

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT LUCIA
8th – 12th APRIL 2019

JUDGMENTS

Case Name: The Supervisory Authority
v
[1] Cresswell Overseas S.A.
[2] Meini Bank (Antigua) Ltd.

[ANUHCVP2017/0003]
(Antigua and Barbuda)

Date: Wednesday, 10th April 2019

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Horace Fraser holding papers for Mr. Reginald Armour, SC
Respondent:	Ms. Natalie Augustin holding papers for Mr. Kelvin John for the second named respondent

Issues: Civil Appeal – Mutual Legal Assistance Request – Mutual Legal Assistance in Criminal Matters Act – Money Laundering Act – Black Swan Principle – Inherent jurisdiction – Jurisdiction pursuant to international treaties – Ratification of Treaties Act – Jurisdiction to register foreign criminal restraint orders – Whether judge had jurisdiction to register a Brazilian criminal restraint order

Result and Reason: Held: dismissing the appeal and awarding costs to Cresswell, that:

1. The registration of foreign criminal restraint orders, like the Moro Order, is governed by section 27 of MACMA. It is clear that section 27, without more,

does not apply to the registration of orders from non-Commonwealth countries. Brazil is not a Commonwealth country and as such, the very clear wording of section 27 automatically precludes its application to Brazilian orders. Accordingly, the judge was correct in concluding that he did not have the jurisdiction to register the Moro Order pursuant to section 27, on the basis that the section does not apply to Brazilian orders.

Section 27 of the Mutual Assistance in Criminal Matters Act 1993, Act No. 2 of 1993 considered.

2. The existence of regulations which satisfy section 30 of MACMA, or some other legislation having the effect of section 30 regulations, is a necessary precondition to a registration order being made under section 27 in respect of orders from a non-Commonwealth country. Without any regulations or some other legislation, section 27 does not vest the court with jurisdiction to register such orders. The 2016 Regulations were made almost 5 months after the judge's registration of the Moro Order. As a result, the 2016 Regulations could not have given the court jurisdiction to register the Moro Order, and in the absence of any legislation having the same effect, the 22nd July registration order was made without jurisdiction and was without any legal effect.

Section 30 of the Mutual Assistance in Criminal Matters Act, Act No.2 of 1993 considered; *The Attorney General v Samuel Knowles Jnr and another* [2017] UKPC 5 distinguished.

3. Section 6 of MACMA recognises and preserves the use or development of existing or future forms of co-operation in criminal matters, in the context of two categories of relationships: (i) Antigua and Barbuda (on the one hand) and any Commonwealth country (on the other hand); and (ii) Antigua and Barbuda or any enforcement agencies or prosecuting authorities in Antigua and Barbuda (on the one hand) and, the International Criminal Police Organization ("INTERPOL") or any such agencies or authorities outside of Antigua and Barbuda (on the other hand). The request from the government of Brazil does not fall within either of the categories of relationships addressed in section 6. As such, section 6 does not enlarge the court's jurisdiction to register the Moro Order, or to consider alternative

methods of registration.

Section 6 of the Mutual Assistance in Criminal Matters Act 1993, Act No. 2 of 1993 considered; Quazi v Quazi [1979] 3 WLR 833 applied; DPP v Jordan [1977] AC 699 applied.

4. Sections 19 and 19A of the MLPA are concerned with the court's power to grant an injunction in respect of the property of a person who has been charged or convicted of a money laundering offence. It is clear that neither section 19 nor 19A was intended to, or does in fact, clothe the court with jurisdiction to make a registration order. As such, the Authority is not correct in its assertion that section 19A empowered the judge to grant a registration order.

Sections 19 and 19A of the Money Laundering (Prevention) Act 1996, Act No.9 of 1996 considered.

5. It is true that section 23 of the MLPA is concerned with the provision of legal assistance in criminal cases, particularly money laundering cases. However, in so far as section 23 refers to the "limits of their respective legal systems", the section intends to defer to the laws of Antigua and Barbuda and the laws of the relevant foreign state, when it is that legal assistance falls to be provided. In the context of this appeal, section 23 of the MLPA therefore redirects one's focus to the rules set out in Part 72 of the CPR and sections 27 and 30 of MACMA, which regulate the registration of orders like the Moro Order. Given the earlier finding that the requirements of sections 27 and 30 of MACMA were not satisfied, it is not possible for the Authority to obtain a registration order on the basis of section 23 of the MLPA. Accordingly, the judge did not err in failing to grant the registration order on the basis of that section.

Section 23 of the Money Laundering Prevention Act 1996, Act No. 9 of 1996 considered.

6. In order for the court to rely on any of the treaties cited for jurisdiction to register the Moro Order, the treaties would have to be ratified in accordance with section 3(3) of the Ratification of Treaties Act and have become part of the laws of Antigua and Barbuda. There is no evidence that the treaties relied upon were ratified in accordance with section 3(3).

As such, the treaties would not form part of the laws of Antigua and Barbuda, and could not confer jurisdiction on the court to register the Moro Order. In any event, the treaties themselves, in almost identical language, defer to the domestic laws of signatory states on the processing of mutual legal assistance requests. The ineluctable conclusion therefore is that these treaties did not provide any basis upon which the Moro Order could have been registered.

Section 3 of the Ratification of Treaties Act CAP 364, Revised Laws of Antigua and Barbuda 1992 applied; Resolution Ratifying United Nations Convention Against Transnational Organized Crime S.I. No.54 of 2002 considered; Resolution of the House of Representatives Ratifying the Inter-American Convention on Mutual Assistance on Criminal Matters S.I. No.15 of 2003 considered; Resolution Ratifying the Inter-American Convention Against Corruption (S.I. No. 16 of 2003) considered.

7. The Black Swan Principle appears to invoke the court's inherent jurisdiction to give ancillary relief in support of civil proceedings in another jurisdiction, in which a money judgment is given or is expected to be given, and not in support of criminal (or quasi-criminal) proceedings like the money laundering proceedings which gave rise to the Moro Order. Additionally, a general common law principle, like the Black Swan Principle, which seeks to invoke the court's inherent jurisdiction, is not intended to circumvent or derogate from statutory regimes that operate toward the same end. As a result, the Black Swan Principle would be precluded from application by virtue of the detailed process for the registration of foreign orders which is set out in sections 27 and 30 of MACMA, and which governs the registration of orders like the Moro Order. For these reasons, the Black Swan Principle could not be utilised to register the Moro Order.

Health Service Executive of Ireland v Z and others [2016] 3 WLR 791 applied; Westminster City Council v C and others [2009] 2 WLR 185 applied; Black Swan Investment I.S.A v Harvest View Limited et al BVIHCV2009/0399 (delivered 23rd March 2010, unreported) considered.

APPLICATIONS AND APPEALS

Case Name:

Anthony Gilbert

V

The Queen

[SLUHCRA2018/0002]

Date:

Monday, 8th April 2019

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. John Carrington, Justice of Appeal [Ag.]

Appearances:

Applicant: No appearance

Respondent: Mr. Daarsrean Greene, Director of Public Prosecutions

Issue:

Application for leave to appeal against sentence

**Type of Result
/ Order**

Directions

**Delivered
(if applicable):**

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The Director of Public Prosecutions is directed to file submissions on the application by Thursday, 11th April 2019 by 3 pm.**
- 2. The application is adjourned for consideration on Friday, 12th April 2019 at 9 am before Panel 1.**

Reason:

The Court was not in possession of any information in relation to the applicant's conviction and requested that the learned Director of Public Prosecutions file submissions to assist in the determination of the matter.

Case Name:

**Elesia Crisp
v**

The Attorney General

[SLUHCVAP2017/0038]

Date:

Monday, 8th April 2019

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, Justice of Appeal [Ag.]**

Appearances:

Applicant: Mr. Horace Fraser

Respondent: Mr. Rene Williams, Senior Crown Counsel

Issues:

**Application to set aside order of the court made in party's
absence – Rule 62.22 of the Civil Procedure Rules 2000 –
Restoration of appeal dismissed for want of prosecution –
Whether conditions in CPR 62.22 satisfied**

**Type of Result
/ Order
Delivered
(if applicable):**

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. SLUHCVAP2017/0038 which was dismissed for want of prosecution on 16th November 2018 is hereby restored.**
- 2. The hearing of the appeal is scheduled for the next sitting of the Court of Appeal in the State of Saint Lucia during the week commencing 1st July 2019.**

Reason:

The applicant applied to the Court pursuant to rule 62.22 of the Civil Procedure Rules 2000 to set aside an order of the Court made on 16th November 2018 dismissing the appeal. Neither counsel for the applicant nor the applicant was present when the order was made. Counsel indicated that the reason for failing to attend the hearing was because he had difficulty departing Saint Marteen to prosecute the appeal. He indicated that because of the cancellations by LIAT he could not travel to St. Lucia. LIAT, having canceled his flight scheduled for 14th November 2018,

prevented him from appearing before the Court to prosecute the appeal which was scheduled for 15th November 2018. On 15th November 2018, the Court adjourned the matter to 17th November 2019. Counsel told the Court that the flight was rescheduled for 16th November 2018 but was then again canceled. This cancellation he said prevented him from getting to Saint Lucia for 17th November 2018 to prosecute the appeal. Counsel indicated that futile efforts were made to have other counsel hold papers for him.

Counsel explained that the applicant did not attend Court on his instructions as he was of the erroneous belief that the Court would not sit based on the communication of his inability to attend. Her absence was not of her own motion and was not a deliberate choice. He cited *Anthony Clyne v The Guyana & Trinidad Mutual Life Insurance Ltd GDAHCV2008/0009* (delivered 30th March 2010, unreported) to support his position that a failure to comply with rules of court which is the fault of the legal practitioner and not the litigant would not amount to an intentional failure to comply with the rules.

The Court, having heard the submissions of counsel for the applicant and the Crown having no objection to the application, was satisfied that the applicant had met the requirements of CPR 62.22.

Case Name:

The Attorney General

v

KCL Capital Money Market Brokers Ltd

[SLUHCVAP2017/0042]

Date:

Monday, 8th April 2019

Coram:

Appearances:

Appellant: Mr. Rene Williams with him, Mr. George K. Charlemagne

Respondent: Mr. Leslie Prospere with him, Ms. Kristian Henry

Issues:	Civil appeal – Ownership of accounts receivables – Whether matter proper for preliminary resolution – Whether question of ownership of accounts receivables open to judge – Whether judge erred in finding that previous garnishee order made in different proceedings in favour of subcontractor for sum due from the government interfered with the Government’s contractual obligations to the appellant – Whether judge erred in finding that the appellant remained contractually liable to make payments to respondent notwithstanding garnishee order
Type of Result / Order Delivered (if applicable):	Oral Judgment
Result / Order:	IT IS HEREBY ORDERED THAT: 1. The appeal is allowed and the orders made by the judge on the hearing of the application for the determination of preliminary questions are set aside. 2. The matter is remitted to the High Court for determination of the case as arising from the pleadings of the parties. 3. The matter is to be determined by a different judge of the High Court. 4. Each party to bear its own costs.
Reason:	This is an appeal from the decision of the commercial division in the High Court in Saint Lucia on two preliminary questions. The preliminary questions arose in the context of a claim by the respondent to this appeal, KCL Capital Money Market Brokers Ltd, that centered on two main issues. Firstly, whether it was the owner of certain accounts receivables of Asphalt & Mining (Saint Lucia) Company Limited due from the Government of Saint Lucia and secondly, whether the garnishee order that had been made in different proceedings in favour of L Caribbean Construction Inc. which had been paid by the Government of Saint Lucia interfered with the Government’s contractual obligations to KCL that form the terms of the receivables. The Government, in its defence, put the claimant to proof as to its ownership of the receivables thereby creating the area of fact that was in dispute. As it turned out the learned judge felt that the determination of that question of fact was critical to the determination of the questions that had been put to her as preliminary questions for her determination and she proceeded to do so in her judgment.

The Government appeals against the orders made by the learned judge which included the order of judgment against the government pursuant to her powers under rule 26(1)(2)(i) of the Civil Procedure Rules 2000 which was available to her when the preliminary questions were to be determined.

Having heard arguments of counsel in the matter, the Court was of the view that in light of the disputes arising from the pleadings as to the issue of fact which the learned judge felt that it was necessary to determine, this was not a proper situation for determination of the matter on the preliminary question posed to the judge and that the proper course was for there to be a full ventilation of the matter, by trial, at which the disputed questions of fact could also be more fully addressed by the tribunal hearing the matter.

In the circumstances, the Court allowed the appeal of the appellant and remitted the matter to the High Court for a determination of the case as arising from the pleadings of the parties.

Case Name:

[1] Daniel Forde

[2] Ian Forde

v

The Attorney General

[SLUHCVAP2017/0024]

Date:

Monday, 8th April 2019

Coram:

Appearances:

Appellants: Mr. Horace Fraser

Respondent: Mr. Seryozha Cenac, Senior Crown Counsel

Issues:

Civil appeal – Civil asset forfeiture – Jurisdiction of magistrate under section 29(a) of Proceeds of Crime Act

(Amended) – General jurisdiction of magistrate unamended Civil Procedure Code – Whether amendment purports to vests in a magistrate jurisdiction exercised by judge of the High Court– Whether section 49 unconstitutional null and void – Whether magistrate had jurisdiction to entertain proceedings involving forfeiture of an amount of cash above \$5000.00 limit

**Type of Result
/ Order
Delivered
(if applicable):**

N/A

Result / Order:

**[Oral delivery]
IT IS HEREBY ORDERED THAT:
Judgment is reserved**

Case Name:

**Prudence Robinson
v
Sagicor General Insurance Inc.
Formerly Barbados Fire & Commercial Insurance
Company Ltd.**

[SLUHCVAP2017/0034]

Date:

Monday, 8th April 2019

Coram:

Appearances:

Appellant: Ms. Lydia Faisal

Respondent: Mr. Mark Maragh

Issues:

Civil appeal – Motor Vehicle Insurance (Third Party Risks) Act – Authenticity of cover notes submitted by parties – Whether judge committed an error of law by misapplying the meaning and import of section 6 of the Motor Vehicle Insurance (Third Party Risks) Act – Whether appellant held a valid insurance policy

Type of Result
/ Order
Delivered
(if applicable):

N/A

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

1. Leave is granted to the respondent to withdraw and discontinue the counter notice of appeal.
2. Judgment is reserved.

Case Name:

[1] The Roserie Company Limited

[2] Thomas Roserie

[3] Sonia Roserie

[4] Chemical Manufacturing and
Investment Company Limited

v

First Caribbean International Bank (Barbados)
Limited

[SLUHCVAP2017/0029]

Date:

Monday, 8th April 2019

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Applicants:

Ms. Cynthia Hinkson-Ouhla

Respondent:

Mr. Deale Lee with him, Ms. Ziniada McNamara

Issues:

Application for leave to appeal to Her Majesty in Council –
Section 108(2)(a) of the Constitution of Saint Lucia

Type of Result
/ Order
Delivered
(if applicable):

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application by way of motion for leave to appeal to Her Majesty in Council pursuant to section 108(2)(a) of the Constitution of Saint Lucia is dismissed.
2. Costs to be paid by the applicant on the dismissal of the motion are fixed at the sum of \$2,000.00 to be paid on or before 10th May 2019.

Reason:

The application was made on the ground that the issues on appeal gave rise to matters of great general or public importance (section 108(2)(a) of the Constitution of Saint Lucia). The grounds set out in the applicant's motion raise issues to the effect that: (1) the Court made errors of law in how it construed a letter of acknowledgement; (2) the Court did not follow the ratio of a particular case in determining whether communication was classified as without prejudice communication and therefore not an acknowledgement in law; (3) the Court did not properly determine the issue of prescription; and (4) had the Court applied the correct principles, the matter would have been decided differently.

The Court found that these are not issues which give rise to matters of great general or public importance, according to the interpretation of that threshold by Saunders JA in *Martinus Francois v The Attorney General SLUHCVP2003/0037* (delivered 7th June 2003, unreported). The Court found that the issues raised do not constitute serious issues of law, an area of law in dispute, constitutional issues, or a legal question, the resolution of which poses dire consequences for the public. The Court stated that the mere fact that the issues on appeal pose dire consequences for the parties does not mean that they pose dire consequences for the public.

The Court was satisfied that none of the issues raised brought this appeal within the realm of section 108(2)(a) of the Constitution of Saint Lucia.

Case Name:

Mega Plex-Entertainment Corporation
v
Eastern Caribbean Collective Organisation for
Music Rights (ECCO) Inc. (Formerly Hewannora
Musical Society (HMS) Incorporated)

[SLUHCVAP2017/0015]

Date: Monday, 8th April 2019

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

Appearances:

Applicant: Mr. Dexter Theodore, QC with him, Ms. Sueanna Fredrick

Respondent: Mr. Gregory Delzin with him, Ms. Diana Thomas and Ms. Cleopatra McDonald

Issues: Application for leave to appeal to Her Majesty in Council –
Sections 108(1)(a) and 108(2)(a) of the Constitution of Saint Lucia

Type of Result / Order Delivered (if applicable): N/A

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name: Theresa Plummer
v

[1] Dennis Mangal
[2] Irmina Lena Edwin
[3] Tarcisus Robinson Stanislaus
[4] Virgina Everiste
[5] Anthony Felicien

[SLUHCVAP2017/0015]

Date: Monday, 8th April 2019

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

Appearances:

Applicant: Ms. Wauneen Louis-Harris

Respondents: Ms. Diana Thomas for first, second and third named respondents, and holding papers for Mr. Alvin St. Claire for the fourth named respondent.

No appearance for the fifth named respondent.

Issues:

Application for leave to appeal to Her Majesty in Council – Sections 108(1)(a) and 108(2)(a) of the Constitution of Saint Lucia

**Type of Result
/ Order
Delivered
(if applicable):**

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal to Her Majesty in Council is dismissed.
2. No order as to costs.

Reason:

The application was made under alternative grounds: (1) The appeal was an appeal from a final order and was as of right; and (2) the issues raised in the application for leave to appeal to Her Majesty in Council, raised matters of general public importance.

The applicant failed to satisfy the Court that the appeal is as of right, as the order which is appealed is in effect an order seeking to give effect to the terms of a consent order entered following mediation between the parties.

The applicant further failed to satisfy the Court that the application was one of great general or public importance warranting consideration by the Privy Council, as the issues raised do not concern any issues other than the private rights of the applicant.

Case Name:

[1] Sharon Theodule

[2] Sylvester Theodule
[3] Alfred Alcide
[4] Huggins Neal Nicholas

V

[1] Doris Adella John
[2] Easutace Eugene
[3] Angus Eugene
[4] Justin William

[SLUHCVP2017/0031]

Date: Monday, 8th April 2019

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

Appearances:

Appellants/ Applicants:	Ms. Wauneen Louis-Harris
Respondents:	Ms. Maureen John-Xavier holding a watching brief for the fourth named respondent
	No appearance for the first to third named respondents

Issue: Application for an extension of time to appeal

**Type of Result
/ Order
Delivered
(if applicable):** N/A

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:
This matter is removed from the list and is not to be relisted for hearing until the appellants/applicants file proof of service of the application or notice of appeal on the respondents in accordance with rule 62.7(1)(a) of the Civil Procedure Rules 2000.

Reason: The application for extension of time to appeal was previously adjourned on 14th November 2018 by the Full Court, in order to permit the applicant to serve the respondents personally. At the hearing of the application,

personal service on the respondents had yet to be effected.

Case Name: **Khardisha Lindy Princess Jawahir**
v
David Garvin Jawahir
[SLUHCVP2017/0055]

Date: **Monday, 8th April 2019**

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

Appearances:
Appellant: **Mr. Leevie Herelle**
Respondent: **Ms. Maureen John-Xavier**

Issues: **Civil appeal – Prescription of claims – Whether an account of the dealings of the administrator in respect of a deceased person’s estate sought by an heir of the estate is prescribed by three years under article 2122 of the Civil Code of Saint Lucia or whether the action for an account falls under article 603 of the Civil Code and not article 2122 so that the prescription period would be thirty years as provided for under article 2103 – Whether learned judge erred by finding that an account of such dealings is prescribed by 3 years under article 2122 of the Civil Code —Whether the case of Dorina Joseph et al v Nora St. Louis et al SLUHCVP2008/0025 (delivered 6th July 2009, unreported) decided that an action for account of dealings was a delict falling within article 2122 of the Code**

Type of Result / Order Delivered (if applicable): **Oral Judgment with Written Reasons to Follow**

Result / Order: **IT IS HEREBY ORDERED:**
1. The appeal is allowed.

2. The costs order made in the court below is reversed.
3. The claim is restored and is to proceed before the court below as an administrative action as provided for under article 603(3) of the Civil Code.
4. For the avoidance of doubt, the Court rules that the claim is not prescribed by 3 years pursuant to article 2122 of the Civil Code.
5. The costs of the appeal shall be paid to the appellant to be fixed as two-thirds of the prescribed costs applicable in the court below, pursuant to CPR 65.5(2)(b).
6. Written reasons for the Court's decision will be furnished at a later date.

Case Name:

Bank of Saint Lucia Limited

V

[1] Jones Biscette

[2] Marie Biscette

[SLUHCVAP2017/0007]

Date:

Tuesday, 9th April 2019

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Leslie Prospere

Mr. Valdez James, representative of the appellant, present

Respondents:

Mr. Horace Fraser

Issues:

Application for consolidation of appeals nos. SLUHCVAP2017/0007 and SLUHCVAP2017/0008 — Appeals raising related issues — Application for adjournment — Deceased party in appeal no. SLUHCVAP2017/0008 Norman Francis and Thaddeus Antoine v Jones Biscette et al and no representative of that party's estate has been appointed

**Type of Result
/ Order**

Directions

**Delivered
(if applicable):**

**Result /
Order/Reason:**

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The appeal is consolidated with SLUHCVAP2017/0008.**
- 2. The hearing of the consolidated appeal is adjourned to the next sitting of the Court in Saint Lucia which will be held during the week commencing 1st July 2019.**
- 3. The firm of FOSTERS is directed to take the necessary steps in order to have proper representation in the estate of the late Mr. Norman Francis in order to be able to expedite the hearing of the appeal on the next occasion.**

Reason:

The Court having been informed that there is a related appeal namely, SLUHCVAP2017/0008 Norman Francis and Thaddeus Antoine v Jones Biscette et al in which the appellant, Mr. Norman Francis has died and no representative of his estate has been appointed and, as a consequence, the matter was not listed for hearing during the sitting of the Court during the week commencing 8th April 2019, and the Court also having been informed that that appeal raises the same issues as in the present appeal and concerns the same judgment of the learned master, the Court was of the view that the interests of justice required that those two appeals be consolidated and therefore made an order to that effect.

Case Name:

Dr. Charles Isidore

v

Gerard Williams

[SLUHCVAP2017/0022]

Date:

Tuesday, 9th April 2019

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Horace Fraser

Respondent:

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

Issues:

Civil appeal — Negligence — Breach of duty — Notary Royal attempting to register deed of sale and hypothecary obligation in absence of the ‘trustee’ clause in the power of attorney empowering the trustees for sale of the vendor to deal with the property — Whether learned judge erred in law in failing to apply the proper test to ascertain whether damage resulted from respondent’s breach (of duty/contract) thus entitling the appellant to an award of damages — Breach of contract — Time of the essence — Whether learned judge erred in finding that there could be no claim for breach of contract because time was not made of the essence in the contract — Whether learned judge erred in finding that appellant had not proved that as a result of the respondent’s negligence he had been made to pay an additional registration fee — Whether learned judge erred in finding that loss claimed was not due to negligence — Costs — Whether learned judge erred in awarding 70% prescribed costs to the respondent in light of the finding that the respondent had breach his duty of care to the appellant

**Type of Result
/ Order
Delivered
(if applicable):**

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed and the decision of the learned trial judge is set aside.
2. The matter is remitted to be heard before another judge of the High Court in relation to the sole issue of breach of contract.
3. Each party should bear its own costs.

Reason:

This is an appeal against the judgment of the learned Justice Kimberly Cenac-Phulgence in which she dismissed the claim brought by the appellant herein against the respondent. The appellant has appealed against the learned judge’s judgment on the basis that the learned judge misdirected herself and erred in law in that she failed to apply the proper test to ascertain whether the appellant was entitled to an award of damages as a result of the respondent’s breach (of duty/contract).

As the oral submissions unfolded, it became clear that the main plank of the appeal was the learned trial judge’s

finding that the appellant had failed to prove that the respondent had breached the contract.

The Court listened to the very helpful submissions from learned counsel for the appellant and very helpful submissions from learned Queen's Counsel, Mr. Theodore for the respondent and it was satisfied that on a close review of the judgment, the learned trial judge did not consider the issue of breach of contract. Therefore, the conclusion to which she arrived at in dismissing the claim indicated that she committed an error in law in so doing. Accordingly, the Court allowed the appeal.

Case Name:

**Sonia Johnny
v
The Attorney General
[SLUHCVAP2017/0036]**

Date:

Tuesday, 9th April 2019

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Cynthia Hinkson-Ouhla with her, Ms. Natalie Dabreo
Respondent: Mr. Dexter Theodore, QC with him, Ms. Kozel Creese, Crown Counsel and Ms. Sueanna Frederick

Issues:

Civil appeal — Application for extension of time to file written submissions — Breach of contract of employment — Entitlement to leave — Vacation leave accrued and not taken — Whether contractual right to payment in lieu of vacation leave exists — Whether learned judge erred in law in assuming that the application of 917A(1) of the Civil Code of Saint Lucia automatically allowed the importation of common law to construe the meaning of article 956 of the Civil Code despite article 956 being clear and unambiguous and conflicting with common law — Whether learned judge erred in failing to consider the concept of abuse of contractual rights and the provisions of article 956 of the Civil Code

Type of Result / Order Delivered (if applicable):	N/A
Result / Order:	[Oral delivery] IT IS HEREBY ORDERED THAT: 1. The application for an extension of time to file submissions is granted and the respondent's submissions are hereby deemed properly filed. 2. Judgment reserved.
Case Name:	First Caribbean International Bank (Barbados) Limited v Sunset Village Inc. (In Liquidation) [SLUHCVAP2016/0027]
Date:	Tuesday, 9 th April 2019
Coram:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. John Carrington, Justice of Appeal [Ag.]
Appearances:	
Applicants/ Interested Creditors:	Mr. Collin Foster on behalf of the interested creditors
Appellants:	Mr. Peter Marshall holding papers for Ms. Renee St. Rose on behalf of First Caribbean Bank (Barbados) Limited
Respondent:	Mr. Bota McNamara
Issues:	Application for final leave to appeal to Her Majesty in Council – Section 108(1) of the Constitution of Saint Lucia
Type of Result / Order Delivered	Oral Decision

(if applicable):

Order:

IT IS HEREBY ORDERED THAT:

Final leave to appeal to Her Majesty in Council pursuant to section 108(1)(a) of the Constitution of Saint Lucia is granted.

Reason:

The Court noted the certificate of the registrar evidencing compliance with the requirements of the order for conditional leave, and that there was no objection to the application for final leave. The Court concluded that the applicants had met the requirements for the grant of final leave to appeal to Her Majesty in Council.

Case Name:

Paul Eloise

v

1st National Bank

[SLUHCVP2016/0027]

Date:

Tuesday, 9th April 2019

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. John Carrington, Justice of Appeal [Ag.]

Appearances:

Appellant:

In person

Respondent:

Ms. Sardia Cenac-Prospere with her, Mr. Andre McKenzie for the respondent

Mr. Rene Williams with him, Ms. Antonio Charlemagne, for the Attorney General who appears amicus curiae

Issues:

Civil appeal — Interpretation of articles 530, 534 and 558 of the Code of Civil Procedure – Whether articles 530 and 534 of the Code of Civil Procedure are mandatory in terms – Whether proof of prejudice is required on a proper interpretation of articles 530 and 534 of the Code of Civil Procedure – What amounts to prejudice in respect of an irregularity to justify annulment of a judicial sale – Whether the exclusion of potential bidders is the only prejudice which would justify an annulment of a judicial

sale – What is the breadth of the discretion for the annulment of a judicial sale

**Type of Result
/ Order
Delivered
(if applicable):**

Directions

Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The parties shall file further written submissions on the treatment of articles 530, 534 and 558 of the Code of Civil Procedure and how those articles relate to each other, supported by any authorities dealing with articles in pari materia to those articles, in relation to the annulment of a judicial sale.**
- 2. Submissions are to be filed and served on or before 28th June 2019. Thereafter, the Court shall render its decision on this appeal.**
- 3. The stay of execution which was previously granted remains, pending the final determination of the appeal.**

Reason:

The appeal raises issues which concern the interpretation and application of articles 530, 534 and 558 of the Code of Civil Procedure, which have never before been considered by the Court. The Court therefore directed that the parties make further submissions on the interpretation of those sections, including authorities from other jurisdictions which interpret provisions in pari materia to articles 530, 534 and 558.

Case Name:

**[1] Guy Ellis
[2] Mayers Printing Company
Limited
[3] Mirror Publishing
Company Limited**

Appellants

**v
Phillip J. Pierre**

Respondent

Heard Together With

**[1] David Vitalis
[2] Guy Mayers
[3] Mayers Printing Company
Limited
[4] Mirror Publishing
Company Limited**

Appellants

v

Phillip J. Pierre

Respondent

[SLUHCVAP2017/0030]

Date:	Wednesday, 10th April 2019
Coram:	The Hon. Mde. Louise Esther Blenman, Justice of Appeal
Appearances:	
Appellants:	Mr. Leslie Prospere with him, Ms. Kristian Henry
Respondent:	Mr. Peter Foster, QC with him, Mr. Sahleem Charles
Issues:	Civil appeal — Defamation — Newspaper publication — Findings of fact of trial judge — Credibility of witness — Whether trial judge failed to properly consider the unchallenged evidence of witness — Damages — Whether trial judge's award of damages for republication of the article too low in the circumstances
Type of Result / Order Delivered (if applicable):	N/A
Result / Order:	[Oral delivery] IT IS HEREBY ORDERED THAT:

1. The Court does not allow the appellant to put documents in that were not part of the trial bundle before the learned judge in the court below, bearing in mind that the appellant has already failed to adduce those documents on an application for fresh evidence.
2. Judgment reserved.

Case Name:

**[1] SMJ (St. Lucia) Ltd
also Trading as SMJ Beverages St. Lucia Ltd.
[2] Frederick Biscette
v
Barbra Elizabeth Radmore
qua Administratrix of the Estate of Edward David
Radmmore (deceased)
[SLUHCVAP2017/0011]**

Date:

Wednesday, 10th April 2019

Coram:

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

Appearances:

Appellant: Mr. Dexter Theodore, QC with him, Ms. Sueanna Frederick
Respondent: Mr. Peter Foster, QC with him, Mr. Sahleem Charles

Issues:

Civil appeal — Negligence — Fatal accident claim — Challenge to trial judge's findings of fact— Whether learned judge erred in determining the points of impact of the motor vehicles on the basis of the location of the debris — Burden of proof — Whether the learned judge erred by placing the burden of proof on the appellants — Whether learned judge ought to have disregarded expert evidence

**Type of Result
/ Order
Delivered
(if applicable):**

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. Costs to the respondent, being two-thirds of the costs awarded in the lower court.

Reason:

On 4th November 2002, a collision occurred along the Millennium Highway involving two vehicles. One vehicle was driven by the deceased, Mr. Edward David Radmore and the other vehicle was driven by the second defendant and as found by the learned judge as the servant/agent of the first defendant. Regrettably and unfortunately, the accident resulted in the death of Mr. Radmore. His estate filed a claim in negligence against the first and second defendants.

After an aborted trial, the matter finally came up before the trial judge Mr. Justice Belle for trial. The learned judge heard the evidence and found that the accident was caused by the negligence of the second defendant and further that the first defendant was liable to the second defendant on the basis of vicarious liability. He ordered that damages be assessed.

The defendants, now the appellants, are unsatisfied with the decision and have appealed to this Court to set aside the judgment of the learned judge. The Court reviewed the grounds of appeal and heard the submissions of counsel and was satisfied, firstly, that this is an appeal which is almost entirely against the findings of fact by the learned trial judge. As such, the basic principles in cases such as *Watt (or Thomas) v Thomas [1947] AC 484* and so many others apply. For the appellants to succeed, they had to satisfy this Court, firstly, that the learned judge erred in coming to his decision or that his decision was so blatantly wrong that this Court is entitled to set aside his findings of fact. There is good reason behind this principle of law because the cases recognise that the judge hearing and seeing the witnesses give their evidence is in the best position to assess their credibility and to make the necessary findings of fact. The task of the appellants in this case is a heavy burden to discharge.

The trial judge centered his decision on where on the road the accident occurred. By his findings, he clearly relied on the point of impact as a basis for his findings. He relied substantially on where on the road the majority of the debris from the colliding vehicles was located. He found that the majority of the debris was found on the side of the road on which the deceased was driving, that is, he was

going north to Castries. He did not accept the evidence of the two eye-witnesses. The appellant complained that this evidence was uncontradicted by any other eyewitness evidence and that the learned judge preferred what the Court would describe as the 'objective evidence' of the location on the road of the debris pointing to the point of impact. The learned judge did not accept the evidence of the eye-witnesses and he gave his reasons for doing so. The reason he gave was that they had an interest to serve in the matter. Therefore, for that reason, he doubted their evidence. More importantly, he relied on the objective evidence of the debris on the road pointing to the point of impact.

Mr. Theodore, QC in a very eloquent argument tried to persuade this Court that based on the expert evidence in this case, whereas as this the accident resulted in one vehicle spinning around that would have resulted in the debris being spewed in different directions and where it was found on the road is probably an indication of where the accident did not happen. The Court found that argument very attractive but was not persuaded that it was sufficient to upset the judge's findings of fact on the issue. Mr. Theodore, QC also addressed the issue of interference with the debris on the road after the accident and he pointed to various factors such as rain, traffic etc.

All of this evidence was before the learned judge and he found that it did not undermine the basic finding as to where he found that the accident occurred. In effect, the learned judge said that there may have been movement, but the majority of the debris was found on the deceased's side and he therefore found that that was the point of impact. Therefore, that meant, it was the second defendant, in the vehicle owned by the first defendant, who drifted onto the side of the road where the collision occurred.

There was also expert evidence in the case and the judge did not accept the evidence. In the appellants' written submissions, there were complaints that the judge did not accept the expert evidence of the appellants. However, it is apparent from the judgment why the judge did not accept the expert evidence. In any case, and in looking at paragraph 76 of the judgment where the judge said that: "the debris suggests the true position on the issue of the point of impact. I therefore reject the defendants' expert evidence and accept the evidence of the police officer investigator...and the other expert".

The judge basically stated that he did not accept the expert evidence because there was objective evidence on the road as to where the accident occurred and he stated that he was going to go with that and the other expert. Mr. Theodore, QC also addressed the issue of the burden of proof. However, the Court was not satisfied that the learned judge erred in any way in how he handled the burden of proof in this matter.

In the circumstances and having heard the submissions, read the evidence and the written submissions, the Court was satisfied that the appellants had not persuaded it that the appeal should be allowed. The Court therefore dismissed the appellants' appeal, with costs to the respondents of two-thirds of the prescribed costs in the court below.

Case Name: **Royal St Lucia Police and Allied Services
Cooperative Credit Union**

**v
Albert James**

[SLUHCVAP2015/0015]

Date: **Wednesday, 10th April 2019**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal [Ag.]**

Appearances:

Appellant:	Mr. Ramon R. Raveneau
Respondent:	Mr. Horace Fraser

Issues: **Civil appeal – Breach of contract of employment – Employment duties – Damages recoverable by an employer for breach of employment contract – Remoteness of damages – Waiver – Repayment of loans received in the course of employment – Whether the respondent breached his contract of employment by demanding that National Insurance Corporation (NIC) contributions cease to be deducted from his salary and the**

salary of another employee – Whether the appellant waived its right to claim reimbursement for paying the respondent's outstanding NIC contributions – Whether respondent's demand that NIC contributions cease to be deducted from his salary was too remote to the appellant's financial losses – Whether all loans including unauthorised loans taken during course of the respondent's employment were due to be paid upon the termination of his employment contract

Type of Result
/ Order
Delivered
(if applicable):

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The respondent is liable to pay the total of \$21,044.38 being the share of NIC contributions of the appellant and Mr. Leonce.
3. The normal loan, in the sum of \$137,347.03 shall be broken down, and a schedule prepared for the Court's consideration by Thursday, 11th April 2019 at 4:00 PM. The schedule shall indicate, the amounts paid on the loan to date, the basis on which interest accrues on the loan, the calculation of interest from the relevant date to the date of the filing of the claim.
4. Similarly, on the sum of \$30,112.51, there shall be produced a schedule of what interest is due and payable on that sum, and the relevant date from which interest is said to run, to the date of the claim.
5. A schedule shall be prepared showing the total number of the individual unauthorized loans, the total of the loans, the interest payable on the loans, and the relevant dates from which interest is payable on the loans.
6. Counsel for the appellant is to serve the schedules, so that respondent may indicate any objections to its contents.
7. The appeal is adjourned to 12th April 2019 at 2:00 PM for further consideration.
8. Costs are awarded to the appellant on a prescribed costs basis. Costs in the court below are awarded in accordance with rule 65.5(2)(a) of the Civil Procedure Rules, and the costs in the appeal shall be two-thirds of the costs in the court below, in accordance with rule 65.13.

Reason:

The Court was unanimous that the appeal should be allowed. The respondent is liable to pay the total of \$21,044.38, being the share of National Insurance Corporation (NIC) contributions of the appellant and Mr. Leonce, the then manager of the police canteen, on the basis that the appellant breached the terms of his contract when he directed that NIC payments cease to be deducted from his salary as well as that of Mr. Leonce.

In the Court's view, there was no waiver of its right to claim the \$21,044.38, given the lapse of time following the query made by the NIC in respect of the outstanding contributions, the audit of the appellant, the determination of the total amount due in outstanding contributions, and the fact that the appellant paid the total outstanding amount over to the NIC, inclusive of surcharges.

In relation to the sum of \$307,724 claimed by the appellant in respect of cash losses it occasioned, the Court found that the respondent was also liable for the loss of that sum. The Court's view is that this loss amounts to damages which flow from the respondent's breach of the terms of his employment, and that these damages were not too remote. The Court's finding in this regard was based on the fact that there was an abundance of evidence before the trial judge that these cash losses were known to the respondent, by reason of the auditor's report. Further, according to the respondent's terms of reference, he was required as CEO to ensure that all accounting records were up to date, ensure that a cash-flow budget be prepared and ensure that all financial reports were completed and accurate. More importantly, the respondent was required to implement recommendations as set out by the auditors for improving internal audit controls. Having regard to all of the respondent's duties and responsibilities, the Court was satisfied (on the basis of the authorities of *Hadley v Baxendale* (1854) 156 ER 145 and *The Herron II* [1969] 1 AC 350) that it would have been reasonably within the respondent's a

The Court took note of the findings of the learned trial judge at paragraph 19 of the judgment which, in its view, were very telling. There, the judge said:

"The court is of the view that the facts revealed in this case are shocking and sad. It is unfortunate indeed that an institution which was established to assist members of the police and allied services could be abused in the way it was. Obviously, the spirit of the credit union could not be properly

served in the manner in which Mr. James managed it. He mismanaged the credit union and its funds and is lucky that he was not charged with theft pure and simple. He took advantage of his position to the fullest extent possible.”

In relation to the loans, which is the other claim in respect of the appeal, the respondent had conceded, and it was apparent from the pleadings and the witness statements of Mr. Patrice and Mr. Oculien, that there was a normal loan which ought to have borne interest at 12% per annum, other loans the respondent granted to himself without authorisation between January 2007 and August 2011, and a special loan facility in the amount of \$30,112.51. The Court found that the loans became fully due and payable on the termination of the respondent’s employment by letter dated 1st August 2011. The only question which remained therefore for the Court’s consideration were, the values of the outstanding loans which were to repaid and the interest to paid on them. Accordingly, the Court made the above orders.

Case Name:

**Cuthbert Felix
v
The Queen**

[SLUHCVP2016/0024A]

Date:

Wednesday, 10th April 2019

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Ms. Donna Jacobie

Respondent:

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

Issues:

Civil appeal – Confiscation order on conviction – Proceeds of Crime Act – Whether appellant derived benefit from his possession of illicit drugs for the purpose of confiscation proceedings under sections 17 and 18 of the Proceeds of

Crime Act – Whether the fact of the appellant’s conviction for possession of illicit drugs with the intent to supply is sufficient to justify a finding that he benefitted for the purpose of sections 17 and 18

**Type of Result
/ Order
Delivered
(if applicable):**

Oral Judgment

Result / Order:

**IT IS HEREBY ORDERED:
The appeal is dismissed.**

Reason:

The appellant pursued two grounds of appeal and argued that the judge was wrong to conclude that the appellant derived benefit from his possession of drugs, within the meaning of sections 17 and 18 of the *Proceeds of Crime Act, Cap. 3.04 Revised Laws of Saint Lucia 2015*. The appellant argued that the judge relied solely on the fact of the appellant’s conviction for possession of illicit drugs with the intent to supply, and that the judge should have considered the appellant’s statement that he did not derive any benefit from the drugs. The appellant submitted that the case of *R v Mackle [2014] UKSC 5* was authority for the proposition that mere possession of drugs is not sufficient to justify a finding that a person benefitted from the drugs.

The Court took the view that *R v Mackle* was decided on different facts and was not applicable to the appellant’s case. In *R v Mackle*, the convict who was subject to confiscation proceedings under the *Proceeds of Crime Act* was in fleeting possession of illicit drugs, and did not have any substantial interest in the drugs. The evidence on the appellant’s case did not reveal that his conviction was founded on similar facts.

The Court found that it could come to no other conclusion, based on the nature of the offence for which the appellant was convicted, the evidence of the appellant’s intention to supply the drugs, and the clear words of sections 17 and 18 of the *Proceeds of Crime Act*, than that the appellant was in possession of the drugs in connection with the commission of a criminal offence, and that the benefit he derived was the black market value of the drugs. Accordingly, the Court took the view that there was no reason to disturb the judge’s findings.

Case Name:

**St. Lucia Electricity Services Limited
also known as LUCELEC**

v

Vanya Edwin-Magras

[SLUHCVAP2018/0017]

Date:

Wednesday, 10th April 2019

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Shervon Pierre with her, Mr. Mark Maragh

Respondent: Ms. Rowana-Kay Campbell with her, Mr. Peter Marshall

Issues:

Civil appeal – Negligence – Causation – Quantum of damages – Whether there was sufficient evidence before the learned judge to ground a finding that the appellant was liable for the type of damage caused to the respondent's property – Whether learned judge erred in his assessment of the witness' credibility – Whether a witness' means is a consideration to be taken into account in determining credibility – Whether learned judge's finding was supported by sufficient expert evidence – Damages in respect of total constructive loss – Damages for cost of repairs – Whether learned judge ought to have made an award for nominal damages given that there was no proof of value of loss – The measure of damages to chattel – Whether in the absence of evidence, the appropriate course was to discount the replacement value to account for depreciation, award the replacement value without discount, or to award a sum for cost of repairs – Whether learned judge was entitled to assign a lifespan to the chattel and to account for depreciation by discounting the replacement value by reference to the age of the chattel

**Type of Result
/ Order
Delivered
(if applicable):**

N/A

Result / Order: IT IS HEREBY ORDERED THAT:
[Oral delivery]
Judgment is reserved.

Case Name: International School of Saint Lucia
v
The Labour Tribunal
[SLUHCVAP2018/0022]

Date: Thursday, 11th April 2019.

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

Appearances:
Appellant: Ms. Ann-Alicia Fagan
Respondent: Mr. Seroyzha Cenac, Senior Crown Counsel with him, Mr. George K. Charlemagne

Issues: Civil appeal — Wrongful and unfair dismissal — Whether the learned judge erred in determining the claim solely on the issue of non-service of the notice of dispute on the appellant without dealing with the second issue as to merits — Whether the learned judge erred in concluding that the appellant was given notice and thereby afforded a right to be heard — Whether learned judge wrongly exercised his discretion to exclude affidavit evidence

Type of Result / Order Delivered (if applicable): Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:
1. The appeal is allowed.
2. The learned judge's decision and the decision of the Tribunal are set aside.
3. There will be rehearing before the Tribunal on evidence and submissions by both parties.
4. Costs to the appellant in the sum of \$1,000.00.

Reason:

Mrs. Jamie Steele is a former employee of the appellant, the International School of Saint Lucia. On 25th June 2014, the appellant terminated her employment as of 26th June 2014. She challenged the dismissal by filing a complaint with the Labour Commission. The Labour Commission had dismissed the complaint. She then filed a dispute with the Labour Tribunal established under the provisions of the *Labour Code 2006*. The Tribunal was required to serve the notice of dispute on the appellant, the appellant being a company registered under the *Companies Act, Cap. 13.01 of Revised Laws of Saint Lucia 2015* had to be served at its registered office pursuant to a section in the *Companies Act*. The notice of dispute was served at the appellant's place of business in Rodney Bay. The receptionist of the appellant signed as receiving the notice of dispute.

At the commencement of the dispute before the Labour Tribunal, there was no appearance of the appellant by any of its officers or representatives. The Tribunal, being dissatisfied that the notice of dispute was served on the appellant at its registered office, proceeded to adjudicate the dispute notwithstanding the absence of the appellant. The Tribunal set aside the decision of the Commissioner, found that Mrs. Steele's employment was not properly terminated and awarded her \$69,750.00, representing the balance of her contract. The appellant was dissatisfied with the decision of the Tribunal and applied to the High Court for judicial review of the Tribunal's decision. She sought the following relief:

- “1. an order for certiorari quashing the decision of the respondent dated 17th October 2016 awarding damages against the claimant for wrongful and unlawful dismissal of Jamie Steele.
2. a declaration that the claimant is not in breach of the Labour Act of Saint Lucia and that the termination of Jamie Steele was worded in accordance with section 129 of the Labour Act and in accordance with section 146(1) of the Labour Act.
3. in the alternative, an order that Jamie Steele, the claimant in the matter before the Labour Tribunal, is not entitled to damages claimed for the entirety of the contract.
4. Costs
5. Such further or other relief as the Honourable Court deems fit.”

The application for judicial review was heard and

determined by the learned judge on paper. There were two issues before the learned judge: (i) the validity of the purported service of the notice of dispute on the appellant at its place of business in Rodney Bay; and (ii) the merits of the appellant's claim that the award of the tribunal be set aside.

The evidence before the learned judge, in relation to the issue of service, included two affidavits from the appellant's chairperson, Ms. Rachael DuBoulay, which stated in the introduction to the affidavits, but not in the body of the affidavits that the appellant's registered office is at Rodney Bay. In an attempt to correct this, the appellant submitted an affidavit by Ms. Deborah Regis on 8th March 2017, ten days before the scheduled hearing of the judicial review application. The affidavit exhibited a document from the Registry of Companies stated that the appellant's registered office is at Brazil and Mongiraud Streets in Castries. The learned judge refused to admit the affidavit evidence on the ground that they did not comply with his order for filing of evidence in December 2017 nor did the appellant apply for and obtain leave to file the affidavit. Further, that they did not comply with the rules for continuing disclosure of documents.

The learned judge then went on to find, having stated in the chairperson's affidavit that the registered office of the appellant is at Rodney Bay, there was proper service on the company. Having failed to appear at the hearing before the Tribunal, the Tribunal did not err in proceeding ex parte. He therefore dismissed the application for judicial review.

The appellant appealed to this Court against the judge's decision. There are two issues in this appeal: (i) whether the learned judge erred in not dealing with the substantive application for judicial review; and (ii) whether the notice of dispute was properly served on the appellant.

Learned counsel for the respondent conceded that the judge should have dealt with the substantive application and failed to do so, notwithstanding that he had found that the appellant was properly served with a notice of dispute.

The second issue involves the judge's refusal to admit the Regis affidavit into evidence. This is undoubtedly an exercise of discretion by the learned judge in the exercise of his case management and as such this Court is reluctant to interfere with his decision. The Court noted that the evidence that was excluded was material to the

disposal of the second issue in the proceedings. In fact, so important was that issue that the judge's decision to dismiss the application turned entirely on his finding that the appellant was properly served and did not appear for the hearing before the Tribunal. The Court also noted that the directions order made in December 2017 did not impose any sanction for a failure to comply with the directions. The Court also noted rule 26.9 of the Civil Procedure Rules 2000 which gives the court the power to rectify matters where there has been a procedural error.

Having regard to the importance of the document that was excluded and the effect of the decision of the Tribunal and the judge, and that the effect of the judge's overall decision is that the appellant was not allowed to present its case to the Tribunal, the Court was minded to set aside the exercise of discretion by the learned judge, mainly on the grounds that he did not consider the provisions of CPR 29.6 in coming to his decision and that his decision was plainly wrong. This gave the Court the right to exercise discretion afresh.

Having regard to the factors considered in setting aside the judge's exercise of discretion, the Court exercised discretion afresh by allowing the Regis affidavit into evidence. This affidavit satisfied the Court on a balance of probabilities that the registered office of the appellant is at Bridge Street and Micoud Street, Castries and not in Rodney Bay. Therefore, service of the notice of dispute at the company's place of business was not proper service within the requirements of the Companies Act. Therefore, the Tribunal should not have proceeded to hear the dispute ex parte. The Court therefore set aside the judge's decision and ordered that the dispute before the Tribunal be reheard on evidence and submissions by both parties.

Case Name:

Attorney General

v

Cecil Toussaint

[SLUHCVP2018/0029]

Date:

Thursday, 11th April 2019.

Coram:

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

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

Appearances:

Appellant: Ms. Kozel Creese with her, Ms. Brender Portland-Reynolds,
Solicitor General and Mr. Rene Williams, Senior Crown
Counsel
Mr. Cecil Toussaint present

Respondent: Mr. David Francis

Issues:

**Civil appeal — Constitutionality of search of appellant's
property — Proceeds of Crime Act — Validity of warrant —
Whether warrant defective in circumstances where it
incorrectly refers to the person on whom it is to be
executed — Whether even if the warrant was defective the
forfeiture of the respondent's money was unlawful**

**Type of Oral
Result / Order
Delivered
(if applicable):**

N/A

Result / Order:

**[Oral delivery]
IT IS HEREBY ORDERED THAT:
Judgment is reserved.**

Case Name:

**[1] Leona King
[2] Christopher Elibox
[3] Petrona Naitram
[4] Rosaline Narcisse**

v

**[1] Reginald Elibox represented by his
Executor Rebecca Elibox
[2] Rebecca Elibox**

[SLUHCVAP2016/0003]

Date:

Thursday, 11th April 2019

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Horace Fraser

Respondents: Ms. Cynthia Oula Hinkson

Issues:

Civil appeal – Application for prescriptive title – Declaration of title made by judge in favour of respondent – Whether declaration made contrary to evidence upon which the case rests – Section 28 of Land Registration Act – Inconsistent findings of judge – Judge’s failure to state precise commencement date of respondent’s exclusive possession – Effect of registration – Moses Joseph Matty v Alicia Francois

**Type of Result
/ Order
Delivered
(if applicable):**

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The matter is remitted to be tried before a different judge.
3. Each party will bear its own costs

Reason:

The Court was of the view that the proper disposal of this matter was to remit it to be tried before a different judge. The findings of fact were not borne out on the evidence.

Case Name:

[1] Romanus Boyce
[2] Thecla Descartes

v

[1] Keitha Auguste
[2] Victor Auguste

Consolidated with

[1] Louis De Leon
[2] Josephine De Leon

v
Romanus Boyce

[SLUHCVP2017/0017]

Date: Thursday, 11th April 2019

Coram: The Hon. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Gerard Williams

Respondents: Ms. Diana Thomas with her, Ms. Cleopatra McDonald for
Keitha Auguste and Victor Auguste

Issues: Civil appeal – Trial commenced by judge and continued by second judge – Authorisation of the Chief Justice not sought for the continuation of the trial in accordance with CPR 2.5(8) – No objection taken – Road traffic accident – Whether the judge erred in law in failing to find that the 4th respondent, Josephine De Leon, who did not file a witness statement due to her inability to and who did not attend the trial to prosecute the claim was not entitled to an award in damages and costs – Challenge to findings of fact – Whether the judge erred in refusing to consider the overwhelming physical evidence before him which supported the appellants' case

**Type of Result
/ Order
Delivered
(if applicable):**

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The claim of Romanus Boyce and Thecla Descartes against Ketha Auguste and Victor Auguste in claim no. SLUCHV2008/1109 is dismissed.
2. Judgment is entered for Ketha Auguste in the counterclaim in claim no. SLUHCVP2008/1109.
3. The claimant Romanus Boyce is to pay the Defendant Ketha Auguste the sum of \$34,766.45 with interest thereon at the rate of 3% from the date of the accident until the date of judgment and thereafter at the rate of 6% from the date of judgment until

payment

4. The claimant Romanus Boyce is to pay to the defendants Victor Auguste and Ketha Auguste Prescribed costs pursuant to Part 65.5 of the CPR 2000.
5. Judgment is entered for the claimants Louis De Leon and Josephine De Leon against the defendants Romanus Boyce in claim no. SLUHCV2009/0434.
6. The defendant Romanus Boyce is to pay the claimants Louis De Leon and Josephine De Leon special damages as follows:
 - i. Special damages to Louis De Leon in the sum of \$113,514.98 with interest at the rate of 3% from the date of the accident until the date of judgment.
 - ii. Special damages to Josephine De Leon in the sum of \$5,514.82 with interest at the rate of 3% from the date of the accident until the date of judgment.
7. The defendant Romanus Boyce shall pay to the claimants, Louis De Leon and Josephine De Leon, the general damages in the sums of \$70,000.00 and \$45,000.00, respectively, with interest at the statutory rate of 6% per annum from the date of the accident to the date of this judgment and interest on the global sum from the date of the judgment until the date of payment.
8. The defendant Romanus Boyce shall pay to the claimants Louis De Leon and Josephine De Leon prescribed costs pursuant to Part 65.5 of the CPR 2000.
9. On the appeal, the respondents are entitled to two-thirds of two-thirds of the costs in the court below.

Reason:

This is an appeal against the judgment and order of Justice Smith. It arises in the context of road traffic accident. The trial was commenced before Justice Wilkinson but was completed by Justice Smith. This informs the first appeal ground. The complaint made was that the authorisation of the Chief Justice was not sought for the continuation of the trial by Justice Smith in accordance with the relevant provision of the Civil Procedure Rules 2000 (CPR 2.5(8)). It is noted however that the trial proceeded or continued before Justice Smith without any objection or exception being taken by the parties. The appellants sought to impugn the proceedings on the ground that the Chief Justice did not authorise such a continuation, however the Court noted that there was no evidential basis submitted in support of that contention

and as previously indicated the matter was continued without any objection taken by any of the parties. The Court therefore did not find substance in this ground and it was accordingly dismissed.

Grounds 2 and 3 as appears in the skeleton submissions of the appellants have essentially been conceded by the respondent.

Ground 4 as set out in the appellant's skeleton submissions complains that the judge erred in law in failing to find that the 4th respondent, Josephine De Leon, who did not file a witness statement due to her inability to and who did not attend the trial to prosecute the claim, was not entitled to an award in damages and costs. It was further complained that there was no application or order made by the court or any other court below for the reception of the 4th respondent's evidence in her absence or at all. Though this ground may seem attractive, it is clear that the evidence in that context was before the court and in view of the evidence which was given by her husband, the Court found no merit in that ground.

Ground 5 of the appeal as set out in the appellants' submissions complains that the judge erred in refusing to consider the overwhelming physical evidence before him which supported the appellants' case. It was also contended that the judge was of the mistaken view that the physical evidence was of the kind that needed forensic assistance needed to make a factual finding. To put this ground in context, it is necessary to refer to the judge's judgment. At paragraphs 22 the judge stated:

"Much was made of the fact that the photographs in evidence showed that Mr. Auguste's car was more on the right side of the road which would be consistent with him being on the wrong side. The photograph indeed showed Mr. Auguste's car, at the point of rest, being across the road facing the verge of the road on the right side. Mr. Auguste's evidence is that his car was hit by the motorcycle on its front right hand side and this is what spun it out of control and across the road. Ms. Thomas asked the court to "take judicial notice of physics behind both kinetic energy and momentum."

The judge stated:

"Tempted though I may be, I must respectfully decline. In the absence of any forensic analysis by an expert of the accident scene, I feel unable to draw

any inference from the position and location of the vehicles. Judging from the police report, the police thought Mr. Boyce was the one who drove carelessly”

This complaint must be seen in the context of the invitation made to the judge by counsel. In that context, the Court did not find that the judge erred in his conclusion. The invitation was to take judicial notice of physics behind both kinetic energy and momentum.

The judge also continued at paragraph 23:

“I feel equally unable to draw any conclusion from the location of accident debris found near the tire of Mr. Auguste’s car on the right hand side of the road facing Vieux Fort as shown in the photographs. Mr. Williams contends that this is consistent with the accident having occurred on the right hand side of the road facing Vieux Fort. Another probable explanation however is that the momentum from the impact could have propelled the debris to the point where it came to rest. Again, in the absence of any forensic analysis of the accident scene, I am disinclined to draw any inferences from the placement of debris from the accident.”

Again, the trial judge was giving reasons why he was disinclined to draw inferences from the placement of debris from the accident. It is known that inferences are drawn from facts. If the judge is unable to draw such inferences, he is entitled to say so and not to draw the inferences. One cannot say that the judge erred in that regard.

Ground 6 complains that the judge erred in law in placing any reliance of the traffic accident report of the Royal St. Lucia Police Force and the traffic case file which led him to conclude that the 1st appellant drove carelessly; that the said reports were not determinative of the 1st appellant’s carelessness; and that the issue of negligence was an issue only to be tried by the court. It is noted that having not drawn inferences urged upon him, the judge continued at paragraph 24 of his judgment by saying:

“I believe Mr. Auguste was probably going more than 20 mph when the collision occurred, I am nevertheless inclined, on a balance of probabilities, to believe his version of how the accident happened. Mr. De Leon’s evidence that he was overtaken by a

motorcycle that was going fast supports Mr. Auguste's narrative. The evidence of Mr. Boyce and his witnesses revealed not only significant contradictions but also a motive for why they were speeding. I therefore find that, on a balance of probabilities, Mr. Boyce caused the accident by driving his motorcycle in a negligent manner. I do not find that Mr. Auguste contributed to the accident in any way."

Here the trial judge was making factual findings and the law with respect to appellate intervention with such findings is well settled. It is always a difficult task for an appeal court to interfere with a factual finding a trial judge who has seen and heard the witnesses. The Court noted that it cannot be said here that there was no evidence to support the findings of the judge and the Court was not of the view that the challenge made here rises to the occasion whereby this Court is positioned to overturn the factual findings of the judge.

The judge had before him conflicting evidence as to how the accident occurred. He weighed the evidence, did his evaluation and analysis and came to his conclusion. The Court is not positioned to upset the factual conclusions of the judge based on the evidence.

With respect to the issue in ground 6 - the traffic report – In the last sentence in paragraph 22 of the judgment, the judge said, 'Judging from the police report, the police thought Mr. Boyce was the one who drove carelessly'.

Counsel for the appellants did take issue with that statement. However, having viewed the paragraph in its context, the Court found that the crucial finding was the judge's statement that he was unable to draw any inference from the position and location of the vehicles.

For the reasons which the Court has ventilated and taking into account the concessions made by the respondent, the appeal was allowed in part.

Case Name:

**Clico International Life Insurance Limited
(Under Judicial Management)**

v

Deldridge Flavius

[SLUHCVP2017/0045]

Date: Thursday, 11th April 2019

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Peter Marshall with him, Ms. Rowana-Kay Campbell
Respondent/ Applicant:	Mr. Horace Fraser

Issues: Application for record to be corrected

Civil appeal – Enforcement of judgment – Company in judicial management – Whether leave of court required for enforcement proceedings – Whether judge erred in making a final attachment of debt order in enforcement against appellant without leave having been granted – Interpretation of “claim”

Type of Result / Order Delivered (if applicable): Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:
In relation to the application to correct the record:
Leave is granted to the applicant to withdraw his application to correct the record.

In relation to appeal and counter-appeal:

1. The appeal is allowed.
2. The order of the learned judge is set aside.
3. The counter appeal is accordingly dismissed.
4. Each party to bear its own costs.

Reason: The master granted leave to the respondent to pursue his claim against CLICO. The respondent proceeded to enforcement and a judge made a final attachment of debt order. CLICO takes issue with the order contending that the respondent required leave of the court for the

enforcement proceedings. Simply put, the core issue in this appeal was whether the judge erred in making a final attachment of debt order in enforcement against CLICO without leave having been granted. It is common ground that the resolution of this matter is essentially one of interpretation. The basal position is that CLICO is under judicial management. The objective of judicial management is to rehabilitate financially troubled but viable companies to ensure continuity of operations and to stave off winding up.

Section 40(4) of the *Insurance Act, Cap.12.08 of Revised Laws of Saint Lucia 2015* provides that all actions and execution of all writs, summons and other processes against the company shall by virtue of this section be stayed and shall not be proceeded with without the leave of the court unless the court decides otherwise.

Clause 5 of the order of judicial management states all actions or claims and execution of all writs, summons and other processes whatsoever initiated against the company are hereby stayed and no person which shall include the body corporate shall bring or continue with a claim proceeding or process against the company without leave of the court

The short background facts to this matter are: The respondent filed a claim against the appellant. Subsequent to the filing of the claim, the appellant was placed under judicial management by an order of the court dated 14th April 2011. Pursuant to that order, all actions against the respondent were stayed by further order of the court. On 15th March 2013, the respondent filed an application seeking leave to allow its proceedings to continue against CLICO under judicial management. The master by order dated 18th September 2013 granted the respondent leave to continue the substantive proceedings against CLICO under judicial management. The respondent received the judgment by order dated 13th May 2014. The respondent filed an application for attachment of debts. The matter came up before a High Court judge. CLICO's counsel contended that the leave granted by the master to the respondent to pursue his suit ended when judgment was entered. The enforcement procedure was a separate procedure and required the court's leave to pursue the attachment of debts application and the judicial manager could not act on the judgment, as to do so would give the respondent an unfair advantage over CLICO's other creditors.

The judge held that, the master having granted the respondent leave to pursue his suit and the respondent having done so, no further leave was required because it is the law that a judgment once obtained takes immediate effect. The judge relied on rule 42.8 of the Civil Procedure Rules 2000 ("CPR") which states that a judgment or order takes effect from the day it is given or made unless the court specifies that it is to take effect on a different date. The judge further reasoned that requiring the respondent to seek leave to file enforcement proceedings, an action only necessary because of CLICO's failure to comply with CPR 42.8 would be disadvantageous to him and bestow an advantage on CLICO for its failure to comply with CPR 42.8. The judge proceeded to order that the respondent be paid forthwith the sum of \$553,986.25 being so much of the judgment debt yield from CLICO as is sufficient to satisfy the judgment debt and costs.

Being dissatisfied, CLICO appealed. CLICO contends that in interpreting the master's order of 18th September 2013, the judge misdirected herself as to its effect and failed to consider important factors which should have guided her decision when granting the application for attachment of debts against it without considering that leave was required for such an enforcement measure. On the authority of *Re Atlantic Computer Systems plc (No.1)* [1990] EWCA Civ 20, CLICO submitted that the judge would have been required to consider the status of matters against the company and its existing obligations and the judge was required to ensure that no other creditors would be unfairly prejudiced by the requested enforcement proceedings and ensure that the respondent was not unduly preferred against all other creditors of the company.

Counsel for the respondent contends that section 40(4) of the Insurance Act makes no distinction between action and execution. Further, no provision of the *Insurance Act* provides for the granting of leave to pursue a claim on liability against a company under judicial management and once judgment has been entered further leave to enforce the judgment is required.

In the Court's judgment, it was clear that in making her order, when one looks at her findings and analysis, it is clear that the judge did not consider or properly consider the entire purpose and scheme of judicial management. The Court was of the view that section 40(3) of the *Insurance Act* provides for a stay of all actions and the execution of all writs, summons and other processes

against the company. It makes a distinction between actions and the execution of all writs, summons and other processes arising out of successful actions. Section 39 of the *Interpretation Act, Cap.1.06 of Revised Laws of Saint Lucia 2015* defines “action” as including a claim as defined in CPR 2000. Part 8 of CPR 2000 deals with the commencement of claims and enforcement of judgments is covered by Parts 42, 43 and 45. Actions and enforcement by the execution of writs, summons and other processes are distinct. An action to obtain any judgment is not the same as execution of a judgment.

Another important factor to consider is the text and context of the master’s order of September 2013. In text, the order granted leave to continue the substantive proceedings against CLICO under judicial management. In context at the time of the order the only substantive proceedings which the order could have been allowed to continue was the claim that was filed. A claim does not refer to any enforcement proceedings which may or may not be instituted to satisfy a judgment made in the claim. Another important part of the context is the fact that the company was under judicial management and all what flows from that status.

The respondent in this matter has filed a cross appeal alleging misdirection and error in law on the part of the judge in not awarding interest at a rate of 6% per annum.

For all the reasons advanced above, the Court is of the view that the judge misdirected herself in finding that leave to pursue the claim necessarily included leave to pursue any judgment arising from the claim. The Court therefore allowed the appeal and dismissed the counter-appeal.

Case Name:

Wauneen Louis-Harris

V

Lazarus Paul

[SLUHCVP2015/0032]

Date:

Friday, 12th April 2019

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Gerard Williams

Issues:

Civil appeal – Application for leave to appeal – Validity of warrant – Whether urging and directing alleged false imprisonment in respect of an officer acting under a warrant are causes of action known to law – Whether causes of action can be maintained against appellant having discontinued a claim against a primary tortfeasor upon whose actions the claim is premised, whether claim can be continued as against a secondary tortfeasor for procuring, or urging an alleged commission of such tort – Exercise of Court's case management powers under Part 26 of the Civil Procedure Rules 2000

**Type of Result
/ Order
Delivered
(if applicable):**

Oral Judgement

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The claim is struck out.
3. No order as to costs on the appeal or in the court below.

Reason:

The Court in the exercise of its case management powers contained in Part 26 of the Civil Procedure Rules 2000 exercised the power that it has which demonstrated that on the face of the claim and the statement of claim that no cause of action has been made out as against the appellant and moreso in circumstances where the claim against the Attorney General was discontinued by the respondent. There was no cause of action subsisting on the claim as framed. Therefore, the claim was struck out.

Case Name:

**Hilary Samuel
v
Rishiram D. Singh**

[SLUMCVAP2018/0001]

Date: Friday, 12th April 2019

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

Appearances:

Appellant: Mr. Eghan Modeste

Respondent: No appearance

Issues: Civil appeal – Order for compensation made by magistrate in favour of virtual complainant, the appellant in criminal proceedings – Order for compensation not sought and precludes virtual complainant from seeking relief in High Court – Section 720 of Criminal Code of Saint Lucia – Proper forum for relief sought – Whether in the circumstances the appropriate course is a civil appeal rather than judicial review of the magistrate’s decision

Type of Result / Order Delivered (if applicable): Oral Judgment

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

Reason: The Court dismissed the appeal on the basis that it was a criminal appeal and was not one brought by the Crown. It was brought by the virtual complainant in criminal proceedings challenging an order made by a magistrate in a criminal cause. While the Court appreciated the relief the complaint sought to obtain, the Court noted that he had taken the wrong avenue and forum for seeking that relief. The Court did not say that there was not a valid grievance. However, the appellant has done so by engaging the wrong forum. The Court had regard to section 720 of the *Criminal Code, Cap 3.01 of Revised Laws of Saint Lucia 2015* in respect of parties who are given a right of appeal and concluded that the section does not contemplate a right of appeal by a virtual complainant in criminal proceedings.

Case Name:

Econo Parts Ltd.

v

The Comptroller of Customs & Excise

Consolidated with

Mr. Parts Ltd.

v

The Comptroller of Customs & Excise

[SLUHCVAP2017/0019]

Date:

Friday, 12th April 2019

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Vandyke Jude with him, Mr. Mervyn Steele

Respondent: Mr. George Charlemagne with him, Mr. Kareem Alleyne and Ms. Karen Bernard, Crown Counsel

Issues:

Civil appeal – Customs (Control and Management) Act – Powers of Comptroller of Customs and Excise – Power of seizure and detention of goods under section 130 of the Customs (Control and Management) Act – lawfulness of notices of seizure – Failure to institute condemnation proceedings following issuance of notices of seizure – Delay – Whether learned trial judge erred in finding that there were reasonable grounds for detaining the goods under section 133 of the Act – Whether learned trial judge erred in granting an exemption to Comptroller pursuant to section 133(2) of the Act – Award of damages – Appellant’s failure to prove special damages – Whether judge erred in making no award of damages – Judge’s power to award damages in circumstances where there was a clear loss but no evidence to support that loss. Constitutional provisions – Articles 6 and 7 – protection from deprivation of property, protection from arbitrary search or entry – Whether compensation should be

awarded by way of vindication of constitutional rights based on misconduct or abuse of power by customs officers

Type of Result
/ Order
Delivered
(if applicable):

N/A

Result / Order:

[Oral delivery]
IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name:

**Royal St. Lucia Police and Allied Services
Cooperative Credit Union
v
Albert James**

[SLUHCVAP2015/0015]

Date:

Friday, 12th April 2019

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Ramon R. Raveneau
Respondent: Mr. Horace Fraser

Issues:

Civil appeal — Breach of contract of employment – Employment duties – Damages recoverable by an employer for breach of employment contract – Remoteness of damages – Waiver – Repayment of loans received in the course of employment – Whether the respondent breached his contract of employment by demanding that National Insurance Corporation (NIC) contributions cease to be deducted from his salary and the salary of another employee – Whether the appellant waived its right to claim reimbursement for paying the respondent's outstanding NIC contributions – Whether the respondent's demand that NIC contributions cease to be

deducted from his salary was too remote to the appellant's financial losses – Whether all loans including unauthorized loans taken during course of the respondent's employment were due to be paid upon the termination of his employment contract

Type of Result
/ Order
Delivered
(if applicable):

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The normal loan of \$153,974.92 shall continue to bear interest at a rate of 12% per annum from the date of the claim to the date of judgment and thereafter post-judgment interest at the rate of 6% per annum until the date of payment.
2. The staff loan in the sum of \$31,618.14 shall bear post-judgment interest at the rate of 6% per annum until the date of payment.
3. The salary advances totaling \$182,036.05, reduced by \$65,001.38 as gratuity and considered paid as against this sum so that the balance remaining thereunder is \$117,034.67, shall be payable by the respondent and shall bear post-judgment interest at the rate of 6% per annum until the date of payment.
4. The order of the Court which includes the other orders made on 17th April 2019 in relation to NIC contributions, cash loss to the appellant and the loans payable as set out above, shall take effect from today's date.

Case Name:

Bradley St. Ange
V
The Police
(Darren Leon, PC 757)

[SLUMCRAP2017/0003]

Date:

Friday, 12th April 2019

Coram:

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

Appearances:

Appellant: Ms. Lydia Faisal

Respondent: Ms. Isa Cyril

Issues: Criminal appeal – Appeal from case management order

Type of Result / Order Delivered (if applicable): Oral Judgment

Result / Order and Reasons: IT IS HEREBY ORDERED THAT:
The Director of Public Prosecutions having indicated his intention not to defend the appeal, the appeal is allowed, and the matter is struck out.

Case Name: Anthony Gilbert
v
The Queen

[SLUHCRAP2018/0002]

Date: Friday, 12th April 2019

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

Appearances:

Applicant: In person

Respondent: Mr. Daasrean Greene, Director of Public Prosecutions

Issues: Application for extension of time to appeal against sentence – Application for leave to appeal against sentence – 16 year delay in filing application for leave to appeal

Type of Result / Order Delivered (if applicable): Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

The application for extension of time to appeal against sentence is dismissed.

Reason:

The appellant was sentenced on 28th April 2003 to life imprisonment for murder. The appellant is now eligible for parole and his sentence has been referred to the parole board for review by order of Belle J dated 20th September 2018. The review has not yet occurred, and it is unclear when the parole board will sit to review sentences.

The Court noted that 16 years had elapsed between the applicant's conviction and the application for leave to appeal. The reason advanced by the applicant for the delay in making his application that he wished for some time to pass before he applied for the Court's pardon. The Director of Public Prosecutions objected to the application.

The Court was not satisfied that the applicant advanced any good reason for the inordinate delay in making his application.

Case Name:

Christopher Alexander

v

WPC 214 Henry

[SLUMCRAP2015/0011]

[SLUMCRAP2015/0012]

Date:

Friday, 12th April 2019

Coram:

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

Appearances:

Appellant: Mr. Huggins Nicholas

Respondent: Mr. Kenroy Justin appearing on behalf of the Director of Public Prosecutions

Issues:

Criminal appeal – Appeal against conviction – Whether there was sufficient evidence to ground a conviction under section 22(5) of the Firearms Act – Whether the judge misdirected himself on the law on possession under the Firearms Act – Whether the judge wrongly inferred that the applicant had knowledge of firearms in his vehicle – Whether *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256 and section 6 of the *Criminal Code* of Saint Lucia provide a basis on which knowledge may have been imputed to the appellant

**Type of Result
/ Order
Delivered
(if applicable):**

Oral Judgment

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal against conviction and sentence is allowed.
2. The conviction and sentence are set aside.

Reason:

The appellant was the driver of a motor car with two passengers. At one stage in their travels, the passenger in the front seat of the car left the vehicle and met with a group of men some distance away from the vehicle. The passenger in the back seat also left the car and joined the men. When the two men returned to the car the passenger seated in the front-seat had two bags, one of which contained mangoes. The appellant was aware of the mangoes, but made no inquiries as to the contents of the second bag. The front-seat passenger placed the two bags on the floor of the car and the journey continued. Along the way, the vehicle was stopped by the police who discovered two firearms in the second bag.

All three men were charged with possession of the firearms without a licence. At trial, the back-seat passenger was acquitted and the front-seat passenger convicted. The magistrate found that the front-seat passenger had knowledge that the firearms were in the vehicle, and therefore found that he was in possession of the firearms in breach of the *Firearms Act, Cap 14.12, Revised Laws of Saint Lucia 2015*. The convicted passenger did not appeal against his conviction.

The appellant was convicted. There was no evidence that he had direct knowledge of the presence of the firearms in the car but the magistrate inferred that he was aware and

therefore was in possession of the firearms. The finding that the appellant knew that the firearms were in the car was an inference drawn by the magistrate, as there is no direct evidence that the appellant knew about the firearms.

The thrust of the appellant's appeal was that there was insufficient evidence for the magistrate to conclude that the appellant knew about the firearms. The Court examined the evidence and listened to the submissions of counsel, and found that the evidence was insufficient for an inference to be drawn that the appellant knew about the firearms. It was therefore not reasonable for the magistrate to draw the inference that the appellant knew about the firearms.

Both the appellant and the respondent relied on the case of *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256. The Court noted that *Warner* is different from the case at bar in that the appellant in *Warner* had physical custody of a box which contained an illegal drug, took it to his vehicle, and had ample opportunities to inspect the contents of the box. On the facts of the present case, the appellant had neither substantial opportunities to inspect the contents of the bag, nor physical custody of the bag with the firearms. The Court concluded that the case of *Warner* did not assist the respondent and held that the learned magistrate therefore erred in finding that the respondent had satisfied the requirements of section 22(5) of the *Firearms Act*.

Case Name:

Devron Phillips

v

The Queen

[SLUHCRA2017/0006]

Date:

Friday, 12th April 2019

Coram:

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

Appearances:

Appellant/
Applicant:

No appearance

Respondent: Mr. Daasrean Greene, Director of Public Prosecutions

Issue: Application for legal aid

**Type of Result
/ Order
Delivered
(if applicable):** Oral Decision

Result/Order: IT IS HEREBY ORDERED THAT:
1. The application for legal aid is granted.
2. The registrar of the High Court shall make the appropriate arrangements for legal aid to be provided to the appellant/applicant.

Reason: This is an application by Devron Phillips to be provided with legal aid to prosecute his appeal against his sentence of 25 years' imprisonment. The Court noted that Mr. Phillips, the appellant/applicant was not present in Court. However, from information received, this may have been due to circumstances entirely beyond his control. The Director of Public Prosecutions indicated that the respondent is not opposed to the application. In keeping with the normal practice of this Court in matters such as this, the appellant having been convicted of murder and having appealed against his sentence, the Court approved the application for legal aid made and directed the office of the registrar of the High Court to make the appropriate arrangements for legal aid to be provided to the appellant/applicant in this matter.

Case Name: [1] Francis Phillip
[2] Kim John
v
The Queen

[SLUHCRAP2015/0007 & 0008]

Date: Friday, 12th April 2019

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

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

Appearances:

Appellants: Mr. Tiyani Behanzin

Respondent: Mr. Daasrean Greene, Director of Public Prosecutions

Issues:

Criminal appeal – Appeal against sentence – Whether the appellants’ life sentences were excessive in the circumstances – Whether it was open to the judge to sentence the appellants to life imprisonment – Whether the appellants having pleaded guilty to manslaughter were entitled to a discounted sentence – Whether sentencing judge took into account the time spent by the appellants on remand prior to the date of sentencing

**Type of Result
/ Order
Delivered
(if applicable):**

Oral Judgment

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal against sentence is allowed to the extent only that the date of review of the sentence is varied from 25 years from the date of the pronouncement of the sentence of the judge, being 24th April 2015 to the date of incarceration of the appellants, being 31st December 2000 in respect of Kim John, and 1st January 2001 in the respect of Francis Phillip, in order to take account of the time spent in custody.
2. The sentence of the trial judge is otherwise affirmed.

Reason:

The appellants were indicted by the Director of Public Prosecutions for the offence of murder in respect of two individuals who were killed during a gruesome attack on a church. The appellants pleaded guilty to the lesser offence of manslaughter. The judge sentenced the appellants to life imprisonment and stated that they will receive the treatments recommended by Dr. Swamy and Ms. Ginelle Nelson, and that they must serve a period of imprisonment of not less than 25 years from the date thereof (24th April 2015) before their sentences become eligible to be reviewed to ascertain their fitness for release.

The appellants have appealed the sentences imposed,

contending that the sentences are too severe, and that the judge erred in pronouncing life imprisonment. In that regard, counsel for the appellant relied on the benchmark sentence for manslaughter – 15 years imprisonment. Counsel also relied on the issue of time spent in remand by the appellants, and also the appellants' entitlement to a discount given their pleas of guilty. Counsel, in essence, contended that the appellants were denied the benefits of all these matters, and that the judge should have imposed a determinative fixed-term sentence, instead of life imprisonment. Learned counsel accepted that according to the severity of the circumstances, the sentencing judge had the discretion to rely on a higher benchmark than that of 15 years and that, given the circumstances which attended the crime, a benchmark of 20 years would have been in order.

Counsel for the respondent sought to uphold the sentence of life imprisonment imposed by the judge on the appellants with the period of review stated by the judge. The judge gave his judgment on sentencing and went through the various factors which were required to be considered. The judge assessed the aggravating factors as well as the factors in mitigation. The judge mentioned, as factors in aggravation, the seriousness of the offence, the needless loss of two lives, the fact that the offence was planned and premeditated, the absence of remorse, and the strong likelihood of the defendants reoffending in like manner. The judge also considered the factors in mitigation. He referred to the appellants' guilty pleas, the mental disorders suffered by them, and the delay in bringing the matter to a stage of finality.

The judge stated that he was required to consider all the facts and circumstances of the case and determine the culpability of the appellants. The judge found and stated: "I am satisfied from the psychiatric reports that the defendants were at the time of the commissions of the offence well aware of what they were doing but felt compelled to carry out this heinous offence". The judge considered diminished responsibility and employed it as a factor in mitigation. He said, "the issue of diminished responsibility does not arise here." He went on to say, "in pursuance of my finding that the defendants did suffer some mental disorder I will with the necessary adaptations and modifications apply the relevant principles of diminished responsibility as a mitigatory factor in the sentencing process."

The judge went on to quote the dicta of Leonard J, which

are worth repeating. The judge stated:

“in diminished responsibility cases there are various courses open to a judge. His choice of the right course will depend on the state of the evidence and the material before him. If the psychiatric reports recommend and justify it, and there are no contrary indications, he will make a hospital order. Where a hospital order is not recommended, or is not appropriate, and the defendant constitutes a danger to the public for an unpredictable period of time, the right sentence will, in all probability, be one of life imprisonment.”

The judge went on to state:

“emerging from the authorities hereinbefore mentioned are the following principles for the court’s consideration in determining an appropriate sentence in a case of diminished responsibility. The court is required to consider all the facts and circumstances of this case and assess the defendant’s blameworthiness or culpability. In so doing the court must balance the seriousness of the offence with the effects of the mental disorder suffered by the defendant and accordingly determine the level of residual responsibility left in them.”

He said that “the defendants have been found fit to stand trial by a qualified psychiatrist”.

The court went on to inquire as to whether the defendants posed a danger to the public. The judge stated:

“the court must consider whether the defendants pose a danger to the public. It is common ground that the defendants carefully planned and ruthlessly executed their grisly endeavour. They have insisted that they were well aware of what they were doing and remain unremorseful for the devastation caused. Indeed, they have insisted that they would do it again if given an opportunity to do so.”

The judge found that in the circumstances, the appellants’ degree of responsibility was by no means minimal.

The judge went on to consider the issue of delay and, upon assessing the circumstances of the entire case, sentenced the appellants to life imprisonment. The judge

stated that they were to serve a period of imprisonment of not less than 25 years before their sentences became eligible for review to ascertain their fitness for release.

The learned Director of Public Prosecutions stated in essence that the judge considered all the relevant circumstances and that, based upon the seriousness of the offence, and all the other factors, found that a term of life imprisonment was appropriate with a period of review of not less than 25 years from the date of the sentence (24th April 2015). This left open the issue of whether the judge ought to have factored the years from 2001 during which the appellants were in custody, because the review period the judge ordered would have started from the date of sentence in April 2015.

Having reviewed the judge's judgment, and having heard the submissions of counsel in seeking to impugn the sentence imposed, and having heard the submissions of the Director of Public Prosecutions, the Court found no proper basis to upset the sentence of life imprisonment imposed by the judge in respect of the appellants. The Court was however of the view that the period of review ought not to have been from the time of sentence in April 2015, but ought to have commenced from the time the appellants were arrested.