

COURT OF APPEAL SITTING

ANTIGUA & BARBUDA

Monday, 12th February 2018 to Friday, 16th February 2018

JUDGMENTS

Case Name: The Attorney General of the Virgin Islands
v
Global Water Associates Limited

[BVIHCMAP2016/0007]

Date: Tuesday, 13th February 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: Ms. Rose-Anne Kim holding papers for Ms. Giselle Jackman-Lumy and Ms. Maya M. Barry

Respondent: Ms. Mandy Thomas holding papers for Mr. Benjamin Strong

Issues: Commercial appeal – Interpretation of written agreements – Implied terms – Breach of written agreements – Remoteness of damage – Arbitration - Arbitration Ordinance No. 7 of 1976 of the British Virgin Islands – Power of court to remit or set aside arbitration award – Meaning of “error of law which appears on the face of the award” – Whether court can remit or set aside arbitration award on the basis of a breach of a term not pleaded before arbitrators

Result and Reason: The appeal is allowed; restoring the arbitrators' award, and ordering that the respondent pay the appellant's costs of the appeal and in the court below, to be assessed in default of agreement:

1. A term is to be implied only if it is necessary to make the contract work, and this it may be if (i) it is so

obvious that it goes without saying (and the parties, although they did not, ex hypothesi, apply their minds to the point, would have rounded on the notional officious bystander to say, and with one voice, “Oh, of course”) and/or (ii) it is necessary to give the contract business efficacy. The concept of necessity must not be watered down. Necessity is not established by showing that the contract would be improved by the addition. The fairness or equity of a suggested implied term is an essential but not a sufficient pre-condition for inclusion. No term will be implied if the contract is effective without it. It is in this sense that the concept of necessity is used. The test is not one of absolute necessity. A term can only be implied if, without the term, the contract would lack commercial or practical coherence. The question whether a term is implied is to be judged at the date the contract is made and must logically be answered only after the process of construing the contract is completed.

Ali v Petroleum Company of Trinidad and Tobago [2017] ICR 531 applied; Marks and Spencer Plc v BNP Paribas Securities Services Trust Co. (Jersey) Ltd [2016] AC 742 applied; BP Refinery (Westernport) Pty v President, Councillors and Ratepayers of the Shire of Hastings (1977) 52 ALJR 20 applied; Phillips Electronique Grand Public SA v British Sky Broadcasting Ltd [1995] EMLR 472 applied; CEL Group Limited v Nedlloyd UK Ltd [2014] 1 Lloyd’s Law Reports 381 applied; Braganza v BP Shipping [2015] 1 WLR 1661 applied.

2. The arbitrators were correct in refusing to imply a term in the MOMA that the Government would provide a prepared site. There was to be implied in the MOMA a term requiring the Government to provide the respondent with a treatment plant for it to manage but there was no term in the MOMA which stipulated that the treatment plant it was to manage had to be built by the respondent in accordance with the terms of the DBA or in accordance with a term which required the Government to provide a prepared site. The MOMA was commercially efficacious without the implication of such a term. It would only be necessary to imply such a term as a subsidiary obligation to the broader implied term to

provide the treatment plant, if the failure to provide the prepared site to the respondent made it impossible for the Government to fulfil its broader obligation to provide the plant so that the MOMA could commence. However, this was not the case.

3. A type of loss is not too remote if at the time of the contract it was reasonably foreseeable by the parties as not unlikely to result from the breach in question or there was a serious possibility or real danger that the particular loss would result from the breach. The arbitrators found that one consequence of the breach of the DBA was that the respondent lost the profits it expected to earn under the MOMA. However, although the loss of profits was held to have been caused by the breach, the respondent's entitlement to recover depended upon a finding that the test of remoteness set out in *Hadley v Baxendale* had been satisfied. The arbitrators were correct in finding that the respondent had failed to satisfy the test of remoteness. This is because the loss of the profits the respondent would make from operating the treatment plant was not the natural and usual consequence of the Government's breach of the DBA. This could only have been the case if the DBA gave the respondent the exclusive right to build the treatment plant, such that if it was prevented from doing so no plant could have been built at all, or if the MOMA provided that the plant which was to be provided for the respondent to manage and operate was one built by the respondent itself. But there was no such term in either agreement.

Hadley v Baxendale (1854) 9 Exch 341 applied; *Koufos v C. Czarnikow Ltd.* [1969] 1 AC 350 applied; *Transfield Shipping Inc. v Mercator Shipping Inc.* [2009] 1 AC 61 applied; *John Grimes Partnership Limited v Gubbins Partnership Limited* [2013] EWCA Civ 37 applied; *Victoria Laundry (Windsor) Limited v Newman Industries Limited* [1949] 2 KB 524 distinguished.

4. The High Court has long exercised a common law jurisdiction independent of the Arbitration Ordinance to set aside the award of an arbitrator for error of law appearing on the face of the award. But, in order to exercise this jurisdiction there must be found in the award some legal proposition which is the basis of

the award and which you can say is erroneous. This would include a note stating the reasons for the award. Absent an allegation of misconduct on the part of an arbitrator in failing to answer a question specifically referred for resolution, the absence from an award of a determination on a question of law not referred, cannot by definition amount to an error on the face of the award. The arbitrators were asked to determine whether the Government's failure to provide the respondent with a prepared site so that it could build the treatment plant breached an implied term of the MOMA. They answered that question correctly. They were not asked to determine whether the Government's failure to provide the respondent with a treatment plant breached an implied term of the MOMA that the Government would not prevent the commencement of that agreement by failing to provide the plant. The failure to make that determination did not invalidate the award, however much it might appear on the facts which the arbitrators found that the answer is obvious.

Racecourse Betting Control Board v Secretary of State for Air [1944] 1 All ER 60; Rees v Waters (1847) 16 M&W 263, 269-270 applied; Cottonex Anstalt v Patriot Spinning Mills Limited [2014] 1 Lloyd's L.R. 615 distinguished.

Case Name:

[1] Phillip Brelsford
[2] Joel Osborne
[3] Ingrid Osborne
[4] Alyn Russell Krause
[5] Gail Ann Cimon-Krause
[6] Kenneth Allen QC
[7] Yvonne Daly-Weekes
[8] Kathleen Allen-Ferdinand
[9] Kharl Markman
v
[1] Providence Estate Limited
[2] Owen M. Rooney
[MNIHCVAP2016/0008-0011]

Date:

Thursday, 15th February 2018

Coram:

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

Appearances:

Appellants: Mr. Sylvester Carrot holding papers for Mr. Kharl Markham

Respondents: Mr. Peyton Knight holding papers for Mr. Owen Rooney

Issues:

Land Law – Registered Land Act – Effect of registration based on a forged document – Indefeasibility of title – Enforcement of personal equities against registered proprietors – Company law – Rectification of the land register – Company law – Effect of actions taken by persons not validly appointed as directors in accordance with the constitutional documents of a company – Whether such a person has ostensible authority to represent the company

Result and Reason:

Allowing the appeal in part and ordering that each party bear his own costs, both in the court below and before this Court, that:

- 1. The registration of any person as the proprietor with absolute title of a parcel vests in that person the absolute ownership of that parcel, together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever. The system of land registration confers (in broad terms) indefeasibility of title on the registered proprietor, that is, immunity from attack in respect of the land or interest of which he is registered as proprietor. Immunity, however, is not absolute as there are circumstances in which the registration may be cancelled or corrected and the proprietor remains subject to claims brought in personam against him.**

Alan Frederick Frazer v Douglas Hamilton Walker and others [1966] UKPC 27 applied; Section 23 of the Registered Land Act, Cap 8:01, Revised Laws of Montserrat 2008 applied.

- 2. Even if non-compliance with the Registered Land Act's requirements as to registration may involve the possibility of cancellation or correction of the entry,**

registration once effected must attract the consequences which the Act attaches to registration, whether that was regular or otherwise. It is the registration and not its antecedents which vests and divests title. As such, once the appellants were registered as proprietors of the various parcels, they acquired title to those parcels, notwithstanding any irregularity that may have occurred with respect to the vendor, PEL. Registration, based on a void instrument, is still effective to vest and divest title. It follows as well that the failure by PEL to execute the land transfer instruments in accordance with section 107 of the RLA also did not affect the title which the appellants derived by virtue of their registration.

Section 23 of the Registered Land Act, Cap 8:01, Revised Laws of Montserrat 2008 applied; *Alan Frederick Frazer v Douglas Hamilton Walker and others* [1966] UKPC 27 applied; *Boyd v Mayor Etc of Wellington* [1924] NZLR 1174 applied.

3. A company can only act through its directors. Where a person has not been appointed a director in accordance with the constitutional documents of the company, the acts of such a person are not acts of the company as he would lack actual authority of the company (acting through its directors) to do such acts. He may, nevertheless, have ostensible or apparent authority to act on behalf of the company, but this will arise only where the company, but not merely the purported director, represents to the third party that the person has the authority to act on its behalf. Where a person purporting to act on behalf of a company lacked either actual or ostensible authority, the company is not bound by the act of that person in the absence of ratification of the agreement purportedly entered on its behalf. The various land transfers purportedly made on behalf of PEL in favour of the appellants were therefore void for want of authority of Mr. Cassell to act in the name of PEL. Notwithstanding, the effect of the void transfers is that PEL was nonetheless divested of its title to the parcels of land and the titles were vested in the purchasers who acquired indefeasible title to the parcels.

Companies Act, Cap. 11.12, Revised Laws of Montserrat 2008 applied.

4. In the absence of a finding of fraud or mistake, the conditions for rectification of the register under RLA section 140 do not arise and the court has no jurisdiction otherwise to order the rectification, that is, either cancellation or correction, of the land registers. The learned judge, having made no finding of fraud, there was no basis on which he could have ordered rectification of the register.

Section 140 of the Registered Land Act, Cap 8:01, Revised Laws of Montserrat 2008 applied.

5. A registered owner may hold as trustee and be compelled to execute the trusts subject to which he holds. Although trusts are kept off the register, a registered owner may not be beneficially entitled to the lands registered in his name. The representation of authority came only from Mr. Cassell himself; this is sufficient to arrive at the conclusion that these transactions were not the acts of PEL but were forgeries. The void transaction though not giving rise to an equitable interest in the property itself could give rise to the equitable right to sue for recovery of the land, and the appellants, as the new registered proprietors of the land would hold their titles subject to this right.

Assets Company, Limited v Mere Roihi and Others [1905] AC 176 applied; Breskvar and Another v Wall and Others (1971) 126 CLR 376 applied.

1. Grounds (a), (d), (e) and (f) of the appeal are allowed.
2. Declarations made by the learned trial judge on the claim and the counterclaim below that the appellants are not the absolute owners of the various parcels of land are set aside.
3. Declarations sought by the appellants on their claims in the court below that they are the absolute owners of the various parcels of land for which they are respectively registered as proprietors, are hereby granted but with the proviso that in each case the land is held subject to the equity in favour of the first respondent to apply to the court for an order to compel each proprietor to re-transfer the

parcel to the first respondent.

4. It is ordered that each of the Appellants shall execute an instrument transferring title to the parcel held in his or her name to the first respondent.

5. Orders for rectification of the various registers are set aside.

6. The counter notice is dismissed.

7. Each party to bear its own costs in the court below and before this court.

STATUS HEARING

HIGH COURT CRIMINAL APPEALS

Case Name:

Luke Pressley

v

The Queen

[ANUHCRA2014/0016]

Date:

Monday, 12th February 2018

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. D. Raimon Hamilton

Respondent: Mrs. Shannon Jones-Gittens

Issue:

Status of the matter

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

Adjournment

Result/Order: [Oral delivery]

The matter is adjourned for further status hearing at the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing the 11th June 2018.

Reasons: The appellant is overseas having served his sentence. The appellant's attorney has not been able to contact him for some time but has an email address and believes that he will be able to take instructions by the next sitting of the court in June 2018.

MAGISTERIAL CRIMINAL APPEALS

Case Name: Donald Sylvester Lumsden
v
The Commissioner of Police
[ANUMCRAP2013/0002]

Date: Monday, 12th February 2018

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mrs. Shannon Jones-Gittens

Issue: Status of the matter

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

Result/Order: [Oral delivery]

The appeal is to be listed before the full Court of Appeal at its next sitting in the state of Antigua and Barbuda during the week commencing the 11th June 2018.

Reasons: The Court notes that the notice of appeal was filed on the 11th January 2013. In spite of orders of the court for the record of appeal to be prepared the record has not been prepared and there is no explanation from the court office why the record of appeal has not been prepared.

Case Name: Kareem Gardiner
v
The Commissioner of Police
[ANUMCRAP2013/0004]

Date: Monday, 12th February 2018

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mrs. Shannon Jones-Gittens

Issue: Status of the matter

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

Result/Order: [Oral delivery]

The appeal shall be listed before the full court at the next sitting in the state of Antigua and Barbuda during the week commencing the 11th June 2018.

Reasons:

The Court notes that the notice of appeal was filed on the 1st August 2013. The Deputy Registrar informs the court that the record of appeal has not been prepared; no explanation is given as to why the record has not been prepared.

Case Name:

**Keimiah Green
v
The Commissioner of Police
[ANUMCRAP2013/0006]**

Date:

Monday, 12th February 2018

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

**Appellant: No appearance
Respondent: Mrs. Shannon Jones-Gittens**

Issue:

Status of the matter

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

Direction

Result/Order:

[Oral delivery]

The appeal shall be listed before the full court at the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing the 11th June 2018.

Reasons: The Deputy Registrar informs the court that the record of appeal have not been prepared and no explanation given for the failure to prepare the record. The Court notes that the notice of appeal was filed on the 7th November 2013.

Case Name: Jemal Benjamin
v
The Commissioner of Police
[ANUMCRAP2015/0004]

Date: Monday, 12th February 2018

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Mrs. Shannon Jones-Gittens

Issue: Status of the matter

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

Result/Order: [Oral Delivery]
The Court notes that the Registrar of the High Court shall forward to the Registrar of the Court of Appeal the notice of appeal if any, filed in this matter. The Registrar is to check with the Magistrate Court as to the status of this matter.

Reasons: There is no file before the court, in the registry or with the office of the DPP.

Case Name: **Dorian Marshall**
v
The Commissioner of Police
[ANUMCRAP2014/0003]

Date: **Monday, 12th February 2018**

Before: **The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: **In person**

Respondent: **Mrs. Shannon Jones-Gittens**

Issue: **Status of the matter**

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

**Result/Order &
Reasons:** **This matter appears to be confused with another matter ANUCRAP2013/0005 of the same Appellant before the court which was withdrawn.**

Case Name: **Keyon B. Hamilton**
v
The Chief Magistrate
[ANUMCRAP2015/0002]

Date: **Monday, 12th February 2018**

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mrs. Shannon Jones-Gittens

Issue: Status of the matter

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

Result/Order: [Oral delivery]

The matter is adjourned to Friday 16th February 2018 at 9.00 am before the full court.

Reasons: Mrs. Jones-Gittens informed the court that the Director of Public Prosecution wishes to adopt a certain course of action regarding this appeal and request that the matter be heard before the full court during this sitting of the court.

MAGISTERIAL CIVIL APPEALS

Case Name:

Glenworth Prince

v

Laudanskies Joseph

[ANUMCVAP2012/0002]

Date: Monday, 12th February 2018

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

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

Respondent: No appearance

Issue: Status of the matter

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

Result/Order: [Oral delivery]

The appeal to be set down before the full court at the next sitting of the court in the state of Antigua and Barbuda during the week commencing the 11th June 2018.

Reasons: The court office has no explanation for the failure to prepare the record of appeal. The court notes that the notice of appeal was filed on the 15th April 2012.

Case Name:

**Neil Jerrick
v
Chief Immigration Officer
[ANUMCVAP2014/0001]**

Date: Monday, 12th February 2018

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

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

Respondent: Ms. Joy Dublin, Crown Counsel II holding papers for Ms. Alicia Aska, Crown Counsel I

Issue:	Status of the matter
Type of Oral Result / Order Delivered:	Adjournment
Result/Order:	[Oral delivery] At the request of counsel on both sides the appeal is adjourned for further status hearing at the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing the 11th June 2018.
Reasons:	The Court notes that the parties are in discussion with a view to settlement and request a further adjournment of this matter.

APPLICATIONS AND APPEALS

Case Name: Massimo Alemagna
v
Flat Point Development Limited

[ANUHCVP2017/0016]

Date: Monday, 12th February 2018

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

Appearances:

Applicant: Mr. Sylvester Carrot

Respondent: No appearance

Issues: Stay of Execution – Application for leave to appeal – Whether the learned judge failed to have proper regard generally to the relevant private and public factors – Whether the learned master erred in law in holding that the claimant was resident in Italy – Whether the Master erred in law in staying the proceedings under section 5 of the Arbitration Act CAP 33 – Whether the learned Master misdirected herself in applying the relevant principles by compartmentalizing the different aspects of the claim.

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

Result / Order: [Oral delivery]

Leave to appeal is refused and the application is accordingly dismissed.

Reason: This is an application for permission to appeal against the Master's order granting a stay of the proceeding brought in

the court of Antigua after the applicant had earlier commenced proceedings in Italy, primarily on the basis of an exclusive choice of law and exclusive jurisdiction clause contained in a compromised agreement entered into among the parties in favour of the courts of Milan, Italy.

Essentially, the applicant complains that the Master misapplied the relevant principles by failing to consider the matter in the round and in staying the proceedings in Antigua, in favour of Italy where he maintains that the respondent had challenged the jurisdiction of the Milan court in respect of the compromised agreement. He further raised the issue of jurisdiction of the Italian Court over the respondent, an Antigua company, where its' related company Flat Point Italy no longer existed having been borne out.

It is important to note that the Italian court has not ruled on this jurisdiction challenge and the applicant says that the Italian judicial process is slow. The applicant places heavy reliance on the United Kingdom decision in Downing v Establishment & Anor. [2002] EWCA Civ 721 where counsel asserts that this case is on all fours with the question where a party repudiates an agreement and challenges whether the agreement was in existence and also the arbitration clause contained in that agreement. This court having had the opportunity to consider that authority, notes that it was the English court where the proceedings were first commenced, pursuant to the agreement contained in the arbitration clause, was to be governed by English law, it is that court which decided whether the defendant there had repudiated the arbitration agreement as well as the main agreement thus allowing for the claimant there to issue proceedings in Saudi Arabia.

In the case at bar, the applicant instead of having the Italian court decide this issue has without more moved the court in Antigua asserting a repudiation by the respondent and the Italian court jurisdiction thus electing the courts of Antigua and also because the application says that this issue will take a long time to be resolved in Italy, perhaps up until 2024. The applicant also maintains that the Master erred in staying the proceedings pursuant to the Arbitration Act of Antigua because there was no evidence that the respondent was ready and willing to go to arbitration. The court is not persuaded that the applicant has met the threshold for the grant of leave in light of the reasoning

provided by the Master having regard to the settled authorities where a party is faced with an exclusive jurisdiction clause and the strong reasons required allowing a party to resile from their agreed choice of jurisdiction.

Furthermore, as pointed out to the applicant as it relates to the issue of evidence showing readiness and willingness to arbitrate for the purpose of the Arbitration Act, the Privy Council's decision in the case of Anzen Limited & Others v Hermes One Limited [2016] UKPC 1. Anzen suggests that failure of a party to engage the arbitration process does not by itself undermine the efficacy of the arbitration clause. For these reasons permission to appeal is refused as the court considers that the appeal has no realistic prospect of success.

Case Name: **Robin Kensworth Montgomery Yearwood**
v
Christiana Yearwood

[ANUHCVAP2015/0018]
[ANUHCVAP2015/0019]

Date: **Monday, 12th February 2018**

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

Appearances:
Applicant: **Mr. Hugh Marshall, Jr.**
Respondent: **Dr. David Dorsett**

Issues: **Leave to appeal to Her Majesty in Council**

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

Delivered:

Result / Order:

[Oral delivery]

It is hereby ordered that leave is granted to the applicant pursuant to section 122 (1)(A) of the Antigua and Barbuda Constitution against the judgment of the Court of Appeal issued on the 21st November, 2017 on the condition that:

- 1. The applicant do within 90 days of the date of the hearing of this application for leave to appeal enter into good and sufficient security in the sum of £500.00 for the due prosecution of the appeal and the payment of all such costs as may be payable by the appellant in the event of this appeal being dismissed, such security to consist of the said amount in the Court.**
- 2. The applicant do take such steps for the purpose of procuring the preparation of the record and settling such record with the solicitors for the respondent and transmitting of such record to the Registrar of the Privy Council within 90 days of the date of hearing of this application for leave to appeal.**
- 3. The applicant shall apply to the court for final leave to appeal to Her Majesty in Council supported by the certificate from the Registrar that the security for cost order in the hearing has been given within the time prescribed by this order to the satisfaction of the Registrar.**
- 4. The cost of this application shall be the cost in the appeal to Her Majesty in Council.**

Case Name:

**Gregory Gordon
v
Jacqueline Havener**

[ANUHCVP2015/0030]

Date:

Monday, 12th February 2018

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

Appearances:

Applicant: Mrs. Samantha May-Francis

Respondent: Mr. Dane Hamilton, QC

Issues: Leave to appeal to Her Majesty in Council

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

Result/Order: [Oral delivery]
It is hereby ordered that leave is granted to the applicant pursuant to section 122 (1)(A) and (C) of the Antigua and Barbuda Constitution against the judgment of the Court of Appeal issued on the 7th December, 2017 upon the condition that:

1. The applicant do within 90 days of the date of the hearing of this application for leave to appeal enter into good and sufficient security in the sum of £500.00 for the due prosecution of the appeal and the payment of all such costs as may be payable by the appellant in the event of this appeal being dismissed, such security to consist of the said amount in the Court.
2. The applicant do take such steps for the purpose of procuring the preparation of the record and settling such record with the solicitors for the respondent and transmitting of such record to the Registrar of the Privy Council within 90 days of the date of hearing of this application for leave to appeal.
3. The applicant shall apply to the court for final leave to appeal to Her Majesty in Council supported by the certificate from the Registrar that the security for cost order in the hearing has been given within the time prescribed by this order to the satisfaction of the Registrar.

4. The cost of this application shall be the cost in the appeal to Her Majesty in Council.

Case Name:

**Attley Alexander
v
The Queen**

[ANUHCRA2016/0009]

Date:

Monday, 12th February 2018

Coram:

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

Appearances:

Appellant: Mr. Dane Hamilton, QC, with him Mr. D. Raimon Hamilton

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

Issues:

Criminal appeal against sentence – Murder – Whether sentence of 42 years unduly harsh – Whether the appellant’s constitutional rights were breached by being bound by his hands and feet for five years – Whether the appellant’s constitutional rights were breached due to him remaining on death row for 5 years

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

Oral Judgment or Decision

Result/Order:

[Oral delivery]

The appeal is accordingly dismissed and the sentence is affirmed.

Reason:

This is the unanimous decision of the court. The appellant was convicted of the offence of murder in 1999. The murder involved the death by burning of a mother, her two minor children ages 13 and 10 years and an unborn child of the mother who was then nine months pregnant. The appellant was sentenced at that time in 1999 to a mandatory death sentence by hanging. Subsequently, he successfully challenged the mandatory death sentence after he had been granted a stay of execution of his death penalty and was successful in having his death sentence declared unconstitutional following such authority as Newton Spence v The Queen Criminal Appeal No. 20 of 1998 and Peter Hughes v The Queen Criminal Appeal No. 14 of 1997.

Consequently, a resentencing hearing took place in 2016, by which time he had spent 19 years incarcerated that includes two years before his conviction. The appellant alleges that during five of the years after his conviction, he was kept in shackles and beaten causing him injuries. At his sentencing hearing the psychiatric reports were produced together with a social inquiry report. The sentencing judge Ramdhani, J [Ag] heard evidence and submissions in mitigation and took the medical reports as well as the social inquiry reports into account. The learned judge also had regard to the submissions of the Crown as well as the extensive criminal antecedent of the appellant and the circumstances leading up to and the commission of the offence. The learned judge further had regard to the delays in the resentence hearing as well as the fact of the breach of his constitutional rights in respect of that delay and that the appellant had been subject to the sentence of death hanging over his head up to the time that his death sentence was declared unconstitutional. Ramdhani, J [Ag] assessed all of the mitigating circumstances and the numerous aggravating factors of this case. He also had regard to case of Daniel Dick Trimmingham v The Queen Criminal Appeal No. 32 of 2004 which clearly indicates that the sentence of death should be reserved for the worst of the worst and rarest of the rare and that the court must have regard to the possibility of rehabilitation.

The position in the case at bar was whether the appellant should be given a whole life sentence as distinct from a sentence for a fixed number of years. The learned judge in a closely reasoned judgement reviewed several relevant authorities and then addressed his mind having regard to

those principles in the circumstances of the case thus determining an appropriate sentence. Even though this may not be considered the worst of the worst or the rarest of rare, in any view, this was an exceedingly heinous crime. Having considered his judgment in the round the court is of the unanimous view that learned trial judge have regard to all the relevant considerations and gave the appropriate weight to them. The court does not find that he took into account any irrelevant factors or that he misapplied any of the principles in arriving at his decision for imposing an indeterminate sentence of life in prison with a minimum period of 42 years from the date of remand with the ability for review of the same every two years thereafter.

The principles upon which an appellate court can properly interfere with the sentencing discretion of a trial judge are well settled as stated in the case of the DPP v Shaunlee Fahie Criminal appeal No. 3 of 2008. In that case at paragraph 2 the court of appeal there held that the imposition of a sentence unless specifically fixed by legislation involves the exercise of discretion by the sentencer. Accordingly, it is well settled that an appellate court would only interfere with the sentence passed by the sentencing court if:

1. It is not justified in law;
2. It is passed on the wrong factual basis;
3. Some matter has been improperly taken into account; and
4. Where the sentence was wrong in principle or manifestly excessive.

It is also well settled that it is not open to an appellant court to substitute its discretion for that of the trial judge merely on the basis that were it to exercise a discretion it would have come to a different conclusion. The court is fully satisfied that the learned trial judge committed no error of principle nor is there any basis for saying that his decision in arriving at the sentence he did was clearly or blatantly wrong or excessive. Accordingly, there is no basis on which this court should interfere with the sentence imposed.

Case Name:

Simon Davis

v

The Queen

[ANUHCRA2012/0007]

Date:

Monday, 12th February 2018

Coram:

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

Appearances:

Appellant: Mr. Sherfield Bowen

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

Issues:

**Criminal appeal against conviction and sentence – Sexual
intercourse with a minor under 16 years – Buggery**

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

Directions

Result/Order:

[Oral delivery]

- 1. That having regard to the unavailability of the transcript of the sentencing hearing regarding the appellant. Counsel for the appellant and counsel for the Crown shall meet and seek to agree the notes of the sentencing hearing and to file with the court the notes so agreed by Friday 30th March, 2018.**
- 2. The appellant shall file and serve skeleton arguments with authorities by the 16th April, 2018.**
- 3. The respondent shall file and serve skeleton arguments in response with authorities by the 18th May, 2018.**
- 4. The hearing of this appeal is adjourned to the next sitting of the Court in Antigua and Barbuda during the week commencing the 11th June, 2018.**

Reason: Counsel for the appellant indicated that the record of appeal is missing an important component that being the sentencing hearing.

Case Name: Anthony Browne
v
The Commissioner of Police
[ANUMCRAP2012/0005A]

Date: Monday, 12th February 2018

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

Appearances:
Applicant: Mr. Justin Simon, QC
Respondents: Mr. Anthony Armstrong, Director of Public Prosecutions
with him, Mrs. Shannon Jones-Gittens

Issues: Criminal appeal against conviction – Larceny

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

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

Reasons: The appellant was charged for larceny and the learned Chief Magistrate lacked the jurisdiction to try the matter.

Case Name:

**The Supervisory Authority
v
[1] Cresswell Overseas SA
[2] Meini Bank (Antigua) Ltd. (In Receivership)

[ANUHCVAP2017/0003]**

Date:

Tuesday, 13th February 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:

Applicant: Mr. Reginald Amour, SC. with him, Mr. Raphael Ajodhia

**Respondents: Mr. Frank E. Walwyn with him, Ms. Jacqueline Walwyn for
the first respondent
Mr. Kelvin John with him, Mr. Loy Weste and Mrs. Lisa John
Weste for the second respondent**

Issues:

**Strike out notice of appeal – Application for an extension
of time to file supplemental submissions and relief from
sanctions – Application to lift stay of legal proceedings
imposed on the 2nd respondent regarding both the appeal
and the hearing below – Application to change the name of
the respondent to show that it is now in receivership – Oral
application that the orders of Thom J. be stayed to preserve
the status quo**

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

First application:

It is hereby ordered that:

The application to strike out the Notice of Appeal on the ground that it was filed without leave is accordingly dismissed.

Second application:

It is hereby ordered that:

1. That the applicant be granted an extension of time until the 29th January, 2018 to file supplemental written submissions.
2. The supplemental written submissions on the 29th January, 2018 be deemed to and do stand as properly filed with the court.
3. The first respondent shall be permitted to hand in to the court and other counsel supplemental submissions in response.

Third application:

It is hereby ordered that:

1. The application made by the first respondent to lift the stay of proceedings imposed on the second respondent by operation of section 143(1)(C) of the International Banking Act 2016 in respect of Civil Appeal No. 3 of 2017 and Claim No. 372 of 2016 is granted to the extent that current appeal proceedings shall proceed to judgment.
2. The Meinv Bank Antigua Ltd. in Receivership is hereby substituted for Meinv Bank Antigua in these proceedings.

Fourth application:

It is hereby ordered that:

1. Judgment is reserved.
2. A stay is granted of paragraphs 1 and 3 of the order of Thom J. made on the 30th January, 2017 pending the determination of an application for a formal stay of said orders. Such stay will lapse if an application is not filed and served by 4 p.m. Friday 16th February, 2018.

Reason:

First application:

Based on paragraph 3 of the order of Justice Thom dated 22nd of July, 2016, the learned judge did grant an injunction prohibiting the defendant from dealing with the frozen accounts and the assets of the company. This

therefore makes the order being appealed an exception to the requirement that leave must first be sought to appeal against an interlocutory order.

Second application:

The first respondent although not conceding the application does oppose the grant of the extension.

Third application:

The application is resisted by both counsels for the respondents as the application should have been properly brought before the High Court as opposed to the Court of Appeal. The International Banking Act defines court as that of the High Court and thus any lifting of a stay should properly be brought there.

Case Name:

Glenis Messiah

v

The Queen

[ANUHCRA2018/0002]

Date:

Tuesday, 13th February 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:

Applicant: Mr. Lawrence Daniels

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

Issues:

Leave to appeal against conviction and sentence out of time

**Type of Oral
Result / Order**

Oral Judgment or Decision

Delivered:

Result/Order:

[Oral delivery]

- 1. The applicant is granted leave to file an appeal against conviction and sentence within 7 days of the date of this order.**
- 2. The applicant shall file and serve skeleton arguments with authorities in support of the appeal on or before the 23rd March, 2018.**
- 3. The respondent shall file and serve skeleton arguments with authorities in response on or before the 27th April, 2018.**
- 4. The hearing of this appeal is fixed for the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 11th June, 2018.**

Case Name:

Joseph Horsford

v

Geoffrey Croft

[ANUHCVP2014/0028]

Date:

Tuesday, 13th February 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:

Respondent: No appearance

Applicant: Mr. Sylvester Carrot

Issues:

Civil Appeal – Leave to appeal her Majesty in Council

**Type of Oral
Result / Order**

Adjournment

Delivered:

Result/Order: [Oral delivery]
The hearing of the application is adjourned to Friday, 16th February, 2018.

Reason: Counsel for the respondent indicated that he has served the applicant but is unable to produce an affidavit of service. Matter is to be adjourned to Friday 16th February, 2018.

Case Name: Ahmed Williams
v
The Supervisory Authority
[ANUHCVP2015/0035]

Date: Tuesday, 13th February 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:
Applicant: Dr. David Dorsett
Respondent: Mrs. Carla Brookes-Harris, Deputy Solicitor General

Issues: Leave to appeal to Her Majesty in Council

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

Result/Order: [Oral delivery]
Final leave is granted to the applicant to appeal to Her Majesty in Council.

Case Name:

Georgette Aaron

v

The Queen

[ANUHCRA2014/0014]

Date:

Tuesday, 13th February 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. Ralph Francis

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

Issue:

**Criminal appeal against sentence – Perverting the course of
justice – Oral application for an adjournment – Oral
application for leave to file an application to adduce fresh
evidence**

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

Orders in respect of the oral application:

- 1. The applicant is granted leave to make an application to adduce fresh evidence. The application is to be filed and served on the Director of Public Prosecutions within 7 days of this order.**
- 2. The applicant is to file and serve submissions and authorities in support of the application.**
- 3. The Director of Public Prosecutions is to file and serve submissions with authorities in reply within**

fourteen days of this order.

4. The application will be heard by a Judge in chamber during the chamber hearing of this court in the month of March.

Orders in respect of the substantive appeal

1. The appellant is to file and serve submissions and authorities on or before the 14th March, 2018.
2. The Director of Public Prosecutions is to file and serve skeleton submissions on or before the 15th April, 2018.
3. The hearing of this appeal is traversed to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 11th June, 2018.

Case Name:

Kaniel Martin

v

The Queen

[ANUHCRA2012/0001]

Date:

Tuesday, 13th February 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. Marcus Peter Foster

Respondent:

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

Issues:

**Criminal appeal against conviction – Murder – Oral
application for leave to include an additional ground of
appeal**

**Type of Oral
Result/Order**

Oral Judgment or Decision

delivered:

Result / Order:

[Oral delivery]

- 1. The court grants the application that the grounds of appeal filed on the 14th July, 2017 are deemed to be properly filed.**
- 2. Leave is granted to the appellant to file and serve skeleton arguments with authorities on or before 30th March, 2018.**
- 3. Leave is granted to the respondent to file and serve skeleton arguments with authorities in opposition to the appeal on or before the 31st May, 2018.**
- 4. The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 11th June, 2018.**
- 5. The Notice of Appeal filed on the 14th July, 2017 is to be served on the respondent within one week of the date of this order.**

Reason:

Counsel for the appellant has indicated that having discovered certain facts about members of the jury, particularly, the foreman and his niece who personally knew the appellant now makes an oral application seeking leave of the court to add an additional ground of appeal which is essential to challenge the very conviction of the appellant.

The court has before it a Notice of Appeal filed on the 1st July, 2017. The court notes that there has not been any application made or granted to file these additional grounds of appeal. Counsel for the appellant makes an oral application before the court to have these grounds of appeal added to the original statutory ground. The court is prepared to have the grounds of appeal filed on the 14th of July 2017, to be deemed regularly filed so that these three grounds of appeal contained in the Notice of Appeal filed on the 14th July 2017 will not form part of the grounds of appeal. The application which counsel sought to make is not a proper application before the court and as such will not entertain counsel's attempt to put in an application informally and as improperly as he sought to do.

Case Name:

Corian Thomas

v

The Queen

[ANUHCRA2016/0004]

Date:

Tuesday, 13th February 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. Ralph Francis

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

Issues:

**Criminal appeal against conviction – Armed Robbery – Oral
application for an adjournment**

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. Leave is granted to the respondent to file and serve skeleton arguments with authority on or before the 24th April, 2018.**
- 2. The hearing of the appeal is fixed for the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 11th June, 2018.**
- 3. This appeal is hereby consolidated and shall be heard together with Glennis Messiah v The Queen [ANUHCRA2018/0002].**

Reason:

Counsel for the appellant indicated that submissions although filed on the 14th December, 2017 were not served on the Director of Public Prosecutions until the 7th January, 2018 not affording him sufficient time to respond to submissions. Further the appellant was jointly charged and

sentenced with Glennis Messiah and the appeals are to be consolidated.

Case Name:

**The Supervisory Authority
v
[1] Cresswell Overseas SA
[2] Meini Bank (Antigua) Ltd. (In Receivership)
[ANUHCVP2017/0003]**

Date:

Tuesday, 13th February 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. Reginald Amour, SC., with him, Mr. Raphael Ajodhia
Respondents: Mr. Frank E. Walwyn with him, Ms. Jacqueline Walwyn for the first respondent
Mr. Kelvin John with him, Mr. Loy Weste and Mrs. Lisa John Weste for the second respondent

Issues:

Whether the learned judge failed to properly or at all to interpret and to apply the Mutual Assistance in Criminal Matters Act (MACMA) and the Money Laundering Prevention Act (MLPA) as Acts *in pari materia* – Whether the learned judge failed properly or at all to interpret and to apply the MACMA and the MLPA construing the statute as a whole and that a statute is to be construed according to its manifest intention – Whether the learned judge failed properly to apply the Ratification of Treaties Act – Whether the learned judge failed properly or at all to consider the effect of legal/public policy and the comity of nations prior to declining the Court's jurisdiction outright – Whether the learned judge was also plainly wrong to have additionally declined jurisdiction on the basis of his (disputed) finding that the Regulations were *ad hominem* given that he was

vested with the necessary jurisdiction

Type of Oral
Result / Order
Delivered:

N/A

Result / Order:

Judgment is reserved.

Case Name:

**Marcus A. Wide and Hugh Dickson
As Joint Liquidators of Stanford International Bank
Limited
v
[1] Amicus Curiae
[2] Timour Gainouline
[ANUHCVP2015/0039]**

Date:

Tuesday, 13th February 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:

**Applicants: Mr. Malcolm Arthurs with him Ms. Nicolette Doherty
Respondents: Mr. Lenworth Johnson for the first respondent
Mr. Lawrence Daniels for the second respondent**

Issues:

Leave to appeal to Her Majesty in Council

Type of Oral
Result / Order
Delivered:

Oral Judgment or Decision

Result/Order:

[Oral delivery]

It is hereby ordered that leave to appeal to Her Majesty in Council is granted to the applicants pursuant to section 122 (2)(A) of the Antigua and Barbuda Constitution against the judgment of the Court of Appeal issued herein on the 22nd September, 2017 on the condition that:

1. The applicants/appellants do within 90 days of the date of hearing of this application for leave to appeal enter into good and sufficient security in the sum of £500.00 for the due prosecution of the appeal and the payment of all such costs as may be payable by the appellant in the event of this appeal being dismissed, such security consists of the deposit of the said amount in the court.
2. The applicant do take such steps for the purpose of procuring the preparation of the record and settling such record with the solicitors for the respondent and transmitting such record to the Registrar of the Privy Council within 90 days of the hearing of this application for leave to appeal.
3. The record shall be comprised of the record used at the hearing of the appeal excluding documents of a formal nature and those omitted by consent which shall include the judgment and order of the Court of Appeal and the order granting conditional leave to appeal.
4. The applicants/appellants shall make an application to this court for final leave to appeal to Her Majesty in Council supported by the certificate of the Registrar that the security for cost herein ordered in the hearing has been given within the time prescribed by this order to the satisfaction of the Registrar.
5. The cost of this application shall be the cost in the appeal in the cause.

Case Name:

Deless Phillip

v

The Queen

[ANUHCRA2015/0020]

Date:

Wednesday, 14th February 2018

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Sherfield Bowen

Respondent: Mrs. Shannon Jones-Gittens holding papers for Mr. Anthony Armstrong, Director of Public Prosecutions

Issue: Criminal appeal against conviction – Shooting with Intent – Aggravated Robbery – Oral application for an adjournment

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

Result / Order: [Oral delivery]

1. Having regard to the late filing of submissions by the appellant, the respondent is granted time until the 20th April, 2018 for filing and serving submissions in response.
2. The hearing of the appeal is hereby adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 11th June, 2018.

Reason: Counsel for the appellant filed submissions on the 24th January, 2018. Counsel for the respondent has not been provided with sufficient time to respond to all the issues raised by the appellant in his submissions.

Case Name: Melvin D. Anderson
v
[1] The Attorney General of Antigua and Barbuda
[2] Commissioner of Police

[3] Glennis Simon
[4] Moncy Duncan

[ANUHCVP2013/0018]

Date: Wednesday, 14th February 2018

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Dr. David Dorsett

Respondents: Mrs. Carla Brookes-Harris, Deputy Solicitor General for the first and second respondents
No appearance for or on behalf of the third and fourth respondents

Issues: Whether the learned judge erred in holding that the appellant did not continue in the employment of the Government from August 2005 (and hence was in breach of two bonds executed on the 13th August 1999 and 1st August 2003) when as a matter of law the appellant continued in the service of the Government as a police officer because none of the conditions prescribed under section 16 of the Police Act by which a police officer ceases to continue in the service of the Government as a police officer had materialized.

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

Result/Order: [Oral delivery]
The appeal against counterclaim is dismissed and the judgment of the learned trial judge is confirmed. Costs in the sum of two-thirds of the prescribed costs of the counterclaim in the court below.

Reason:

This is an appeal by Mr. Melvin Anderson against the judgment of Justice Jennifer Remy dated the 15th of August, 2013, in which the learned judge based on a claim and a counter claim made certain findings in favour of the claimant who is now the appellant and critical findings against the claimant in relation to the counter claim. Namely that the claimant was to pay the defendant the sum of EC\$ 152,400.00 being the amount due as damages for breach of two bonds executed on the 13th of August 1999 and the 1st of August 2003 together with interest at the rate of 5 % per annum from the 26th day of July, 2011 (date of filing of the defence and counterclaim) to the 15th day of August 2013 (the date of judgment) together with prescribed costs.

Mr. Anderson is dissatisfied with the judge's order in relation to the counterclaim and has appealed on the ground that the learned judge erred in law in holding that the appellant did not continue in the employment of the Government from August 2005 (and hence was in breach of two bonds executed on the 13th August 1999 and 1st August 2003) when as a matter of law the appellant continued in the service of the Government as a police officer because none of the conditions prescribed under section 16 of the Police Act by which a police officer ceases to continue in the service of the Government as a police officer had materialized.

Counsel for the appellant also appealed against several findings of fact that were made by the learned trial judge; namely that the claimant's failure to report for duty without notice is a repudiatory breach entitling the defendants to accept the said breach. Secondly, he appeals against the finding of the learned judge that Mr. Anderson had abandoned his employment and critically the court's finding that based on the evidence before it, it was clear that Mr. Anderson voluntarily relinquished the performance of his duties and that he did so with the actual imputed intention to abandon and relinquish the said office.

The court having perused the submissions advanced by learned counsel Dr. Dorsett; the written submissions of learned Deputy Solicitor General Mrs. Carla Brookes-Harris and for all of the intimations which the court gave during the submissions by Dr. Dorsett coupled with the fact that the court is of the unanimous view that it was opened to the learned judge based on the evidence that was provided to

the court to have concluded as she did that Mr. Anderson had indeed abandoned his post and was therefore in a position which was a repudiatory breach of his contract with the government of Antigua and Barbuda entitling them to accept the repudiation as they did.

The court is also of view that section 16(3) of the Police Act is not engaged in the circumstances of this matter, what is before the court is a breach of contract counterclaim by the Government. The court is further of the view that the learned trial judge correctly applied the legal principles to the factual circumstances, and came to a correct conclusion in holding that Mr. Anderson having breached the two bonds was liable to compensate the State to the extent of EC\$ 152,400.00 at a rate of 5% per annum. Accordingly, there is no basis on which the court can properly interfere with the well written judgment of the learned trial judge in relation to the counterclaim.

Case Name: Humphrey M. Blackburn
v
Liat (1974) Ltd.

[ANULTAP2017/0001]

Date: Wednesday, 14th February 2018

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: Mr. Septimus Rhudd
Respondent: Mrs. Stacey Richards-Roach with her, Ms. Bellina Barrow

Issues: Oral application for an adjournment

Type of Oral Directions

**Result / Order
Delivered:**

Result/Order:

[Oral delivery]

It is hereby ordered that:

- 1. The appellant files a supplemental record of appeal to include the respondent's counter notice and any other documents omitted from the record of appeal filed on the 7th October, 2017 before the Industrial Court on the subject of the appeal by the 12th March, 2018.**
- 2. The appellant shall file and serve written submissions in support of the appeal together with authorities relied on by the 12th March, 2018.**
- 3. The respondent shall file and serve written submissions in support of counter Notice of Appeal in response to the appellant by the 16th April, 2018.**
- 4. The appellant shall if necessary serve and file a reply to the respondent's submissions by the 4th May, 2018.**
- 5. The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 11th June, 2018.**

Reason:

Counsel for the appellant stated that a counter notice of appeal having been filed on the 17th August, 2017 and as such the record of appeal is not complete. Further counsels on both sides are yet to submit skeleton arguments.

Charles Khoury

v

Agnes Khoury

[ANUHCVP2017/0019]

Date:

Wednesday, 14th February 2018

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Mr. Justin L. Simon, QC. with him Mr. Kwame Simon

Respondent: Mr. John Carrington, QC. with him Ms. Sandy-Ann Khouly

Issues:

Interlocutory Appeal - Whether the learned master erred in law in determining that the applicant failed to provide a good explanation for his failure to file a defence as required by Part 13.3(1)(b) of the CPR – Whether the learned master having failed to properly take into account the material facts, erred in law in finding that there was no good explanation for the applicant's failure to file a defence because of the court's order that the applicant file his defence by June 8, 2016 – Whether the learned master erred in law in determining that the applicant failed to provide an 'exceptional circumstance' pursuant to Part 13.3(2) of the CPR – Whether the learned master having failed to properly take into account the applicant's submissions on the respondent's claim being statute barred, erred in law in determining that this did not constitute an exceptional circumstance

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

Oral Judgment or Decision

Result/Order:

[Oral delivery]

The appeal is hereby dismissed with costs to the respondent to be fixed at two thirds of costs assessed in the court below.

Reason:

This is an interlocutory appeal against the decision of learned master Wallace, M [Ag.] refusing to set aside the judgment entered in default of defence given on the 5th September, 2017. The background which is relevant to this appeal may be summarized as follows: The respondent/claimant issued proceedings in respect of a debt said to be due and owing from the appellant/defendant. The appellant/defendant after the deadline for filing his defence dispute the court's jurisdiction to try the claim. This jurisdiction challenge was dismissed by Lanns, J. who in her judgment dated the 11th

May, 2016, ordered the appellant to file his defence within 28 days. The appellant dissatisfied with this ruling sought by an application filed on the 26th May, 2016 permission to appeal Lanns J. ruling of jurisdiction.

A short while later he applied to the court below for a stay of Lanns J. order. Leave to appeal having been granted on August 4th 2016, the appellant launched his appeal on the 25th of August 2016. The respondent opposed the stay application. Also on September 23, 2016 the respondent filed a request for judgment in default of defense which pursuant to Lanns, J. order 2016 ought to have been filed on or about 8 of June 2016. The stay application was refused by Master Corbin Lincoln who in her ruling of 16 November 2016 alluded to the risk of a request for judgment in default being made and interestingly observed at paragraph 17 that it was open to the appellant to state clearly in his defence that his defence was being filed pursuant to the order of the court but reserving his position with respect to his challenge to the court's jurisdiction. The appellant did not comply with the judge's order to file his defence and even in light of Master Lincoln's judgment still had not sought to file his defence or apply for an extension of time to do so. Rather the defendant then applied to the court of appeal for a stay after the master's refusal but by then judgment in default had been entered by the court office in respect of the respondent's request made on the 23rd September 2016. The appellant having been notified in the affidavit of the respondent opposing the stay in the court of appeal and having been served with the judgment in default in December 2016 promptly made application to set aside the judgment in default pursuant to Part 13.3 (1) and (2) of the Civil Procedure Rules. The learned Master Wallace M [Ag.] in her well-reasoned judgment ruled that the appellant had not satisfied the requirement for a good explanation in the three limb cumulative test stipulating pursuant to Part 13.3 (1)(a)-(c) of the CPR. The authorities are very clear that all three conditions of 13.3 1 must be satisfied and having failed on the good explanation criterion, the application was doomed to fail under 13.3 1 of the CPR. The master then addressed whether the appellant had established exceptional circumstances which would enable her to exercise her discretion under Part 13 .3 (2) of the CPR and concluded after full and detailed consideration of all the factors advanced and reviewing the relevant authorities that the several factors put forward failed to demonstrate exceptional circumstances.

The principles upon which an appellant court will interfere with the exercise of the discretion by the court below are so well settled as to be considered trite and are found locus classicus of this court in the case of Dufour v Helenair Corporation Ltd. Civil Appeal No.4 of 1995, Sir Vincent Floissac: *"We are thus here concerned with an appeal against a judgment given by a trial judge in the exercise of a judicial discretion. Such an appeal will not be allowed unless the appellate Court is satisfied (1) that in exercising his or her judicial discretion, the learned judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations or by taking into account or being influenced by irrelevant factors and considerations and (2) that as a result of the error or the degree of the error in principle, the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong."*

Sir Floissac went on to say that the first condition was explained by Viscount Simon L.C. in Charles Osenton & Co. v Johnston (1941) 2 AER 245 at 250 that *"The appellate tribunal is not at liberty merely to substitute its own exercise of discretion for the discretion already exercised by the judge. In other words, appellate authorities ought not to reverse the order merely because they would themselves have exercised the original discretion, had it attached to them, in a different way. If; however, the appellate tribunal reaches the clear conclusion that there had been a wrongful exercise of discretion, in that no weight, or no sufficient weight, has been given to relevant considerations such as those urged before us by the appellant, then the reversal of the order on appeal may be justified."*

The second condition was explained by Asquith L.J. in Bellenden (formerly Satterthwaite) v Satterthwaite (1948) 1 AER 343 at 345 *".....We are here concerned with a judicial discretion, and it is of the essence of such a discretion that on the same evidence two different minds might reach widely different decisions without either being appealable. It is only where the decision exceeds the generous ambit within which reasonable disagreement is possible, and is, in fact, plainly wrong, that an appellate body is entitled to interfere."*

The court is of the unanimous view that the appellant has

failed to show that the learned master made any error of principle or that she exceeded the generous ambit of her discretion or that her decision was plainly wrong. Accordingly, no basis has been shown warranting interference with the exercise of a discretion by this court. A rerun of the same arguments all of which were before the master does not elevate them to a demonstration of an error on the part of the master in the exercise of her discretion.

Case Name: Dickenson Bay
v
Miriam Myers
[ANUHCVP2016/0022]

Date: Thursday, 15th February 2018

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

Appearances:

Applicant:	Ms. E. Ann Henry, QC. with her, Ms. C. Debra Burnette and Ms. Krishna-Kay Lawrence
Respondent:	Mr. Justin L. Simon, QC. with him, Ms. Gina Dyer-Munro and Mrs. Cherissa Roberts-Thomas

Issues: Application for an extension of time to file an application to discharge an order of a single judge and admit fresh evidence

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

Result/Order: [Oral delivery]
1. The court therefore grants the stay of execution in

relation to the part of the damages namely the sum of EC\$ 364,341.60 plus interest that is yet to be paid to the respondent on the condition that this sum shall be paid into an interest bearing account held by the Registrar of the High Court within 14 days of this order.

2. The application to adduce fresh is refused.
3. Each party shall bear its' own cost in relation to this application.

Reason:

This is an application for an extension of time to discharge the order of a single judge and to admit fresh evidence. With the consent of the parties the court has treated the extension of time as the substantive application. The court is of the view that taking the totality of the circumstances into account including the impecuniosity of the respondent, the likelihood of the success of the appellant in relation to the issues of the multiplier that was used and the award of pain, suffering and loss of future income; that a stay of execution ought to be granted failing which there is a real possibility of an appeal being rendered nugatory on the well establishing principles which needs no recitation.

In relation to the application to adduce fresh evidence, the court having heard the submissions and having read the affidavit evidence filed in relation to that application is of the unanimous view that the applicant has failed to meet the threshold requirement of the principles that were established in Ladd v Marshall [1954] EWCA Civ 1.

Case Name:

Claudy Kelvin Brown

v

[1] The Attorney General

[2] The Chief Immigration Officer

[3] The Chief Magistrate

[ANUHCVP2012/0017]

Date:

Thursday, 15th February 2018

Coram:

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

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

Appearances:

Appellant: Dr. David Dorsett

Respondents: Ms. Joy Dublin, Crown Counsel II holding papers for, Ms. Alicia Aska, Crown Counsel I

Issues:

Oral application for an adjournment

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

Adjournment

Result / Order:

[Oral delivery]

The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 11th June, 2018.

Reason:

Counsel for the respondent having been hospitalized on the 5th February, 2018 is unable to attend court to conduct the matter. Counsel for the appellant does not object to an application for an adjournment.

Case Name:

Hilroy Humphreys

v

Ian Peters

[ANUHCVP2011/0031]

Date:

Thursday, 15th February 2018

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal**

Appearances:

Appellant: Mr. Septimus Rhudd

Respondent: Mr. Justin Simon, QC

Issues:

Whether the learned trial judge erred in law in finding that the evidence of the appellant lacked credibility, cogency and consistency – Whether the learned trial judge erred in law in finding that “the real fraud in this case was perpetrated by the third defendant on the claimant and that he did commit a fraud on the claimant in receiving funds from him and representing to him that he (the claimant) was purchasing and had purchased parcel 117 from the Crown, while purchasing the land for himself, furnishing the claimant with a bogus land certificate to further the deception of him and then diverting him off the track of the parcel of land that he was supposed to have purchased and onto the track of a parcel 135 evidently purchased from the Crown by someone with the same name as but a different address to the claimant – Whether the learned trial judge erred in law in finding that the appellant was liable to the claimant – Whether there was no evidence to support the finding of the learned trial judge that the appellant “did commit a fraud on the claimant in receiving funds from him and representing to him that he (the claimant) was purchasing and had purchased parcel 117 from the crown, while purchasing the land for himself, furnishing the claimant with a bogus land certificate to further the deception of him and then diverting him off the track of a parcel 135 evidently purchased from the crown by someone with the same name as but a different address to the claimant – Whether the learned trial judge misdirected himself in his treatment of the evidence of the appellant in that the learned trial judge relied on evidence not given by the appellant and made findings not supported by the evidence – Whether the learned trial judge misdirected himself and failed to give or have due regard to the evidence when he kept referring to one “Terry Henry” where the evidence as given by the appellant was in relation to one “Terry Harvey” – Whether the judgment of the learned trial judge as against the appellant was wrong and ought to be set aside

Type of Oral

Oral Judgment or Decision

**Result/Order
Delivered:**

Result/Order: [Oral delivery]

The appeal is accordingly dismissed and the appellant shall bear the cost of this appeal to be two-thirds of the cost prescribed in the court below.

Reason:

This is an appeal brought by the appellant who was the third defendant in the court below in which the learned trial judge on a claim brought by the respondent for damages for fraud and rectification of land register relating to Parcel No. 135, Block No. 45 1795A, Registration Section: McKinnons. The learned trial judge found that the third defendant had committed a fraud on the respondent and those findings are set out more specifically at paragraph 28 of the learned judge's judgment and the court can do no more than repeat those findings based on the evidence where he said *"the fact is that the evidence of the third defendant as a whole lacks credibility, cogency and consistency and leads inevitably and ineluctably to the conclusion that the third defendant's evidence is not to be believed."* Then the learned judge went on further to explain what truly had emerged from the evidence *"Although the claimant in his pleadings largely misdirected his fire at the other defendants in the belief that parcel 135 was the land that he had purchased and paid for, the preponderance of the evidence in the case leads the court to the conclusion that the real fraud in this case was perpetrated by the third defendant on the claimant and that he did commit a fraud on the claimant in receiving funds from him and representing to him that he (the claimant) was purchasing and had purchased parcel 117 from the Crown, while purchasing the land for himself, furnishing the claimant with a bogus land certificate to further the deception of him (the claimant) and then diverting him off the track of the parcel of land that he was supposed to have purchased and onto the track of a parcel 135 evidently purchased from the crown by someone with the same name as the claimant (Ian Peters) but a different address to the claimant. The court found accordingly that the third defendant is liable to the claimant."*

The learned judge went on further at paragraph 32 to say

that "Having regard to the court's findings on the evidence and to the applicable law, the court ordered: 1. The claims against the first, second and fourth defendants for damages of fraud, rectification of the register relating to Parcel: 135, Block No.:45 1795A, Registration Section: McKinnons, a declaration that the said parcel of land is owned by the claimant or held in trust for the claimant, interest and costs are dismissed. 2. The claim against the third defendant for damages for fraud is allowed and the third defendant is ordered to pay the claimant damages in the sum of \$350,000.00 (being the price which the third defendant sold parcel 117 for on the 10th December 2003) plus interest on the sum of \$350,000.00 at the rate of 5% percent per annum from the 10th December 2003 to the date of judgment."

The question to be determined now, was whether it was open to the trial judge to arrive at those findings. The court is satisfied on the evidence that was before the trial judge having stated that he disbelieved the evidence of the appellant in its totality that those findings were quite open to him. The principles on which an appellate court will upset findings of fact made by a trial judge they are considered to be trite and the court will only refer to the case of Thomas v Thomas [1947] AC 484 where Lord Thankerton said: " (1) Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion. (2) The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence. (3) The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."

This court finds that it cannot say that the learned trial judge did not take advantage of the opportunity of having seen and heard the witnesses or that there is some way that he did not give proper reasons for arriving at the

factual conclusion to which he came. The issue before the learned trial judge was the question whether or not one or the other of the defendants had committed a fraud and whether or not if he found that fraud was committed, what would be the adequate measure of damages. The learned trial judge in paragraph 28 came to the view on the examination of all the evidence that the third named defendant, the appellant, committed a fraud on the respondent and deceived him in respect of the land that he was purchasing and that the third defendant/appellant went so far as to give to the respondent a bogus land certificate in respect of parcel 117.

It was therefore open to the learned trial judge to find on the evidence that there was a fraud committed and that the real fraud was not in respect of parcel 135 but in respect of parcel 117 and that his measure of damages adequately would have been the loss that he sustained in relation to not being able to have ownership of parcel 117; because by the time he discovered what had transpired, parcel 117 was no longer in the ownership of the appellant but had been sold to a third party purchaser. This prevented him from having received the said parcel as he discovered parcel 135 was in relation to a different Ian Peters which was subsequently sold many times and parcel 117 which he ought to have had, was sold by the appellant on to other third parties and therefore was no longer available to him.

The learned judge in our view was correct in awarding damages for the loss sustained consequent upon the fraud that he found. There is no reason for this court to interfere with those findings the reasons that he gave are cogent based on all the evidence that this court has seen and thus the court finds no reason to disturb those finding of facts.

The court notes that the court below ordered an assessment of costs but in our view in as much as he ordered damages in the sum of EC\$ 350,000.00, the cost ought to be on a prescribed cost basis in the court below; and in the court of appeal to be two-thirds of that cost on the appeal in accordance with part 65.30 of the Civil Procedure Rules.

v
[1] The Attorney General of Antigua and Barbuda
[2] Minister of Foreign Affairs

[ANUHCVP2017/0011]

Date: Friday, 16th February 2018

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

Appearances:

Applicant: Dr. David Dorsett with him, Mr. Jarid Hewlett

Respondents: Mr. Reginald Amour SC., with him Ms. Vanessa Gopaul and
Mrs. Carla Brookes Harris, Deputy Solicitor General
Mr. Anthony Armstrong, Director of Public Prosecutions
watching brief on behalf of the requesting state

Issues: Extension of time to file application of a single Judge and
admit fresh evidence

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

Result / Order: [Oral delivery]

1. The application by the appellant to amend its notice of appeal and add an additional ground of appeal as set out in the application is hereby granted.
2. The application by the respondent to deem skeleton arguments duly filed is hereby granted

Case Name: Leroy King

v
[1] The Attorney General of Antigua and Barbuda
[2] Minister of Foreign Affairs

[ANUHCVP2017/0011]

Date: Friday, 16th February 2018

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

Appearances:

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

Respondents: Mr. Reginald Amour SC., with him Ms. Vanessa Gopaul and
Mrs. Carla Brookes Harris, Deputy Solicitor General
Mr. Anthony Armstrong, Director of Public Prosecutions
watching brief on behalf of the requesting state

Issues: Whether the order of the learned judge purporting to (1) dismiss the claim for constitutional relief and (2) dismissing the application for leave to apply for judicial review was wrong in that the learned judge treated and adjudicated upon the matter as if it were two proceedings – Whether the learned judge erred in law in dismissing an application for leave to bring a hybrid administrative law application when it was arguable that the application for leave raised serious constitutional issues – Whether the learned judge erred in law in dismissing an application for leave to bring a hybrid administrative law application by delving into the depth of the matter when all that was before him was an application for leave – Whether the learned judge erred in law in dismissing an application for leave to bring a hybrid administrative law claim by failing to recognize that the Mutual Assistance Treaty between the Government of the United States and the Government Antigua and Barbuda was incorporated into an Act of Parliament and that actions contrary to the said Act were illegal – Whether the learned judge erred in law by failing to give a rectifying construction to the Extradition Act 1993 so as to avoid a manifest absurdity

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

N/A

Result / Order:

Judgment is reserved.

Case Name:

**Jose Gillis
Lawful Attorney of Pierre Vandenbroucke
v
Star Properties Corporation**

[ANUHCVAP2017/0021]

Date:

Friday, 16th February 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. Lenworth Johnson

Respondent:

**Mr. Kendrickson Kentish with him, Ms. Kathleen Bennett
and Ms. Cherise Archibald**

Issues:

Whether the learned trial judge erred in law by failing to address her mind to the true legal effect of the defendant company accepting shares which were permanently disabled by statutory law – Whether the learned trial judge erred in law by wrongfully declining to look behind the depositing of the shares by the Sabat group and the acceptance thereof by the custodian after the ultimate transition date of 29th July, 2012 – Whether the learned trial judge failed to appreciate the legal principle that the appellant could not approbate and reprobate at the same

time – Application to admit fresh evidence

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

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
The application to admit fresh evidence is dismissed and
Judgment is reserved.**

Case Name:

**Judah Benjamin
v
The Chief Magistrate
[ANUMCRAP2015/0001]**

Date:

Friday, 16th February 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. Sherfield Bowen
Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions
with him, Mrs. Shannon Jones-Gittens**

Issues:

**Criminal appeal against sentence – Possession of a firearm
– Possession of ammunition**

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

Oral Judgment or Decision

Result/Order:

[Oral delivery]

The appeal is allowed and the sentence imposed by the Magistrate is set aside. The sentence is varied to time already served.

Reason:

This is an appeal against consecutive sentences imposed by the magistrate for an offence of possession of firearm and possession of two sets of ammunition. In addition, the magistrate imposed a sentence of two years for possession of a firearm and sentenced the appellant to one and a half years for each of the two charges of possession of ammunition. The three sentences to run consecutively.

The Magistrate Code of Procedure Act provides that the sentence imposed in respect of an offence which arises from one set of circumstances ought not to exceed two years. In the circumstances, the magistrate erred in imposing consecutive sentences totaling five years. The court therefore sets aside the sentence imposed by the magistrate and imposes instead a sentence of time already served having regard to the fact that the appellant has already served in excess of two years.

Case Name:

Keyon B. Hamilton

v

The Chief Magistrate

[ANUMCRAP2015/0002]

Date:

Friday, 16th February 2018

Before:

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

Appearances:

Appellant: Mr. Lawrence Daniels

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

with him, Mrs. Shannon Jones-Gittens

Issue: Criminal appeal against sentence – Possession of marijuana – Whether the sentence is grossly excessive

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

Result/Order: [Oral delivery]
The appeal against sentence is allowed and the appellant's sentence varied to time served being two months to date.

Case Name: Joseph Horsford
v
Geoffrey Croft

[ANUHCVP2014/0028]

Date: Friday, 16th February 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:

Respondent: In person

Applicant/Appellant: Mr. Sylvester Carrot

Issues: Application for a stay of the Judgment and Order of the Court of Appeal on the 24th November, 2017 pending an application for leave to appeal to Her Majesty in Council – Application to admit fresh evidence and re-open its decision

Type of Oral
Result / Order
Delivered:

Oral Judgment or Decision

Result/Order:

[Oral delivery]

1. The appellant's application to reopen the appeal is denied.
2. Paragraph 2 of the judgment of the Court of Appeal whereby the court ordered that Mr. Croft the appellant, be restrained whether by himself, his servants or agents from entering upon the said Parcel 281 by motor vehicle or howsoever otherwise whether in exercise of an alleged right of way or otherwise is stayed pending the hearing and the determination of the appellant's appeal to the Privy Council.
3. The appellant is to pay EC\$ 10,000.00 into court pending the hearing and the determination of the appeal. Such payment is to be made on or before the 16th May, 2018, failing which the stay is discharged without further order.
4. The stay granted by this order will be for a period of one year with liberty to the appellant to apply.
5. The cost of the application for the stay be costs in the appeal.
6. The cost of the application to reopen the appeal should be borne by the appellant in the amount of EC\$ 750.00.