

COURT OF APPEAL SITTING

**SAINT LUCIA
11th – 15th December 2017**

JUDGMENTS

Case Name:

**[1] LUCIEN CALLWOOD
[2] URMAN CALLWOOD
[3] GERTRUDE CALLWOOD-COAKLEY
[4] WENDELL CALLWOOD**

v

**[1] THE REGISTRAR OF LANDS
[2] SHEILA CALLWOOD-SCHULTERBRANDT
[3] BEATRICE INNIS ORR
[4] ESTATE OF DORIS KELLY (DECEASED)
[5] ESTATE OF KETURAH KELLY
(DECEASED)
[6] ESTATE OF THEOPHOLOUS CALLWOOD
(DECEASED)**

[BVIHCVAP2012/0008]

Date:

Tuesday, 12th December 2017

Coram:

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

Appearances:

Appellant:

Ms. Shan Greer holding papers for Mr. Sydney Bennett, QC

Respondent:

Mr. Seryozha Cenac holding papers for Ms. Jo-Anne Williams-Roberts, Solicitor General

Issues:

Civil appeal – Application for registration as proprietors of land by prescription – Section 135(1) of

the Registered Land Act – Whether appellants’ occupation and use of the disputed parcels of land satisfy the requirements of prescriptive ownership – Factual possession – Intention to possess – Role of appellate court in reviewing findings of fact of a lower court – Concurrent findings of fact of lower courts

**Result / Order
and Reason:**

Held: dismissing the appeal and ordering that the appellants pay the costs of the respondents, to be assessed in default of agreement, that:

- 1. The function of an appellate court is not to substitute its own views for those of the court below. In the absence of some other identifiable error, such as a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that the trial judge’s decision cannot reasonably be explained or justified. Further, it is the well-established practice of the Privy Council not to interfere with concurrent findings of fact of two lower tribunals. The practice is not cast-iron, but it will be departed from only in cases of a most unusual nature. In the instant case, the Registrar was in effect the trial judge or the adjudicator at first instance, and the judge in the High Court was performing an appellate function. Therefore, the settled principle is no less applicable to the appeal before this Court.**

Sandra Juman v The Attorney General of Trinidad & Tobago and Anor [2017] UKPC 3 applied; Henderson v Foxworth Investments Ltd [2014] 1 WLR 2600 applied; Devi v Roy [1946] AC 508 applied; Central Bank of Ecuador v Conticorp SA [2015] UKPC 11 applied.

- 2. The ownership of land may be acquired by peaceable, open and uninterrupted possession without the permission of any person lawfully**

entitled to such possession for a period of twenty years. There are two elements necessary for legal possession: (i) a sufficient degree of physical custody and control ("factual possession"); and (ii) an intention to exercise such custody and control on one's own behalf and for one's own benefit. Without the requisite intention, in law there can be no possession. To establish factual possession, it must be shown that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.

Section 135 of the Registered Land Act, Cap.229 of the Revised Laws of the Virgin Islands 1991 applied; JA Pye (Oxford) Ltd v Graham [2001] UKHL 30 applied; Powell v McFarlane (1977) 38 CP & Cr 452 applied

3. Although it is possible that the acts of possession of only part of a parcel of land can be evidence of possession of the whole, the evidence in this case falls short of demonstrating factual possession of the whole of parcel 2. None of the evidence demonstrated that the entirety of parcel 2 was entirely or partly used for cultivation and partly for animal rearing, either intermittently or continuously. The evidence revealed that the extent of the fencing was limited and done for the purpose of keeping the animals in, and not for keeping people out. As it relates to the construction of a road, there is no evidence of the appellants excluding anyone from its use. In any event, the cutting of the road does not advance the appellants' case because doing so did not, and was not shown to, affect adversely the rights of the registered owners. Further, neither the survey nor the family meeting served to stop the period for prescriptive title from running, but weighed against the appellants' case that they were in exclusive, peaceful, open and uninterrupted possession.

Higgs & Anor v Nassauvian Ltd [1974] UKPC 24 considered; Long v Suva [2007] EWHC 2087

(Ch) applied.

4. Taken individually and cumulatively, the appellants' acts of user do not conclusively demonstrate the required intention to possess the parcels of land in question. The appellants have not demonstrated that the judge has made a material error in law, or made a critical finding of fact which has no basis in the evidence, or reflects a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, which would allow this court to interfere with the findings of fact made by her. Therefore, the appellants' appeal against the decision of the judge, refusing registration of the disputed parcels, must fail.

Case Name:

[1] BERYL ISAAC
[2] THE CABINET SECRETARY OF GRENADA
[3] HER EXCELLENCY DAME CECILE LA
GRENADA
[4] THE GOVERNOR GENERAL OF GRENADA
[5] THE ATTORNEY GENERAL OF GRENADA
[6] ERIC BRAITHWAITE
[7] MANAGER OF THE GOVERNMENT
PRINTERY

v

THE GRENADIAN HOTEL LIMITED
(doing business as the Grenadian by Rex
Resorts)

[GDAHCVAP2017/0002]

Date:

Friday, 15th February 2017

Coram:

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

Appearances:

Appellant: Ms. Cynthia Hinkson-Ouhla holding papers for Mr. Dwight Horsford

Respondent: Ms. Diana Thomas holding papers for Mr. Dickon Mitchell

Issues:

Civil Appeal – Application to set aside the decision of a single judge – Land acquisition proceedings – Public law element in proceedings – Whether the learned single judge erred in the exercise of his discretion in making the conservatory order – Rights of the Crown to land acquisition pursuant to the Land Acquisition Act Cap. 159, Revised Laws of Grenada 2010

Result/Order and Reason:

Held: dismissing the application and awarding costs to the Grenadian Hotel, such costs to be assessed within 21 days if not agreed, that:

1. It is settled law that an appellate court would be wary to interfere with the exercise of discretion of a judge unless it is shown that the judge in exercising his discretion blatantly erred in principle or failed to take into account relevant factors or took into account irrelevant factors, or his decision was so unreasonable that it exceeded the generous ambit within which disagreement is permissible.
2. In considering an application for an interim injunction in which there is a public law element in issue, the approach to be adopted is the application of the guidelines outlined in *American Cyanamid v Ethicon* with the necessary modifications appropriate to the public law element. The public law element is a special factor in considering the balance of justice. In determining where the balance of justice lies the court has a wide discretion to take the course which seems most likely to minimize the risk of an unjust result.

American Cyanamid v Ethicon Limited [1975] 1 All ER 504; National Commercial Bank of Jamaica Ltd. v Olin Corp Ltd [2009] UKPC 16; R v Secretary of State for Transport ex p Factortame Ltd. (No. 2) [1991] 1 AC 603; Belize Alliance for Conservation Non-Governmental Organization v Department of the Environment of Belize (BACONGO) (2003) UKPC 63, (2003) 63 WIR 42 applied.

3. While a public authority acting within the law should be permitted to exercise its functions and duties for the benefit of the public, having regard to the circumstances of this case, the learned single judge in exercising his discretion correctly applied the relevant principles. He took into account the relevant matters and did not take into account irrelevant matters. There is therefore no basis to interfere with the exercise of his discretion.

STATUS HEARING

Case Name: Wayne Anderson Edward
v
The Queen

[SLUHCRA2014/0004]

Date: Thursday, 14th December 2017

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

Appearances:

Appellant:	No appearance
Respondent:	Mr. Stephen Brette

Issue: Status of the matter

Type of Oral Result / Order Delivered:	N/A
Result / Order:	[Oral delivery] Matter is stood down.
Reason:	The matter was stood down to give the appellant, who is incarcerated and unrepresented, time to enter an appearance.
Case Name:	William Gerald v The Police [Case No. 3852 of 2005]
Date:	Thursday, 14 th December 2017
Before:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice
Appearances:	
Appellant:	No appearance
Respondent:	Mr. Stephen Brette
Issue:	Status of the matter
Type of Oral Result / Order Delivered:	Oral Judgment or Decision
Result / Order & Reason:	[Oral delivery] The appeal is hereby struck out for want of prosecution, there being no appearance of the appellant or his counsel who appeared on the last occasion when the matter was fixed for the December 2017 sitting of the Court.

Case Name:

**Moses Cyril
v
Claudius Eugene**

[SLUMCRAP2013/0010]

Date:

Thursday, 14th November 2017

Before:

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

Appearances:

Appellant: In person

Respondent: In person

Issue:

Status of the matter

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

Directions

**Result / Order
& Reason:**

[Oral delivery]

- 1. The parties are to be furnished with a copy of the transcript of the proceedings in the magistrates' court.**
- 2. The magistrate who conducted the proceedings provide his/her reasons for decision by 31st January 2018.**
- 3. The registrar of the court shall serve a copy of this order on the Chief Magistrate no later than Friday, 5th January 2018.**
- 4. The appellant Mr. Cyril is granted time to instruct a lawyer to prosecute his application.**
- 5. The hearing of this appeal is adjourned to the next sitting of the Court in the week beginning 14th May 2018. There shall be no further adjournments in this matter.**

Reason: The appellant indicated that he does not have a lawyer; however he wishes to retain one. The Court noted that there were no reasons for the decision by the learned magistrate on file. Consequently, the Court gave directions and adjourned the matter but warned that this would be the last adjournment.

Case Name: CPL 340 Dwayne Octave
v
Iftexhar Ahmed Shams
[SLUMCRAP2015/0008]

Date: Thursday, 14th December 2017

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

Appearances:
Appellant: Mr. Stephen Brette
Respondent: Mr. Shawn Innocent (respondent present)

Issue: Status of appeal – Application by respondent to strike out the appeal

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

Result / Order: [Oral delivery]
The appeal is struck out for want of prosecution.

Reason: Counsel for the appellant indicated that the notice of appeal was filed in 2015 together with the decision of the magistrate but without the reasons for the decision. Counsel requested one last opportunity to obtain the reasons for decision. Counsel for the respondent objected to the request and submitted

that the matter should be struck out. Counsel for the respondent indicated that given the length of the delay, the landscape of the matter has changed drastically.

The Court noted that no request has been made for the reasons for decision since the filing of the notice of appeal. The Court was of the view that fairness required that the appeal be struck out given all of the delays, several adjournments (11 adjournments) in the magistrates court resulting in the decision made, the fact that the appeal had not gotten off the ground by virtue of the delays and the fact that the notice of appeal was filed in 2015 but had not yet been served on the respondent. The Court was mindful of the fact that the appellant had been in detention without a conviction for a period which in itself runs counter to the administration of justice and fairness.

Case name:

**Garnet St. Romain
v
PC237 Severius Mathurin
[SLUMCRAP2014/0001]**

Date:

Thursday, 14th December 2017

Before:

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

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Appearances:

Appellant:

Mr. Lorne Theophilus

Respondent:

Mr. Stephen Brette

Issue:

Status of the matter

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

Directions

Result / Order:

[Oral delivery]

- 1. The registrar shall enquire of the Chief Magistrate as to the readiness of the transcript of the proceedings and reasons for decision by Friday, 5th January 2018.**
- 2. Counsel for the appellant also undertakes to make enquires of the Chief Magistrate as to the readiness of the transcript of the proceedings and reasons for decision.**
- 3. The matter shall be placed on the list for further report during the next sitting of the Court commencing the week of 18th May 2018.**

Reason:

Counsel for the appellant was recently retained and was not in possession of the transcript of proceedings.

Case name:

**Richie Bonett
v
PC220 Tana Monlouis
[SLUMCRAP2015/0005]**

Date:

Thursday, 14th December 2017

Before:

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

Appearances:

Appellant: Mr. Al Elliott

Respondent: Mr. Stephen Brette

Issue:

Status of the matter

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

The notice of appeal herein be struck out for want of prosecution.

Reason:

Counsel for the appellant indicated that he has not received instructions since the filing of the appeal some two years ago. The Court noted the letter of the Court Administrator dated 9th November 2017 together with the payment of the fine in full and the indication that the appellant no longer wishes to pursue his appeal. The letter stated that on 29th July 2015 the appellant verbally indicated that he was no longer interested in proceeding with his appeal hence his reason for paying the fine in full. The letter also indicated that an email was sent on 2nd August to the appellant to obtain his request in writing but there was no response.

Case name:

**William Stewart
v
PC 282 Miguel Lansiquot
[SLUMCRAP2014/010]**

Date:

Thursday, 14th December 2017

Before:

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

Appearances:

Appellant:

No appearance

Respondent:

Mr. Stephen Brette

Issue:

Status of the matter

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

Oral Judgment or Decision

**Result / Order
& Reason:**

[Oral delivery]

This appeal is struck out for want of prosecution. The appellant has shown no interest in his appeal since the filing of his appeal on 31st July 2014.

Case Name:

Jabez Frederick

v

PC 600 St. Aimee

[SLUMCRAP2014/0015]

Date:

Thursday, 14th December 2017

Before:

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

Appearances:

Appellant:

In person

Respondent:

Mr. Stephen Brette

Issue:

Status of the matter

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

Directions

Result / Order:

[Oral delivery]

- 1. The registrar of the High Court shall request from the magistrate the transcript of the proceedings together with the reasons for decisions by 5th January 2018.**
- 2. The magistrate is requested to produce the transcript and reasons no later than 2nd March 2018.**
- 3. The registrar is to serve a copy of this order on the magistrate.**
- 4. The matter shall be listed for further report at the next sitting of the Court commencing 14th May 2018.**

Reason: The transcript of proceedings was outstanding.

Case Name: **Richie Vernol**
V
CPL 670 St. Catherine
[SLUMCRAP2015/0006]

Consolidated with

Richie Vernol
V
WPC 829 Sonny
[SLUMCRAP2015/0007]

Date: Thursday, 14th December 2017

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

Appearances:

Appellant: No appearance

Respondent: Mr. Stephen Brette

Issue: Status of the matter

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

Result / Order: **[Oral delivery]**
1. The magistrate is to prepare the transcript of the proceedings relating to all three convictions in respect of the appellant.
2. The appeals shall be listed for further report

during the sitting of the court commencing 14th May 2018.

Reason: The transcript was not yet ready but it is currently being prepared.

Case Name: Wayne Anderson Edward
v
The Queen
[SLUHCRAP2014/0004]

Date: Thursday, 14th December 2017

Before: The Hon. Dame Janice Pereira, DBE, Chief Justice

Appearances:
Appellant: In person
Respondent: Mr. Stephen Brette

Issue: Status of the matter

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

**Result / Order
& Reason:** [Oral delivery]
1. The record of conviction of the appellant be amended so as to strike out the conviction in respect of damage to property, it having been shown that the offence of damage to property was previously dismissed by the magistrate as stated by counsel for the prosecution.
2. The appeal shall proceed in respect to the conviction and sentence of aggravated burglary only.
3. The appellant shall file his written reasons for his appeal by 31st January 2018.

4. The respondent shall file submissions in response by 28th February 2018.
5. The appeal in respect of conviction and sentence for aggravated burglary shall be set down for hearing before the Court at its next sitting commencing on 14th May 2018.

Case Name:

**Mahmoud Selim
V
Nersha Duncan WPC 297
[SLUMCRAP2015/0010]**

Date:

Thursday, 14th December 2017

Before:

The Hon. Dame Janice Pereira, DBE, Chief Justice

Appearances:

Appellant:

No appearance

Respondent:

Mr. Stephen Brette

Issue:

Status of the matter

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

Directions

**Result /
Order &
Reason:**

[Oral Delivery]

1. The matter shall be listed for the next sitting of the Court commencing on 14th May 2018.
2. The Court, having regard to the appearance of counsel Ms. Wauneen Louis-Harris on behalf of the appellant on 29th June 2017 when the matter was listed for 11th December 2017 and the Court further noting that neither the appellant nor counsel has appeared and no explanations for their absence has been given, further directs that in the event the appellant or the appellant's

counsel fail to appear during the next sitting of the Court in May 2018, this appeal shall stand struck out.

Case Name: Christopher Alexander
v
WPC 214 Henry
[SLUMCRAP2015/011]
Christopher Alexander
v
WPC 214 Henry
[SLUMCRAP2015/0012]

Date: Thursday, 14th December 2017
Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice

Appearances:
Appellant: In person
Respondent: Mr. Stephen Brette

Issue: Status of the matter

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

**Result / Order
& Reasons:** [Oral Delivery]
1. The record of appeal containing the reasons for decision now having been filed as of 8th December 2017, the hearing of the appeal is fixed for the week of the sitting of the court commencing 14th May 2018.
2. The appellant shall file and serve written

submissions in support of the appeal by 31st January 2018.

3. The respondent shall file and serve written submissions in response by 28th February 2018.

Case Name:

**David Ferguson
v
Carol Gideon Clovis**

[SLUHCVAP2015/0001]

Date:

Friday, 15th December 2017

Before:

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

Appearances:

Appellant:

Mr. Ferguson John

Respondent:

Ms. Carol Gideon-Clovis

Issue:

Status of the matter

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

N/A

Result / Order:

**[Oral Delivery]
Matter stood down.**

Reason:

The Court stood the matter to obtain further information from the High Court Registry.

Case Name:

Cynthia Paul

V
**[1] The New India Assurance Co. (Trinidad
and Tobago) Ltd.**

[2] S & A Insurance Brokers Ltd

[SLUHCVAP2015/0007]

Date: Friday, 15th December 2017

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

Appearances:

Appellant: Ms. Wauneen Louis Harris

Respondents: Mr. Dexter Theodore, QC with him, Ms. Isabella Shillingford for the 1st Respondent

Issue: Status of the matter

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

Result / Order: [Oral delivery]
The appellant shall apply for an extension of time to file the record of appeal, such application to be supported by evidence on affidavit, to be made by Friday, 12th January 2018 failing which the notice of appeal filed herein on 19th March 2015 shall stand as struck out without the need for further application.

Reason: The appellant did not file the record of appeal within the time stipulated by the Civil Procedure Rules. Accordingly, the Court gave directions.

Case Name:

**1. Benjamin Drakes
2. Gerarld Francis (trading as Turnkey
Engineering Contractors)**

V

Plantation Beach St. Lucia Ltd.

[SLUHCVAP2015/00017]

Date: Friday, 15th December 2017

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

Appearances:

Appellant: Mr. Ramon Ravaneau holding papers for Mr. Benjamin Drakes Jr.

Respondent: Ms. Cleopatra McDonald

Issue: Status of the matter

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral delivery]
The appellant shall apply for an extension of time within which to file the record of appeal, such application to be supported by evidence on affidavit, to be made by Friday, 31st January 2018 failing which the notice of appeal filed herein on 12th August 2015 shall stand as struck out without the need for further application.

Reason: The appellant did not file the record of appeal within the time stipulated by the Civil Procedure Rules 2000. Accordingly, the Court gave directions.

Case Name:

1. Network Construction Maintenance & Rehabilitation Limited
2. Gregory Laughan Fevrier
v
Cable & Wireless (St Lucia) Limited

[SLUHCVAP2016/0001]

Date: Friday, 15th December 2017

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

Appearances:

Appellant: Mr. Dexter Theodore, QC with him, Ms. Isabella Shillingford

Respondent: Mr. Deale Lee

Issue: Status of the matter

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral Delivery]

1. The Registrar shall advise the parties whether a transcription of the recordings will be available from the audio recording or whether it is impossible to transcribe the notes from the audio recording or whether it is merely difficult and to do so by Wednesday 31st January 2018.
2. In the event that it is impossible to transcribe the recordings then the Registrar shall request a copy of the judge's notes, if available.
3. The matter shall be listed for report on the progress of the transcript for the next sitting of the Court in the week commencing the 14th May 2018 in St. Lucia.

Reason: The transcript of proceedings below was not ready.

Case name:

The Bagshaws of St. Lucia Limited
v
Pavlin Limited

[SLUHCVAP2014/0023]

Date: Friday, 15th December 2017

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

Appearances:

Appellant: Ms. Renee St. Rose

Respondent: Ms. Esther Greene-Ernest

Issue: Status of the matter

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

Result / Order: [Oral Delivery]
1. The parties shall report to the Court by Friday, 2nd March 2018 as to the outcome of settlement discussions between the parties.
2. Should a settlement be reached prior to that date, the parties shall notify the Court and the appellant file notice of discontinuance of the appeal.

Reason: The parties indicated that they were pursuing settlement discussions which were likely to be successful.

Case name:

1. Ruth Dubois
2. Elvis Naitram
3. John Alexander
Appellants/Cross Respondents
V
Francis Maurice
Respondent/ Cross Appellant

[SLUHCVP2013/0007]

Date: Friday, 15th December 2017

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

Appearances:

Respondent/ Cross In person

Appellant:

**Appellant/ Cross
Respondent:**

Ms. Esther Greene-Ernest

Issue:

Status of the matter

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

Directions

Result / Order:

[Oral Delivery]

- 1. The respondent/cross appellant shall file an application for an extension of time for filing the record of appeal, such application to be filed by 31st January 2018 supported by evidence on affidavit.**
- 2. Should the respondent/cross appellant fail to file the application for extension of time by the date given, the cross appeal herein shall stand struck out without the need for further application.**

Reason:

The respondent/cross appellant did not file the record of appeal within the time stipulated by the Civil Procedure Rules. Accordingly, the Court gave directions.

Case Name:

**Justin Augustin
Levista Augustin
v
Joseph Oberius**

[SLUHCVAP1999/0002]

Date:

Friday, 15th December 2017

Before:

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

Appearances:

Appellants:

No appearance

Respondent:

Antoinette Oberius, Executrix of the estate of Joseph Oberius, deceased

Issue: **Status of the matter – Application for entry as Executor**

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

Result / Order: **[Oral Delivery]**
1. The application filed on 23rd November 2017 on behalf of respondent be fixed for hearing in chambers by a single judge of the Court on 23rd January 2018.
2. Notice of hearing of the application on 23rd January 2018 be served on the appellants.

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

Date: **Friday, 15th December 2017**

Before: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**

Appearances:
Appellant: **Mr. Ferguson John**
Respondent: **In person**

Issue: **Status of the matter**

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

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

1. The appellant is to produce by filing with the Court a sealed copy of any order granting leave to appeal by 31st January 2018.
2. In the event that the appellant is unable to produce to the Court the order granting leave, the notice of appeal filed herein on 14th January 2015 shall be deemed to be a notice of appeal filed without the leave of the Court and therefore deemed to be a nullity.

Reason:

The Court noted that the notice of appeal is from an interlocutory order of the Court, namely, an order made at a case management conference, granting summary judgment to the defendant/respondent and dismissing the claim of the claimant/appellant. The Court further noted that leave of the Court was required to appeal against such an order and that there was no evidence produced of an order of the Court granting leave to appeal.

APPLICATIONS AND APPEALS

Case Name:

**Michael Medar
v
Marie Antoinette Medar
[SLUHCVAP2014/0025]**

Date:

Monday, 11th December 2017

Before:

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

Appearances:

Appellant:

Mr. Horace Fraser

Respondent:

Ms. Esther Greene-Ernest

Issue: High Court civil appeal – Matrimonial proceedings – Ancillary relief – Interpretation of section 23 of the Divorce Act – Whether award of one-third share in matrimonial property to the respondent excessive in the circumstances – Section 25 of Divorce Act – Whether learned judge carried out correct balancing exercise

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

Result / Order: [Oral Delivery]
1. The appeal is dismissed.
2. The order in relation to the maintenance is set aside.
3. The appellant shall pay the respondent's costs to be fixed at two-thirds of the costs in the court below whenever these costs are assessed.

Reason: The Court found that there was no good reason to disturb the overall sum awarded to the respondent/ wife.

Having regard to section 25 of the Divorce Act and the exercise the Court should carry out, coupled with the evidence before the Court and the lack of frankness or openness of the appellant/husband in not placing before the Court details of his income and his inconsistent statements which showed that he was not a person without means as well as his refusal to assist the Court in relation to the true position of his property, there was no basis on which the Court could disturb the decision of the learned judge.

The Court found that despite the basis of the assessment, the husband was overall in a better position than the wife at the end of this divorce when one considers what her reasonable requirements would be. The husband is with 2/3 of matrimonial home and the entire business which was not taken into account or valued, another property, boats and cars.

Therefore, there was no reason for the Court to disturb the findings of the learned judge as the appellant had not placed any evidence before the Court to allow it to do so. Further, the Court noted that the appellant had not been forthright with the Court.

Case Name:	Jane Kangal v Paul Cadette [SLUHCVAP2017/0009]
Date:	Monday, 11 th December 2017
Before:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mr. Paul Webster, Justice of Appeal [Ag.] The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Eghan Modeste
Respondent:	Mr. Dexter Theodore, QC with him, Ms. Isabella Shillingford
Issue:	Civil appeal – Beneficial interest in property – Whether learned judge erred in finding no existence of oral agreement to jointly construct property – Whether learned judge erred in making findings of fact
Type of Oral Result / Order Delivered:	N/A
Result / Order & Reason:	[Oral Delivery] The Court will give a short oral decision on Friday, 15 th December 2017.

Case Name:

- 1. Suzanne P. Gyspeerdt**
- 2. Bruce L. Cutright**
- 3. Claire Fraser**
- 4. DCG Properties Limited**

v

- 1. Clico Investment Bank Limited (In Compulsory Liquidation) Represented by the Deposit Insurance Company**
- 2. Jeffry C. Coyne**

[SLUHCVAP2017/0016]

Date:

Monday, 11th December 2017

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]**

Appearances:

Applicants:

No appearance

Respondents:

**Mr. Deale Lee appears for the 1st respondent
Mr. Leslie Mondesir with him, Mr. Bota McNamara for
the 2nd respondent**

Issues:

Application for leave to appeal to Her Majesty in Council

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

N/A

Result / Order:

**[Oral delivery]
The matter is stood down.**

Reason:

The matter was stood down in order to allow counsel

for the applicant to appear.

Case Name:

**Attorney General
v
KCL Capital Money Market Brokers Ltd**

[SLUHCVAP2017/0042]

Date:

Monday, 11th December 2017

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]**

Appearances:

Applicant:

**Mr. Rene Williams, Senior Crown Counsel with him,
Ms. Antonia Charlemagne**

Respondent:

Mr. Leslie Prospere with him, Mr. Vilan Edward

Issues:

Application for stay of execution – Whether applicant satisfies requirements for grant of stay – Evidential basis – Whether appeal would be rendered nugatory if stay is refused – Prejudice to applicant – Irreparable harm to applicant

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The application for a stay of execution of the order of Justice Cadie St. Rose-Albertini made on 22nd September 2017 is refused.**
- 2. No order as to costs.**

Reason:

This was an application by the Attorney General for the stay of execution of the judgment of Mde. Justice Cadie St. Rose-Albertini made on 12th September

2017. In support of the application for the stay, there was an affidavit deposed to by Mr. Cenac. Having read the submissions of learned senior crown counsel in support of the application and the submissions of learned counsel Mr. Prospere in opposition of the application for the stay, the Court was of the view that the applicant had failed to satisfy the evidential threshold required in order to persuade this Court to grant a stay of execution in its favour.

The law is very settled and there are several authorities from this Court which address the question of stay. The Court considered the well-known cases of *Courtesy Taxi Co-operative Society Ltd v Lucien Joseph SLUHCVAP2008/0043* (delivered 18th May 2009, unreported), *C-Mobile Services Limited v Huawei Technologies Co. Limited BVIHCMAP2014/0017* (delivered 2nd October 2014, unreported) and *Cage St. Lucia and Treasure Bay (St. Lucia) Limited v The Gaming Authority et al SLUHCVAP2011/0045* (delivered 23rd January 2012, unreported) which all indicate the required evidential basis. Accordingly, the Court was of the unanimous view that the application for the stay should be refused.

Case Name:

1. Suzanne P. Gryspeerdt
2. Bruce L. Cutright
3. Claire Fraser
4. DCG Properties Limited

v

1. Clico Investment Bank Limited (In
Compulsory Liquidation) Represented
by the Deposit Insurance Company
2. Jeffrey C. Coyne

[SLUHCVAP2017/0016]

Date:

Monday, 11th December 2017

Coram:

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

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

Appearances:

Applicants: Mr. Colin Foster for the 1st – 3rd applicants

Respondents: Mr. Deale Lee for the 1st respondent
Mr. Leslie Mondesir with him, Mr. Bota McNamara for the 2nd respondent

Issues:

Application for leave to appeal to Her Majesty in Council – Whether decision is final where leave is as of right or interlocutory where leave of the Court must be obtained

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

Oral Judgment or Decision

Result / Order:

[Oral Delivery]
The application for leave to appeal to Her Majesty in Council is refused.

Reason:

This was an application by notice of motion for leave to appeal to Her Majesty in Council. The application was made by four named-appellants seeking leave of the Court to appeal against a judgment delivered by the learned Chief Justice, a unanimous judgment of the Court of Appeal. In the motion, there were two bases on which the application was grounded; 1. That it was an appeal as of right on the basis that it was a final decision in civil proceedings where the matter in dispute was one of a prescribed value. In the course of his submissions, counsel for the applicants conceded that the appeal was an interlocutory appeal and necessarily the judgment flowing from that appeal was an interlocutory order. It was clear to the Court and in the end to counsel for the applicants that the matter was not going to be brought to an end whichever way the Court had ruled, which is the requirement for determining whether a judgment or an appeal is one involving a final decision of the Court

The second basis upon which the applicant sought leave to appeal to the Privy Council was that it was a decision in civil proceedings where in the opinion of the Court of appeal the question involved in the appeal was one by reason of its great general and public importance ought to be submitted to Her Majesty in Council. This Court has in a number of cases laid down clearly the requirements for an appeal to be treated as one of great general and public importance. Further, it is virtually now a trite matter in particular considering that there is a case from this very jurisdiction which is of some antiquity, some 15 years and beyond where the Court in *Martinus Francois v The AG* SLUHCVP2003/0037 (delivered 7th June 2004, unreported) very clearly laid out the requirements for an appeal to be treated as one involving great public and general importance. This application did not come close even to the requirements laid down by the Court. In the circumstances, none of the criteria having been satisfied by the applicant, the Court refused the application made for leave to appeal to Her Majesty in Council.

Case Name:

Pizza! Pizza! Limited

v

**The Bank of Nova Scotia
[SLUHCVP2017/0001]**

Sinead Investments Limited

v

**The Bank of Nova Scotia
[SLUHCVP2017/0002]**

Charthouse Restaurant Limited

v

**The Bank of Nova Scotia
[SLUHCVP2017/0003]**

Date: Monday, 11th December 2017

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Applicants: Mr. Colin Foster

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

Issues: Application to revoke order of a single judge –
Application for adjournment

Type of Oral Result / Order Delivered: N/A

Result / Order: [Oral delivery]
The appeal is adjourned to Thursday, 14th December 2017 before panel 2 for determination.

Reason: In view of counsel's indisposition due to ill health the matter was adjourned.

Case Name: Guy Ellis
v
Phillip J. Pierre
[SLUHCVP2017/0030]

Date: Tuesday, 12th December 2017

Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Leslie Prospere with him, Mr. Vilan Edward

Respondent: Ms. Renee St. Rose with her, Mr. Sahleem Charles

Issue: Civil appeal – Application for leave to adduce and rely upon fresh evidence

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

Result / Order: [Oral Delivery]
1. The application for leave to adduce fresh evidence is dismissed
2. Costs awarded to the respondent in the sum of \$1500.00 to be paid by 15th January 2018.

Reason: The Court was of the view that the applicant had not met the requirements set out in *Ladd v Marshall [1954] 3 All ER 745* applicable to the admission of fresh evidence. Further, the Court was not satisfied that the applicant had shown that the respondent had committed fraud on the Court.

Case Name: Keith Smith
v
Gertrude Thomas
Gervan Thomas

[SLUHCVP2014/0020]

Date: Tuesday, 12th December 2017

Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Dexter Theodore, QC, with him, Ms. Isabella

Shillingford

Respondents: Ms. Veronica Barnard

Issue: Civil appeal – Contributory negligence – Whether learned judge erred in conducting apportionment of liability for motor vehicle accident – Whether award of damages excessive in the circumstances – Whether discretion of learned judge properly exercised

Type of Oral Result / Order Delivered: N/A

Result / Order: [Oral Delivery]
The Court will deliver an oral judgment at 3:30 p.m.

Case Name: Theresa Plummer
Appellant
v
1. Dennis Mangal
2. Irmina Lena Edwin
3. Tarcisus Robinson Stanislaus
Respondents/Claimants
4. Virginia Everiste
5. Anthony Felicien
Respondents/Ancillary Defendants

[SLUHCVAP2017/0015]

Date: Tuesday, 12th December 2017

Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:
Appellant: Mrs. Wauneen Louis-Harris

Respondents: Mr. Alvin St. Clair for 4th Respondent/ 1st Ancillary defendant
Ms. Diana Thomas for 1st, 2nd and 3rd Respondents/Claimants

Issue: Interlocutory appeal – Service of notice of appeal on respondents – Oral application for extension of time to serve respondents

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

Result / Order: [Oral delivery]
1. The appellant is granted an extension of time to serve the notice of appeal on the 1st, 2nd, 3rd and 5th respondents by Tuesday, 16th January 2018.
2. The appeal is de-listed until the requisite proof of service on the respondents is provided to the court.

Reason: Counsel for the 1st, 2nd and 3rd respondents, Ms. Thomas, informed the Court that she was served but her clients were not served personally and that she has not received any instructions in the matter. Counsel for the appellant made an oral application to the Court for an extension of time to effect personal service. The Court was minded, in the circumstances and with a view to moving the matter along, to grant an extension of time.

Case Name: Keith Smith
v
Gertrude Thomas
Gervan Thomas

[SLUHCVP2014/0020]

Date: Tuesday, 12th December 2017

Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Dexter Theodore, QC with him, Ms. Isabella Shillingford

Respondent: Ms. Veronica Barnard

Issue: Civil appeal – Contributory negligence – Whether learned judge erred in conducting apportionment of liability for motor vehicle accident – Whether award of damages excessive in the circumstances – Whether discretion of learned judge properly exercised

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

Result / Order: [Oral Delivery]

1. The appeal is allowed.
2. The second respondent is awarded damages for pain and suffering and loss of amenities in the sum of \$80,000.00 reduced by 75% for a total of \$20,000.00.
3. The second respondent is awarded special damages in the amount of \$14,468.48.
4. The second respondent is awarded interest on the special damages amount at the rate of 3% from the date of accident to the date of claim and 6% from the date of claim to the date of payment.
5. The first respondent is awarded the sum of \$8,950.00 reduced by 75% to the amount of \$2237.59 representing damages for loss of use of the vehicle.
6. The first respondent is awarded interest on this amount at the rate of 3% from the date of accident to the date of claim and 6% from the date of claim to the date of payment.
7. Regarding the counterclaim, the appellant is awarded the sum of \$44,614.00 reduced by 25% to

the sum of \$33,480.00.

8. The appellant is awarded interest on this sum at the rate of 3% from the date of the claim to the date of payment.
9. The order for costs in the court below is set aside.
10. The appellant is awarded costs of the appeal as well as two-thirds of the award of prescribed costs on the sum of \$33,480.00 in the court below.

Reason:

This is an appeal from the judgment of Belle J dated 21st June 2014 to the effect that the appellant was 75% responsible for the collision which occurred on 12th November 2008 and that the second respondent was entitled to damages of \$175,000.00 for pain and suffering and loss of amenities.

On Wednesday, 12th November 2008 at about 8:30 p.m., a collision occurred when the appellant who was driving a motor bus with registration number M958, southbound along the John Compton Highway collided with a vehicle owned by the first respondent, Gertrude Thomas, and driven by her son, the second respondent, who was emerging from L'Anse Road turning right into the middle lane of the John Compton Highway.

In this appeal, only two questions arise. Firstly, as to the apportionment of blame i.e. contributory negligence apportionment and secondly, as to the damages which were cited as being excessive. As regards to the principles that apply to the reversal of an apportionment in the Court of Appeal, the Court is fortunate to have two cases. A local case, *Lawrence Eleuthere et al v Linda Esnard SLUHCVAP2002/0407* (delivered 17th July 2003, unreported) decided by Hariprashad- Charles J which is of great assistance and a case from England, *Eagle v Chambers [2003] All ER (D) 411 (Jul)*, a judgment of Lady Justice Hale in the Court of Appeal of England and Wales.

First of all, citing from the judgment in *Eagle v Chambers*, Hale LJ said:

“[w]e also accept that this court is always reluctant to interfere with the trial judge's

judgment of what apportionment between the parties is 'just and equitable' under the 1945 Act. But a finding as to which, if either, of the parties was the more responsible for the damage is different from a finding as to the precise extent of a less than 50% contribution. There is a qualitative difference between a finding of 60% contribution and a finding of 40% which is not so apparent in the quantitative difference between 40% and 20%. It is rare indeed for a pedestrian to be found more responsible than a driver unless the pedestrian has suddenly moved into the path of an oncoming vehicle."

She then went on to say that that was not the case there and she further elaborated on that by saying that there are two aspects involved in apportioning responsibility between the claimant and the defendant. Firstly, the respective causative potency of what they have done and secondly, the respective blameworthiness. Hale LJ referred to the words of Denning LJ in *Davies v Swan Motor Co Ltd* [1949] 2 KB 291, at 326.

So that in dealing with the first issue as to apportionment, applying the principles set out there and which have been repeated in the Eleuthere case, the Court must first look at the facts as found by the judge. The Court refers to paragraphs 14-16 of the judgment of the learned trial judge:

"[14] I've considered as important aspects of the evidence that the Defendant collided with the Second Claimant's car in the north bound lane of the John Compton Highway. In doing so his bus struck the right front door of the Claimant's car causing damage to the vehicle and injury to the driver. I am of the view that the Defendant's explanation for the collision is not true. Although he swerved to avoid the collision he simply did not exercise sufficient care in the circumstances to avoid the collision. I think that a more sensible maneuver to avoid a collision would have been to pull to the left or make a left

turn. Instead he pulled his vehicle into the lane carrying north bound traffic, why? I also see no evidence of any attempt to stop or slow down on seeing the claimant's car emerging from the minor road. The inference is that he must have been focused on something other than careful driving.

The learned judge was clearly saying that he found that the driver of the bus was contributorily negligent in the sense that he was not able to stop or slow down on seeing the claimant's car emerging from the minor road.

He went on to say:

“[15] I also conclude based on the evidence that the Defendant could have sounded his horn in order to alert the Claimant of his approach. His answer under cross examination in relation to sounding his horn was not convincing. I do not think that he sounded his horn

“[16] In the circumstances I hold that the Defendant Keith Smith is partly liable for the damage and injury caused in the collision and must compensate the Claimants. However the Claimants themselves cannot totally escape liability. The intersection from which the Claimants emerged is a very dangerous one which puts traffic moving in three different directions in jeopardy. A driver should not emerge from that intersection unless the road is absolutely clear and there is no chance of causing an obstruction nor a collision. I do not think that the accident could have taken place in the manner described had the Second Claimant totally made the turn and proceeded on his oath any significant distance. 44 feet from the intersection where the debris was found in the circumstances is not a significant distance. It is unlikely that the collision took place at 88 feet from interception (sic) as allegedly stated by the Claimant. Consequently, I hold that the Claimant is 25% contributory negligent and the Defendant is 75% contributory negligent”

Reading those passages, it is clear that the finding of the judge in paragraph 16 was tending towards the conclusion that the bus driver was 75% negligent and that the driver of the motor car was 25% negligent.

But one has to look at a passage in the case of *Simon v Peat* [1952] 2 QBD 24 which is repeated in the Eleuthere case which gives the Court some guidance as to what happens in the case of an agony of the moment. In that case, Lord Goddard CJ said:

“[s]uppose a driver is confronted with a sudden emergency through no fault of his own; in an endeavour to avert a collision he swerves to his right - it is shown that had he swerved to the left the accident would not have happened: that is being wise after the event and, if the driver was in fact exercising the degree of care and attention which a reasonably prudent driver would exercise, he ought not to be convicted, even though another and perhaps more highly skilled driver would have acted differently.”

The learned judge himself had suggested that it might have been better for the driver to have swerved to the left. While he accepted that there was some negligence, if one applies the principle in the Simon case, one should find, and the Court does in fact find, that the driver of the motor bus was not anymore negligent as a result of having to avoid an accident in the agony of the moment.

Applying also the various findings of the judge at paragraph 15, he meant to apportion more blame to the second respondent than to the driver of the bus. So that in this case, the Court finds that the proper apportionment would have been the reverse of what the learned judge found and that the appellant, the bus driver, would have been 25% contributorily negligent and the second driver 75% contributorily negligent.

The Court reverses the apportionment of the learned judge. This has consequences for the damages which

have been awarded but the Court will consider this after the Court examines the question of the quantum of damages which the appellant says was excessive. Mr. Theodore, QC referred the Court to the case of *Andy Bute v Gary "Trubbie" De Freitas et al SVGHCV2010/0303* (delivered 8th August 2012, unreported) which is similar in the sense that the scale of injuries was not too removed from what is before the Court in this case. In the present case, Dr. Horatio Jeffers described the injuries as multiple soft tissue grazes and contusions to face and forehead and both upper limbs and left lower limb, open fracture of the left tibia and fibula, closed fracture of the left humerus.

In the Bute case, which was a case from Eastern Caribbean Supreme Court, the master said:

"I am satisfied that the defendant sustained a comminuted fracture of his right tibia and fibula, for which he was treated with open reduction and fixation of the tibia. He was discharged after surgery without problems on the 29th March 2010 but was readmitted when infection set in and x-rays showed some loosening of the plate and instability of the fracture site due to infection and excessive weight bearing on the affected area. He was treated with antibiotics and casting of the leg. The fracture consolidated but with some deformity due to the plate loosening during the healing of the tibia with the resultant shortening of the leg. He is now ambulant but sometimes uses a walking aid for support. He will have a permanent limp."

The damages awarded there for the physical injury, pain and suffering and loss of amenities and general damages was \$75,000.00 which is quite away from the award of \$175,000.00 which the learned judge arrived at. The Court thinks that those injuries are comparable and that the range of damages properly awardable would have been in the area of \$75,000.00 and \$80,000.00.

The Court has looked at other cases in the jurisdiction. Counsel for the respondent cited the case of *Sherma Mathurin v Rain Forest Sky Rides SLUHCV2008/0551* (delivered 3rd August 2003, unreported) where an award of \$150,000.00 for loss of amenities and pain and suffering was made for a displaced intra-articular open fracture of the lower right tibia, extending into the ankle joint with a fracture of the fibula, multiple grazes and bruises to the forehead and right upper limbs. The Court takes the view that those injuries appear to be much more serious than the ones in this case because in that case, the victim had to give up her job as a tour guide and take up one as a cashier so that the clearly the ambulant quality of her employment was lost and in that context, she was made to have a sit-down job.

The case of *Ronald Fraser v Joe Dalrymple ANUHCV2004/0513* was referred to where the High Court of Antigua in 2010 awarded the sum of \$85,000.00 for pain and suffering and \$65,00.00 for loss of amenities making a total of \$150,000.00 for a severely comminuted fracture of the left ankle and lower leg, fracture of the left medial malleus of the left tibia, severely comminuted fracture of the lower area of the tibia, lateral dislocation of the left ankle, fibular dislocation with lateral shifting of the talus and ankle diastasis, severely contaminated compound neuron with neuro vascular compromise. These are clearly more serious injuries. In addition, it is not clear what accounted for the figure of loss of amenities.

In any event, the figure for pain and suffering was \$85,000.00. The Court thinks that the proper range of damages would have been in the region of \$75,000.00 and \$80,000.00. The Court would top that up as the Bute case was in 2012 and fix the general damages for pain and suffering and loss of amenities at a figure of \$80,000.00.

As regards the award itself, the Court would award damages to the second respondent of \$80,000.00 reduced by 75% which would bring us into the region of \$20,000.00. The second respondent also claimed special damages which would be reduced by 75% to the figure of EC\$14, 468.48. In respect of special

damages, the rate of interest will be 3% from date of accident to the date of claim and 6% and from the date of claim to the date of payment.

Regarding the first respondent, for loss of use of vehicle, the Court would award damages of \$8,950.00 reduced by 75% to the amount of \$2237.50 at the rate of 3% from date of accident to the date of the claim and 6% from the date of the claim to the date of payment.

Regarding the counterclaim, the sum of \$44,614.00 is reduced by 25% to the sum of \$33,480.00 and interest of 3% from the date of the claim to the date of payment.

In respect of costs, the Court would set aside the order for costs. The appellant will be awarded his costs in the Court of Appeal as well as two-thirds of the award of prescribed costs on the sum of \$33,480.00 in the court below.

The Court accordingly allows the appeal on the basis described

Case Name:

**1. Ministry of the Public Service and
Broadcasting
2. Attorney General of Saint Lucia
V
Vincent Marcel**

[SLUHCVAP2017/0006]

Date:

Tuesday, 12th December 2017

Before:

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

Appearances:

Appellant:

Ms. Jan Drysdale

Respondent: Mr. Andie George with him, Ms. Sherene Francis

Issue: Preliminary Point – Whether decision final or interlocutory – Whether leave to appeal necessary

High Court civil appeal – Whether or not vacation could be accrued during a period when the respondent was on suspension – Whether the respondent would be entitled to payment in lieu of vacation – Effect of Prescription

Type of Oral Result / Order Delivered : N/A

Result / Order: [Oral Delivery]

In relation to the preliminary point :
The preliminary issue raised by counsel for the appellant has not found favour with the Court and the application is dismissed, with costs to be costs in the appeal.

Substantive appeal:
Judgment is reserved

Case Name: Interisland Dredging Co. Ltd
v
C.O. Williams Construction (St. Lucia) Ltd.
[SLUHCVAP2016/0002]

Date: Tuesday, 12th December 2017

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

Appearances:

Appellant: Ms. Petra Nelson with her, Ms. Esther Greene-Ernest
Respondent: Ms. Shann Greer with her, Mr. Michael DuBoulay

Issue: Civil appeal – Expert evidence – Judge’s striking out of witness summary and expert report of Mr. Francis for non-compliance as an abuse of process – Whether strike out wholly wrong in law and/or fact – Admissibility of witness statements under section 66 the Evidence Act – Counter appeal – Whether the judge erred in exercising power under CPR 26.2(1) to strike out witness statement of Mr. Shingleton-Smith for non-compliance with CPR 29.5(1)(c) and (e) – Whether the judge wrongfully struck out the entire witness statement and exhibits on the basis of hearsay

Type of Oral Result / Order Delivered: N/A

Result / Order & Reason: [Oral delivery]
The matter is adjourned to Thursday, 14th December 2017 to facilitate the filing of a consent order by the parties.

Case Name:

1. Joan Marquis
2. Brands Inc
3. First Caribbean International Bank
(Barbados) Ltd.
v
The Attorney General

[SLUHCVAP2015/0006]

Date: Thursday, 14th December 2017

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

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

Appearances:

Appellant: Mr. Dexter Theodore, QC with him, Ms. Isabella Shillingford

Respondent: Ms. Brender Portland-Reynolds, Solicitor General with her, Ms. Jan Drsydale

Issue: High Court civil Appeal – Application for adjournment

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

Result / Order: [Oral Delivery]
The hearing of this appeal is adjourned and traversed to the next sitting of the Court of Appeal in Saint Lucia during the week which commences on the 14th May 2018.

Reason: The appellants requested an adjournment on the basis that one of the main bundles with exhibits and the record of appeal were outstanding. There was no objection by the respondent.

Case Name: Kim John
v
The Queen

[SLUHCRA2015/0008]

Francis Phillip
v
The Queen

[SLUHCRA2015/0007]

Date: Thursday, 14th December 2017

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

Appearances:

Appellants: In person

Respondent: Mr. Daarsrean Greene, Director of Public Prosecutions

Issues: High Court criminal appeal against sentence – Murder – Application for legal aid – Application for adjournment to seek alternative representation

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

Result / Order: [Oral delivery]

1. The hearing of this appeal is adjourned and traversed at the request of the appellants and with no objection by the Director of Public Prosecutions to the next sitting of the Court of Appeal in Saint Lucia during the week which commences 14th May, 2018.
2. Leave is given to the appellants to obtain alternative representation at their own costs.

Reason: The appellants wished to obtain alternative representation at their own costs as they were dissatisfied with the legal representation of their State-assigned counsel. Both appellants wished to appoint Mr. Behanzin to pursue their appeal and applied for an adjournment for their legal representation to be settled.

Case Name:

**Interisland Dredging Co. Ltd.
v
C.O. Williams Construction (St. Lucia) Ltd.**

[SLUHCVAP2016/0002]

Date:

Thursday, 14th December 2017

Coram:

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

Appearances:

Appellant: Mr. Petra Nelson

Respondent: Ms. Shan Greer

Issue:

Civil appeal – Expert evidence – Judge’s striking out of witness summary and expert report of Mr. Francis for non-compliance as an abuse of process – Whether strike out wholly wrong in law and/or fact – Admissibility of witness statements under section 66 the Evidence Act – Counter appeal – Whether the judge erred in exercising power under CPR 26.2(1) to strike out witness statement of Mr. Shingleton-Smith for non-compliance with CPR 29.5(1)(c) and (e) – Whether the judge wrongfully struck out the entire witness statement and exhibits on the basis of hearsay

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The decision of Wilkinson, J dated 2nd February 2016 striking out the witness summary and report of Noel Francis and the witness statement of Stephen Shingleton Smith be and is hereby set aside.**
- 2. The appellant be and is hereby granted leave to file a supplementary witness statement/witness summary of Noel Francis in order to comply with**

Part 32 of the CPR 2000 within 50 days of the date of this order in relation to his expert report.

3. The respondent be and is hereby granted leave to file a supplementary witness statement of Stephen Shingleton Smith in order to comply with Part 29.5 of CPR 2000 and the Evidence Act Cap. 4.15 within 50 days of the date of this Order.
4. The matter shall proceed to trial after the filing of the relevant docs referred to in paragraphs 2 and 3 hereof on a date to be fixed by the Court Office.
5. No order as to costs.

Reason:

The parties prepared a draft consent order for the Court's approval.

Case Name:

Clement Tisson

v

The Queen

[SLUHCRA2015/0001]

Date:

Thursday, 14th December 2017

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

Mr. Daarsrean Greene, Director of Public Prosecutions

Issue:

High Court criminal appeal against sentence – Unlawful carnal knowledge – Whether sentences should have been imposed to run concurrently – Whether appellant is considered to be on remand for one sentence while serving another sentence for a different offence – Whether credit should be given for

time spent on remand – Meaning of “remand” – Whether sentence of 12 years is excessive having regard to all the circumstances – Constitutional right to a fair trial in a reasonable time – Delay – Whether trial judge should have acted on the basis of an amended statute, the amendment of which was not reflected in the indictment – Applicability of Section 8(4) of the Constitution of St Lucia – Section 1287 of the Criminal Code 1992

Type of Oral
Result / Order
Delivered:

N/A

Result / Order:

[Oral delivery]
The matter is stood down until 2:00 p.m.

Reason:

The Court was of the view that the issues as to whether the judge ought to have acted on an amendment in the Criminal Code of St. Lucia not contained in the indictment or a now amended statute not contained in the indictment are significant legal issues that the appellant would not be able to handle on his own. The Court was minded in the circumstances to adjourn the matter. The Court requested counsel present in Court to assist the appellant. Mr. Sandy John and Mr. Sean Innocent opted to assist.

The Court stood down the matter until 2:00 p.m. to be heard.

Case Name:

[1] Peter Hippolyte
[2] Michael Augustin
[3] Martinus Alexander
v
The Queen

[SLUHCRAP2017/0005]

Date: Thursday, 14th December 2017

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

Appearances:

Appellants: Mr. Horace Fraser with him, Mr. Leslie Mondesir

Respondent: Ms. Jenin Samuel-Kisna

Issues: High Court criminal appeal against conviction –
Unlawful possession pursuant to section 441 of the
Criminal Code–Application to quash committal order–
Whether indictment is a nullity – Whether appeal is
properly before the Court.

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

Result / Order: [Oral delivery]
The matter is stood down until 2:00 p.m.

Reason: The matter was stood down until 2:00 p.m. so that the
Court could hear matters relating to appellants who
are incarcerated.

Case Name: Cornelius Victor
v
Carlene Charles WPC 216

[SLUMCRAP2016/0008]

Date: Thursday, 14th December 2017

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

Appearances:
Appellant: Ms. Floreta Nicholas

Respondent: Ms. Tamara Foster

**Magisterial criminal appeal against conviction –
Assault – Application for adjournment**

Issue:

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

Result / Order: [Oral delivery]
1. The appellant is hereby ordered to file and serve skeleton arguments in support of his appeal on or before 31st January, 2018.
2. The respondent is hereby ordered to file and serve skeleton arguments in response on or before 15th February, 2018.
3. Leave is granted to the appellant to file and serve submissions in reply if necessary on or before 28th February, 2018.
4. Hearing of the appeal is fixed for the next sitting of the Court of Appeal in Saint Lucia during the week commencing 14th May, 2018.

Reason: The appellant recently received the reasons for decision. The Court therefore gave directions in order for the matter to proceed.

Case Name: Kirwan Gilbert
v
Carlene Charles WPC 216

Date: Thursday, 14th December 2017

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

Appearances:

Appellant: Ms. Floreta Nicholas

Respondent: Ms. Tamara Foster

Issue: Magisterial criminal appeal against conviction –
Assault – Application for adjournment

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral delivery]

1. The appellant is hereby ordered to file and serve skeleton arguments in support of his appeal on or before 31st January 2018.
2. The respondent is hereby ordered to file and serve skeleton arguments in response on or before 15th February 2018.
3. Leave is granted to the appellant to file and serve submissions in reply on or before 28th February 2018.
4. Hearing of the appeal is fixed for the next sitting of the Court of Appeal in Saint Lucia during the week commencing 14th May 2018.

Reason: The appellant recently received the reasons for decision. The Court therefore gave directions in order for the matter to proceed.

Case Name: Merlisha Walters

V
WPC 210 Jayhan Emmanuel

[SLUMCRAP2016/0004]

Date: Thursday, 14th December 2017

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

Appearances:

Appellant: Mr. Sandy John

Respondent: Mr. Leon France

Issue: Magisterial criminal appeal against conviction – Possession of a controlled drug – Possession of cannabis with intent to supply – Bringing a prohibited item into Bordelais Correctional Facility – Application for adjournment

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral delivery]

1. The appellant is hereby ordered to file and serve skeleton arguments in support of her appeal on or before 31st January 2018.
2. The respondent is hereby ordered to file and serve skeleton arguments in response on or before 15th February 2018.
3. Leave is granted to the appellant to file and serve submissions in reply if necessary on or before 28th February 2018.
4. Hearing of the appeal is fixed for the next sitting of the Court of Appeal in Saint Lucia during the week commencing 14th May, 2018.

Reason: Counsel for the appellant was retained in this matter on 13th December 2017 and requested an adjournment so that he could prepare his

submissions for the appeal. The Court gave directions to that effect.

Case Name:

**Barthelmy Fedee
v
PC 436 Charlery
(The Police)**

[SLUMCRAP2016/0001]

Date:

Thursday, 14th December 2017

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Sandy John

Respondent:

Ms. Jenin Samuel-Kisna

Issue:

**Magisterial criminal appeal against conviction –
Unlawful Assault – Application for adjournment**

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

Directions

Result / Order:

[Oral delivery]

- 1. The appellant is hereby ordered to file and serve submissions in support of his appeal on or before 31st January 2018.**
- 2. The respondent is hereby ordered to file and serve submissions in response to the appeal on or before 15th February 2018.**
- 3. Leave to the appellant to file and serve submissions in reply on or before 28th February 2018.**
- 4. The hearing of the appeal is fixed for the next**

sitting of the Court of Appeal in Saint Lucia during the week commencing 14th May 2018.

Reason: Counsel for the appellant was retained in this matter on 12th December 2017 and requested some time to file the necessary documents.

Case Name: Evans Estaphane
V
The Police (PC 556 Patrice Francis)

[SLUMCRAP2014/0013]

Date: Thursday, 14th December 2017

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

Appearances:
Appellant: Mr. Daniel Francis
Respondent: Ms. Tamara Foster

Issue: Criminal appeal against conviction – Driving without due care and attention – Application for adjournment

Type of Oral Result / Order Delivered : Directions

Result / Order: [Oral delivery]
1. Leave to the appellant to file and serve skeleton arguments in support of the appeal on or before 31st January 2018.
2. Leave to the respondent to respond to file supplementary submissions if necessary on or before 15th February 2018.

3. Leave to the appellant to file and serve submissions in reply on or before 28th February 2018.
4. Hearing of the appeal is fixed for the next sitting of the Court appeal in Saint Lucia during the week commencing 14th May, 2018.

Case Name:

Clement Tisson

v

The Queen

[SLUHCRA2015/0001]

Date:

Thursday, 14th December 2017

Before:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Rolston Nelston, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Sandy John and Mr. Sean Innocent appearing amicus

Respondent:

Mr. Daarsrean Greene, Director of Public Prosecutions

Issue:

High Court criminal appeal against sentence – Unlawful carnal knowledge – Whether sentences should have been imposed to run concurrently – Whether appellant is considered to be on remand for one sentence while serving another sentence for a different offence – Whether credit should be given for time spent on remand – Meaning of “remand” – Whether sentence of 12 years is excessive having regard to all the circumstances – Constitutional right to a fair trial in a reasonable time – Delay – Whether trial judge should have acted on the basis of an amended statute, the amendment of which was not reflected in the indictment – Applicability of Section 8(4) of the Constitution of St Lucia – Section 1287 of the Criminal Code 1992

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

The sentence of 12 years is confirmed and the appeal against sentence is dismissed.

Reason:

Upon hearing Mr. Sandy John and Mr. Sean Innocent for the appellant the Court found no basis to interfere with the decision of the trial judge. The Court was of the view that the judge did not make any error in law or principle or failed to give due weight to any matters which should have been considered and did not consider any matters which should not have been considered.

Therefore, there was no basis in law or otherwise to interfere with the decision of the learned trial judge. The appeal was therefore dismissed and the sentence of 12 years' imprisonment was affirmed.

Case Name:

Tony Perineau

v

The Police (Nysa Augustin WPC 239)

[SLUMCRAP2016/0002]

Date:

Thursday, 14th December 2017

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]

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

Appearances:

Appellant:

Mr. Alberton Richelieu

Respondent:

Ms. Jenin Samuel-Kisna

Issue: Magisterial criminal appeal against conviction – Indecent assault – Application for adjournment

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral delivery]
1. The supplementary submissions filed by the appellant on 11th December 2017 are hereby deemed to have been properly filed.
2. Leave is granted to the respondent to respond to the supplementary submissions of the respondent on or before 15th January 2018.
3. The hearing of the appeal is adjourned to a date to be fixed by the Court office.

Reason: The appellant filed submissions on 11th December 2017 in relation to a further ground of appeal without leave. There was no objection by the respondent to the appellant's submissions on the further ground as it was previously mentioned in the first submissions filed.

The Crown however, requested time to respond having only received the submissions on Monday, 11th December 2017. Accordingly, the Court gave directions.

Case Name: Shawn Gonzague
v
WPC 616 Beverley Fontenelle
[SLUMCRAP2014/0008]

Consolidated with

Nelldwin President

V
WPC 616 Beverley Fontenelle

[SLUMCRAP2014/0009]

Date: Thursday, 14th December 2017

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

Appearances:

Appellants: Mr. Sean Innocent

Respondent: Ms. Jenin Samuel-Kisna

Issues: Magisterial Criminal appeal against conviction - Possession of a controlled drug to wit: cannabis – Procedural point arising on appeal –Whether magistrate properly exercised his discretion in adopting a particular mode of trial

Type of Oral Result / Order Delivered : Directions

Result / Order: [Oral delivery]
1. Hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Saint Lucia to facilitate receipt of the complete record of appeal.
2. Leave to the respondent to file and serve submissions filed on 12th December 2017 on or before 31st January 2018.

Reason: Counsel for the appellant indicated that he had filed and served submissions in support of the appeal on 12th December 2017 and on 14th December 2017 respectively. Counsel indicated that all he had was the magistrate's reasons for his decision in relation to sentence and that the notes of evidence were not included in the record but are relevant to the issue of whether the magistrate properly exercised his discretion. Counsel for the respondent requested

time to file and serve submissions in response.

Case Name: **Andra Edwide**
v
PC 684 Hamish Alexander

[SLUMCRAP2009/0008]

Date: **Thursday, 14th December 2017**

Coram: **The Hon. Mr. Mario Michel, Justice of Appeal**
The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:
Appellant: **No appearance**
Respondent: **Ms. Jenin Samuel-Kisna**

Issues: **Magisterial criminal appeal against conviction –**
Assault with a dangerous weapon

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

Result / Order
& Reason: **[Oral Delivery]**
Noting that the notice of the hearing was served on
Mr. Jeannot-Michel Walters who appeared on behalf
of the appellant on the last occasion, the matter will
be stood down until 2 p.m.

Case Name: **The Director of Public Prosecutions**
v
Caleb Antoine

[SLUHCRAP2017/0001]

Date: Thursday, 14th December 2017

Before: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Daarsrean Greene, Director of Public Prosecutions

Respondent: Mr. Leslie Mondesir

Issue: High Court criminal appeal against sentence – Referral of sentence to the Court of Appeal by Director of Public Prosecutions – Discontinuance of matter

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

Result / Order & Reason : [Oral Delivery]
Notice of withdrawal of the referral of this matter to the Court of Appeal having been filed by the appellant on 11th December 2017, the appeal accordingly stands dismissed.

Case Name: Glenroy Shawn Victor
v
The Queen

[SLUHCRAP2014/0001]

Date: Thursday, 14th December 2017

Before:	The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.] The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Alberton Richelieu holding papers for Mr. Alfred Alcide
Respondent:	Mr. Leon France
Issue:	High Court criminal appeal against sentence – Application for adjournment
Type of Oral Result / Order Delivered:	Directions
Result / Order:	[Oral Delivery] 1. The appellant is hereby ordered to file and serve skeleton arguments in support of his appeal on or before 31st January 2018. 2. The respondent is hereby ordered to file and serve skeleton arguments in response on or before 15th February 2018. 3. Leave is granted to the appellant to file and serve submissions in reply if necessary within 1 month of being served with the skeleton arguments of the respondent. 4. Hearing of the appeal is fixed for the next sitting of the Court of Appeal in Saint Lucia during the week commencing 14th May, 2018.
Reason:	Counsel for the appellant sought an adjournment to which there was no objection by the respondent. However, the respondent requested that the Court make directions in relation to filing of documents.

Case Name:

**Andra Edwidge
v
PC 684 Hamish Alexander**

[SLUMCRAP2009/0008]

Date:

Thursday, 14th December 2017

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Leslie Mondesir holding papers for Mr. Jeannot-Michel Walters

Respondent:

Ms. Jenin Samuel-Kisna

Issues:

**Magisterial criminal appeal against conviction –
Assault with a dangerous weapon – Application for
adjournment**

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

Directions

Result / Order:

[Oral delivery]

- 1. The appellant is hereby ordered to file and serve skeleton arguments in support of her appeal on or before 31st January 2018.**
- 2. The respondent is to file and serve skeleton arguments in reply on or before 28th February 2018.**
- 3. Leave to the appellant to file and serve skeleton arguments in reply on or before 15th March 2018.**
- 4. Hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 14th May 2018.**

Reason:

Mr. Leslie Mondesir indicated to the Court that Mr. Walters was absent due to illness. Mr. Mondesir requested an adjournment on the basis that Mr.

Walters is awaiting the notes of evidence. There was no objection to this request by the respondent.

Case Name:

[1] Peter Hippolyte
[2] Michael Augustin
[3] Martinus Alexander
v
The Queen

[SLUHCRA2017/0005]

Date:

Thursday, 14th December 2017

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Horace Fraser with him, Mr. Leslie Mondesir
Respondent: Ms. Jenin Samuel-Kisna

Issues:

High Court criminal appeal against conviction –
Unlawful Possession pursuant to section 441 of the
Criminal Code of St Lucia 2004 – Application to
withdraw appeal

Type of Oral
Result / Order
Delivered:

Oral Judgment or Decision

Result / Order:

[Oral delivery]
The appeal is withdrawn with no order as to costs.

Reason:

The Court pointed out that the appeal was not properly before the Court of Appeal as there was no decision to review. The application to quash the

committal order made in the court below was withdrawn and as a result there was no decision made by the judge of the High Court.

Accordingly, Counsel for the appellant, withdrew his appeal.

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
[SLUHCVAP2017/0003]**

Date:

Thursday, 14th December 2017

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]**

Appearances:

Appellants:

Mr. Colin Foster

Respondent:

Mrs. Sardia Cenac-Prospere with her, Mr. Andre McKenzie

Issues:

Application for leave to deem application to revoke order of a single judge properly filed – Application to revoke order of a single judge

Type of Oral Result / Order Delivered :	N/A
Result / Order:	[Oral delivery] The hearing of this matter is adjourned to Friday 15 th December 2017 at 9:00 a.m.
Reason:	The full appeal was not heard on 14 th December 2017 and continued on the next day.
Case Name:	Simon Marius v The Queen [SLUHCRA2017/0002]
Date:	Friday, 15 th December 2017
Coram:	The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Appellant:	In person
Respondent:	Mr. Stephen Brette
Issues:	Application for leave to appeal against sentence
Type of Oral Result / Order Delivered:	Oral Judgment or Decision
Result / Order & Reason:	[Oral delivery] 1. Leave is granted to the applicant to file and serve a notice of appeal against sentence, there being no objection by The Crown. 2. The applicant is to file and serve the notice of

appeal within 21 days of today's date.

Case Name:

**Urban St. Brice
v
Director of Public Prosecutions**

[SLUHCVAP2017/0033]

Date:

Friday, 15th December 2017

Coram:

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

Appearances:

Appellant:

Ms. Nathalie Dabreo

Respondent:

Mr. Rene Williams with him, Ms. Antonia Charlemagne

Issues:

**Application for leave to appeal – Judicial review –
Whether the learned judge erred in refusing an
application for leave on a judicial review application –
Judicial review of a prosecutorial decision – Whether
this case falls within “exceptional circumstances” as
outlined in *Sharma v Antoine and others [2006] UKPC
57* – Whether actions of DPP constitutes exceptional
circumstances**

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

Oral Judgment or Decision

Result / Order:

**[Oral Delivery]
The application for leave to appeal to against
decision of Cenac-Phulgence J is refused.**

Reason:

**Having heard the oral submissions of counsel for the
appellant and having read the written submissions of**

both counsel for the applicant and the respondent, the Court was of the view that the applicant had not met the threshold requirements for the grant of leave to appeal the decision of Justice Cenac-Phulgence in which she refused to grant leave to file judicial review. The Court found that the learned judge comprehensively and competently dealt with all the matters that were raised before her and paid particular regard to the judgment of *Sharma v Antoine and others [2006] UKPC 57*. Accordingly, the application was dismissed.

Case Name:

**Marvin William
v
The Queen**

[SLUHCRAP2014/0005]

Date:

Friday, 15th December 2017

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal**

Appearances:

Appellant:

Mr. Leslie Mondesir

Respondent:

Mr. Stephen Brette

Issues:

High Court criminal appeal against conviction sentence – Murder – Whether sentence manifestly excessive in the circumstances – Oral application to amend grounds of appeal

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

Oral Judgment or Decision

Result / Order:

[Oral Delivery]

1. The appeal against conviction is dismissed and

conviction is affirmed.

2. The appeal against sentence is dismissed and the decision of the trial judge is affirmed.

Reason:

Oral application to amend grounds of appeal:

In this appeal leave was granted to the applicant to amend his grounds of appeal to argue the additional ground that the learned trial judge failed to properly put the defence to the jury.

Substantive appeal:

This was an appeal by Marvin Williams against his conviction for murder and sentence of 20 years on the ground that his conviction is unsafe and his sentence is excessive and unsatisfactory.

Having heard counsel for the appellant and the respondent and also reading submissions of counsel for the appellant and respondent, the Court was of the view that the appeal against the conviction had no merit, the learned trial judge comprehensively and treated adequately with the defence of self defence that was raised by the appellant. In fact, it is an unfair criticism to say that the judge failed to deal with the issue of self defence. The judge dealt extensively with the defence of self defence. Accordingly, the ground of appeal against conviction was dismissed and the conviction was affirmed.

The Court found that the learned trial judge, though not articulating the benchmark in the matter and though not indicating all of the relevant principles taken into account, did not err in imposing a sentence of 20 years, using a 30 year benchmark. This Court took into account the mitigating and aggravating factors and relevant sentencing factors such as deterrence, punishment, rehabilitation, which did not arise in this matter and the totality of the circumstances including the circumstances of the offender and the offence and found that the learned judge did not err.

The Court was of the view that the sentence should be upheld but to be varied only to reflect that the sentence is to be taken from the date on which the appellant was taken into custody on remand. The trial judge alluded to that by stating “time takes into account time on remand” – The Court dismissed the appeal against sentence and affirm the decision of the trial judge, save to make the minor change to indicate when exactly the remand period started.

The Court made it clear that judges in sentencing ought to get indications from the prosecution as to the exact date when the appellant is taken into remand.

Case Name:

Pedro R. N. Rodriguez

v

Attorney General

[SLUHCVAP2015/0002]

Date:

Friday, 15th December 2017

Coram:

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

Appearances:

Appellant:

Mr. Lorne Theophilus

Respondent:

**Ms. Brender Portland-Reynolds, Solicitor General
with her, Mr. Rene Williams**

Issues:

**Application to set aside the decision of a single judge
and reinstate the appeal**

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The order of Baptiste JA dated 6th June 2017 is set aside.**
- 2. The appeal filed on 26th January 2015 filed by the applicant is hereby reinstated.**
- 3. The registrar of the court shall cause the transcript in this appeal to be prepared with due expedition and the parties notified accordingly.**
- 4. Thereafter the appeal shall proceed in accordance with CPR 2000.**

Reason:

This was an application to set aside an order of the learned Justice of Appeal Baptiste dated 6th June 2017 in which he dismissed the appellant's appeal for want of prosecution. At the hearing of the application, it was agreed by the respondent, that at the time the learned judge dismissed the appeal for want of prosecution the learned judge was not aware of the special circumstance of this case, being that the applicant was not a person who spoke the English language, that the documents which were served on him were all in the English Language and that his lawyer who was representing him no longer had the audience of the Court. In those circumstances, the Court was of the view that the respondent was in no position to contest the application. The applicant was not given an opportunity to be heard and in those circumstances the Court set aside the order of the learned judge and reinstate the appeal

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

[SLUHCVAP2017/0003]

Date: Friday, 15th December 2017

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

Appearances:

Appellants: Mr. Colin Foster

Respondent: Mrs. Sardia Cenac-Prospere with her, Mr. Andre McKenzie

Issues: Civil appeal – Consolidated appeals – Application for leave to deem application to revoke order of a single judge properly filed – Application to revoke order of single judge – Security for costs – Non-compliance with order of judge – Relief from sanctions – Whether failure to comply with security for costs order results in an automatic sanction – Whether a written or oral application would have to be made for relief – Whether it is within the inherent jurisdiction of the Court to grant relief from sanctions where no application has been made – Requirements for relief from sanctions – Applicability of the overriding objective

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

Result / Order: [Oral delivery]
1. The application is hereby dismissed.
2. Costs to be assessed if not agreed within 21 days.

Reason: The application of the companies (“the Company”) in this matter was to revoke the order of Justice of Appeal Paul Webster dated 4th July 2017 dismissing

its appeal. The Bank of Nova Scotia indicated its opposition to the application by filing a notice of opposition. In support of the application to revoke, the Company filed written submissions and there were submissions in reply. The Bank submitted that for the reasons which the learned counsel set out before the Court the company had failed to negate the validity of the order of Webster JA (Webster JA's dismissal order).

Essentially, the application to revoke the order is based on Rule 62.1(6) of the Civil Procedure Rules 2000 (application to vary/discharge order of a single judge). Webster JA's dismissal order referred to an order of Michel JA dated 11th April 2017. In that order, Michel JA granted a stay and stipulated that the appellant should give security for the respondent's costs, that the appellant should pay security in the amount of \$3,333.33 which sum shall be paid into court by Mrs. Ashworth. Suffice it to say that strictly speaking the payment of that amount by Mrs. Ashworth was from the account of the company and that was in direct contravention of the terms of the order.

It was submitted that the order was in fact complied with, within the time fixed, by Mrs. Ashworth. Suffice it to say, there is recognition that there was some breach in the order of Michel JA and that it was a technical breach and there was compliance.

We however disagree and our understanding of the law is that there was an immediate and automatic dismissal of the appeal upon non-compliance. The appellant to date has not applied for relief from sanctions and as counsel for the Bank indicated, we have to consider whether there was any application for relief from sanctions. In this case, there was none. The court was referred to the cases of *Marcan Shipping (London) Ltd. v Kefalas* [2007] EWCA Civ 463, and *Issa Nicholas (Grenada) Limited v Time Bourke Holdings (Grenada) Limited* GDAHCVAP2015/0029 (delivered 8th December 2016, unreported) where Barrow JA said 'the rule is uncompromising, the court is prohibited from granting relief from sanctions if these conditions are

not satisfied'. What that means is that one cannot dodge the effect of the rule by referring to the inherent jurisdiction of the Court. As in fact, Saunders JA made clear in the case of *Treasure Island Company et al v Audubon Holdings Limited et al BVIHCVAP2003/0022* (delivered 20th September 2004, unreported).

Counsel also sought to suggest that there was in *Cutler v Barnet London Borough Council* [2014] EWHC 4445 (QB) some protection for his position, that is to say, that he didn't have to make a written application but could rely on an oral application or the judge of his own motion could have granted relief from sanctions and that there was no need for a specific application as it was sufficient if there was an implicit application on the evidence before the court. On the evidence of Mrs. Ashworth, counsel suggests that there was an implicit application. There was however no implicit application as it was an application made by the Bank ex abundanti cautela to get an order specifically dismissing the application against the background that the applicant argued that it was compliant with the order of Michel JA. That implied alleged application is not sustained and what the applicant should have done was to comply with rule 26.8 of the Civil Procedure Rules 2000 and make an express application immediately that the respondent bank had filed an application for express order.

We find in all respects that the appellant has not made out the case that there is any basis on which the order of Webster JA should be varied. The learned judge in fact accepted the strict force of CPR 26.8 where it says that the court is prohibited from exercising its discretion under the rule.

In all the circumstances, we find that the application made before us should be dismissed with costs. The application is hereby dismissed. Costs to be assessed if not agreed within 21 days of the order.

Case Name:

Luann Shanel Amorsingh

v

Martina Labadie

[SLUHCVAP2012/0022]

Date:

Friday, 15th December 2017

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]

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

Appearances:

Appellant:

Mr. Andie George with him, Ms. Sherene Francis

Respondent:

Mr. Vern Gill

Mr. Geoffrey DuBoulay, holding a watching brief

Issues:

Civil appeal – Breach of contract – Whether defendant had a right to sell vehicle – Whether good title passed to the appellant – Section 283 of the Commercial Code of St. Lucia Cap 13.31 – Implied condition on the part of the seller that he has a right to sell goods and implied warranty that the buyer is entitled to quiet possession of goods and that the goods will be free from any encumbrances – Equity of redemption upon payment of a loan – Whether title of motor vehicle assigned to the Bank – Whether market overt applies in the circumstances – Whether the sale of the motor vehicle by the insurance company was a sale in market overt

Type of Oral

Result / Order

Delivered:

Oral Judgment or Decision

Result / Order:

[Oral Delivery]

1. The appeal is allowed.

2. Judgment is entered for the appellant/claimant in the sum of \$37,000.00.

3. The appellant to have his costs in the court below and 2/3 of those costs in the Court of Appeal.

Reason:

This is the decision of the Court in this matter. Before the Court is an appeal from the decision of Belle J delivered on 30th April 2013 in which the learned judge dismissed the claim of the appellant who was the claimant in the court below for a sum of \$37,000.00 being the monies which she had paid over to the respondent in purchasing a motor vehicle which the respondent had previously purchased from someone else. In this matter, there was also an ancillary claim which was brought against Emmanuel Andrew as the ancillary defendant. The ancillary defendant failed to acknowledge service and a judgment in default was obtained against him on 21st November 2011 and entered on 14th December 2011 in the sum of \$47,035.36.

In his decision, the learned judge concluded that article 294 of the Commercial Code of Saint Lucia Cap 13:31 (the “Commercial Code”) was a provision which was applicable in the circumstances of this transaction and on that basis concluded that the claimant/appellant had acquired good title to the motor car from the respondent/defendant. The claim was dismissed.

In this appeal, the issues have distilled themselves to the question of whether the respondent had transferred good title to the vehicle to the appellant. The vehicle, after the sale was concluded, was repossessed by the 1st National Bank, Saint Lucia Limited under the terms of a Bill of Sale which had remained unsatisfied when the motor vehicle was sold to someone else. That Bill of Sale expressly states that the borrower assigns to the bank, all and singular for several chattels things specified in the schedule by way of security for the loan and the motor car in question, particulars of that is set out in the schedule to the Bill of Sale.

In hearing arguments for the appellant and respondent, attention was drawn to article 293 of the Commercial Code which deals with market overt. It seems to be common ground that the principles of market overt were not applicable to the transaction

between the appellant and respondent regarding the sale of the vehicle. The principles of market overt also sought to be applied to the transaction by which an insurance company had sold that vehicle to another person and as the argument goes that by virtue of that sale that other person would have acquired good title from the insurance company and the rights of the bank would have thereby been extinguished.

I believe it is correct to say that in the final analysis learned counsel for the respondent accepted that section 293 could not apply to that transaction as there was no evidence led to substantiate a finding of market overt. The matter rests on article 294 of the Commercial Code which deals with sale under voidable title whereby a seller who has a voidable title would be able to transfer good title to goods to a buyer provided that he or she buys them in good faith and without notice of the seller's defect in title.

The learned judge in the court below pegged his decision on this article. This provision, in our view, has no application to the transaction at hand. Voidable title by way of definition would be referring to a title which is defective. In this case, we are not dealing with a defective title but rather one which was good, and which was the subject of a Bill of Sale by way of security over the vehicle.

It is our considered view that article 294 cannot apply. That leaves for the purposes of this appeal, reliance which has been placed on by the appellants, article 283 of the Commercial Code which deals with implied undertakings as to title. We are in agreement with counsel for the appellant with regard to matters which were implied in the transaction between the respondent and the appellant. It is clear to us that the respondent was in breach of the implied conditions and warranties to make good title to the motor car to the appellant. Accordingly, we disagree with the learned judge's decisions and the orders which were made by the learned judge in this matter will be set aside.

Accordingly, the appeal is allowed. Judgment is

entered for the appellant/claimant against the respondent in the sum of \$37,000.00. The appellant will have costs in the court below and two-thirds of those costs in the Court of Appeal.

Case Name:	Jonathan David Lesfloris v Glenda Dale Lesfloris [SLUHCVAP2015/0018]
Date:	Friday, 15th December 2017
Coram:	The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.] The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Ms. Wauneen Louis-Harris
Respondent:	Mr. Gerard Williams
Issue:	Civil appeal – Adjournment of matter
Type of Oral Result / Order Delivered:	N/A
Result / Order:	[Oral delivery] The hearing of this appeal is adjourned to the next sitting of the Court in Saint Lucia during the week commencing 18th May 2018.
Reason:	The matter was adjourned due to the unavailability of one of the members of the panel.

