

COURT OF APPEAL SITTING
SAINT LUCIA

Monday, 14th May 2018 to Thursday, 24th May 2018

JUDGMENT

Case Name:

**Jose Gillis
v
Star Properties Corporation**

**[ANUHCVP2017/0021]
Antigua and Barbuda**

Date: **Wednesday, 23rd May 2018**

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

Appearances:

Appellant: **Mr. Horace Fraser holding papers for Mr. Lenworth Johnson**
Respondent: **Ms. Wauneen Louis-Harris holding papers for Mr. Kendrickson Kentish**

Issue: **Civil appeal – Section 139 of the International Business Corporations Act as amended —Effect of failure to deposit bearer shares within prescribed time – Disabled bearer shares –Consequences of voting disabled bearer shares at shareholders’ meeting — Procedural fairness — Audi alteram partem rule — Whether the rule of procedural fairness is absolute and does not allow any exceptions once the court is satisfied that the rights of non-parties could be affected by the decision – Whether the court has a discretion and should treat each case on its own facts**

Result/Reason: **Held: allowing the appeal, setting aside the judgment of the learned trial judge, declaring that the meeting of shareholders of the company held on 11th April 2014 and resolutions passed at that meeting are null and void, and ordering the respondent to pay the costs of the appeal at two-thirds of the amount awarded in the court below, that:**
1. The intention of the Amendment Act is clear – bearer

shares were being taken out of circulation as of 29th July 2012 and any bearer shares not deposited by that date were permanently disabled and liable to mandatory redemption under section 139D(1). There is no evidence that the Sabat shareholders applied under section 139C or otherwise to extend the time to deposit their shares during the transition period or the 12-month period thereafter ending on 29th July 2012. In the absence of evidence of an application to extend time, the purported deposit of the shares with a custodian followed by the restoration of the Company to the register of companies by the Commission did not have the effect of validating the Sabat shares. The Commission had no jurisdiction to extend the period for depositing the Sabat shares or any other bearer shares into custody after 29th July 2012. Therefore, the Sabat shares were disabled as of 29th July 2011 and the beneficial owners of the shares were not entitled to vote the shares at the April 2014 meeting.

Section 139 of the International Business Corporations Act as amended Cap. 222, Revised Laws of Antigua and Barbuda 1992 applied.

2. Procedural fairness dictates that a decision should not be made that affects a person's property or his rights without giving him a chance to be heard and to respond to the case that has been made against him (*audi alteram partem*). The rule recognises that for a person to be deprived of his property or his rights he must be given a fair opportunity to present his side of the case and to reply to the evidence and the other side's case. The rule is not absolute and any departure from it can be justified only in exceptional circumstances. There are exceptional circumstances in this case. The Sabat shareholders, though not joined as defendants, were aware of the challenge by Mr. Vandenbroucke to the validity of their shares and the April 2014 meeting, and were given ample opportunity to and did participate in the proceedings through their representatives. They were instrumental in presenting the Company's defence to the claim. The disabling of the Sabat shares was a shareholder issue and the defence to that part of the claim, though presented by the Company, was in substance the defence of the Sabat shareholders. The joining of the Sabat shareholders as parties would not have made a difference to the factual and legal issues regarding the late deposit of the Sabat shares.

Independent Asset Management Company Limited v
Swiss Forfaiting Limited BVIHCMAP2016/0034
(delivered 24th November 2017, unreported) applied;
Lloyd v McMahon [1987] AC 625, pp. 702-703 applied;
Re Greater Britain Insurance Company; ex parte
Brockdorff (1920) 124 LT 194 considered.

STATUS HEARING

Case Name:

Cynthia Paul

v

[1] The New India Assurance Co. Ltd

[2] S & A Insurance Brokers Ltd.

[SLUHCVAP2015/0007]

Date:

Monday, 14th May 2018

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Ms. Wauneen Louis-Harris

**Respondents: Mr. Dexter Theodore for the first respondent
No appearance for and on behalf of the second respondent**

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 the record of appeal on or before 18th June 2018 failing which the appeal shall stand dismissed.**
- 2. After the record of appeal shall have been filed and served the appeal shall be proceeded with in accordance with CPR Part 62.**

Case Name: David Ferguson
v
Carol Gideon Clovis
[SLUHCVAP2015/0001]

Date: Monday, 14th May 2018

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

Appearances:
Appellant: Mr. Ferguson John
Respondent: No appearance

Issue: Status of the matter

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

Result / Order: [Oral Delivery]
1. The applicant shall file an affidavit of service of the application for extension on or before 16th May 2018.
2. The application for extension to file a notice of appeal is set down for hearing by a judge in Chambers on Tuesday, 22nd May 2018 at 9:00 a.m.

Case Name: The Bagshaws of St. Lucia Limited
v
Pavlin Limited
[SLUHCVAP2014/0023]

Date: Monday, 14th May 2018

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

Appearances:

Appellant: Ms. Renee St. Rose

Respondent: Mr. Gerard Williams, holding papers for Mrs. Esther Greene-Ernest

Issue: Status of the matter

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

Result / Order: [Oral Delivery]
The order upon consent by the parties:

1. The appeal to be withdrawn by the appellant.
2. There is no order as to costs.
3. The appeal is hereby dismissed.

Reason: On the last occasion that the matter was called, it was adjourned to allow parties to file a consent order. However, they were not able to arrive at a consent position before the time within which they had to file this consent order. They have since arrived at an agreement.

Case Name:

[1] Roger Goring
[2] Claver Estaphane
Cross Appellants

v

Florence Chedy
Respondent

v

Melba Sonny
Kissy Williams
(By her representative Simon Popo)
Tedburt Theobalds
Respondents

[SLUHCVAP2014/0017]

Date: Monday, 14th May 2018

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

Appearances:

Appellant: Mr. Gerard Williams for the cross-appellants

Respondents: No appearance

Issue: Status of the matter

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

Result / Order: [Oral Delivery]

1. An extension of time is granted to the appellant in the cross appeal to file and serve the record of appeal on or before 15th June 2018.
2. The appeal shall thereafter be proceeded with in accordance with Part 62 of the CPR.

Reason: The respondents in the appeal withdrew their appeal. The appellant in the cross-appeal requested an extension of time to file and serve the record of appeal.

Case Name: Garnet St. Romain
v
PC 237 Severius Mathurin
[SLUMCRAP2014/0001]

Date: Monday, 14th May 2018

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

Appearances:

Appellant: Mr. Lorne Theophilus

Respondent: Ms. Stacey-Anne St. Ville

Issue: **Status of the matter**

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

Result / Order: **[Oral Delivery]**
The appellant shall file and serve skeleton arguments in support of the appeal on or before 23rd July 2018, or alternatively the appellant shall by that date file a notice of discontinuance of the appeal.

Reason: Copies of transcript are now available. Counsel for the appellant indicated that he will need to consult with the appellant as the appeal may be one in which a notice of discontinuance ought to be filed. He requested time to do so as the appellant does not reside in Saint Lucia.

Case name: **Richie Vernol**
v
CPL 670 St. Catherine
[SLUMCRAP2015/0006]
consolidated with
Richie Vernol
v
WPC 829 Sonny
[SLUMCRAP2015/0007]

Date: **Monday, 14th May 2018**

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

Appearances:
Appellant: **No appearance**

Respondent: Mr. Kenroy Justin

Issue: Status of the matter

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

Result / Order: [Oral Delivery]
Status hearing of the matter is adjourned to 24th May 2018
at Nyerah Court Building via videoconference.

Case name: Malcolm Collis Yarde
v
[1] Rudolph Springer
[2] Anthony Springer

[SLUHCVAP2015/0020]

Date: Monday, 14th May 2018

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

Appearances:

Appellant: No appearance

Respondent: Ms. Dalia Daniel

Issue: Status of the matter

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

Result / Order: Matter stood down.

Reason: The matter was stood down in order to ascertain the location of Mr. Alfred Alcide, counsel on record for the appellant.

Case name: [1] Justin Augustin
[2] Levista Augustin
v
Joseph Oberius
[SLUHCVAP1999/0002]

Date: Monday, 14th 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):** N/A

Result / Order: [Oral delivery]
There being no appearance of either of the parties, status hearing of this matter is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 12th November 2018.

Case Name: Malcom Collis Yarde
v
[1] Rudolph Springer
[2] Anthony Springer

[SLUHCVAP2015/0020]

Date: Monday, 14th May 2018

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

Appearances:

Appellant: No appearance

Respondent: Ms. Dalia Daniel

Issue: Status of the matter

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

Result / Order: [Oral delivery]
The court notes that counsel for the appellant was served with notice that transcript of proceedings was available on 25th January 2017, counsel was also served on behalf of appellant with notice of status hearing of this matter on 1st March 2018. No action has been taken by the appellant since filing the appeal on 10th January 2015, the appeal is accordingly dismissed for want of prosecution.

Reason: Efforts to contact Mr. Alcide were not successful.

Case Name:

Moses Cyrill
v
Claudius Eugene

[SLUMCRAP2013/0010]

Date: Monday, 14th May 2018

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

Appearances:

Appellant: In person

Respondent: In person

Issue: Status of the matter

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

Result / Order: [Oral delivery]
The appeal which was filed on the 2nd July 2013 is dismissed.

Reason: The appellant was found not guilty by the magistrate. There was no basis on which the appeal could have proceeded. The appellant was seeking compensation for medical costs. He could not achieve this by filing an appeal against the magistrate's not guilty decision.

Case Name: Jabez Frederick
v
PC 600 St. Aimee

[SLUMCRAP2014/0015]

Date: Monday, 14th May 2018

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

Appearances:

Appellant: No appearance

Respondent: Mr. Kenroy Justin

Issue: Status of the matter

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

Result / Order: [Oral delivery]
The Court having been advised of the unavailability of the appellant as a result of being an inpatient at the Wellness Center and the Court being also advised that the record of appeal will be available for collection by the parties within one month of today's date and the Court being further advised of the desire of the appellant to get legal representation to prosecute his appeal, the status hearing of this matter is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 12th November 2018.

Reason: The appellant was unable to attend Court as he is presently at the Wellness Center. His father, Francis Frederick appeared on his behalf to give the indications to the Court.

Case Name: Christopher Alexander
v
WPC 214 Henry
[SLUMCRAP2015/0011]
[SLUMCRAP2015/0012]

Date: Monday, 14th May 2018

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

Appearances:
Appellant: In person
Respondent: Ms. Stacey-Anne St. Ville

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 written submissions in support of the appeal on or before 2nd July 2018.
2. The respondent shall file and serve written submissions in response by 2nd August 2018
3. The hearing of the appeal shall be fixed for the Court of Appeal sitting in Saint Lucia during the week commencing 12th November 2018.

Reason:

The respondent had no objection to the oral request for an adjournment.

APPLICATIONS AND APPEALS

Case Name:

[1] Leona King
[2] Christopher Elibox
[3] Petrona Naitram
[4] Rosaline Narcisse
v
[1] Reginald Elibox
[2] Rebecca Elibox

[SLUHCVAP2016/0003]

Date:

Monday, 14th May 2018

Coram:

The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Horace Fraser
Respondent: Ms. Sylma Finisterre

Issues:

Application to vary or revoke order of single judge –
Application for extension of time to file submissions

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. Extension of time is granted and time is given of 14 days (30th May 2018) for filing and serving skeleton arguments by the appellant.**
- 2. The respondent shall have 28 days filing and serving skeleton arguments in response from the date of service of the appellant's skeleton arguments.**
- 3. The application to strike out appeal is dismissed with no order as to costs. The appellant however shall bear the costs of the respondent on the application to vary and extension of time fixed in the sum of \$1000.00 to be paid by Friday, 18th May 2018.**
- 4. Thereafter the appeal shall be listed for hearing before the Court.**

Reason:

There are 2 applications before the court: 1. An application to vary or set aside the order of Michel JA which was made on 3rd November 2017 and 2. an application to strike out or dismiss the appeal for failure to file skeleton arguments in support of the appeal. The order of Michel JA records that the application did not provide a good reason for the failure of the appellant to file the record of appeal and skeleton arguments within the time stipulated by Part 62 of the Civil Procedure Rules 2000 and he then recorded the number of days' delay according to his calculations of them. When one looks at the affidavit in support of the application for extension of time for filing skeleton arguments in particular paragraphs 4, 5, 6 and 7, those paragraphs set out the explanation proffered by the appellants for the failure to file the skeleton arguments in accordance with the timelines fixed by the rules.

Michel JA's order of 3rd November 2017 does not record having regard to any other factors in the exercise of the discretion given to the Court in granting extension of time where no sanctions are imposed either by an order of the court or a rule of the court and therefore the Court's discretion would be a broad discretion taking into account all of the relevant factors and circumstances in determining whether or not to grant extension prayed.

In the decisions of the Court that were referred to by the appellant, I think it is worthwhile to recite the decision of the Court of Appeal in *Craig Reeves v Platinum Trading Management Ltd* SKBHCVAP2007/0022 delivered 25th

February 2008 where barrow JA in his dicta basically said at paragraph 39:

“I wish to make the point that it is not every instance of non-compliance that will result in sanctions, express or implied. And where there is a sanction it will not usually be dismissal of the appeal, which must be an exceptional course, because the object of the rules is to bring cases to trial rather than to deny them a trial. It will sometimes be the case that non-compliance is so trifling that the court is justified in rectifying the error in a summary manner, as rule 26.9 permits, without resorting to the provisions and criteria in rule 26.8.”

In this regard, the Court must in treating and dealing with cases justly have regard to whether the consequence of taking a certain course is proportionate to the noncompliance complained of. It is clear to us that had the learned single judge have regard to all of the factors and the fact that there was a perfectly proper appeal on foot with a record of appeal filed and that the skeleton arguments not having been filed on time but are arguments filed to assist the Court and which does not amount to treating the appeal as nonexistent, he would have concluded that to have exercised this discretion on one ground in relation to delay was one where he committed an error of principle in not having regard to all the relevant factors. This Court in looking at the matter has no hesitation in setting aside that order and granting in all the circumstances an extension of time for the filing of submissions in support of the appeal and the Court would so order.

Case Name:

Pizza! Pizza! Limited

v

**The Bank of Nova Scotia
[SLUHCVAP2017/0001]**

Sinead Investments Limited

v

**The Bank of Nova Scotia
[SLUHCVAP2017/0002]**

Charthouse Restaurant Limited

v

**The Bank of Nova Scotia
[SLUHCVAP 2017/0003]**

Date: Monday, 14th May 2018

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

Appearances:

Appellants: Mr. Colin Foster

Respondents: Ms. Sardia Cenac- Prospere with her, Ms. Danielia Chambers

Issue: Application for leave to appeal to Her Majesty in Council

Type of Oral Result / Order Delivered: N/A

Result / Order & Reason: The matter was stood down so as to interpose another matter.

Case Name: Romanus James
v
Christopher Stanislaus
[SLUHCVAP2016/0017]

Date: Monday, 14th May 2018

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

Appearances:

Appellant: Ms. Lydia Faisal

Respondent: Mr. Alberton Richelieu

Issues: Civil Appeal – Fairness of the trial in the court below – Appellant unrepresented and not given an opportunity to be heard

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

Result / Order: [Oral delivery]
By Consent:

1. The appeal is allowed and the matter is remitted to the High Court.
2. The appellant shall file and serve his defence to the claim within 14 days of the date of this order.
3. The respondent shall be at liberty to file and serve a reply within 14 days of service of the defence.
4. Thereafter the matter shall be listed for case management and for giving any necessary further directions with a view to trial.
5. There shall be no order as to costs of this appeal.

Reason: The parties arrived at a consent order in the terms of the order of the Court.

Case Name:

Pizza! Pizza! Limited
v
The Bank of Nova Scotia
[SLUHCVAP2017/0001]

Sinead Investments Limited
v
The Bank of Nova Scotia
[SLUHCVAP2017/0002]

Charthouse Restaurant Limited
v
The Bank of Nova Scotia
[SLUHCVAP 2017/0003]

Date: Monday, 14th May 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard Farara, QC, Justice of Appeal

Appearances:

Appellant: Mr. Colin Foster

Respondent: Ms. Sardia Cenac-Prospere, with her, Danielia Chambers

Issues: Application for leave to appeal to Her Majesty in Council

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

Result / Order: [Oral delivery]

1. The applications by way of motions made in civil appeals 1, 2 and 3 of 2017 for conditional leave to appeal to her majesty in council are dismissed.
2. The costs of the applications/motions in aggregate are fixed in the sum of \$1000.00 to be paid personally by Ms. Indira Ashwood, promoter of the applications/ motions and to be paid within 21 days.

Reason:

The Court is of unanimous view that applications by way of motions made in civil appeals no. 1,2 and 3 of 2017 for conditional leave to appeal to Her Majesty in Council are dismissed, the applicant having failed to satisfy the requirements of the provisions of the Constitution of St. Lucia which specifies that appeals to the Privy Council lies of right from final decisions in civil proceedings with a value as stated in the provision.

We are of the view that the decision of the Court of Appeal does not meet the test of being a final decision of the Court in a civil cause or matter and that is by reason of the fact that the decision is one made in respect of an interlocutory application in the course of an appeal which at the time was a pending appeal.

This Court is governed by the application test. That test is set out in Part 62 of the Civil Procedure Rules 2000 and the test states that a determination as to whether an order or judgment is final or interlocutory is made on the application

test and that order or judgment is final if it is determinative of the issues that arise on a claim whichever way the application could have been decided. So that, had the appellants complied with the order for security for costs on the interlocutory application made for security, then the appeals would have continued no doubt on its usual course. Therefore, the fact that there was non-compliance with that order which led to the other orders does not thereby convert what was clearly an interlocutory order as one which is final merely because of the consequence which flowed from non-compliance with the court's interlocutory order on the security for costs.

Having failed on that condition, the conditions therefore set out in the Constitution have not been satisfied. Similarly, on the ground in relation section 108 (1) (c) of the Constitution that also requires as a qualifier, that it is, from a final decision in any civil or criminal proceedings which involve a question as to the interpretation of the Constitution, we do not consider that this appeal raises any question as to interpretation of any provision of the Constitution, but may have sought to raise a question of application of the provisions, which is a different question and a different consideration.

As it relates to whether it raises any question of great general or public importance, the Court is not satisfied that there is any question which raises any great general or public importance that warrants the matter being referred to Her Majesty in Council. There is no order made that possess any dire consequences for the public. It may in fact have a dire consequence in relation to the parties before it but certainly, it does not thereby pose any consequence for the public as a whole. Thus, the qualification in relation to subsection 2 of the Constitution has similarly not been satisfied as a condition for granting leave. The applications and the motions are accordingly all dismissed.

Case Name:

Tara Ermine Leevy

v

Rosanna St. Martin

[SLUHCVP2015/0005]

Date:

Monday, 14th May 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal

Appearances:

Appellant: Ms. Esther Greene-Ernest

Respondent: Mr. Geoffrey DuBoulay, with him, Mrs. Sardia Cenac-Prospere

Issues: Civil appeal – Operation and interpretation of Article 296(2) of the Commercial Code of St. Lucia

Type of Oral Result / Order Delivered: Oral Judgment with Written Reasons to Follow

Result / Order: [Oral delivery]
1. Appeal is dismissed.
2. The appellant shall pay costs of the appeal to the respondent agreed in the sum of \$1500.00, to be paid within 6 weeks.
3. Written reasons to follow.

Case Name: Jane Kangal
v
Paul Cadette

[SLUHCVAP2017/0009]

Date: Monday, 14th May 2018

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

Appearances:

Applicant: Mr. Eghan Modeste

Respondent: Mr. Dexter Theodore, QC, with him, Ms. Shahida Charlemagne

Issue: Application for leave to withdraw application for leave to appeal to Her Majesty in Council

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

Result / Order: [Oral delivery]
1. The applicant is granted leave to withdraw the application for leave to appeal to Her Majesty in Council filed on 7th February 2018.
2. No order as to costs.

Reason: Counsel for the applicant wished to withdraw the application for leave to appeal to Her Majesty in Council. There was no objection by the respondent.

Case Name: Mathilda Nelson
v
Alexis Alcide

[SLUHCVAP2018/0002]
[SLUHCVAP2018/002A]

Date: Monday, 14th May 2018

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Dexter Theodore, QC

Respondent: Ms. Wauneen Louis-Harris

Issues: Interlocutory Appeal – Application for stay of execution – Application to vary, discharge or revoke order of single judge

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. We allow the appeal against the order of Smith J and extend the interim stay of the execution of the order of Cenac-Phulgence J dated 12th July 2016 until the hearing and determination of the substantive appeal against Belle J.**
- 2. The application to revoke extension order is dismissed with no order as to costs.**
- 3. In respect of the stay appeal there will be no order as to costs.**

PARTIES WILL DRAFT THE ORDER.

Reason:

There are two appeals before the Court. The first appeal is by Mr. Alcide, his application is to strike out the order of appeal Thom JA sitting as a single judge. That order insofar as it is relevant extended the time for Ms. Nelson to appeal against order of Belle Justice on the claim in the High Court. Leave was granted leave to Ms. Nelson to appeal against order of Smith J dated 2nd February 2018. The second appeal is by Ms. Nelson filed on 10th January 2018 for stay of order of Cenac-Phulgence J made on 12th of July 2017 ordering Ms. Nelson to give up possession of the disputed property.

Dealing firstly with Mr. Alcide's application, the extension application, we find that the provision of the Supreme Court Act applies to the order granting the extension of time for Ms. Nelson to appeal against Belle J's order and the Court of Appeal does not have jurisdiction to entertain an appeal against that order or an application to vary or revoke the order. The application to vary or revoke the extension order is therefore dismissed. Counsel for Mr. Alcide asked that costs of that application nonetheless be ordered and in a normal course there would be an order that the applicant for extension of time pay the costs of the application regardless of the result. However, there was minimal participation by Mr. Alcide which was limited to filing an objection, in the circumstances no costs are ordered on that application.

Ms. Nelson's application for a stay – a brief background is that Belle J after a full trial found that Ms. Nelson was not entitled to interest in disputed property. In July 2017, Cenac-

Phulgence J made an order for possession of property and on December 2017 writ of possession was issued. Ms. Nelson applied for a stay of Cenac-Phulgence's order. Smith J refused the application. Ms. Nelson appealed with the leave of Thom JA sitting as a single judge. Blenman JA also sitting as a single judge ordered a temporary stay of Smith J's order until the appeal against Cenac-Phulgence's order was heard by the Full Court.

The test for granting a stay of the order pending appeal is that if there is no stay will the appeal be rendered nugatory. The application must be supported by evidence showing that the appeal has some prospect of success, bald assertions are not enough. In the final analysis, this Court must be satisfied relying on the case of *Hammond Suddard Solicitors v Agrichem* [\[2002\] CP Rep 21](#) at para. 21, Lord justice Clarke says

“if a stay is refused what are the risks of the appeal being stifled, If a stay is granted and the appeal fails, what are the risks that the respondent will be unable to enforce the judgment? On the other hand, if a stay is refused and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks of the appellant being able to recover any monies paid from the respondent?”

Whether the Court should exercise a discretion to grant a stay will depend on the circumstances of the case, but the essential question is would be what is the risk of injustice to one or both parties if it grants or refuses the stay. We find that Ms. Nelson has some prospects of success on appeal, especially on the issue of proprietary estoppel. She has expended monies on the property based on the promise of her grandmother. Belle J did not reject this evidence. Ms. Nelson lives on the property and operates a business therefrom. If a stay is refused, she will be exposed to losing her business and the appeal will be rendered nugatory. In the circumstances, we find that there is a risk of injustice to Ms. Nelson if a stay is not in place. We note also that Blenman JA sitting as a single judge found on the evidence that Ms. Nelson has met the threshold for the grant of a stay, we are not bound by a single judge's order but we agree with her that Ms. Nelson has met the threshold for a grant of stay.

Case Name:

[1] Dr. Martin G. C. Didier

[2] Dr. Kannan Mathiprakasam

**[3] Dr. Guruswamy Ramachandrappa
v
Royal Caribbean Cruises Ltd.**

[SLUHCVAP2017/0051]

Date: Tuesday, 15th May 2018

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

Appearances:

Appellants: Mrs. Sardia Cenac-Prospere, with her, Ms. Danielia Chambers

Respondent: Mr. Dexter Theodore, QC, with him, Ms. Shillingford

Issues: Interlocutory appeal – Security for costs – Whether master erred in exercise of discretion – Part 24 of the CPR – Inability to satisfy enforcement of judge – Whether there were materially significant errors of fact undermining the masters discretion in meeting the high threshold test to apply – Merits of application considering the probability of success – Whether appellant had discharged their burden under part 24 – Judicial notice

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

Result / Order: Judgment reserved.

Case Name: Paul Hackshaw
v
Saint Lucia Air & Seaports Authority

[SLUHCVAP2017/0012]

Date: Tuesday, 15th May 2018

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

Appearances:

Appellant: Mr. Leslie Prospere, with him, Mr. Vilan Edwards
Respondent: Mr. Mark Maragh, with her, Mrs. Shovvone Pierre

Issues: Civil appeal – Whether the learned judge erred in finding that sections 143 and 144 of the evidence act were of no assistance to the appellant in so far as it concerned the admitting the disputed document – Whether the learned judge erred in refusing to grant the appellant leave to file and serve a witness statement of the author of the disputed document

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

Result / Order: Judgment is reserved until sometime next week.

Case Name: Linus Felix
v
Hildree Edward
[SLUHCRA2015/007]

Date: Tuesday, 15th May 2018

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellants: Ms. Wauneen Louis-Harris
Respondent: No appearance

Issues: Application for adjournment – Application for skeleton arguments to be deemed properly filed

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

Result / Order: [Oral Delivery]

1. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 12th November 2018.
2. Skeleton arguments filed by the appellant on 11th May 2018 are hereby deemed to have been properly filed.
3. Notice of the hearing of this appeal in November 2018 shall be served on the respondent personally.
4. Leave is given to the respondent to file and serve submissions in response on or before 15th August 2018.
5. Leave is given to Mrs. Esther Greene- Ernest to apply to the Court to be removed from the record as counsel for the respondent.
6. The appellant shall serve on the respondent personally the record of appeal, skeleton arguments in support of the appeal on or before 15th June 2018.

Reason: The Court adjourned the matter as there is no indication that the respondent was aware of the proceedings this week as notice of the hearing was served on his counsel who indicated that she no longer represents him. The Court cannot justly make any orders that may affect him. The Court made directions for the service of the notice of hearing on the respondent for the next sitting in November

Case Name: Lazarus Paul
v
[1] Raquel Willie Trotman
[2] Douglas Trotman
[3] Teferi Trotman
(minor acting and represented
herein by his mother, Raquel Willie-Trotman)

[SLUHCVP2017/0049]

Date: Tuesday, 15th May 2018

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Gerard Williams
Applicant present

Respondent: Mrs. Wauneen Louis-Harris

Issue: Application for leave to appeal – Enforcement of money judgment — Whether court can make an enforcement order based on oral examination – Whether Court can make an order based on oral application – Part 53(2) Civil Procedure Rules 2000 – Contempt proceedings

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

Result / Order: [Oral delivery]

1. Leave is granted to the applicant, Mr. Lazarus Paul to appeal against paragraphs 3, 4 and 5 of the order of Smith J dated 9th November 2017.
2. The notice of appeal shall be filed and served on or before 5th June 2018.
3. Costs on the application for leave on the application in the court below to be costs in the appeal.

Reason: The Court was satisfied that the applicant had met the threshold for the grant of leave to appeal. The respondent conceded on paragraphs 3,4, 5 of the order of Smith J.

Case Name: Fire Service Association
v
[1] Public Service Commission
[2] Chief Fire Officer
[3] The Attorney General

[SLUHCVAP2010/0013]

Date: Tuesday, 15th May 2018

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Mrs. Cynthia Hinkson-Oula

Respondents: Mrs. Grace Ward-Glasgow for the 1st respondent
Mrs. Brender Portland-Reynolds, Solicitor General, for the 2nd and 3rd respondents

Issues: Interlocutory appeal – Assessment of costs by Registrar – Oral decision followed by written decision – Refusal to continue to assess costs pursuant to an order granted in favour of the appellant by the Court of Appeal on 16th December 2013 – Jurisdiction of Registrar - Failure to take into account CPR 65.13 – Distinction between assessment and prescribed costs – Whether the registrar constrained herself by virtue of the application of CPR 65.5(2)(b) – whether registrar failed to adopt the procedure for assessing costs in that the items were not examined individually to determine whether they were reasonably incurred or reasonably charged – Failure of the registrar to take into account what was included in costs, prescribed costs and what is excluded from it - Whether registrar misapplied rule 65.3 and rule 65.13 dealing with costs in appeals

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

Result / Order: [Oral Delivery]

1. The appeal of the Fire Service Association is dismissed except to the extent that the application of rule 65.11(7) by the learned registrar is not allowed.
2. The appellant, Fire Service Association is awarded the sum of \$5,000 costs in the appeal which was dealt with by the Court of Appeal in October 2010 and was the subject of the ruling in 2012 such sum to be inclusive of the partial award of costs of \$4,554.64.
3. There is no order as to costs.

Reason:

This is an appeal by way of notice of appeal filed on 17th October 2017 against the oral decision of the learned registrar delivered on the 17th May 2017. Following the oral decision, the learned registrar gave written reasons for her decisions which were given on the 7th June 2017. We do not have before us in the papers for this appeal the extract of the oral decision given by the registrar. What is before is the written decision of the registrar and learned counsel for the parties have accepted that it is the written decision of the registrar which the Court must consider in this light.

It is important to note in this matter that the question of the assessment of costs related to a preliminary issue which was raised apparently in the defence in the proceedings before the High Court and which was dealt with as a preliminary issue. In hearing that preliminary issue, the learned judge ruled in favour of the position advanced by the respondents. That ruling was overturned by the Court of Appeal when the matter came before the Court of Appeal and a decision of the Court of Appeal which was passed up to the Court was rendered on the 16th October 2013. The relevant portion of that decision for the purposes of this appeal is paragraph 19 which states:

“The appeal is allowed with costs to the appellant and the decision of the learned trial judge is set aside. Costs are to be assessed in accordance with Civil Procedure Rules 2000 and are to be paid by the Attorney General.”

The assessment of costs took place before the learned registrar on the basis of an order of the 20th April 2016 made by the learned judge in the High Court. As mentioned, the reasons for the decision is set out in the written decision. It is important to note that there had been a prior interim assessment of costs conducted by the registrar in which the sum of \$4,554.64 was awarded. Having awarded that sum, the registrar requested that further particulars be given in relation to certain items in the Bill of Costs and for responses thereto by way of affidavit or otherwise from the Attorney General.

In further assessment of costs, the learned registrar in paragraph 5 of her ruling stated that: “[a]fter careful review of the law in relation to assessment of these costs, I am guided by rule 65.13 of the Civil Procedure Rules 2000.”

Sub-paragraph 1 of that rule states that the costs of any appeal must be determined in accordance with rules 65.5,

65.6 and 65.7. It is also important to note that the order for costs made by the Court of Appeal was limited to costs in the appeal and had no application to costs before the High Court. The learned registrar was concerned with assessing costs in relation to the appeal. In her ruling, the learned registrar refers to rule 65.5(2)(b) of the CPR which provides that if the claim is not for a monetary sum, it is to be treated as a claim for \$50,000 unless the court makes an order under rule 65.6(1)(a). No such order was made in these proceedings.

At paragraph 7 of the ruling, the registrar states that currently there is no such order. Part 65.16 (which is apparently a typographical error) of the CPR is applied and the sum of \$7,500 is the amount on the prescribed claim of \$50,000. Thereafter, rule 65.11(7) of the CPR is applied. I pause here to observe that it is common ground between the parties that the registrar erred in applying rule 65.11(7) of the CPR.

Rule 65.11 deals with the determination of any application except at the case management conference. CPR 65.11(7) invokes the one-tenth rule in these words: “the costs allowed under this rule may not exceed one-tenth of the amount of the prescribed costs appropriate to the claim unless the court considers that there are special circumstances of the case justifying a hiring amount. Accordingly, the learned registrar erred in applying 65.11(7) in her reasoning and ruling. The learned registrar then concludes that “I am not in a position to award any further amounts”. We take that to mean that having awarded as an interim award the sum of \$4,554.64, a calculation arrived at using a value of the claim of \$7,500 and applying incorrectly the one-tenth rule would have resulted in a sum that was considerably less than the interim award.

Learned counsel for the appellant has submitted that the costs are to be assessed in accordance with rules 65.12 and 65.13 of the CPR. 65.13 of the CPR deals with costs in the Court of Appeal. It provides that the general rule is that the costs of any appeal must be determined in accordance with rules 65.5, 65.6 and 65.7 and Appendix B but the costs may be limited to two-thirds of the amount that would otherwise be allowed. It is accepted that rule 65.6 and 65.7 are of no application in this particular matter.

Having considered the submissions of learned counsel, we are satisfied that the applicable rule in the assessment of costs in this matter which relates to costs of an appeal is rule 65.13. Rule 65.13 invokes the general rule and refers to

65.5. Rule 65.13(2) states that the Court of Appeal may if the circumstance of the appeal or the justice of the case requires depart from the general rule. In such a case, it may (a) make an order for budgeted costs; or (b) make such other order as it thinks fit. Learned counsel for the appellant has relied on sub-paragraph (b) to some extent in her submissions. However, the Court of Appeal was not invited and even if invited, did not make an order in the appeal departing from the general rule.

In the absence of such an order, the assessment of costs falls to be considered under rule 65.5. Rule 65.5 deals with prescribed costs. In particular 65.5(2)(b) of that rule states that if the claim is not for a monetary sum, it is to be treated as a claim for \$50,000 unless the court makes an order under rule 65.6(1)(a). Again, no such order has been made in this matter. Having heard counsel on both sides, we are satisfied that the learned registrar was correct in applying rule 65.5(2)(b) of the CPR in arriving at a value of the claim of \$7,500.

As stated before, we are satisfied that the learned registrar then erred in then going on to apply rule 65.11(7). We are fortified in this conclusion by the authority provided to us by learned counsel for the second and third respondents. That is, the Court of Appeal decision in *Norgulf Holdings Limited and IncomeBorts Limited v Michael Wilson & Partners Limited* BVIHCVAP2007/0008 (delivered 29th October 2005, unreported) and in particular at paragraph 23 of the judgment of the Court where it states that in the appeal there was no order for budgeted costs and the parties had no agreement as to costs. Therefore, pursuant to rule 65.13 the costs of the appeal must be limited in accordance with the specified rules which are the rules that provide for prescribed costs, how these costs are quantified and what they include.

In short, the appellants are entitled to prescribed costs in the Court of Appeal. Therefore, it is by reference to prescribed costs that the application for an interim payment of costs must be considered. In applying the prescribed costs rules and in particular rule 65.5(2)(b) and in arriving at a value of the claim of \$7,500, we are mindful that pursuant to rule 65.13(1) of the CPR which states that the costs must be limited to two-thirds of the amount that would otherwise be allowed, that the two-thirds rule must now be applied to the amount of \$7,500 as the value of the claim. This would reach a sum of \$5,000. In the circumstances, we considered that the proper assessment of the costs relating to this matter which is costs on the appeal would be \$5,000.

Case Name: **Antow Holdings Limited**
v
Best Nation Investments Limited

[BVIHCMAP2017/0010]
Territory of the Virgin Islands

Date: **Wednesday, 16th May 2018**

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

Appearances:

Appellant:	Mr. Peter McMaster, QC, with him, Ms. Laure-Astrid Wigglesworth
Respondent:	Mr. David Fisher

Issues: **Civil appeal – Whether breaches of fiduciary duties alleged by the respondent should lead to setting aside of transactions – Whether it should be set aside for the same reasons given by the learned judge – Whether the transaction which the learned judge set aside formed a pillar of the subsequent share reduction – Statutory duties of directors of the company – Business Companies Act – Section 120 – Statutory construction of the Act – Section 124 – Section 121 – Duty to act for a proper purpose – Broad exercise should be conducted by the Court in order to determine proper purpose – Whether given the findings of fact the purpose for which the power was exercised fell out the scope for which the power was conferred**

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

Result / Order: **[Oral delivery]**
1. The appellant is allowed to file brief submissions on the Court of Appeal decision in Independent Asset

**Management Company Limited v Swiss Forfaiting Ltd.
within 7 days.**

- 2. The respondent shall have a further 7 days from date of service of submissions by the appellant to reply to those submissions.**
- 3. Judgment is reserved.**

Reason:

Judgment was reserved for 7 days in order to allow the parties to review and make submissions on the case Independent Asset Management v Swiss Forfaiting Ltd. BVIHCMAP2016/0034.

Case Name:

**Joan Marquis
v
The Attorney General of Saint Lucia
[SLUHCVAP2015/0006]**

Date:

Wednesday, 16th May 2018

Coram:

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag].
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag]**

Appearances:

Appellant:	Mr. Dexter Theodore, QC, with him, Ms. Shahida Charlemagne
Respondent:	Mrs. Brender Portland-Reynolds, Solicitor General

Issues:

Civil appeal – Compulsory land acquisition under Land Acquisition Act of St. Lucia – Lifting corporate veil – Whether there is a causal connection between the compulsory acquisition and the loss incurred – Shadow period – Whether impending acquisition affected appellant's ability to secure financing for the business Method of valuation – Whether costs approach or investment approach appropriate method for valuation – Whether board in using cost approach erred in arriving at a valuation which was manifestly wrong – Whether first appellant entitled to recover 100% of the loss of the property as opposed to 25% awarded

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

Result / Order: [Oral delivery]
Judgment reserved.

Case Name: Dannon CE Limited
v
The Attorney General
[SLUHCVP2016/0015]

Date: Thursday, 17th May 2018

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard Farara, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Leslie Prospere, with him, Mr. Vilan Edward
(representative for appellant present)

Respondent: Mr. Dexter Theodore, QC, with him, Ms. Kozel Creese

Issues: Civil appeal – Judicial review – Award of contract – Tender process – Whether the learned judge erred in concluding that the proceedings were not sustainable in judicial review but rather in private law – Whether there was an overwhelming public law element to the proceedings - Procurement and Store Regulations – Whether this case falls within the Regulations – Wednesbury principle - Whether there has a breach of statute or regulation to impose obligations on the respondent

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

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

2. There is no order as to costs.

Reason:

This appeal arises from the decision of the trial judge dismissing a claim for judicial review. The learned judge substantially grounded her decision to dismiss the claim upon the view that it was devoid of a sufficient public law element. The judge relied upon the principles in the authorities of *Mass Energy Ltd. v Birmingham City Council* ([1993] Lexis Citaton 2440) *NH International (Caribbean) Limited v Urban Development Corporation of Trinidad and Tobago & Anor.* (Civil Appeal No. 95 of 2005). The trial judge after evaluating these authorities concluded that the decision was not reviewable as the tendering process for the consultancy contract was of a commercial nature and determine that the appellant's claim was challengeable in private law only.

In the judgment, the learned trial judge indicated that there were two issues before her:

1. Whether the decision of the Central Tenders Board to award a contract arrived at by way of a tender process to Amarna Consult Ltd. is a decision in public law or private law.
2. If the decision was in public law and so reviewable, then whether Dannion, the appellant, has made out a case that the Central Tenders Board was unreasonable in the sense of *Wednesbury* unreasonableness and b. failed to observe the principles of fairness and natural justice.

At paragraph 33 of her judgment, the judge relied on the authority of *Mass Energy Ltd* and *NH International* and came to the view as I had earlier indicated that the decision of the Board as not reviewable. The judge stated that in the case before her the evaluation committee made a recommendation based on the stronger technical scoring and number 1 rating of Amarna Consult Ltd. Its recommendation is that which was adopted by the Central Tenders Board. The judge said at paragraph 35 being guided by the *Mass Energy* case and on examination of both the Procurement and Stores Regulations and Procedures for the Selection and Engagement of Consultants by Recipients of CDB Financing that the court could find nothing in them creating any right for the appellant Dannion CE Ltd. and no particular and specific breaches of the regulations were demonstrated to the court.

Having arrived at the decision that the Central Tenders Board decision is not reviewable the court said that it need not go any further however in the event that it was wrong

the court looked at the serious allegation raised by Dannion CE that of Wednesbury unreasonableness and procedural impropriety by a failure to observe the principles of fairness and natural justice. The judge went on to say that the fact is that the Evaluation Committee, the specialist and Expert Committee of the Central Tenders Board arrived at a decision where there was only 0.6% difference between the appellant, Dannion CE and Amarna Consult Ltd. and bearing in mind the emphasis on technical scoring, the Evaluation Committee made the recommendation to recommend Amarna Consult Ltd. There was no evidence that the Evaluation Committee deliberations were tainted in anyway. It is their decision that was adopted by the the Central Tenders Board. Indeed, the company in its relief sought – declarations 1 and 4 seemed to emphasize that the Central Tenders Board was to follow and adopt the recommendation of the Evaluation Committee and this is exactly what the Central Tenders Board did.

The judge also concluded that there was no Wednesbury unreasonableness.

The appellant takes issue with the judge's decision and advances several grounds of appeal to show that the judge was wrong. In his oral submissions counsel for the appellant, Mr. Prospere, stated the fundamental complaint is that the evaluation process undertaken was manifestly unfair and that both the Committee and the Board deviated in a substantial way from the guiding procedure for the criteria set for the evaluation of the bid. Counsel advanced also that the statutory process provided the underpinning which provided the public law element. Counsel mentioned that the funds were provided for by the Government from its own resources and from a loan from Caribbean Development Bank. These were squarely public funds and that the NHC (National Housing Corporation) was merely the implementer of the project. In his submissions in response to a question from the Court, counsel submitted that the legislation which underpins the process brings it within the purview of public law. In that context counsel refers to regulation 11.1 and advanced the submission that that regulation was breached. Counsel accepted that there was an evaluation but concluded that the evaluation was flawed. Counsel proceeded to indicate why he concluded that the evaluation process was flawed. Counsel stated that the procedure contained clear guidance as to how it was to be undertaken contained in the letter of invitation and in the Caribbean Development Bank handbook. Counsel advanced the view that the procedures were not followed to the hilt. The question is whether the facts or points which

counsel refer to necessarily attract the underpinning of the public law element which is critical to this case.

It would be instructive at this point to refer to the guiding law. It is clear that the judge had to consider whether the decision under challenge had a sufficient public element to it and secondly whether the breaches alleged involve breaches of public law obligations which are applicable to the decision-making process. As Mr. Justice Waller stated in *Ex parte Hibbit and Saunders (a Firm) and Another* ((1993) Times, 12 March):

“it is critical to identify the decision and the nature of the attack on it. Unless there is a public law element in the decision and unless the allegations involve suggested breaches of duties or obligations owed as a matter of public law, the decision will not be reviewable.”

On the subject of contractual negotiations Waller J said:

“A governmental body is free to negotiate contracts and it would need something in addition to the simple fact that a governmental body was negotiating the contract to impose on that authority any public law obligations in addition to any private law obligations or duties there might be.”

With respect to the statutory underpinning as a foundation for judicial review Waller J said if a governmental body has an obligation by statute to negotiate a contract in a particular way on particular terms and fail to perform that obligation imposed by the statute one immediately has the additional public law obligation.

He continued by saying that the point however is to have a right which can then be subject of review, that right must flow from the statute if it is to a statute that one has to look for providing the public law element. It is not enough to say that the governmental authority is acting pursuant to certain statutory provisions without the additional factor that it is those statutes which impose the obligation which is said to have been broken.

In concluding that judicial review did not arise in the case, Waller J concluded that even allowing for a distinction between a governmental department and an ordinary business man in the approach for tendering it did not alter the nature of the tendering process. The fact that the decision sought to be reviewed is the placing of a contract with a particular firm seems to me to add force to the

contention that there is unlikely to be any public law element in that decision.

In the case of *R (on application Menai Collect Ltd and others) v Department for Constitutional Affairs* [2006] All ER (D) 101, McCombe J referred to Waller J's judgment *Ex parte Hibbit* and approved it. At paragraph 41 he said it is critical to identify the decision and the nature of the attack on it, unless there is a public law element in the decision and unless the obligation involves suggested breaches of duties or obligations owed as a matter of public law the decision will not be reviewable.

Learned counsel for the appellant referred the court to Regulation 11(1) of the procurement and store regulation which he said underpins the public law element. However, the matter which counsel indicated which engage public law considerations to my mind do not fall within that category. Counsel referred to a letter of invitation and also to the CDB handbook. We are not of the view that these matters engage the public law element which the law calls for. The courts have indicated that complaints about the tendering exercise itself are unlikely to involve allegations of breach of any applicable principles of public law. Attaching public law label such as irrationality or breach of a duty to act fairly is unlikely to give rise to any enforceable claim in public law if in truth the claim does no more than challenge a commercial body to prefer one bidder over another. The fact that a public body is exercising a power given by statute implies by itself an element of public law, this is a starting point. The fact that it is spending public money again imply elements in relation to the challenge tendering process but these features by themselves and the matters relied on by the appellant to our mind are not sufficient for the reasons earlier indicated to render the process amenable to judicial review. In our view, the learned judge examined the bases of the challenge, the subject matter of the decision challenged and the grounds of the challenge. The judge reviewed the applicable legal principles and in our view arrived at the correct conclusion. On the facts of the case and within the overall context, it was open to the judge to conclude that there was no sufficient public law aspect to the challenge to make it amenable to judicial review.

In her decision, the judge went on to consider if she was wrong and addressed the issues raised by the appellant in respect of unfairness, procedural impropriety and *Wednesbury* unreasonableness. The court said it saw no *Wednesbury* unreasonableness in the matter. We share that view. The circumstances under which irrationality or

Wednesbury unreasonableness can be entertained in this context are rare. Irrationality as a ground of judicial review applies to a decision that is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied to his mind to the question would have arrived at it. That is a very high test.

Having reviewed the matter in no way can it be said that the decision given the facts advanced can ever reach the test of irrationality as propounded by Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1984] 3 All ER 935. There are also strong policy reasons which militate against the engagement of irrationality in this case. As was stated by Gibbs J in *R (on the application of Gamesa Energy UK Ltd) v National Assembly for Wales and another* [2006] EWHC 2167 (Admin), there may be sound policy reasons why matters of this sort should not generally be open to challenge on the ground of irrationality. To hold otherwise, would enable challenges to be mounted on the basis of an attack on particular aspects of tendering processes by one potential bidder where those tendering processes are conducted by public bodies, such challenges being mounted on the basis that a particular aspect or aspects of such processes as they affect that bidder are unreasonable. Such challenges would be permissible even if the body who acted in good faith and as between the bidders there was a level playing field. The extension of public law into matters of that kind could be regarded as creating an unreasonable impediment to impose upon a public body in circumstances such as the present one. Circumstances under which I have found, having regard to the authorities that no sufficient public law considerations are engaged.

Counsel for the appellant also raised the issue of certain remarks made by a floating member, Ms. Daniel, which counsel advanced negatively influenced the decision against it and complained that these comments ought to have engaged a reply from the appellant and that having not happened the natural justice aspect became a live issue. Mr. Theodore, QC addressed that issue and relied on the case of *McInnes v Onslow-Fane and Another* [1978] 3 All ER 211 whereas Mr. Prospere relied on the case of *Ex parte Doody* [1994] AC 531.

We have listened to the submissions of both sides on the matter. We however are not of the view that this ground is meritorious. Mr. Prospere indicated that the evidence incontrovertibly establishes that the board was influenced by the adverse comments of Ms. Daniel and the appellant

was not afforded the opportunity to reply. Mr. Theodore submitted that Ms. Daniel's representation occurred after the written recommendation of the committee had been made and there had already been a breaking of the statistical deadhead when the remarks were made. We are in agreement with that submission. In conclusion, we agree with the submissions of Mr. Theodore that the appeal must fail. The appellant has not shown the presence of the element that there has been a breach of any statute or regulation which imposed an obligation on the respondent. What has been attempted is to show breaches of the invitation letter and the CDB Handbook.

The appeal against the decision of the judge is dismissed.

We have heard both counsels' submissions on the issue of costs. We are cognizant of the public law element in this matter and in the circumstances, we will make no order as to costs.

Case Name:

Theresa Plummer

v

[1] Dennis Mangal

[2] Irmira Lena Edwin

[3] Tarcisus Robinson Stanislaus

[4] Virginia Everiste

[5] Anthony Felicien

[SLUHCVP2017/0015]

Date:

Thursday, 17th May 2018

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Gerard Farara, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Wauneen Louis-Harris

Respondents: Ms. Diana Thomas for the First, Second and Third Respondents

Mr. Alvin St. Clair for Ms. Virginia Everiste

Mr. Anthony Felicien in person

Issues: Interlocutory appeal – Whether judge erred in failing to order stay of execution of the consent order entered into by the parties – Exercise of judge’s discretion

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

Result / Order: [Oral delivery]

1. The appeal is dismissed.
2. In relation to the respondents in this matter who are represented by Ms. Thomas, we would order the appellant to pay the sum of 1500.00.
3. In relation to the first ancillary defendant or respondent represented by Mr. St. Clair, we would order that the appellant pay the sum of \$2000.00.

Reason: The matter before us comes by way of notice of appeal filed on 25th July 2017 in relation to an interlocutory appeal by which the appellant, Ms. Theresa Plummer is appealing the order of the learned judge in the court below dated 17th May 2017. That order was made in relation to an application which came before the learned judge by way of notice of application filed on behalf of the appellant on 14th January 2015. In that application, the appellant sought a number of orders the first being a stay of the execution of an order of the court made on the 15th October 2014. That order is a consent order entered into by the parties through their respective lawyers, it provides as follows:

1. The defendant Theresa Plummer shall pay costs of \$17000 to the first claimant, 2nd and 3rd claimant and the first ancillary defendant.
2. That the defendant shall pay to the 1st, 2nd and 3rd claimant and first ancillary defendant the further sum of 6760 representing reimbursement of the fee paid to the surveyor.
3. All sums are to be paid within 3 months.
4. Penal notice attached.

That consent order has never been set aside varied or appeal against and it therefore stands as a binding order of the court. The grounds of appeal are set out in the notice of appeal and the learned judge in the court below in the order made on 17th May 2017 did not grant the application for the stay as is recited in the last recital to that order. However, she did go on to make certain specific orders with regard to certain matters which are to be done by the parties.

This matter has been the subject of two mediation agreements. The first which is at page 26 of the core bundle was entered into by the parties on 12th June 2012, the specific terms of that mediation agreement are clearly set out for the benefit of the Court at paragraph 5 of the appellant's skeleton argument. That mediation agreement was the subject of an order of the court that was made on 18th June 2012 by which the court ordered that all further proceedings in this matter are stayed except for the purpose of carrying into effect the terms of the said agreement, permission to apply to the court was granted.

By an order made by the learned master the parties were required to go back to mediation or to continue the previous mediation and in doing so to seek the assistance or avail themselves of the assistance of the surveyor Mr. Baptiste. This resulted in a mediation agreement which was signed by the parties and is to be found at page 46 of the core bundle. The salient terms of that mediation agreement are set out at paragraph 9 of the submissions of learned counsel for the appellant. The stated basis for going back to mediation as set out in the order of the learned master was that there were certain matters which remain unresolved by the parties. That mediation agreement states in the first paragraph of significance to this matter, having regard to the order of 20th December 2013, Mr. Rufinus Baptiste, licensed land surveyor has made the following suggestions and enumerated therein as items 1-4 are certain matters relating to turning points on the land, incorporation of appropriate drainage on the properties of the respective parties to minimize water run off problems, road access should be left free of impediments all times in order to facilitate ease of use and Mr. Baptiste has confirmed he has consulted his 2004 plan to re-establish the position of the right of way.

There is some issue with regard to the efficacy with this second mediation agreement in that the matters enumerated therein are predicated as suggestions. In this matter when the application on behalf of the appellant came before the learned judge the judge made certain orders which are set out at pages one to two of the core bundle. As previously mentioned the learned judge did not grant the application for a stay.

We have considered the arguments and submissions made by learned counsel for the appellant in attempting to convince the court that the consent order ought to be stayed in all the circumstances of this matter. Having

considered these submissions, we are not satisfied that there is any basis upon which this court can disturb the order of the learned judge refusing the stay. The consent order related to certain aspects of the first mediation agreement, the first paragraph of that order pertains to the payment of costs and the second paragraph related to a reimbursement of fees that were paid to the surveyor. As mentioned previously this order has not been varied or set aside or even appealed by the appellant in this matter and thus the appellant is bound by the terms of this order. Furthermore, the threshold test that is required for a stay of execution which is clearly set out in the authorities has not been met by the appellant on the affidavit evidence filed in support of the application for a stay which was before the learned judge.

Accordingly, this aspect of the appeal is dismissed. The appellant also appeals in the notice of appeal against the other paragraph of the learned judge's order of 17th May 2017. In the round, it seems to ask that these orders made by learned judge was with a view to giving efficacy to the terms of the mediation agreement and particularly to the second mediation agreement having regard to the questionable nature of that agreement where the use of the word suggestions was made.

Having considered each one of these limbs of the learned judge's order and having heard learned counsel for all the parties and their respective submissions and having had the benefit of the clarification presented to the court on specific issues by counsel on both sides particularly reference to various affidavits and documents which form part of the core bundle before this Court we are not satisfied that the court ought to disturb any of the orders made by the learned judge and without condescending into a detail examination of each and every limb of the order we are satisfied that the learned judge was quite correct in the orders she made at paragraph 1-7 in her order she made on 17th May 2017.

On the issue of costs, we have heard the submissions of counsel on both sides. In relation to the appeal we consider that the appeal having been dismissed the appellant ought to pay costs in the matter.

V
Forest Springs Limited

[SLUHCVAP2018/0013]

Date: Thursday, 17th May 2018

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

Appearances:

Applicant: Ms. Rowana-Kaye Campbell, holding papers for Ms. Renee Saint-Rose

Respondent: Ms. Petra Nelson

Issues: Leave to Appeal – Application for adjournment

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

Result / Order: [Oral delivery]
The application for leave to appeal and for stay of execution is adjourned to Wednesday, 23rd May 2018.

Reason: Counsel with conduct of the matter, Ms. Saint Rose had a family emergency in Vieux Fort and was unable to proceed this morning. The Court adjourned the application in the circumstances given the emergency of counsel.

Case Name: Ferdinand James

V

[1] Planviron (Caribbean Practice) Limited
[2] Rodney Bay Marina Limited

[SLUHCVAP2017/0050]

Date: Thursday, 17th May 2018

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

Appearances:

Appellant: Ms. Andie George, with him, Ms. Sherene Francis

Respondents: Mr. Geoffrey Du Boulay, with him, Mrs. Sardia Cenac-Prospere

Issues: Civil Appeal – Whether the learned judge erred in failing to give reasons for concluding that the appellant had no prospect of successfully defending the application to set aside – Part 9 Land Registration Act 1984 as amended by Act 2 of 1987 – Two distinct methods for prescription of registered land – Whether LRA impliedly repealed Prescription Rules – Registration of Title vs Title by Registration

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

Result / Order: Judgment is reserved.

Case Name: First Caribbean International Bank (Barbados) Limited
v
Sunset Village Inc.

[SLUHCVAP2016/0027]

Date: Friday, 18th May 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Renee St. Rose

Respondent: Mr. Anwar Brice

**Interested
Creditors:** Mr. Colin Foster

Issue: Application for adjournment

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

Result / Order: [Oral Delivery]
By consent of the parties:
1. The hearing of this appeal is adjourned to 4th July 2018.
2. The appeal shall be listed to occupy an aggregate time of 4 hours broken down as follows:
 (a) 1 hour to the appellant
 (b) 2 hours to the interested creditors
 (c) 15 minutes to the respondent
 (d) 45 minutes by way of reply by the appellant
3. The appellant shall file and serve a reply to the submission of the respondent and the interested creditors within 14 days of today's date.

Reason: Counsel for the appellant requested an adjournment on the basis that she had only received the submissions of the interested creditors on Wednesday, 16th May 2018 and that of the liquidator in unfiled form on the morning of the hearing. Counsel stated that she required some time to peruse and reply if necessary to the submissions. On Wednesday, 16th May 2018, counsel indicated to the Court that the matter would not be ready for hearing.

Counsel for the liquidator informed the Court that he required some time to digest the submissions of all parties which is why his submissions were only filed on the morning of the hearing.

Counsel for the appellant indicated that this is an urgent matter and accordingly requested a special sitting of the Court next month to deal with the matter in light of the fact that the next scheduled sitting of the Court in St. Lucia is in November 2018.

There was no objection by other counsel.

Case Name: **McHale S. C. Andrew**
v
The Board of Directors of Invest Saint Lucia
[SLUHCVAP2018/0009]

Date: **Friday, 18th May 2018**

Coram: **The Hon. Dame Janice M. Pereira, Chief Justice**
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Applicant: **Mr. Leslie Prospere, with him, Mr. Vilan Edward**

Respondent: **Mr. Mark Maraj, with him, Ms. Shervon Pierre**

Issues: **Application for leave to appeal – Whether applicant satisfies test for the grant of leave to appeal – Whether there is a realistic prospect of success – Judicial review – Whether claim properly founded in public law – Whether non-renewal of contract of employment falls to be considered as a public law issue – Invest St. Lucia Act**

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

Result / Order: **[Oral Delivery]**
Leave to appeal is refused.

Reason: **The applicant has not met the threshold for the grant of leave to appeal. The Court did not consider the appeal would meet with any realistic prospect of success.**

Case Name: **The Bank of Nova Scotia**
v
Indra Hariprashad-Charles

[SLUHCVAP2017/0047]

Date: Friday, 18th May 2018

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

Appearances:

Appellant: Ms. Sardia Cenac-Prospere, with her, Ms. Danielia Chambers

Respondent: Mr. Collin Foster

Issues: Interlocutory Appeal – Whether the learned judge erred in exercise of discretion to dismiss the claim for want of prosecution – Errors of fact in relation to the principles that should have guided the learned judge – Procedural unfairness – Appellant having not had a reasonable opportunity to make representations as to whether the claim ought to have been dismissed – Rule 26.2 of the Civil Procedure – Requirement of 7 days’ notice before the court makes orders of its own motion

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

Result / Order: [Oral Delivery]
1. The appeal is allowed and the order made by learned judge on 24th October 2017 is set aside.
2. The claim is reinstated and the Court further directs that the application filed on 9th January 2015 is to be set down by the Court office for a hearing on its merits.
3. There shall be no order as to costs on this appeal.

Reason: The Court is of the view unanimously that the appeal ought to be allowed. We consider that the learned judge erred in principle in her application of her case management powers under Part 26 of the Civil Procedure Rules 2000 in making the order of her own initiative to dismiss the appellant’s claim without giving to the parties a reasonable opportunity to make representations as to whether that course of action to dismiss the claim ought to be taken.

This is so in light of the fact that there was on the file, at the time, an application to extend time for complying with various case management orders made previously and that application for extension of time and relief from sanctions is outstanding and to date has not been heard. Therefore, whether it was not brought to the learned judge's attention that there was that extant application is one that ought not to be taken lightly and cannot lie necessarily at the appellant's feet.

We consider that the learned judge did not have regard to all of the relevant circumstances and no doubt had she have regard to them, she would not have taken the step that she took because the striking out of a claim is a draconian step. There are many authorities, from the highest court, the Privy Council, that make plain that striking out is what is called a nuclear weapon. Therefore, the order made by the learned judge is set aside, the claim is reinstated and the Court further directs the application filed on 9th January 2015 be set down by the Court office for a hearing on its merits. The Court further orders that there should be no order as to costs on this appeal.

Case Name:

Jonathan David Lesfloris

v

[1] Glenda Dale Henry

[2] Department of Fisheries

[SLUHCVAP2018/0005]

Date:

Friday, 18th May 2018

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Gerard Farara, QC, Justice of Appeal [Ag.]

Appearances:

Applicant: Mrs. Wauneen Louis-Harris

Respondents: Mr. Gerard Williams for the 1st respondent

Issues:

Application for extension of time within which to file application for leave to appeal out of time — Whether evidence discloses reasons for the delay in filing

application for leave to appeal — Whether court may exercise discretion to extend time to file application for leave to appeal where no reasons were provided in the affidavit in support for the delay

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

Oral Judgment or Decision

Result / Order:

[Oral Delivery]

- 1. An extension of time is granted to the applicant, Jonathan David Lesfloris to seek leave to appeal against the order of Smith J dated 25th January 2018.**
- 2. Leave is granted to the applicant to appeal against the order of Smith J dated 25th January 2018.**
- 3. The notice of appeal shall be filed within 21 days of the date of this order.**
- 4. Costs to be costs in the appeal.**

Reason:

This is an application by the applicant/intended appellant on its face for leave to appeal against an order of Smith J made on the 25th January 2018 by which order the learned judge struck out the applicant's statement of case on the basis that it disclosed no cause of action against the 1st defendant and that the subject matter of the claim is currently under appeal.

The Court notes that the application which led to the making of this order by the learned judge was in fact an application where the court was being asked to declare that it had no jurisdiction to hear the claim, or that if it did have jurisdiction it should to decline to exercise its jurisdiction. This is clearly a claim under rule 9.7 of the Civil Procedure Rules, however the order made by the judge is in fact an order made under rule 26.3 which of course is different to the case in which the applicant would have come to before the judge to hear.

Although the application is titled notice of application for leave to appeal, in the application, the applicant states as an alternative, a request to enlarge the time within which to file an application for leave to appeal. The Court recognizes that in fact an extension of time will be required before the Court can address the application for leave. We note that application for leave was made 3 days late and no explanation offered in the affidavit in support for the reason for the delay.

We are however satisfied that there is a reasonable prospect for success on an appeal having regard to the fact as indicated that the judge made an order which was not consistent with the application that was made to the judge and that in fact if one considers all of the evidence presented it is clear there is a factual issue in contention which can only be determined on a trial of the matter, that is, the issue of whether the particular vessel that was the subject matter in the prior case between the parties is in fact the same vessel which is the subject of the present claim instituted by the applicant against the respondent.

This Court believes that this is an issue which ought to be left for determination of this Court and not form the subject of a strike out order. In the circumstances having regard to the fact that there is a very clear manifest basis upon which the applicant may be able to succeed in an appeal and therefore that the prospects of success are very strong and having regard to the fact that that there does not seem to be any significant prejudice to respondent if leave to appeal is granted, we are therefore prepared to grant the extension of time which is the pre-requisite for grant of leave to appeal.

Case Name:

[1] Ruth Dubois
[2] Evis Naitram
[3] John Alexander
v
Francis Maurice

[SLUHCVP2013/0007]

Date:

Friday, 18th May 2018

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara, QC, Justice of Appeal [Ag.]

Appearances:

Applicant Mrs. Wauneen Louis- Harris
/Respondent:

Respondents/ Mrs. Esther Greene-Ernest
Appellants:

Issues: Application for leave to correct the record of appeal —
Application for leave to file supplemental record of appeal

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

Result / Order: [Oral Delivery]

1. The application for extension of time to correct the record of appeal and permit the applicant to file a supplemental record of appeal is granted.
2. Leave is granted to the applicant, Francis Maurice to file a supplemental bundle of documents filed on 27th April 2018 and the supplemental bundle of documents filed on the 8th May 2018.
3. The said bundle of documents filed herein on the 27th April 2018 and the 8th May 2018 are deemed properly filed.

Reason: The Court was satisfied that the applicant ought to be granted an extension of time to correct the record of appeal and to file a supplemental record of appeal.

Case Name: [1] Ruth Dubois
[2] Evis Naitram
[3] John Alexander
v
Francis Maurice

[SLUHCVP2013/0007]

Date: Friday, 18th May 2018

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara, QC, Justice of Appeal [Ag.]

Appearances:

Appellants/ Cross- Respondents:	Mrs. Wauneen Louis-Harris
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**Respondent/
Cross-
Appellant:**

Mrs. Esther Greene-Ernest

Issues:

Civil appeal — Assessment of damages — Whether the learned judge erred in refusing to accept the monies expended by the cross-appellant – Special Damages – Reasonableness of special damages expressly pleaded and strictly proven – Hearsay evidence – Whether the learned judge relied on hearsay evidence in his analysis of the affidavit evidence – Whether the judge would have arrived at the same conclusion having not given consideration to the hearsay evidence – Interest on damages award – Costs — Prescribed costs – Whether the learned judge erred in calculating the prescribed costs on the claim – Whether costs should be calculated on global sum of the general damages and special damages before interest is added and prescribed costs calculated

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

Oral Judgment or Decision

Result / Order:

[Oral Delivery]

- 1. Grounds 1 to 5 of the appellant's grounds of appeal are dismissed.**
- 2. Ground 6 is allowed and interest is awarded on the sum of \$411,500.00 special damages from the date of the accident to the date of the judgment at the rate of 3% per annum.**
- 3. Grounds 7 and 8 consolidated are allowed and prescribed costs are awarded to the claimant in the court below calculated in accordance with CPR 65.16 on the global sum of \$675,033.35 on general damages, special damages and interest up to the date of judgment of \$42,601.42.**
- 4. There will be interest on the total amount awarded inclusive of costs at the rate of 6% per annum from the date of judgment until payment.**
- 5. There shall be no order as to costs.**

Case Name:

Jonathan David Lesfloris

v

[1] Glenda Dale Henry
[2] Department of Fisheries

[SLUHCVAP2018/0005]

Date: Friday, 18th May 2018

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mrs. Wauneen Louis-Harris

Respondent: Mr. Gerard Williams

Issue: Adjournment

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

Result / Order: The matter is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 12th November 2018.

Reason: Due to time constraints, the Court was unable to begin this matter. The Court noted that the matter was adjourned in last December for some other reason. Other matters dictated that it be adjourned on this occasion. The Court apologised to the parties and counsel involved in the matter.

Case Name:

Theo Venkatly

v

[1] Brenda Flavien

[2] Virgie Lucien

[3] Lin Simeon

[4] Petruka Alexander

[5] Delphia Dulcie

[6] Cecil Emmanuel
[7] Natalia Cassius
[8] Carmen St. Aimee
[9] Beverly Alexis
[10] Edith Harrow
[11] Wivina Alexander
[12] Cecilia Placide

[SLUHCVAP2017/0044]

Date: Wednesday, 23rd May 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Rowana-Kay Campbell with her, Ms. Renee St. Rose

Respondents: Mr. Ferguson John

Issues: Interlocutory appeal – Setting aside default judgment pursuant to rule 13.3(2) of the Civil Procedure Rules 2000 – Exceptional circumstances – Refusal by learned judge to set aside default judgment based on exceptional circumstances – Whether learned judge erred in law and in fact in the exercise of his discretion when he determined that the grounds put forward by the appellant did not reasonably amount to exceptional circumstances – Whether learned judge failed to take into account relevant factors/ considerations

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

Result / Order: [Oral delivery]
1. The appeal is dismissed.
2. Costs to be paid by the appellant to the respondent agreed in the sum of \$2000.00 to be paid within 2 weeks.

Reason: The Court is of the unanimous view that the appeal be dismissed. There is no basis shown for interfering with the exercise of judge's discretion under rule 13.3(2) of the Civil

Procedure Rules 2000. There is no reason to disturb judge's findings having conducted an evaluation of all the facts and circumstances. There were no exceptional circumstances warranting the setting aside of the default judgment.

Case Name: 1st National Bank St. Lucia Limited
v
[1] Michel Rocton
[2] Gwendoline Rocton
[SLUHCVAP2016/0020]

Date: Wednesday, 23rd May 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Geoffrey DuBoulay, with him, Ms. Sardia Cenac-Prospere

Respondents: No appearance

Issues: Interlocutory appeal – Article 1008 of the Civil Code – Post-judgment interest entitlement – Whether common intention of parties to hypothec was that interest rate agreed would survive and be applicable post judgment

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

Result / Order: [Oral delivery]
1. The appeal is allowed.
2. The respondents shall pay in respect of the first sum claimed of \$169,399.23 with interest on the principle sum of \$14,5281.99 at the rate of 14% per annum as from 12th May 2012 until the date of payment.
3. As to the 2nd sum that the respondents shall pay, the sum of \$12,868.39 together with interest on the principle sum

of \$12,547 at the rate of 14% per annum from the date of 17th May 2012 until date of payment.

4. The cost of this appeal shall be costs as prescribed pursuant to rule 65.13, being two-thirds of the prescribed costs of the Court below.

Reason:

The Court is satisfied that notice of appeal was served on the respondents and they have failed to participate in the proceedings.

The learned judge erred in holding that the appellant had not pleaded a breach of the loan agreement. This is clearly set out in the amended statement of claim which was before the learned judge. The learned judge erred in construing Article 1008 of the Civil Code and its application to the registered hypothec.

Article 1008 states that:

“The damages resulting from delay in the payment of money, to which the debtor is liable, consist only of interest at the rate legally agreed upon by the parties, or, in the absence of such agreement, at the rate fixed by law...”

To determine whether a rate was legally agreed by the parties, this would require the court to construe the provisions contained in the hypothec which constituted the parties' agreement. The hypothec at page 47 of the record volume 1 specifically clause 5 (b) says that the mortgagors, here the respondents, hereby covenant with the mortgagee that so long and debts or part thereof remain outstanding the mortgagors shall...(b) pay monthly or at such other times as the mortgagee may from time to time fix interest on the debts at the agreed rate, such interest to be payable before as well after demand for payment or on any judgment obtained under these presents and so construing that hypothec it is clear that it allows for the parties to agree the rate of interest to be paid upon a judgment obtained by the mortgagee and the agreed rate of interest having been found to be established at 14% on the mortgage debt it was not open to the judge in his discretion to award a different rate of interest post judgment when the contract contained in the hypothec showed the party agreement for post judgment interest at the agreed interest of 14% on the principle remaining due and owing.

Case Name:

**Benjamin Drakes
v
Plantation Beach St. Lucia Ltd**

[SLUHCVAP2015/0017]

Date:

Wednesday, 22nd May 2018

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Benjamin Drakes Jr.

Respondent: Ms. Diana Thomas

Issues:

Civil appeal – Construction contract – Whether the judge erred in a mixed fact and law in concluding that the contract sum was \$806,080.00 – Parole evidence rule – Article 1164 of the Civil Code – Judge’s treatment of parole evidence – Whether written agreement contained entire agreement

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

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
1. The matter is remitted to the court below for a retrial before a different judge.
2. No order as to costs.**

Reason:

The Court is unanimously of the view that the case must be remitted to the court below for retrial before a different judge the court. Having regard to the judgment of the learned trial judge, we are of the view that he failed to make primary findings of fact as well as to determine the issue which was placed before him of finding whether there was a contract and the terms of that contract and therefore whether there was a breach of that contract in order to determine what remedies were available and on what basis.

Apart from that we are also concerned about the inconsistencies demonstrated in the judgment when one has regard to paragraphs 19, 20 and 21 of the judge's decision where it is not clear whether he is accepting that the contract is completely written and forms the entire agreement between the parties or whether the contract is one to have been determined partially in writing and on other factors and whether he accepted this position or not. If he did not as to why and what he therefore accepted from all sides as being the position on the contract.

Furthermore, throughout the body of the judgment the learned judge makes reference to a contract and variations of that contract and yet at the end says that both sides have placed a claim before the court which has no contractual basis. This leaves this Court in doubt as to precisely what approach the learned judge adopted in the case with the end result that the judge ultimately non-suited the appellant and the respondent.

We think that this was an error and we consider in order correcting this that the matter should be remitted to the court below for a trial on the merits of the case and for appropriate findings.

As it relates to costs, because of the circumstances in which the matter is remitted the Court will make no order as to costs.

Case Name:

**Marie Honora Algene Phillips (nee Simeon)
(Legal representative for the Estate of Joseph
Simeon aka Reginald Baptiste)**

v

**[1] Gabriel Fevriere
(appointed representative of Lincoln Volney)**

[2] Agnes Campbell

[3] Gilbert Reynold

Date:

Wednesday, 23rd May 2018

Coram:

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

Appearances:

Appellant: Mrs. Wauneen Louis Harris

Respondents: Mr. Horace Fraser for the Second Respondent

Issues: Interlocutory appeal – Appeal against order made on 24th October 2017 – Whether the learned judge erred in not making a factual finding based on the surveyor's report when both parties had agreed to the report – Whether learned judge erred in accepting the preliminary objection by the respondent – Whether learned judge allowed form to supersede substance – Whether the alleged defects served to nullify the petition before the court – Whether petition was void because of alleged non-compliance with section 8(2) (the summons must be in form 2 and must be advertised in two separate issue of the Gazette and newspaper) of the Prescription Rules – Whether noncompliance with section 8(2) is a substantial breach which would render the petition void

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

Result / Order: [Oral delivery]
Decision will be given at 1:30 p.m.

Reason: Petition was filed in 1984 and no further action until 2008 – the petitioner passed away and on 6th May 2008 by his lawful heir in order to move the matter forward, the applicant was seeking order of Court to dismiss claims and to declare Joseph Simeon as registered proprietor. The affidavits were filed.

Case Name: Marie Honora Algene Phillips (nee Simeon)
(Legal representative for the Estate of Joseph
Simeon aka Reginald Baptiste)
v
[1] Gabriel Fevriere
(appointed representative of Lincoln Volney)
[2] Agnes Campbell
[3] Gilbert Reynold

Date: Wednesday, 23rd May 2018

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

Appearances:

Appellant: Mrs. Wauneen Louis-Harris

Respondent: Mr. Horace Fraser for second named respondent

Issues: Interlocutory appeal – Appeal against order made on 24th October 2017 – Whether the learned judge erred in not making a factual finding based on the surveyor’s report when both parties had agreed to the report – Whether learned judge erred in accepting the preliminary objection by the respondent – Whether learned judge allowed form to supersede substance – Whether the alleged defects served to nullify the petition before the court – Whether petition was void because of alleged non-compliance with section 8(2) (the summons must be in form 2 and must be advertised in two separate issue of the Gazette and newspaper) of the Prescription Rules – Whether noncompliance with section 8(2) is a substantial breach which would render the petition void

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

Result / Order: [Oral delivery]

1. The appeal is allowed.
2. The orders of the judge are set aside and the matter is remitted to the court below to be considered by a different judge.
3. The respondent should pay the appellant’s costs in this matter of \$3,500.00

Reason: This matter is steeped in some antiquity. It is an appeal against the order of a judge dismissing the petition filed on 15th May 1984 for the correction of title by prescription. Nothing happened in this matter until about 2008 when the court again was set into motion. The matter was case managed various orders made consent orders entered into and there was no doubt that there were factual issues which

required a trial. Sometime in April 2017, submissions were made in respect of a preliminary issue taken at the instance of the respondent. Submissions were filed and in October 2017 the judge heard the parties on the issue and dismissed the petition essentially for lack of compliance with the rules.

Counsel for the appellant filed various grounds of appeal seeking to set aside the order of the learned judge. Counsel submitted that the judge erred in dismissing the petition on the basis that it was defective whereas the petitioner complied with the procedural requirements of the supreme court prescription by 30 years (Declaration of title) Saint Lucia Rules 1969 rule section 17. Counsel submitted that the core bundle discloses that all the requisite documents are appended to the petition filed in the court on 15th May 1984. Counsel for the respondent submitted that the documents were not before the trial judge and maintained his position that the petition was defective. Upon hearing the skeleton arguments of the parties, it became obvious that counsel for the respondent's concern resided in alleged breaches of rule 5(a) and 8(2) and (3) of the rules and of section 17.

The matter was further refined to essential rule 8(2) as counsel for the respondent in his submissions accepted that a breach of section 5(a) which dealt with description of property claim stating its extent and boundaries and value would not be such a breach so as to render the petition a nullity. It was counsel's view that breaches which had been identified would have the effect of rendering the petition a nullity. The arguments as unfolded essential boiled down to whether the petition was a nullity. We are not of the view that the petition was a nullity because of the defect which counsel has advertised. Undoubtedly there may have been non-compliance to certain provisions but that would not render the petition a nullity. Rule 8 of the relevant provisions provide that the summons must be in Form 2 of the schedule and must be advertised in two separate issues of the gazette and of the newspaper circulated in the State and there must be an interval of not less than one week between publications.

Counsel for the appellant did submit to the Court a copy of the Gazette of St. Lucia dated 19th May 1984 and the summons so there is no doubt that the matter was gazetted in terms of rule 8(2). Counsel for the respondent intimated that there was just one copy and the Rules provide for 2 copies and also pointed out that there was no indication of publication in the newspaper or that the summons was posted in a conspicuous place in a Sheriff's office and in a

courtroom of a Magistrate district in which the land is situated.

These can constitute irregularities but not in our view render the petition a nullity. Various cases were referred to by both sides in support of their respective arguments. The Court notes that the conduct of this matter from 2008, the various consent orders made, other orders made with respect to surveyor, case management directions and clear fact that there was an issue to be tried which would depend on evidence in respect of factual issues were which were germane to this matter. As previously indicated on the date of the trial, the preliminary issue raised by counsel for the respondent was heard and the judge made his orders. The order appears at page 195 of the core bundle. It is obvious to us that when the judge made the order various matters which were assumed not to have been present were in fact present as indicated when one looks at the petition which was filed in 1984 although counsel for the respondent argued that these matters were not before the judge but we accept the record as is which clearly indicates that the matters of which complaint were made were largely before trial judge. Counsel took his position on the preliminary issue.

There are certain guidelines which are engaged when the court is asked to make a determination on a preliminary issue. In summary, only issues which are decisive or potentially decisive should be identified. Secondly, the questions should be questions of law and should be decided on the basis of a schedule of agreed or presumed facts. They should be triable without significant delay making full allowance of implications of a possible appeal and lastly any order should be made by the court following a case management conference. These are the usual matters to be engaged when one looks at the hearing of a preliminary issue. Be that as it may the Court has heard from both counsel in the matter and also referred to and looked at the cases they have referred to in the context of their respective positions with respect to the appeal. It would appear to us that the trial judge did err in striking out the application for a declaration of prescriptive title. It is our view that upon looking at section 17 of the prescription by 30 years' rule and upon narrowing the complaint of the respondent essentially to a breach of section 8(2) of the rules which counsel postulated rendered the petition a nullity, we do not share the view that this breach would constitute a nullity.

We are of the view that there are enough factual issues which ought to be ventilated at a trial of this matter on the merits and the judge erred in his decision to strike out the petition for the reasons which he indicated. I agree with the submissions of Mrs. Louis-Harris that the minor breaches alleged did not impact negatively on the respondents and that the appellants should not be deprived of having the matter heard and ventilated on its merits. Mrs. Louis-Harris did point out that the respondents heard and took part in the objection and sought to differentiate this case from the case relied on by counsel for the respondent, Planviron (Caribbean Practice) Limited et al v Ferdinand James (SLUHCVP2013/0005) delivered 19th December 2013 (Unreported). Counsel for the respondent referred us to this case at page 49 and quoted from the Court of Appeal ruling that the judge was required not to issue a declaration of title until satisfied with proof of service on the appellants of the summons and there was nothing before the court to indicate that he had any such evidence before him and this raised the issue, a real question as to whether the judge would have exercised the power given to him under article 2103(a) of the Civil Code to declare title.

Mrs. Louis-Harris urged upon the Court to look upon the substance of the matter and proffered the view that the Court is not there to punish persons for non-compliance. We agree with the submissions, the case of Texan Management Limited v Pacific Electric Wire & Cable Company Limited [2009] UKPC 46 is referred to where it is stated that, rules of procedure ought to be a servant than a master. we do agree with the sentiments expressed therein by the board and also by this Court in the case indicated, Planviron.

For all the reasons indicated, we are of the view that the judge erred in dismissing the declaration application for a declaration of prescriptive title. We consequently allow the appeal and set aside the orders of the judge and remit the matter to be considered in the court below by a different judge.

We have heard submissions on the issue of costs. Costs here would follow the event taking all the circumstances into account as advanced by counsel on both sides. We are of the view that the respondent should pay the appellant's costs in this matter of \$3,500.00.

Case Name:

**Blue Waters St. Lucia Ltd
v
Forest Springs Ltd.**

[SLUHCVAP2018/0013]

Date:

Wednesday, 23rd May 2018

Coram:

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

Appearances:

Appellant: Ms. Renee St. Rose

Respondent: Ms. Petra Nelson (she is not on record for the application for leave to appeal)

Issues:

Application for leave to appeal — Application to set aside default judgment — Rule 13.3(1) of the Civil Procedure Rules 2000 — Whether delay in filing defence due to administrative difficulty or deficiency — Application for stay of execution

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The application for leave to appeal is dismissed.**
- 2. The applicant is ordered to pay costs to the respondent in the sum of \$2,000.00.**

Reason:

This is an application for leave to appeal the judgment and order of Her Ladyship. the Honourable Justice Cadie St. Rose-Albertini made on 7th March 2018 by which order she refused to set aside a default judgment dated 13th April 2017. The application for leave is grounded on the fact that the learned judge erred in fact and in law in the exercise of her discretion and that the applicant has a reasonable prospect of success if an appeal were to be heard.

The judge's reasons for the decision that she made are contained essentially in paragraph 33 of her judgment

where she stated that the reasons advanced for failing to file the defence on time is about administrative difficulties and deficiencies because the extent of the allegations in the statement of claimant would have been known to Blue Waters from the time it was served on 8th March and that the issue for the Court at this time is not the length of the delay in filing the defence, or why Blue Waters did not apply for a further extension of time. It is the substance of the reasons advanced from not filing the Ddfence by the agreed filing date which must be examined.

The onus on the applicant in the court below was to satisfy to the judge that the provisions of rule 13.3 of the Civil Procedure Rules 2000 ("CPR") was satisfied. That is, in the first place, that the applicant applied to the court as soon it was reasonably practicable after finding out that judgment had been entered; that the applicant gives a good explanation for the failure to file an acknowledgment of service or defence; and that the applicant has a reasonable prospect of successfully defending the claim.

The learned judge found that she was satisfied that conditions (a) and (c) of rule 13.3(1) of the CPR had satisfied. She accepted that the application was made as soon as reasonably practicable after finding out that judgment had been entered and she made a finding that there was not a good explanation for the failure to file a defence and that the requirements were conjunctive and once there was a failure on one ground, one could not succeed in an application under rule 13.3(1). The judge went on to consider whether rule 13.3(2) would have assisted the applicant, in that, although the conditions of 13.3(1) may not have been satisfied, that there were nonetheless exceptional circumstances which would incline a court to grant the application to set aside the default judgment. The court found that there were no exceptional circumstances and it is noted that counsel for the applicant, even when invited declined to speak to that particular requirement, and in fact indicated that she would rely on her submissions in that regard.

Looking at the facts before the learned judge and looking at the reasons advanced by the learned judge for declining the application to set aside the default judgment, this Court can find no basis upon which these determinations made by the judge ought to be upset. The judge had the evidence before her on the basis of which she could have made the determination she made. She found that the reasons advanced for failing to file the defence amounted to administrative difficulties and deficiencies. Although

learned counsel for the applicant focused on the fact that the judge had indicated that by the time the statement of claim was served, there was enough time for the defendant to do whatever was required and to have filed the defence in time. Learned counsel seemed to have focused on the fact that the judge may have misapprehended what was involved in filing the defence and may have failed to take into account the fact that you are talking about issues that arose over a four-year period and that there was new management of the applicant/defendant company as it was in the court below and that the judge failed to appreciate that all of these facts led to a situation where it was not unreasonable for the defendant to require all of the time between the 8th March and the 13th April in order to have been able to prepare and file its defence. The fact is that the judge had all of that before her. The judge looked at the authorities which addressed the question of what will constitute a reasonable explanation for filing a defence out of time.

Having looked at the authorities and having considered the facts, the judge determined that it boiled down to administrative difficulties and deficiencies and that that was not a good explanation. For our part, we consider it very difficult for the judge to have classified or characterized the explanation any differently from the way in which she did because whether it is the fault of the defendant itself or the fault of counsel for the defence in terms of ensuring that all of the information required in order to put the defence was not available until after the deadline had passed. But even if we did not ourselves take that view, the fact is the judge made a finding and there is not sufficient basis upon which we could say that the judge was wrong in so doing such that we ought to substitute ourselves for the judge in arriving at that finding.

In the circumstances, we feel compelled to deny the application for leave to appeal because the defendant/applicant has failed to satisfy us that if leave is granted that there is a reasonable prospect of success based on the applicant being able to have the reasoning of the judge overturned in terms of her finding that there were administrative difficulties and deficiencies. So, we do not find that there is any basis upon which leave to appeal can be granted and we accordingly deny the application for leave. The second application which we did not go on to consider, we of course need not now consider which is the application for stay of execution pending the determination of the appeal.

On the issue of costs, that issue does not arise on the leave on application because it is in the nature of an ex parte application. It does however arise in relation to the stay application. Although it turned out that we did not have to make a determination on the stay application so we did not hear it, the fact is that counsel would have prepared for that application. Counsel for the respondent did file submissions in relation to the application so there would be an entitlement to costs for the respondent in relation to the stay application.

We have heard the application for costs in the sum of \$2,500 and we have heard counsel for the applicant that the matter was being left to the Court's discretion. The Court has decided that \$2,000 costs will be appropriate in the circumstances.

Case Name:

Wayne Anderson Edward

v

The Queen

[SLUHCRA2014/0004]

Date:

Thursday, 24th May 2018

Coram:

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

Appearances:

Appellant: In person

Respondent: Mr. Stephen Brette

Issues:

Appeal against sentence – Aggravated burglary

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

1. The appeal is allowed in relation to damage to property. We would quash the conviction and set aside the sentence of the learned judge of 5 years.
2. The appeal against sentence for aggravated burglary having been withdrawn is hereby dismissed and the sentence of the learned judge affirmed.

Reason:

The appellant was convicted of the offences of damage to property and aggravated burglary. He was sentenced to a term of 5 years for damage to property and 10 years for aggravated burglary. He appealed against both sentences and conviction in relation to damage to property on the ground that he was on a previous occasion acquitted of the said offence. We have heard the submissions of learned Director of Public Prosecutions that indeed the offence in relation to damage to property the appellant was acquitted. We would therefore allow the appeal in relation to damage to property. We would quash the conviction and set aside the sentence of the learned judge of 5 years. In relation to the offence of aggravated burglary, the appellant indicated to the Court that he no longer wishes to pursue his appeal in that offence. The appeal is therefore dismissed and the sentence of the learned judge affirmed.

Case Name:

[1] Kim John
[2] Francis Phillip
v
The Queen

[SLUHCRA2015/0007]
[SLUHCRA2015/0008]

Date:

Thursday, 24th May 2018

Coram:

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

Appearances:

Appellants: In person

Respondent: Mr. Daarsrean Greene, Director of Public Prosecutions

Issues:	Appeal against sentence – Murder
Type of Oral Result / Order Delivered (if applicable):	N/A
Result / Order:	Matter stood down.
Reason:	Matter stood down to await the arrival of counsel for the appellant.
Case Name:	Lance Wilson v The Queen [SLUHCRAP2015/0006]
Date:	Thursday, 24th May 2018
Coram:	The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal
Appearances:	
Appellant:	Mr. David Moyston
Respondent:	Mr. Stephen Brette, Deputy Director of Public Prosecutions
Issues:	Appeal against sentence – Murder
Type of Oral Result / Order Delivered (if applicable):	Directions
Result / Order:	[Oral delivery] 1. The Court hereby assigns Mr. David Moyston as the attorney for Lance Wilson in this appeal.

2. The appellant is granted leave to file and serve written submissions with authorities on or before the 31st day of August 2018.
3. The respondent shall file and serve submissions and authorities on or before the 30th of September 2018.
4. The hearing of the appeal is scheduled for the next sitting of the Court of Appeal in the State of Saint Lucia during the week commencing 12th November 2018.

Reason:

The Court noted that learned counsel Mr. David Moyston was assigned to the accused, Lance Wilson in the lower court. He has been convicted of the offence of murder and the Court was of the view that Mr. Moyston would be capable to represent him before this Court and therefore the Court assigned Mr. Moyston to Mr. Wilson in this appeal.

Case Name:

[1] Kim John
[2] Francis Phillip
v
The Queen

[SLUHCRAP2015/0007]
[SLUHCRAP2015/0008]

Date:

Thursday, 24th May 2018

Coram:

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

Appearances:

Appellant: Mr. Tiyani Behanzin

Respondent: Mr. Daarsrean Greene, Director of Public Prosecutions

Issues:

Appeal against sentence – Murder

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

Directions

Result / Order:

[Oral delivery]

1. The Court assigns, Mr. Tiyani Behanzin, to represent the appellants in the appeal against sentence.
2. Leave is given to the respondent to file skeleton arguments with authorities on the appeal against sentence on or before Monday, 2nd July 2018.
3. Leave is given to the appellant to file and serve submissions within 14 days of being served with the submissions of the respondent.
4. The appeal is set down for hearing at the next sitting of the Court of Appeal in Saint Lucia during the week commencing 12th November 2018.

Reason:

Appellant's counsel requested to be assigned as counsel for the appellants. Appellant's counsel filed submissions on Thursday, 24th May 2018. As such, the Deputy Director of Public Prosecutions having receiving the submissions on the same day requested time to reply to the submissions.

Case Name:

Glenroy Shawn Victor

v

The Queen

[SLUHCRA2014/0001]

Date:

Thursday, 24th May 2018

Coram:

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

Appearances:

Appellant: Mr. Alfred Alcide

Respondent: Mr. Stephen Brette, Deputy Director of Public Prosecutions

Issues:

Appeal against sentence – Murder

**Type of Oral
Result / Order
Delivered**

Directions

(if applicable):

Result / Order:

[Oral delivery]

1. Upon application by the appellant for leave to file additional grounds of appeal and with no objection by the respondent, the appellant is hereby given leave to rely on the additional grounds of appeal contained in the submissions filed on his behalf on the 23rd day of May 2018.
2. The respondent shall file and serve submissions in response on or before 31st July, 2018.
3. Leave is given to the appellant to file submissions in reply on or before 22nd August 2018.
4. Hearing of the appeal is set down for the next sitting of the Court of Appeal in Saint Lucia during the week commencing 12th November 2018.

Case Name:

Bradley St. Ange

V

The Police (Darren Leon, PC 757)

[SLUMCRAP2017/0003]

Date:

Thursday, 24th May 2018

Coram:

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

Appearances:

Appellant: Mr. Lydia Faisal

Respondent: Ms. Jenin Samuel-Kisna

Issue:

Application for extension of time to file and serve skeleton arguments

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

Directions

Result / Order:

[Oral delivery]

1. The application for extension of time to file the skeleton arguments and record is granted.
2. The record and the skeleton arguments filed on the 30th of April 2018 are deemed to be properly filed.
3. The respondent has leave to file and serve submissions with authorities on or before the 2nd July 2018.
4. The appellant has leave to file submissions in reply on or before the 18th of July 2018.
5. The hearing of the appeal is set down for the next sitting of the Court of Appeal in the State of Saint Lucia during the week commencing the 12th of November 2018.

Reason:

The Court considered the application for extension of time together with the affidavit in support filed on 16th April 2018. The Court noted that the respondent does not object to the application.

The Court was of the opinion that the requirements for the grant of extension of time to file skeleton arguments and the record have been met. The Court further noted that the skeleton arguments were filed on 30th April 2018.

Case Name:

**Cornelius Victor
v
Carlene Charles, WPC 216**

**Ed Samuel
v
Carlene Charles, WPC 216**

**Kirwan Gilbert
v
Carlene Charles, WPC 216**

**[SLUMCRAP2016/0008]
[SLUMCRAP2016/0009]
[SLUMCRAP2016/0010]**

Date:

Thursday, 24th May 2018

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellants: Ms. Floreta Nicholas

Respondent: Ms. Jenin Samuel-Kisna

Issues:

Appeal against conviction – Assault

**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 magistrate dated 6th September 2016 is quashed.**

Reason:

The Court noted the concession of the Crown that the appeals should be allowed. The Court also considered the record of appeal in each case.

Case Name:

Merlisha Walters

V

WPC 210 Jayhan Emmanuel

[SLUMCRAP2016/0004]

Date:

Thursday, 24th May 2018

Coram:

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

Appearances:

Appellant: Mr. Alberton Richelieu, holding papers for Mr. Sandy John

Respondent: Ms. Jenin Samuel-Kisna

Issues: Appeal against conviction – Possession of a controlled drug – Possession of cannabis with intent to supply – Bringing a prohibited item into Bordelais Correctional facility

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

Result / Order: [Oral delivery]
1. The submissions filed by the appellant on the 26th April 2018 are deemed to have been properly filed.
2. Leave is given to the respondent to file submissions in response on or before 2nd July 2018.
3. The hearing of the appeal is set down for the next sitting of the Court of Appeal in Saint Lucia commencing 12th November 2018.

Reason: There was no objection by counsel for the respondent.

Case Name: Barthelmy Fedee
v
PC 436 Charlery (The Police)
[SLUMCRAP2016/0001]

Date: Thursday, 24th May 2018

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

Appearances:
Appellant: Mr. Alberton Richelieu, holding papers for Mr. Sandy John
Respondent: Mr. Bernick Faisal

Issues: Appeal against conviction – Unlawful assault

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

N/A

Result / Order:

**[Oral delivery]
The hearing of the appeal is fixed for the next sitting of the
Court of Appeal in Saint Lucia during the week commencing
12th November 2018.**

Reason:

**Counsel holding papers for counsel on record in this
matter, Mr. Sandy John, requested an adjournment of the
matter.**

Case Name:

**Pedro Ramon Narvaez Rodriguez
v
The Attorney General**

[SLUHCVAP2015/0002]

Date:

Thursday, 24th May 2018

Coram:

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

Appearances:

Appellant: Mr. Lorne Theophilus

Respondent: Ms. Carol Barnard

Issue:

Status of the matter

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

Directions

Result / Order:

**[Oral delivery]
1. The appellant has leave to file and serve submissions
together with authorities on or before 10th July 2018.**

2. The respondent shall file and serve written submissions with authorities on or before 17th September 2018.
3. The appellant shall file and serve, if necessary, submissions and authorities in reply on or before 2nd October 2018.
4. The hearing of the appeal is set down for the next sitting of the Court of Appeal during the week of 12th November 2018.

Reason: The Court heard the submissions of Mr. Theophilus and was in receipt of the record of appeal filed on 11th April 2018.

Case Name: **Richie Vernol**
v
CPL 670 St. Catherine
[SLUMCRAP2015/0006]
Consolidated with
Richie Vernol
v
WPC 829 Sonny
[SLUMCRAP2015/0007]

Date: Thursday, 24th May 2018

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

Appearances:

Appellant: In person

Respondent: Ms. Jenin Samuel-Kisna

Issue: Appeal against sentence

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

1. Appeal against sentence is allowed.
2. The sentences in SLUMCRAP2015/0006 and 0007 are hereby set aside.

Reason:

The Court had no indication as to when the transcript and other documents would have been ready for the appeal to be able to proceed. Counsel for the respondent had no indication.

Case Name:

Evans Estaphane

v

The Police (PC 556 Patrice Francis)

[SLUMCRAP2014/0013]

Date:

Thursday, 24th May 2018

Coram:

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

Appearances:

Appellant: Mr. Daniel Francis

Respondent: Mr. Bernick Faisal

Issues:

Appeal against conviction – Driving without due care and attention

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

Oral Judgment or Decision

**Result / Order
& Reason:**

[Oral delivery]

Counsel for the appellant having informed the Court of the intention of the appellant to discontinue the appeal, the appeal stands dismissed.

Case Name: **Tony Perineau**
V
The Police (Nysa Augustin WPC 239)
[SLUMCRAP2016/0002]

Date: **Thursday, 24th May 2018**

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

Appearances:
Appellant: **Mr. Alberton Richelieu**
Respondent: **Ms. Jenin Samuel-Kissna**

Issues: **Appeal against conviction – Indecent assault – Whether the learned magistrate erred in failing to conduct an enquiry as required by section 15(3) of the evidence act resulting in an unfair trial and a miscarriage of justice**

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

Result / Order: **Judgment reserved until 2:30 p.m. this afternoon.**

Case Name: **Shawn Gonzague**
V
WPC 616 Beverly Fontenelle
[SLUMCRAP2014/0008]

Consolidated with
Nelldwin President
v
WPC 616 Beverley Fontenelle
[SLUMCRARP2014/0009]

Date: Thursday, 24th May 2018

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

Appearances:

Appellant: Mr. Shawn Innocent

Respondent: Mr. Bernick Faisal

Issues: Criminal appeal against conviction and sentence –
Possession of a controlled drug to wit: cannabis

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

Result / Order & Reason: Matter stood down until 2:30 p.m. for luncheon adjournment.

Case Name: Paul Hackshaw
v
Saint Lucia Air & Seaports Authority
[SLUHCVAP2017/0012]

Date: Thursday, 24th May 2018

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

Appearances:

Appellant: Mr. Vilan Edwards, holding papers for Mr. Leslie Prospere

Respondent: Mrs. Shivonne Pierre, holding papers for Mr. Mark D. Maragh

Issues:

Civil appeal – Whether the learned judge erred in finding that sections 143 and 144 of the evidence act were of no assistance to the appellant in so far as it concerned the admitting the disputed document – Whether the learned judge erred in refusing to grant the appellant leave to file and serve a witness statement of the author of the disputed document

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

1. The appeal is dismissed.
2. The counter appeal is allowed to the extent that the order of the learned judge that there shall be no order as to costs is set aside.
3. The appellant shall pay the respondent costs in the court below in the sum of \$1500 and \$1000 in the appeal.
4. The matter is remitted to the High Court for trial of the claim.
5. The Registrar of the High Court shall fix a date for hearing of the claim and serve the parties with a notice of hearing.

Reason:

The learned judge correctly interpreted and applied sections 143 and 144 of the Evidence Act as outlined in paragraph 36 to 41 of the judgment. Rule 29.11 of the Civil Procedure Rules is unambiguous; it applies to all persons who wish to testify at a trial.

We can find no error in the manner in which the learned judge exercised his discretion pursuant to paragraph 2 of CPR 29.11. We can also find no error with the manner in which the learned judge exercised his discretion in refusing to grant the appellant an extension of time within which to file an additional witness statement having regard to all of the circumstances of the case.

The appellant was in possession of the document approximately 3 years prior to the application. The application was made more than 2 months after the decision of the Court of Appeal. Further, no reason was advanced for the delay in making the application and in our view the respondent would have suffered prejudice since the claim had been pending for almost ten years.

Case Name: **Tony Perineau**
v
The Police (Nysa Augustin WPC 239)

[SLUMCRAP2016/0002]

Date: **Thursday, 24th May 2018**

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

Appearances:

Appellant: **Mr. Alberton Richelieu**

Respondent: **Ms. Jenin Samuel-Kisna**

Issues: **Appeal against conviction – Indecent assault**

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

Result / Order: **[Oral delivery]**
1. The appeal against conviction is dismissed.
2. The appeal against sentence is allowed.
3. The sentence of the appellant on each count is set aside and hereby substitute with a sentence of 3 years on each count to run concurrently.

Reason: **This is an appeal against the conviction and sentence of the appellant on 3 counts of indecent assault of the 9 year old**

niece of his wife. After a trial before a magistrate, the appellant was convicted on all 3 grounds and sentenced to 4 years' imprisonment on each count with the sentences to run concurrently.

The appellant had originally filed several grounds of appeal but eventually pursued only one ground of appeal against conviction and one ground of appeal against sentence. In the course of his submissions before the Court, learned counsel for the appellant referred the Court to the Evidence Act of St Lucia, to the Australian case of *SH v R* [2012] NSWCCA 79, the case of *R v Starrett (2002) 82 SASR 115* and referred the Court also to the Privy Council decision out of Trinidad and Tobago *Fazal Mohammed v the state* [1990] UKPC 5.

Having considered the submissions of counsel for the appellant and one must fairly say the very limited response of counsel for the respondent, we are satisfied that the magistrate did avert her mind to section 15(3) of the Evidence Act, Cap. 4.15, Revised Laws of Saint Lucia 2008 which states

“Where a child who is less than 12 years of age is presented as a witness in proceedings, the court shall conduct an inquiry to determine if, in its opinion, the child is possessed of sufficient intelligence to justify the reception of his or her evidence, and understands that he or she should tell the truth and, where the court so finds, it shall permit the child to give evidence upon stating: “I promise to tell the truth.”

The magistrate expressly said so in her reasons for decision and the magistrate was satisfied as she said that the child was possessed of sufficient intelligence to justify the reception of her evidence. Indeed, the transcript of proceedings commences with the words from the virtual complainant “I promise to tell the truth” which is part of requirements of section 15(3), not only did the magistrate refer to this in her reasons for decision but in the actual transcript of proceedings it began with the words “I promise to tell the truth”. Whereas we agree with the decision of the Privy Council in the judgment of *Fazal Mohammed v the State* and in fact we adopt the words of the Privy Council when it said that the lesson to be learned is that the judge in future should record in his notes the full inquiry of a child under 14 years (12 years in St. Lucia) before allowing the oath to be taken by the child (in the case of St. Lucia, before evidence of the child is to be taken. We want to associate ourselves with the wording of the Privy Council and to pay specific focus to the learned magistrate to make recordings

of all the proceedings in order for the defendant to know how the determination was made.

We are satisfied that although the magistrate did not specifically state that she had made a section 15(3) inquiry, the clear indication is that she did conduct some inquiry as to the intelligence of the virtual complainant to have justified reception of her evidence and understanding that he or she should tell the truth. On that basis, we do not find that the appeal on that ground is made out and we dismiss this ground of appeal. There being no other ground of conviction which was pursued the appeal against conviction is accordingly dismissed.

The sentence of 4 years' imprisonment was imposed for each of the 3 counts and the sentences to run concurrently. The magistrate clearly started off from not a notional sentence but a maximum sentence of 5 years. The magistrate also did not weigh and measure the mitigating and aggravating factors. In fact, the magistrate made no mention of the mitigating factors, particularly the good character of the appellant, in that he had no prior conviction. We consider that the notional sentence to be in the region of 2 1/2 years minimum to 3 and half years. All things considered, the serious aggravating factor in that the breach of trust of the 9-year-old niece of the wife, we counter that with the very strong mitigating factor of the appellant's previous good character and we arrive at the proper sentence of 3 years and not four years. We will allow the appeal against sentence and set aside the sentence of the appellant on each count and impose a sentence of 3 years on each count and the sentences to run concurrently.

Case Name:

Shawn Gonzague

v

WPC 616 Beverly Fontenelle

[SLUMCRAP2014/0008]

Consolidated with

Nelldwin President

v

WPC 616 Beverley Fontenelle

[SLUMCRARP2014/0009]

Date: Thursday, 24th May 2018

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

Appearances:

Appellant: Mr. Shawn Innocent

Respondent: Mr. Bernick Faisal

Issues: Criminal appeal against conviction – Possession of a controlled drug

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

Result / Order: Matter stood down.

Reason: The matter was stood down to allow counsel to identify the provisions of section 1202 of the Criminal Code of Saint Lucia the section in relation to sentencing, for the benefit of the Court.

Case Name: Andra Edwide
v
PC 684 Hamish Alexander

[SLUMCRAP2009/0008]

Date: Thursday, 24th May 2018

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

Appearances:

Appellant: Mr. Jeannot-Michel Walters

Respondent: Mr. Bernick Faisal

Issues: Appeal against conviction – Assault with a dangerous weapon

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

Result / Order: Counsel for the appellant having informed the Court of the intention of the appellant to discontinue the appeal, the appeal stands dismissed.

Case Name: Shawn Gonzague
v
WPC 616 Beverly Fontenelle
[SLUMCRAP2014/0008]
Consolidated with
Nelldwin President
v
WPC 616 Beverley Fontenelle
[SLUMCRAP2014/0009]

Date: Thursday, 24th May 2018

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

Appearances:
Appellant: Mr. Shawn Innocent
Respondent: Mr. Bernick Faisal

Issues: Criminal appeal against sentence – Possession of a controlled drug to wit: cannabis

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

Result / Order: [Oral delivery]

1. The appeal against conviction has no merit and the appeal is accordingly dismissed.
2. The appeal against sentence is allowed.
3. The \$60,000 fine imposed by the magistrate on both appellants is substituted with a fine of \$30,000 to be paid in 6 months, in default of which the appellants are to spend 6 months in prison.

Reason: The Court having determined that the magistrate erred in starting at a maximum sentence and in not giving credit to the appellant for his previous good character we find that an appropriate sentence for the offence in respect of a fine is \$60,000.

We consider that the appellant should get full credit for his guilty plea which would give him a 1/3 discount, we will take this down to \$40,000. We find that the appellant had no previous conviction and up to then being of good character, the fine of \$40,000 should be taken down to \$30,000 to account for the previous good character of appellant.

We therefore substitute for the \$60,000 fine imposed by the magistrate and impose instead a fine of \$30,000 to be paid in 6 months in default of which the appellant to spend 6 months in prison. The sentence of the Court applies to both appellants.