, 2020.
5. The applicant shall serve a copy of this order on the respondents within 7 days of the date of this order.

Reason:

This matter was set for the hearing of an application for an extension of time to seek leave to appeal and for leave to appeal.

Mr. Byron outlined to the court that he had not served the application for an extension of time on the respondents and as such had his misgivings as to whether the application could proceed.

The Court indicated that it too had similar misgivings and was of the view that the matters should be dealt with in chambers after the applicant has effected service on the respondent.

Case Name:

**Earl Garfield Jeffers (Administrator of the
Estate of Winston Liddie and Lawful
Attorney for Miguel Shane Xavier Liddie)**

v

- 1. Shirley Liddie**
- 2. Edwin Liddy**
- 3. Registrar General of Births, Deaths
and Marriages**

SKBHCVAP2020/0002

Date: 12th June 2020

Coram: The Hon. Mde. Louise Esther Blenman, Justice of
Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Terrence Byron

Respondents: N/A

Issues: Leave to appeal – Extension of time within which to
apply for leave to appeal – Stay of execution –
Application for consolidation

Type of Order Directions

Result / Order: Oral Delivery

IT IS HEREBY ORDERED THAT:

- 1. The applicant shall serve the application filed on
11th February, 2020 along with the E-Litigation
Portal authorisation code on the respondent
within 3 days of the date of this order.**

2. The applicant shall file and serve written submissions together with authorities on the respondents within 7 days of the date of this order.
3. The respondents shall file and serve written submissions together with authorities within 14 days of receipt of the applicant's submissions and authorities.
4. The application is adjourned for further consideration at the Chamber Hearing of the Court scheduled for 28th July, 2020.
5. The applicant shall serve a copy of this order on the respondents within 7 days of the date of this order.

Reason:

Mr. Byron indicated that this matter is connected to SKBHCVAP2019/0051 which involved the same parties. He further indicated that it was similarly not ready to proceed due to non-service, but enquired as to the court's posture with regard to the application for consolidation with the related matter.

The court was of the view that the applicant should make the application for an extension of time and, if successful, it could canvass the application for consolidation. The court was however minded to give directions in like terms to the related matter so that the applications for extension of time and for leave to appeal could be properly ventilated.

Case Name:

Wycliffe Baird

V

1. David Goldgar
2. Paul B. Coburn

3. Caribe (Realties) Canada Limited
4. Immeubles Caribe Canada Ltee
5. Betts Realty Limited

SKBHCVAP2019/0038

Date: 12th June 2020

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Terrence Byron

Respondents: Mr. Damien Kelsick with Ms. Danni Maynard

Issues: Application to reconsider and revoke order – Stay of execution – Conditions to be satisfied in order to grant a stay of execution – Whether a judge granting a stay of execution is required to indicate the specific ground of appeal with a realistic prospect of success – Consideration of whether an appeal would be rendered nugatory – Balancing exercise of a judge when considering a stay application

Type of Order Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application to reconsider and revoke the amended order of the single judge dated 24th March, 2020 is dismissed.
2. The respondents/applicants shall pay costs to the appellant/respondent in the sum of \$1,000.00

to be paid within 21 days of the date of this order.

Reason:

This was an application for review and revocation of the order of Baptiste JA dated 24th March 2020 which stayed Paragraph 42 (iii) of the judgement of Carter J that ordered that the freezing order of 25th November 2015 be discharged.

Mr. Kelsick argued that there was a threshold requirement of any application for stay; that is, that the appellant should show some prospect of success. He further submitted that the order of Baptiste JA which granted the stay did not indicate which ground of appeal showed any prospect of success and should be revoked for that reason.

Mr. Kelsick posited that where there were thirteen grounds of appeal it had to be established that at least one ground had a reasonable prospect of success and that ground had to be identified so that the respondent could investigate the ground and make a determination as how it should then proceed.

The court, in looking at the order of Baptiste JA found that while the learned Justice of Appeal did not refer to any specific ground of appeal as having a reasonable prospect of success, Baptiste JA considered the matter in the round and was satisfied that there was, generally, such a prospect.

The court further found that applications for stays of execution were fact sensitive and this matter was one in which an important consideration to be had was whether the appeal could be rendered nugatory if the appellant was successful but a stay of execution was not in place. The Court found that upon a balancing exercise which considered the maintenance of the stay as opposed to its discharge, if the stay was not so maintained, the appeal could be nugatory if the appellant was successful as the sums which now formed the core of the appeal would be taken out of the jurisdiction and would be unavailable for the appellant.

The court therefore having read the order of Baptiste JA in its entirety together with the application and having heard the submissions of learned counsel for the applicant, was of the unanimous view that the single judge had given deliberate consideration to the relevant principles for the grant of a stay and applied them correctly in granting the stay. Reading the entirety of the judge's order the court found that there was no basis to interfere with it. The court underscored the fact that the underlying circumstances necessitated the grant of the stay. Accordingly, the court held that the learned single judge did not err and was of the unanimous view that the stay should be maintained.

The court, upon the invitation of Mr. Byron and, despite the resistance of Mr. Kelsick, made the usual award of costs to the successful party in keeping with the general principle that costs follows the event.

Case Name:

The Commissioner of Police

V

Akile Glasgow

SKBMCRAP2017/0003

Date:

12th June 2020

Coram:

The Hon. Mde. Louise Esther Blenman, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

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

Appearances:

Appellant:

Mr. Teshawn Vasquez

Respondent:

Dr. Henry Brown QC with Mr. O'Grenville Brown

Issues: Appeal against sentence

Type of Order Directions

Result / Order: Oral Delivery

IT IS HEREBY ORDERED THAT:

1. The appellant shall file and serve written submissions with authorities in response to the respondent's submissions filed on 9th June 2020 on or before 10th July 2020.
2. The respondent is at liberty to file a reply to the appellant's submissions on or before the 14th August 2020.
3. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis scheduled for the week commencing 26th October 2020.
4. In respect of the application for an extension of time filed by the respondent on 9th June 2020:
 - a. The respondent shall file and serve written submission with authorities on or before 26th June 2020;
 - b. The appellant shall file and serve reply submissions on or before 10th July 2020; and
 - c. The application is adjourned the next chamber hearing of the court scheduled for 28th July 2020.

Reason: This matter was set for the hearing of an appeal against sentence by the Crown.

Mr. Vasquez however, preliminarily, informed the court that the respondent had on the 9th of June 2020 filed

an application for an extension of time within which to appeal and also submissions in response to their appeal.

The court rose to ascertain the documents filed in the matter.

The court then, having considered what was before it, and in light of the very late application of the respondent which they had not yet seen, considered that it may be appropriate to have the entirety of the matter adjourned so it could consider all applications together.

Mr. Vasquez initially resisted the suggestion due to the proximity of the filing of the application to the hearing date of the scheduled appeal which they had filed since 2017.

However, in so far as the court had not even had sight of the application, the court indicated that it could not at this stage, take a position one way or the other, and was constrained to adjourn the proceedings.

The court then proceeded to give directions for the conduct of the applications and the appeal.

Case Name:

Steve Powell

V

Laurell Dorset

SKBMCVAP2016/0008

Date:

12th June 2020

Coram:

The Hon. Mde. Louise Esther Blenman, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

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

Appearances:

Appellant: Appellant in person
Respondent: Mrs. Yvonne Bussue-Fleming

Issues:

Civil appeal – Appellate court’s role in reviewing finding of fact

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against the decision of the learned magistrate is dismissed and the magistrate’s decision is affirmed.**
- 2. Costs awarded to the respondent fixed in the sum of \$666.00.**

Reason:

This was an appeal against the decision of the learned magistrate who awarded damages to the respondent arising from a motor-vehicular accident.

The appellant being dissatisfied with the decision filed an appeal in which he complained that the magistrate erred in her analysis of the accident and in her award of damages.

The appellant admitted that he was at fault for the accident. However, he contended that the respondent lied in her evidence and presented inaccurate and, he asserted, patently false evidence.

He alleged that (i) the parties had come to an agreement of what the damage to the vehicle was at the scene of the accident and the respondent exaggerated the damages subsequently at trial (ii)

immediately following the accident there was no damage to the right side of the vehicle of the respondent but the respondent claimed for damage to the right side of her vehicle at trial (iii) there was no windscreen damage yet she claimed windscreen damage at trial and (iv) the picture which the respondent claimed was taken the day of the accident was actually taken some five days later.

The appellant on his notice of appeal also raised the issue that the claim was statute barred but he did not advance oral submissions on that point. In any event, the court was satisfied, after enquiry from Ms. Bussue-Fleming, that the matter was filed in time and was not statute barred.

In relation to the arguments raised that the judge made awards for damage sustained to the right side of the respondent's vehicle, and the contradiction of the agreement of the parties, the court took the view that the complaints of the appellant were predicated on findings of fact.

The court found that the principles which establish the role of the appellate court in relation to review of findings of facts are well settled and need no recitation. The court is charged to be very reluctant to overturn such findings of fact.

In the circumstances, the court found that there was no basis on which it could interfere with the findings of fact. The magistrate saw the witnesses, heard them, evaluated their evidence and came to findings of fact which were open to her. It could not be said that the facts as found by the learned Magistrate were plainly wrong

The court therefore took the view that there was no merit to the appeal.