

EASTERN CARIBBEAN SUPREME COURT

COURT OF APPEAL SITTING DIGEST

**ANTIGUA AND BARBUDA
17TH JUNE TO 21ST JUNE 2019**

JUDGMENTS

Case Name:

**[1] DANIEL FORDE
[2] IAN FORDE**

and

THE ATTORNEY GENERAL OF SAINT LUCIA

[SLUHCVAP2017/0024]

Date:

Thursday, 20th June 2019

Coram:

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

Appearances:

Appellant:

Mr. Hugh Marshall Jr. holding papers for Mr. Horace Fraser

Respondent:

Mr. Justin L. Simon, QC holding papers for Mr. Seryozha Cenac, Senior Crown Counsel

Issues:

Civil appeal — Seizure and detention of cash pursuant to section 29A of Proceeds of Crime Act (amended) — Jurisdiction of Magistrate's Court to hear civil asset forfeiture matters under section 49A amendment to Proceeds of Crime Act — Whether section 49A amendment to Proceeds of Crime Act unconstitutional — Whether learned judge erred in finding that magistrate granted an order for the continued detention of the cash seized from the appellants

**Result and
Reason:**

Held: dismissing the appeal in relation to the constitutionality of section 49A of the Proceeds of Crime Act and allowing the appeal in relation to the learned judge's finding that the magistrate had made an order for the continued detention of the cash seized; making the declarations and orders set out at paragraph 47 of the judgment; and ordering that each party shall bear its own costs, that:

- 1. The section 49A amendment to the Proceeds of Crime Act introduced civil asset forfeiture in Saint Lucia, which is distinct from criminal asset forfeiture. Before the amendment, the High Court only had jurisdiction over criminal asset forfeiture in relation to money laundering and a person's assets could only have been forfeited after conviction. Civil asset forfeiture is a new regime created by Parliament which is also aimed at combating money laundering. The section 49A amendment empowers the magistrate to forfeit the assets of a person who has not been convicted, which is consistent with civil asset forfeiture.**

Section 49A of the Proceeds of Crime Act Cap. 3:04, Revised Laws of Saint Lucia 2015 amended by Act No. 4 of 2010 and Act No. 15 of 2011 applied; Attorney General v Cecil Toussaint SLUHCVP2018/0029 (delivered 5th June 2019, unreported) followed; Ahmed Williams v The Supervisory Authority ANUHCVP2015/0035 (delivered 13th July 2017, unreported) followed.

- 2. There is no doubt that Parliament, in amending the Proceeds of Crime Act, did not amend the Constitution nor did it assign any jurisdiction to the Magistrate's Court which was previously exercised by the High Court. It is settled law that Parliament cannot vest a jurisdiction which was previously exercised by judges of the High Court in the Magistrate's Court. However, in relation to money laundering, the High Court never had any jurisdiction for civil asset forfeiture.**

Therefore, the issue of a parallel jurisdiction being exercised by the High Court and the Magistrate's Court does not arise in this case.

Hinds v R [1977] AC 195 distinguished.

3. The Code of Civil Procedure and the Proceeds of Crime Act are ordinary pieces of legislation, the latter of which was later amended. They must be read together. It is trite law that a subsequent Act of Parliament can amend the former. Therefore, there was no need for Parliament to expressly amend the magistrate's jurisdiction under section 871 of the Code of Civil Procedure so as to increase the civil jurisdiction of magistrates in relation to civil asset forfeiture. It is clear that Parliament was entitled through the section 49A amendment to the Proceeds of Crime Act to increase the civil jurisdiction of the magistrate. Additionally, the section 49A amendment does not contravene the Constitution as the Constitution does not provide for the jurisdiction of the Magistrate's Court.
4. Section 29A(2) of the Proceeds of Crime Act clearly states that the police can only detain cash seized for a period of forty-eight hours. Section 29A(3) states that in order for there to be continued detention of cash, there must be an order by the magistrate. Since the Crown has conceded, even in the face of the learned judge's detailed recitation of the terms of the order made by the magistrate for the continued detention of the cash, that the magistrate made no such order, it therefore follows that the continued detention was not in accordance with section 29A(3) of the Proceeds of Crime Act. Accordingly, the continued detention of the cash was unlawful.

Case Name:

[1] KEITHLEY LAKE

[2] FIDELITY INSURANCE CO. LTD
[3] ALLIANCE ROYALTIES INC
[4] WESTMINSTER HOPE & TURNBERRY
(By his personal representative, Theodora
Montoute)

and

[1] RICHARD VENTO
[2] LANA VENTO
[3] GAIL VENTO
[4] RENEE VENTO
[5] NICOLE MOLLISON
[6] FIRST NEVIS TRUST COMPANY
LIMITED
(as trustee of Much Love International Dynasty
Trust, Vita International Dynasty Trust, Loki
International Dynasty Trust, Founders International
Dynasty Trust)

[AXAHCVP2016/0012]

Date: Thursday, 20th June 2019

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

Appearances:

Appellant: Mr. Kendrickson Kentish holding papers for Mr.
Brian Barnes

Respondent: Ms. Luann de Costa holding papers for Mr. Gerhard
Wallbank, with him Ms. Rayana Dowden

Issues: Civil Appeal — Judgments Act — Registered Land
Act — Part 55 of the Civil Procedure Rules 2000 —
Order for sale of property by a judgment creditor —
Whether the Master erred by failing to make
inquiries into an alleged unregistered interest in
land — Joint proprietorship — Proprietors in
common — Whether the Master erred in ordering the

sale of property which a judgment debtor owned in common with non-debtors — Whether the Master erred in ordering the sale of jointly owned properties without the consent of all joint proprietors or severance of the joint tenancy — Severance of a joint proprietorship — Operation of a judgment as a charge on property — Whether the operation of a judgment as a charge on property severs a joint tenancy — Whether an order for sale of property in satisfaction of one joint proprietor's debt severs a joint proprietorship

**Result and
Reason:**

Held: allowing the appeal, setting aside the order of the learned Master, and making the orders set out in paragraph 43, that:

1. Rule 55.5 of the Civil Procedure Rules empowers the court to give directions to facilitate the sale of property, including directions that an inquiry be made into the interests of any interested persons in the land, and the extent of such interests in the net proceeds of sale. While the Master's order recognises both Ms. Harewood and her alleged interest in parcel 127, there was no specific finding in relation to the nature and extent of her interest in the property. In the face of unresolved claims that Ms. Harewood held an interest in the land, which would necessarily have to be accounted for in the substantive order, the Master was required to make a specific finding regarding the interest, and if necessary, give directions for an enquiry into the existence or otherwise of Ms. Harewood's interest.

Rule 55.5 of the Civil Procedure Rules 2000 considered.

2. The court's power to sell the lands of a judgment debtor is limited to selling only the debtor's interest in the land. Such a sale cannot include the interest of any other person in the land being sold, such as a

proprietor in common. The order for the sale of the entirety of parcel 189, which necessarily included the interests of the other proprietors in common, was in excess of the court's jurisdiction under the Judgments Act. Accordingly, the order for the sale of parcel 189 must be set aside.

Sections 2, 3, 4 and 8 of the Judgments Act R.S.A. c. J10 considered.

3. Where a joint proprietorship subsists, the court will only have the power to make an order for the sale of one proprietor's interest to the exclusion of the other proprietors' interests, where the joint tenancy has first been severed. There is no evidence that the joint proprietorship in parcel 208 was severed by voluntary acts of the joint proprietors. Neither did the fact that the judgment debt operated as a charge on the land under the Judgments Act operate to sever the joint proprietorship, as the four unities of time, title, interest and possession that are essential for a joint tenancy remained unaffected by the charge. It follows that the Master did not have the power to order the sale of the joint property. The purported sale of parcel 208 was therefore a nullity, and that part of the Master's Order must be set aside.

Sections 2, 3, 4 and 8 of the Judgments Act R.S.A. c. J10 considered; section 107 of the Registered Land Act R.S.A. Cap. R30 considered; Williams v Hensman (1861) 70 ER 862 considered; Mums Incorporated and another v Cayman Capital Trust Company and others 2000 CILR 132 considered; Eunice Edwards v Keith Edwards and another Antigua and Barbuda Civil Appeal No. 15 of 2005 considered; Sheila Miller-Weston v Paul Miller and Leithia Miller Supreme Court of Jamaica, Claim No. CL 2002 MO94 (delivered 22nd June 2007, unreported) considered; First Global Bank Limited v Rohan Rose Supreme Court of Jamaica, Claim No. 2012CD00029

(delivered 29th July 2016, unreported)
distinguished; James F. Walker v Susan
Lundborg [2008] UKPC 17 distinguished.

Case Name:

HAYNES BROWNE

and

**NEIL SARGEANT (as Executor of the Estate of Buell
Carr, deceased, substituted for Lena Carr, deceased
by her Executor Buell Carr)**

[ANUHCVP2018/0008]

Date:

Thursday, 20th June 2019

Coram:

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

Appearances:

Appellant:

Ms. Mandi Thomas

Respondent:

Dr. David Dorsett with him Mr. Jarid Hewlett

Issues:

**Civil appeal — Counter appeal — Damages —
Nominal damages — Building contract —
Construction agreement — Breach of contract —
Assessment of damages — Method of calculating
damages — Quantum of interest — Appropriate
measure of damages — Diminution in value or cost
of reinstatement — Pre-judgment interest — Post
judgment interest**

**Result and
Reason:**

**Held: allowing the appeal; setting aside the order of
the learned master; dismissing the counter appeal;
awarding the respondent a total of \$60,000.00
nominal damages together with pre-judgment**

interest of 1½% per annum from the date of service of the claim to the date of this judgment and thereafter at the statutory rate of 5% per annum until the debt is satisfied; and ordering that the appellant pay the respondent prescribed costs in the High Court pursuant to rule 65.5(2) of the Civil Procedure Rules 2000 ('CPR') and the respondent to pay the appellant on the appeal two-thirds of the prescribed costs pursuant to CPR 65.13, that:

1. The normal measure of damages for breach of building contracts is the cost of reinstatement unless it would be unreasonable to so insist. Damages for the non-compliance with contract specifications would be assessed based on the diminution in value where the cost to reinstate would be out of all proportion to the benefit which would accrue to the innocent party. In assessing the damages, it must be both reasonable to reinstate and the amount awarded must be objectively fair as between the claimant and the defendant.

Ruxley Electronics and Construction Ltd v Forsyth [1996] AC 344 applied; Treitel The Law of Contract (7th edn, Sweet & Maxwell 2007) applied; Southampton Containder Terminals Ltd v Schiffahrts-Gesellschaft "Hansa Australia" MGH & Co. [2001] EWCA Civ 717 applied; East Ham Corporation v Bernard Sunley & Sons Ltd [1996] A.C. 406 considered; Hudson's Building and Engineering Contracts (8th edn, Sweet & Maxwell 1959) considered.

2. The cost of reinstatement is not the appropriate measure of damages if the expenditure would be out of all proportion to the benefit to be obtained, and, secondly, the appropriate measure of damages in such a case is the difference in value, even though it would result in a nominal award. An award of nominal damages is appropriate given the complete lack of evidence in proof of the loss. The court is empowered to make an award of nominal damages where the fact of a

loss is shown but the evidence as to its amount is not proven.

Attorney General of Antigua and Barbuda v The Estate of Cyril Thomas Bufton et al ANUHC VAP2004/0022 (delivered, 6th February 2006, unreported) applied; Ruxley Electronics and Construction Ltd v Forsyth [1996] AC 344 applied; Bellgrove v Eldridge (1954) 90 C.L.R 613 considered.

3. In this case the cost of reinstatement is unreasonable in the circumstances. There is no evidence which demonstrates that the house is a complete disaster or that the house is so defectively constructed that it is uninhabitable and needs to be rebuilt. The loss sustained does not extend to the need to reinstate. To assess damages on any other basis would result in Mr. Sargeant being unjustly enriched. In the circumstances the cost of reinstatement is not the appropriate measure of damages. An award based on the diminution in value is the appropriate approach in the circumstances.

Ruxley Electronics and Construction Ltd v Forsyth [1996] AC 344 applied; Consolidated Development Co Ltd v Diotte 2013 NBQB 386 considered.

4. The master erred in the decision to use the square foot value of the property to determine the diminution in value. Based on the evidence before the master and the evidence of Mr. Workman, it was not open to the master to embark on the arithmetical exercise that she did. The master therefore took into account irrelevant factors which led her into error.
5. Only where the award of damages is inordinately low or unwarrantably high that it cannot be permitted to stand, will warrant interference by an appellate court. Though nominal damages do not mean small damages, the award of \$95,000.00 is abnormally high and out of scale. The lack of

evidence proving the extent to which the value of the house has been diminished due to the breach and also the fact that the defects identified by Mr. Workman were based on the approved and not the agreed modified drawings used to construct the house makes the task more difficult; The court, doing its best on the paucity of evidence, awards the global sum of \$60,000.00 taking into account the reduction in size of rooms, the 'handing' of the house; the defective wall and the lack of a closet door as a reasonable amount for the presumed diminution in the value of the house.

Greer v Alstons Engineering Sales & Services Ltd (2003) 63 WIR 388 applied; Josephine Gabriel & Company Limited v Dominica Brewery Beverages Limited DOMHCVAP2004/0010 (delivered 2nd July 2007, unreported) applied; Flint v Lovell [1935] 1 KB 354 applied.

6. Interest should not be awarded as compensation for the damage done. It should be awarded to a Plaintiff for being kept out of money which ought to be paid to him. The learned master erred in granting post-judgment interest from the date of judgment on liability. Where a judge conducts a bifurcated trial and enters judgment on liability only, as in this case, there is no judgment debt on which interest can accrue. The master erred in awarding post judgment interest from the date of judgment on liability

Jefford v Gee [1970] 2 Q.B. 130 applied; Section 7 Judgments Act Cap. 227 Laws of Antigua and Barbuda applied; Section 27 of the Eastern Caribbean Supreme Court Act Cap. 143 Laws of Antigua and

Barbuda applied.

- 7. Interest should not be suspended for the delay in service of the judgment. The delay is attributed to the vagaries of the adversarial process for which the respondent cannot be faulted; neither should the appellant be penalised.**

Rule 42.6(1) of the Civil Procedure Rules 2000 applied.

APPLICATIONS AND APPEALS

Case Name:

Clive Olivera

v

Antigua Commercial Bank

[ANUHCVP2018/0005]

Date:

Monday, 17th June 2019

Coram:

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

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Dr. David Dorsett with him Mr. Jarid Hewlett

Respondent:

Mrs. Carla Brookes-Harris Deputy Solicitor General holding for Ms. Alicia Aska

Issues:

Civil appeal – Application for adjournment —

Whether the learned Master erred in not properly awarding costs on an assessed basis by misapplying CPR 65.13 and not having regard or any proper regard for CPR 56.13 (5) — Whether leave to appeal is required to appeal an order for costs.

Type of Oral
Result / Order
Delivered:

Directions

Order:

Result / Order:

1. By consent the hearing of this appeal is adjourned to the next sitting of the court during the week commencing the 16th September 2019.
2. The parties shall file written submissions on the question of whether leave to appeal is required on the costs award.
3. The submissions shall be filed and served by 15th July 2019.
4. On the assumption that the appeal is regular, the respondent shall file submissions in response by 15th July 2019.

Case Name:

[1] Jasmine Browne Wilson
[2] Damion George Wilson

v

[1] The Attorney General of Antigua and Barbuda
[2] The Chief Immigration Officer

[ANUHCVP2017/0022]

Date:

Monday, 17th June 2019

Coram:

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

Justice

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Kendrickson Kentish

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

Issues:

Civil appeal – Application for adjournment

[1] Whether the decision of the judge to accept the untested affidavit evidence of the respondents was wrong?

[2] Whether there is an arguable case that the decision of the Cabinet to declare the second appellant “*Persona Non-Grata*” is amenable to judicial review?

[3] Whether there is an arguable case that there was a breach of the appellants right to protection of the law contrary to section 3 (a) of the Constitution Order?

[4] Where there is an arguable case that the deportation of the second appellant will be a breach of the appellants right to protection of family life contrary to section 3 (c) of the Constitution Order?

[5] Whether there is an arguable case that it is permissible to remove or deport the second appellant, a non-citizen parent where the effect will be that the children who are citizens of Antigua and Barbuda will also have to leave?

[6] Whether there is an arguable case that there is a breach of the first appellant’s right to freedom of movement contrary to section 8(1) of the Constitution Order?

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

Directions

Result / Order:

Order

1. By consent, the hearing of this appeal is adjourned by consent to the next sitting of the

court in the state of Antigua and Barbuda during the week commencing 16th September, 2019.

2. The written submissions filed and served by the appellants in support of the appeal is deemed to be duly filed and served as at 21st May, 2019.
3. The respondents shall file and served written submission on the appellants in response no later than 15th July, 2019.
4. The appellants shall be at liberty to file and served a reply no later than 26th July, 2019.
5. No order as to costs.

Case Name:

Leonart Mathias

v

Antigua Commercial Bank

[ANULTAP2017/0002]

Date:

Monday, 17th June 2019

Coram:

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

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. Justin L. Simon QC

Respondent:

Mrs. Andrea Roberts Nicholas

Issues:

Adjournment — Whether there should be a retrial of the appellant's unfair dismissal claim in all circumstances

**Type of Oral
Result / Order**

Directions

Delivered:

Result / Order:

1. The appellant shall file and serve written submissions in support of the appeal by 5th July 2019.
2. The respondent shall file and serve written submissions in response by 9th August 2019.
3. The appellant shall be at liberty to file and serve reply by 16th August 2019.
4. By consent, the hearing of this appeal is adjourned to the next sitting of the court in the state of Antigua and Barbuda during the week commencing 16th September 2019.
5. No order as to costs.

Case Name:

Charles Joseph

v

[1] The Attorney General

[2] The Director of Public Prosecutions

[ANUHCVAP2017/0005]

Date:

Monday, 17th June 2019

Coram:

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

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Dr. David Dorsett

Respondent:

Mrs. Carla Brookes-Harris, Deputy Solicitor General

Issues:

Civil appeal – Application for adjournment — Whether the learned judge erred in law in the issuance of his order in that he failed in his duty to give reasons for his order and in failing to give reasons the right of the appellant to a fair trial as guaranteed by section 15 (8) of the Constitution of

Antigua and Barbuda.

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

Directions

Result / Order:

Order:

1. This appeal is hereby de-listed and will only be restored on application by either party.
2. No order as to costs.

Case Name:

Mehul Choksi

v

[1] The Minister Responsible for Citizenship

[2] The Minister Responsible for External Affairs

[ANUHCVAP2018/0048]

Date:

Monday, 17th June 2019

Coram:

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

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. Justin L. Simon, QC with him Dr. David Dorset

Respondent:

Mrs. Carla Brookes-Harris, Deputy Solicitor General

Issues: Civil appeal – Application for leave to appeal — Application to adduce expert evidence — Whether the learned judge erred by failing to grant application to adduce expert evidence — Extradition to India

Type of Oral Result / Order Delivered: Oral Decision

Result / Order: Order:
Leave to appeal is hereby granted.

Case Name: Dr. Jose Humphreys
v
The Medical Council
[ANUHCVP2017/0002]

Date: Monday, 17th June 2019

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

Appearances:

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

Respondent: Ms. Chatrisse Beazer

Issues: Criminal appeal – Leave to appeal to Her Majesty In Council

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

Result / Order: Order:
1. The application is dismissed.
2. No order as to costs.

Reason: The court is of the unanimous view that the applicant has not met the test contained in Section 22 1(a) of the Constitution of Antigua and Barbuda in that the appeal does not involve directly or indirectly a claim or a question respecting a right which has a value equal to or exceeding the prescribed value of \$1,500.00 as the question on the appeal is whether the letter of the Medical Council is in effect a refusal to renew the Medical Licence or whether the application for renewal of the Medical Licence was still pending before the Medical Council based on the authority of Daryl Sands, Controller of Bank Crozier Limited (in Liquidation) v. Garvey Louison, Liquidator of Bank Crozier Limited et al. that question does not involve a question as to a value of the issue in dispute. There shall be no order as to cost.

Case Name:	Oliver Joseph Oscar
	v
	The Queen
	[ANUHCRA2016/0010]
Date:	Monday, 17th June 2019
Coram:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Appellant in person
Respondent:	Mrs. Shannon Jones- Gittens, Crown Counsel 1 for the Director of Public Prosecutions
Issues:	Criminal appeal – Grievous bodily harm — Appeal against sentence and conviction — Whether the evidence supports the conviction — Whether the jury’s verdict was in compliance with the law — Whether the sentence was harsh
Type of Oral Result / Order Delivered:	Directions
Result / Order:	Order:
	1. The appellant is to file written submissions by Wednesday 19th June 2019. 2. The respondent is to file a reply by 20th June 2019. 3. The appeal is to be heard on Friday, 21st June 2019, given its urgency, during the afternoon session of the court.

Case Name:

Jenoure Craig

v

The Queen

[ANUHCRA2017/0005]

Date:

Monday, 17th June 2019

Coram:

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

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Appellant in person

Respondent:

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

Issues:

Criminal appeal – Appeal against conviction and sentence — Possession of a controlled substance to wit cocaine — Possession with intent to supply — Whether the sentence was too severe in all of the circumstances — Whether the conviction was unsafe and unsatisfactory — Whether the learned judge in his summing up misdirected the jury in that he emphasized and more or less confused or directed the jury of the correctness of the inference that of “knowledge” but failed to remind them or even mention the equally available inference of “lack of knowledge” — Whether the judge erred in law when he failed to direct the jury on “proof of knowledge” to ground a finding of possession — Whether the judge failed to assist the jury with legal requirement to ground a finding of possession with intent to supply — Whether the judge misdirected the jury on the issue of possession — Whether there was no evidence or sufficient evidence to sustain a conviction of drug trafficking — Application for adjournment for appellant to seek Counsel

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

Directions

Result / Order:

Order:

1. The respondent shall file and serve written submissions on the appellant by 22nd July 2019.
2. The appellant shall file and serve written submissions on the respondent by 22nd July 2019.
3. The hearing of the appeal is adjourned to the next sitting of the court in the state of Antigua and Barbuda during the week commencing the 16th of September 2019.

Case Name:

Darryl Wilson

v

The Queen

[ANUHCRA2015/0002]

Consolidated with

Melville Samuel

v

The Queen

[ANUHCRA2015/0013]

Date:

Monday, 17th June 2019

Coram:

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

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. Sherfield P. Bowen

Respondent: Mr. Anthony Armstrong and with him Mrs. Shannon Jones- Gittens and Mr. Curtis Cornelius for the Director of Public Prosecutions

Issues: Criminal appeal – Armed Robbery — Appeal against conviction and sentence — Whether material irregularity occurred when the jacket presented and described in the court below is substantially different from the jacket presented and admitted at the trial and resulted in unfairness to appellant — Identification or recognition of evidence — Turnbull Direction — Section 146 of the Evidence Act of Antigua and Barbuda — Whether failure to consider the Evidence Act renders conviction unsafe — Good Character — Whether the sentence imposed on the appellant was manifestly excessive — Refusal of the trial judge to entertain the objection to the introduction of the photograph

Type of Oral Result / Order Delivered: Oral Judgment

Result / Order: Order:

1. The appeal against conviction is dismissed.
2. The appeal against sentence in relation to Melville Samuel is varied and substituted by a sentence of 16 years.
3. The appeal against sentence in relation to Daryl Wilson is varied and substituted by a sentence of to 15 years.

Reason: There is no merit in the grounds of appeal against conviction. The matters which were raised in relation to the jacket and color of jacket were matters that would be eminently in the domain of the jury to accept or reject as they saw fit and for that, would not be a question that arise to any unfairness in the trial. There are many cases which demonstrate this, such as, Teeluck v State of Trinidad and Tobago [2005] 1 WLR 2421 and Jagdeo

Singh v. The State, [2005] UKPC 35 which makes clear that the mere fact that the judge does not give a full character direction or that the judge omits to give a character direction is not fatal to the fairness of the trial because all turns on the quality of the evidence of the case and whether there was cogent and compelling evidence for which even if the judge gave the character direction it would not have made a difference. This is such a case that where it is clear, even if the judge gave the full character direction on Wilson it would have made no difference to the verdict of the jury, given the quality and cogency of the evidence which compelled the jury to give the decision which they did. That ground is without merit.

In relation to the sentence, it is clear that learned judge erred in where he started given the maximum time for aggravated robbery. It is a serious offence and the court considers that an appropriate sentence given the aggravating factor which outweighs the mitigating factors, which seems to be that they are not young men and had no prior convictions those are the mitigating factors. The aggravating factors, are brought day light, masked and whereby one was an employee. So, it demonstrates the degree of planning of purpose of carrying out into execution to basically rob from your employer. That is aggravation because employee breached the trust. Upon the court considering the cases cited cases by prosecution, and noting that the cases falls more in line with Glennis Messiah v. The Queen and Corian Thomas v. The Queen from this court, the sentence, which was 20 years for both, was unduly excessive. There should be disparity in sentences because of different parts. Mr. Samuel was the mastermind and Mr. Wilson was the getaway vehicle and, in those circumstances, the court weighing aggravating factors and taking into account mitigation, Mr. Samuel 20 years sentence is reduced to 16 years and in relation Mr. Wilson 20 years sentence is reduced to 15 years.

Case Name:

Eraquio Jose Gonzalez

v

The Queen

[ANUHCRA2019/0006]

Date: **Monday, 17th June 2019**

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

Appearances:

Appellant: **Mr. Sherfield P. Bowen**

Respondent: **Mr. Anthony Armstrong with him Mrs. Shannon Jones-Gittens and Mr. Curtis Cornelius for the Director of Public Prosecutions**

Issues: **Extension of time to appeal — Application withdrawn**

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

Result / Order: **Order:**
The application for an extension of time to appeal is hereby withdrawn.

Case Name:

**Jevorny Richards
v
The Queen
[ANUHCRA2013/0006]

Consolidated with

Lasana Riley
v
The Queen
[ANUHCRA2013/0007]**

Date:

Monday, 17th June 2019

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant:

**Mr. Cosbert Cumberbatch for Mr. Jervony Richards
Mr. Sherfield Bowen for Mr. Lasana Riley**

Respondent:

Mr. Anthony Armstrong with him Mrs. Shannon Jones-Gittens and Mr. Curtis Cornelius for the Director of Public Prosecutions

Issues:

Criminal appeal – Murder – Appeal against conviction and sentence — Defence of accident

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

Oral Judgment

Result / Order:

Order:

- 1. The appeal against the conviction of Lasana Riley is dismissed.**

2. The appeal against the sentence in relation to Lasana Riley is varied and substituted by a sentence of 35 years with a period of review after 20 years.
3. The appeal against the sentence in relation to Jevorny Richards is varied and substituted by a sentence of 25 years with a period of review after 15 years.

Reason:

The appellant Lasana Riley has appealed against his conviction and sentence. As clearly as may be desirable, Mr. Riley's defense was that the gun had gone off accidentally and that it was an accident. At the end of his summation that the shooting was an accident, the court is satisfied that when these directions are taken together that the shooting was not an accident, and there is no basis for holding that the verdict is unsafe. The appeal is dismissed and the conviction is affirmed. In the sentence of life imprisonment, the learned judge erred in principle as it relates to sentencing.

In relation to Mr. Riley, the court shall vary the sentence of 35 years with a period or review after 20 years.

In relation to Mr. Richards, the court shall vary the sentence of life imposed on him to 25 years with a period of review after serving 15 years.

Case Name:

Cove Hotels (Antigua) Ltd.

v

**[1] The Hon. Gaston Browne
(Prime Minister of Antigua and Barbuda)**

**[2] Konata Lee
(Secretary to the Cabinet of the Government of
Antigua and Barbuda)**

**[3] Ryan Johnson
(Editor of the Antigua and Barbuda Official Gazette)**

**[4] Ralph George
(Antigua and Barbuda Government Printer)**

[5] The Attorney General of Antigua and Barbuda

[ANUHCVP2018/0040]

Date: Tuesday, 18th June 2019

Coram: The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. John Carrington, QC with him Mr. Jomokie Phillips and Mr. Kemar Roberts

Respondent: Mr. Anthony Astaphan, SC with him Mrs. Carla Brookes-Harris, Deputy Solicitor General

Issues: Civil appeal – Compulsory acquisition — Bias — Whether the learned judge applied the correct legal principles in determining if a legitimate expectation existed — Whether the decision was irrational — Whether the Government acted illegally — Whether there was procedural impropriety — Award of costs against the appellant — Counter-notice of appeal and appeal against the finding of bias and procedural irregularities

Type of Oral Result / Order Delivered: N/A

Result / Order: Judgment is reserved.

Reason:

Case Name: Cedar Valley Springs Homeowners Association Incorporated
v
Hyacinth Pestaina

[ANUHCVP2018/0041]

Date: Tuesday, 18th June 2019

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

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

Appearances:

Appellant: Mr. Jason Martin

Respondent: Mr. Hugh Marshall, Jr. with him Ms. Kema Benjamin

Issues:

Interlocutory appeal — Restrictive covenants — Summary judgment

[1] Whether the learned Master misdirected herself on both the facts and the law when she equated a notice of intention to form an entity with an entity in being — Whether the Master failed to appreciate that the reference to the Cedar Valley Springs Homeowners Association in the restrictive agreement in the deed of sale was not a reference to an entity in being with rights capable of assignation, and therefore could not be distinguished on this basis from the appellant.

[2] Whether the learned Master misdirected herself on the law in finding that the fact of its ownership of land within the development, was not conclusive that the Appellant had the proper standing to bring an action against the respondents for breach of the restrictive covenants.

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

Oral Judgment

Result / Order:

Order:

1. The appeal is dismissed.
2. Paragraph 5 of the preamble of the Master's order of 8th November 2018, which states that *"the claimant in these proceedings is an incorporated company which pursuant to the authority of Salomon v Salomon 1895-99 All ER Rep. 33 is a distinct separate legal entity to that provided for in the instrument of transfer"* is set aside.

3. Costs to the respondent in the sum of \$750.00.

Reason:

The appellant and the respondent in these two appeals are the owners of lots in a development known as the Cedar Valley Springs Development. The underlying claim is by the appellant against the respondents for the payment of maintenance fees in respect of the common areas of the development. The appellant filed an application for summary judgment on the issue of the summary judgement being entered for the appellant on whether the appellant is entitled to enforce the covenants as pleaded. The court held that in the fifth recital of the learned Master's decision, she erred in finding the claimant in these proceedings is an incorporated company which pursuant to the authority of Salomon v A Salomon & Co Ltd, [1897] AC 22, is a distinct separate legal entity that provided for in the instrument of transfer. However, the court is satisfied that the learned Master exercised her discretion in a manner with which the court cannot and should not interfere in finding that the appellant did not show that the respondent had no real prospect of succeeding on the issue of whether the appellant is entitled to enforce the covenants as pleaded. In the circumstances, the appeal is dismissed and paragraph 5 of the preamble of the Master's order of 8th November 2018, which states that *"the claimant in these proceedings is an incorporated company which pursuant to the authority of Salomon v Salomon 1895-99 All ER Rep. 33 is a distinct separate legal entity to that provided for in the instrument of transfer"* is set aside.

Case Name:

Cedar Valley Springs Homeowners Association
Incorporated

v

[1] Kenneth Meade

[2] Hilda Meade

[ANUHCVP2018/0042]

Date:

Tuesday, 18th June 2019

Coram:	The Hon. Mr. Davidson Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Jason A. Martin
Respondent:	Mr. Hugh Marshall, Jr.
Issues:	Interlocutory appeal—restrictive covenants—summary judgment [1] Whether the learned Master misdirected herself on both the facts and the law when she equated a notice of intention to form an entity with an entity in being;—whether the Master failed to appreciate that the reference to the Cedar Valley Springs Homeowners Association in the restrictive agreement in the deed of sale was not a reference to an entity in being with rights capable of assignation, and therefore could not be distinguished on this basis from the appellant. [2] Whether the learned Master misdirected herself on the law in finding that the fact of its ownership of land within the development, was not conclusive that the Appellant had the proper standing to bring an action against the respondents for breach of the restrictive covenants.
Type of Oral Result / Order Delivered:	Oral Judgment
Result / Order:	Order: 1. The appeal is dismissed. 2. Paragraph 5 of the preamble of the Master’s order of 8th November 2018, which states that <i>“the claimant in these proceedings is an incorporated company which pursuant to the authority of <u>Salomon v Salomon</u> 1895-99 All ER Rep. 33 is a distinct separate legal entity to that provided for in the instrument of transfer”</i> is set aside. 3. Costs to the respondent in the sum of \$750.00

Reason:

The appellant and the respondent in these two appeals are the owners of lots in a development known as the Cedar Valley Springs Development. The underlying claim is by the appellant against the respondents for the payment of maintenance fees in respect of the common areas of the development. The appellant filed an application for summary judgment on the issue of the summary judgement being entered for the appellant on whether the appellant is entitled to enforce the covenants as pleaded. The court held that in the fifth recital of the learned Master's decision, she erred in finding the claimant in these proceedings is an incorporated company which pursuant to the authority of Salomon v A Salomon & Co Ltd, [1897] AC 22, is a distinct separate legal entity that provided for in the instrument of transfer. However the court is satisfied that the learned Master exercised her discretion in a manner with which the court cannot and should not interfere in finding that the appellant did not show that the respondent had no real prospect of succeeding on the issue of whether the appellant is entitled to enforce the covenants as pleaded. In the circumstances, the appeal is dismissed. Paragraph 5 of the preamble of the Master's order of 8th November 2018, which states that *"the claimant in these proceedings is an incorporated company which pursuant to the authority of Salomon v Salomon [1895-99 All ER Rep. 33] is a distinct separate legal entity to that provided for in the instrument of transfer"* is set aside.

Case Name:

Ericsson AB Antigua Limited

v

Ayesha Charles

[ANULTAP 2018/0007]

Date:

Tuesday, 18th June 2019

Coram:

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

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

Appearances:

Appellant: Mr. Rushaine Cunningham

Respondent: In Person

Issues:

Civil appeal – Application to adduce fresh evidence — Whether the industrial exceeded its jurisdiction in ordering an ex parte trial — Employer not served — Industrial Court (Procedure) Rules, 2015 — Illegality — Opportunity to be heard — Whether exemplary damages should have been ordered where there was no evidence to support such an award — whether costs should have been ordered

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

Directions

Result / Order:

- 1. The appeal is adjourned to the next sitting of the court of appeal in the state of Antigua and Barbuda during the week commencing 16th September 2019.**
- 2. The respondent shall file and serve submissions in response with authorities on or before the 15th day of July 2019.**
- 3. The appellant has leave to file submissions with authorities in reply, if necessary, on or before the 31st of July 2019.**

Case Name:

**Everton Welch
v
The Attorney General
[ANUHCVP2017/0018]**

Date:	Wednesday, 19th June 2019
Coram:	The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Dr. David Dorsett
Respondent:	Mrs. Carla Brookes-Harris
Issues:	Civil appeal – Whether the learned judge erred in dismissing the appellant’s application for constitutional relief without considering the legal merits of the application — Whether the learned judge erred in rendering a judgment in a case where he did not conduct a public hearing — Public hearing under section 15 (8) of the Constitution of Antigua and Barbuda — Whether the learned judge erred in finding as “probably not true” the affidavit evidence of the applicant when the said evidence was not subject to cross-examination — Whether the learned judge erred in dismissing the appellant’s application for a declaration that was contravention of section 15(2) of the Constitution in the absence of a finding that the continuation of the trial took place in the absence of the appellant with the appellant’s “own consent”.
Type of Oral Result / Order Delivered:	Oral Judgment
Result / Order:	Order: 1. The appeal is allowed. 2. The constitutional motion is reverted to be heard by another judge of the civil court. 3. No order as to costs.
Reason:	This is an appeal against a decision of the learned judge in the circumstance where the constitutional motion was heard by one judge and decision was

reserved by that judge. Unfortunately, another judge reverted the decision without the appellant and who offered the judgement which had been reserved by another judge. The Deputy Solicitor General having had sight this morning of the order of Hon. Justice Pearletta Lanns, who had reserved the judgement, has quite properly conceded that the appeal should be allowed and the constitutional motion should be reverted to be dealt with by another judge. In these circumstances, it is hereby ordered that the appeal is allowed and the constitutional motion is reverted to be dealt with by another judge of the civil court. There should be no order as to cost.

Case Name:

Geddes Meyer

v

Kehvin Dickson

[ANUHCVP2014/0005]

Date:

Wednesday, 19th June 2019

Coram:

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

Appearances:

Appellant:

Mr. George Lake

Respondent:

Ms. Safiya Roberts with her Ms. Kamilah Roberts

Issues:

Civil appeal – Specific performance — Frustration of the agreement — Whether the failure of the relevant Government departments to assess and calculate the taxes to be paid within a reasonable time sufficed to end the contract by frustration — Whether the claim for specific performance of the agreement should be dismissed — Whether time was of an essence — Whether the contract was frustrated based on the circumstances — Whether respondent entitled to treat contract at end — Whether the appellant was entitled to specific performance of the contract — On counterclaim

whether respondent entitled to mesne profits and costs

Type of Oral
Result / Order
Delivered:

N/A

Result / Order:

The judgment is reserved.

Case Name:

St. James Club
v
Sundry Workers

[ANULTAP2018/0005]

Date:

Wednesday, 19th June 2019

Coram:

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

Appearances:

Appellant:

Mr. Hugh Marshall Jr. with him Mrs. Stacey-Ann
Saunders Osbourne and Ms. Kema Benjamin

Respondent:

Ms. Asheen Joseph

Issues:

Collective bargaining agreement—whether the judge failed to properly consider and apply provisions of the Antigua and Barbuda Labour Code, the Collective Agreement and the law of agency—whether the learned judge erred in law in finding that the Antigua and Barbuda Workers’ Union needed to consult with the Respondents—whether the learned judge failed to consider that the Antigua and Barbuda Workers’ Union was already acting with the authority of the Respondents—Whether the Respondent signing the agreement without prejudice had any effect on the agreement in the circumstances—whether the judge applied the

without prejudice rule properly—whether the industrial court was wrong on the strike out application—Agent authority to bind the principal.

Type of Oral
Result / Order
Delivered:

N/A

Result / Order:

The judgment is reserved.

Case Name:

Jehu Hand
v
Keith Mazer

[ANUHCVP2018/0027]

Date:

Wednesday, 19th June 2019

Coram:

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

Appearances:

Appellant:

Ms. Luann de Costa

Respondent:

Ms. C. Debra Burnette with her Ms. Mandi Thomas

Issues:

Civil appeal – Whether the learned judge failed to make an order to appoint an independent property manager to manage and operate the property which is in dispute between the parties.

Type of Oral
Result / Order
Delivered:

Directions

Result / Order:

Order:

This court will accordingly vary the order made by the learned judge at paragraph 46 (c) of the judgement by adding the following:

- 1. The claimant shall file further verified accounts from August 2018 to June 2019 within thirty (30) days of this order.**
- 2. Pursuant to CPR part 17.1 (f) and with effect from 20th June 2019, all rental income of the property shall be paid into court into an interest-bearing account, the details of which to be provided by the Registrar until further order.**
- 3. In listing the property for rent, the claimant is directed to inform prospective tenants to pay the rent into the account referred to of clause 2 of this order.**
- 4. No order as to costs.**

Reason:

This an appeal against the judgment of the judge of the High Court in which the learned judge on an application by the appellant for interim orders made an order directing that the claimant do file a verified account of all the rents received in respect of the subject property but declined to make an order appointing an independent property manager to manage the property pending the trial of the claim of the ownership of the property. The considers that the judge erred in the exercise of her discretion by not making an order protecting the interest of both parties pending the determination of the trial of the ownership of the subject property and was therefore plainly wrong.

Case name:

**Waterfront Properties Ltd.
v
ABI Bank Ltd. (In Receivership)
[ANUHCVP2018/0008]**

Date:

Thursday, 20th June 2019

Coram:

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

Appearances:

Appellant: Mr. Hugh Marshall, Jr.

Respondent: Mr. Justin L. Simon, QC

Issue:

Interlocutory appeal — Strike out application — Registered Land Act, CAP 374 — Whether the learned judge erred in law by failing to determine whether the defendant had pleaded any default of subsection 64 (2) or any demand in writing thereunder — Whether the learned trial judge erred in law by finding that whether the actions of the defendant amounted to a default is a matter for trial when only matters raised in the pleadings can be issues for trial, the defendant having not pleaded that a default was made — Whether the learned judge erred in law by failing to consider ruling on the law of subsection 64 (2) in relation to the substantive and factual aspects of the application before the court, in particular the fact that the defaults pleaded by the defendant were defaults of a loan agreement with a third party and not defaults under the charges under which the defendant acted in selling the claimant's property — Whether the learned judge erred in law by failing to consider the grounds of the application on their merits.

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

Oral Judgment

Result / Order

1. The respondent's application to adduce further evidence is refused.
2. The appeal is dismissed.
3. Costs to the respondent in the amount of \$10,000.00 for this appeal and the court below.

Reason:

This is an appeal against the judge's order refusing an application to strike out. The reasons for the decision are contained in paragraph 19 of the judgment. In deciding not to strike out the defence, the judge was exercising her case management discretion. Such a decision is essentially that of the view of the trial judge and the appeal court will not

interfere unless the judge was clearly wrong in the exercise of the discretion. The law as to when the appeal court will impugn the discretion of the trial judge is well known. It is established that strike out is a draconian remedy and ought to be remedy of last resort. The court is of the view that there is no reason for this court to impugn the exercise the discretion of the judge in refusing to strike out the defence. The judge in his judgment clearly stated that among other things that the earlier issues raised by the defence also involved issues that must be submitted at trial. It is clear from that statement that the judge considered all the issues raised and in exercise of discretion came to the conclusion not to strike out. In circumstances, the appeal is dismissed.

Costs be granted to the respondent in the amount of EC\$10,000.00 to cover this appeal and the court below.

Case Name:

Debra Jones-Thompson

v

[1] Sharon Govia

[2] John Govia

[3] Shenella Govia

[ANUHCVP2016/0024]

Date:

Thursday, 20th June 2019

Coram:

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

Appearances:

Appellant:

Mr. Sylvester Carrot

Respondent:

No appearance

Issues:

Civil appeal – Whether the master erred by refusing appellant’s application for default judgment—fixed dated claim — Damages and injunction for trespass — Encroachment by respondents by chattel house

— Whether the claim for possession should be by fixed date claim

Type of Oral
Result / Order
Delivered:

Oral Judgment

Result / Order:

Order:

1. The appeal is allowed.
2. The matter is remitted to the High Court for determination.
3. Costs to the appellant in the sum of \$1,000.00 to be paid by the second respondent.

Reason:

This is an appeal by the appellant against the decision of the learned Master where in an application for default judgment against the respondent, the learned Master declined to make an order for judgment in default but instead made an order that the claimant's claim be brought by fixed date claim rather than an ordinary claim because the claim was essentially a claim for possession of land. The appellant appeals the order on the basis inter alia and the claim for injunction and damages and properly brought by an ordinary claim. The appellant therefore submits that the Master was blatantly wrong in the exercise of this discretion and his order should be set aside. The court agrees with the appellant in that regard, that the second defendant having failed to file any acknowledgement of service or defence, after having been served with proceedings, the application for default judgment against the second defendant ought not to be refused and ought to return to High Court for determination.

The first named respondent has never been served and the court notes that the appellant does not wish to proceed against her. The court further notes that the appeal against Shenella Govia is not being proceeded with, and Counsel for the appellant submits that once the default judgment against second respondent is granted, the matter shall proceed no further. The appeal is allowed and the matter is remitted to the High Court for

determination.

Costs are awarded to the appellant in the sum of \$1,000.00 to be paid by the second respondent.

Case Name:

[1] Krystal Kenda

Kandia King

Griffin King

**(as administrator and co-administrators of the estate
of Claude King, deceased)**

v

George Lewis

[ANUHCVP2014/0026]

Consolidated with

Falmouth Harbour Chandlery and Fuel Dock Ltd.

v

George Lewis

[ANUHCVP2014/0027]

Date:

Thursday, 20th June 2019

Coram:

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

Appearances:

Appellant:

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

Respondent:

Ms. Kamilah Roberts

Issues:

Civil appeal – Constructive trust — Equity

- 1. Whether the learned trial judge erred in law by not considering and determining the claim by Falmouth Harbour Chandlery & Fuel Dock Ltd in Claim No. ANUHCVP2010/0224 for vacant possession in light of the company's rights granted by its lease over the premises.**

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

Type of Oral
Result / Order
Delivered:

Oral Judgment

Result / Order:

Order:

1. The appeal is dismissed.
2. Costs to the respondent of two thirds (2/3) of the amount awarded in the court below

Reason:

The appellant appealed against the judgment of Cottle, J in which he declared the appellant company holds a leasehold interest in a portion of

land and the buildings thereon on constructive trust for respondent. The appellants, Claude King and Falmouth Harbour Chandlery and Fuel Dock Ltd. appealed the decision of Cottle, J appealed the decision of Cottle, J on eight (8) grounds of appeal. Counsel on behalf of the appellants however pursued principally two grounds (1) whether it was open to the learned trial judge on the pleadings and the evidence to make the finding on constructive trust and (2) whether a constructive trust can arise in a situation where there is no prior agreement between the trustee and the beneficiary.

The court is of the view that there was a sufficient basis on the pleadings and the affidavit evidence for the learned judge could have made a finding that a constructive trust arose between the company and the respondent. The court finds no fault in the judge ruling in this regard.

On the other ruling that a constructive trust can only arise between an agreement the trustee and beneficiary, the court takes the view that constructive trust whenever one party relies on an undertaking by another party and acts on that undertaking to his detriment. Counsel for the respondent submitted that although the leasehold interest on the land was held by the company, the way in which the parties conducted the affairs with regard to the property and the business, the company and Mr. King who was the sole shareholder are one and the same and the monies invested by the respondent were invested on the buildings and the business conducted on the land the leasehold interested which held by the company. The learned judge made his finding on constructive trust on this basis and the court sees no reason to upset his ruling.

There were six (6) other grounds of appeal which counsel for the appellant did not pursue vigorously and in any event, we see no merit in any of them. The appeal against the judgment of Cottle, J is accordingly dismissed with costs to the respondent of two thirds (2/3) of the amount awarded in the court below.

Case Name:	The Attorney General of Saint Christopher and Nevis v Dr. Denzil Douglas [SKBHCVAP2019/0007]
Date:	Thursday, 20 th June 2019
Coram:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Douglas Mendes, SC with him Ms. Talibah Byron Mr. Michael Quamina and Ms. Lea Abdullah
Respondent:	Mr. Anthony Astaphan, SC with him Mr. Delano Bart QC, Mr. Kendrickson Kentish and Mrs. Angelina Gracie Sookoo
Issues:	Appeal from Constitutional Motion - Sections 28(1) and 31(3) of the Constitution of Saint Christopher and Nevis - Disqualification from Parliament - Whether the respondent is disqualified from sitting as a member of the House of Assembly of Saint Christopher and Nevis and required to vacate his seat - Acknowledgment of allegiance to a foreign state - Diplomatic Passport - Whether the application for, possession and use of a foreign diplomatic passport put the respondent under an acknowledgement of allegiance to a foreign state - Interpretation of Joyce v Director of Public Prosecutions [1946] AC 347
Type of Oral Result / Order Delivered:	N/A
Result / Order:	Judgment is reserved.

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

[ANUMCRAP2017/0002]

Date: Friday, 21st June 2019

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

Appearances:

Appellant: Mr. Anthony Armstrong with him Mrs. Shannon Jones-Gittens and Mr. Curtis Cornelius for the Director of Public Prosecutions

Respondent: Mr. John E. Fuller with him Mr. Kendrickson Kentish and Ms. Siobhan Leandro for the second respondent

Ms. Anesta Weekes, QC for the third respondent,

Mr. Ralph Francis for the fourth respondent

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

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

Appellant application to add an additional ground of appeal filed the day before the hearing of the appeal

Type of Oral
Result / Order
Delivered:

Oral Judgment

Result / Order:

Order:

1. The appellant's application to amend the grounds of appeal is not allowed.
2. The appeal is allowed.
3. The judgment of the Magistrate is set aside.
4. The matter is remitted to be heard by a Magistrate to rehear the committal proceedings in respect of the 2nd 3rd and 4th respondents.

Reason:

This court by majority takes the view that the amendment to the grounds of appeal should not be allowed. The appellant's application made yesterday at 1:15 pm is denied.

This is an appeal by the director of Public Prosecution against the order of the Magistrate in committal proceedings dismissing all charges brought by the police against the second 3rd and 4th respondents. At paragraph 19 of his judgment, the Magistrate stated in view of the paragraph above and in accordance with the *Galbraith* principle, this court is firmly of the belief "that the prosecution evidence taken at its highest is such that a jury properly directed could not properly convict on it."

The learned Director of Public Prosecutions advanced several appeal grounds against the order of the Magistrate. Written submission were also filed in this matter by the Director of Public Prosecutions and the 2nd, 3rd and 4th respondents. It would be instructive to look at some of the appeal grounds. The first ground states the learned Magistrate erred in law when he considered and

applied the test as stated in *Galbraith* in the committal proceedings before him. Secondly, the Magistrate erred in law when he failed to consider and apply the test or committal proceedings as expressly stated in the Magistrate's Code of Procedure Amendment Act 2004, Section 42 (c). Thirdly, the Magistrate erred in law in misunderstanding his role and function in the committal proceedings when he made findings of facts. Fourthly, the magistrate erred in law when he raise and considered questions of fact which were not for his consideration during the committal proceedings.

The court will deal with the relevant test. The Magistrate's Code of Procedure Amendment Act 2004 states, "*A Magistrate holding committal proceeding may commit an accused person for trial by a jury on a charge of an indictable offense if he is satisfied that either the charge supported by the evidence in documents filed under section 42 (a)1 alone or in conjunction with any documents filed under section 42 (b)1 established or are likely to establish the indictable offense charged or an indictable offense of a like kind which is not otherwise within his jurisdiction to deal with summary.*"

The learned Director of Public Prosecution submits that the Magistrate erred in not using the test set out in the statute. Learned Counsel Ms. Weekes, QC submits that even if the Magistrate did not use that test the outcome would have been the same. It is clear that the test established by section 42 (c) is of a low threshold particularly by the use of the disjunctive "or". It is a different test than that which is set out in the case of *Galbraith*. The Director of Public Prosecutions pointed out besides using the erroneous test, that is, the *Galbraith* test the Magistrate relied on the second limb of the test when there was nothing before him to justify that usage. So, (1) the Magistrate erred in using the *Galbraith* test and in not using the test, the test set out in the statute and even in relying on the second limb of *Galbraith* there was nothing to suggest or support his use of that limb. The court finds that there is much merit in the submissions advanced by

the learned Director of Public Prosecutions with respect of his submissions that the Magistrate employed the wrong test.

This is sufficient reason to allow the appeal. The court is not of the view that by using the *Galbraith* test the Magistrate would have arrived at the same decision. The court has considered Paragraph 19 of the Magistrate conclusion and the learned Director of Public Prosecutions submitted quite properly that there was no analysis to support the decision arrived at paragraph 19. In conclusion, the court is obliged to allow the appeal by the Director of Public Prosecutions against the order of the Magistrate. In the circumstances, it is ordered that the appeal is allowed. The judgment of the Magistrate is set aside and the matter is remitted to be heard by a Magistrate to rehear the committal proceedings in respect of the 2nd 3rd and 4th respondents.

Case Name:

Oliver Joseph Oscar

v

The Queen

[ANUHCRA2016/0010]

Date:

Friday, 21st June 2019

Coram:

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

Appearances:

Appellant:

**Mr. Cosbert Cumberbatch with him Mr. Sherfield
Bowen**

Respondent:

**Mr. Anthony Armstrong with him Mrs. Shannon
Jones- Gittens, for the Director of Public
Prosecutions**

Issues:

Criminal appeal – Grievous bodily harm — Appeal

against sentence and conviction — Whether the evidence supports the conviction — Whether the jury's verdict was in compliance with the law — Whether the sentence was harsh

Type of Oral
Result / Order
Delivered:

Oral Decision

Result / Order:

Order:

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

Reason:

This is an appeal against his conviction and sentence whereby there are two grounds.

The first ground the appellant contends that there was undue pressure brought on the jury to reach a verdict that was unanimous. In the oral submissions, it became clear that the critical issue was whether an unfairness was done to the appellant in that the second count was not put to the jury. The appellant was indicted on two charges, (1) Causing grievous bodily harm with intent and (2) grievous bodily harm. The counts were in the alternative. The jury was directed and came out four (4) hours after and sought to give a verdict with an 8-4 majority verdict. Having so stated, some more directions were put to them. The jury retired and returned a minute after with a unanimous verdict on count No.1

It is clear from what transpired that the second count was not put to the jury. This is the lesser count. One cannot speculate as to what verdict the jury would have returned on count No. 2. The court is of the opinion that this operated unfairly to the accused as he was denied the opportunity of an acquittal on the second count. In the circumstances, the appeal is allowed and the conviction and sentence are set aside. The court does not believe that an issue of retrial would arise as the appellant's imprisonment terms ends in November.

