

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
ANTIGUA AND BARBUDA
13TH JANUARY TO 17TH JANUARY 2020

JUDGMENTS

Case Name:

JEVONE DEMMING

V

THE QUEEN

**[BVIHCRA2015/0001]
(TERRITORY OF THE VIRGIN ISLANDS)**

Date:

Tuesday, 14th January 2020

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:	Mrs. Safiya Roberts Swatton holding papers for PST Law
Respondent:	Mr. Justin L. Simon, QC holding papers for the Director of Public Prosecutions

Issues:

Criminal appeal — Attempted murder — Appeal against conviction — Joint enterprise — Whether the judge erred in law when directing the jury on joint enterprise — Section 20 of the Criminal Code 1997 – Application of proviso — Section 37 (1) of the Supreme Court (Virgin Islands) Act

Result and Reason:

**Per: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal**

The Hon. Mr. Mario Michel, Justice of Appeal

Held: dismissing the appeal and affirming the conviction that:

Per Pereira CJ:

- 1. Section 20 of the BVI Criminal Code requires two conditions for the liability of parties to a joint enterprise, namely; (1) two or more persons with a shared intention to prosecute an unlawful purpose in conjunction with each other; and (2) that while pursuing the unlawful purpose, an offence is committed that was a probable consequence of the prosecution of the unlawful purpose. Section 20 essentially provides that a person, who participates in a joint enterprise, is liable for the commission of an offence committed in the furtherance of the joint enterprise if the secondary party had foresight that the offence committed would have been committed. It follows therefore that the relevant law on joint enterprise in the Territory of the Virgin Islands is governed by the Criminal Code, and in particular that the mental element for the liability of a secondary party to a joint enterprise is contained in section 20 of the Criminal Code and not the common law.**

Section 20 of the Criminal Code Act No.1 of 1997 applied; R v Jogee; Ruddock v The Queen [2016] UKSC 8; [2016] UKPC 7 distinguished; Teiko David Jamel Furbert et al v The Queen [2000] UKPC 12 applied; Anjay Charles v The Queen SVGHCRA2013/0016 (delivered 6th April 2017, unreported) applied.

- 2. When a judge's summation is subject to review, the directions given by the judge must be looked at as a whole. An appellate court's examination of a summation is not concerned solely with determining whether a judge made errors in directing the jury on the law or in the summing up of the evidence. The Court is concerned with whether the judge's misdirection occasioned a miscarriage of justice and resulted in an unsafe conviction.**

Daniel Dick Trimmingham v The Queen [2009] UKPC 25 considered; Jay Marie Chin v The Queen ANUHCRA2012/0005 (delivered 5th April 2017, unreported) considered.

3. The judge misdirected the jury on the relevant law to be applied to the issue of joint enterprise given that the judge's direction was in effect a Jogee direction. However, the presence of a misdirection is not itself determinative of an appeal against conviction. The effect of the judge's misdirection in this case, is that the misdirection enured to the benefit of the appellant as the jury was directed on the higher standard on intention to kill. No real prejudice can be suffered where a jury convicts a secondary party to a joint enterprise having been given a Jogee direction instead of a section 20 direction.

R v Jogee; Ruddock v The Queen [2016] UKSC 8; [2016] UKPC 7 distinguished.

Per Blenman JA:

4. The learned judge was required to direct the jury in accordance with section 20 of the Criminal Code. However, the learned judge's direction to the jury that "[e]ven if unusual or unforeseen consequences arise in the execution of the agreed joint enterprise, all are liable for those consequences" is inconsistent with Jogee. More critically, that direction that was given did not comport with section 20 and would therefore amount to a misdirection. The jury could have easily formed the view that Mr. Demming could have been found guilty for unusual or unforeseen consequences, which would have prejudiced him at trial.
5. The application of the proviso requires this Court to look beyond the errors of a trial judge to examine whether, having regard to the admissible evidence before the jury, a conviction was inevitable. There was overwhelming, corroborated and virtually unchallenged evidence before the jury which supported the prosecution's case. Therefore, the jury would have found that the appellant

foresaw that the firearm would have been used in the course of the altercation, and further the jury would inevitably have convicted the appellant.

Section 37(1) of the Supreme Court (Virgin Islands) Act Cap. 80, Revised Laws of the Virgin Islands 1991 applied; *Stafford v The State* [1999] 1 WLR 2026 applied; *R v Matenga* [2010] 2 LRC 36 considered; *Rupert Anderson v The Queen* [1972] AC 100 applied; *Freemantle v R* [1994] 3 All ER 225 applied; *Maxo Tido v R* [2011] UKPC 16 applied.

Case Name:

ALLEN CHASTANET

V

ERNEST HILAIRE

**[SLUHCVAP2019/0005]
(SAINT LUCIA)**

Date:

Thursday, 16th January 2020

Coram:

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

Appearances:

Appellant: Mr. Kendrickson Kentish holding papers for Mr. Garth Patterson, QC

Respondent: Mrs. Carla Brookes-Harris holding papers for Ms. Renee T. St. Rose

Issues:

Interlocutory appeal — Whether Court of Appeal has jurisdiction to deal with constitutional point raised in lower court proceedings but not addressed by trial judge — Constitutionality of article 917A of Civil Code of Saint Lucia – Civil Code of Saint Lucia — Whether article 917A of the Civil Code breaches sections 40 and 120 of the Constitution — Statutory interpretation —

Whether article 917A of the Civil Code of Saint Lucia imports into Saint Lucia the statute law of England relating to contracts, quasi-contracts and torts — UK Defamation Act — Whether UK Defamation Act is imported into the laws of Saint Lucia by article 917A — Whether provisions of UK Defamation Act conflict with Civil Code provisions on defamation

Result and Reason:

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

Held: allowing the appeal; setting aside the order of the trial judge; remitting the case to the trial court for dealing with the outstanding interlocutory applications including the appellant's application to strike out the claim; awarding costs of the appeal to the appellant summarily assessed at \$5,000.00, that:

- 1. The general rule is that the Court of Appeal will not entertain an appeal on a constitutional point that was not raised in the lower court and that did not come to the Court of Appeal by way of an appeal. The constitutionality of article 917A was raised and argued in the High Court, but the trial judge, having found that article 917A does not permit the importation of English statute law into Saint Lucia, did not engage with the issue. The claim for a constitutional declaration is therefore not one that was raised for the first time in the Court of Appeal and it is not caught by the general rule that such claims should not be raised for the first time in proceedings before the Court of Appeal.**

Section 28(1) of the Eastern Caribbean Supreme Court (Saint Lucia) Act Cap 2.01, Revised Laws of Saint Lucia 2015 applied; Maycock v Commissioner of Police [2015] 3 LRC 183 applied; Tyson v R [2018] 5 LRC 270 followed; Piggott v R (2015) 88 WIR 299 followed; Attorney General of Grenada v Financial Investment & Consultancy Services Ltd. GDAHCVAP2016/0038 (delivered 18th April 2018,

unreported) distinguished.

2. Article 917A was inserted into the Code in 1956. At the time, Saint Lucia was an English colony. When the country attained independence in 1979, Parliament was given the power to make laws for the new independent state. There is no reason why an existing law such as article 917A which purports to import the law of England relating to contracts, quasi-contracts and torts should become ineffective on the attainment of independence unless there was something in the independence legislation that expressly or by implication abrogated the article. There is no such provision in Saint Lucia's independence legislation.

3. Parliament's power to legislate for the importation of laws made by a foreign Parliament as contained in article 917A is not a delegation of its law-making power. Rather, it is an expression of the local sovereign Parliament's law-making power subject only to any inconsistency with any provision of the Constitution. Article 917A is not inconsistent with section 40 or any other provision of the Constitution.

Ibralebbe and another v Reginam [1964] 1 All ER 251 applied; *BCB Holdings Limited and Another v The Attorney General of Belize* [2013] CCJ 5 (AJ) applied.

4. The Parliament of Saint Lucia has the power to legislate for the importation of statutes made by a foreign state. In each case, the meaning of the importing provision is a matter of interpreting the words used by the drafter to determine the extent to which the laws of the foreign state are to be imported. The effect of article 917A is that it imports into Saint Lucia the law of England relating to contracts, quasi-contracts and torts, which includes the statutes of England relating to these areas of law. The words "for the time being" in article 917A have an ambulatory effect which means that the courts of

Saint Lucia should apply the law of England from time to time and not when article 917A was enacted in 1956.

Bamgbose v Daniel and others [1954] 3 All ER 263 distinguished; Cyril Mathurin and another v Anthony Augustin qua administrator of the Estate of Yasmin Natasha Augustin (deceased) SLUHCVP2007/0041 (delivered 2nd June 2008, unreported) distinguished; The Attorney General of Saint Lucia and Francis Dariah v Donavan Isidore Saint Lucia Civil Appeal No. 20 of 2003 (delivered 24th May 2004, unreported) distinguished; Barras v Aberdeen Sea Trawling and Fishing Company Limited [1933] AC 402 distinguished.

5. There is no irreconcilable inconsistency between the provisions of the Defamation Act and the provisions of the Code except in the case of the application of the time limit for bringing a claim for defamation under the section 8(3) of the Act and the time limit prescribed by article 2123 of the Code. The inconsistency is however reconciled by reference to the principle of *mutatis mutandis* contained in article 917A, by reading section 8(3) of the Defamation Act to conform to article 2123 of the Code. Accordingly, the Defamation Act was imported into Saint Lucia in 2013 pursuant to the provisions of article 917A of the Code.

Case Name:

CHU KONG

V

[1] LAU WING YAN

[2] OCEAN SINO LIMITED

[BVIHCMAP2017/0020]

(TERRITORY OF THE VIRGIN ISLANDS)

Date: Friday, 17th January 2020

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. John Carrington, QC

Respondents: Mr. Daniel Warrents

Issues: Commercial Appeal — Insolvency proceedings — Application by shareholder to wind up company on just and equitable ground — Insolvency Act 2003—Deadlock in management of company — Whether learned judge erred in finding deadlock in the management of company — Approach of appellate court to evaluations of fact — Alternative remedies to a winding up order — Whether learned judge erred in the exercise of discretion

Result and Reason:

Per: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Held: allowing the appeal, setting aside the judgment in the court below winding up the company and the order appointing liquidators and setting aside the costs order in the court below and awarding costs in the high court to the appellant to be assessed if not agreed within 21 days of this judgment and awarding costs to the appellant on the appeal at two-thirds of the assessed costs in the court below, unless otherwise agreed within 21 days of this judgment that:

1. It is clear that the learned judge took into account issues related to Beibu Gulf which could not have affected OSL at the director and shareholder level. As a general rule, matters which concern a totally unrelated company which is not a subsidiary

should not be taken into account to determine whether there is a deadlock in a company. The judgment of this Court in *Wang Zhongyong et al v Union Zone Management Limited and Jin Xiaoyong et al* makes it clear that the judge was wrong in doing so. Beibu Gulf was not a subsidiary of OSL. Neither was OSL the holding company of Beibu Gulf. Rather OSL, through PBM, merely owned a 49% share in Beibu Gulf. It is clear from these circumstances, along with the fact that Mr. Lau had only made complaints that went to matters that taking place at the level of Beibu Gulf, that the judge erred when considering facts in relation to Beibu Gulf in deciding whether OSL was deadlocked and should be wound up.

Wang Zhongyong et al v Union Zone Management Limited and Jin Xiaoyong et al BVIHCMAP2013/0024 (delivered 12th January 2015, unreported) followed; *Rackind and others v Gross and others* [2005] 1 WLR 3505 distinguished.

2. There was cogent and objective documentary evidence before the judge pointing to the fact that there was no deadlock in relation to OSL. The documents evidenced negotiations between Mr. Chu and Mr. Lau after the date of the application, and showed that the men were able to take effective decisions regarding PBM. The actions of Mr. Chu and Mr. Lau clearly show that the relationship between them had not deteriorated to the point of deadlock. On the facts therefore the judge was plainly wrong in holding that there was deadlock in the management and affairs of OSL.
3. It is the law that a winding up petition should not be resorted to merely because there is dissension within a company. In the case at bar, the dispute and the main trigger of the winding up application, was a disagreement as to whether Beibu Gulf should repay PBM. On any view of the facts PBM was only a minority shareholder in Beibu Gulf. PBM therefore could not make any decisions as to what should occur in Beibu Gulf. The nature of the

dispute simply did not lend itself to a finding of deadlock in the management of OSL.

Re Harris Maxwell Larder Lake Gold Mining Co Ltd (1910) 1 O.W.N 984 (H.C.). considered; Loch and another v John Blackwood, Limited [1924] AC 783 at p. 788. considered; Re Anglo-Continental Produce Co Ltd [1939] 1 All ER 99 considered.

4. The court is reluctant to make a finding of deadlock where there is some procedure under the company's constitution, its articles or memorandum of association which can lead to the resolution of a potential deadlock or an exit from the company. Clause 6 of the Articles of Association and clause 11 the Memorandum of Association of OSL clearly provided an exit route for either Mr. Lau or Mr. Chu, in the face of potential deadlock. These clauses do not appear to have been brought to the attention of the learned judge. In the face of these clauses, there could not reasonably have been a finding of deadlock between Mr. Chu and Mr. Lau at OSL. On any view of the facts, the judge was plainly wrong in finding that there was deadlock in the management of OSL. The judge's evaluation of facts must therefore be set aside.

Ebrahimi v Westbourne Galleries Ltd and Others [1973] AC 360 applied; Assicurazioni Generali SpA v Arab Insurance Group; Practice Note [2003] 1 WLR 577 applied; Mutual Holdings (Bermuda) Limited and others v Diane Hendricks and others [2013] UKPC 13 applied; McGraddie v McGraddie [2013] UKSC 58 applied; Volcafe Ltd and others v Compania Sud Americana De Vapores SA (trading as CSAV) [2018] UKSC 61 applied; Wang Zhongyong et al v Union Zone Management Limited and Jin Xiaoyong et al BVIHCMAP2013/0024 (delivered 12th January 2015, unreported) followed.

5. An appellate court will not interfere with the

exercise of a trial judge's discretion unless satisfied that the judge's exercise of discretion exceeds the generous ambit within which reasonable disagreement is possible and is clearly or blatantly wrong. Even if there was deadlock, which this Court finds there was not, the learned trial judge erred in granting the winding up order without giving proper consideration to the alternative remedies available to Mr. Lau. In particular, the judge failed to properly take into account the alternative remedies, such as a buyout. The judge having taken into account irrelevant matters which concerned Beibu Gulf in concluding that there was deadlock, and therefore the exercise of his discretion to wind up OSL must be set aside, on the basis that it was plainly wrong. The judge having exercised his discretion improperly, it falls to this Court to exercise its discretion afresh. In doing so, this Court is of the opinion that the appropriate order would be either that Mr. Chu or Mr. Lau buy out each other, or that either one offers his shares to a third party.

Dufour and others v Helenair Corporation Ltd and Others (1996) 52 WIR 188 followed; Sections 162 and 167 of the Insolvency Act 2003 Act No. 5 of 2003 applied; Cumberland Holdings Ltd v Washington H Soul Pattinson and Co Ltd (1977) 13 ALR 561 applied.

Upon the respondent's application for a stay: The application for a short stay was refused. The application to remit the matter to the court was refused as there is nothing to remit.

APPLICATIONS AND APPEALS

Case Name:

**Antigua and Barbuda Fishermen Cooperative
Society**

v

[1] Phillip Athanze

[2] Gary Gore

[3] Colin Francis

[4] John Browne
[5] John Tomlinson

[ANUHC VAP2019/0018]
(Antigua and Barbuda)

Date: Tuesday, 14th January 2020

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

Appearances:
Applicant: Dr. David Dorsett and Mr. Jarid Hewlett
Respondents: Mr. Justin L. Simon, QC holding a watching brief

Issues: Application for leave to appeal — Whether judge should have struck out appellant's claim — Whether judge should have applied the principles from Real Time Systems Limited v Renwar Investments and Others [2014] UKPC 6

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appellant shall file and serve the Notice of Appeal on or before 21st January 2020.
2. The appellant shall prepare the appeal bundle for hearing which shall include the appellant's skeleton arguments and authorities on or before the 31st January 2020 and serve the same on the respondents or before 31st January 2020.
3. The respondents shall file and serve skeleton arguments in response on or before 21st February 2020.
4. The hearing of the appeal shall be listed for Friday 28th February 2020 during the week of the sitting of the court in St. Vincent and the Grenadines with a time estimate of one (1) hour.

Reason: The Court was satisfied that the applicant had met the threshold for the grant of leave to appeal and leave was accordingly granted. The Court further considered that directions were necessary for the hearing of the appeal on an expedited basis since the matter has been before the courts for an extended period of time and is one which involves a dispute as to who is authorized to operate the Antigua and Barbuda Fishermen Cooperative Society, thereby having a continued effect on the business of the Society. In light of the urgency of the appeal, the Court and the parties agreed that the matter be listed for hearing at the next sitting of the Court of Appeal in Saint Vincent and the Grenadines.

Case Name: Antigua Flight Training Center
v
Eastern Caribbean Civil Aviation Authority
[ANUHCVP2014/0021]
(Antigua and Barbuda)

Date: Tuesday, 14th January 2020

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

Appearances:
Appellant: Mr. Pete-Semaj McKnight holding papers for Mr. Warren Cassell
Respondent: Dr. David Dorsett and Mr. Jarid Hewlett

Issues: Notice of Discontinuance

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:
The matter is discontinued.

Reason: The Court considered that a notice of discontinuance had been filed by the appellant on 23rd December 2019 and that there was no objection from the respondent. Accordingly, the matter was discontinued.

Case Name: Stuart A. Lockhart

v

[1] Valentina Nonini
[2] Maurizio Pandini
[3] The Disciplinary Committee

[ANUHCVP2019/0004]
(Antigua and Barbuda)

Date: Tuesday, 14th January 2020

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

Appearances:

Appellant: Dr. David Dorsett and Mr. Jarid Hewlett

Respondents: Mrs. Safiya Roberts-Swatton for the first and second respondents
Mr. Loy Weste and Mr. Arthur Bryan Thomas for the third respondent

Issues: Application to discharge the order of a single Judge —
Application for stay of the judgment — Notice of discontinuance

Type of Order: N/A

IT IS HEREBY ORDERED THAT:

**Result /
Order:**

1. The application is hereby withdrawn.
2. No order as to costs.

Reason:

The Court considered that where a notice of discontinuance filed by the appellant on 9th January 2020 and there being no objection by the respondents, accordingly, the application ought to be withdrawn. The Court also took the view that in circumstances where costs had been agreed as between the appellant and the first and second respondents, and where the third respondent sought no costs, that no order as to costs ought to be made.

Case Name:

Alwyn Labadie

v

Daven Joseph

**[ANUMCRAP2017/0001]
(Antigua and Barbuda)**

Date:

Tuesday, 14th January 2020

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

**Appellant/
Respondent:**

Mr. Cosbert Cumberbatch

**Respondent/
Applicant:**

Mr. Hugh Marshall Jr.

Issues:

Criminal Appeal — Application to strike out notice of appeal — Whether the appeal is properly before the court — Time period to serve a notice of appeal — Section 170 of the Magistrate's Code of Procedure Act — Section 30 of the Eastern Caribbean Supreme Court Act — Costs

**Type of
Order:**

Oral Decision

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The notice of appeal and amended notice of appeal filed on 24th January 2019 is struck out as a nullity, the notice of appeal being contrary to the provision of section 170 of the Magistrates Procedure Act and section 30 of the Eastern Caribbean Supreme Court Act.**
- 2. Prescribed costs of the application is hereby fixed in the sum of \$1,000.00 to be paid by the appellant to respondent by Tuesday 18th February 2020.**

Reason:

The Court considered the following in arriving at its decision:

The appeal before the Court arose from a private criminal complaint by the appellant against the respondent, which was heard and dismissed in the Magistrate's Court on the 16th March 2017. An appeal was thereafter filed by the appellant against the Commissioner of Police only on 22nd March 2017, which was never served on the respondent and never named the respondent as a party to the appeal. In March 2018 a status hearing was held in the matter, where the court granted the appellant leave to take the necessary actions in order to have the notice of appeal amended. Thereafter an amended notice of appeal, which was filed on 24th January 2019, was served on the respondent, naming him as a respondent in the appeal. In response the respondent filed the application which was being considered by the Court to strike out the appellant's notice of appeal.

The Court was mindful that the jurisdiction of the appellate court in appeals arising from the Magistrate's Court operates by virtue of section 30 of the Eastern Caribbean Supreme Court Act which specifies that such appeals are "subject to the provisions of the Magistrate's Code of Procedure Act or any other enactment regulating appeal's from Magistrate's Courts...". Section 170 of the Magistrate's Code of Procedure Act ("the Code") mandates the appellant to

serve a notice of appeal on the other party within fourteen (14) days of the date of the magistrate's decision.

The Court considered that the originally filed notice of appeal was never served on the respondent within the time specified under section 170 of the Code. The appellant further failed to carry out the necessary steps, which the March 2018 status hearing orders granted him leave to take, in order to regularize the appeal as being properly before the Court against the respondent; such steps including the filing of an application for extension of time and for leave to amend the notice of appeal. In absence of such steps being taken, the Court was minded to strike out the appellant's notice of appeal and amended notice of appeal as not being properly before the Court, being contrary to the provisions of section 170 of the Magistrate's Code of Procedure Act, and having regard to section 30 of the Eastern Caribbean Supreme Court Act. The respondent/applicant having been successful in the application, the Court was of the view that he should be awarded costs.

Case Name:

Maria Esbrand

v

Curtis Ryan

**[ANUHCVP2019/0021]
(Antigua and Barbuda)**

Date:

Tuesday, 14th January 2020

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Applicant: In person

Respondent: No appearance

Issues: Application for leave to appeal — Extension of time — Relief from sanctions — Whether the Master erred by granting an extension of time when the application before the court was one for relief from sanctions— Rule 27.8 of the Civil Procedure Rules

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal is refused as no arguable case is shown for appealing against the exercise of the Master's discretion in granting relief against sanctions and making an appropriate award for costs in the circumstances.
2. The Court further directs that a date be fixed for the hearing of the assessment before the Master.

Reason: The Court considered that the Master's directions allowing an extension of time and relief from sanctions were made with the view to regularize the respondent's non-compliance with previous directions given by the court, namely the filing of a Form 31 notice and witness statements. The Court further considered that the respondent's application for relief from sanctions foreshadowed, in content, that an extension of time was being sought even though it was only titled as an application seeking relief from sanctions. Additionally, the Court took into account the Master's consideration of any possible inconvenience to the applicant due to the respondent's delay, by awarding her costs. The Court was therefore of the view that the appellant presented no arguable case for appealing against the Master's discretion exercised by the decision to grant relief from sanctions, an extension of time and making an appropriate award for costs in the circumstances. The application for leave to appeal was accordingly refused.

Case Name: Kenard Byron

v

Eastern Caribbean Amalgamated Bank (ECAB)

**[ANUHCVAP2012/0010]
(Antigua and Barbuda)**

Date: Tuesday 14th January 2020

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

Appearances:

Appellant: Dr. David Dorsett and Mr. Jarid Hewlett

Respondent: Ms. E. Ann Henry, QC, with her, Ms. Tracy Benn-Roberts

Issues: Civil Appeal — Employment Law — Redundancy —
Severance payment — Assumed or assigned liability —
whether the liability owing to the appellant, in respect of
severance pay, was assumed by the respondent bank
under Purchase and Assumption agreement —
Additional documents

**Type of
Order:** Oral Judgment

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

1. The appeal is allowed.
2. No order as to costs.

Reason: Her Majesty in Council, by judgment delivered on the
13th May 2019, remitted to this Court for further
consideration the question as to whether the liability
owing to Mr. Byron, the appellant, in respect of
severance pay was a liability assumed by the
respondent bank, the Eastern Caribbean Amalgamated
Bank [ECAB] under the Purchase and Assumption
agreement [P&A] made on the 12th October 2010,
between the Eastern Caribbean Central Bank [ECCB] as

controller of Bank of Antigua [BOA] pursuant to the provisions of the ECCB agreement and the ECCB Act as vendor of the one part and ECAB as purchaser of the other part.

The Privy Council after reviewing the P&A at paragraphs 23, 24 and 25 of its judgment had this to say:

23 *"This is a classic case where it was first necessary to decide what the parties meant by what they did say. There is a great deal to be said for the view that the words used did include this liability. Clause 3(1) has three elements: (i) 'all the debts and liabilities of the Bank ... subsisting at the Transfer Date'; (ii) 'on the final balance sheet and in the supporting books and documents of the Bank ...'; and (iii) subject to the express exclusions in sub-clause (2). Element (i) is comprehensive, subject to what follows; it means that everything subsisting at the Transfer Date is transferred apart from those liabilities which are expressly excluded. Element (iii) refers to the express exclusions which are defined in sub-clause (2) with (3), none of which apply on the facts of this case.*

24. *It is element (ii) which is thought to cause the difficulty. But it can clearly be read to cover, not only those debts and liabilities which appear on the final balance sheet, but also those debts and liabilities which are apparent from the books and documents of the Bank at the Transfer Date.*

25. *There is good reason to think that this particular liability will have been apparent from the books and records of the Bank. The evidence is that the terms of the respondent's original employment were contained in a written letter of employment from the Bank's chairman. His promotion to Managing Director was in accordance with a letter from the Bank's Human Resources Manager. His appointment as Deputy Chairman was also documented. His dismissal was oral but the circumstances (which were dramatic) may well be documented. There is the email indicating that an agreed sum had been negotiated with the Bank. But as the respondent is not party to the contract, nor suing directly upon it, he has not had disclosure of the relevant documents which might enable this to be established."*

And then at paragraph 29, the Privy Council then concluded that, although in trying to accept Mr. Byron's interpretation of the agreement, that there was no evidence before them directed towards that issue, that is, in respect of all the debts and liabilities of the bank on the final balance sheet and in the supporting books and documents of the bank, nor any evidence or argument to deal with the impact of clause 12 of the Purchase and Assumption agreement.

On remission to this Court, Mr. Byron exhibited before the Court documents related to his employment along with correspondence passing between his counsel and counsel for the Bank of Antigua in which agreement was being sought as to the amount of severance payment to be made to Mr. Byron. The Court takes judicial notice of the fact that Mr. Byron has in his favour a judgment of the Industrial Court made on the 14th December 2011, finding liability on the part of Bank of Antigua. The task of this Court and therefore its focus is to decide from all the documentary evidence produced, that by Mr. Byron and the closing statement produced by ECAB as well as the further itemization of the sum stated as liabilities in the closing statement, whether the liability of Bank of Antigua to Mr. Byron was among the liabilities assumed by ECAB pursuant to clause 3 of the P&A.

The closing statement produced, as directed by the court, proved to be unhelpful as it only showed under the general heading Liabilities and under the item Total Accounts Payable a total balance as at 17th October, 2010, in the sum of \$12,443,450.60 with \$6,719,207.40 of that sum retained as liabilities of Bank of Antigua and the sum of \$5,724,243.19 as being liabilities transferred to ECAB. This resulted in the court issuing further directions on 11th November, 2019, as follows: *"That ECAB use its best endeavour to produce the underlying documentation which would assist in determining the liabilities and itemize those liabilities transferred to ECAB on or before the 31st December, 2019."*

On 13th January 2020, ECAB produced a partial

itemization of the total liabilities transferred to ECAB refer to in the opening balance sheet along with accrued expenses and other miscellaneous liabilities as well as a general listing of what remained in BOA. That itemization showed only severance related to staff expressly named and listed in schedule 2 of the P&A which did not and would not have included Mr. Byron since he had been made redundant and ceased being an employee on the 20th February 2009. No other documents have been forthcoming from ECAB although it is fair to say that all documents, books and records relating to BOA would have been in the possession of ECCB at the time they took control of BOA and it can be reasonably inferred to have been passed on to ECAB on the completion of the P&A.

On a perusal of all the documents produced, what is striking is that no books, documents, or records of BOA have been disclosed or any documenting the liability to Mr. Byron which is surprising as the liability to Mr. Byron must be taken to have been well known given the correspondence relating to severance payment passing between counsel as already referred to, coupled with the office held by him at BOA prior to him being made redundant. The Court was of the view that this could not have been simply overlooked. It is quite reasonable to infer that this liability must have been duly recorded on the books, records and other documents of BOA, but the court was not provided with further assistance in this regard. It was unlikely that any further documentation would be provided by ECAB.

Dr. Dorsett, counsel for Mr. Byron invited this Court to draw an adverse inference against ECAB for its failure to assist the court further in respect of such documents or evidence in this regard. The Court was of the view that this is not an unreasonable approach since as between ECCB and ECAB they would be holding all the cards which would be dispositive of this issue. This brought this Court back to the wording of clause 3 of the P&A which states, "*The purchaser agrees to assume, pay, perform and discharge all the debts (emphasis on all the debts) and liabilities of the bank on the final balance sheet and in the supporting books and documents of the bank excluding all subsisting contracts related to or held in connection with the said*

liabilities whether secured or not in respect of the said business subsisting at the transferred date except the liabilities expressly excluded in sub clause 2."

It therefore follows, in this Court's view, that since the liability does not fall within the category of those expressly excluded in sub clause 3 (2) that the liability to Mr. Byron passed to ECAB under Clause 3 (1) of the P&A by which the purchaser ECAB assumed all the debts and liabilities of the bank on the final balance sheet and in the supporting books and documents of the bank as this liability was not one expressly excluded. The Court accordingly held that Bank of Antigua's liability to Mr. Byron was transferred and assumed by ECAB under the P&A and ECAB is accordingly liable therefore. For the avoidance of doubt this Court did not find that BOA and ECAB are jointly and severally liable, rather the Court found that the liability which was undoubtedly that of BOA was assigned or assumed by ECAB under the P&A. It is on this basis that the Court concluded that ECAB is ultimately liable for the severance payment entitlement of Mr. Byron.

Case Name:

The Queen

v

Shane Williams

**[ANUHCRA2018/0008]
(Antigua and Barbuda)**

Date:

Wednesday, 15th January 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:

**Mr. Anthony Armstrong, Director of Public Prosecutions
and Mrs. Shannon Jones-Gittens**

Respondent: No appearance

Issues: Criminal Appeal- Appeal against sentence –Unlawful sexual intercourse with a female under the age of fourteen—whether the learned trial judge erred in law in imposing a suspended sentence—Whether the sentence imposed was manifestly lenient given all the circumstances of the case.

Type of Order: Adjournment

Result / Order: IT IS HEREBY ORDERED THAT:

1. A subpoena to be issued for Mr. Shane Williams to appear in court on Friday, 17th January, 2020 at 9 am.
2. The matter is adjourned to that date.

Reason: The Court noted the indication from the learned Director of Public Prosecutions of the efforts consistently made to serve Mr. Shane Williams who has been evading service. The Court also noted the Affidavit of non-service and the request of the learned Director of Public Prosecutions for a subpoena.

Case Name: The Queen
v
Rochell Jarvis
[ANUHCRA2017/0008]
(Antigua and Barbuda)

Date: Wednesday 15th January 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: Mr. Anthony Armstrong, Director of Public Prosecutions and Mrs. Shannon Jones-Gittens

Respondent: No Appearance

Issues:

Criminal Appeal- Appeal against sentence—False Pretenses—Whether the learned trial judge erred in law in imposing a suspended sentence—Whether the sentence imposed was manifestly lenient giving all the circumstances of the case.

Type of Order:

Adjournment

Result / Order:

IT IS HEREBY ORDERED THAT:

The Court having been advised by the learned DPP that the respondent was served with the appellant's submissions on 14th January 2020 and the Crown having conceded that the respondent was short served:-

- 1. The hearing of the appeal is adjourned and traversed to the next sitting of the Court in Antigua and Barbuda during the week commencing on the 25th May 2020.**
- 2. The Registrar of the High Court is directed to have a notice of adjournment served on the respondent personally and to provide proof of service.**

Reason:

The Court noted the indication by the learned Director of Public Prosecutions that the respondent was served with the appellant's submissions on 14th January 2020 10:00 am. The Court also noted that the Crown conceded that the respondent was short served.

Case Name:

Wilmouth Ralph

v

The Queen

[ANUHCRA2018/0007]

(Antigua and Barbuda)

Date: Wednesday 15th January 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: Mr. Sherfield Bowen

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions and Mrs. Shannon Jones-Gittens

Issues: Criminal Appeal — Unlawful sexual intercourse — Whether the sentence is harsh an excessive in the circumstances — Whether it is permissible in law for an accused person to plead guilty to an offence which is not established by the evidence — Whether the Court of Appeal can substitute a verdict in this case

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The sentence of eight (8) years is set aside and a sentence of time served is substituted.

Reason: This was an appeal by Mr. Wilmoth Ralph against the sentence of eight (8) years that was imposed by the learned judge after Mr. Ralph was convicted of the offence of having sexual intercourse contrary to Section 6 (1) of the Sexual Offences Act of 1995. He appealed against his sentence on the main basis that the learned judge imposed a sentence that was excessive or unduly harsh. His main criticism of the judgment was the fact that the learned judge in circumstance where the maximum for that sentence was 10 years incorrectly utilized a starting point of nine and half years. He also complains that the learned trial judge erred in utilizing a

discount of one-ninth for the guilty plea that Mr. Ralph had given and instead that the judge ought to have utilized a discount of one-third.

The Court reviewed the totality of circumstances of this matter not least of which is the fact that the appellant had been charged for the offence of rape, had been tried and sentenced to 25 years in prison. He subsequently appealed his conviction after the Crown had conceded that there was a material irregularity in his trial and his conviction was quashed by the Court of Appeal and his sentence was set aside. He was ordered to be retried, and it was as a consequence of his retrial that he pleaded guilty to the offence of Sexual Intercourse with a female under the age of 16 before the learned judge.

The Court has reviewed the submissions of learned counsel for the appellant and found particularly helpful the submissions of learned counsel, Mrs. Shannon Jones-Gittens, for the Crown. Having reviewed the entirety of the matter, the Court was of the view that the learned judge erred in utilizing a starting point of nine and a half years, but rather in the circumstances, the appropriate starting point ought to have been six years.

In relation to the guilty plea, there was no basis on which the Court could impugn the exercise of the learned judge's discretion given the totality of circumstances which the Court indicated earlier. This Court was of the view that the discount of one-ninth cannot be assailed given all of the attending circumstances.

Having reviewed the authorities and the jurisprudence that was pointed to us, this Court was of the view that in circumstances where the Court has been advised that the appellant has served four (4) years and eight months, that the Court should allow the appeal, and set aside the sentence of eight (8) years that was imposed on the appellant and substitute that for a sentence of time served.

Case name:

Eurel Hodge

V

Peach Hallpike-Hodge

**[ANUHCVP2017/0010]
(Antigua and Barbuda)**

Date: **Wednesday 15th January 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: **In person, unrepresented**
Respondent: **Mr. R. Leonard Moore**

Issue: **Application for leave to appeal — Whether the learned High Court judge had the jurisdiction to vary the order of the Magistrate Court — No application for variation — order was not appealed — Whether the learned trial judge failed to take into consideration matters she ought to, and considered matters that she ought not to have considered.**

Type of Order: **Oral Judgment**

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

- 1. The application for the respondent's submissions and authorities to be deemed properly filed and served and there being no objection by the appellant, the application is hereby granted.**
- 2. The appeal is dismissed.**
- 3. No order as to costs.**

Reason: **This was an appeal against a judgment of Justice Lanns by which the judge made several orders in relation to the children and the wife of the appellant. In her order,**

the learned judge made provisions for the sum of \$500 to be paid by the appellant to the respondent in respect of each of the three children of the marriage. The learned judge also ordered that the appellant shares certain responsibilities in relation to the education and health of the children and as well made an order of \$500 per month by way of spousal support for a period of two years beginning on 1st April 2017. By notice of appeal filed in June 2017, the appellant appealed against the orders of the trial judge on the basis that the judge had misdirected herself when she made certain rulings, in particular, the appellant contended in his notice of appeal that the effect of the judge's order was a variation of a previous order made by a magistrate and that the judge did not have the jurisdiction to make the variation order that she did there being, according to the appellant, no change of circumstances to justify the award.

Having heard the well- presented submissions of the appellant, in addition to his written submissions, the Court was of the view that in the circumstances, it ought not to interfere with the orders made by the judge. The Court noted that the period of payment of maintenance to the respondent has expired, and the appellant indicated that he paid all of those sums on time. The Court also noted that the monthly payments of \$500 to each of the children has been lessened by the fact that one of these three children is now working and above the age of 18 years, so that in effect what the appellant must now do is to pay the sum of \$500 per month to each of his two minor children a grand total of \$1000. Everything that the appellant has written and said in this Court suggested that the appellant ought to have no difficulty whether financially, emotionally, or otherwise to meet that sum towards the maintenance of his children. As indicated the Court therefore, saw no basis upon which it ought to alter or set aside the decision of the learned judge. Accordingly, the Court was unanimous that the appeal should be dismissed, and that no order should be made as to cost.

Case Name:

Campbell Coates

v

Tarin Winter

**[ANUHCVAP2017/0027]
(Antigua and Barbuda)**

Date:

Wednesday 15th January 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. Michelle Sterling

Respondent: No appearance

Issues:

Civil Appeal — Default judgment — Whether the learned Master erred in law by taking into account or being influenced by irrelevant factors and considerations in that she erroneously concluded that the court had to be satisfied of evidence in order to grant default judgment on a specified sum of money in absence of a defence — Whether the learned Master erred in principle by failing to take into account or giving too little weight to the relevant factors and considerations as set out in Part 12.5 of the Civil Procedure Rules 2000 (CPR) — Whether the learned Master’s decision exceeded the generous ambit within which reasonable disagreement is possible and is plainly wrong

**Type of
Order:**

Oral Judgment

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.

2. The order of the Master in respect of the assessment for outstanding rent is set aside.
3. Judgment in default is entered for the appellant for the full amount set out in the request for judgments including the sum of \$28,775 for outstanding rent.
4. No order as to costs.

Reason:

The appellant filed a claim against the defendant for certain items of money including \$28,775.00 for outstanding rent of the dwelling house which was rented by the defendant. The defendant did not respond to the claim and the appellant filed a request for judgment in the lower court. The request was referred to the learned Master who granted the default judgement in respect of the other money claims but did not grant the claim in respect of the outstanding rent. She ordered that that matter be assessed in further proceedings. The appellant applied for leave to appeal and was granted leave to appeal against the Master's order refusing to enter judgment for the outstanding rent. The claim clearly disclosed a claim for \$28,775.00 in rent that was the amount requested in the application in the request for the default judgment. The defendant not having taken any steps to defend the matter, liability was proved and the judgment in accordance with the rules should have included the \$28,775.00 arrears of rent. In the circumstances, the Court allowed the appeal brought by the appellant, set aside the order of the Master in respect of the assessment for the outstanding rent and ordered that the default judgment be entered for the appellant for the full amount set out in the request for judgment sum, including the \$28,775 for outstanding rent.

Case name:

Jude Jolie

v

Eastern Caribbean Civil Aviation Authority

**[ANUHCVP2018/0025]
(Antigua and Barbuda)**

Date: Wednesday 15th January 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: Mr. Ruggles Ferguson and Ms. Luann De Costa

Respondent: Dr. David Dorsett and Mr. Jarid Hewlett

Issue: Interlocutory appeal — Whether the learned trial judge misdirected himself and committed an error of law in arriving at the conclusion that the respondent does not have jurisdiction to review the examination given that there is no statutory authority authorizing it to do so — Whether the learned trial judge misdirected himself and committed an error of law in arriving at the conclusion that the decision by the respondent of 18th April 2018 was a gratuitous decision and not a decision amenable to review by the court — Whether the learned trial judge committed an error of law in arriving at the conclusion that the respondent was protected from intended claim by the previous Article 25 of the Eastern Caribbean Aviation Authority Treaty.

Type of Order: Oral Judgment

Result / Order IT IS HEREBY ORDERED THAT:

1. The appellant has met the threshold for leave for him to bring a claim for judicial review.
2. The court sets aside the learned judge's decision refusing leave to file a claim for judicial review.
3. The court hereby grants the appellant leave to file a claim for judicial review.
4. The appellant shall comply with CPR 2000 in relation to the claim for judicial review.

Reason: This was an appeal against the refusal of the learned judge of the High Court to grant leave to Mr. Jolie in

order for him to challenge the decision that was made by the Eastern Caribbean Civil Aviation Authority deeming his failure genuine. The Court was of the view that the appellant met the threshold for leave for him to bring a claim for judicial review. The Court therefore set aside the learned judge's decision refusing leave to file a claim for judicial review. The Court thereby granted the appellant leave to file a claim for judicial review. The Court ordered further that the appellant shall comply with CPR 2000 in relation to claim for judicial review.

Case Name:

Jenoure Craig

v

The Queen

**[ANUHCRAP2017/0005]
(Antigua and Barbuda)**

Date:

Thursday 16th January 2020

Coram:

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

Appearances:

Appellant: Mr. Sherfield Bowen

**Respondent: Mr. Anthony Armstrong Director of Public Prosecutions
and Mrs. Shannon Jones-Gittens**

Issues:

Criminal Appeal — Leave to amend grounds of appeal — Additional grounds of appeal — Appeal against conviction and sentence — Possession of a controlled substance to wit cocaine — Possession with intent to supply — Whether the sentence was too severe in all of the circumstances — Whether the conviction was unsafe and unsatisfactory — Whether the learned judge in his summing up misdirected the jury in that he emphasized and more or less confused or directed the

jury of the correctness of the inference that of “knowledge” but failed to remind them or even mention the equally available inference of “lack of knowledge” — Whether the judge erred in law when he failed to direct the jury on “proof of knowledge” to ground a finding of possession — Whether the judge failed to assist the jury with legal requirement to ground a finding of possession with intent to supply — Whether the judge misdirected the jury on the issue of possession — Whether there was no evidence or sufficient evidence to sustain a conviction of drug trafficking — Application for adjournment for appellant to seek Counsel

**Type of
Order:**

Oral Judgment

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed in respect of the sentence for the offence of drug trafficking and a sentence of six (6) years is substituted for the sentence of ten (10) years.**
- 2. The appeal is allowed in respect of the sentence for the offence of possession with intent to supply and a sentence of five (5) years is substituted for the sentence of seven (7) years.**
- 3. Both sentences to run concurrently.**
- 4. The fine of \$300,000.00 is removed as part of the sentence.**

Reason:

The Court agreed that the grounds of appeal raised against conviction were all unmeritorious. On the evidence, it was clear that the learned judge adequately directed the jury and properly in relation to the elements of the offences which were possession and knowledge, and that he appropriately addressed the jury with regard to inferring knowledge from all the circumstances including the conduct of the appellant and to make what they wished of it and they did. There was nothing that was wrong about those directions and those complaints, and accordingly, the Court was of the view that the appeal against conviction ought to be dismissed.

In relation to the sentences imposed, given the authority cited by the learned Director of Public Prosecutions, the Court was guided by the decision in *The Queen v Ramon Urito Brito and others* [ANUHCR2016/0020], in which the amount of the cocaine was some 55.25 kilograms as compared to in this case of 6.9 (at the highest) kilograms and the sentence imposed here in relation to drug trafficking which was 10 years and that having regard to the much smaller quantity, the Court considered that an appropriate sentence would be the sentence of six (6) years. And so, the sentence of ten (10) years was reduced to a sentence of six (6) years. On the sentence relating to possession with intent to supply the Court reduced the sentence of seven (7) years to five (5) years, both sentences to run concurrently. The Court was also minded to remove the sentence requiring a fine of \$300,000.00 because the learned judge appeared to have accepted in his sentencing remarks that the appellant was a person of very modest means and it would not, in the Court's view, be right to impose a custodial sentence and then a fine in the same breath of \$300,000.00 on the appellant. Therefore, that aspect was varied by being removed as part of the sentence.

Case Name:

Chavis Phillip

v

The Queen

**[ANUHCRA2014/0007]
(Antigua and Barbuda)**

Date:

Thursday 16th January 2020

Coram:

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

Appearances:

Appellant: Mr. Sherfield Bowen

Respondent: Mr. Anthony Armstrong Director of Public Prosecutions
and Mrs. Shannon Jones-Gittens

Issues: Criminal Appeal — Appeal against sentence — Rape —
Whether the sentence was harsh and excessive in the
circumstances

**Type of
Order:** Oral Judgment

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

1. The appeal against conviction is discontinued.
2. The appeal against sentence is dismissed.
3. The conviction is affirmed and the sentence of
twelve (12) years is affirmed.

Reason: In assessing the seriousness of the offence, the Court noted that the victim was taken somewhere with one expectation and then discovered that it was a set up with others. There was a significant degree of planning, a group or gang attack, and there was a recording of the incident and/ or distribution. And so, the Court was of the view that this does not fall under a level (b) rather puts it into the seriousness of level (a). At level (a), there is a twelve (12) years starting point. The Court then examined the offender and the aggravating factors, that he pushed the victim on to the bed, and he came into the presence of another gentleman. Where the court starts at twelve (12) years, and then add the aggravating factors that the crime was committed in presence of others, and further there was no evidence of initial consensual sexual activity; the mitigating factors being no prior convictions (good character), the Court was of the opinion that it leaves them cancelling out each other virtually. No credit was given for a guilty plea because this a trial.

Further, the Court was of the view that even though the

learned trial judge did not carry out an expansive analysis for this exercise, this Court conducted that exercise and reached to the end result that is precisely the same.

The Court found that there is no reason or basis to interfere with the sentence of twelve (12) years, and that the sentence was just and the result is the same.

Case Name:

**[1] Mc Alister Abbott
[2] Eugene Abbott**

v

**[1] Massimo Alemagna
By his Attorney Alessandra
Alemagna
[2] Sir Eustace Francis
[3] Michael Pigott**

**[ANUHCVP2018/0029]
(Antigua and Barbuda)**

Date: Thursday 16th January 2020

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

Appearances:

Appellants: Mr. Hugh Marshall Jr.

Respondents: Mr. Kendrickson Kentish and Mr. Kyle Kentish

Issues: Interlocutory appeal—Whether the learned Master, having granted the appellant's summary judgment, erred in law by failing to award prescribed costs on the claim.

Type of Order:	Oral Judgment
Result / Order:	IT IS HEREBY ORDERED THAT: 1. The appeal is dismissed on the basis that it is premature and not properly before the court because the matter of the claim itself and costs on the claim were not canvassed in the court below.
Reason:	The Court was of the view that the appeal was premature and not properly before the court because the matter of the claim itself and costs on the claim were not canvassed in the court below.
Case Name:	The Queen v Shane Williams [ANUHCRA2018/0008] (Antigua and Barbuda)
Date:	Friday 17th January 2020
Coram:	The Hon. Mde. Louise Esther Blenman, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances:	Appellant: Mr. Anthony Armstrong Director of Public Prosecutions and Mrs. Shannon Jones-Gittens Respondent: In person, unrepresented
Issues:	Criminal Appeal — Appeal against sentence — Unlawful sexual intercourse with a female under the age of fourteen — Whether the learned trial judge erred in law in imposing a suspended sentence — Whether the sentence imposed was manifestly lenient given all the

circumstances of the case.

Type of
Order:

Adjournment

Result /
Order:

IT IS HEREBY ORDERED THAT:

1. The hearing of the appeal is adjourned and traversed to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 25th May, 2020.
2. The Registrar of the High Court is directed to serve a copy of the record of appeal on the respondent within seven (7) days of this order.
3. The DPP is directed to serve a copy of the submissions together with the authorities on the respondent within seven (7) days of this order.
4. The respondent is required to file and serve written submissions on or before 31st March, 2020.
5. The respondent is bound over to attend court on 25th May, 2020 at 9 am at the High Court of Antigua and Barbuda, St. John's Antigua.
6. If the respondent does not attend, the prosecution can apply to the court to have a warrant issued for his attendance.

Reason:

The Court considered that the respondent, having been brought before the Court by subpoena due to his consistent efforts to evade service of court documents on him by the Director of Public Prosecutions, would only have been served with the transcript and record of appeal on the day of the hearing. The Court was therefore of the view that the respondent, who was unrepresented, would require time to peruse the documents and adequately prepare for the hearing of the appeal, and that directions were necessary for the appeal to proceed. Accordingly, the Court considered it appropriate to give directions for the filing and service of documents and to adjourn and traverse the hearing of the appeal to the next Sitting of the Court of Appeal in Antigua and Barbuda.

Case Name:

PIC Insurance Company Ltd

v

**Zona Barthley and Zorel Barthley, Personal
Representative of the estate of Dr. Rolston
Barthley**

**[ANUHC VAP2019/0003]
(Antigua and Barbuda)**

Date: Friday, 17th January 2020

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Anthony Astaphan, SC, with him, Dr. David Dorsett and Mr. Jarid Hewlett

Respondents: Mr. Kendrickson Kentish and Mr. Kyle Kentish

Issues: Civil Appeal — Whether learned trial judge misdirected herself when she trespassed beyond the boundaries of the pleaded case — Whether the learned trial judge erred in fact and law and failed to properly take advantage of her role as the trial judge who heard and saw witnesses — Whether the learned trial judge erred when she failed to properly construe and give effect to the provisions of sections 29, 30, 94, and 241 of the Companies Act, and relied instead on some wide discretion of the Court — Whether the learned judge erred in law and misdirected herself when she held that the Board’s decision to retain Counsel to assist in the arbitration or assessment process constituted oppression under section 241 of the Companies Act — Whether the judge erred in granting the oppression remedy — Whether the learned judge was wrong in law and on the facts

Type of Order: N/A

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

Judgment reserved.

Case Name:

**Dolcie Christian
(In her Capacity as Executor of the
Estate of Sydney Christian)**

v

King's Casino Limited

**[ANUHCVP2018/0030]
(Antigua and Barbuda)**

Date:

Friday 17th January 2020

Coram:

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

Appearances:

Appellant: Mr. Jason Martin

Respondent: Mrs. Kivinee Knight-Edwards

Issues:

**Civil Appeal — Personal injury — Assessment of
Damages — Loss of earnings — Nominal damages —
Whether the learned master erred in concluding that
practice was mainly a trademarks practice — Appeal
against master's findings of fact — Approach of
appellate court to findings of fact — Whether learned
master erred in exercise of her discretion in awarding
20% of annual income as loss of earnings — Basis on
which appellate court would interfere with exercise of
master's discretion**

**Type of
Order:**

Oral Judgment with Written Reasons to Follow

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. Written reasons to follow.**

Case Name:

Washington Emmanuel Bramble

v

**[1] The Commissioner of Police
[2] Conliffe Clarke
Magistrate for District “A”**

**[ANUMCRAP2017/0004]
(Antigua and Barbuda)**

Date:

Friday 17th January 2020

Coram:

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

Appearances:

Appellant: In Person

**Respondents: Mr. Anthony Armstrong Director of Public Prosecutions
and Mrs. Shannon Jones-Gittens**

Issues:

**Criminal Appeal — Appeal against conviction and
sentence — Sections 18 (1) and 9 of the Small Charges
Act Cap. 405 — Insulting language — Disorderly
conduct, making noise — Whether the decision is
unreasonable or cannot be supported having regard to
the evidence**

**Type of
Order:**

Oral Judgment

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The appeal against both convictions is dismissed.**
- 2. The convictions are affirmed.**

Reason:

This was an appeal against the decision of the learned Magistrate in which the learned Magistrate having heard the evidence in this matter and came to the conclusion that the Crown had satisfied the Magistrate beyond a reasonable doubt, that the appellant was guilty of disorderly conduct by making noise and insulting language contrary to Sections 18 (1) and 9 of the Small Charges Act. The appellant appealed against the conviction since he was aggrieved. The Court was of the unanimous opinion that there is no error of law or fact that was committed by the learned Magistrate in concluding that the appellant was guilty of both offences. In fact, the Court was of the view that the issue that was joined between the parties was one of credibility and on the fact the learned Magistrate found beyond a reasonable doubt that the Crown had established its case against the appellant. Accordingly, the appeal against both convictions was dismissed and the convictions affirmed.