

**THE EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
SAINT LUCIA**

9th to 13th March 2020

JUDGMENTS

Case Name:

**Dr. Abner James
v
The Medical and Dental Council**

**[SLUHCVAP2018/0018]
(SAINT LUCIA)**

Date:

Thursday, 12th March 2020

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Michael Fay, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mrs. Wauneen Louis-Harris

Issues:

Civil Appeal – Administrative claim – Entitlement to award of damages – Rule 62.4 of the Civil Procedure Rules 2000 – Section 28(2) of the Eastern Caribbean Supreme Court (Saint Lucia) Act – Whether the Court of Appeal can exercise its powers in absence of a challenge to the trial judge’s findings – Whether learned judge erred in refusing to award damages – Costs – Whether learned judge erred in refusing to award costs

**Result and
Reason:**

Held (per Pereira CJ, Thom Ja and Webster Ja [Ag.]): dismissing the appeal and affirming the order of the court below, that:

1. Ordinarily, where an appellant, challenges the trial judge's finding as to the existence of a right on which his claim to an award of damages hinges, it would be improper for the appellate Court to consider an appeal solely against the refusal of an award for damages. However, having regard to the Court's broad powers under section 28(2) of the Eastern Caribbean Supreme Court (Saint Lucia) Act and being satisfied that the respondent will suffer no prejudice thereby, allows consideration of the issue as to whether the appellant had a common law right to work as asserted.

Section 28(2) of the Eastern Caribbean Supreme Court (Saint Lucia) Act, Cap. 2.01 of the Revised Laws of Saint Lucia, 2013 applied; Rule 62.4 of the Civil Procedure Rules 2000 considered.

2. Neither the common law, nor the statutory provisions of the laws of Saint Lucia establishes an unequivocal or unqualified right to work or to practise medicine in Saint Lucia. The common law recognises an individual's right to be protected from losing his livelihood in an arbitrary or capricious manner. The court has a duty to ensure that associations or bodies which predominantly govern or regulate the entry into trades or professions do not abuse their power by excluding individuals, who have satisfied the existing requirements of those trades or professions. Dr. James was not suspended by the Council. He applied for renewal of his practising certificate after he had allowed his certificate to expire.

Nagle v Feilden [1966] 2 QB 633 considered; Attorney General et al v E. Ann Henry Goodwin et al ANUHC VAP1997/0010 (delivered 25th October 1999, unreported) considered.

3. The appellant failed to show that at the time of bringing his administrative claim he was seized of a cause of action in private law which would have entitled him to an award of damages.

Furthermore, he failed to provide any evidence to support his claim for loss of chance and for distress and inconvenience. Accordingly, there is no basis for disturbing the learned judge's conclusion refusing an award of damages.

Nagle v Feilden [1966] 2 QB 633 considered; Attorney General et al v E. Ann Henry Goodwin et al ANUHCVAP1997/0010 (delivered 25th October 1999, unreported) considered.

4. It is well settled law that costs awards are in the discretion of the court. Appellate courts only interfere with the exercise of a trial judge's discretion in well-defined circumstances, and an appellate court will only interfere with the exercise of a trial judge's discretion if it is established that the judge took into account irrelevant factors or failed to take into account relevant factors or that the judge committed an error in principle or where it is shown that the conclusion reached was blatantly wrong. Dr. James sought declaratory relief concerning his right to practise medicine in Saint Lucia and damages incidental to the alleged breach of that right by the Council. The learned judge denied Dr. James the substantive relief sought. There is nothing which suggests that the learned judge considered irrelevant factors or committed an error in principle or that the decision to make no order as to costs was blatantly wrong. Therefore, there is no basis for this Court to interfere with the learned judge's decision to make no order as to costs.

Rule 64.6 of the Civil Procedure Rules 2000 applied; Rochamel Construction Limited v National Insurance Corporation SLUHCVAP2003/0010 (delivered 24th November 2003, unreported) followed; The Hon. Attorney General and another v D. Giselle Issac ANUHCVAP2015/0014 (delivered 11th March 2016, unreported) followed.

Case Name: **The Attorney General of Saint Christopher and Nevis**
v
Dr. Denzil Douglas

[SKBHCVAP2019/0007]
(SAINT CHRISTOPHER AND NEVIS)

Date: **Thursday, 12th March 2020**

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

Appearances:

Appellant:	Mr. Thomas Theobalds holding papers for Mr. Douglas Mendes, SC and Ms. Talibah Byron
Respondent:	Ms. Ann-Alicia Fagan holding papers for Mr. Anthony Astaphan, SC

Issues: **Civil appeal — Constitutional interpretation — Disqualification from National Assembly on account of circumstances which arose after election — Acknowledgment of allegiance, obedience or adherence to a foreign state — Section 28(1)(a) of the Constitution of Saint Christopher and Nevis — Diplomatic passport issued to respondent by the Commonwealth of Dominica — Whether respondent's application for, receipt and use of diplomatic passport issued by the Commonwealth of Dominica amounts to an acknowledgment of allegiance to the Commonwealth of Dominica — Section 31(3)(c) of the Constitution — Whether respondent required to vacate his seat in National Assembly**

Result and Reason: **Held (per Pereira CJ, Thom Ja and Webster Ja [Ag.]): allowing the appeal; declaring that Dr. Douglas is required to vacate his seat in the Assembly; and ordering that each party shall bear their own costs before this Court and in the court below, that:**

- 1. Section 28(1)(a) of the Constitution provides for three distinct legal requirements to be proved for a**

person to be disqualified from sitting in the Assembly. There must be: (i) a de jure allegiance owed to a foreign power or state; (ii) some voluntary act on the part of the allegedly disqualified person; and (iii) the voluntary act by the allegedly disqualified person amounts to an acknowledgment of that allegiance. This disqualifying provision was included in the Constitution as a means of avoiding the possibility of elected members having split loyalties which would render them incapable of acting in the interests of Saint Christopher and Nevis, in circumstances where such acts are diametric to the interests of the state to which they possess a competing loyalty.

Section 28(1)(a) of the Constitution of Saint Christopher and Nevis, Cap. 1.01, Revised Laws of Saint Christopher and Nevis 2009 applied; *Sykes v Cleary* [1992] HCA 60 applied; *Hewitt v Rivers, Solomon and Attorney General* [2013] (2) CILR 262 applied.

2. By the issuance of a passport, a state undertakes an obligation of protection in respect of the passport holder, such that would give rise to a corresponding obligation of fidelity or allegiance. This applies equally to diplomatic passports. By issuing a diplomatic passport, upon the application of Dr. Douglas, the Commonwealth of Dominica consented to the presentation and use by Dr. Douglas of the passport and to him praying in aid the state's protection at his convenience. Accordingly, Dr. Douglas has been vested with a concomitant duty of obedience or allegiance to the Commonwealth of Dominica.

Joyce v Director of Public Prosecutions [1946] AC 347 applied; *Sykes v Cleary* [1992] HCA 60 applied; *Hewitt v Rivers, Solomon and Attorney General* [2013] (2) CILR 262 considered; *Hicks v Ruddock* (2007) 156 FCR 574 considered.

3. It is evident that there must be some element of knowledge and participation in the acts which are claimed to have placed a person under an

acknowledgment of allegiance, whether that participation is active or passive. The requirement for voluntariness of conduct is imported by the words “by his own act” contained in section 28(1)(a). In this case, the voluntariness of the acts which were claimed to place Dr. Douglas under an acknowledgment of allegiance, is undisputed as he admitted that he applied for, received and used the Dominican diplomatic passport to travel.

Section 28(1)(a) of the Constitution of Saint Christopher and Nevis, Cap. 1.01, Revised Laws of Saint Christopher and Nevis 2009 applied.

4. Whether there has been an acknowledgment of allegiance is a determination to be made on the facts of each case. Here, Dr. Douglas invoked the protection and privileges of the state of Dominica, by the presentation of his diplomatic passport, knowing that the passport represented him as a subject and citizen of Dominica and not Saint Christopher and Nevis. The terms of the passport are unequivocal, very clearly represent Dr. Douglas as a citizen of Dominica and request that he be accorded the protections of a Dominican citizen. Accordingly, an acknowledgment of allegiance in respect of which section 28(1)(a) of the Constitution is aimed has been made out.

Joyce v Director of Public Prosecutions [1946] AC 347 considered; Sykes v Cleary [1992] HCA 60 considered; Hewitt v Rivers, Solomon and the Attorney General [2013] (2) CILR 262 considered; Dabdoub v Vaz (CA 45 & 47 of 2008, 13th March 2008) considered; Green and Joseph v Saint Jean and Skerit DOMHCVAP2012/0001 (delivered 11th March 2013, unreported); Nile v Wood [1988] HCA 30 considered.

APPLICATIONS AND APPEALS

Case Name:

The Attorney General

v

Sonia Johnny

**[SLUHCVAP2017/0036]
(SAINT LUCIA)**

Date: Monday, 9th March 2020

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

Appearances:

Applicant: Mr. Dexter Theodore, QC with him, Ms. Kozel Creese and
Ms. Sueanna Frederick

Respondent: Ms. Cynthia Hinkson-Ouhla and Ms. Natalie DaBreo

Issues: Application for conditional leave to appeal to Her Majesty
in Council as of right — Section 108 (1) of the Constitution
of Saint Lucia, Cap. 1.01 Revised Laws of Saint Lucia 2015
— Whether appeal raises a genuinely disputable issue —
Application for stay of execution of judgment

Type of Order Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. Conditional leave to appeal against the decision of
the Court delivered on 13th December 2019, is
hereby granted to the petitioner pursuant to section
108(1)(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 of Five Hundred Pounds
Sterling for the due prosecution of the appeal.
Such security to consist of a deposit of the said
amount at the court office.
 - b. Within 90 days of the date hereof the petitioner
does take the necessary steps for the purposes
of procuring the preparation of the records, the
settling of such records with the solicitors of the
respondent to this petition and the certification

of the record by the Registrar of the Court of Appeal.

- c. The record shall be prepared in accordance with rules 18-20 of the Judicial Committee (Appellate Jurisdiction) Rules Order 2009 and its practice directions 4.2.1, 4.3.2 and practice direction 5 and shall be transmitted to the Registrar of the Judicial Committee of the Privy Council where final permission to appeal has been granted.
2. The petitioner shall make an application to this Court for final leave to appeal to Her Majesty in Council supported by the certificate of the Registrar that the security for costs ordered herein has been given within the time prescribed by this order to the satisfaction of the Registrar.
3. The judgment of the Court of Appeal dated 13th December 2019 is hereby stayed pending the determination of the appeal to Her Majesty in Council.
4. The costs of the petition for conditional leave to appeal to Her Majesty in Council shall be costs in the appeal to Her Majesty in Council.

Reason:

The Court was satisfied that the threshold conditions set out in section 108(1)(a) of the *Constitution of Saint Lucia, Cap.1.01, Revised Laws of Saint Lucia 2015* had been met for the grant of conditional leave to appeal to Her Majesty in Council. The Court was also of the view that the appeal raised a genuinely disputable issue as observed by Her Majesty in Council in *Alleyne-Forte (Learie) v The Attorney General of Trinidad and Tobago and Anor* [1997] UKPC 49, and more recently in *Meyer v Baynes* [2019] UKPC 3. Accordingly, pursuant to section 108(1)(a) of the Constitution of Saint Lucia, the Court granted the petitioner conditional leave to appeal to Her Majesty in Council against the decision of the Court delivered on 13th December 2019.

Reason:

The Court noted that there was no objection by either of the parties to the Bar Association of Saint Lucia being heard on the motion for conditional leave to appeal to Her Majesty in Council.

Case Name:

**Cynthia Paul
v
[1] The New India Assurance Co.
(Trinidad and Tobago) Ltd.
[2] S&A Insurance Brokers Ltd.**

**(SLUHCVP2015/0007)
(SAINT LUCIA)**

Date:

Monday, 9th March 2020

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard Farara, QC, Justice of Appeal**

Appearances:

Appellant: Ms. Wauneen Louis-Harris

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

Issues:

**Civil appeal — Discontinuance of appeal — Costs on
discontinuance of appeal — Rules 62.25, 62.26 and 62.27
of the Civil Procedure Rules 2000**

Type of Order

Oral Decision

Result / Order:

**IT IS HEREBY ORDERED THAT:
The appeal against the first and second respondents is
hereby discontinued and stands dismissed with costs
payable to the first respondent, who has appeared on this
appeal, in the sum of \$6,000.00, being two-thirds of the
costs on the appeal further discounted by one-third.**

Reason:

**The Court noted that the appellant filed a notice of
discontinuance on 9th March 2020 discontinuing the
appeal against the first and second respondents. Further,
both counsel for the appellant and the first respondent
agreed on costs on the discontinuation of the appeal in**

the amount of \$6,000.00, representing a discount of the costs on the appeal by one-third, to be paid by the appellant to the first respondent.

Case Name: **Ferdinand James**
v
Planviron (Caribbean Practice) Limited

[SLUHCVP2017/0050]
(SAINT LUCIA)

Date: **Monday, 9th March 2020**

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

Appearances:

Applicant:	Mr. Dexter Theodore, QC with him Mr. Andie George and Ms. Sueanna Frederick Mr. Peter Foster, QC, with Mr. Deale Lee and Ms. Diana Thomas appearing amicus curiae for the Bar Association of Saint Lucia
Respondent:	Mr. Geoffrey DuBoulay and Mrs. Sardia Cenac-Prosper

Issues: **Application for conditional leave to appeal to Her Majesty in Council as of right — Section 108(1)(a) of the Constitution of Saint Lucia Cap. 1.01, Revised Laws of Saint Lucia — Application for conditional leave to appeal to Her Majesty in Council pursuant to section 108(2) of the Constitution of Saint Lucia**

Type of Order **Oral Decision**

Result / Order: **[Oral**
IT IS HEREBY ORDERED THAT:
1. Conditional leave to appeal to Her Majesty in Council is granted pursuant to section 108(2) of

the Constitution of Saint Lucia upon the following conditions:

- a. That the appellant/applicant do within 90 days of the date of the hearing of this application for leave to appeal enter into good and sufficient security in the sum of Five Hundred Pounds Sterling for the due prosecution of the appeal and the payment of all such costs as may be payable by the appellant in the event of this appeal being dismissed, such security to consist of a deposit of the said amount into court.**
 - b. That the appellant/applicant do take such steps for the purposes of procuring the preparation of the record, settling such record with the solicitors for the respondent and transmitting such record to the Registrar of the Judicial Committee of the Privy Council within 90 days of the date of the hearing of this application for leave to appeal.**
 - c. The record shall be comprised of the record used at the hearing of the appeal excluding documents of a formal nature and those omitted by consent and shall include the judgment and orders of the Court of Appeal and the order granting conditional leave to appeal.**
 - d. The appellant/applicant shall make an application to the Court for final permission to appeal to Her Majesty in Council supported by the certificate of the Registrar that the security for costs ordered herein has been given within the time prescribed by this order to the satisfaction of the Registrar and the costs of the application for conditional leave to appeal shall be costs in the appeal to Her Majesty in Council.**
- 2. The decision of the Court of Appeal delivered on 16th October 2019 regarding the payment of costs is hereby stayed pending the determination of the appeal to Her Majesty in Council.**

3. The costs of this application shall be costs in the appeal to Her Majesty in Council.

Reason:

This application is by way of motion, for conditional leave to appeal to Her Majesty in Council against the decision of the Court delivered on 16th October 2019. The motion is made on two limbs, namely, pursuant to section 108(1)(a) and section 108(2)(a) of the *Constitution of Saint Lucia, Cap 1.01, Revised Laws of Saint Lucia 2017*. Under section 108(1)(a) of the Constitution, the motion is made on the basis that the decision of the Court is a final decision in civil proceedings where the matter in dispute on the appeal to Her Majesty in Council is of the prescribed value or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards.

It is common ground that the value threshold prescribed under the Laws of Saint Lucia, of \$1,500.00, has been met. The argument revolves around the question, whether the decision being appealed is a final decision. The decision on appeal followed from an application for summary judgment, an agreed course taken by the parties in the court below, dealing with the question whether the *Land Registration Act, Cap. 5.01, Revised Laws of Saint Lucia 2017* had impliedly repealed the Supreme Court – Prescription by Thirty Years (Declaration of Title) Rules , S.I 7 of 1970 (“*Prescription Rules*”). The result of the ruling on the summary judgment application had the effect of bringing the proceedings in the court below to an end and the setting aside of the declaration of title earlier granted by the court to the appellant/applicant. This was also in the context of a set aside application which was pending on a number of grounds.

Had the summary judgment application been decided the other way, by finding that there was no repeal of the *Prescription Rules*, the matter would no doubt have gone on to a hearing on the merits. This fulfils the requirements of the application test as recognised and incorporated in the *Civil Procedure Rules 2000* and is a decidedly different scenario from the case in *White v Brunton [1984] QB 570* which considered the concept of split trials and final decisions made on different issues in the split trials. The Court was accordingly of the view that the decision of the

Court, flowing from the application for summary judgment, is interlocutory and not final. The threshold required for the gateway to appeal pursuant to section 108(1)(a) of the Constitution was therefore not met.

The applicant also prayed in aid section 108(2)(a) of the Constitution which allows for decisions to be appealed to the Privy Council where, in the Court's opinion, the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council. The Court was referred to a number of decisions addressing this question, beginning with the decision of Martinus Francois v The Attorney General of Saint Lucia Saint Lucia Civil Appeal No. 37 of 2003 (delivered 7th June 2004, unreported) which is considered to be the locus classicus in the region. The Court considered the observations in the case of *Francois* as well as the other cases to which it was referred, including the decisions of Renaissance Ventures Ltd. et al v Comodo Holdings Ltd. BVIHCMAP2018/0005 and BVIHCMAP2018/0008 (delivered 13th July 2018, unreported), Pacific Wire & Cable Company Limited v Texan Management Limited et al BVIHCVAP2006/0019 (delivered 6th October 2008, unreported), Imran Siddiqui et al v Athene Holding Ltd. [2019] CA (Bda) 15 Civ from the Court of Appeal of Bermuda and the case of Olesamo v Barnett Ltd. (1995) 51 WIR 191 from the Court of Appeal of Jamaica.

Having considered all the arguments and the observations made by the courts in the cases cited, the Court considered that, as stated in *Olesamo*, the phrase "or otherwise" gives a court a broader discretion than would otherwise be the case when considering whether the matter is one of great general or public importance and provides for the Court to refer a matter to the Privy Council where in its opinion there is some other good reason, such as having the benefit of a pronouncement on the law from the highest appellate court.

The Court considered this case to be such a case, given the practice undertaken over the past thirty years in Saint Lucia regarding the procedure for obtaining a declaration for prescriptive title from the court under the *Civil Code, Cap.4.01, Revised Laws of Saint Lucia 2017* notwithstanding the provisions of the *Land Registration Act*. Accordingly, the Court granted the applicant

conditional leave to appeal to Her Majesty in Council pursuant to section 108(2)(a) of the Constitution.

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: Monday, 9th March 2020

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Michael Fay, QC, Justice of Appeal [Ag.]

Appearances:

Appellants/ Respondents:	Mr. Horace Fraser
Applicant/ Respondent:	Ms. Karen Bernard, Mr. Rene Williams and Mr. Kurt Thomas instructed by the Attorney General

Issues: Civil appeal – Application for extension of time to file and serve skeleton arguments and relief from sanctions

Type of Order Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

The application for an extension of time within which to file and serve skeleton arguments is granted.

Reason: The Court was of the view that the circumstances justified the grant of an extension of time. The appellants did not object to the application.

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: Monday, 9th March 2020

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Michael Fay, QC, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Horace Fraser
Respondent:	Ms. Karen Bernard, Mr. Rene Williams and Mr. Kurt Thomas instructed by the Attorney General Mr. Kosygin Frederick representative for the Respondent

Issues: Civil appeal – Entry into, search and seizure of property by customs officers – Section 94 of Customs (Control and Management) Act Cap. 15.05, Revised Laws of Saint Lucia – Whether Comptroller of Customs had power to authorise entry and search under section 94 without a warrant issued by the court – Whether exercise of powers by Comptroller of Customs under section 94 of Customs (Control and Management) Act breaches separation of powers doctrine – Bad faith – Whether Comptroller of Customs exercised powers under section 94 in bad faith — Whether Comptroller of Customs had reasonable grounds for believing that property which is liable to

forfeiture was being kept on appellants' premises – Whether appellants' pleadings in court below sufficiently particularised allegations of bad faith – Protection from arbitrary search or entry – Section 7(2)(c) of the Constitution of Saint Lucia Cap 1.01, Revised Laws of Saint Lucia – Whether powers of Comptroller of Customs under section 94 of Customs (Control and Management) Act are consistent with constitutional protection from arbitrary search or entry under section 7 of the Constitution

Type of Order:

N/A

Result/Order:

[Oral Delivery]
IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

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

[SLUHCVAP2019/0024]
(SAINT LUCIA)

Date:

Tuesday, 10th March 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. Horace Fraser

Issues:

Application for leave to appeal — Refusal to set aside judgment in default of defence — Whether appeal has realistic prospect of success — Whether there is a good

explanation for failing to file defence — Rule 13.3(1) of the Civil Procedure Rules 2000 — Whether there is a real prospect of successfully defending the claim — Whether there are exceptional circumstances for setting aside default judgment — Rule 13.3(2) of the Civil Procedure Rules 2000

Type of Order

Oral Decision

Result / Order:

[Oral Delivery]
IT IS HEREBY ORDERED THAT:

The application for leave to appeal is dismissed.

Reason:

The matter was referred to the Full Court by order of a single judge of the Court of Appeal. The Court, having read the reasons proffered by the learned trial judge in his ruling dated 2nd October 2019, was of the view that the learned trial judge did not err in refusing to set aside the judgment in default. The Court was also satisfied that the applicant had not demonstrated that the appeal had any realistic prospect of success on the appeal for the grant of leave to appeal. Accordingly, leave to appeal was refused.

Case Name:

James Junior Frederick

v

The Attorney General

[SLUHCVAP2017/0046]
(SAINT LUCIA)

Date:

Tuesday, 10th March 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:

Mr. Colin Foster

Respondent: Ms. Kozel Creese and Mr. Seryozha Cenac

Issues: Civil appeal — False imprisonment — Malicious prosecution — Approach of appellate court to trial judge's findings of fact and evaluations of fact — Whether learned judge's decision is against weight of evidence — Whether learned judge erred in concluding that the investigating officer had reasonable and probable cause in proffering criminal charge of kidnapping against appellant — Whether it was open to the learned judge to find on the basis of the evidence that there was no malice in proffering charge of kidnapping against appellant

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:
1. The appeal is dismissed.
2. The judgment of the learned judge is affirmed.
3. The respondent is awarded costs in this appeal in the amount of two-thirds of the costs awarded in the court below.

Reason: This was an appeal by James Junior Frederick against the decision of Belle J, dated 22nd September 2017, in which the learned judge dismissed the appellant's claim against the State and ordered costs against him. The underlying claim is in the tort of false imprisonment and malicious prosecution. The appellant filed three main grounds of appeal, in effect seeking to challenge the learned judge's findings of fact and his evaluation of those findings of fact in circumstances where the judge held that there was neither false imprisonment nor did the police officers maliciously prosecute Mr. Frederick. The Court read the submissions of learned counsel extensively and was of the view that at the heart of the appeal is a challenge to the learned judge's findings of fact.

The law in this area is settled in relation to the function of the appellate court in seeking to review findings of fact and evaluations of those findings of fact and therefore need no recitation. Suffice it to say that they are borne out

in the locus classicus of Watt (or Thomas) v Thomas [1947] AC 484 which has been consistently applied by this Court in several judicial pronouncements. In a nutshell however, in order for an appellate court to interfere with the findings of fact of a High Court judge, it must be shown that the conclusion to which the judge arrived was not open to him or in effect, was plainly wrong.

The Court reviewed the evidence before the learned judge and the judge's evaluations and conclusions and found that the judgment was coherent and clear. There was no basis on which the Court could state that the conclusions to which the judge arrived at were not open to him. The judge had the benefit of hearing the witnesses and reviewing all of the evidence in the matter, including the evidence of the investigating officer and other police officers together with that of the appellant. The learned judge concluded, on his review, that the officers had reasonable and probable cause and did not act with malice in proffering the charge of kidnapping against Mr. Frederick. Taking the caution that is indicated by the Board in Mitra Harracksingh v The Attorney General of Trinidad and Tobago et al (2004) 64 WIR 362, the Court stated that it must approach with caution the evaluations and conclusions arrived at by the learned judge and pay due respect to the judge's findings in this regard.

In this case, the Court found no basis upon which it could properly impugn the judge's decision. In the Court's view, if there were ever a case in which the police did have reasonable and probable cause and did not act with malice in proffering a criminal charge, this was such a case. Accordingly, the Court dismissed Mr. Frederick's appeal, affirmed the judgment of the learned judge, and awarded the respondent costs in the appeal in the amount of two-thirds of the costs awarded in the court below.

Case Name:

Linus Felix
v
Hildree Edward

[SLUHCVP2014/0006]
(SAINT LUCIA)

Date: Tuesday, 10th March 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: Mrs. Wauneen Louis-Harris

Respondent: In person

Issues: Civil appeal — Application for adjournment

Type of Order: Adjournment

Result / Order: [Oral Delivery]
IT IS HEREBY ORDERED THAT:

1. Given the unreadiness of the respondent and there being no objection by the appellant, the hearing of this appeal is adjourned to the next Court of Appeal sitting in Saint Lucia during the week commencing 6th July 2020.
2. No order as to costs.

Reason: The Court adjourned the hearing of the appeal to the next sitting of the Court of Appeal in Saint Lucia as the respondent did not appear with the necessary documents to enable him to fairly proceed with the appeal.

Case Name: SOL EC Ltd.
v
Rubis West Indies Limited

[SLUHCVAP2017/0052]
(SAINT LUCIA)

Date: Tuesday, 10th March 2020

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

Appearances:

Appellant/ Applicant:	Mr. Dexter Theodore, QC with him, Ms. Sueanna Frederick
Respondent:	Mr. Peter Foster, QC with him, Ms. Renee St. Rose and Ms. Rowana Kay Campbell

Issues: Civil appeal – Application to set aside order of single judge striking out appeal for want of prosecution – Failure to file skeleton arguments within time required by Civil Procedure Rules 2000

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The order of the learned judge dated 22nd October 2019 is set aside.
2. The appeal filed on 6th December 2017 is hereby reinstated and shall be heard on its merits.
3. The appellant shall file skeleton arguments within 14 days of the date of this order, failing which the appeal shall stand dismissed.
4. The costs of the application to strike out the appeal and the application to reinstate the appeal are assessed in the agreed sum of \$10,000.00, with such costs to be paid by the appellant to the respondent within 14 days, failing which payment, the appeal shall stand dismissed.

Reason: This was an application to set aside the order of a single judge of the Court of Appeal by which the appeal was struck out for want of prosecution. The background to the matter is that the notice of appeal was filed on 6th December 2017. Notice was given to the parties of the availability of the transcript in accordance with the Civil Procedure Rules 2000 (the “CPR”). The respondents

failed to file the record of appeal and skeleton arguments within the 42 and 52 days required, respectively, by the CPR.

An application was made to extend the time within which the appellant was required to file the record of appeal – that application was granted. The record of appeal was filed 3 days late and a further extension was granted to deem the record validly filed. No extension of time was sought to file the skeleton arguments. The skeleton arguments ought to have been filed on 13th November 2018. At the date of the hearing of this application, the skeleton arguments had still not been filed.

On 24th September 2019, the respondent issued an application to strike out the appeal on the basis that the appellant failed to file skeleton arguments or take any steps to prosecute the appeal following the filing of the record of appeal. The respondent gave no notice of objection to the strike out application and did not file evidence in response to the application.

On 1st October 2019 the Court of Appeal Registry issued a notice that the matter would come on for hearing before a single judge of this Court on paper. The matter came before a single judge on 22nd October 2019. The judge considered the strike out application and ordered that the appeal be struck out for the reasons that the appellant had not taken any further steps to prosecute the appeal, the appellant's had not complied with the CPR and had failed to seek an extension of time within which to file skeleton arguments.

The respondents thereafter filed an application on 5th November 2019 to set aside the order made by the learned judge and to reinstate the appeal. The application was accompanied by affidavit evidence. The essence of the appellant's excuse for its failure to file skeleton arguments was that there had been a change in ownership of the appellant and that its senior management had lost sight of the matter before the Court.

It was agreed by counsel for the appellant that its conduct in this regard, fell below that which was expected by a litigant. Notwithstanding this, the appellants, through counsel, indicated their willingness to file the skeleton

arguments on the day following the hearing of the present application, if necessary.

The matter before this Court is a review of the single judge's order by way of rehearing of the application by the Full Court, and not by way of an appeal against that order. The specific question was what course the Court should take when faced with the present application which was, in effect, an application to file the submissions far out of time.

The Court took the view that, in the circumstances of this case, an order permitting the filing of the written submissions was an appropriate order to be made. The Court therefore set aside the order of the learned judge, without any criticism of that order, and ordered in terms of the draft order with amendments to reflect the court's view that an unless order should be made.

Case Name:

**Juliet Sutherland
v
Bank of Saint Lucia Limited

[SLUHCVP2016/0005]
(SAINT LUCIA)**

Date:

Tuesday, 10th March 2020

Coram:

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

Appearances:

**Appellant/
Applicant:**

Mr. Alfred Alcide

Respondent:

**Mr. Leslie Prospere with him, Mrs. Megan DuBoulay-Lee,
with Mr. Valdus James as representative for the
respondent**

Issues:

**Civil Appeal – Application for adjournment – Request for
time to reply to respondent's skeleton arguments**

Type of Order:

Adjournment

Result / Order:

**IT IS HEREBY ORDERED THAT:
[Oral Delivery]**

The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 6th July 2020.

Reason:

The matter originally scheduled for hearing before the Court of Appeal, was an appeal against the decision of a judge in the court below. However, with some advanced notification by email received the day prior, the Court was adverted by learned counsel for the appellant that he intended to make an application for an adjournment, on the basis that the appellant did not have sufficient time to reply to the comprehensive submissions filed by the respondent. The respondent objected to the application for an adjournment, urged the Court to proceed to hear the appeal, or alternatively, make an order of costs against the appellant.

The Court noted that the email from counsel for the appellant was a very last-minute intimation of his intention to apply for an adjournment. The Court noted that the substantive application made before the Court was oral and therefore very informal. The Court also noted that the failure of the appellant to file skeleton arguments was within the context of counsel's intimation at a status hearing before the Chief Registrar that the skeleton arguments in reply would have been filed within 7 days of receiving the respondents' skeleton arguments.

This notwithstanding, the Court also noted that the respondent had not been prompt in the filing of its skeleton arguments, the arguments having been filed some three months after the appellant's skeleton arguments were filed and indeed very close the hearing of the appeal.

Having regard to the volume of the respondent's skeleton arguments and authorities, the Court took the view that it

was fair in the circumstances to grant the adjournment sought by the appellant. The Court further took the view that it was not appropriate in the circumstances to make an order as to costs against the appellant.

Case Name:

**Mary Francis
v
Development Control Authority**

**[SLUHCVAP2017/0021]
(SAINT LUCIA)**

Date:

Tuesday, 10th March 2020

Coram:

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

Appearances:

Appellant:

Mr. Horace Fraser

Respondent:

**Mr. Adrian Etienne and Ms. Kay Louis,
Mr. Hinkson Smith as representative of the respondent**

Issues:

Civil Appeal – Judicial Review – Delay – Whether the learned judge erred in concluding that delay in filing a claim for judicial review was sufficient basis on which relief ought to have been refused – Prejudice – Whether delay in filing judicial review claim occasioned prejudice on part of respondent or third party

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED:

- 1. The appeal is allowed.**
- 2. The respondent is to enforce the abatement notice issued by it on 9th June 2011.**

3. The costs of the appeal and in the court below are to be paid by the respondent to the appellant in the agreed sum of \$6000.00.

Reason:

This was an appeal against the order made by the learned trial judge on 17th May 2017 on application for judicial review by the appellant, of the decision made by the respondent to grant planning permission to the appellant's neighbour Mr. Moses. The challenge was to the part of the planning permission that allowed the construction of a trestle on Mr. Moses' property.

The appellant's case, in the court below, was that the respondent had a policy of not permitting construction within six feet of a boundary of a particular parcel. Secondly, that the respondent gave approval for the erection of the trestle within six feet of the minimum setback. The appellant submitted it was irrational on the part of the respondent to grant the approval after having previously served an abatement notice. The appellant further submitted that she had a legitimate expectation of compliance with the six-foot setback and structures affecting her land.

The respondent's case in the court below was that both the appellant and Mr. Moses had buildings within the six-foot setback and that the judicial review filed more than two (2) years after the decision, should be dismissed as a consequence of unreasonable delay. The learned trial judge found at paragraph 18 of his judgment that no reasonable decision-maker in the position of the respondent, given the facts and circumstances of the case, would have arrived at the decision at which it did. There was no challenge by the respondent to that finding. Having made that finding, the judge then turned to the issue of delay. Part 56.5 of the Civil Proceedings Rules 2000 ("CPR") provides as follows:

"56.5 (1) In addition to any time limit imposed by any enactment, the judge may refuse leave or to grant relief in any case in which the judge considers that there has been unreasonable delay before making the application."

“(2) When considering whether to refuse leave or to grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to –

(a) be detrimental to good administration; or

(b) cause substantial hardship to or substantially prejudice the rights of any person.”

The appellant was told of the planning permission on or about 4th June 2014, but did not apply for leave to bring judicial review proceedings until August 2016 – a delay of more than two (2) years. Whilst every case turns on its own facts, a delay of more than two (2) years would normally be fatal to a claim of judicial review on the grant of planning permission.

The issue of delay was raised at the application for leave to bring judicial review proceedings but was put over until trial. The appellant submitted that she delayed commencing judicial review proceedings because she was pursuing private law proceedings against Mr. Moses. The respondent was briefly a party to those proceedings having been joined in March 2014 and removed in June 2014.

The appellant had two substantial complaints about the trestle. Firstly, that it overhung and trespassed onto her land. Secondly, that it was built within the six-foot setback, contrary to the respondent’s planning policy. The private law proceedings only related to the overhang and some related complaints about nuisance, but did not refer to the six-foot setback policy. The evidence before the High Court was that the trestle was substantially completed prior to the grant of planning permission in March 2014 and finally completed by 22nd April 2014. The planning permission was therefore, to a great extent, for retroactive work that had already been done.

Counsel for the appellant, argued that the appellant’s pursuit of the private law proceedings justified and or explained the delay by the appellant from March 2014 to August 2016, in commencing judicial review proceedings. The Court did not accept that suggestion, that private law proceedings only related to the overhang and a related nuisance claim could explain or justify the delay in bringing a public law claim. In the circumstances, there

was no good reason for the delay. The Court therefore turned to the provision of rule 56.5 of the CPR, as already set out above, and raised the question as to whether or not the granting of judicial review sought, would be detrimental to good administration, cause substantial harm or substantially prejudice the rights of any person.

The respondent submitted that the delay would be prejudicial to Mr. Moses as he expended monies on the construction of the trestle. However, in the peculiar circumstances of this case, he had expended nearly all of the monies prior to the grant of the planning permission and the rest, 6 weeks after the permission was obtained. If the appellant, as she ought to have done, commenced judicial review in a more timely fashion, Mr. Moses would be in no worse position than as he would have been now because the relief that was sought, namely, directed at the trestle, would have been the same relief sought if judicial review commenced in a more timely fashion. The delay caused no prejudice to Mr. Moses. Other than the alleged prejudice to Mr. Moses, the respondent did not submit in the matter that the relief sought in judicial review would be detrimental to good administration or would cause prejudice to any other person.

It was indeed arguable, that requiring the respondent to enforce its own policy on a six-foot setback was in fact beneficial to good administration. In those circumstances, the Court proposed to allow the appeal and to make an order that the respondent pay the costs of the appeal and the trial below.

Case Name:

**Processus Jn. Baptiste
v
The Police (PC 797 Henry)
[SLUMCRAP2016/0007]
(SAINT LUCIA)**

Date:

Wednesday, 11th March 2020

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Michael Fay, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Processus Jn. Baptiste in person
Respondent: Ms. Stacey-Anne St. Ville on behalf of the Director of Prosecutions

Issues: Criminal appeal – Application for adjournment – Incomplete transcript of proceedings

Type of Order Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:
The hearing of the appeal is adjourned to the next Court of Appeal in Saint Lucia during the week commencing 6th July 2020.

Reason: Counsel for the respondent indicated that evidence led by the crown in the proceedings below was not included in the transcript of proceedings which was filed. The record of appeal also did not contain a copy of the magistrate's notes. Counsel for the respondent indicated that an attempt was made to source the omitted parts of the transcript.

Case Name: Bernadine Evans
v
The Commissioner of Police

[SLUMCRAP2018/0010]
(SAINT LUCIA)

Date: Wednesday, 11th March 2020

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Michael Fay, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mrs. Antonia Charlemagne holding papers for Mrs. Lydia Faisal

Respondent: Ms. Stacey-Anne St. Ville on behalf of the Director of Public Prosecutions

Issues: Criminal Appeal – Appeal against conviction arising from nonpayment of traffic ticket – Appeal conceded by Crown

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

Upon the respondent conceding the appeal, the appeal is allowed and conviction and sentence are set aside.

Reason:

Case Name: Lance Wilson
v
The Queen

[SLUHCRAP2015/0006]
(SAINT LUCIA)

Date: Wednesday, 11th March 2020

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Michael Fay, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. David Moyston

Respondent: Mr. Stephen Brette on behalf of the Director of Public Prosecutions

Issues: Criminal Appeal – Application for an adjournment – Respondents’ skeleton arguments in reply not filed

Type of Order: Directions

Result / Order: [Oral Delivery]

The appellant having not opposed the application by the respondent for an adjournment of the hearing of the appeal, it is hereby ordered that:

1. The respondent shall file and serve skeleton arguments with authorities on or before 30th April 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 6th July 2020.

Reason: The appellant filed skeleton arguments on 6th February 2020. Counsel for the respondent indicated that he had not been in a position to respond to the skeleton arguments and therefore requested an adjournment. The appellant, through counsel, indicated that he did not object to the application for an adjournment.

Case Name: Urban St. Brice
v
The Attorney General

[SLUHCVAP2018/0036]
(SAINT LUCIA)

Date: Wednesday 11th March 2020

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

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Michael Fay, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Natalie Da Breo and Mrs. Cynthia Hinkson-Ouhla
Respondent: Mr. Seryozha Cenac and Mrs. Antonia Charlemagne on behalf of the Attorney General

Issues:

Civil Appeal – Constitutional Motion – Right to fair trial within a reasonable time – Right to a public hearing – Protection against inhumane treatment – Sections 1, 3, 4, 5, 6, 8 and 10 of Constitution of Saint Lucia Cap. 1.01 Revised Laws of Saint Lucia 2013 – Indictment for murder – Admissibility of evidence notwithstanding noncompliance with sections 55, 56 and 57 of Evidence Act – Whether pending indictment should be quashed or permanently stayed – Appellant in custody for 18 years after 6 unsuccessful or aborted trials and no final determination of indictment for murder – Whether in the circumstances the appellant could receive a fair trial 18 years after appellant charged on indictment for murder – Deprivation of liberty without bail

Type of Order

N/A

Result / Order:

[Oral Delivery]

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

Case Name:

**[1] Roger Goring
[2] Clavier Estaphane
[3] Melba Sonny
v
[1] Florence Chedy
[2] Tedburt Theobalds**

**[SLUHCVAP2014/0017]
(SAINT LUCIA)**

Date: Wednesday, 11th March 2020

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

Appearances:

Appellants: Mr. Gerald Williams

Respondents: Mr. Tedburt Theobalds in person
No appearance by or on behalf of the 1st respondent

Issues: Civil Appeal – Application for adjournment

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

The appeal is adjourned and traversed to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 6th July 2020.

Reason: The second respondent Mr. Tedburt Theobalds, having been short-served with the notice of hearing and the relevant documents; namely, the record of appeal and submissions, applied to the Court for an adjournment to instruct counsel. There was no objection to the application by learned counsel for the appellants.

Case Name: Bonny Alexander
v
[1] Stanislaus Smith
[2] James Enterprises Ltd.

**[SLUHCVAP2018/0016]
(SAINT LUCIA)**

Date: Wednesday, 11th March 2020

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

Appearances:

Appellant: Ms. Lydia Faisal

Respondents: Ms. Cleopatra McDonald

Issues: Civil appeal – Negligence – Personal injury – Assessment of damages after default judgment entered – Contributory negligence – Failure to wear seatbelt – Reduction of damages – Whether learned master erred in assessment of damages in finding that appellant was contributorily negligent – Whether there was evidence before learned master indicating that failure to wear seatbelt contributed to injuries – Whether or not learned master erred in considering oral submissions on contributory negligence in the absence of such pleadings and evidence

Type of Order: Oral Judgment

Result / Order: [Oral Delivery]
IT IS HEREBY ORDERED THAT:

1. The appeal is allowed in relation to the learned master's discount of 15% on the basis of contributory negligence for the awards of \$100,000 for pain and suffering, \$40,000 for loss of amenities, \$60,415.60 for special damages and \$10,000 for loss of earning capacity.
2. The awards made by the learned master are reinstated without any discount or diminution of 15% resulting from contributory negligence or any other factor arising from the appellant not wearing his seatbelt at the time of the accident.

3. Costs agreed in the sum of \$1,500 shall be paid by the respondents to the appellant.

Reason:

This was an appeal against the judgment of the learned master arising out of a motor vehicle accident for which the respondents admitted liability. The issue which arose for determination was the quantum of damages which should flow from that admission. The matter went to assessment of damages where it was established or acknowledged that the claimant (who is now the appellant) was not wearing a seatbelt at the time of the accident. However, this was as far as the issue went in terms of any impact on the injuries sustained or the damages to be awarded. Learned counsel for the appellant submitted that absent any evidence of the seatbelt or the not wearing of a seatbelt as exacerbating any damage or injury, it was not open to the learned master to have made a determination that not wearing the seatbelt contributed to the loss occasioned to the appellant.

Counsel for the respondents, Ms. Cleopatra McDonald, made reference to a number of cases on the basis of which she sought to persuade this Court that the very fact that the appellant acknowledged that he was not wearing a seatbelt was in and of itself sufficient for the learned master to make a finding of contributory negligence or a finding that the injury suffered by the appellant was exacerbated by his failure to wear a seatbelt. Both counsel referred to cases purporting to support their respective submissions.

The Court, having considered all of the cases submitted by both sides, found that the common thread running through all of them is that there has to be evidence on the basis of which the court can make a determination of the impact of wearing or not wearing the seatbelt on any injuries sustained by a party. In Froom v Butcher [1976] QB 286, a case which both parties referred to, the judgment of Lord Denning is very clear that as much as one might take the view that if you do not wear a seatbelt, then any injury might be exacerbated by that. However, that is not a basis upon which a court can make a finding of contributory negligence. There must be evidence from

an expert witness to say that some additional injury would have been sustained by failure to wear the seatbelt.

In these circumstances, there being no evidence at all whether from an expert or otherwise upon which the court could have made a finding of contributory negligence, this Court was of the view that the order made by the learned master reducing the damages awarded to the claimant by 15% on the basis of a finding by her that the claimant not wearing a seatbelt contributed to the extent of the injuries sustained cannot stand. Accordingly, there was no proper evidential basis on which the master could have arrived at the determination that she did.

Case Name:

**[1] Agatha Peter
[2] Thomas Francis
[3] Andrea Fatal
[4] Emma Francis
[5] Cindy Francis
[6] Flavia Francis
[7] Sandra Didier
[8] Soeria Peter
[9] Gemma Hunte
[10] Celia Cadette
[11] Javin Cadette
[12] Francisca Francis**

v

**[1] Ansonia Lydia Charles
[2] Guy Charles
[3] Rocksford Clarke
[4] Patsy H. Cyril
[5] Ernest C. Charles
[6] Anselma V. Charles
[7] Brenda D. Charles**

**[SLUHCVP2018/0004]
(SAINT LUCIA)**

Date: Wednesday, 11th March 2020

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

Appearances:

Appellants: Mr. Horace Fraser

Respondents: Mrs. Wauneen Louis-Harris for the 1st and 2nd respondents
No appearance by or on behalf of the 3rd, 4th, 5th, 6th and 7th respondents

Issues: Civil Appeal – Possession of land – Application for writ of possession – Failure to serve application for writ of possession on appellants – Whether or not writ of possession properly issued – Natural justice principles – Right to be heard – Whether learned judge erred in granting writ of possession in circumstances where appellants were not given opportunity to adduce evidence in opposition to application for writ of possession

Type of Order: Oral judgment

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The application for writ of possession is remitted to the High Court to be heard by another judge.
3. The application for writ of possession shall be served on all the appellants in this matter.
4. The matter shall proceed in accordance with the directions given by the trial judge.
5. No order as to costs.

Reasons: This was an appeal against the order of Cenac-Phulgence J by which she ordered the appellants to vacate property which is the subject matter of this dispute. The brief background is that in 2007, Mason J heard a claim

between the contesting parties, namely the grandmother or foreparent of the appellants, Ms. Ufita Francis and the respondents. The matter came up before Cenac-Phulgence J on an application for writ of possession. The learned judge granted the writ and ordered that the appellants vacate the property. The appellants have appealed to this Court against that order.

The Court, having heard the submissions of both counsel, was concerned that the application for writ of possession was not served on all persons who are now the appellants in this matter. Where a writ of possession is sought, all the persons against whom it is sought should be served. However, in this instance, there were parties who were not served and the parties upon whom service was effected were not given an opportunity to properly defend themselves. In light of this, the Court was of the view that this amounted to a breach of natural justice.

In the circumstances, the Court was of the view that the appropriate course of action was to remit the application for writ of possession to the lower court to be heard by another judge. The application for writ of possession should be served on all appellants in this matter and in respect of those who had been served before in the court below, a notice of hearing should be served.

Case Name:

**The Attorney General of Saint Lucia
v
[1] Godfrey Ferdinand
[2] Tamar Ferdinand
(acting herein by her next friend Godfrey
Ferdinand)**

**[SLUHCVP2018/0032]
(SAINT LUCIA)**

Date:

Thursday, 12th March 2020

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Michael Fay, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Dexter Theodore, QC with him, Ms. Kozel Creese and Ms. Sueanna Frederick

Respondents: Mr. Leslie Prospere and Mrs. Megan DuBoulay-Lee

Issues:

Civil appeal — Appeal against award of damages on personal injury claim — Approach of appellate court to master's award of damages — Whether award of damages for loss of use, pain and suffering and loss of amenities excessive — Whether master erred by making award for loss of earning capacity — Whether the master should have made an award of damages for swimming prosthesis and for future equipment — Whether the master erred in considering affidavit evidence of the first respondent which was submitted after the first respondent's case had been closed without the appellant being able to cross-examine the affiant

Type of Order

Result / Order:

[Oral Delivery]
IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Glenroy Shawn Victor
v
The Queen

[SLUHCRA2014/0001]
(SAINT LUCIA)

Date:

Thursday, 12th March 2020

Coram:

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

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

Appearances:

Appellant: Mr. Alfred Alcide on record

Respondent: Mr. Stephen Brette on behalf of the Director of Public Prosecutions

Issues: Criminal appeal – Application for adjournment

Type of Order Oral Decision

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

The hearing of this appeal is adjourned to the next sitting of the Court of Appeal scheduled during the week commencing 6th July 2020.

Reason:

Counsel for the respondent indicated that the matter was not ready to proceed given that the Crown had not responded to the appellants' written submissions which were filed in May 2018. Counsel for the respondent beseeched the Court for an adjournment. Counsel indicated that this matter had been within the purview of several Crown Counsel at the Office of the Director of Public Prosecution ("DPP"), however, they had not yet been able to respond to the submissions of the appellant.

Counsel for the respondent pointed to several logistical issues at the office of the DPP including: (1) the fact that the last Crown Counsel with conduct of the matter left the employ of the office of the DPP in January 2020; (2) the fact that there were interruptions in the internet supply to the offices of the DPP and (3) that the caseload of the said office was so great that the remaining Crown Counsel could not deal with the matter with expedition.

The Court noted that it was quite displeased with the lack of attention shown to the matter and the inability of the Respondent to file submissions in reply. The Court indicated that it did not consider the reasons advanced by

counsel for the respondent to be sufficient to grant the requested adjournment.

The Court, however, upon noting the absence of counsel for the appellant and further noting, after inquiry from the appellant, his inability to mount his own appeal in person, determined that the matter should be adjourned.

Case Name: **Cornelius Aloysius Leo**

v
The Queen

[SLUHCRA2017/0011]
(SAINT LUCIA)

Date: **Thursday, 12th March 2020**

Coram: **The Hon. Mr. Mario Michel, Justice of Appeal**
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, QC, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Leslie Mondesir
Respondent:	Ms. Isa Cyril

Issues: **Criminal appeal – Whether learned trial judge exercised his discretion unfairly by allowing the trial to continue in the circumstances – Section 136(1)(e) of Evidence Act of Saint Lucia Cap 4.15 – Whether the trial judge gave sufficient warning that evidence may be unreliable – Section 15(4) of the Evidence Act Cap 4.15 – Whether there was a legal requirement for a corroboration warning in the circumstances – Whether sentence was manifestly excessive and severe in the circumstances – Whether the judge failed to consider sentencing principles – Section 35 of the Eastern Caribbean Supreme Court (Saint Lucia) Act – Whether the proviso should be applied**

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The conviction is affirmed and sentence is affirmed.

Reason:

This was an appeal from the conviction of the appellant on 4th May 2017 where the jury convicted the appellant of unlawful sexual connection, indecent assault and gross indecency. The appellant was sentenced to 5 years imprisonment for unlawful sexual connection, 5 years imprisonment for indecent assault and 2 years imprisonment for gross indecency which were to run concurrently.

In the appeal, the appellant relied on several grounds as set out in the written submissions of learned counsel for the appellant. These grounds represented additional grounds to those which were originally set out in the notice of appeal and permission was granted by the Court at the commencement of the appeal for the grounds set out in the appellant's skeleton argument to be the grounds by way of amendment to the notice of appeal.

The first ground of appeal related to the appellant's contention that the conviction of the appellant was unsafe and that the trial of the appellant was unfair as the learned judge exercised his discretion unfairly by allowing the trial to commence in the all the circumstances. In relation to this particular ground, learned counsel relied on a number of factors including the court's inquiry of the appellant as to whether he had his disclosure documents with him and that it appeared that he did not have them in his possession at the commencement of the trial. Reliance was also placed on it being said that the appellant could not read or write.

Essentially, the submission in this particular ground, based on the decision in the case of *R v Cooper* [1969] 1 All ER 32, was that the appellant was asking the Court to

conclude that the court was left with a lurking doubt as to whether an injustice may have been done to the appellant in the conduct of the trial in the circumstances; especially where he was unrepresented.

The Court considered the arguments and submissions made by counsel for the appellant and those made in reply by learned counsel for the respondent and was satisfied that the learned judge was quite correct in proceeding with the trial of this matter in the circumstances in which he did. The Court was of the view, that the learned judge was at pains to point out to the appellant that if he did not understand any matter, he was to inform the learned judge, who would have provided as much assistance as he could have provided in the conduct of the hearing. It was also noteworthy to the Court that at a later stage during the conduct of the trial, the appellant was in fact represented by counsel, Mr. Alfred Alcide, who made an appearance in the matter on 2nd May 2017 during the course of the trial. Having considered all the relevant factors, the Court was not satisfied that there was any merit in this ground of appeal and accordingly, that ground failed.

The second ground of appeal was not pursued and accordingly that ground was dismissed.

The third ground of appeal relied on by the appellant, was that the learned judge failed to give a warning pursuant to section 136 (1)(e) of the Evidence Act Cap 4.15 of Saint Lucia ("the Evidence Act"). In particular, reliance has been placed on section 136 (1)(e) which states that a warning is required "in the case of a prosecution for an offence of a sexual nature, evidence given by a victim of the alleged offence." Counsel for the appellant submitted that that was the situation at bar which meant that that section was applicable. Section 136(2) states:

"Where there is a jury the Judge shall, unless there are good reasons for not doing so—

- (a) warn the jury that the evidence may be unreliable;
- (b) inform the jury of matters that may cause it to be unreliable; and
- (c) warn the jury of the need for caution in determining whether to accept the evidence and the weight to be given to it."

In arguing this particular ground, learned counsel referred to the summation of the trial judge at the conclusion of the trial. The learned judge stated as follows:

“Members of the jury, this entire case rests on the testimony of this witness, (referring to the virtual complainant). In considering her testimony, you must bear in mind if you accept the evidence of her mother that at the time of the commission of this alleged offence she was just six years old, we all know that children of that tender age usually indulge in make believe and are inclined to make up stories. We must bear in mind that allegations of sexual offences are easy to make and difficult to defend. So you must be cautious when considering her evidence and in all things heed my warning to be cautious. If however, having taken my warnings into consideration, you find that [the virtual complainant’s] evidence to be reliable, then you may act upon it and give it such weight as you think fit.”

In relation to this particular ground, learned counsel relied specifically on two authorities in relation to section 136. Counsel relied on Vincent Leroy Edwards & Richard Orlando Haynes v The Queen [2017] CCJ 10 (AJ) and specifically the judgment delivered by Saunders J at paragraph 50 in that judgment, where among other things, the learned judge stated interestingly why all three requirements are important, the second being the most critical because it obliges the judge to provide the jury with the essential rationale for the first and third. Reliance was also placed by learned counsel on the decision of this Court in Kyron Fredrick v The Queen SLUHCRA 2006/0008 where the judgment of the court was delivered by Olivetti JA [Ag.]. Specifically, counsel relied on the passages to be found at paragraphs 35, 36 and 39 of the judgment. At paragraph 36 the learned judge states:

“I have considered the directions relating to the victim’s evidence. The judge in effect told the jury what corroboration is in law and the danger of convicting on uncorroborated evidence. However, he failed to inform the jury of matters that may have caused her evidence to be unreliable and he failed to direct the jury as to the weight to be given to it if they

accepted her evidence. The judge simply recited the evidence and asked the jury to analyse it themselves. In my view, the section required him to assist the jury in doing that very task; analyzing the evidence. Clearly, he failed to do that and he gave no reasons for not complying with the section.”

The appellant submitted that the learned judge in this matter not only had a duty to give a direction in terms of what he gave in the summation, but also had a duty to assist the jury in their task of analysing the evidence in determining the reliability of the virtual complainant.

In her submissions, learned counsel for the respondent drew the Court’s attention to page 21, in particular, beginning at lines 13, where the learned judge dealt with the issue of identification which is on the evidence, a matter of importance in this case. The learned judge gave to the jury a warning of a special need for caution before convicting the defendant based on evidence of identification by another. The Court understood it to be the submission of counsel for the respondent that the learned judge not only gave an appropriate direction but assisted the jury in relation to that direction and warning as it related specifically to the important question of visual identification and that in the round, the learned judge discharged the duty which was placed upon him in relation to section 136 of the Evidence Act. The Court was in total agreement with that submission and accordingly this ground failed.

Ground four, as relied on by the appellant, was that the judge failed to give the mandatory corroboration warning pursuant to section 15 (4) of the Evidence Act. The specific provisions of section 15 of the Evidence Act were set out at page 13 of the written submissions of the appellant and do not bear repeating for the purposes of this decision.

The Court noted that it was accepted by learned counsel for the appellant that if section 15 (4) of the Evidence Act was not engaged in the circumstances of this matter, then it was not necessary or put differently, the learned judge was not required to give a direction on corroboration. In brief, what transpired as borne out by the record in this matter, is that the learned judge specifically considered

the provisions of section 15 of the Evidence Act and concluded that the virtual complainant being 12 years of age at the time of the trial, was presumed to be competent to give evidence. The learned judge did go on to indicate that he may still ask the virtual complainant certain questions, however those questions which were indeed asked by the learned judge, did not relate to nor did it indicate that the learned judge had any doubt as to whether the virtual complainant was unable to understand questions or provide intelligible answers.

In all the circumstances of this matter, the Court did not consider that section 15(4) of the Evidence Act was engaged and while it was accepted that the learned judge did not give a direction on corroboration, the Court was of the view that no such direction was necessary or required in the circumstances of this case. Accordingly ground four failed.

In relation to ground five, which was the ground relating to sentence, reliance on that ground of the appeal was abandoned by learned counsel for the appellant and accordingly did not fall for the Court to pronounce upon.

Case Name:

Peter Jason Francis

V

[1] Renan Promesse PC 607

[2] Magistrate Robert Innocent

**[SLUMCRAP2017/0002]
(SAINT LUCIA)**

Date:

Thursday, 12th March 2020

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

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

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

Appearances:

Appellant:

Mr. Huggins Nicholas

Respondents: Ms. Isa Cyril on behalf of the Director of Public Prosecutions

Issues: Magisterial criminal appeal – Possession of firearm without a licence – Section 22 of the Firearms Act of Saint Lucia Chap 14.12 – Appeal against sentence – Excessive sentence – Whether the sentence imposed by the learned magistrate was excessive in the circumstances – Whether the reduction of sentence in light of guilty plea and mitigating factors was reasonable

Type of Order: Oral Judgment

Result/Order: IT IS HEREBY ORDERED THAT:

1. Appeal dismissed.
2. The sentence for each offence of \$7,500.00 to be paid within 6 months, in default, 3 years imprisonment, is affirmed.
3. The fines for each offence to be paid within six (6) months of the date of this judgment and in default three (3) years imprisonment for each offence, which shall run concurrently.

Reason: This was an appeal against a magisterial sentence of \$7500.00 where the appellant was charged with two offences under the Firearms Act No.9 of 2003 of Saint Lucia; namely, having a gun without a licence and possession of ammunition. He pleaded guilty to both offences. The minimum sentence on both charges in terms of a fine is \$15,000.00. The magistrate reviewed the matter and set out his decision as to how he arrived at the eventual fine of \$7,500.00 for each offence. The learned magistrate started at \$15,000.00, as what appears to be the notional sentence. The Court was of the view that this was a reasonable start by the magistrate, being the minimum fine for each of the offences. The learned magistrate then gave credit for the guilty plea and further credit for the mitigating circumstances. The Court found the fines imposed by the learned magistrate to be reasonable.

The Court found further that there were no discernable errors in the reasoning of the magistrate and did not find that there was any error in how he arrived at the sentences. In the circumstances, the Court found no reason to disturb the sentence of the magistrate and affirmed the sentences.

Case Name: **Matilda Nelson**

v
Alexis Alcide

[SLUHCVAP2018/0002]
(SAINT LUCIA)

Date: **Friday, 13th March 2020**

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

Appearances:

Appellant:	Mr. Dexter Theodore, QC with him, Ms. Sueanna Frederick Appellant present
Respondents:	Ms. Wauneen Louis-Harris Respondent present

Issues: **Civil appeal – Land law – Possession of land – Proprietary estoppel – Whether the appellant had established the essential elements of a claim based on the doctrine of proprietary estoppel and, if so, what was the minimum equity necessary to do justice to the appellant**

Type of Order: **N/A**

Result/Order: **[Oral Delivery]**

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Chaney Clerice

v

The Queen

[SLUHCRA2017/0009]

(SAINT LUCIA)

Date:

Friday, 13th March 2020

Coram:

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

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. Alberton Richelieu

Respondent:

Ms. Isa Cyril on behalf of the Director of Public Prosecutions

Issues:

Criminal Appeal – Application for adjournment – Bereavement of counsel

Type of Order

Adjournment

Result / Order:

[Oral Delivery]

Upon application by counsel for the appellant, Mr. Alberton Richelieu, for an adjournment of the appeal, with no objection by counsel for the respondent, it is hereby ordered that:

The hearing of the appeal is adjourned to the next Court of Appeal sitting in Saint Lucia during the week commencing 6th July 2020.

Reason: An adjournment was sought and granted on account of the bereavement of counsel for the appellant.

Case Name: Gael Daria
v
The Queen

[SLUHCRA2017/0002]
(SAINT LUCIA)

Date: Friday, 13th March 2020

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellant: Mr. Alberton Richelieu and Mr. Leslie Mondesir
Respondent: Mr. Bernick Faisal on behalf of the Director of Public Prosecutions

Issues: Criminal Appeal – Application for adjournment – Skeleton arguments of respondent not filed

Type of Order Directions

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED:

1. The respondent shall file and serve skeleton arguments on or before 14th April 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 6th July 2020.

Reason: The respondent indicated that it was not in a position to proceed with the appeal, with skeleton arguments in reply having not been filed. Counsel for the appellant did not object to the adjournment.

