

COURT OF APPEAL SITTING

**ANTIGUA AND BARBUDA
11TH MARCH TO 15TH MARCH 2019**

JUDGMENTS

Case Name:

**EMMERSON INTERNATIONAL
CORPORATION**

v

**[1] STARLEX COMPANY LIMITED
[2] SUNGLET INTERNATIONAL INC**

[BVIHCMAP2018/0044]

Date:

Monday, 11th March 2019

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Mr. Craig Jacas

Respondent: Ms. Kari-Ann Reynolds

Issues:

**Civil appeal — Interlocutory appeal — Failure to file
defence to ancillary claim within prescribed time —
Relief from sanctions — Rule 26.8(2) of the Civil
Procedure Rules 2000 — Whether judge erred in
granting relief from sanctions**

**Result and
Reason:**

**Held: dismissing the appeal and ordering that each
party shall bear its own costs, that:**

- 1. For relief from sanctions to be granted, all
three preconditions outlined in CPR 26.8(2)**

must be satisfied by an applicant who seeks relief. The applicant must establish that the failure to comply was not intentional; that there is a good explanation for the failure; and that the applicant has generally complied with all other relevant rules, practice directions, orders and directions. A failure to satisfy any of the three pre-conditions is fatal to the application for relief from sanctions.

Rule 26.8(2) of the Civil Procedure Rules 2000 applied; *Ferdinand Frampton v Ian Pinard et al* DOMHCVAP2005/0015 (delivered 3rd April 2006, unreported) followed; *Inna Gudavadze et al v Ivane Chkhartishvili* BVIHCMAP2016/0037 (delivered 11th January 2017, unreported) followed.

2. There is no basis for criticising the judge for failing to examine whether Starlex and Sunglet's conduct was unintentional by reference to what steps they took to meet the deadline. As the relevant officials of Starlex and Sunglet say that they were unaware that the third ancillary claim was served on them, it could not be asked in any sensible way what reasonable steps they took to meet the deadline. They simply were not aware of the deadline, on their case. It was therefore open to the judge to conclude that Starlex and Sunglet's failure to file their defences was unintentional. Further, it has not been shown that the judge's order was perverse or clearly wrong. Accordingly, insofar as the first limb of the sub-rule is concerned, that the judge's decision is correct as a matter of law.

Rule 26.8(2)(a) of the Civil Procedure Rules 2000 applied; *Adam Bilzerian v Gerald Lou Weiner and Kathleen Ann Weiner* SKBHCVAP2012/0028 (delivered 24th May 2013,

unreported) distinguished; *Ken I Young v The Attorney General of Saint Vincent and the Grenadines* SVGHCV2014/0226 (delivered 20th July 2016, unreported) considered; *Issa Nicholas (Grenada) Ltd v Time Bourke Holdings (Grenada) Ltd* GDAHCVAP2015/0029 (delivered 8th December 2016, unreported) followed; *The Attorney General v Universal Projects Limited* [2011] UKPC 37 applied.

3. Misapprehension of the law, lack of diligence or volume of work do not constitute good explanations for a failure to comply with a rule or court order. Oversight may be excusable in certain circumstances. However, it is unlikely that inexcusable oversight or “administrative inefficiency” can ever amount to a good explanation. In the case at bar, it is evident that there was a breakdown in communication between Starlex and Sunglet’s registered agents in Belize and the relevant persons in London, in circumstances where the ‘engine room’ of both companies seem to be in London and Moscow. The judge was fully aware of the matters that usually amounted to a good explanation and properly examined the facts of the case before him, including the excusable inadvertence and lack of awareness that the third ancillary claim had been served. Further, the judge’s findings are unimpeachable when considering that Starlex and Sunglet conducted no business in Belize. In view of the totality of circumstances, there is no discernible error of law in the judge’s conclusion that the good explanation limb had been satisfied.

Rule 26.8(2)(b) of the Civil Procedure Rules 2000 applied; *QVT Fund V LP et al v China Zenix Auto International Group Ltd. et al* BVIH(COM)2014/0026 (delivered 2nd December 2016, unreported) applied; *Attorney General v*

Universal Projects Limited [2011] UKPC 37 applied; Laudat v Ambo DOMHCVAP2010/0016 (delivered 15th December 2010, unreported) distinguished.

4. There is no basis to conclude that the judge erred in finding that Starlex and Sunglet had generally complied with all other relevant rules, practice directions, orders and directions in circumstances where they had not filed their acknowledgments of service and defences. As Emmerson's claims are still in its infancy, Starlex and Sunglet would have been required to meet very few procedural requirements. The main failure that was at the heart of the application for relief from sanctions was Starlex and Sunglet's failure to file their defences. Accordingly, the judge correctly concluded that Starlex and Sunglet's failure to file their acknowledgments of service were part and parcel of their failure to file their defence on time.

Rule 26.8(2)(c) of the Civil Procedure Rules 2000 applied.

Case Name:

[1] FRIAR TUCK LTD.

[2] QUIVER INC.

v

INTERNATIONAL TAX AUTHORITY

[BVIHCVAP2017/0003]

Date:

Tuesday, 12th March 2019

Coram:

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

Appearances:

Appellant: Mr. Loy Weste holding papers for Mr. Jonathan Addo

Respondent: Mr. Hugh Marshall Jr. holding papers for Ms. Jo-Ann Williams-Roberts, Solicitor General

Issues: Civil appeal – Assessment of costs in judicial review proceedings – Basis of assessment – Whether judge erred in assessing costs on a prescribed basis – Rules 56.13, 65.11 and 65.12 of the Civil Procedure Rules 2000

Result and Reason: Held: allowing the appeal; remitting the question of costs in the court below to Ellis J for assessments; and making an award of costs on the appeal to the appellants, to be assessed by Ellis J if not agreed within 21 days, that:

1. It is clear that rule 56.13(5) requires a judge who awards costs in judicial review proceedings to assess costs in accordance with the assessed costs regime referred to in rules 65.11 and 65.12. The trial judge was accordingly correct when she assessed the appellants' costs in the proceedings in the court below herself, as she was required to do so by rule 56.13.

Rules 56.13(5) and 64.2 of the Civil Procedure Rules 2000 considered; Prime Minister and Juno Samuel v Gerald Watt, KCN, QC ANUHC VAP2012/0005 (delivered 27th May 2014, unreported) considered.

2. Whereas there is some overlap between the regimes for the quantification of costs under the CPR, it is not open to a judge to assimilate costs regimes where the CPR expressly requires that a particular regime be utilised. It was therefore not open to the judge to assimilate the prescribed and assessed costs regimes in as much as the CPR mandates that the costs in judicial review proceedings be assessed (and not prescribed). The learned judge therefore erred when she purported to

assess costs on a prescribed costs basis, saying that she was “satisfied that it ought to be done on a prescribed basis”. Accordingly, the cost award made by the judge must be set aside.

Rules 65.4(3), 65.5(4)(b)(ii) and 65.11(7) of the Civil Procedure Rules 2000 considered.

3. The appellants having prevailed in their contested judicial review applications, ought to be awarded costs on their applications against the respondent which unsuccessfully contested the claims for judicial review. It does not follow, however, that the appellants are entitled to have the entirety of their costs paid by the respondent. In light of the fact that the respondent was carrying out its statutorily mandated function and that its operations could be crippled by large costs awards made against it; and, having regard to the manner in which the court is required to exercise its discretion by rule 65.2(1)(b), the quantum of costs to be awarded in cases like this should more closely resemble prescribed costs awards than costs assessed on an indemnity basis. It may be different if it is found that the International Tax Authority had acted capriciously or maliciously in the purported discharge of its functions, in which case it may be visited by large costs awards, but not so if it is simply doing what it is statutorily mandated to do, which appears to be the situation in the present case. This Court, being unapprised of any material which could assist its assessment and quantification of the costs to be paid to the respondent by the appellants in the proceedings below, is constrained to remit the assessment of the costs in those proceedings to Ellis J.

Rules 56.13, 65.2(1)(b) and 65.12 of the Civil Procedure Rules 2000 considered; *M v Croydon Borough of London* [2012] EWCA Civ 595 and *R (on the application of Bahta) v Secretary of State for the Home Department*

[2011] EWCA Civ 895 distinguished.

Case Name: **FLAT POINT DEVELOPMENT LIMITED**
v
MARY DOOLEY

[ANUHCVP2015/0029]

Date: **Wednesday, 13th March 2019**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: **Ms. Jacqueline Walwyn**

Respondent: **Ms. Amina Byron**

Issues: **Civil appeal — Breach of sale agreement — Approach of appellate court to findings of fact of trial judge — Whether judge erred in concluding that the purchase price for condominium block was paid in full — Whether judge erred in law finding that the deed of assignment was valid — Assignment — Whether equitable assignee can sue in his own name without joining assignor to the claim — Whether judge erred in law in granting relief — Whether judge erred in granting remedy that was not specifically sought**

Result and Reason: **Held: dismissing the appeal; ordering Flat point to transfer and convey the condominium unit to Ms. Dooley within 14 days of the date of this judgment; and awarding costs of the appeal to Ms. Dooley which are to be two-thirds of the prescribed costs awarded in the court below, that:**

- 1. The function of the appellate court is to make sure that the judge has correctly directed himself to and applied the relevant law and has**

properly approached his task in deciding disputed facts and has not erred in principle. After this determination, the appellate court should stand back and determine whether the findings of facts were open to the judge to make. If they were, the appellate court should not interfere. The appellate court ought not to second guess the trial judge who has been immersed in the case and has had a unique opportunity of hearing and seeing the witnesses and testing their evidence and gaining a feeling of the case, an opportunity which is denied to an appellate court.

Watt (or Thomas) v Thomas [1947] AC 484 applied; Yates Associates Construction Company Ltd v Blue Sand Investments Limited BVIHCVAP2012/0028 (delivered 20th April 2016, unreported) followed.

2. There is no doubt that the judge, having heard the oral evidence and having read the documentary evidence including the witness statements filed by both sides, came to finding of fact that was clearly open to him that Mr. Hughes had paid the purchase price for Block D4-03. There is no doubt that the judge quite properly rejected the evidence that was led by Flatpoint based on internal inconsistencies. In addition, there was evidence before the judge to properly conclude that Ms. Dooley's evidence was more compelling, and that Mr. Hughes had paid the full purchase price for Block D4-03 and had not breached the sale agreement. The evidence that was led by Flatpoint could properly be characterised as thin and consistent with the view argued on behalf of Ms. Dooley. Accordingly, there is no basis upon which the judge could properly be faulted for arriving at the reasoned position which he did, and his decision cannot be

impugned.

3. The benefit of a contract may be transferred to a third party through a process of assignment. As a consequence of an assignment, the assignee is entitled to sue the person who is liable under the contract. An equitable assignment of a chose or thing in action passes to the assignee the right to sue for its recovery. If the chose or thing in action is equitable and the assignment is absolute, the assignee can sue in his own name without making the assignor a party to the claim. It is clear that Mr. Hughes had assigned to Ms. Dooley, based on her payment of the total sum of US\$638,000.00, the right to take a conveyance of the condominium unit. There is nothing which indicates that Ms. Dooley was suing to enforce the entire agreement Mr. Hughes had with Flatpoint. There is also nothing which prevents Ms. Dooley, having paid the full purchase price for her condominium unit and Flatpoint having refused to convey the unit to her, to sue. By way of emphasis, the assignment to Ms. Dooley of the condominium unit was absolute and she was therefore entitled to seek to have the unit conveyed to her.

Roofman Limited v Rayford Construction Limited CV 2009-03946 (delivered 20th February 2014 High Court of the Republic of Trinidad and Tobago) distinguished; Butler v Capel (1823) 2 B&C 251 distinguished; Comfort v Betts [1891] 1 QB 737 distinguished.

4. There is nothing in law which prevented the learned judge from granting a remedy to Ms. Dooley that was not specifically sought. Rule 8.6(2) of the Civil Procedure Rules 2000 permits the court to grant any other remedy to which the claimant may be entitled. It is

noteworthy that in her claim, Ms. Dooley had specifically prayed for “such further and other relief as this Honourable Court deems fit” and the relief ordered by the court falls within that category. Therefore, while it is correct that Ms. Dooley did not seek a conveyance of the unit to her in her claim, that relief was appropriately granted by the judge in the circumstances. Accordingly, there is no basis to interfere with the judge’s decision on this issue.

Rule 8.6(2) of the Civil Procedure Rules 2000 applied; Lance Kydd v Rita Williams SVGHCV2000/0323 (delivered 16th September 2002, unreported) applied.

Case Name:

**[1] KWOK KIN KWOK
[2] CROWN TREASURE GROUP LIMITED
v
YAO JUAN**

[BVIHCMAP2018/0042]

Date:

Thursday, 14th March 2019

Coram:

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

Appearances:

Appellant:

Mr. Kwame Simon holding papers for Ms. Richard Evans

Respondent:

Ms. Mandi Thomas and Ms. Chatrisse Beazer holding papers for Mr. David Fisher

Issues:

Commercial appeal – Appointment of liquidator – Unfair prejudice – Whether the trial judge erred in the exercise of discretion in appointing a liquidator – Remedies open to court on an unfair prejudice application – Whether relief granted was just and

equitable – Fresh evidence – Whether a respondent can make an application to admit fresh evidence to support the judgment in the court below

Result and Reason:

Held: allowing the appeal; setting aside the decision of the learned judge; setting aside the consequential order; and awarding costs to the appellant in the court below to be assessed if not agreed within 21 days, costs to the appellant in this Court on the substantive appeal at two-thirds of the costs in the court below and costs to the appellant on the fresh evidence application to be assessed if not agreed within 21 days, that:

- 1. In considering whether there was an agreement between the appellant and the respondent, which brought about an obligation on the appellant to provide information to the respondent, the learned judge appears either to have lumped together the duty to notify and consult/provide information, with the duty to obtain consent in relation to introducing a new investor, without a distinction as to the circumstances. Alternatively, the learned judge appears to have sought to extract from the duty to obtain consent, (where it did exist, in relation to introducing a new investor) a general and unrelated duty to notify and consult. The alleged general duty to provide information/notify and consult and the alleged duty to obtain consent for the introduction of a new investor were distinct issues. In the learned judge's finding of a duty to provide information/notify and consult, he relied on his own analysis of evidence elicited in an exchange between counsel for the respondent and the appellant. On the evidence elicited, a duty to notify, consult and obtain consent existed only at the investor level, that is, in relation to introducing new investors. There is no identifiable basis on which the learned judge properly concluded on the evidence, a duty on the appellant generally to provide information, or to notify and consult. The learned judge erred in this general conclusion.**

2. On the question of whether the learned judge possessed the jurisdiction to appoint a liquidator, section 184I of the BCA states that: if, on an application made under section 184I, the court considers that it is just and equitable to do so, it may make such order as it thinks fit, including, without limiting the generality of the subsection, one or more of the orders set out in sub-paragraphs (a) through (h). Sub-paragraph (f) refers to the appointment of a liquidator under section 159(1) of the Insolvency Act on the grounds specified in section 162(1)(b) of that Act. The effect of the wording is to confer a very wide discretion on the court to do what is considered fair and equitable in all the circumstances of the case, in order to put right and cure for the future, the unfair prejudice which the petitioner has suffered. Further, the court is not bound by the specific relief sought by the petitioner.

Re Bird Precision Bellows Ltd [1985] 3 All ER 523 applied; Re Neath Rugby Ltd (No.2); Hawkes v Cuddy and others (No.2) [2009] 2 BCLC 427 applied; Section 184I Business Companies Act 2004, Act No. 16 of 2004 applied.

3. In considering the reasonableness of the decision of the learned judge to appoint a liquidator, the premise for his determination that such an order was appropriate was the learned judge's view that it was unfair that the respondent would be locked into an investment for the next 40 years without the hope of seeing any benefit from the investment. This Court having determined that the learned judge erred in finding that there existed the broad agreement pleaded by the respondent and further that the learned judge clearly premised the exercise of his discretion to appoint a liquidator on the basis that all of the complaints had been proven against the appellant, which this Court determined (except in one instance) not to be the case, the learned judge erred in the exercise of his discretion. The consequence is that the learned judge exceeded

that generous ambit within which reasonable disagreement is possible when he appointed a liquidator.

4. To satisfy the requirements for the admission of further evidence, it must first be shown that the evidence could not have been obtained with reasonable diligence for use at the trial, secondly that the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive, and thirdly that the evidence must be such as is presumably to be believed, in other words, it must be apparently credible though it need not be incontrovertible. Though fresh evidence applications are usually made by an appellant seeking its introduction, this application to adduce further evidence is by the respondent, who was successful in the court below. The application is sought on the basis that the new ground will enable the respondent to support the judgment of the court below on grounds that were not available before the new evidence became available. The provision of a further ground for supporting a decision in the court below is not a proper basis for the exercise of this very reserved jurisdiction to admit fresh evidence and does not support the second requirement above. To permit the evidence on this basis would run totally counter to the principle of finality. Further, even if the fresh evidence was otherwise admissible, in the exercise of its discretion, this Court would refuse to admit the fresh evidence based on this Court's setting aside of the finding of a broad and unrestricted agreement between the parties, the basis on which the decision in the court below was made and upon which the application to admit the fresh evidence was grounded. Further, even if all three requirements were met it would still be necessary to conduct an evaluation of the new evidence to determine its effect. This would normally require that the matter be remitted to the lower court as the Court of Appeal is not designed to address a factual issue other than one which has been ventilated in a lower court. In this

matter, the interests of justice would not be best served by remitting this matter to the lower court for a retrial of any kind. The interests of the parties and of the public in fostering finality in litigation are significant.

Ladd v Marshall [1954] 1 WLR 1489 applied;
Gohil v Gohil (No.2) [2015] UKSC 61 applied;
Transview Properties v City Site Properties
[2009] EWCA Civ 1255 applied.

5. By choosing to appoint a liquidator, the learned judge erred in the exercise of his discretion. It is now for this Court to exercise its own discretion in determining the appropriate remedy to grant, bearing in mind that this Court should seek to grant the minimum remedy to repair the misconduct and unfair prejudice and prevent it from happening in the future since that is the Court's main purpose when making a grant of relief in such cases. The remedy granted should be proportionate to the prejudice suffered by the petitioner and is not by way of punishment for bad behaviour. Upon consideration of the relevant factors and the fact that the appointment of a liquidator should normally be a remedy of last resort, this Court orders that for the future conduct of Crown Treasure, Madam Kwok be required to notify, consult with and obtain the consent of Madam Yao in relation to matters at the investor level. This enforces the agreement that this Court has found to exist between the parties.

Case Name:

[1] MINISTRY OF THE PUBLIC SERVICE
INFORMATION AND BROADCASTING
[2] THE ATTORNEY GENERAL OF SAINT
LUCIA

v

VINCENT MARCEL

Date: Thursday, 14th March 2019

Coram: The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Carla Brookes-Harris and Dr. David Dorset

Respondent: Ms. Mandi Thomas and Ms. Chatrisse Beazer

Issues: Civil appeal – Employment law – Suspension from duties – Whether an officer in the Royal Saint Lucia Police Force can earn or accrue vacation leave while on suspension – Entitlement to payment for vacation leave earned but not taken – Staff Orders for the Public Service of Saint Lucia 1983 – Prescription – Police Act – Police Regulations – Authority of Commissioner of Police to offer payment in lieu of vacation leave

Result and Reason: Held: allowing the appeal; setting aside the order of the learned master and making no order as to costs, that:

1. The learned master did not err in finding that the Respondent was entitled to accrue vacation while on suspension. Vacation leave is granted in respect of service, and in the absence of a statutory or contractual provision to the contrary, the Respondent's continued employment in the Police Force entitled him to accrue vacation, even while on suspension. If the legislature had intended to deprive a police officer of that benefit during suspension, express provision would have been made for this in the Police Regulations or the Staff Orders.

Staff Order no. 6.12 of the Staff Orders of the Public Service of Saint Lucia applied; Police

Act Cap. 14.01 Revised Laws of Saint Lucia 2014 considered.

- 2. The Police Regulations permit police officers to accumulate vacation leave up to certain specified maximums and a police officer is only entitled to accumulate and take up to 150 days' vacation leave on retirement.**

Regulation 27 of the Police Regulations Cap. 14.01 Revised Laws of Saint Lucia 2014 applied; Ormond Shotte v The Attorney General MNIHCV2000/0005 (delivered 30th May 2001, unreported) applied.

- 3. The Respondent is not entitled to damages for breach of contract and the present case is distinguishable from the cases of Welch v Trinibashment Limited and Burrill v Schrader, both of which involve claims for breach of contract.**

Ricardo Welch v Trinibashment Limited TT 2012 HC 13 distinguished; Burrill and Another v Schrader and Another (1995) 50 WIR 193 distinguished.

- 4. There is a general presumption against implying terms into written contracts. The question of implication arises when the instrument does not expressly provide for what is to happen when some event occurs. The test of implication is also one of necessity. There is no need to introduce a fundamentally different position into the Respondent's contract of employment by implying a term that the employee is entitled to monetary compensation for leave not taken. If the Government had intended to allow payment for vacation leave not taken it would have made provision for it in the terms of employment. This Court cannot be**

called upon to imply such a term.

Attorney General of Belize v Belize Telecom Ltd [2009] UKPC 10 applied; Bank of Nova Scotia v Emile Elias & Co Ltd (1992) 46 WIR 33 applied.

- 5. Vacation leave is not money. The respondent could not retire when he did and then several years later seek monetary compensation for his own failure to make proper arrangements for taking his accumulated leave. In the absence of a contractual or statutory provision, the Government is not required to convert vacation leave not taken into monetary compensation.**

Ormond Shotte v The Attorney General MNIHCV2000/0005 (delivered 30th May 2001, unreported) applied.

- 6. Though the Police Commissioner is vested with the responsibility to manage the finances of the Police Force, he does not possess the authority to make a payment without proper authorisation. The Commissioner is not an entity unto himself and he did not have the authority to make the payment that he promised to the Respondent. In this case, the promise of payment in lieu of vacation was not made by the Respondent's employer, the Government of Saint Lucia, but by the Commissioner, an employee of the State who did not have the authority to make such a decision.**

Section 7 of the Police Act Cap. 14.01 Revised Laws of Saint Lucia 2014 applied; Section 6 and 26 of the Finance (Administration) Act Cap. 15.01 Revised Laws of Saint Lucia 2014 applied; Regulation 5 and 72 of the Financial

Regulations Cap. 15.01 Revised Laws of Saint Lucia applied; Vincent Lynch v Public Transport Service Corporation HC 2123/2011 dated 8th January 2013 distinguished

Case Name:

[1] MARTIN DINNING
[2] HUDSON CARR
[3] SHAWN WILLIAMS
[4] ROBERT MILLER
[5] EASTERN CARIBBEAN CENTRAL BANK

v

[1] SATAY LIMITED
[2] UNITED DUTY-FREE CONCESSIONARIES LTD.
[3] HELEN BAYER CONSTABLE, PATRICK
CONSTABLE AND WALTER BAYER II
[4] HELEN BAYER CONSTABLE, TERESA BAYER
AND WALTER BAYER II
[5] CADIZ HOLDINGS LTD.
[6] CHANTAL CLOUTIER
[7] CMS MANAGEMENT LTD.
[8] DAVID CROWLEY
[9] D.N.A PATENTS, INC
[10] DCIPHER INC.
[11] VODACO LIMITED
[12] DIAMONT COMPANY N.V.
[13] DUNA HOLDING LIMITED
[14] EQUIPMENT LEASING LTD.
[15] VAN VEEN CARIBBEAN HOLDINGS
[16] JASON FREEMAN
[17] HBM (ANGUILLA) LTD.
[18] HEIDI HOBGOOD
[19] HOPE-ROSS AND THOMPSON
[20] IHATSU FUDOSAN CAPITAL LIMITED
[21] SEAN KENNELLY
[22] A & A LIMITED
[23] EDOUARD LEDEE
[24] ANTHONY MARINI
[25] MARS EXPLORATION INC
[26] LISA MARSHALL
[27] LATIN RETREATS
[28] DOMINIQUE NOIRE
[29] FRANK OLIVIERO
[30] COLIN PERCY
[31] FRANCIS RAINEAU
[32] NECOL LIMITED
[33] RHINO LLC

[34] FSC MANAGEMENT ATTORNEY LLC
 [35] CANON LIMITED
 [36] SUNNY DAYS MANAGEMENT
 CORPORATION
 [37] SYNETICS CAPITAL CORP LIMITED
 [38] GLENYS TAILLON
 [39] TSS LLC
 [40] ROBERT VELASQUEZ
 [41] ANNETTE KRABBE
 [42] SIMON DRAKE
 [43] JOHN MICHAEL VICTORY
 [44] LORRAINE TYSON
 [45] STEPHEN JOSEPH CAVAGNARO
 [46] GARY CHARKHAM
 [47] SUNSHINE PROPERTIES LIMITED
 [48] LAURA F.E. VAN HOEVE
 [49] VANITA MIRCHANDANI
 [50] SHARRON YUAN-SAM
 [51] GILLIAN LOOSER
 [52] ANGELA TYLER
 [53] THE LITTLE SHIP COMPANY LTD
 [54] JERRI-LYN ZIMMERMAN
 [55] RAYMOND LONGBOTTOM
 [56] MANNING KONG
 [57] PAMELA YEE LAWRENCE
 [58] ISABELLE PATRY
 [59] MARIA INES ALMEIDA
 [60] MARLAM LTD
 [61] DARLINE DESTEPHENS
 [62] HOLLY HAVEN LTD
 [63] HABIB JIHA
 [64] MENAVIA LANGLAIS
 [65] HIROKO YOSHIDA

[AXAHCVAP2017/0004]

Date: Friday, 15th March 2019

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

Appearances:
Appellant: Mr. Kendrickson Kentish, holding papers for Ms. Navine Fleming

Respondent: Mr. Jomokie Phillips holding papers for Mr. John Carrington, QC with him, Ms. Rayana Dowden

Issues: Civil appeal – Application disputing court’s jurisdiction based on immunity provisions in Eastern Caribbean Central Bank Agreement Act – Scope of immunity provisions – Emergency powers of Eastern Caribbean Central Bank – Whether immunities in articles 50(2) and 50(7) of Central Bank Act apply in respect of actions over affiliated institutions – Whether appellants’ actions fell within scope of powers under article 5B – Whether appellants entitled to limited immunity under article 5F or general immunity under article 50 – Whether tension exists between article 5F and article 50

Result and Reason: Held: dismissing the appeal; allowing the counter appeal in part; directing that the appellants file and serve their defence within 21 days of the date of this order; awarding costs to the respondents on the appeal being two thirds of the costs awarded below and 50% of the costs on the counter appeal, that:

1. Immunity provisions must be strictly construed so that no greater immunity is bestowed than that which it intended to confer. The extent of the immunity must be found in the words of the legislation. Article 50(2) is very clear. It provides for the ECCB, its property and assets to be immunised from judicial process. Article 50(7) is also clear. The class of named persons, which includes the 1st – 4th appellants, are immunised in respect of acts performed by them in their official capacity.

Gulf Insurance Limited v Central Bank of Trinidad and Tobago [2005] UKPC 10 applied; Capital Bank International Limited v Eastern Caribbean Central Bank et al GDAHCVAP2002/0013 and 0014 (delivered 10th March 2003, unreported) followed.

2. The emergency powers of the ECCB are contained in article 5B of the Central Bank Act and includes the power to only investigate the affairs of an affiliated institution. Parliament made special provisions in relation to affiliated institutions affording them different treatment to financial institutions. The actions of the appellants, including the variation of rates of interest payable on deposits and implementation of upper limits of withdrawals, were not acts of an investigatory nature permitted by the Central Bank Act in relation to affiliated institutions and therefore could not be actions done within the official capacity of the 1st – 4th appellants. Rather, they were acts that were purported to be done in the performance of the powers conferred by the Act, but which were in fact outside the powers which it conferred.
3. In article 5B(ii), the ECCB has the power to take over the property and undertaking of the financial institution. While the word “property” is not defined in the Act, in its ordinary meaning “property” would include the shareholding of the affiliated institution. The ECCB would therefore be acting within its powers under the Act in taking over the shareholding of the affiliated institutions.
4. Article 5C prescribes the procedure to be followed in the exercise of the article 5B(ii) power. It specifically requires the ECCB to state the property and undertaking it proposes to take over and the powers of control it proposes to exercise. It is not disputed that the procedural requirements of article 5C were not complied with. The notices of intervention related to the parent banks. There was no notification of the takeover of the affiliated institutions. The main purpose of this statutory procedural requirement is to notify the depositors and all stakeholders of the financial institution of the ECCB’s intention in relation to the specific property. The effect of the non-compliance with the article 5C

requirement is that the ECCB would have acted ultra vires despite it initially possessing the power to do what was purportedly done. The ECCB therefore cannot rely on the statutory immunities, nor can the 1st – 4th appellants since their actions flow from the actions of the ECCB.

Central Tenders Board and another v White
[2015] UKPC 39 applied.

5. There is no tension between article 5B(1)(vii) and article 5F. The 1st – 4th appellants, pursuant to 5B(1)(vii), are entitled to the general article 50 immunity only when exercising the emergency powers of 5B(1)(i) – (vi), while article 5F grants the 1st – 4th appellants and the ECCB a limited immunity when exercising powers under Part IIA. Part IIA provisions grant very wide powers and can be characterised as being intrusive. They provide for the compulsory acquisition of property. In determining whether to assume control and take over a financial institution, the ECCB must act in good faith and in a competent manner. Parliament, by including article 5F in the provisions creating the special emergency powers, must have intended to grant the ECCB a different level of immunity than when exercising its other powers to which the general article 50 immunity would be applicable. Accordingly, the learned master was correct in stating that the applicable immunity provision in relation to the 1st – 4th appellants was the article 50 provision. He however erred in stating that the article 50 provisions were also applicable to the ECCB when exercising the powers under subparagraph 5B(1)(i) – (vi).

APPLICATIONS AND APPEALS

Case Name:

Gregory Gordon
v

Jacqueline Havener

[ANUHCVP2015/0030]

Date: Monday, 11th March 2019

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Dane Hamilton, QC

Respondent: Mrs. Kivinee Knight-Edwards

Issues: Final leave to appeal to Her Majesty in Council

**Type of Oral
Result / Order
Delivered:** Oral Judgment or Decision

Result / Order: [Oral Delivery]

Order:

1. Leave is granted to the applicant to appeal to her Majesty In council

Case Name: Humphrey Michael Blackburn
v
LIAT (1974) Ltd.

[ANULTAP2017/0001]

Date: Monday, 11th March 2019

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Mr. Jomokie K. R. Phillips

Respondent: Mr. Septimus A. Rhudd

Issues:

Final leave to appeal to Her Majesty in Council

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral Delivery]

**The Court will grant to the applicant final leave to
appeal to Her Majesty in Council all conditions
having been satisfied.**

Case Name:

**St. James Club
v
Sundry Workers**

[ANULTAP2018/0005]

Date:

Monday, 11th March 2019

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

**Appellant: Mr. Hugh Marshall Jr. with him Mrs. Stacey-Ann
Saunders-Osborne**

Respondent: Ms. Asheen Joseph

Issues: Leave to appeal — Stay of proceedings in the Industrial Court pending the determination of the appeal — Collective bargaining agreement — Whether the judge failed to properly consider and apply provisions of the Antigua and Barbuda Labour Code, the Collective Agreement and the law of agency — Whether the learned judge erred in law in finding that the Antigua and Barbuda Workers' Union needed to consult with the Respondents — Whether the learned judge failed to consider that the Antigua and Barbuda Workers' Union was already acting with the authority of the Respondents — Whether the Respondent signing the agreement without prejudice had any effect on the agreement in the circumstances — Whether the judge applied the without prejudice rule properly.

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral Delivery]

1. Leave to appeal is hereby granted.
2. Matter stood down

Reason:

Case Name: Leroy King
v
[1] The Attorney General of Antigua and Barbuda

[2] The Minister of Foreign Affairs

[ANUHCVP2017/0011]

Date: Monday, 11th March 2019

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Dr. David Dorsett with him Mr. Jarid Hewlett

Respondent: Mrs. Carla Brooke-Harris, Deputy Solicitor General

Issues:

Leave to appeal to Her Majesty in Council – Appeal as of right under section 122 (1) (a) and (c) and 2 (a) of the Constitution of Antigua and Barbuda – Question of interpretation as to the equal protection of the law provision Section 3 of the Constitution of Antigua and Barbuda — The issue of access to justice for a requesting state and a requested person, a matter that by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council.

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The application for conditional leave is dismissed.**
- 2. There shall be no order as to costs**

Reason:

This is a motion for conditional leave to appeal to Her Majesty in Council from the decision of the Court of Appeal dismissing the applicant's appeal from the refusal of the trial judge to grant leave to bring judicial review proceedings. We are satisfied that the motion for conditional leave ought to be dismissed for the following reasons:

- 1. The motion does not satisfy the requirements of section 122 (1) (a) of the Constitution of Antigua and Barbuda in that it is not 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 indirectly a claim of a value of \$1,500.00. The practice of this court in**

relation to determining whether orders are final or interlocutory is well settled in Sylvester v Singh. And further it is expressly incorporated into the Civil Procedure Rules Part 62 where the test to be applied is the application test and not the order test. And the application test states at Rule 62.1 (3) states that in this part, (a) a determination whether an order or judgment is final or interlocutory is made on the “application test”; (b) an order or judgment is final if it would be determinative of the issues that arise on a claim, whichever way the application could have been decided; and (c) an order on an application for disclosure against a person who is not a party is a final order.

2. The application fails to meet the test under Section 122 (1) c of the Constitution which relates to final decisions in any civil or criminal proceedings which involves questions of interpretations of this constitution. As we said earlier, the decision is not a final one and it is not one which involves a question of the interpretation of the Constitution of Antigua and Barbuda. The court will follow the cases of Joseph v the State of Dominica, 59 AC 1986 Privy Council, and the case of Eric Frater v the Queen, another Privy Council decision in 1981.
3. Nothing has been put forward in this appeal to raise any issue of great general importance.

Case Name:

St. James Club

v

Sundry Workers

[ANULTAP2018/0005]

Date:

Monday, 11th March 2019

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice

The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: **Mr. Hugh Marshall Jr. with him Mrs. Stacey-Ann Saunders-Osborne**

Respondent: **Ms. Asheen Joseph**

Issues:

Leave to appeal — Stay of proceedings in the Industrial Court pending the determination of the appeal — Collective bargaining agreement — Whether the judge failed to properly consider and apply provisions of the Antigua and Barbuda Labour Code, the Collective Agreement and the law of agency — Whether the learned judge erred in law in finding that the Antigua and Barbuda Workers' Union needed to consult with the Respondents — Whether the learned judge failed to consider that the Antigua and Barbuda Workers' Union was already acting with the authority of the Respondents — Whether the Respondent signing the agreement without prejudice had any effect on the agreement in the circumstances — Whether the judge applied the without prejudice rule properly.

**Type of Oral
Result / Order
Delivered:**

Directions

Result / Order:

[Oral Delivery]

- 1. The hearing of the substantive appeal will occur on Friday, 15th March 2019.**
- 2. The respondent shall file and serve written submissions no later than 3:00 p.m. Wednesday, 13th March 2019.**

Case Name: Krystal Kenda Kandia King and Griffin King
as administrator and co-administrator of the
estate of Claude King, deceased

v
George Lewis

[ANUHCVP2014/0026]

Consolidated with

**Falmouth Harbour Chandlery and Fuel Dock
Ltd.**

v
George Lewis

[ANUHCVP2014/0027]

Date: Monday, 11th March 2019

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:	Mr. Hugh Marshall with him Ms. Kema Benjamin
Respondent:	Ms. C. Kamilah Roberts

Issues: Record of appeal, submissions and authorities be
deemed properly filed, relief from sanctions/appeals
to be consolidated — Constructive trust — Equity

1. Whether the learned trial judge erred in law by not considering and determining the claim by Falmouth Harbour Chandlery & Fuel Dock Ltd in Claim No. ANUHCVP2010/0224 for vacant possession in light of the company's rights granted by its lease over the premises.
2. Whether the learned trial judge erred in law in that the declaration of a constructive trust in favour of George Lewis in the lease owned by the company over the property, was not reflective of the case

pleaded by George Lewis—whether the judgment was fair to the defence which the company prepared for trial.

3. Whether the learned trial judge erred in law by neglecting and/or not considering and determining the claim by Falmouth Harbour Chandlery & Fuel Dock Ltd in Claim No. ANUHCV2010/0224 for mesne profits at the rate of \$2,500.00 per week for the use of the premises by George Lewis from since August 2006.
4. Whether the learned trial judge erred in law by ordering that rent for the property payable to the Crown at the rate of EC\$1,000.00 per month and paid during the currency of the lease by Mr. King and Falmouth Harbour Chandlery & Fuel Dock Ltd are to be reimbursed by the company without further ordering the payment of mesne profits on the basis that the company is not limited to a claim for monies which it has lost by way of rent—whether the company may recover all the loss which has resulted from the dispossession.

Type of Oral
Result / Order
Delivered:

Directions

Result / Order:

[Oral Delivery]

1. The submissions by the respondents filed on 26th February 2019 are deemed to be timely filed, and the appeals are consolidated and will be heard together, 26 of 2014 and 27 of 2014.
2. Having regard to the issues between the parties, and the parties agreeing, at the indication of the court to refer the matter to mediation, it is hereby ordered that matters in issue are hereby referred to mediation, such mediation to take place within 30 days.
3. The parties selected Mr. Kelvin John to be the mediator and in the event of his unavailability, the parties agree that Ms. Monique Francis-Gordon shall be the mediator.
4. The hearing of the appeal shall be set down for

hearing during the week commencing 17th June 2019 unless settled between the parties before that date.

Case Name:

**Makenya Akez
v
Grays Point Ltd.**

[ANUHCVAP2018/0044]

Date:

Monday, 11th March 2019

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: No Appearance

Respondent: Mr. Loy L.A. Weste

Issues:

Leave to appeal — Whether application for leave to appeal is invalid — Whether appeal is an abuse of process — Whether the appeal has a realistic prospect of success

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral Delivery]

- 1. The court will strike out the application for leave to appeal for want of prosecution but also because the application is out of time for appealing, more than three years, and no extension of time has been sought.**

Case Name:

**Yida Zhang
v
Lux Location Ltd.**

[ANUHCVP2018/0013]

Date:

Monday, 11th March 2019

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Mr. Barry Gale, QC with him Dr. David Dorsett

Respondent: Mr. Thomas Roe QC with him Mr. Andrew O’Kola

Issues:

**Leave to appeal — Application for adjournment —
Whether the learned trial judge erred in failing to
further the overriding objective CPR 25.1 (f) — Matter
determined on point not put to Counsel — Whether
application of 26th February 2018 was opposed**

**Type of Oral
Result / Order
Delivered:**

Directions

Result / Order:

[Oral Delivery]

- 1. The applicant for default judgment shall file and serve submissions in support of application by Friday, 29th March 2019.**
- 2. The applicant in respect of the striking out application and application to extend time for filing a defence or summary judgment shall file and serve its submissions by 29th March 2019.**
- 3. The respondent to the default judgment application shall file and serve submissions in response by Tuesday, 16th April 2019.**
- 4. The respondent to the strike out application/ extension of time/ summary judgment**

application shall file and serve submissions in response by 16th April 2019.

5. The applicant in the default judgment application to file and serve any reply submissions by Monday, 29th April 2019.
6. The applicant in the strike out application/extension of time/summary judgment shall file and serve submissions in reply by Monday, 29th April 2019.
7. The hearing of the default judgment application, the strike out application, extension of time, and summary judgment shall be set down for one day on Thursday, 2nd May 2019 commencing at 9:00 a.m.
8. No order as to costs.

Case Name:

**Yida Zhang
v
Lux Location Ltd.**

[ANUHCVP2018/0024]

Date: Monday, 11th March 2019

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Barry Gale, QC with him Dr. David Dorsett

Respondent: Mr. Thomas Roe QC with him Mr. Andrew O’Kola

Issues: Leave to appeal — Interlocutory order — Application for adjournment — Whether the learned Master erred in deciding to strike out the appellant’s claim on the ground that the claim did not disclose a cause of action for want of certain particulars — Whether the learned Master erred in deciding to strike out the claim on the ground of abuse of process when it was

the case that the defendants in the latter case brought by the appellant are different from the defendants in the earlier case brought by the respondent.

Type of Oral
Result / Order
Delivered:

Directions

Result / Order:

[Oral Delivery]

1. The applicant for default judgment shall file and serve submissions in support of application by Friday, 29th March 2019.
2. The applicant in respect of the striking out application and application to extend time for filing a defence or summary judgment shall file and serve its submissions by 29th March 2019.
3. The respondent to the default judgment application shall file and serve submissions in response by Tuesday, 16th April 2019.
4. The respondent to the strike out application/ extension of time/ summary judgment application shall file and serve submissions in response by 16th April 2019.
5. The applicant in the default judgment application to file and serve any reply submissions by Monday, 29th April 2019.
6. The applicant in the strike out application/extension of time/summary judgment shall file and serve submissions in reply by Monday, 29th April 2019.
7. The hearing of the default judgment application, the strike out application, extension of time, and summary judgment shall be set down for one day on Thursday, 2nd May 2019 commencing at 9:00 a.m.
8. No order as to costs.

Case Name:

Marlon Ho-Tack

v

Alice Ho-Tack

[ANUMCVAP2015/0002]

Date: **Tuesday 12th March 2019**

Coram: **The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:
Appellant: **Mr. Hugh Marshall Jr. with him Ms. Kema Benjamin**
Respondent: **No appearance**

Issues: **Whether the Learned Magistrate erred in law by acting contrary to sub-section 9 (4) (a) (iv) and the proviso thereto of the Antigua and Barbuda Constitution Order 1981 — Appellant's constitutional right to occupy premises jointly owned with the respondent — Whether the Protection and Occupation Orders of 30th October 2015 are reasonably justifiable in a democratic society for the protection of the respondent and the children in light of the learned Magistrate's exclusion of the family business from the ambit of Orders — Overriding objective — Best interest of the children — Acts and threats of violence — Domestic Violence Act — Dislocation of families — Reconciliation**

**Type of Oral
Result / Order
Delivered:** **Adjournment**

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

- 1. Counsel for the appellant having advised the court that the appellant is deceased, the matter is adjourned to the next status hearing for report during the week commencing 10th June 2019.**

Reason: **The Appellant is deceased.**

Case Name:

Claude Anthony

v

Auto Hub Ltd

[ANUHCVAP2018/0032]

Date:

Tuesday, 12th March 2019

Coram:

The Hon. Mr. Davidson Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellant:

Mr. Hugh Marshall Jr. with him Ms. Kema Benjamin

Respondent:

Mr. Lawrence Daniels

Issues:

Civil appeal – Leave to appeal

Type of Oral

N/A

Result / Order

Delivered:

Result / Order:

[Oral Delivery]

Decision reserved until Thursday, 14th March 2019.

Case Name:

Claude Anthony

v

[1] Auto Hub Ltd

[2] People's Insurance Co. Ltd [PIC]

[ANUHCVAP2018/0034]

Date:

Tuesday, 12th March 2019

Coram: The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Hugh Marshall Jr with him Ms. Kema Benjamin
Respondent: Mr. Lawrence Daniels for the first respondent
Mrs. Unica Anthony for the second respondent

Issues: Civil appeal – Leave to appeal

**Type of Oral
Result / Order
Delivered:** N/A

Result / Order: [Oral Delivery]
Decision reserved until Thursday, 14th March 2019.

Case Name: Damien Graham
v
The Queen
[ANUHCRA2016/0002]

Date: Tuesday, 12th March 2019

Coram: The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Ralph Francis
Respondent: Mrs. Shannon Jones-Gittens, with her Mr. Curtis

**Cornelius and Ms. Rashida Jonas for Director of
Public Prosecutions**

Issues: Criminal appeal against sentence and conviction —
Whether the verdict is unsafe and unsatisfactory

**Type of Oral
Result / Order
Delivered:** Oral Judgment or Decision

Result / Order: [Oral Delivery]

The appeal against conviction is allowed the Crown
having considered the matter. The sentence and the
conviction is quashed, and the sentence is set aside.

Reason:

Case Name: Terry Herbert
v
The Queen

[ANUHCRA2015/0012]

Date: Tuesday, 12th March 2019

Coram: The Hon. Mr. Davidson Baptiste, 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: Mrs. Shannon Jones-Gittens with her Mr Curtis
Cornelius and Ms. Rashida Jonas for the Director of
Public Prosecutions

Issues: Criminal appeal against conviction and sentence—
indecent assault — Sexual intercourse with a female
under 14 years — Whether the sentence was harsh
and excessive under the circumstances — Ineffective

assistance of counsel — Whether the defence was not properly put to the jury in the judge's summation — Whether the learned trial judge adequately directed the jury on the treatment of the evidence of a child witness — Whether the judge erred in his failure to direct the jury on good character especially as it relates to credibility and propensity — Whether the verdict is unsafe and unsatisfactory

Type of Oral
Result / Order
Delivered:

Oral Judgment or Decision

Result / Order:

[Oral Delivery]

The appeal against conviction is allowed, the Crown having conceded the appeal. The conviction is accordingly quashed and the sentence is set aside.

Reason:

The crown conceded the appeal.

Case Name:

Darnell Azille
v
The Queen

[ANUHCRA2015/0003]

Date:

Tuesday, 12th March 2019

Coram:

The Hon. Mr. Davidson Baptiste, 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:

Mrs. Shannon Jones-Gittens with her, Mr. Curtis Cornelius and Ms. Rashida Jonas for the Director of Public Prosecutions

Issues:

Appeal against conviction and sentence — Unlawful

sexual intercourse — Whether the sentence is harsh and excessive — Whether the judge erred when appellant requested time to instruct new counsel and the judge granted 20 minutes — Whether the appellant was denied a right to a fair trial and whether the proceedings were unfair to him — Whether the judge erred when the court assisted the DPP on the evidence while the defendant was unrepresented

Type of Oral
Result / Order
Delivered:

Oral Judgment or Decision

Result / Order:

[Oral Delivery]

1. The appeal against conviction is dismissed. The conviction affirmed.
2. The appeal against sentence is allowed to the extent it is reduced from 15 years to 10 years.

Reason:

The appellant appeals his conviction and sentence of 15 years imprisonment, on a count of sexual intercourse with female under the age of 14. In the course of submissions, counsel for the appellant focused on two primary issues, (1) he advanced the view that the appellant's trial wasn't fair because he was not allowed legal representation when his Counsel had withdrawn from the matter and that the appellant consequently conducted his matter without the elements of counsel. Counsel for the respondent pointed out that the appellant had been given the opportunity to get counsel and this was not the first time the appellant had an issue of appearing in court without counsel, and given the factual circumstances which concluded in the defendant having to defend himself it could not properly be advanced that the appellant suffered unfairness of the trial without the benefit of counsel. I am in agreement with Counsel for the respondent on that issue. And given the factual circumstances, I am not of the view that the judge erred in allowing the trial to continue without the appellant having counsel. The other issues raised

by the appellant in his appeal against conviction goes to his submission that the allegation in this case was made by a child age 13, and the trial judge, although giving directions, did not direct the jury for the need for caution because of the age of the child. The counsel for the respondent takes issue with this and according to the age of the VC at the time that she gave her evidence in this matter. It of course is a matter for the trial judge in the circumstances he appreciated them. In the circumstances, one cannot say the judge erred. In the end result, we do not find merit in the appeal against conviction.

With respect to the appeal against sentence, Mr. Bowen takes issues with the 15 years sentence imposed by the judge. Both sides agreed that an appropriate starting point would be 8 years in prison. The Appellant's Counsel submitted that in all circumstances an appropriate sentence would be 10-12 years. The appellant counsel refer the court to the factors in mitigation at the time, he showed some remorse and had prior good character, first time offender, and he played basketball for the nation. Those were the factors in mitigation. The factors in aggravation concerned the making of a video tape of the proceeding also the publication of the video tape on social media. Taking into account the factors advanced in mitigation, we consider to be a serious factor in aggravation. Taking into account factors in mitigation and aggravation, we are of the view that the appropriate sentence in this case would be 10 years in prison. The appeal against sentence is allowed to the extent that the sentence of 15 years is reduced to 10 years imprisonment.

The appeal against conviction is dismissed, and the conviction affirmed, and the appeal against sentence is allowed to the extent it is reduced from 15 years to 10 years.

Case Name:

Trevor Boston

v

The Queen

[ANUHCRA2017/0002]

Date: Tuesday, 12th March 2019

Coram: The Hon. Mr. Davidson Baptiste, 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: Mrs. Shannon Jones-Gittens, with her Mr. Curtis Cornelius and Ms. Rashida Jonas for Director of Public Prosecutions

Issues: Criminal appeal against sentence – Murder – Whether the sentence was harsh and excessive in the circumstances

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral Delivery]

The appeal against sentence is allowed, and the sentence of 20 years imposed by the trial judge is varied to 18 years.

Reason: The appellant was charged with the offence of murder and on the second day of trial, he changed his plea to guilty. The learned judge sentenced him to 20 years imprisonment and the appellant has appealed against sentence. In imposing the sentence, the learned judge took into consideration the aggravating circumstances of the offence and used a starting point of 30 years. This is entirely within the judge's discretion, he having all regard to the submission Mr. Bowen for the appellant that a sliding scale of 15-30 years should be used to determine the starting point. The judge having considered all of the aggravating circumstances

came to the conclusion that 30 years would have been the starting point starting point. We also heard from counsel for the respondent that 30 years is within the ball park in Antigua and Barbuda for the offence of murder. The judge sentenced the appellant. Having started at 30 years, a 25 % reduction for his guilty plea which came at the second day of trial which reduced the sentence to 22.5. There is a further reduction of 2 years based on the mitigating circumstances of the appellant including the fact that he was remorseful which brought it down to 20 years. The judge then added 2 years for the aggravating circumstances and we In this circumstances we find the judge erred because the aggravating circumstances after the starting point was determined. The judge also allowed 3 years for the delay in the matter coming into trial and that was entirely within the judge's discretion and we will not interfere with his finding on that point. End result is that, we, looking at the matter overall, we find that an appropriate sentence in this matter is 18 years imprisonment.

Order of the court therefore is that:
The appeal against sentence is allowed, and the sentence of 20 years imposed by the trial judge is varied to 18 years.

Case name:

Donald Lumsden

v

The Queen

[ANUHCRA2017/0001]

Date:

Tuesday, 12th March 2019

Coram:

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

Appearances:

Appellant:

Ms. Siobhan Leandro

Respondent:

Mrs. Shannon Jones-Gittens with her, Mr. Curtis Cornelius and Ms. Rashida Jonas, for the Director Public Prosecutions

Issue:	Appeal against sentence – Unlawful carnal knowledge – 20 years sentence — Whether the learned trial judge failed to adequately or at all direct the jury on the issue of corroboration — Whether the learned trial judge failed to adequately warn the jury of the danger of convicting the appellant upon the evidence of the complainant alone — Whether the learned trial judge, before sentencing, received highly prejudicial evidence concerning similar fact which was adduced through the social inquiry report from the Social Welfare Department — Whether the sentence was unduly excessive in the circumstances — Leave to withdraw appeal against sentence.
Type of Oral Result / Order Delivered:	Oral Judgment or Decision
Result / Order	[Oral Delivery] 1. Appellant granted leave to withdraw appeal against conviction. Appeal against conviction is accordingly dismissed, and the appellant is granted leave to appeal against sentence. 2. The appeal against sentence is accordingly allowed to the extent that the sentence of 20 years is set aside and replaced with 15 years
Reason:	This is an appeal against sentence where the matter in which the appellant was convicted for unlawful sexual intercourse with a girl under the age of 14. He was 47 years old. The judge sentenced the appellant to 20 years imprisonment on an offence that carries a maximum of life imprisonment. In the case of <u>Winston Joseph v The Queen</u> the learned Chief Justice is looking at sentencing in respect of sexual offences opined that a sentence of 8 years imprisonment for a girl not far from her 13th birthday would be appropriate and for that sentence one

would look at mitigating and aggravating factors. Counsel for the appellant considered that having regard to other cases by this court, Winston Joseph v the Queen, that the starting point of 11 year imprisonment would be appropriate of the nature and circumstances of this case starting from the 11 years benchmark, counsel for appellant conceded that there would aggravating factors arising out of the serious nature of the offense and disparity in the ages of the appellant and the virtual complainant. Other factors identified are considered not to be significant aggravating factors in terms of the starting point and a previous unrelated conviction: Counsel for the appellant cited the community report in terms how the appellant was perceived in the community, that is in a favourable way, and the fact that he was the sole provider for his children, as being other factors that are mitigating circumstances. Looking at this aggravating and mitigating factor from a 11-year starting point and Counsel for the appellant suggested to the court that an appropriate sent would be 15 years. That proposed sentence was consistent with the submission of Counsel for the respondent where a sentence within the range of 15 to 18 years was proposed. Looking at all of the circumstances of this case, the court considers a sentence at the lower range recommended by the respondent and of the identical number as proposed by the appellant will be the appropriate sentence. The appeal against sentence is accordingly allowed to the extent that the sentence of 20 years is set aside and replaced with 15 years

Case Name:

**Damien Wilson
v
Her Honour Magistrate
(District “B” Ngaio Emmanuel)**

[ANUMCRAP2017/0003]

Date:

Tuesday, 12th March 2019

Coram:

**The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

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

Appearances:

Appellant: Mr. Warren Cassell

Respondent: Mrs. Shannon Jones-Gittens, with her, Mr. Curtis Cornelius and Ms. Rashida Jonas, Director of Public Prosecutions

Issues:

Appeal against sentence – Possession of cannabis — Supply of cannabis — Whether the Magistrate erred in imposing separate sentences

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral Delivery]

- 1. The sentence imposed for supply cannabis set aside and replaced by no separate sentence for the supply.**
- 2. Upon satisfactory proof that the appellant has paid a total amount of \$28,000.00 in respect of fines imposed by the Magistrate in this matter, the appellant shall be refunded the sum of \$14,000.00 by the relevant authority.**

Reason:

This is an appeal against sentence in a matter in which the magistrate imposed the following sentences on the appellant on his pleas of guilty to the charges of possession of cannabis, supply to sell and supply of cannabis. The sentence imposed \$14,000 or one year imprisonment. \$14,000 one year imprisonment for the supply of cannabis the appellant appeals that the Magistrate erred in imposing separate sentences of offense cannabis with intent to sell similar not identical. Counsel for the respondent cited authorities where the offense were similar that long sentences should not be imposed the court accepts that submission and accordingly would order that for the sentence of

supply of cannabis no separate sentence imposed from that offence cannabis with intent to sell. Magistrate erred by imposing separate sentences for those two. The sentence imposed for supply cannabis set aside and replaced by no separate sentence for the supply.

Upon satisfactory proof that the appellant has paid a total amount of \$28,000.00 in respect of fines imposed by the Magistrate in this matter, the appellant shall be refunded the sum of \$14,000.00 by the relevant authority.

Case Name: **David Brandt**
v
Director of Public Prosecutions

[MNIHCVAP2018/0003]

Date: **Tuesday, 12th March 2019**

Coram: **The Hon. Mr. Davidson Baptiste, Justice of Appeal**
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag/]

Appearances:
Appellant: **Dr. David Dorsett**
Respondent: **Ms. Anesta Weekes, QC**

Issues: **Motion for conditional leave to appeal to the Her Majesty in Council — Stay of proceedings pending the determination of the appeal before Her Majesty in Council**

Type of Oral Result / Order Delivered: **Oral Judgment or Decision**

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

Order:

It is hereby ordered that leave to the appeal to her Majesty in Council is granted to the appellant pursuant to section 20 subsection 4 of the Montserrat Constitution Order 2010 against the judgment of the Court of Appeal pronounced herein 29th November 2018, upon condition that:

- 1. The appellant do within 90 days of the date of hearing of this application for leave to appeal entered good and sufficient security in the sum of 500 pounds sterling, for the prosecution of the appeal, and the payment of all such costs as may be payable by the appellant in the event that this appeal being dismissed, such security to consist of the said amount in the court.**
- 2. The appellant do take such steps for the purpose of procuring the preparation of the record, settling such record with solicitors for the respondent, and transmitting of such record to the Registrar of the Privy Council with 90 days of this application for leave to appeal.**
- 3. The record shall comprise of the record used at the hearing of appeal excluding documents of the following nature, and those permitted by consent, and shall include the judgements and orders of the court of appeal and order granting conditional leave to appeal**
- 4. The appellant shall make an application to the court for final leave to appeal to Her Majesty in Council supported the certificate of the Registrar that security for costs herein ordered has been given within the time prescribed to the satisfaction of the Registrar.**
- 5. The cost of this application is cost in the cause.**
- 6. The applicant's application for a stay of criminal proceedings in the matter Commissioner of Police v David Brandt No. 3 of 2017 and No. 19 of 2018 pending the final determination of these appeal proceedings by Her Majesty in Council is refused.**

Reason:

This is an application for conditional leave to appeal to Her Majesty in Council and for a stay. The applicant states that he is entitled to appeal as of right pursuant to section 20 subsection (4) of the Constitutional Order 2010 of Montserrat. The respondent does not take issue with leave as of right under section 20 subsection (4) of the Constitution Order of Montserrat. The critical issue concerns whether or not the court ought to grant a stay of the criminal proceedings which have been instituted against the appellant. In support of his application for a stay, Dr. Dorsett on behalf of the applicant has invited the court to apply the case of Seepersad v. Ayers- Caesar and others, [2019] UKPC 7 the 2019 Decision of Privy Council. Dr. Dorsett asked the court to adopt the test which is advanced in this case. The test is (1) There should be a preliminary assessment of the merits to see whether there was a serious issue to be tried; (2) it must be determined whether the applicant will suffer irreparable harm if the application for stay is refused; (3) an assessment must be made as to which party would suffer any harm from the grant or refusal of the stay and then a decision on the merits.

Dr. Dorsett submitted that irreparable harm would be done if the stay is not granted

Counsel for the respondent takes issue with the applicability of the Seepersad case with the circumstance before the court. Ms. Weekes strongly opposes the stay application. Counsel recaptured the history of the matter and where the matter is at the present time. Learned Counsel, Ms. Weekes stated that the sufficiency hearings is completed. Counsel also noted that trial judge rejected Dr. Dorsett's stay application and there is an ongoing criminal trial, and further stated that the matter can be dealt with during the trial of the matter, in this context Ms. Weekes QC referred the court to the learning as found in the case of Shannon where the Privy Council pronounced on such matters. We have listened to the different arguments posed by both sides, read submissions and the case referred to. We are of the view that, considering the matter on a whole, that the arguments which have been proffered by Ms. Weekes QC, finds favour with the court, in that the

court in its discretion would not grant a stay of the proceedings, so the order of the court would be:

1. That Conditional leave is granted to the applicant to appeal to Her Majesty in Council.
2. The application for a stay of execution of the criminal proceedings is refused.

It is hereby ordered that leave to the appeal to her Majesty in Council is granted to the appellant pursuant to section 20 subsection 4 of the Monserrat Constitution Order 2010 against the judgment of the Court of Appeal pronounced herein 29th November 2018, upon condition that:

1. The appellant do within 90 days of the date of hearing of this application for leave to appeal entered good and sufficient security in the sum of 500 pounds sterling, for the prosecution of the appeal, and the payment of all such costs as may be payable by the appellant in the event that this appeal being dismissed, such security to consist of the requisite of said amount in the court.
2. The appellant do take such steps for the purpose of procuring the preparation of the record, settling such record with solicitors for the respondent, and transmitting of such record to the Registrar of the Privy Council with 90 days of the date of hearing of this application for leave to appeal.
3. The record shall comprise of the record used at the hearing of appeal excluding documents of a formal nature, and those permitted by consent, and shall include the judgements and orders of the court of appeal and order granting conditional leave to appeal
4. The appellant shall make an application to the court for final leave to appeal to Her Majesty in Council supported the certificate of the Registrar that security for costs herein ordered has been given within the time prescribed by this order to the satisfaction of the Registrar.
5. The cost of this application is cost in the cause.
6. The applicant's application for a stay of criminal proceedings in the matter Commissioner of Police v David Brandt No. 3 of 2017 and No. 19 of 2018 pending the final determination of these appeal proceedings by Her Majesty in Council

is refused.

Case Name:

**The Director of Public Prosecution
v
[1] His Honour Magistrate Carden Conliffe
Clarke
[2] Jacqui Quinn
[3] Harold Lovell
[4] Wilmoth Daniel**

[ANUMCRAP2017/0002]

Date:

Tuesday, 12th March 2019

Coram:

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

Appearances:

Appellant:

**Mrs. Shannon Jones- Gittens with her, Mr. Curtis
Cornelius and Ms. Rashida Jonas holding papers for
the Director of Public Prosecutions**

Respondent:

**Mr. John E. Fuller with him, Ms. Siobhan Leandro for
Jacqui Quinn
Ms. Anesta Weekes, QC for Harold Lovell
Mr. Ralph Francis for Wilmoth Daniel**

Issues:

**Whether the District Magistrate erred in law when he
considered and applied the test in *Galbraith [1981] 1
WLR 1039* in the committal proceedings before him –
Whether the learned District Magistrate erred in law
when he failed to consider and apply the test for
committal proceedings as expressly stated in The
Magistrate’s Court of Procedure (Amendment) Act
2004, Act No.13 of 2004, Section 42c — Role and
function of the Magistrate in committal proceedings
— Whether the learned Magistrate erred in law when
he raised and considered questions of facts which
were not for his consideration during the committal
proceedings — *Mens rea* — Refusal of Magistrate to**

accept and consider photographs taken by a police photographer on a CD.

Type of Oral
Result / Order
Delivered:

Directions

Result / Order:

[Oral Delivery]

Order:

1. The appellant is to prepare and settle the record of appeal with the solicitors for the respondents on or before the 12th of April 2019.
2. The hearing of the appeal is adjourned to Friday, 21st June 2019 during the sitting of the court of appeal in Antigua and Barbuda.

Case Name:

Dr. Jose Humphreys

v

The Medical Council

[ANUHCVP2017/002]

Date:

Wednesday, 13th March 2019

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

Dr. David Dorsett with him Mr. Jarid Hewlett

Respondent:

Ms. E. Ann Henry, QC with her Ms. Chatrisse Beazer

Issues:

**Medical License — License to practice medicine-
Medical Practitioners Act 2009 — Constitution of
Antigua and Barbuda — Whether notice of appeal
should be struck out for want of prosecution —
Strike out notice of appeal — Requirements of the
Medical Practitioners Act 2009**

**Type of Oral
Result / Order
Delivered:**

Directions

Result / Order:

**[Oral Delivery]
Order:**

1. Dr. Humphreys is directed to provide the documents requested by the medical council in the letter 25th September 2014 no later than the 28th March 2019.
2. The Medical Council is directed to consider the application for renewal and to make its decision known to Dr. Humphreys no later than 2nd May 2019.
3. The stay that was granted on the 3rd March pending the determination of this appeal, pending the determination and communication of the medical council, and no later than 2nd May 2019.
4. The Court further orders that the respondents are entitled to have the costs on appeal assed by the master or the registrar to be assessed if not agreed within 21 days of this order.

Reason:

This is an appeal by Dr. Humphreys against a decision of the learned Justice Clare Henry. The learned judge dismissed Dr. Humphreys' claim on the basis that he failed to prove that the Medical Council had lawfully denied him the renewal of his medical license and in so doing unlawfully contravened his right to liberty including his right to earn a living. The crux of Dr. Humphreys' counterclaim is that the Medical Council by letter dated 25th September 2014 decided his application for a renewal. The learned judge, having closely reviewed the relevant evidence and the relevant statutory provisions came to the conclusion that, to the contrary, the Medical Council acted properly in requesting Dr. Humphreys to provide further documentation in order to properly consider his application for the renewal of the license. The learned judge also concluded that the Medical Council made no decision one way or the other in relation to the renewal of Dr. Humphreys'

license. Dr. Humphreys being aggrieved by the decision, appealed the judge's decision and has filed several grounds of appeal. In fact he filed eight grounds, all indicating that the learned judge erred in principle by concluding there was no denial of the Medical Council of the application for a renewal. We have heard the submissions of learned Counsel Dr. Dorset for the appellant Dr. Humphreys, also we have we have read the written submissions of learned Counsel for the respondent Queen's Counsel Ms. Henry, and in addition to the exchanges we had with Dr. Dorsett, we are of the unanimous view that the learned judge did not commit any error of principle in the conclusion in which she arrived and critically, there was no basis on which the learned judge to could have properly concluded in all that she did. We are satisfied the judgment was closely reasoned and conclusions of facts and law to which the learned judge arrived were open to her and there is no basis this court can impugn the judgment of the learned Justice Henry. Accordingly, the appeal is dismissed in its entirety and we are of the view this is a matter that ought not to have been initiated in the first place, and rather wasted in the exchange of Dr. Dorset. We propose to give some directions with a view of having the application for renewal to be dealt with by the Medical Council which is the only body who has the authority to consider the application for renewal, and in our view litigation could have been averted had the requisite documents provided to Counsel and in these circumstances, we are giving very short time lines.

Case Name:

Haynes Browne

v

Neil Sargeant

**(as Executor of the estate of Buell Carr,
deceased)**

[ANUHCVP2018/0009]

Date:

Wednesday, 13th March 2019

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Ms. C. Debra Burnette with her, Ms. Mandi Thomas

Respondent: Dr. David Dorsett with him, Mr. Jarid Hewlett

Issues:

Whether the learned Master erred in her method of calculating the claimant's damages for diminution in value in the sum of EC\$64,153.05 — Whether the learned Master considered irrelevant facts in calculating the award of damages — Whether the learned Master gave any or any sufficient weight to the evidence of Addison Workman resulting in the decision being against the weight of the evidence — Whether the nominal damages is excessive — Whether the learned Master should have awarded interest from the date of service of the writ to the date of judgment on liability and interest thereafter at 5% considering the delay in delivery of judgment and the delay in the service of the judgment.

**Type of Oral
Result / Order
Delivered**

N/A

Result / Order:

Judgment is reserved.

Case Name:

Uriel Caleb

v

The Attorney General of Antigua and Barbuda

[ANUHCVP2017/0012]

Date:

Wednesday, 13th March 2019

Coram:

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

Appearances:

Appellant: Mr. Sylvester Carrot

Respondents: Mrs. Carla Brooke-Harris, Deputy Solicitor General

Issues: Whether the judge erred in law by holding that the respondent was not liable in trespass

Type of Oral Result / Order Delivered: Adjournment

Result / Order: [Oral Delivery]

The matter is adjourned to Thursday 14th March 2019 at 9:00 a.m.

Case Name: Owen Adriani Roach
v
[1] The Attorney General
[2] The Registrar of the High Court
[ANUHCVP2016/0023]

Date: Wednesday, 13th March 2019

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

Appearances:

Appellant: Dr. David Dorsett with him Mr. Jarid Hewlett

Respondent: Ms. Alicia Aska, Senior Crown Counsel I

Issues:

1. Whether the learned trial judge erred in failing to find that the rights granted to the Appellant by virtue of section 9 (3) of the Supreme Court Order of the laws of Antigua and Barbuda, could not be undermined by legislation not in the nature of a constitutional instrument.
2. Whether the learned trial judge erred in failing to find that the Appellant was the beneficiary of an Order made pursuant to section 70 of the Supreme Court Act, Cap 02.01 of Montserrat that admitted him to practice as a Barrister of the Court, that is, the Eastern Caribbean Supreme Court established by the Supreme Court Order and that :
 - (a) the said order was governed by section 9 (3) of the Supreme Court Order and one which had full force and effect in Antigua and Barbuda and
 - (b) the said Order was one which the Appellant could seek to have executed and enforce in Antigua and Barbuda.

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral Delivery]

1. The appeal is dismissed.
2. The appellant is ordered to pay \$2,000.00 to the respondent.

Reason:

This the unanimous decision of the Court. The appellant was admitted to practice in Monserrat and later sought to be admitted to practice in Antigua and Barbuda. The learned trial judged refused the application and the appellant appealed to this court. We have heard counsel and we have read the submissions. The appeal is unmeritorious and unreasonably pursued and further that we were informed that the appellant had been admitted to the Bar in Antigua and he was admitted before this appeal. The order of the Court; the appeal is dismissed. The appellant is ordered to pay \$2,000.00 to the respondent. The order is made having

considered 56.14 of the Civil Procedure Rules 2000.

Case Name:

Cove Hotels (Antigua) Limited
v
[1] The Hon. Gaston Browne
(Prime Minister of Antigua and Barbuda)
[2] Konata Lee
(Secretary to the Cabinet of Antigua and Barbuda)
[3] Ryan Johnson
(Editor of the Antigua and Barbuda Official Gazette)
[4] Ralph George
(Antigua and Barbuda Government Printer)
[5] Attorney General of Antigua and Barbuda

[ANUHCVP2018/0040]

Date:

Thursday, 14th March 2019

Coram:

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

Appearances:

Appellant: Mr. Jomokie Phillips

Respondent: Ms. Carla Brookes-Harris, Deputy Solicitor General

Issues:

- 1. Whether the learned trial judge failed to give legal effect to her finding of actual bias or substantive unfairness against the appellant.**
- 2. Whether the learned trial judge erred in that she misunderstood the factual basis of the appellant's legitimate expectation that its leasehold interest would not be acquired insofar as the learned judge considered that the appellant's legitimate expectation was based solely on and/or limited to the respondent's agreeing to "hold their hand" o the matter**

exercising the 3rd option stated in letter of 17th November 2014 and assurances given in relation thereto—legitimate expectation—legal principles

3. Whether the learned trial judge erred in law insofar as she found that there were several procedural irregularities in the respondents' steps to compulsorily acquire the appellant's leasehold property but concluded there was no procedural impropriety because the acquisition was not complete—procedural impropriety—*ultra vires*
4. Whether the learned erred in law in making an order for the appellant to pay prescribed costs.
5. Whether there was bias demonstrated against the Claimant/Appellant
6. Where there were procedural irregularities
7. Application for adjournment

Type of Oral
Result / Order
Delivered:

Adjournment

Result / Order:

[Oral delivery]

Order:

1. The hearing of the appeal is adjourned to the next sitting of the court of appeal in Antigua and Barbuda during the week commencing 17th June 2019.

Case Name:

George Rick James
v
[1] Nathaniel James
(Chairman of the Electoral Commission)
Gary Peters
John Jarvis
Anthonyson King
Paula Lee
Genaris Robinson
Jeanette Charles

(Electoral Commissioners)

[2] Lorna Simon

[ANUHCVP2018/0010]

Date: Thursday, 14th March 2019

Coram: The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Ralph Francis

Respondent: Mrs. E. Patricia Simon- Forde

Issues: Civil appeal – Application for substitution —
Extension of time to file submissions

**Type of Oral
Result / Order
Delivered:** Directions

Result / Order: [Oral Delivery]

1. It is ordered that George Rick James being deceased; Vincent Parker be substituted for George Rick James as the Appellant in this matter.
2. It is ordered that the respondents' application for an extension of time to file submissions is granted.

Case Name: Claude Anthony
v
Auto Hub Ltd

[ANUHCVP2018/0032]

Date: Thursday, 14th March 2019

Coram: The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Kema Benjamin

Respondent: Mr. Lawrence Daniels

Issues: Civil appeal – Leave to appeal

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral Delivery]

We have considered this matter and we are not satisfied that the application has met the threshold for appeal. The appeal is dismissed. We would provide written reasons for doing so.

Case Name: Claude Anthony
v
[1] Auto Hub Ltd
[2] People's Insurance Co. Ltd [PIC]
[ANUHCVP2018/0034]

Date: Thursday, 14th March 2019

Coram: The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. Kema Benjamin
Respondent: Mr. Lawrence Daniels for the first respondent

Issues: Civil appeal – Leave to appeal

**Type of Oral
Result / Order
Delivered:** Oral Judgment or Decision

Result / Order: [Oral Delivery]

We have considered this matter and we are not satisfied that the application has met the threshold for appeal. The appeal is dismissed. We would provide written reasons for doing so.

Case Name: Robin Kensworth Montgomery Yearwood
v
Christina Yearwood
[ANUHCVP2015/0018]
[ANUHCVP2015/0019]

Date: Thursday, 14th March 2019

Coram: The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Hugh Marshall Jr.
Respondent: Dr. David Dorsett

Issues: Civil appeal – Final leave to appeal to Her Majesty in Council

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral Delivery]

The applicant is granted final leave to appeal to Her Majesty in Council.

Case Name: Debra Jones- Thompson
V
[1]Sharon Govia
[2]John Govia
[3]Shenella Govia

[ANUCVAP 2016/0024]

Date: Thursday, 14th March 2019

Coram: The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Sylvester Carrot

Respondent: No appearance

Issues: Civil appeal – Adjournment

Type of Oral Result / Order Delivered: Adjournment

Result / Order [Oral Delivery]

The matter is adjourned to the next sitting of the court in Antigua and Barbuda during the week commencing 17th June 2019.

Case Name: **Uriel Caleb**
v
The Attorney General of Antigua and Barbuda
[ANUHCVP2017/0012]

Date: **Thursday, 14th March 2019**

Coram: **The Hon. Mr. Davidson Baptiste, Justice of Appeal**
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: **Mr. Sylvester Carrot**
Respondents: **Mrs. Carla Brooke-Harris, Deputy Solicitor General**

Issues: **Civil appeal – Whether the judge erred in law by holding that the respondent was not liable in trespass**

Type of Oral Result / Order Delivered: **[Oral Decision]**

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

We allow the appeal and order that the case be remitted to the judge below for the determination of the sole issue that whether on the pleadings evidence and submission that were before her, government had in fact permitted APUA to trespass on the appellant’s property and did so to the effect of such finding on the issue of liability.

We heard both Counsel on the issue of costs, and the

court is minded to accept the submission of Counsel. We award cost in the appeal in the sum of \$5,000.00.

Reason:

The judgment of the Court:

The nub of this appeal is the question of whether the trial judge erred in not addressing in her judgment the allegation by the appellant that the trespassing on the property of the appellant, that APUA did so with the permission of the government. The appellant submitted that the issue was pleaded by the reply in the government defence, that there was evidence before that there was evidence before the judge that Government had given permission to APUA to trespass on the appellant's property and that the appellant, the claimant in the court below, had specifically addressed this issue in his closing submission yet the judge failed all together to address the issue in her judgment. The respondent submitted that the appellant's pleadings was based on the relationship of agency between Government and APUA and that the judge found that on the evidence there was no agency and did not therefore err in her findings. On the specific issue of the appellant's reply to the defence, counsel for the respondent submitted that the averment in the reply on which counsel for the appellant relies was nothing but a response to the government's denial of the agency relationship and not a new allegation. We accept the submission of the appellant that the judge failed all together to address the issue of the government permitting the trespass by APUA and that she erred in so doing. We allow the appeal and order that the case be remitted to the judge below for the determination of the sole issue that whether on the pleadings evidence and submission that were before her, government had in fact permitted APUA to trespass on the appellant's property and did so to the effect of such finding on the issue of liability.

We heard both Counsel on the issue of costs, and the court is minded to accept the submission of Counsel. We award cost in the appeal in the sum of \$5,000.00.

Case Name:

George Rick James
v
[1] Nathaniel “Paddy” James
(Chairman of the Electoral Commission)
[2] Lorna Simon
[3] Gary Peters
[4] John Jarvis
[5] Paula Lee
[6] Genaris Robinson
[7] Jeanette Charles
(Electoral Commissioners)
[8] Anthonyson King

[ANUHCVP2018/0010]

Date:

Thursday, 14th March 2019

Coram:

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

Appearances:

Appellant:

Mr. Ralph Francis

Respondent:

Mrs. E. Patricia Simon-Forde

Issues:

Civil appeal – Whether the learned trial judge erred in law in ruling that upon the issue of a writ of election any challenge made to the process before an election must be determined by the High Court acting as an election court and not by an application to the High Court in its ordinary jurisdiction.

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral Decision]

The appeal is dismissed, with no order as to costs.

Reason:

This is an appeal against an order of Wilkinson J striking out an application by the appellant seeking the several reliefs.

The judge struck out the application on the basis that she lacked jurisdiction to determine an election issue on an application filed after the issue of the writ of election, which she treated as the beginning of the election. She held that any election issue arising after the issue of the writ could only be addressed by the election court, which court comes into existence upon the filing of an election petition after the conclusion of the election.

The appellant appealed against the judge's order striking out his application, but conceded that the remedies which he sought in his application dismissed by the judge were no longer live issues because the elections had taken place nearly one year ago. Instead, the appellant sought a declaration by this Court that the judge erred in her determination that any challenge to an issue concerning an election after the writ of election had been issued must be brought by an election petition filed after the election. Counsel for the appellant, Mr. Ralph Francis submitted that the effect of such a ruling could be that a prospective election candidate whose nomination was improperly rejected by the returning officer was powerless to challenge the rejection of his nomination until after the election had taken place with him being excluded as a candidate.

As powerful as Mr. Francis's hypothetical may be, the fact is that what he is asking of this Court is to issue a declaration in a case where there is no live dispute remaining between the parties – the dispute having come to an end by the time the general elections were held on 21/03/18.

The cases are clear that a court ought not to grant a declaration in a situation such as the present one

where there is no live dispute between the parties. One such case is the case of MW HIGH TECH PROJECTS UK LTD v HAASE ENVIRONMENTAL CONSULTING in which the court held that a declaration should be refused unless (1) there is a dispute between the parties; (2) the dispute arises from specific facts which are already in existence; (3) the dispute is still alive; and (4) its determination will be of some practical consequence to the parties or the public.

Accordingly, this Court declines to grant the declaration sought by the appellant, leaving the issue of whether a challenge can be mounted against any matter concerning an election after the issue of the writ of elections for determination by another court in an appropriate case.

The appeal is therefore dismissed, with no order as to costs.

Case Name:

**Neil Jerrick
v
Chief Immigration Officer
[ANUMCVAP2017/0014]**

Date:

Friday, 15th March 2019

Coram:

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

Appearances:

Appellant:

Mr. Jarid Hewlett

Respondent:

Ms. Alicia Aska, Senior Crown Counsel I

Issues:

Section 170 (2) of The Magistrate Code of Procedure Act — Whether the decision of the learned Magistrate was erroneous in point of law — Whether the

judgment or sentence passed was based on a wrong principle or was such that a Magistrate viewing the circumstances reasonably could not properly have so decided — Whether the sentence imposed was unduly severe

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order

[Oral Delivery]

The appeal, having been conceded by the respondents it is ordered that:

1. The appeal is allowed, and the decision and the order of the learned Magistrate is quashed.
2. Costs to the appellant of \$750.00.

Case Name:

**Cardayro Joseph
v
The Queen**

[ANUHCRA2017/0004]

Date:

Friday, 15th March 2019

Coram:

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

Appearances:

Appellant:

Mr. Sherfield Bowen

Respondent:

**Mrs. Shannon Jones- Gittens for the Director of
Public Prosecutions.**

Issues:

Criminal appeal – Appeal against sentence — 35

years Sentence — Murder — Whether the sentence was harsh and excessive

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral delivery]

The appellant being deceased, the appellant's counsel seeks leave to withdraw the appeal, the appeal is accordingly dismissed.

Case Name:

**LICS Limited
v
Gay-Yin-Wong**

[ANUHCVP2018/0026]

Date:

Friday, 15th March 2019

Coram:

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

Appearances:

Appellant:

Ms. E. Ann Henry, QC with her Ms. Mandi Thomas

Respondent:

Mr. Cosbert Cumberbatch

Issues:

Interlocutory appeal — Refusal to strike witness statement and witness summaries — Expert evidence — Whether the learned judge erred in law by not considering the requirements of Part 32 of the Civil Procedure Rules — Whether the learned trial judge was wrong in concluding that, as medical men, the intended witnesses could give opinion evidence without being appointed as experts — Whether the learned trial judge failed to apply the well-established principles of law relating to appointment of experts

and failed to strike out from the Witness statement and Summaries those portions that were expert testimony.

Type of Oral
Result / Order
Delivered:

Oral Judgment or Decision

Result / Order:

[Oral delivery]

The appeal is dismissed with costs to the respondent in \$1,000.00.

Reason:

This is an appeal against the order of the High Court judge refusing the application of the appellant to strike out the witness statement of the medical doctor and the witness summaries of two other doctors. The appeal is essentially against the exercise of discretion of the judge, and the circumstances under which such discretion can be successfully impugned are very well circumscribed. The critical ground of appeal was that the witness statement and summaries essentially constituted the evidence of experts and that regard ought to have fallen within the parameters of the rules of CPR which govern expert evidence. The judge however opined that the evidence which was being impugned, that the witness statement and witness summaries did not constitute expert evidence. The judge in his ruling stated that the witness statements and summaries in question do not purport to be expert reports or expert evidence. Since the witness statements and summaries could not thought to be reports or expert evidence of the witness, Part 32 does not apply and the judge went on to say in so far as the witness statements and summaries of the witnesses contained opinion evidence, this is admissible since the witnesses were doctors each of whom examined the claimant. The judge therefore ordered that the application be refused and also made an order of costs. The Court has examined the witness statement and witness summaries which are at the center of this matter. The witness statement of

Dr. Richards is quite short and contains 3 paragraphs. The first paragraph recites that he is a registered medical doctor and a consultant surgeon attached to MSJMC. Paragraph 2 – it states that on 28th October 2013, I examined Mr. Gay-yin Won at the MSJMC. I found that he had 19% partial fitness, thermal burns to his head, face, neck, torso and other extremities. I prepared a medical report dated 9th December 2013 and I signed that report. I also completed a report on Mr. Wong dated 8th of May 2014 and I signed that report and I also recognize it. The court also examined the report attached and counsel further indicated the areas in the report which were a concern to her. Essentially counsel intimated that she objects to everything which follows from “General”, on page 2 of the report which is contained in page 17 and page 18 of the court record. The court has examined the witness statement and also the medical report attached to this witness statement. Upon examining the statement and the report, the court does not share the view that constitutes expert evidence and see no reason to set aside the decision of the judge in this matter. Counsel for the respondent seeks to support the judge’s decision. He referred the court at page 2 of his submissions to the Modern Law of Evidence by Keane 5th Ed, page 59, which states in part a non-expert witness may give evidence on matters in relation to which it is impossible or are virtually impossible to separate his inferences from the perceived facts those inferences are based. In these circumstances, the witness is permitted to express his opinion as a compendious means of conveying to the court the facts he perceived. The admissibility of non-expert evidence is largely the question of degree and the matters open to proof by such evidence defy comprehensive expectations. The learned authors then went on to describe certain situations. It is our view that the doctor who is giving factual evidence may also proffer statement of opinion which are reasonably related to the facts within his knowledge. This is consistent with the statement referred to by the respondent in the Modern Law of Evidence by Keane. Counsel also took issue with the witness summary of Dr. Gallagher and Dr. Walwyn the court also has perused the witness summaries

and questions and again find no reason to interfere with the exercise of discretion of the trial judge in this matter. The law which relates to impugning the exercise of a judge is well known. The circumstances under which this court can interfere are limited. In summary this court should only interfere only when it is satisfied that the judge erred in principle, took into account irrelevant matters or was otherwise clearly wrong. The Court should not interfere with his management decision whereby the judge who has applied the correct principles, and took into account the matters which should have been taken into account and left out matters which are irrelevant unless satisfied that the decision is so clearly wrong that must it be regarded as outside the generous ambit of the discretion entrusted to the judge. There was much discussion in respect to paragraph 3 of the Order. The judge stated that in so far as the witness statement and summaries of the witnesses containing expert evidence, this is admissible since the witnesses were doctors, each of whom examined the claimant. This may seem to be ineloquently stated and on its face, seem to be over broad statement, however, we are still satisfied that the trial judge did not err in the exercise in his discretion. We, as I said earlier, adopt the statement of law which counsel for the respondent referred to from Keane, and repeat the view that a doctor giving practical evidence may proffer statement which are reasonably related to the facts. In the circumstances, the appeal by the appellant is dismissed with costs to the respondent in \$1,000.00.

Case Name:

Bondalyn Monica Jacobs

v

Royal Bank of Canada

[ANUHCVP2018/0036]

Date:

Friday, 15th March 2019

Coram:

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

Appearances:

Appellant: Mr. Kendrickson Kentish with him Ms. Cherise Archibald

Respondent: Ms. E. Ann Henry with her Ms. Chatrisse Beazer

Issues:

Review order of a single judge — Equity of redemption — Breach of chargee statutory duty of good faith — Forfeiture — Section 70 (1) of the Antigua and Barbuda Registered Land Act — Valuation of charged property — Stay of execution of judgement dated 4th October 2018

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral delivery]

1. The court grants a stay of the execution of the judgment of Madam Justice Clare Henry dated 4th October 2018 until the appeal is heard and determined and on the condition the applicant will provide an indemnity in relation to the deposit paid by the successful bidder, the third party, the legal fees and the bank charges.
2. No order as to costs.
3. The appellant shall on or before 3:00 pm on Monday 18th March 2019 execute and file in this court an indemnity in the following terms:
 - i. The appellant shall hold harmless and indemnify Royal Bank of Canada the respondent herein, in respect of any and all claims made by Ms. Marcia Edwards the successful bidder at the auction held on 4th April 2018, and more particularly, in respect of the deposit paid by the said Marcia Edwards in the amount of EC\$15,100.00 together with any legal fees and bank charges including interest incurred by the said Marcia Edwards in respect of the aforesaid auction sale of 4th April 2018.

Reason:

This is the ruling of the court on the application:

On the 4th of October 2018, on the application of the respondent Royal Bank of Canada, Henry J made the following orders:

- 1. That the defendant Bondalyn Jacobs do give the bank immediate access to the said property for the purpose of the Purchase, through her financial institution, carrying out a valuation.**
- 2. The defendant Bondalyn Monica Jacobs do deliver up, within 30 days of this order, possession of the property registered and recorded in the land registry as Registration Section: West Central; Block No: 11 2191B; Parcels 31 and 32.**
- 3. Costs to the bank to be agreed within 21 days.**

The appellant filed a notice of appeal against the decision of the learned judge and made an app for a stay of execution of the judgment of the learned judge. The application for stay was refused by a single judge of the court. The applicant now seeks the full court to vary that order and to grant a stay of execution of the judgment. We have heard the submission of counsel on both sides, there is no dispute in relation to the legal principles that apply to a stay that have been outlined and that have been applied by this court on numerous occasions. We have considered the arguable grounds identified by Mr. Kentish for the applicant. We are of the view that the arguments in relation to section 71 of the Registered Land Act and 75 (2) and the submission in relation to the relief from forfeiture, having regard to the facts of this case, that without a stay the appeal would be rendered nugatory as the application would lose possession of the property. We have considered the prejudice suffered by the applicant and the respondent and the third party bidder and we are of the view that the balance of harm is in favour of the applicant and the risk of injustice is much higher if the stay is not granted. We will therefore grant a stay of the execution of the judgment of Madam Justice Clare Henry dated 4th October 2018 until the appeal is heard and determined and on the condition the applicant will provide an indemnity in relation to the

deposit paid by the successful bidder, the third party, the legal fees and the bank charges.

Case Name: Norman Aviation Flight Training Academy
Inc.
v
[1] Leroy Smith
[2] Dulani Smith
[ANUHCVP2017/0006]

Date: Friday, 15th March 2019

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

Appearances:
Appellant: Mr. Warren Cassell
Respondents: Mr. Hugh Marshall Jr. with him Ms. Kema Benjamin

Issues: Application to strike out appeal—Application for extension of time

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral Delivery]

Application to strike out:

1. The application to strike out having been withdrawn, the application is dismissed.
2. No order as to costs.

Application for extension of time:

1. The application for extension of time having been withdrawn, the application is accordingly dismissed.
2. No order as to costs.

Case Name:	Norman Aviation Flight Training Academy Inc. v [1] Leroy Smith [2] Dulani Smith [ANUHCVAP2017/0006]
Date:	Friday, 15th March 2019
Coram:	The Hon. Mr. Davidson Baptiste, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances:	
Appellant:	Mr. Warren Cassell
Respondents:	Mr. Hugh Marshall Jr. with him Ms. Kema Benjamin
Issues:	Appeal against order of learned trial judge striking out appellant's case
Type of Oral Result / Order Delivered:	Oral Judgment or Decision
Result / Order:	Order: 1. The appeal is allowed. 2. There is no order as to costs. 3. The documents filed by the appellant in relation to the case management order as claimant in the court below in compliance with the case management order are deemed properly filed. 4. The claimant is granted an extension of time until the 15th April 2019 to comply with the case management order made on the 19th September 2016. 5. The Registrar of the Court shall fix a date for the

pre-trial review.

Reason:

We have considered the submissions of Mr. Marshall and we have looked at the record and we are of the view that the learned judge erred in striking out the claim and in those circumstances, we will allow the appeal and no order as to costs.

The appeal is allowed. There is no order as to costs. The documents filed by the appellant in relation to the case management order as claimant in the court below in compliance with the case management order are deemed properly filed. The claimant is granted an extension of time until the 15th April 2019 to comply with the case management order made on the 19th September 2016. The registrar of the court shall fix a date for the pre-trial review.

Case Name:

**St. James Club
v
Sundry Workers
[ANULTAP2018/005]**

Date:

Friday, 15th March 2019

Coram:

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

Appearances:

Appellant:	Mr. Hugh Marshall Jr. with him Mrs. Stacey-Ann Saunders-Osborne
Respondent:	Ms. Asheen Joseph

Issues:

Leave to appeal — Stay of proceedings in the Industrial Court pending the determination of the appeal — Collective bargaining agreement — Whether the judge failed to properly consider and apply provisions of the Antigua and Barbuda Labour Code, the Collective Agreement and the law of agency — Whether the learned judge erred in law in

finding that the Antigua and Barbuda Workers' Union needed to consult with the Respondents — Whether the learned judge failed to consider that the Antigua and Barbuda Workers' Union was already acting with the authority of the Respondents — Whether the Respondent signing the agreement without prejudice had any effect on the agreement in the circumstances — Whether the judge applied the without prejudice rule properly.

Application for an adjournment

**Type of Oral
Result / Order
Delivered:**

Adjournment

Result / Order:

Order

1. The court noting that the submissions of respondent filed yesterday afternoon the court will grant application of adjournment of the appellant.
2. The hearing of the appeal is adjourned to the next sitting of the court of appeal in the state of Antigua and Barbuda during the week commencing 17th June 2019.
3. Leave is granted to the appellant to file submissions in response on or before the 30th April 2019.

Case Name:

**Nelisa Spencer
v
James Herbert**

**[ANUHCVP2016/0003]
[ANUHCVP2018/0043]**

Date:

Friday, 15th March 2019

Coram:	The Hon. Mr. Davidson Baptiste, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances:	
Appellant:	Mr. Sylvester Carrot
Respondent:	Mrs. Kivinee Knight- Edwards
Issues:	[ANUHCVAP2018/0043] — Leave to appeal [ANUHCVAP2016/0003] — Application be deemed part-heard — Matter be re-opened and determined on paper — Application for extension of time to serve claim form/submissions
Type of Oral Result / Order Delivered:	Oral Decision
Result / Order:	It is hereby ordered that: 1. The appeal heard on 28th October 2016 is deemed to have been part heard; 2. The order made by this Court on 28th October 2016 is supplemented to the extent that it is further ordered that, the Court finding no reason to interfere with the exercise of discretion by the Master to extend the time for service of the Claim Form, the Master's order is accordingly affirmed. 3. No order as to costs. 4. In relation to the application for leave to appeal filed in Civil Appeal number 43 of 2018, leave to appeal is granted and, with the consent of the parties, the application for leave to appeal is treated as the appeal. 5. The default judgment granted by the Master on 9th November 2018, in the absence of the appellant (as defendant in the court below), is

hereby set aside, and leave is granted to the defendant to file and serve a defence within fourteen (14) days of the date of this order.

Reason:

By notice of application filed by the appellant on 20th June 2018 in Civil Appeal number 3 of 2016, the appellant seeks the following orders:

- (1) Civil appeal be deemed part heard
- (2) the order expressly set aside
- (3) Judgment in default remains set aside

The grounds of the application can be summarized as follows:

(1) In October 2016, the appeal came before this Court whereupon the appeal was allowed and the default judgment entered in the court below was set aside.

(2) The Court did not at that time consider a portion of the appeal in relation an order made in the court below was set aside.

Having read the written submissions filed by the parties and the oral submissions made by counsel on their behalf, and having considered the authorities referred to us by counsel for the appellant (Hashtroodi v Hancock; Cecil v Bayat and Hoddinott) It is hereby ordered that:

1. The appeal heard on 28th October 2016 is deemed to have been part heard;
2. The order made by this Court on 28th October 2016 is supplemented to the extent that it is further ordered that, the Court finding no reason to interfere with the exercise of discretion by the Master to extend the time for service of the Claim Form, the Master's order is accordingly affirmed.

In relation to the application for leave to appeal filed in civil appeal number 43 of 2018, leave to appeal is granted and, with the consent of the parties, the application for leave to appeal is treated as the

appeal. The Court having considered the submissions made by both parties, and taking into account all the circumstances, and in the interest of justice, the default judgment granted by the Master on 9th November 2018, in the absence of the appellant (as defendant in the court below), is hereby set aside, and leave is granted to the defendant to file and serve a defence within 14 days of the date of this order. No order as to costs.