

COURT OF APPEAL SITTING

GRENADA

Monday, May 28th – Friday, June 1st 2018

JUDGMENTS

Case Name: **Telecommunications Regulatory Commission**
v
Cable and Wireless (BVI) Ltd.

[BVIHCVAP2016/0013]
(British Virgin Islands)

Date:

Coram: **The Hon. Mr. Mario Michel, Justice of Appeal**
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: **Ms. Sabina Gibbs holding for Maples and Calder BVI**

Respondent: **Ms. Melissa Garraway from the law firm of Seon and Associates holding for Ms. Cassie Smith, QC**

Issues: **Civil appeal – Judicial review – Telecommunications Act of the Territory of the Virgin Islands – Interpretation of section 75 of Telecommunications Act – Application of the rule of informed interpretation of legislation – Whether section 75(1)(a)(iii) permits the Telecommunications Regulatory Commission (“the TRC”) to take enforcement action with respect to conduct that is past or only conduct that is present or future – The relevant point in time in relation to TRC’s exercise of its enforcement powers – Whether TRC is empowered under the Telecommunications Act to do ex post regulation or is limited to ex ante regulation – Whether TRC is able to take enforcement action under section 75(1)(a)(iii) without having made a finding of dominance in the market under section 26(3) – Whether TRC acted ultra vires by proceeding with enforcement action under section 75(1)(a)(iii) of the Act rather than by proceeding with**

regulatory action under sections 26 or 29 of the Act – The effect of taking into account irrelevant factors in coming to a decision

Result and Reason:

Held: allowing the appeal and the cross appeal in part and ordering that the appellant pay the costs of the appeal and cross appeal to the respondent at the rate of one half of the costs in the court below, as opposed to the usual two thirds under CPR Part 65.13, to reflect the success of the appellant on this appeal, that:

1. The correct interpretation of the Act section 75(1)(a)(iii) is that the relevant point in time at which it should be determined whether a licensee is carrying on or is likely to carry on business in a detrimental manner contrary to section 75(1)(a)(iii) is when the investigation into the impugned conduct commences.

R v Secretary of State for the Environment, Transportation and Regions, ex parte Spath Holme Limited [2001] 2 AC 349 applied; Douglas v The Police (1992) 43 WIR 175 referred to.

2. There is no requirement that TRC must make a finding of dominance under section 26 of the Act in order to determine whether there is anti-competitive conduct by a licensee under section 75(1)(a)(iii) of the Act. Where there is a finding of anti-competitive conduct that involves anti-competitive pricing or acts of unfair competition, TRC has the discretion to act either under section 29 or under section 75 of the Act. TRC therefore did not act ultra vires the Act by proceeding under section 75 where it was of the view that there was a form of margin squeeze.
3. Section 75(1)(a)(iii) of the Act is to be interpreted as permitting both ex ante and ex post competition investigation and regulation and that no matter which classification is employed with respect to the statutory provision, TRC had the statutory authority to regulate the impugned conduct and so acted intra vires the Act in the exercise of its enforcement powers against LIME BVI.

4. Notwithstanding that TRC had jurisdiction under the Act to investigate the impugned conduct and to take enforcement action under section 75(1)(a)(iii), TRC nevertheless took into account irrelevant factors in determining that LIME BVI was engaged in anti-competitive conduct, namely the conduct of LIME BVI's affiliates outside the jurisdiction which were not regulated by TRC. TRC failed to discharge the onus that laid on it to satisfy the court that the consideration of these irrelevant matters was not significant to the Decision and that the Decision would inevitably have been the same had they not been considered. On this basis, the cross appeal should be allowed and the Decision should be set aside.

Smith v North East Derbyshire PCT [2006] 1 WLR 3315 applied; R v Broadcasting Complaints Commission ex p Owen [1985] 1 QB 1153 applied; R v Secretary of State for Work and Pensions [2012] EWCA (Civ) 332 applied; Associated Provincial Picture House Ltd v Wednesbury Corporation [1947] 2 AER 680 applied.

Case Name:

Michael Francois

v

Ryan Richards

**[GDAHCVAP2013/0033]
(Grenada)**

Date:

Friday, 1st June 2018

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Alban John

**Respondent: Mr. Derick Sylvester, with him, Ms. Cathisha Williams and
Ms. Hazel Hopkin**

Issues: Civil appeal — Negligence — Personal injury — Contributory negligence — Apportionment of liability — Whether the trial judge erred in assessment of damages for pain and suffering and loss of amenities

Result and Reason: Held: dismissing the appeal and the counter appeal and ordering that each party shall bear his own costs in the appeal, that:

1. An appellate court should only interfere with a trial judge's conclusions on primary facts, or the inferences which she draws from the facts, if the judge misdirected herself in law or if the appeal court is satisfied on the evidence that the judge was plainly wrong. In the present case, there was ample evidence on the basis of which the trial judge could have made the finding of negligence by the appellant. The trial judge found that the appellant was driving at an excessive speed and that he was negligent since he breached his duty of care to drive at a speed that was safe in the circumstances, and his duty to manage his vehicle to avoid the collision. The finding of negligence by the trial judge was not based on the speed with which the appellant was driving, but on his breach of the duty of care to drive at a speed and in a manner that was safe. Therefore, the trial judge was entitled on the evidence to have made the findings of fact and the inferences that she made. Accordingly, there is no basis for this Court to interfere with the judge's determination on the issue of negligence.

Watt v Thomas [1947] AC 484 applied; Grealis v Opuni [2003] EWCA Civ 177 applied.

2. The guiding principle in proving contributory negligence is whether the respondent by his acts or omissions contributed to his injuries, in the sense that he failed to take reasonable care for his own safety, taking into account (as he must) that other users of the road are likely to be negligent. Contributory negligence does not involve any breach of duty owed by the claimant to the defendant. The trial judge therefore approached the issue of contributory negligence incorrectly by focusing on

the duty of care. She was plainly wrong in making the determination she made on the basis on which she made it and, as a result, her finding on the issue can be interfered with by this Court. However, having regard to the evidence, inasmuch as the trial judge took the wrong route to her destination, she did arrive at the correct destination that the respondent was contributorily negligent in causing the accident and his resulting injuries.

Watt v Thomas [1947] AC 484 applied; Alphonso v Ramnath (1997) 56 WIR 184 applied.

3. The trial judge erred in failing to give reasons for her apportionment of liability between the parties. As a result, the issue of apportionment of liability fell to this Court to be properly determined. On the facts, although the primary cause of the accident was the appellant's negligence, the respondent did display a sufficient want of care for his own safety to share in the responsibility for the accident and, the apportionment of liability by the trial judge of 70% to the appellant and 30% to the respondent was just and equitable.
4. The assessment of general damages, particularly for pain, suffering and loss of amenities, which cannot be monetarily measured, is a matter within the discretion of the trial judge. The burden on the appellant, therefore, who invites a court of appeal to interfere with a judge's assessment of general damages, particularly for a head of damages which cannot be monetarily measured, is a very heavy one. Before an appellate court can be justified in interfering with a discretionary order of a trial judge, the court must first determine that the trial judge failed to apply the relevant principles and take cognizance of comparable awards and that the trial judge made an award which was outside the range of awards which could reasonably have been made on the facts of the case and was therefore manifestly wrong. In the present case, the trial judge outlined and applied principles applicable to the determination of awards for pain and suffering and loss of amenities and reviewed several cases to find 'comparables' for the making of an award for pain and suffering and loss of

amenities. There is no basis, therefore, for interfering with the award made by the trial judge.

Steadroy Matthews v Garna O'Neal
BVIHCVAP2015/0019 (delivered on 16th January 2018, unreported) applied; CCCA Limited v Julius Jeffrey
SVGHCVAP2003/0010 (delivered on 2nd March 2004, unreported) applied.

STATUS HEARING

Case Name:

Richardson Mapp

v

The Queen

[GDAVRAP2015/0001]

Date:

Monday, 28th May 2018

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Darshan Ramdhani

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issue:

Status of the Matter

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

Oral Judgment or Decision

Result / Order:

[Oral Delivery]

- 1. The appeal against sentence filed on 9th January 2015 is allowed.**
- 2. The sentence imposed by the magistrate is set aside and the appellant is sentenced to time served.**

Reason: Learned Senior Crown Counsel indicated that he was prepared to concede that the appeal should be allowed and accept that time served would be an appropriate order to be made.

Case Name: Jones Alexander
v
Canisha Bolah
[GDAMCVAP2018/0002]

Date: Monday, 28th May 2018

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellant: No appearance
Respondent: No appearance

Issue: Status of the matter

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

Result / Order: [Oral delivery]
There being no indication that the parties were served with notice of the hearing of this matter today, the matter is adjourned for status hearing at the next sitting of the Court of Appeal in Grenada during the week commencing 15th October 2018.

Reason: Parties were not served.

Case Name: Henry Paryag
V
Unicomer Grenada Limited
[GDAMCVAP2018/0003]

Date: Monday, 28th May 2018

Before: The Hon. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Ms. Sheriba Lewis

Issue: Status of the matter

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

Result / Order: [Oral delivery]

1. The appellant shall file and serve the notice of appeal on or before 11th June 2018, failing which the appeal will be struck out.
2. The Registrar of the High Court shall cause the record of appeal to be prepared, documents for the preparation of which are already on the Court's file.
3. The appellant shall file and serve skeleton arguments in support of the appeal within 28 days of the receipt of the record of appeal.
4. The respondent shall file skeleton arguments in response within 28 days of being served the Appellant's skeleton arguments.
5. The hearing of the appeal is fixed for the next sitting of the Court of Appeal in Grenada during the week commencing 15th October 2018.

Reason: The notice of appeal in this matter was filed on 13th March 2018. It purports to appeal against a decision of the Chief magistrate given on 28th February 2018. The transcript of

proceedings and the magistrate's reasons for decision both indicate that the decision of the magistrate was actually handed down on 14th February 2018, which means that the appeal was filed out of time. The Court is prepared to treat the notice of appeal as an application to extend the time for filing a notice of appeal and grants the application that the appellant shall file a notice of appeal on or before 11th June 2018.

Case Name: Alexander Clack
v
The Queen
[GDAHCRAP2016/0004]

Date: Monday, 28th May 2018

Before: The Hon. Mario Michel, Justice of Appeal

Appearances:
Appellant: Mr. Anselm Clouden
Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issue: Status of the matter

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

Result / Order: [Oral Delivery]
The matter is adjourned for report and further status hearing at the next sitting of the Court of Appeal in Grenada the week commencing 15th October 2018.

Reason: The transcript of proceedings in the court below is not available. It is voluminous and its production by the Registry is likely to be delayed by its voluminous nature and

the insufficiency of transcriptionists available at the Registry.

Mr. Clouden undertakes on behalf of the appellant to cause a private transcriptionist to be engaged so as to progress the appeal.

Case Name: **Nigel Murray**
v
The Queen
[GDAHCRAP2015/0008]

Date: **Monday, May 28th 2018**

Before: **The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant: **Mr. Anselm Clouden**

Respondent: **Mr. Howard Pinnock, Senior Crown Counsel**

Issue: **Status of the matter**

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

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

- 1. The appellant shall endeavour to have the transcript of the proceedings in the court below be produced by private transcriptionists by the date of the next sitting of the Court of Appeal in Grenada.**
- 2. The matter is adjourned for report and status hearing at the next sitting of the Court of Appeal in Grenada the week commencing 15th October 2018.**
- 3. Leave is given to the appellant to make application to have the proceedings be set down before the Full Court for its disposition of the matter.**

Reason: This appeal was filed on 21st May 2015. The transcript of the proceedings in the court below has not been prepared despite an order made by the Court at a status hearing on 5th December 2016 for the transcripts to be produced within one (1) year of that date.

The Court Office has indicated the difficulties experienced in getting transcripts produced in a timely manner and the facility available to appellants to have the transcripts produced privately at their cost.

Case name: Nigel Murray
v
The Queen

[GDAHCRAP2016/0019]

Date: Monday, 28th May 2018

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Anselm Clouden

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issue: Status of the matter

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

Result / Order: [Oral Delivery]
1. The appellant shall endeavour to have the transcript of the proceedings in the court below produced by private transcriptionists by the date of the next sitting of the Court of Appeal in Grenada.

2. The matter is adjourned for report and status hearing at the next sitting of the Court of Appeal in Grenada the week commencing 15th October 2018.
3. Leave is given to the appellant to make an application to have the proceedings be set down before the Full Court for its disposition of the matter.

Reason:

The transcript of the proceedings in the court below has not been prepared despite an order made by the Court at a status hearing on the 5th December 2016 for the transcripts to be produced within one (1) year of that date.

The Court Office has indicated the difficulties experienced in getting transcripts produced in a timely manner and the facility available to appellants to have the transcripts produced privately at their cost.

Case name:

**Joel Horsford
v
The Queen**

[GDAHCRAP2015/0014]

Date:

Monday, 28th May 2018

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Anselm Clouden

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issue:

Status of the matter

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

Directions

Result / Order:

[Oral Delivery]

1. The appellant shall file and serve skeleton arguments in support of his appeal against sentence on or before 30th July 2018.
2. Leave is given to the respondent to file and serve further submissions on or before 15th August 2018.
3. Hearing of the appeal is fixed for the sitting of the Court of Appeal in Grenada commencing the week of 15th October 2018.

Reason:

Directions were given to ensure that the matter is set down for the week 15th October 2018.

Case name:

Sheldon Bain

v

The Queen

[GDAHCRAP2016/0007]

Date:

Monday, May 28th 2018

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Anthony C.K. Hood

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issue:

Status of the matter

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

Directions

Result / Order:

[Oral delivery]

1. Leave is given to the appellant to file and serve an amended notice of appeal amending the grounds of

appeal contained in the notice of appeal filed on 16th March 2016.

2. The amended notice shall be filed and served on or before 4th June 2018.
3. The appellant shall file and serve skeleton arguments and authorities in support of the appeal on or before 11th June 2018.
4. The Respondent shall file and serve skeleton arguments in response on or before 2nd July 2018.
5. Leave is given to the appellant to file and serve submissions in reply, if necessary, on or before 9th July 2018.
6. The hearing of the appeal is fixed for the next sitting of the Court of Appeal in Grenada during the week commencing 15th October 2018 unless the Chief Justice shall assign an earlier date by which the appeal can be heard.

APPLICATIONS AND APPEALS

Case Name:

Nichol Trevor Williams

v

[1] Raphael Sylvester

[2] John Ettienne

[GDAHCVAP2015/0018]

Date:

Monday, 28th May 2018

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: In person

Respondents: Ms. Dennies Burris, with her Ms. Rena Banfield

Issues:	Conditional Leave to appeal to Her Majesty in Council – Whether the application for leave was filed in time – Whether the matter meets the criteria for Court of Appeal to grant conditional leave to apply to the Privy Council
Type of Oral Result / Order Delivered (if applicable):	Oral Judgment or Decision
Result / Order:	[Oral delivery] Leave to appeal to her Majesty in Council is hereby granted to appeal the decision of the Court of Appeal given on 1st February 2018 upon the conditions that: 1. The applicant within 90 days of the date hereof do enter into good and sufficient security in the sum of Five Hundred Pounds Sterling for the due prosecution of the appeal. Such security to consist of a deposit of the said amount at the Court Office. 2. Within 90 days of the date hereof the applicant does take the necessary steps for the purposes of procuring the preparation of the records the settling of such records with the solicitors of the respondents to this application and the certification of the record by the Registrar of the Court of Appeal. 3. The record shall be prepared in accordance with rules 18-20 of the JCPC Appellate Jurisdiction Order 2009 and practice directions 4.2.1, 4.3.2 and 5 and shall be transmitted to the Registrar of the JCPC without delay where final permission to appeal has been granted. 4. The applicant shall make an application to the Court for final permission to appeal to Her Majesty in Council supported by the certificate of the Chief Registrar that the security for costs ordered herein has been given within the time described by this order to the satisfaction of the Chief Registrar and the costs of the application for conditional leave to appeal shall be costs in the appeal to Her Majesty in Council.
Reason:	The Court considered that there were sufficient grounds for the appellant to appeal to the Privy Council.

Case Name: Godwin Bibby
v
Public Workers Union
[GDAHVAP2015/0011]

Date: Monday, 28th May 2018

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Mrs. Ria Marshall-Ghust

Issues: Interlocutory appeal – Whether the court had jurisdiction to make an award for damages under section 40 of the Labour Relations Act – Whether the appellant’s claim in the court below is an abuse of process and statute barred

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

Result / Order: [Oral delivery]
1. The hearing of the appeal is adjourned to Friday, 1st June 2018 at 9:00 a.m.
2. The Registrar of the High Court is to cause a notice of hearing to be served on Mr. Bibby for his attendance.

Reason: The appellant was served for 28th May 2018, but due to the change of location of the Court, the appellant was unaware and not present.

Case Name: **Jessamy Environmental Consulting & Research
Caribbean Incorporated
v
Grenada Cooperative Bank Limited**

[GDAHCV2017/0020]

Date: **Monday May 28th 2018**

Coram: **The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: **Mr. Jerry Edwin
Ms. Valma Jessamy, director of the appellant, present**

Respondent: **Ms. Deborah St. Bernard
Mrs. Jacqueline Phillip representative of the respondent,
present**

Issues: **Interlocutory appeal – Whether the judge exercised his
discretion correctly pursuant to part 13.3 of the Civil
Procedure Rules 2000 – Whether the learned judge erred in
her conclusions – Setting aside of a default judgment**

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

Result / Order: **[Oral delivery]**
1. The appeal is allowed.
**2. The order of the Court setting aside the judgment that
was entered on 9th June 2015 is set aside in its entirety
and the default judgment entered is restored.**
**3. The costs of this appeal shall be borne by the
respondent fixed in the sum of \$2,500.00 to be paid
within seven days.**

Reason: **This is an interlocutory appeal in respect of a decision of the
learned judge in relation to an order delivered orally on**

November 23rd 2017 as agreed by the parties. In that order, the learned trial judge set aside the judgment in default which had been entered in favour of the appellant on 9th June 2015. The respondent filed an application to set aside that judgment on 9th July 2015 and that application was filed pursuant to part 13.3 of the Civil Procedure Rules 2000 (“CPR”). The learned judge in her judgment found that the respondent had failed to satisfy rule 13.3(1) in that a good explanation for the delay had not been put forward, no draft defence had been filed and she was not satisfied that there was a realistic prospect of success. She also considered the application under rule 13.3(2) exceptional circumstances and found that that limb of rule 13.3 had not been satisfied.

In our unanimous view that ought to have been the end of the application which was before the learned Judge under Part 13.3. The learned judge fell into serious error when she embarked, apparently without any notice to the parties, to consider the matter under CPR 13.2 which deals with where a judgment has been entered for irregularity and to somehow accept the respondent’s assertions as to whether the amended statement of claim served was one bearing the filed stamp of the Court Office. We would observe that there is nothing in the rule which says that the stamp must be in any particular form or format and rule 3.7 of the CPR 2000 deals with how a party may file documents and deals with filing. It says that a document may be filed by delivering it, posting it, sending it by fax, transmitting by any other electronic means as authorized by the Chief Justice in a practice direction to the Court Office. Rule 3.9 deals with sealing of documents issued by the Court and it says that the Court must seal the following documents and issue the claim form or notices of appeal or Judgments and then it says that the Court may place the seal on any document by hand or printing a facsimile of the seal on the document electronically or by any other means. That is basically what filing and sealing means.

Also, the judge erred in seeking to go behind the unchallenged affidavit of service of the documents for the purposes of seeking to substitute the application and treat with it under CPR 13.2 for failure to serve when indeed the application was under 13.3 which assumed that the provisions of 13.2 would have been satisfied. Accordingly, the appeal is allowed, the order of the Court setting aside the judgment that was entered on the 9th June 2015 is set

aside in its entirety and the default judgment entered is restored.

The costs of this appeal shall be borne by the respondent fixed in the sum of \$2,500.00 to be paid within seven days.

Case Name:

Tyrone Bernard

v

The Queen

[GDAHCRAP2014/0018]

Date:

Tuesday, 29th May 2018

Coram:

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

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

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Darshan Ramdhani

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issues:

Appeal against sentence – Robbery with violence

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The appeal is allowed.**
- 2. The sentence is varied to time served.**
- 3. The compensation order in the sum of \$250.00 to be paid to the virtual complainant shall be paid to the Court within one month from today's date in default four months' imprisonment.**

Reason: The order being appealed stated that the appellant shall serve four years' imprisonment and is to receive counselling. It also stated that compensation to virtual complainant in the sum of \$250.00 to be paid on or before 31st January 2015 in default 1 year imprisonment. The respondent conceded to the appeal against sentence.

Case Name: Winston Smith
v
The Commissioner of Police
[GDACRAP2018/0011]

Consolidated with
Winston Smith
v
The Commissioner of Police
[GDAMCRAP2018/0014]

Date: Tuesday, 29th May 2018

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: Mr. Ritchie Maitland, appearing amicus curiae
Appellant present
Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issues: Appeal against sentence – Housebreaking contrary to section 104(A)(1) of the Criminal Code – Application to withdraw appeal

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

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
With the leave of the Court the matters are withdrawn.**

Reason:

Counsel for the respondent requested that the matters be consolidated. Counsel for the appellant requested that the matters be withdrawn.

Case Name:

**Winston Smith
v
The Commissioner of Police**

[GDAMCRAP2018/0012]

**Winston Smith
v
The Commissioner of Police**

[GDAMCRAP2018/0013]

Date:

Tuesday, 29th May 2018

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

**Appellant: Mr. Ritchie Maitland appearing amicus curiae
Appellant present**

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issues:

Appeal against sentence – Taking on a number of passengers at a place not indicated by the sign bus stop contrary to section 77(4) of the Road Traffic Act 289A of

Volume 13 of the 2010 Continuous Revised Edition of the Laws of Grenada – Application to withdraw appeal – Application for extension of time to pay fine imposed by magistrate

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. With the leave of the Court the appeal is withdrawn by the Court.**
- 2. The Court will allow the appellant to pay the fines imposed by the magistrate by 14th December 2018. In default seven (7) days in prison.**

Reason:

The appellant requested an extension of time within which to pay the fine in this matter.

Case Name:

Dr Christopher Pasquini

v

St. George's University

[GDAHCVAP2017/0008]

Date:

Tuesday, 29th May 2018

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Mr. Anselm Clouden

Respondent: Ms. Skeeta Chitan, with her, Mr. Ritchie Maitland

Issues:

Interlocutory appeal – Application to withdraw appeal

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

With the leave of the Court the Appeal herein is withdrawn at the request of the appellant with costs to the respondent agreed in the sum of \$1,500.00 to be paid within six (6) weeks.

Case Name:

[1] Shorn Braveboy

[2] Letisha Lessey-Braveboy

Appellants

AND

[1] Ricardo Daniel

[2] Garvin Johnson

[3] Earl Dunbar

[4] The Attorney General of Grenada

Respondents

AND

[1] RBTT Bank (Grenada) Limited

[2] Grenada Cooperative Bank Limited

[3] Republic Bank (Grenada) Limited

**[4] First Caribbean International Bank (Barbados)
Limited**

[5] The Bank of Nova Scotia

Garnishees

[GDAHCVAP2018/0003]

Date:

Tuesday, 29th May 2018

Coram:

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

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

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellants: Mrs. Melissa Modeste-Singh, with her, Ms. Aloytha Thomas

Respondents: Mr. Sasha Courtney, with him, Ms. Olabisi Clouden

Issues:

Interlocutory Appeal – Attachment of debt – Section 21(4) of the Crown Proceedings Act – Rules 50.2(3) and 59.7 of the Civil Procedure Rules 2000 (“CPR”) – Whether CPR Part 50.2(3) and 59.7 and section 21(4) of the Crown Proceedings Act are in breach of the fair trial rights as contained in section 8 of the Constitution of Grenada – Agreement of parties to statement of facts

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

1. The parties shall meet and agree to the statement of facts and the appellant shall file same on or before 29th June 2018.
2. The parties shall file submissions on the question of whether CPR Part 50.2(3) and 59.7 and section 21(4) of the Crown Proceedings Act are in breach of the fair trial rights as contained in section 8 of the Constitution of Grenada.
3. The appellant shall file and serve submissions with authorities on or before 30th July 2018.
4. The respondent shall file and serve submissions with authorities on or before 31st August 2018
5. Thereafter the Registrar of the High Court shall fix the date for the hearing and determination of the question before a judge of the High Court.
6. The respondent shall pay the costs of this appeal in the sum of \$1,500.00 the said costs to be paid on or before 16th July, 2018.
7. The appellants shall have carriage of the order.

Reason:

This is an appeal against an order of the learned judge. The claimants do challenge the constitutionality of Civil Procedure Rules 50.2(3) and 59.7 and section 21(4) of the

Crown Proceedings Act by way of an originating motion since these impugned provisions will have to be declared unconstitutional and such declaratory relief cannot be made outside a claim seeking same. The background to the order is that a money judgment was obtained by the appellant against the Crown. The appellant sought to enforce the judgment by making an application under CPR Part 50 for an attachment of the debts which they asserted are held by the named banks for the Crown. The appellants raised the issue of the constitutionality of CPR 50.2(3) and 59.7 and section 21(4) of the Crown Proceedings Act. Learned Counsel for the Attorney General, Mr. Courtney accepted that questions relating to the constitutionality of provisions could be determined by the High Court when they arise pending proceedings. However, he contended that there were no proceedings before the Court in which the constitutional issue could arise. He was also of the view that it could only arise by an originating motion pursuant to Part 56 of CPR. We are of the view that this submission is without merit.

It is settled law that in every proceeding before the court, the court has jurisdiction to determine its jurisdiction in respect of the matter. The learned judge in our view had jurisdiction to determine the question of the constitutionality of the provisions raised before her. We wish to emphasize that it is not to be taken that parties are free to disregard the procedures set out in part 56 of CPR. It is only in relation to the peculiar circumstances of this case and the court's exercise of its case management powers. Notwithstanding, the failure to follow the part 56 procedure would be seeking to promote judicial economy in terms of time and costs and having regard to the fact that all the relevant parties are before the court that it would treat the application as one under part 56 and determine the question within those proceedings rather than have the parties commence separate proceedings.

The learned judge erred when she determined that constitutional relief cannot be made outside the claim seeking same and that it was therefore necessary for the appellant to commence separate proceedings. We are of the view that the learned judge exercised her case management discretion on the wrong basis. The discretion having been erroneously exercised, it is therefore open to this Court to exercise the discretion afresh. In so doing we make the following orders and directions:

1. The parties shall meet and agree to the statement of facts and the appellant shall file same on or before the 29th June 2018.
2. The parties shall file submissions on the question whether CPR Part 50.2(3) and 59.7 and section 31(4) of the Crown Proceedings Act are in breach of the fair trial rights as contained in section 8 of the Constitution of Grenada.
3. The appellant shall file and serve submissions with authorities on or before the 30th July 2018
4. The respondent shall file and serve submissions with authorities on or before 31st August 2018
5. Thereafter the Registrar of the High Court shall fix the date for the hearing and determination of the question before a Judge of the High Court.
6. The respondent shall pay the costs of this appeal in the sum of \$1,500.00 the said costs to be paid on or before 16th July, 2018.
7. The appellants shall have carriage of the order.

Case Name:

Edmund Gilbert

v

The Queen

[GDAHCRAP2001/0011]

Date:

Wednesday, 30th May 2018

Coram:

Hon. Mr. Mario Michel, Justice of Appeal

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

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

Appearances:

Appellant: Mr. Anselm Clouden

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issues:

Civil Appeal – Reconsideration of appeal/decision of a High Court judge – Application to withdraw applications for reconsideration of the appeal

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

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
Leave having been sought by counsel for the applicant to
withdraw the applications for reconsideration of the appeal
filed on 23rd March 2018 and 10th May 2018, leave is granted
and the applications are withdrawn.**

Case Name:

Tevin Dominique

v

The Queen

[GDAHCRAP2015/0004]

Shaquain Horsford

v

The Queen

[GDAHCRAP2015/0012]

Elvis Lewis

v

The Queen

[GDAHCRAP2015/0015]

Date:

Wednesday, 30th May 2018

Coram:

**Hon. Mr. Mario Michel, Justice of Appeal
Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]**

Appearances:

Appellants:

**Mr. Darshan Ramdhani for the second and third appellants
Ms. Sabina Gibbs for the first appellant
Appellants present**

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issues: Appeal against conviction – Sexual intercourse with a minor

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

Result / Order: [Oral delivery]

1. The appeal against conviction on behalf of the 2nd and 3rd appellants is hereby withdrawn.
2. The appeal against sentence with respect to all three appellants is allowed.
3. Sentences imposed by the learned judge are set aside and substituted for a sentence of time served.
4. With regard to application made on behalf of the appellants, under section 71 of the Juvenile Justice Act the appellants shall file and serve submissions in support of their application on or before 31st July 2018.
5. The respondent shall file and serve submissions in response on or before 31st August 2018.
6. Leave to the appellants to reply if necessary to the submissions of the respondent on or before 14th September 2018.
7. Hearing of the application shall be fixed for the next sitting of the Court of Appeal in Grenada during the week commencing 15th October 2018.

Reason: Counsel for the Prosecution conceded to the withdrawal of the appeal against conviction on behalf of the second and third defendant and agreed with the appellants to allow the appeal against sentence to be allowed.

The question of the expunging of the record of the appellants arose and it is in context of this that the appellants have been invited to file submissions regarding this issue with the Court of Appeal.

Case Name: **Osbert Phillip**
v
The Commissioner of Police
[GDAMCRAP2018/0001]

Date: **Wednesday, 30th May 2018**

Coram: **Hon. Mr. Mario Michel, Justice of Appeal**
Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Hon. Mr. John Carrington, QC, Justice of Appeal (Ag)

Appearances:

Appellant: **In person**

Respondent: **Mr. Howard Pinnock, Senior Crown Counsel**

Issues: **Appeal against sentence – Stealing**

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

Result / Order: **[Oral delivery]**
The appeal against sentence is dismissed.

Reason: **The record as it is found reveals that there are several convictions of a similar nature to the matter before the Court of Appeal. There can be found no error in principle in the decision of the magistrate regarding sentence of two years' imprisonment.**

Case Name: **Chester Andrew**
v
The Commissioner of Police

[GDAMCRAP2018/0002]

Date: Wednesday, 30th May 2018

Coram: Hon. Mr. Mario Michel, Justice of Appeal
Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Howard Pinnock, Senior Crown Counsel

Issues: Appeal against sentence – Housebreaking and stealing –
Whether the learned magistrate ought to have applied the
notional benchmark sentence

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

Result / Order: [Oral delivery]

1. The appeal against sentence is allowed.
2. The five-year sentence imposed by the magistrate for each of the offences of housebreaking and stealing is set aside and substituted with sentences of four years for housebreaking and two years and eight months for stealing.
3. Sentences to run concurrently for a total of four years in prison. Sentence in respect of these offences to run consecutive to any sentence being served at the time.

Reason: The magistrate ought first of all to have applied a notional or benchmark sentence. The notional sentence if we look at nothing further for housebreaking would be three years and for stealing would be two years. You would then be entitled to a discount, a credit, for your early guilty plea of a full one third because you pleaded guilty at the first available opportunity. That would bring the three-year sentence for housebreaking down to two years and it would bring the two-year sentence for stealing to sixteen months, one year

and four months. Then when you arrive there the Court would look at your previous convictions which are twenty-three in number, the majority of which are for offenses of stealing and housebreaking. There are very serious aggravating factors to go against the one mitigating factor of an early guilty plea. We believe that in the circumstances having regard to the strong aggravating factors in particular the 23 previous convictions, we would move the two years for housebreaking up to four years and move the one year and four months for stealing up to two years and eight months and we believe that these are the appropriate sentences with respect to the two offences for which the appellant has pleaded guilty so that this Court will set aside the five year sentences imposed by the magistrate for each of the offences of housebreaking and stealing and substitute sentences of four years for housebreaking and two years and eight months for stealing. We believe that the magistrate properly determined that the two sentences should run concurrently so that the appellant would serve a total of four years in prison. We also believe that the magistrate was correct in determining that the appellant's sentence in respect of these offences would run consecutively to any sentence that he was serving at the time. Thus, if the appellant was serving a sentence at the time, that the magistrate imposed those sentences on him, then at the end of that sentence the four years would begin to run.

Case Name:

Denroy Peters

v

The Commissioner of Police

[GDAMCRAP2018/0003]

Date:

Wednesday, 30th May 2018

Coram:

Hon. Mr. Mario Michel, Justice of Appeal

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

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

Appearances:

Appellant: In person

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issues: Appeal against sentence - Assault and stealing

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

Result / Order: [Oral delivery]
The appeal against sentence is withdrawn by the appellant he having already served his sentence in full.

Case Name: Orandy Charles
V
The Commissioner of Police
[GDAMCRAP2018/0005]

Date: Wednesday, 30th May 2018

Coram: Hon. Mr. Mario Michel, Justice of Appeal
Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]

Appearances:

Appellant:	In person
Respondent:	Howard Pinnock, Senior Crown Counsel

Issues: Appeal against sentence – Stealing

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

Result / Order: [Oral delivery]
The appeal is dismissed and the sentence of the magistrate of 18 months is confirmed.

Reason: The appellant had a series of prior offences.

Case Name: Andy John
V
The Commissioner of Police
[GDAMCRAP2016/0013]

Date: Friday, 1st June 2018

Coram: Hon. Mr. Mario Michel, Justice of Appeal
Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Anthony Cajeton Hood
Appellant present

Respondent: Mr. Brendon La Touche

Issues: Appeal against sentence – Trafficking cannabis

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

Result / Order: [Oral delivery]
1. Leave is given to the appellant to file and serve an amended notice of appeal together with written submissions in support of the appeal on or before 18th June 2018.
2. Leave is given to the respondent to file and serve submissions in reply within 14 days of being served with the appellant's submissions.
3. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Grenada during the week commencing 15th October 2018.

4. This being the third consecutive occasion on which the appellant has failed to appear to prosecute his appeal, this is a final adjournment of this appeal.

Reason: The appellant tendered a sick leave and requested through his counsel an adjournment.

Case Name: Sheldon Ruben
v
Commissioner of Police
[GDAMCRAP2018/0010]

Date: Friday, 1st June 2018

Coram: Hon. Mr. Mario Michel, Justice of Appeal
Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Brendon La Touche

Issues: Appeal against sentence – Housebreaking and stealing from a dwelling house

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

Result / Order: [Oral delivery]
1. The sentences are set aside.
2. The sentences are replaced by the sentence of two and a half years in prison for housebreaking.
3. The appellant is reprimanded and discharged for the offence of stealing.

Reason:

The decision is that the magistrate probably should not have made the sentences consecutive, 2 years and then the 6 months. There is a basis upon which that decision of the magistrate can be challenged. However, the decision to sentence the appellant to only two years for housebreaking is also one that can be challenged. A maximum penalty of five years several previous convictions including convictions for like offences, the magistrate may well have properly sentenced the appellant for more than two years in prison for the housebreaking. Our disposition is to modify the sentences for both counts but at the end of it all the total sentence will be two and a half years. The same amount of time given by the magistrate but on a different basis.

The magistrate was wrong in principle in imposing the sentence of two years having regard to sentences for housebreaking in the face of the impressive record of conviction of the appellant. This Court would set aside the magistrate's sentences and sentence the appellant in respect of the two sentences. We consider that an appropriate benchmark for the offence of housebreaking would be in the region of three years. We believe that the appellant is entitled to a full one third discount for his plea of guilty at the first available opportunity which would then bring the sentence down to two years. We believe though that given the serious aggravating factors present here, the only mitigating factor being the guilty plea which he has been given full credit for, the proper sentence would be two and half years in prison for the housebreaking. We believe that there ought to be no separate sentence for the offence of stealing.

In the circumstances, we are minded to set aside the sentence for stealing and to substitute it with reprimand and discharge. The Court orders that the sentences be set aside and replaced by sentence of two and half years imprisonment for housebreaking and the appellant is reprimanded and discharged for the offence of stealing.

Case Name:

**Michael De Riggs
v**

The Commissioner of Police

[GDAMCRAP2018/0004]

Date: Friday 1st June 2018

Coram: Hon. Mr. Mario Michel, Justice of Appeal
Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Rohan A. Phillip
Appellant present

Respondent: Mr. Brendon La Touche

Issues: Appeal against conviction and sentence – Wounding

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

Result / Order: [Oral delivery]
The appeal is allowed and the conviction is quashed.

Reason: The respondent conceded that the conviction herein ought to be quashed. If the learned magistrate properly considered the defences raised that it was not inevitable that a conviction would have resulted.

Case Name: Curtis Cyrus
v
The Commissioner of Police

[GDAMCRAP2018/0006]

Date: Friday, 1st June 2018

Coram: Hon. Mr. Mario Michel, Justice of Appeal
Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Present in person

Respondent: Mr. Brendon La Touche

Issues: Appeal against conviction and sentence – Trespass

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

Result / Order: [Oral delivery]
The appeal against the conviction for trespass is allowed and the conviction is quashed.

Reason: This is an appeal against conviction for the offence of trespass, the Crown conceded that the appellant ought not to have been convicted for that offence and the Crown agrees that the appeal ought to be allowed.

Case Name: Curtis Cyrus
V
The Commissioner of Police
[GDAMCRAP2018/0007]

Date: Friday, 1st June 2018

Coram: Hon. Mr. Mario Michel, Justice of Appeal
Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Brendon La Touche

Issues: Appeal against conviction and sentence – Causing harm –
Causing to be at large a ferocious dog

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

Result / Order: [Oral delivery]
1. The appellant shall file and serve submissions in support of his appeal on or before 3rd September 2018.
2. Leave given to the respondent to file and serve submission in reply within 14 days of being served with the submissions of the appellant.
3. The appeal is fixed for hearing at the next sitting of the Court of Appeal in Grenada during the week commencing 15th October 2018.

Reason: The appellant requested an opportunity to gain representation and file submissions in this matter.

Case Name: Curtis Cyrus
v
The Commissioner of Police
[GDAMCRAP2018/0008]

Date: Friday 1st, June 2018

Coram: Hon. Mr. Mario Michel, Justice of Appeal
Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: In person

Respondent: Mr. Brendon La Touche

Issues: Appeal against conviction and sentence – Stealing

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

Result / Order: [Oral delivery]

1. Leave is given to the appellant to file and serve an amended notice of appeal.
2. The appellant shall file and serve submissions on or before 3rd September 2018.
3. Leave is given to the respondent to file and serve submissions in reply within 14 days of being served with the appellant's submissions.
4. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Grenada during the week commencing 15th October 2018.

Reason: The appellant requested an opportunity to gain representation and file submissions in this matter.

Case Name: Robbie Clarke
v
The Commissioner of Police
[GDAMCRAP2018/0009]

Date: Friday, 1st June 2018

Coram: Hon. Mr. Mario Michel, Justice of Appeal
Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: In person

Respondent: Mr. Brendon La Touche

Issues: Appeal against conviction and sentence – Housebreaking – Causing grievous bodily harm

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

Result / Order: [Oral delivery]

1. The appeal against conviction is dismissed on the convictions for housebreaking and for causing grievous bodily harm.
2. The appeal against the sentence of two years' imprisonment suspended two years for housebreaking is dismissed and the sentence of the magistrate is confirmed.
3. The appeal against the sentence of the fine of \$5,000.00 is varied to the extent that the appellant is granted an extension of time to the 31st of May 2019 within which to pay the fine of \$5,000.00, in default 18 months in prison.
4. The appeal against the sentence of compensation of \$5,000.00 is varied to the extent that the appellant is granted an extension of time to the 31st May 2019 within which to pay the compensation of \$5,000.00 in default 2 years in prison.

Reason: The appellant was charged with two charges - housebreaking and causing grievous bodily harm. He pleaded not guilty and was tried by the magistrate. The magistrate heard evidence from the virtual complainant Mr. McDonald, from the police officer and the appellant gave an unsworn statement setting out his defence on the charge of grievous bodily harm. The magistrate accepted the evidence of Mr. McDonald that on the charge of housebreaking he left the building locked and when he came back the following day the door was ajar and the appellant was inside the building. That evidence was accepted by the magistrate and it is more than sufficient for her to have found that the

charge of housebreaking was made out beyond reasonable doubt.

On the charge of causing grievous bodily harm, again the magistrate accepted that Mr. McDonald did not attempt to chop the appellant nor approach him an aggressive way and she found that the appellant bit the virtual complainant in three places causing him fairly serious bodily harm. We are not in a position to dispute the magistrate's finding. There was evidence on which she could have come to the conclusion that the defence of self-defence should have been rejected. Accordingly, the conviction for causing grievous bodily harm is also affirmed.

On the housebreaking conviction, the appellant was sentenced to two years suspended sentence which would take effect if the appellant committed any offence during the period. There is no reason to interfere with that sentence.

On the charge of causing grievous bodily harm, the appellant was fined \$5,000.00 to be paid within six months and in default 18 months in prison. The appellant has indicated that he is not in a position to pay the fine within the time allowed by the Court. We have heard his submissions on this point and we are prepared to vary the sentence to allow an extension of time to pay the \$5,000.00 fine. The fine of \$5,000 is confirmed and a period of 12 months is allowed from today's date for payment.

Case Name:

**Janet Lucas
V
Queen Anne Gill**

[GDAMCVAP2018/0001]

Date:

Friday, 1st June 2018

Coram:

**Hon. Mr. Mario Michel, Justice of Appeal
Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Henry Paryag

Respondent: Ms. Monique Adams

Issues: Civil Appeal – Judgment debt – Whether the trial judge erred in hearing of the matter in the absence of the judgment debtor

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

Result / Order: [Oral delivery]
The matter is stood down until 2:30 pm.

Reason: The appellant filed late submissions and counsel for the respondent was asked whether she might consider attempting to respond to those submissions at later period.

Case Name: Anderson Dino Clement
V
The Commissioner of Police
[GDAMCRAP2017/0006]

Date: Friday, 1st June 2018

Coram: Hon. Mr. Mario Michel, Justice of Appeal
Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Darshan Ramdhani appearing amicus curiae
Respondent: Mr. Brendon La Touche

Issues:	Appeal against conviction and sentence – Housebreaking and stealing
Type of Oral Result / Order Delivered (if applicable):	Oral Judgment or Decision
Result / Order:	[Oral delivery] 1. The appeal is allowed. 2. The conviction and sentence entered by the learned magistrate are set aside.
Reason:	This is an appeal by Mr. Anderson Clement from convictions for stealing and housebreaking. There were four charges in total 2 for stealing and two for housebreaking. The offences took place in October 2014 in the Parish of Saint David's in Grenada. The unusual aspect of this case arose in what looks from on the record where the second day of the trial the appellant changed his plea from not guilty to guilty. Thereafter the prosecution made a statement of facts in respect of what appears to be the remainder of the case against the appellant. The magistrate recorded the convictions and the appellant's counsel then made a statement in mitigation. That statement in mitigation and what followed from the appellant is form the focus of the argument of Mr. Ramdhani. Counsel for the appellant stated that the defendant stated to me that he didn't take the items. Then the appellant himself later apologized to the virtual complainants and said I didn't take the items I only received the stuff. Mr. Ramdhani submitted that based on the statements by both counsel and the appellant himself the convictions were unsafe because they were based on pleas of guilty and there were statements made before the court which should have led the court to question whether the pleas of guilty should have been retained. Mr. Ramdhani cited the case of Lewis and the Commissioner of Police in support of his contentions that: 1. A person can appeal against a plea of guilty and 2. It is open to the Court of Appeal to set aside the conviction and sentence where in all the circumstances, the magistrate should have entered a plea of not guilty notwithstanding the willingness of the accused to plead guilty.

Mr. Ramdhani also went on to make other submissions with respect to sentence and why the sentence should not be retained in the matter. However, those submissions are all rendered fairly moot in light of the concession which we believe to be correct on the part of counsel for the respondent Mr. La Touche that the conviction in the circumstances should not stand. We agree with that concession and as a result we hold that the conviction of Mr. Clement on the four counts of housebreaking and stealing should be set aside. The consequential question now is whether the matter should be remitted to the magistrate for retrial possibly on the charge for receiving. We consider that a critical aspect of this case is the fact stated by Mr. Ramdhani and not contested by Mr. La Touche that the appellant has in fact served the entire sentence based on his conviction of stealing and housebreaking. We feel that in these circumstances and in the light of all the other facts of this particular case, justice would best be served by not ordering a retrial of the defendant on any other charge.

Case Name:	Devon Charles v The Commissioner of Police [GDAMCRAP2016/0008]
Date:	Friday, 1st June 2018
Coram:	Hon. Mr. Mario Michel, Justice of Appeal Hon. Mr. Paul Webster, Justice of Appeal [Ag.] Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]
Appearances:	
Appellant:	In person
Respondent:	Mr. Howard Pinnock, Senior Crown Counsel
Issues:	Appeal against sentence – Damage to property – Unlawful wounding

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

The appeal against sentence is allowed to the extent that the sentence of the magistrate is substituted to time already served.

Reasons:

Senior Crown Counsel has stated that he would concede the appeal against sentence only to the extent that the sentence would move from 18 months to an order of time served since the appellant served most of the sentence.

Case Name:

Dwayne Lambert

V

The Commissioner of Police

[GDAMCRAP2017/0005]

Date:

Friday, 1st June 2018

Coram:

Hon. Mr. Mario Michel, Justice of Appeal

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

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

Appearances:

Appellant: In Person

Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issues:

Appeal against conviction and sentence – Housebreaking – Stealing

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

Oral Judgment or Decision

Result / Order: [Oral delivery]
 1. The appeal against sentence is dismissed.
 2. The sentences imposed by the magistrate are affirmed.
 3. The Court affirms that the appellant will serve a total of five years' imprisonment commencing from the date of his conviction and sentence which would be 4th May 2017.

Reason: The Court is of the opinion that the correct computation of the sentences imposed by the Magistrate totalled 5 years' imprisonment.

Case Name: Michael Dottin
 V
 The Commissioner of Police
 [GDAMCRAP2017/0007]

Date: Friday, 1st June 2018

Coram: Hon. Mr. Mario Michel, Justice of Appeal
 Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
 Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: In person
Respondent: Mr. Howard Pinnock, Senior Crown Counsel

Issues: Appeal against conviction and sentence – Stealing

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

Result / Order: [Oral delivery]
 1. The appeal is dismissed and sentence affirmed.

2. The sentence of the magistrate of one year imprisonment to run consecutively with the term of imprisonment that the appellant is currently serving is affirmed.

Reason:

The appellant pleaded guilty to the offence of stealing. The magistrate sentenced the appellant to one year imprisonment to run consecutively with the term of imprisonment that he was then serving. We have reviewed the magistrate's decision; we have taken into consideration the long list of convictions and we see no reason to interfere with the decision.

Case Name:

**Anthony Nicholas
V
The Commissioner of Police
[GDAMCRAP2018/0015]**

Date:

Friday, 1st June 2018

Coram:

**Hon. Mr. Mario Michel, Justice of Appeal
Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant:	In person
Respondent:	Mr. Howard Pinnock, Senior Crown Counsel

Issues:

Appeal against conviction and sentence – Assaulting a police officer while in the execution of their duty – Matter heard in the absence of the appellant

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

Oral Judgment or Decision

Result / Order: [Oral delivery]
The appeal is allowed and a retrial is ordered.

Reason: The trial of the appellant was heard in the absence of the appellant. The appellant claimed to have been misinformed of the date of the hearing of the matter and as a result he was not present for the hearing of the matter.

Case Name: Janet Lucas
v
Queen Anne Gill
[GDAVAP2018/0001]

Date: Friday, 1st June 2018

Coram: Hon. Mr. Mario Michel, Justice of Appeal
Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Henry Paryag
Respondent: Ms. Monique Adams

Issues: Civil Appeal – Judgment debt – Whether the trial judge erred in hearing of the matter in the absence of the judgment debtor

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

Result / Order: [Oral delivery]

1. The appellant shall file and serve amplified submissions in support of the appeal within 14 days, that is, no later than 15th June 2018.
2. The respondent shall be at liberty to file and serve written submissions on or before 15th July 2018.
3. The matter is adjourned to the next sitting of the Court in Grenada in the month of October 2018.
4. There shall be no order for costs of today’s hearing.

Reason: The appellant filed late submissions in this matter and as a result an adjournment was granted.

Case Name: Godwin Bibby
V
Public Workers Union
[GDAHCV2015/0011]

Date: Friday, 1st June 2018

Coram: Hon. Mr. Mario Michel, Justice of Appeal
Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Ms. Ria Marshall-Ghust

Issues: Interlocutory appeal – Whether the court had jurisdiction to make an award for damages under section 40 of the Labour Relations Act – Whether the appellant’s claim in the court below is an abuse of process and statute barred

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

Result / Order: [Oral delivery]
1. The appeal is dismissed.
2. The order of the learned trial judge setting aside the claim form and statement of claim is affirmed.
3. The order of the learned trial judge that the claim constitutes an abuse of process is set aside.
4. Assessed costs to the respondent of the appeal assessed at 50% of 2/3 of the costs awarded in the High Court.

Reason:

On 10th March 2011, the appellant, Mr. Godwin Bibby, filed a claim in the High Court claiming:

- 1. The sum of 10 million dollars, being the compensation for damages due to the claimant for the Public Workers' Union's failure to provide him as a member of the said Union with full and proper representation pursuant to Part 7 of the Labour Relations Act section 15 and section 4(1).**
- 2. Interest at the rate of 6% per annum and continuing thereafter.**
- 3. Court Fees**
- 4. Personal Service**
- 5. Service**
- 6. Costs**

This is a claim by the appellant under section 40 of the Labour Relations Act and I think that section plays such an important part in this appeal that I will read the entire section

“Where a trade union has been certified as the exclusive bargaining agent for a bargain unit that trade union shall provide full and proper representation of the interest of all employees of the bargaining unit with respect to their rights under the collective agreement.”

Subsection 2: Any person in the bargaining unit may apply to the High Court for an order directing the trade union to cease a violation of section 1 and to direct that the act or omission be rectified.

How we read section 40 is that it is a section which allows a member of a trade union to question certain actions of the trade union if he or she feels that he has not been provided with full and proper representation. In that event, that person can go to the court and ask for an order directing the union to provide the proper representation or to otherwise direct that the omission be rectified. In effect, the section creates a right which is to question the power of the union and it also provides a remedy in subsection 2 where the member can go to the court and ask for an order. Section 40 does not allow a remedy for damages against the Union.

In this case, the appellant was a member of the Union. He had differences with his employers and it is unnecessary for us to go into the differences. In 2003, the Union made it quite clear to the appellant that they would not provide him with

representation. This led eventually to the filing of the claim by the appellant alleging that he had not been provided with full and proper representation and therefore is claiming damages. That claim was filed on the 10th March 2011. On 13th August 2011, the respondent the Union applied to the High Court judge to strike out the claim made by the appellant. The grounds of the application are two firstly that the High Court has no jurisdiction to entertain a claim for damages under section 40 of the Labour Relations Act and secondly that the Claim is an abuse of process because it was filed out of time. The respondent also asked for prescribed costs in that application. The learned judge heard the application and on 18th June 2014 she made the following order:

It is hereby ordered that:

1. The Claim form is struck out on the grounds that:
 - (a) The court has no jurisdiction to hear the claim.
 - (b) It is an abuse of process.

She also awarded costs as assessed costs and I will come to that later. The second part of her order dealing with the abuse of process, the judge did not elaborate on exactly what she meant by abuse of process but we know from the application that was made by the respondent that the alleged abuse of process was the allegation that the claim was filed out of time.

The appellant was dissatisfied with the judge's decision and so he filed an appeal against the order made by the learned judge and an amended appeal on 3rd November 2017. The appellant complains that the judge was wrong in finding that the court had no jurisdiction and that the claimant is to pay the costs to the defendant. There is no appeal against the finding of abuse of process but nonetheless it became an issue in the appeal and we will deal with both the jurisdiction complaint and the abuse of process complaint. The notice of appeal in terms of the jurisdiction point sets out grounds the summary of which on a proper construction of section 40 of the Labour Relations Act the Court does have jurisdiction to entertain the Claim.

We have heard the submissions of the appellant which regrettably did not deal in sufficient detail with the main issues that are before this Court of jurisdiction. We have also heard submissions from counsel for the respondent and we have read submissions of both the appellant and the respondent.

On the question of jurisdiction, we agree wholeheartedly with the interpretation put on section 40 by the respondent. Section 40 in very plain language creates a right for a member who has been aggrieved by the action of the Union to file a claim in court and to seek the relief set out in the section in that claim. Section 40 does not allow a member to bring a claim against the Union for damages and as such the learned judge was correct in finding that she had no jurisdiction to hear a claim for damages and was correct to strike out the claim for and statement of claim on that ground.

We have also read the cases that were cited by counsel for the respondent in her submissions and we are aware of cases of this Court of Appeal which support the position completely that where a statute creates a right and in the same breadth a remedy for a breach of that right the aggrieved person is restricted to the remedy set out by the legislation. The aggrieved person cannot use the legislation to gain damages. The appeal with respect of the jurisdictional point is dismissed and that is sufficient to dismiss the entire appeal. But since the issue of abuse of process was raised in the context of the Limitation Act, we have not been directed to any specific provision in the Limitation Act which has been breached in the absence of specific provisions dealing with limitations that finding by the judge on abuse of process we will set aside. The judge also awarded costs to the respondent in the High Court those costs are to be assessed. The respondent has been mainly successful on the appeal.