

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT LUCIA
25th to 29th November 2019

APPLICATIONS AND APPEALS

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

[SLUHCVP2017/0050]

Date: **Monday, 25th November 2019**

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

Appearances:

Applicant/ Appellant:	Ms. Sherene Francis
Respondent:	Mrs. Sardia Cenac-Prospere

Issues: **Civil appeal – Application for conditional leave to appeal to Her Majesty in Council – Application for adjournment – Application to file additional affidavit evidence**

Type of Order: **Directions**

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

IT IS HEREBY ORDERED AND DIRECTED THAT:

- 1. The applicant is at liberty to file and serve further evidence on affidavit no later than 30th December 2019.**
- 2. The applicant shall file and serve written**

submissions in support of the notice of motion on or before 24th January 2020.

3. The respondent shall file and serve written submissions in response on or before 21st February 2020.
4. The hearing of this motion is accordingly adjourned to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 9th March 2020.
5. There is no order as to costs on this adjournment.

Reason:

The respondent sought an adjournment to the sitting of the Court of Appeal in March 2020 due to the illness of counsel with conduct of the matter. The applicant did not oppose the request for adjournment and requested permission to file supplemental affidavit evidence in support of the application. The respondent did not oppose the applicant's request.

Case Name:

**Michael Joseph
v
RBTT Bank Caribbean Limited**

[SLUHCVAP2018/0027]

**Michael Joseph
v
[1] Indra Hariprashad-Charles
[2] William Charles**

[SLUHCVAP2018/0033]

Date:

Monday, 25th November 2019

Coram:

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

Appearances:

Appellants: Mr. Horace Fraser

Respondents: Mr. Mark Maragh for RBTT Bank Caribbean Limited

Mr. Dexter Theodore, QC for Indra Hariprashad-Charles
and William Charles

Issues: Application to set aside order of single judge – Order made
in absence of a party

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED BY CONSENT THAT:

1. The order dated 14th May 2019, consolidating the
appeals in SLUHCVAP2018/0027 and
SLUHCVAP2018/0033 is hereby set aside.
2. The said appeals shall be heard separately and
consecutively and the record in
SLUHCVAP2018/0033 shall stand as the record in
SLUHCVAP/2018/0027.
3. SLUHCVAP2018/0027 shall be heard first.
4. There shall be no order as to costs.

Reason: The parties filed a consent order which was approved (as
amended) and adopted as the order of the Court.

Case Name:

[1] Wayne Marcellin
[2] Vernata Kaidou
v
[1] JMJ Inc.
[2] IHM Inc. Ltd
[3] Cecil Lay

[SLUMCVAP2019/0001]

Date: Monday, 25th November 2019

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

Appearances:

Appellants: Mr. Collin Foster

Respondents: Mrs. Maureen John-Xavier

Issues: Civil appeal – Landlord and tenant possession claim and counterclaim – Dismissal of claim and counterclaim without hearing – Whether learned magistrate erred in determining claim without hearing the evidence on the parties’ behalf

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The learned Magistrate erred in proceeding to determine the claim over which she assumed and had jurisdiction without allowing the parties a trial so as to determine the matter on its merits.
2. The Court, being mindful that the counterclaim was one in excess of the jurisdiction of the Magistrate, the matter is remitted to the High Court for the hearing of the claim and the counterclaim.
3. There shall be no order as to costs as agreed by the parties.

Reason: The matter before the learned magistrate was a landlord and tenant possession claim and counterclaim. There was a preliminary issue in relation to the jurisdiction of the District Court to hear the matter. The magistrate determined the issue of jurisdiction, and in essence proceeded on the basis that the court was seized of jurisdiction to hear the possession claim. The magistrate went on to dispose of the substantive claim on an examination of the pleadings only, and struck out the defendants’ counterclaim.

The complaint before the Court of Appeal was that the

magistrate erred in determining the substantive possession claim without hearing the evidence of the parties' witnesses, and without the parties having had the opportunity to examine and cross-examine witnesses in support of their respective cases.

The Court found that magistrate erred in so doing. Noting that the value counterclaim was in excess of the District Court's jurisdiction, the Court further took the view that it was appropriate to remit the hearing of the claim and counterclaim to the High Court.

Case Name:

**The Labour Tribunal
v
Saint Lucia Electricity Services Ltd.
[SLUHCVAP2019/0002]**

**Saint Lucia Civil Service Association
v
Saint Lucia Electricity Services Ltd.
[SLUHCVAP2019/0003]**

Date:

Monday, 25th November 2019

Coram:

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

Appearances:

Appellants: Mr. Seryozha Cenac and Ms. Tina Louison for the Labour Tribunal

Mr. Thaddeus M. Antoine for the Saint Lucia Civil Service Association

Respondent: Mr. Dexter Theodore, QC with Ms. Diana Thomas

Issues:

Civil appeal – Judicial review – Labour Act Cap. 16.04 Laws of Saint Lucia – Statutory interpretation – Whether section

22(2) of the Labour Act invalidates contractual provisions which are inconsistent with the Act and which predate the coming into force of the Act – Whether absurdity arises from literal interpretation of section 22(2) – Whether purposive approach to interpretation should be adopted – Whether coexistence of a lower contractual retirement age with the retirement age under the Labour Act amounts to a lower than minimum standard in contravention of section 13(4) of the Labour Act – Whether private pension scheme of the Saint Lucia Electricity Services Limited was harmonised with the National Insurance Corporation pension scheme

Type of Order:

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The parties shall provide the Court, on or before 20th December 2019, with the explanatory notes to the provisions of the Labour Act, the Hansard and other papers relevant to the introduction of the Labour Act.
2. Judgment is reserved.

Reasons:

The appeal concerned the interpretation of the Labour Act. The appellants invited the Court to take a purposive approach to the interpretation of the Act, taking into consideration the purpose for which sections 13 and 22 were enacted. The appellants however did not produce any documents proving the intentions of Parliament in relation to those sections. The Court accordingly directed that these documents be produced.

Case Name:

James Junior Frederick

v

The Attorney General

[SLUHCVP2017/0046]

Date:

Tuesday, 26th November 2019

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

Appearances:

Appellant: Mr. Colin Foster

**Respondent/
Applicant:** Ms. Karen Bernard and Ms. Antonia Charlemagne

Issues: Civil appeal – Application to strike out notice of appeal for failure to file written submission

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application to strike out the notice of appeal is dismissed having been withdrawn by the respondent.
2. The respondent shall file and serve written submissions with authorities on or before 31st January 2020.
3. The appellant is granted leave to reply, if necessary, on or before 14th February 2020.
4. The hearing of the appeal is adjourned to the next sitting of the Court in Saint Lucia during the week commencing 9th March 2020.
5. No order as to costs.

Reason: The respondent/applicant filed an application to strike out the appeal on the ground that the appellant had, on two occasions, failed to comply with an order to file skeleton arguments in support of the appeal.

The Court noted that it is not likely to grant an application to strike out an appeal on the basis of non-compliance with an order to file submissions. Striking out, in such circumstances, would most likely be a sanction that is out of proportion to the complaint. The Court further noted that, on the eve of the hearing of the application, the appellant had filed submissions without seeking the Court's leave or indulgence. The Court took the view that

this was not the appropriate course to follow.

Following discussions with counsel for the appellant, the respondent withdrew the application to strike out the notice of appeal. The Court therefore dismissed the application. The Court noted, lastly, that, having received the appellant's submissions belatedly, the respondent was in need of sufficient opportunity to respond. In those circumstances, the Court granted leave to the respondent to file and serve written submissions with authorities and adjourned the hearing of the appeal.

Case Name:

**Brandon Charles
v
The Attorney General**

[SLUHCVAP2017/0039]

Date:

Tuesday, 26th November 2019

Coram:

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

Appearances:

Appellant: Mr. Gerard Williams

Respondent: Mr. George Charlemagne and Ms. Antonia Charlemagne

Issues:

Civil appeal – Unlawful trespass – Challenge to findings of fact made by the learned trial judge – Bad faith – Whether the learned trial considered irrelevant facts in making the determination that there was no bad faith

Type of Order:

Oral Judgment

Result / Order:

**IT IS HEREBY ORDERED THAT:
1. The appeal is dismissed.
2. No order as to costs.**

Reason:

This was an appeal against the judgment of the learned judge by which the judge indicated, quite clearly, that he had heard the evidence of witnesses for both parties and preferred the evidence of the defendant, on which basis the claim was dismissed.

The appellant, who was the claimant in the court below, has filed an appeal raising several grounds of law on the basis of which he asked the Court to overturn the judge's judgment. Although, in his oral submissions before the Court, Mr. Williams raised a number of issues of fact upon which he submitted that the judge had not made factual conclusions. The Court engaged counsel and was satisfied that the judge reached material conclusions of fact. The Court was therefore concerned with the findings of law made by the judge which are the findings that are the subject of the notice of appeal.

The Court considered the submissions made on behalf of both the appellant and the respondent and, like the trial judge who heard the evidence of both sides and preferred the evidence of the defendant, the Court preferred the submissions of the respondent. The Court was satisfied that the judge considered all the relevant facts and sees no basis upon which to overturn the judge's findings of fact or law.

Case Name:

CLAIM NO. SLUHCV2008/0964

BETWEEN

**[1] Roger Goring
[2] Claver Estaphane
[3] Melba Sonny**

v

**[1] Florence Chedy
[2] Tedburt Theobalds**

Consolidated with

CLAIM NO.: SLUHCV2008/0634

Kissy Williams

v

[1] Florence Chedy

[2] Tedburt Theobalds

[SLUHCVAP2014/0017]

Date: Tuesday, 26th November 2019

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

Appearances:

Appellants: Mr. Gerard Williams

Respondents: No appearance

Issues: Civil appeal – Adjournment – No proof of service of notice of hearing on second respondent

Type of Order: Adjournment

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:
The matter is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 9th March 2020.

Reason: The Court noted that there was no evidence of service of the notice of hearing on the second respondent. The hearing of the appeal therefore could not proceed.

Case Name:

**Mary Francis
v
Development Control Authority**

[SLUHCVAP2017/0021]

Date:

Tuesday, 26th November 2019

Coram:

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

Appearances:

Appellant: Mr. Horace Fraser

Respondent: No appearance

Issues:

Civil appeal – Adjournment – No proof of service of notice of hearing on the respondent

Type of Order:

Adjournment

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 9th March 2020.**
- 2. The appropriate officer of the Development Control Authority shall be served with notice of hearing of the appeal on or before 16th December 2019.**

Reason:

The Court noted that there was no evidence of service of the notice of hearing on the respondent. The hearing of the appeal therefore could not proceed.

Case Name:

The Attorney General of Saint Lucia

v

Darrel Montrope

[SLUHCVP2019/0021]

Date:

Wednesday, 27th November 2019

Coram:

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

Appearances:

Appellant: Mr. Garth Patterson, QC with Mr. Mark Maragh and Mr. Rene Williams

Mr. Vern Gill for the Public Service Commission (the first-named defendant to the substantive claim in the court below)

Respondent: Mr. Anthony W. Astaphan, SC with Dr. Kenny D. Anthony and Mr. Kendrickson Kentish

Issues:

Interlocutory appeal – Originating motion for relief under the Constitution of Saint Lucia Cap. 1.01 Laws of Saint Lucia – Preliminary objection – Whether ambiguous notice of hearing issued by High Court was notice of first case management conference for the originating motion – Whether hearing conducted by learned judge pursuant to notice of hearing was a case management conference – Effect of application to strike out statement of case – Whether leave required to amend statement of case after an application to strike out the statement of case has been filed – If leave is required to amend the statement of case, whether the learned judge erred in permitting the amendments on the basis that they were not fanciful – Effect of application pursuant to CPR 9.7 – Whether learned judge was correct in determining an oral application to amend statement of case before determining a CPR 9.7 application filed earlier in time

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name: Dr. Abner James
v
The Medical and Dental Council
[SLUHCVAP2018/0018]

Date: Wednesday, 27th November 2019

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

Appearances:
Appellant: Mr. Horace Fraser
Respondent: Mrs. Wauneen Louis-Harris

Issues: Civil appeal – Judicial review – Claim for breach of common law right to work – Delay in considering application for practicing certificate on requirement imposed to undergo anger management CPR 56.8 – Claim for other relief or remedies sought in administrative law proceedings – Whether appellant established an entitlement to damages for loss of chance to earn an income, distress and inconvenience in his claim for administrative orders – Whether appellant was required to prove a substantive right to the damages claimed in private law pursuant to CPR 56.8 – Costs in administrative law proceedings – Partial success on application for administrative orders – Whether judge erred in making no order as to costs – Whether appellant was entitled to costs having been successful on one out of nine orders sought – Previous conduct in related proceedings – Whether judge correctly took into account appellant’s conduct in previous

related proceedings in making costs award

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name: Rock Jean
v
The Honourable Attorney General of Saint Lucia
[SLUHCVP2019/0014]

Date: Thursday, 28th November 2019

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

Appearances:

Appellant:	Mr. Rock Jean, in person
Respondent/ Applicant:	Ms. Karen Bernard

Issues: Civil appeal — Application to strike out notice of appeal —
Whether appellant needed leave to appeal — Appeal from
order striking out claim — Whether leave is required to
appeal against a strike-out order

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:
1. Notice of appeal is struck out.
2. The appeal as a consequence is dismissed.

Reason:

The appellant filed a notice of appeal by which he sought to appeal against the order of a judge striking out his claim. The appellant's notice of appeal was filed without leave of the Court. The Attorney General applied to strike out the notice of appeal on the basis that it was filed without leave and was therefore a nullity.

The Court recognised that there are several cases which are clear that a striking out order is an interlocutory in nature, because a striking out application will not bring a matter to an end whichever way it is decided. If a judge were to accept and rule in favour of the striking out application, the matter would come to an end. On the other hand, if a judge were to rule against the application, the matter would proceed.

The appellant therefore required leave to appeal the judge's striking out order. Leave having not been granted to the appellant, the Court found that the notice of appeal was a nullity.

Case Name:

**Juliet Sutherland
v
Bank of Saint Lucia Limited
[SLUHCVP2016/0005]**

Date:

Thursday, 28th November 2019

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

**Appellant: Ms. Lydia Faisal holding papers for Mr. Alfred Alcide
Respondent: Mr. Leslie Prospere**

Issues: Civil appeal – Application for adjournment

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

This matter is adjourned until the next sitting of the Court of Appeal in Saint Lucia during the week commencing 9th March 2020.

Reason: Counsel for the appellant was unwell and not present. The respondent had also not filed skeleton arguments in support of the appeal. The appeal therefore could not proceed as scheduled.

Case Name: [1] Durand Dorseide
[2] Marlins Dorseide
v
West Indies General Insurance Company Ltd.

[SLUHCVP2016/0029]

Date: Thursday, 28th November 2019

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

Appearances:

Appellants: Ms. Lydia Faisal

Respondent: Ms. Sueanna Frederick holding papers for Mr. Dexter Theodore, QC

Issues: Civil appeal – Application for adjournment

Type of Order

Adjournment

**Result / Order
and Reasons:**

[Oral Delivery]

The application for an adjournment being sought on the basis that the respondent's written submissions were only received on Monday, 25th November 2019, the appellants not being in a position to respond, and counsel for the respondent consenting to the adjournment, IT IS HEREBY ORDERED THAT:

The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 9th March 2020.

Case Name:

Glenroy Shawn Victor

v

The Queen

[SLUHCRA2014/0001]

Date:

Friday, 29th November 2019

Coram:

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

Appearances:

Appellant: Glenroy Shawn Victor, in person

Respondent: Mr. Stephen Brette for the Director of Public Prosecutions

Issues:

Criminal Appeal – Application for adjournment

Type of Order:

Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

The hearing of the appeal is adjourned to the next Court of Appeal sitting in Saint Lucia during the week commencing 9th March 2020.

Reason: Counsel for the appellant indicated, by way of letter, that he was unwell and therefore unable to proceed with the appeal as scheduled.

Case Name: Lance Wilson
v
The Queen

[SLUHCRA2015/0006]

Date: Friday, 29th November 2019

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

Appearances:

Appellant: Mr. David Moyston

Respondent: Mr. Stephen Brette for the Director of Public Prosecutions

Issues: Criminal Appeal – Application for adjournment

Type of Order: Directions

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The appellant shall file and serve skeleton arguments with authorities on or before 31th January 2020.
2. The respondent shall file and serve skeleton

arguments with authorities on or before 28th February 2020.

3. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Saint Lucia scheduled for the week commencing 9th March 2020.

Reason:

The appellant had not filed skeleton arguments in support of the appeal. The Court noted that the notice of appeal was filed on 7th Aug 2015, that on 11th Jan 2017, the appellant also filed a notice of intention to proceed with the appeal, and that notwithstanding the significant time that had passed, the appellant to date had not filed skeleton arguments. Counsel for the appellant, Mr. Moyston, gave an undertaking to file the appellant's skeleton arguments by the end of the day. The Court indicated that this was the last opportunity being given for the appellant to file skeleton arguments.

Case Name:

Peter Jason Francis
v
The Police (Renan Promesse PC 607)
[SLUMCRAP2017/0002]

Date:

Friday, 29th November 2019

Coram:

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

Appearances:

Appellant:	Mr. Huggins Nicholas
Respondent:	Ms. Isa Cyril for the Director of Public Prosecutions

Issues:

Criminal Appeal – Application for an adjournment

Type of Order:

Directions

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The respondent shall file and serve skeleton arguments with authorities on or before 31st January 2020.
2. The hearing of the appeal is adjourned to the next Court of Appeal sitting in Saint Lucia commencing 9th March 2020.

Reason: The respondent filed an application for an adjournment in order to file written submissions in support of the appeal. The appellant was not in remand, had been granted bail pending the determination of the appeal, but was not present in the Court. The Court noted that the respondent may have been absent from the hearing on account of a misunderstanding as to the venue of the appeal hearing. In light of the appellant's absence, Mr. Huggins joined with the respondent's adjournment application.

Case Name: Marie Claudina Angelien
v
The Queen
[SLUHCRA2017/0010]

Date: Friday, 29th November 2019

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

Appearances:
Appellant: Mr. Alberton Richelieu
Respondent: Mr. Stephen Brette for the Director of Public Prosecutions

Issues: Criminal Appeal – Appeal against conviction – Provocation
– section 91 of Criminal Code of Saint Lucia Cap. 3:01

Laws of Saint Lucia – Whether judge erred in not putting the defence of provocation to the jury – Whether there was sufficient evidence before the judge for the defence of provocation to be put the jury – Whether contents of appellant’s caution statement and evidence at trial were sufficient to raise the defence of provocation as a matter of law

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against conviction is allowed.**
- 2. The conviction for murder is substituted for a conviction for manslaughter.**
- 3. The appellant’s sentence of 18 years imprisonment is set aside and substituted with a sentence of 11 years and 5 months, to commence from the date of sentence, on 12th June 2017, taking into account the period of 7 months**

Reason:

The appellant was convicted of murder and was sentenced to imprisonment for a term of 18 years. The sole ground of appeal advanced was that the learned judge erred in failing to put the defence of provocation to the jury, the defence having arisen on the evidence. Counsel for the appellant submitted that the defence of provocation arose in the statement under caution made by the appellant. More specifically, counsel referred to the portion of the caution statement which reads, “Don’t let me perform what I almost performed on you last night” and the portion of the statement, wherein the appellant said she saw the deceased grab his waist and begin to lift his shirt.

Learned counsel for the appellant referred the Court to a number of authorities including Dwight Wright v Regina [2010] JMCA Crim 17. The principles in relation to the evidence required for provocation and when this defence should be left to the jury are well-illustrated in the cases referred to by the appellant, as well as the case of R v Acott [1997] 1 WLR 306 referred to by the respondent. In the Court’s view, having regard to the evidence that was led at the trial, the learned judge ought to have left the defence of provocation to the jury. The Court found that in

failing to do so the learned judge erred. The Court therefore allowed the appeal against the appellant's conviction for murder, and substituted, in its place, a conviction for manslaughter.

In relation to the appellant's sentence, the Court further set aside the sentence imposed in relation to the conviction for murder. Both counsel for the appellant and respondent submitted that the Court should apply the benchmark sentence of 15 years. The Court noted, and it was agreed on both sides, that the appellant had no previous convictions. It was submitted by the respondent, and the Court agreed, that a reduction of 3 years should be made in relation to the appellant's previous good conduct – that would leave a term of imprisonment of 12 years.

The Court further noted that the appellant has spent a period of 7 months on remand; deducting this period from 12 years, left 11 years and 5 months. The Court therefore substituted the appellant's 18-year sentence of imprisonment to a term of 11 years and 5 months to commence from the date of sentence, being 12th June 2017.

Case Name:

**Merlisha Walters
v
WPC 210 Jayhan Emmanuel
[SLUMCRAP2016/0004]**

Date:

Friday, 29th November 2019

Coram:

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

Appearances:

**Appellant: Mr. Sandy John
Respondent: Mr. Bernick Faisal**

Issues: Criminal appeal – Appeal against conviction – Whether sufficient evidence for magistrate to conclude that the appellant was guilty – Whether there was sufficient evidence of knowledge by appellant

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:
The appeal against conviction is dismissed, and the conviction and sentence are affirmed.

Reason: The appellant was charged and convicted on 3 counts in relation to possession of drugs and has appealed against her conviction.

The evidence before the magistrate was that the appellant, who was an employee at the Bordelais Correctional Facility, brought a cake containing marijuana into the facility. The appellant led evidence to the effect that she received the cake as a gift and did not know of its contents. The Crown identified a number of inconsistencies which arose on the appellant's case and suggested that the appellant's claim that she did not know about the contents of the cake, was untrue.

The crux of the appeal was that there was insufficient evidence on which the learned magistrate could have found the appellant guilty of the offences charged. In particular the appellant challenged whether there was sufficient evidence before the magistrate that the appellant knew that a cake contained marijuana.

Having reviewed the evidence led by the Crown and the submissions of the appellant, both written and oral, the Court took the view that the learned magistrate did not err in coming to the conclusion that the appellant was guilty of the offences charged. In the Court's view, the evidence was overwhelming and the Crown would have proved its case beyond a reasonable doubt.

Case Name:

**Barthelmy Fedee
v
PC 436 Charley (The Police)
[SLUMCRAP2016/0001]**

Date:

Friday, 29th November 2019

Coram:

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

Appearances:

Appellant: Mr. Sandy John

Respondent: Mr. Bernick Faisal

Issues:

**Criminal appeal – Appeal against conviction and sentence
– Assault – Whether sentence imposed by magistrate erred
in excess of magistrate’s jurisdiction – Whether sentence
passed in excess of jurisdiction renders conviction unsafe**

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against conviction is dismissed and the conviction is affirmed.**
- 2. The sentence imposed by the learned magistrate is set aside in its entirety and substituted with a fine of \$500 to be paid on or before 31st December 2019 or, in default, a term of 2 weeks imprisonment.**

This is an appeal by Mr. Fedee against the decision of the learned magistrate by which the magistrate: (i) convicted Mr. Fedee of assault; (ii) fined him the sum of \$1000.00 to be paid on or before 3rd October 2017; (iii) ordered him to apologise to the complainant, in open court, and in lieu of such apology, a fine; and (iv) ordered him to undergo anger management in default of which he would be

imprisoned for 3 months. He has appealed against his conviction and sentence.

The appellant argued that the magistrate did not have jurisdiction to order an apology with a fine in default, or anger management with imprisonment in default. The Crown conceded that the magistrate did not have such jurisdiction. The appellant further argued that the magistrate divested herself of jurisdiction when she imposed those sentences, and that, as a result, the conviction was unsafe and also made without jurisdiction.

The Court took the view firstly, that the learned magistrate was at no time divested of jurisdiction and that a sentence imposed in excess of jurisdiction could not render the conviction unsafe. The Court, upon reviewing the evidence and submissions of counsel, further took the view that there was no basis upon which it could interfere with the learned magistrate's conviction.

In relation to the sentence imposed, the Court however took the view that, though the learned magistrate, having convicted the appellant, also had jurisdiction to sentence him, the sentence imposed was excessive. Accordingly, the appeal against sentence was allowed. The sentence imposed by the learned magistrate was substituted for a sentence of \$500.00 to be paid by the appellant in default of which, he shall be remanded to two weeks in prison. This sentence is to be paid on or before 31st December 2019.