

COURT OF APPEAL SITTING

ANTIGUA & BARBUDA

Monday, 6th November 2017 to Friday, 10th November 2017

STATUS HEARING

Case Name:

Claudy Kelvin Brown

v

[1] The Attorney General

[2] The Chief Immigration Officer

[3] The Chief Magistrate

[ANUHCVP2012/0017]

Date:

Wednesday, 8th November 2017

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

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

Respondents: Ms. Alicia Aska

Issue:

Status of the matter

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

Directions

Result/Order:

[Oral delivery]

- 1. The respondent has leave to file submissions in reply on or before the 22nd December, 2017.**
- 2. The hearing of this appeal is set down for the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing the 12th February, 2018.**

Reason: The record of appeal and submissions were filed and served on the respondent on the 2nd November 2017. The respondent sought leave and directions to file submissions.

Case Name: Melvin David Anderson
v
[1] The Attorney General of Antigua and Barbuda
[2] Commissioner of Police
[3] Glennis Simon
[4] Moncy Duncan
[ANUHCVP2013/0018]

Date: Wednesday, 8th November 2017

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

Appearances:

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

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

Issue: Status of the matter

Type of Oral Result/Order Delivered: Directions

Result/Order: [Oral delivery]
1. Leave is granted to the respondent to file and serve submissions with authorities on or before the 15th December, 2017.
2. The hearing of the appeal is set down for the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing the 12th February, 2018.

Reason: The record of appeal having been filed on the 02nd November, 2017 and written submissions filed on the 3rd November, 2017 the respondent now seeks leave and directions for filing of their submissions.

Case Name: Saffron Limited
v
Angel Estates Limited
[ANUHCVP2012/0045]

Date: Wednesday, 8th November 2017

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

Appearances:

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

Respondent: Mr. John Fuller

Issue: Status of the matter

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

Result/Order: [Oral delivery]
1. Leave is granted to the respondent to file and serve written submissions with authority on or before the 15th January, 2018.
2. This appeal is set down for hearing at the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing the 12th February, 2018.

Case Name:

**[1] Winston B. Spencer
[2] Crusader Publications Broadcasting Ltd.
v
Lester Bird**

[ANUHCVP2012/0006]

Date:

Wednesday, 8th November 2017

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellants: Ms. Sherri-ann Bradshaw

Respondent: Mr. Warren Cassell

Issue:

Status of the matter

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

Oral Judgment or Decision

**Result/Order &
Reason:**

**[Oral delivery]
Notice of discontinuance of the appeal having been filed by the appellant on the 6th November, 2017 and the respondent having acknowledged receipt of the notice, the appeal is accordingly dismissed. There shall be no order as to costs as agreed by the parties.**

Case Name:

**Treetops Garden Centre Limited
v
St. John's Development Corporation**

[ANUHCVP2014/0033]

Date: Wednesday, 8th November 2017

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

Appearances:

Appellant: Mr. Peter Harker, Owner of Appellant Company

Respondent: Mr. Craig Whyte, Executive Director

Issue: Status of the matter

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

Result / Order: [Oral delivery]
This matter is adjourned for further status hearing at the next sitting of the Court of Appeal in the State of Antigua and Barbuda during the week commencing the 12th February, 2018.

Reason: NB: Ms. Kema Benjamin watching brief advised the Court that there was a notice of intention to proceed with appeal filed. However, the parties requested additional time to discuss with a view of settling the matter and will determine whether they intend to proceed with the appeal prior to the next sitting of the Court of Appeal in Antigua and Barbuda.

Case Name:

**[1] Violet Francis
[2] Pauline Gomes
v
[1] The Attorney General
[2] Commissioner of Police

[ANUHCVP2014/0012]**

Date:

Wednesday, 8th November 2017

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

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

Respondents: Ms. Alicia Aska

Issue:

Status of the matter

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

N/A

Result/Order:

**[Oral delivery]
The appeal is adjourned for further status hearing at the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing the 12th February, 2018.**

Reason:

The appellant is now deceased and the mother of the appellant has just received probate of the appellant's estate and is zealous to proceed with the appeal. The record of appeal is not ready and should be ready and served on the parties in January 2018.

Case Name:

Michael Villiers

v

Edson Browne

[ANUHCVP2014/0017]

Date: **Wednesday, 8th November 2017**

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

Appearances:

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

Respondent: **No appearance**

Issue: **Status of the matter**

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

Result/Order: **[Oral delivery]
Leave is granted to the appellant to withdraw the appeal.
The appeal is accordingly dismissed.**

Case Name:

Edwin Gomez

v

The Queen

Isiah Benjamin

v

The Queen

[ANUHCRA2014/0012]

[ANUHCRA2014/0013]

Date:

Wednesday, 8th November 2017

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellants: Mr. Sherfield Bowen

Respondent: Mrs. Shannon Jones-Gittens

Issue:

Status of the matter

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

Oral Judgment or Decision

Result/Order:

[Oral delivery]

- 1. The appellant has leave to file and serve written submissions with authorities on or before the 15th December, 2017.**
- 2. The respondent has leave to file and serve submissions in response on or before the 15th January, 2018.**
- 3. The hearing of the appeal is set down for the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing the 12th February, 2018.**

Reasons:

Counsel for the appellant has not filed submissions despite

being in possession of the record for several months.

Case Name:

Devon Byam

v

The Queen

[ANUHCRA2014/0009]

Date:

Wednesday, 8th November 2017

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Sherfield Bowen

Respondent: Mrs. Shannon Jones-Gittens

Issue:

Status of the matter

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

Directions

Result/Order:

[Oral delivery]

- 1. The appellant has leave to file and serve written submissions with authorities on or before the 15th December, 2017.**
- 2. The respondent has leave to file and serve written submissions with authorities on or before the 15th January, 2018.**
- 3. The hearing of the appeal is set down for the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.**

Reasons:

The parties have not received the transcripts which would be served on them today.

Case Name:

**Lasana Riley
v
The Queen**

[ANUHCRA2013/0007]

Date:

Wednesday, 8th November 2017

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Ralph Francis holding papers for Mr. George Lake

Respondent: Mrs. Shannon Jones-Gittens

Issue:

Status of the matter

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

Oral Judgment or Decision

Result/Order:

[Oral delivery]

- 1. The appeals ANUHCRA2013/0007 and ANUHCRA2013/0006 are hereby consolidated.**
- 2. The hearing of the appeals are adjourned for further status hearing at the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week of 12th February, 2018.**

Reasons:

Jevorny Richards ANUHCRA2013/0006 was tried along with the appellant who is represented by Mr. Ralph Francis.

Case Name:

Darnell Azille

v

The Queen

[ANUHCRA2015/0003]

Date:

Wednesday, 8th November 2017

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Sherfield Bowen

Respondent: Mrs. Shannon Jones-Gittens

Issue:

Status of the matter

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

N/A

Result/Order:

[Oral delivery]

This appeal is adjourned for further status hearing at the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing the 12th February, 2018.

Reasons:

The parties are not in receipt of the transcripts and it is hoped that it would be prepared and served on the parties in January 2018.

Case Name:

Darryl Wilson

v

The Queen

Melville Samuel

v

The Queen

[ANUHCRA2015/0002]

[ANUHCRA2015/0013]

Date:

Wednesday, 8th November 2017

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellants: Mr. Sherfield Bowen

Respondent: Mrs. Shannon Jones-Gittens

Issue:

Status of the matter

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

Directions

Result/Order:

[Oral delivery]

- 1. The appellant is granted leave to file and serve written submissions with authority on or before the 31st January, 2018.**
- 2. The respondent is granted leave to file and serve written submissions with authorities on or before the 1st March, 2018.**
- 3. The hearing of the appeal is set for the sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing the 5th June, 2018.**

Reasons:

The transcripts are now ready and shall be served on the parties during the week.

Case Name:

**Terry Herbert
v
The Queen**

[ANUHCRA2015/0012]

Date:

Wednesday, 8th November 2017

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Sherfield Bowen

Respondent: Mrs. Shannon Jones-Gittens

Issue:

Status of the matter

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

N/A

Result/Order:

[Oral delivery]

This appeal is adjourned for further status hearing at the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing the 12th February, 2018.

Reasons:

The transcripts are not ready and it is hoped that it will be prepared and served on the parties in January 2018.

Case Name:

Luke Pressley

v

The Queen

[ANUHCRA2014/0016]

Date:

Wednesday, 8th November 2017

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Mrs. Shannon Jones-Gittens

Issue:

Status of the matter

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

Directions

Result/Order:

[Oral delivery]

- 1. This appeal is set down for further case management at the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing the 12th February, 2018.**
- 2. The Registrar is to serve a copy of this order on counsel on record Mr. D. Raimon Hamilton and the appellant's sureties.**

Reasons:

The appellant has served his sentence and is currently out of the jurisdiction. Counsel on record Mr. D. Raimon Hamilton is absent.

Case Name:

Keyon Bronille Hamilton

v

The Queen

[ANUHCRA2015/0002]

Date:

Wednesday, 8th November 2017

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Sherfield Bowen holding papers for Mr. Lawrence Daniels

Respondent: Mrs. Shannon Jones-Gittens

Issue:

Status of the matter

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

N/A

Result/Order:

[Oral delivery]

This appeal is adjourned for further status hearing at the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing the 12th February, 2018.

Reasons:

The record of appeal is still outstanding.

Case Name:

**Donald Sylvester Lumsden
v
The Commissioner of Police
[ANUMCRAP2013/0002]**

Date:

Wednesday, 8th November 2017

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. John Fuller

Respondent: Mrs. Shannon Jones-Gittens

Issue:

Status of the matter

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

Directions

Result/Order:

[Oral delivery]

- 1. The Chief Magistrate is ordered to cause the record of appeal to be prepared and submitted to the Registrar of the High Court on or before the 31st January, 2018.**
- 2. The matter is adjourned for further status hearing at the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.**

Reasons:

The record of appeal from the Magistrates Court is still outstanding.

Case Name:

**Kareem Gardiner
v
The Commissioner of Police
[ANUMCRAP2013/0004]**

Date: Wednesday, 8th November 2017

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

Appearances:

Appellant: Mr. Sherfield Bowen holding papers for Mr. Lawrence Daniels
Respondent: Mrs. Shannon Jones-Gittens

Issue: Status of the matter

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

Result/Order: [Oral delivery]
1. The Chief Magistrate shall cause the record of appeal to be prepared and submitted to the Registrar of the High Court on or before the 30th December, 2017.
2. The appeal is adjourned for further status hearing at the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.

Reasons: The parties are still waiting to receive the record of appeal from the Magistrates Court.

Case Name:

**Dorian Marshall
v
The Commissioner of Police
[ANUMCRAP2013/0005]**

Date: Wednesday, 8th November 2017

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

Appearances:

Appellant: In person

Respondent: Mrs. Shannon Jones-Gittens

Issue: Status of the matter

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

Result/Order: [Oral delivery]
Leave is granted to the appellant to withdraw the appeal
and the appeal is accordingly dismissed.

Reasons: The appellant has indicated that he has served his time and
no longer wishes to pursue the appeal.

Case Name:

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

Date: Wednesday, 8th November 2017

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

Appearances:

Appellant: No appearance

Respondent: Mrs. Shannon Jones-Gittens

Issue: Status of the matter

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

Result/Order: [Oral delivery]

1. The Chief Magistrate shall cause the record of appeal to be prepared and submitted to the Registrar of High Court on or before the 30th December, 2017.
2. The appeal is adjourned for further status hearing at the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.

Reasons: The parties are still awaiting the record of appeal from the Magistrates Court.

Case Name:

**Jemal Benjamin
v
The Commissioner of Police
[ANUMCRAP2015/0004]**

Date: Wednesday, 8th November 2017

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

Appearances:

Appellant: No appearance

Respondent: Mrs. Shannon Jones-Gittens

Issue: Status of the matter

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

Result/Order: [Oral delivery]

1. The Chief Magistrate shall cause the record of appeal to be prepared and submitted to the Registrar of the High Court on or before the 31st January, 2018.
2. The appeal is adjourned for further status hearing at the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.

Reasons: The appellant was not served with notice of status hearing. However, the record of appeal has not been received from the Magistrates Court.

Case Name:

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

Date:

Wednesday, 8th November 2017

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Sherfield Bowen

Respondent: Mrs. Shannon Jones-Gittens

Issue:

Status of the matter

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

N/A

Result/Order:

[Oral delivery]

This appeal is adjourned for further status hearing at the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.

Reasons:

The record of appeal from the Magistrates Court is still outstanding.

Case Name:

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

Date: **Wednesday, 8th November 2017**

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

Appearances:

Appellant: **Mr. Sherfield Bowen holding papers for Mr. Lawrence Daniels**

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

Issue: **Status of the matter**

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

Result/Order: **[Oral delivery]
The appeal is adjourned for further status hearing at the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.**

Reasons: **The record of appeal from the Magistrates Court remains outstanding.**

Case Name:

**Glenworth Prince
v
Laudanskies Joseph
[ANUMCVAP2012/0002]**

Date:

Wednesday, 8th November 2017

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

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

Respondent: No appearance

Issue:

Status of the matter

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

Directions

Result/Order:

[Oral delivery]

- 1. The Chief Magistrate shall cause the record of appeal including the reasons for the decisions to be prepared and submitted to the Registrar of the High Court on or before the 30th December, 2017.**
- 2. The appeal is adjourned for further status hearing at the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.**

Reasons:

The Chief Magistrate has failed to comply with the order of this court dated the 29th May, 2017 to prepare and submit the record of appeal.

Case Name:

Gervon Archibald

v

Claudete Barnes

[ANUMCVAP2013/0004]

Date:

Wednesday, 8th November 2017

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Sherfield Bowen

Respondent: No appearance

Issue:

Status of the matter

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

Directions

Result/Order:

[Oral delivery]

- 1. The Chief Magistrate shall cause the record of appeal to be prepared and submitted to the Registrar of the High Court on or before the 30th December, 2017.**
- 2. The appeal is adjourned for further status hearing at the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.**

Reasons:

The respondent was not served with notice of today's status proceedings. The appellant is still awaiting the record of appeal from the Magistrates Court.

Case Name:

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

Date: **Wednesday, 8th November 2017**

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

Appearances:

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

Respondent: **Ms. Alicia Aska**

Issue: **Status of the matter**

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

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

- 1. The Chief Magistrate shall cause the record of appeal to be prepared and submitted to the Registrar of the High Court on or before the 30th December, 2017.**
- 2. The appeal is adjourned for further status hearing at the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.**

Reasons: **The parties are still not in receipt of the record of appeal.**

Case Name:

Marlon Ho-Tack

v

Alice Ho-Tack

[ANUMCVAP2015/0002]

Date:

Wednesday, 8th November 2017

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Ms. Kema Benjamin

Respondent: No appearance

Issue:

Status of the matter

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

Directions

Result/Order:

[Oral delivery]

- 1. The appellant shall file and serve written submissions with authorities on or before the 7th January, 2018.**
- 2. The respondent shall file and serve written submissions with authorities on or before the 2nd February, 2018.**
- 3. The hearing of this appeal is set for the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.**

Reasons:

The record of appeal has been received and will be served on the parties shortly.

Case Name:

**[1] Condace Benjamin
[2] Geraldine Bridges
v
Avery A. Henry**

[ANUHCVP2015/0003]

Date: Friday, 10th November 2017

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

Appearances:

Appellants: Mr. John Fuller

Respondent: Mr. Justin L. Simon, QC. with him, Mrs. Laurie Freeland-Roberts

Issue: Status of the matter

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

Result/Order: [Oral delivery]

1. Counsel for the respective parties who were counsel in the lower Court will meet and shall prepare from their notes taken at the trial the notes of evidence to form part of the record of Appeal to be used at the hearing of this Appeal.
2. The appellant shall file and serve the record of appeal on or before the 28th February, 2018.
3. The appellant shall file and serve written submissions with authorities on or before 28th February, 2018.
4. The respondent shall file and serve written submissions with authorities on or before 28th March, 2018.
5. The hearing of this appeal is set down for the sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing 11th June, 2018.

Reasons:

APPLICATIONS AND APPEALS

Case Name:

**Kenard Byron
v
Eastern Caribbean Amalgamated Bank**

[ANUHCVP2012/0010]

Date:

Monday, 6th November 2017

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]**

Appearances:

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

Applicant/Respondent: Ms. E. Ann Henry, QC. with her, Ms. C. Debra Burnette

Issues:

**Conditional leave to appeal to Her Majesty in Council –
Extension of time to file application for conditional leave to
appeal to Her Majesty in Council – Oral application to
withdraw application**

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

Oral Judgment or Decision

Result/Order:

[Oral delivery]

- 1. Leave is granted to the applicant to withdraw application for extension of time filed on June 26th, 2017.**
- 2. The applicant shall pay the respondent costs in the amount of \$750.00.**

Reason:

Case Name:

[1] Xavier Mason
[2] Cornell Humphreys
[3] Colin Barnes
[4] Cameron Thomas
[5] Lyndon Greene
v
Antigua Port Authority

[ANUHCVP2011/0027]

Date: Monday, 6th November 2017

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

Applicants: Mr. Kendrickson Kentish

Respondent: Mr. Craig Jacas

Issues: Leave to appeal to Her Majesty in Council

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

Result / Order: [Oral delivery]
1. Leave is granted to the applicant to withdraw the application for conditional leave filed on the 4th July, 2017, the application being out of time.
2. There shall be no order made as to costs.

Reason: The time limit for filing leave to appeal is 21 days and the applicant filed out of time. Thus the court lacks jurisdiction to make an order.

Case Name:

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

[ANUHCVP2017/0003]

Date:

Monday, 6th November 2017

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]**

Appearances:

Applicant: Mr. Curtis Bird holding papers for Mr. Reginald Amour, SC.

Respondents: Mr. Frank E. Walwyn with him, Ms. Jaqueline Walwyn

Issues:

Strike out notice of appeal

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. On the hearing of the application for an adjournment by counsel for the applicant leave is hereby granted with costs to the respondent in the amount of US\$7,500.00 to be paid within 21 days from today failing which the application stands dismissed.**
- 2. The hearing of the application to strike out and appeal are adjourned to the next sitting of the Court of Appeal during the week commencing the 12nd February, 2018 to be heard together.**

Reason:

Counsel for the applicant requests an adjournment as they have recently changed counsel from Mr. Anthony

Armstrong, Director of Public Prosecution to Mr. Reginald Amour, SC. Counsel for the respondent strongly opposed the application for adjournment as the request prejudices his client as there is a freezing order on his client's assets. The court stated that the rules require this application to be in writing setting out the evidential basis for the adjournment.

Case Name:

**Ahmed Williams
v
The Supervisory Authority
[ANUHCVP2015/0035]**

Date:

Monday, 6th November 2017

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]**

Appearances:

**Applicant: Dr. David Dorsett with him, Mr. Jarid Hewlett
Respondent: Ms. Bridget Nelson holding papers for Mr. Reginald Amour SC.**

Issues:

Leave to appeal to Her Majesty in Council

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

Oral Judgment or Decision

Result/Order:

**[Oral delivery]
1. The applicant is granted conditional leave to appeal to Her Majesty in Council pursuant to section 122 (1)(A) of the Antigua and Barbuda Constitution against the judgment of the Court of Appeal issued on July 13th, 2017 upon the condition that the applicant do within 90**

days of the date of hearing of this application for leave to appeal enter into good and sufficient security in the sum of £500.00 for the due prosecution of the appeal and the payment of all such costs as may be payable by the appellant in the event of this appeal being dismissed.

2. Such security to consist of the requisite of the said amount in the cost. The applicant do take such steps for the purpose of procuring the preparation of the record and settling such record with the solicitors for the respondent and transmitting such record to the Registrar of the Privy Council within 90 days of the hearing of this application for leave to appeal.
3. The record shall be prepared in accordance with Rules 18 - 20 of the Judicial Committee Appellant Jurisdiction Rules Order 2009, and Practice Direction 4.2.1 - 4.3.2 and Practice Direction 5 and shall be transmitted to the Registrar of Judicial Committee of the Privy Council without delay where final permission to appeal has been granted.
4. The applicant shall apply to the court for final permission to appeal to Her Majesty in Council supported by the certificate from the Registrar that the security for cost order in the hearing has been given within the time prescribed by this order to the satisfaction of the Registrar.
5. The applicant shall file its notice of appeal to Her Majesty in Council within 56 days of this court granting final leave to appeal to Her Majesty in Council and pursue its appeal to Her Majesty in Council expeditiously. The cost of this application shall be the cost in the appeal to Her Majesty in Council.

Case Name:

[1] Antigua Flight Training Center Inc.

[2] Grace Norman

v

Eastern Caribbean Civil Aviation

[ANUHCVP2017/0015]

Date:

Monday, 6th November 2017

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

Applicants: No appearance

Respondent: Dr. David Dorsett with him, Ms. Nina Joseph

Issues:

Leave to appeal – Application for an adjournment

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

Directions

Result/Order:

[Oral delivery]

- 1. The hearing of this application for leave to appeal is adjourned to Friday, 10th November 2017 at 2:00 p.m.**
- 2. The application would be heard via video conference.**
- 3. The Registrar shall cause a copy of this order to be served on Mr. Norman.**

Case Name:

Millicom (Tanzania) N.V.
v
[1] Golden Globe International Services Limited
[2] Yusuf Manji
[BVIHCMAP2016/0036]

Date:

Monday, 6th November 2017

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. John McDonald

Respondents: No appearance

Issues:

Final leave to appeal to Her Majesty in Council

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

Oral Judgment or Decision

Result/Order:

[Oral delivery]

- 1. The applicant is granted final leave to appeal to Her Majesty in Council.**
- 2. The cost of the application shall be costs of the appeal to Her Majesty in Council.**

Case Name:

**[1] Tom Matthews
[2] Teresia Matthews
v
Linde Antigua Limited**

[ANUHCVP2015/0020]

Date:

Monday, 6th November 2017

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]**

Appearances:

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

Respondent: Ms. E. Ann Henry, QC. with her, Ms. Sherrie-Ann Bradshaw

Issue:

Interlocutory Appeal –Whether the learned judge erred by hearing and granting a without notice oral application made by the respondent on the day of trial raising objection to certain witness statements, witness summaries, expert reports, in circumstances where the respondent would have been deemed to have waived any irregularity – Whether the learned judge erred by hearing and granting a without notice oral application made by the respondent on the day of trial when the respondent failed to give full disclosure to the appellants of all relevant facts, including the fact of the respondent’s intention to make its application for the striking out of certain witness statements, and in so doing the respondent failed in its duty under CPR 25.1 (i) – Whether the learned judge erred in striking out portions of witness statements where reliance was placed on certain documents which said documents were agreed to by both sides prior to trial- Whether the learned trial judge erred in entertaining the oral applications of the respondent converting the trial into a case management conference or pre-trial review without giving directions in furtherance of the overriding objective.

**Type of Oral
Result / Order**

Oral Judgment or Decision

delivered:

Result &
Reason:

[Oral delivery]

These proceedings commenced in 2011, comprised a claim and counterclaim arising out of a construction contract between the claimant and the defendants. The matter was set down for trial on the 19th of May 2015, before Justice Clare Henry and the court is advised that the trial bundles comprised of eight volumes. When the matter was call on for hearing on the first day of the trial, the claimant made an oral application raising the objection to various witness statements or parts thereof and various experts' reports or parts thereof. The intention to make the oral application was not intimated to the defendants prior to it being made. The learned judge acceded to the oral application and made an ordered striking out various witness statements and expert reports or parts thereof. The defendants who are the appellants appeal against five of the six substantive orders made by the judge on the 19th of May, 2015. It is convenient to address each of the five orders made by the judge in term.

There is no appeal against paragraph 1 of the order. Paragraph 2 of the order dated the 19th of May struck out three witness statements for non-compliance with CPR 29.11. CPR 29.11 (1) provides that if a witness statement is not served with respect to an intended witness within the time specified by the court, the witness may not be called unless the court permits. It was common ground between the parties that three witness statements were not filed in the timetable ordered by the court on the 18th of July 2014 although it was not clear to as to how late the witness statements were in fact filed. The consequence of CPR 29.11 (1) was those witnesses could not be called at the trial unless the court permitted and since permission was not sought prior to the trial the court was not able to give such permission unless the defendants had a good reason for not previously seeking permission. There was no application by the defendants for such permission. In those circumstances it was not necessary for the claimant to make any application to strike out the witness statements nor for the court to make any such order absent an application for permission to call the witness, the defendant could not call those witnesses. The Court is of the view that the order made by the judge was wrong in principle. She should not have entertained the oral application in that respect since the oral application served

no useful purpose absent an application by the defendants for permission to call three witnesses, the judge merely had to give effect to CPR 29.11 by refusing to allow the witnesses to be called. The order made by the judge also had the effect of denying the defendants the opportunity of making a future application under CPR 29.11. The Court therefore proposes to set aside the order. The consequence of that is not to permit the defendants to call the three witnesses but simply to restore position to that existing prior to the judge making the order. If the defendants wish to call the witnesses at the trial then they will need to make the necessary application under CPR 29.11.

Paragraph 3 of the order struck out paragraphs 4 and 5 of the witness statement of David Armsby upon the basis that it contained expert evidence and no leave had been given to call him as expert. Mr. Armsby is the managing director of a refrigeration service and his statement confirms that he has been providing refrigeration services including the installation and repairs of air-conditioning units for 20 years. At paragraph 3 of his witness statement, which was not struck out, Mr. Armsby states that he and his technicians had visited the premises on at least three occasions to carry out installation and repair works. At paragraph 4, he states that upon completion of the works, the technicians issued written reports in relation to the repairs and the related problem and at paragraph 5 he stated he intended to refer to the reports and to other documents at the trial. The other documents from which Mr. Armsby intended to rely were included in the trial in the agreed bundle. The defendants' contention is that the statement made by Mr. Armsby was not in the nature of expert evidence but was a compendious means of conveying the facts that he received. The court has some sympathy with that submission although it is difficult at this stage and without seeing the evidence in the context of a trial to come to a determinative view. Whilst there are many cases in the civil division where it is possible to say in advance of a hearing whether evidence is expert in nature there are others where it is not possible to make that decision without hearing the evidence in its context. The judge sitting in the civil court has the advantage of being able to hear the evidence in context and then makes a decision as to whether it is expert or not. If the judge decides the evidence is not expert then the judge can ignore that evidence for the purposes of resolving the matter. The Court is also acutely aware that Mr. Armsby is also a

witness for the claimant. In his witness statement filed for the claimant Mr. Armsby expresses a view to the effect that upon observing the compressor unit on the premises it was immediately apparent to him that they have been installed too high on the walls. That statement seems to fall within the same line between the statement of opinion and a compendious way of conveying facts as his statement in the witness statement was struck out. Given the documents to which he refers are contained in the agreed bundles it seems likely he would be cross-examined on those documents during the trial even if his statement files on behalf of the defendants remain struck out. In those circumstances striking out paragraphs 4 and 5 of his witness statement that is the statement filed on behalf of the defendant does not serve any useful purpose. In my view the learned judge fell into error in acceding to the application to strike out paragraphs 4 and 5 on the oral application. The court sets aside the order.

Paragraph 4 of the order strikes out witness statement of Karlton DaSilva. The witness statement was very short. After confirming that Mr. DaSilva was an experienced building contractor and that he visited the premises, paragraph 4 of the witness' summary indicated that Mr. DaSilva would rely on and stand by a report dated the 7th of July 2011. However, on the 18th July 2014 the court had made an order striking out the whole of the report dated the 7th of July 2011. There was no appeal against that order. The appeal against paragraph 4 is with respect hopeless. The judge was entirely right to make the order that she did and indeed there is no other order that she could possibly have made.

Paragraph 5 of the order expunges various parts of the report of Tim Carter. An earlier order dated the 5th of September 2013, give permission for Mr. Carter to be called as an expert in the area of installation of grace ice and watershield roofing materials. The complaint about Mr. Carter's report was that it delved into areas of expert evidence outside the installation of grace ice and watershield. The court does not understand counsel for the appellant Dr. Dorsett who argued that Mr. Carter should be permitted to give expert evidence outside the installation of grace ice and watershield. His points were the terms of the order were too widely drawn. In contradistinction to the position in respect of Mr. Armsby, it was open to the judge to identify evidence offered by Mr. Carter outside the area of grace ice and watershield and to expunge those parts. However, the court believes that there is merit in the

submission that the order was drawn too widely. For instance it appears to offer to strike out Mr. Carter's qualifications. The Court amends the first sentence of paragraph 5 of the order which should state "*that the report of Tim Carter be amended to expunge from it all opinions that do not relate to the installation of grace ice and watershield*". The second sentence of the order should remain in place.

At paragraph 6 of the order the learned judge permitted the defendant to amend the report of David Watt so that it complied with CPR 32.14 (2)(d) and that is the statement that has to be included in every expert report. Absence to comply with such provisions the defendants would not be permit to adduce the evidence of Mr. Watt. In those circumstances, it's surprising that the defence appeals that part of the order and the court notes that Dr. Dorsett does not press that part of the appeal, thus paragraph 6 remains in place. The Court notes that it was unfortunate the claimant did not intimate the matter that was the subject of the oral application in advance of the hearings. One of the purposes of a pre-trial review is to ensure that a matter is ready for trial. The defendants who are at fault in many respects justifiably felt ambush by the oral application on the morning of the trial. It is not for one party to advise the other party how to run its case but both parties have a duty to the court to ensure that costs are kept to the minimum and the trial dates are not wasted. Unfortunately the failures by defendants and the fact that the claimant waited until the last moment to make the oral application conspire to increase the costs, waste a trial date and massively delay the resolution of this matter. The Court makes no order for cost notwithstanding the defendants have succeeded in part in this appeal. There are the authors of their own misfortune and the court is not prepared to make an order for cost against the claimants even though they should have raised the issues in advance of the oral application on the morning of the trial. The matter should be relisted for a pre-trial review preferably before the judge that will hear the trial in order for any outstanding matters to be dealt with at that stage so that there can be confidence that the next trial date would not be lost.

Case Name:

Attley Alexander

v

The Queen

[ANUHCRA2016/0009]

Date:

Monday, 6th November 2017

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Dane Hamilton QC

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

Issues:

Criminal appeal against sentence – Murder – Oral application for an adjournment

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

Directions

Result/Order:

[Oral delivery]

- 1. The matter is adjourned to Wednesday, 8th November 2017.**
- 2. Counsel for the appellant is to file submissions by Tuesday, 7th November 2017.**

Reason:

Counsel for the appellant requested an adjournment as he was unavoidably occupied by matters outside of the jurisdiction.

Case Name:

Ramon Brito

v

The Queen

[ANUHCRA2016/0006]

Date:

Tuesday, 7th November 2017

Coram:

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

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

The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Sherfield Bowen

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

Issues:

**Criminal appeal against sentence – Possession of cocaine
with intent to supply – Whether the learned trial judge erred
in failing to take into consideration the personal
circumstances of the appellant when the fine was imposed
– Whether the learned trial judge erred in imposing the fine
without taking into consideration the means of the
appellant to pay said fine**

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

Oral Judgment or Decision

Result/Order:

[Oral delivery]

**The appeal therefore is allowed to the extent that the
consecutive sentence is varied to run concurrently.**

Reason:

**The appellant appeals his sentence of six years
imprisonment for possession of cocaine with intent to
supply and a fine of \$200,000.00 to be paid within one year,
in default of payment, one year imprisonment to run
consecutively. The appellant complained that the sentence
imposed is excessive and harsh. The appeal is predicated
on two grounds that is the court failed to consider the**

personal circumstances of the appellant and that the court did not consider the appellant's means. Counsel submitted that the appellant was suffering from prostate cancer and that the court ought to have taken this into consideration when sentencing but it was clear that the court cannot be faulted for not considering the health of the appellant because there was no evidential basis provided in support of the ailment of the appellant. In this sense the complaint against the court falls away.

Counsel for the appellant indicated that the record indicated that the appellant had no means. The learned director of public prosecutions took issue and submitted that the consecutive sentence ought to be vindicated and be replaced by a concurrent sentence and the court in fact is of this view. Consequently, the incident arose from one transaction and there was no need for the sentences to run consecutively.

Case Name:

Simon Davis

v

The Queen

[ANUHCRA2012/0007]

Date:

Tuesday, 7th November 2017

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Sherfield Bowen

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

Issues:

**Criminal appeal against conviction – Sexual Intercourse
with a minor under the age of 16 years – Buggery – Oral
application for an adjournment**

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

Directions

Result / Order:

[Oral delivery]

- 1. The appellant is to file and serve skeleton submissions with authorities on or before the 6th December, 2017.**
- 2. The respondent is to file and serve skeleton submissions with authorities on or before the 6th January, 2018.**
- 3. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.**

Reason:

Counsel for the appellant was unable to file submissions in time due to the extent of his workload and thus sought to make an application for an adjournment.

Case Name:

Wilmoth Ralph

v

The Queen

[ANUHCRA2015/0001]

Date:

Tuesday, 7th November 2017

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Sherfield Bowen

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

Issue:

Criminal appeal against conviction – Rape – Whether the

learned trial judge erred in law in allowing the appellant's wife to be a prosecution witness

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The appeal against conviction is allowed for the reason that the learned judge erred in law in allowing the appellant's wife to be called as a witness for the prosecution.**
- 2. In the interest of justice, the matter is to be remitted to the High Court for retrial.**
- 3. The terms and conditions of the appellant's bail are to be restored.**

Reason:

The court noted that the Director of Public Prosecutions has properly conceded the appeal on the ground that the learned trial judge erred in law in allowing the appellant's wife to be called as a witness for the prosecution.

Case Name:

Jesus Junkere

v

The Queen

[ANUHCRA2013/0001]

Date:

Tuesday, 7th November 2017

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Lawrence Daniels

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

Issues:	Criminal appeal against sentence – Manslaughter – Whether the sentence is manifestly excessive and severe in the circumstances
Type of Oral Result/Order delivered:	Oral Judgment or Decision
Result / Order:	[Oral delivery] The appeal against sentence having been withdrawn is accordingly dismissed.
Reason:	The appellant has appealed his sentence of 14 years imposed for manslaughter. He complains that the sentence is manifestly excessive. During the oral submissions counsel for the appellate in response to a question from the bench stated that it cannot discern any error in principle committed by the judge in imposing the sentence and that the sentence imposed was not manifestly excessive. Counsel indicated in light of the court's observation that he will withdraw the appeal against sentence. The court thought it a wise decision on the part of the counsel to withdraw the appeal against sentence. In imposing sentence the judge took into account the mitigating and aggravating factors and the prevalence of the offences involving the use of firearms. It is clear that the sentence of 14 years imposed is within the range of sentences imposed by this court for manslaughter arising from provocation. The court holds the view that the sentence imposed was not manifestly excessive nor can the court discern any error in principle committed by the judge in imposing sentence.

Case Name:

Corian Thomas

v

The Queen

[ANUHCRA2016/0004]

Date:

Tuesday, 7th November 2017

Coram:

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

Appearances:

Appellant: Mr. Ralph Francis

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

Issues:

**Criminal appeal against conviction – Armed Robbery – Oral
application for an extension of time**

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

Directions

Result / Order:

[Oral delivery]

- 1. Leave is granted to the appellant to file and serve skeleton submissions with authorities on or before the 14th December, 2017.**
- 2. The respondent is to file and serve skeleton submissions with authorities on or before the 1st February, 2018.**
- 3. The hearing of this appeal is traversed to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.**

Reason:

Counsel for the appellant has indicated that he unfortunately was unable to file submissions in time and thus made an oral application for an extension of time.

Case Name:

Julian Morgan

v

The Queen

[ANUHCRA2010/0014]

Date:

Tuesday, 7th November 2017

Coram:

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

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

The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Sherfield Bowen

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

Issues:

Criminal appeal against conviction – Rape – Whether the learned trial judge failed to take into consideration the absence of mitigating factors when sentencing the appellant – Whether the term of imprisonment is manifestly excessive and harsh under the circumstances

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

The appeal against sentence is allowed to the extent that the sentence of 16 years is varied to 13 years.

Reasons:

The appellant was convicted of the offence of rape and sentenced to 16 years imprisonment. He has appealed the sentence on the ground that the sentence imposed was excessive and harsh. He submits that apart from the inherent violence used in the offence of rape there was lack of violence. He also said there was no trauma to the complainant of any sexual transmitted diseases and that

judge gave too much weight to aggravating factors. In the judgment below, the trial judge found several aggravating factors i.e.: the very serious nature of the offence; the age of the virtual complainant (the complainant was only 15 years at time of the offence as against the age of the defendant who was 29 at the time); the betrayal of trust (the appellant knew the complainant from the time she was a child and he was very much a part of the family); lack of remorse on behalf of the defendant; and the prevalence of these offences in the jurisdiction. The court also notes that another factor for consideration is that the trial judge found that the appellant's age and his previous good character were mitigating factors.

It is obvious to the court that factors in aggravation here outweigh the factors in mitigation and the previous good character of the appellant, which would reduce the weight given the serious nature of the offence and the age of the appellant. As a result of the serious nature of the offence the court would not give much weight to these two mitigating factors. In arriving at the sentence of 16 years the court cannot glean the evaluative process the judge applied and therefore the court is at liberty to review this matter. It is known that to disturb the sentence of the judge it has to be demonstrated that the judge erred in principle in arriving at a sentence or that sentence was manifestly excessive. The court is therefore of the view that giving the circumstances of this case, an appropriate starting point would be 10 years and considering the factors in aggravation there would be an escalation of 4 years. From this the court would deduct one year for mitigating factors which amounts to 13 years. The court believes that 13 years in the circumstances, would represent a reasonable sentence.

Case Name:

Kaniel Martin

v

The Queen

[ANUHCRA2012/0001]

Date:

Tuesday, 7th November 2017

Coram:

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

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

Appearances:

Appellant: In person

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

Issues: Criminal appeal against conviction – Murder

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

Result / Order: [Oral delivery]
This appeal is set down for status hearing at the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing the 12th February, 2018.

Reasons: The attorney for the appellant who ordinarily practices in St. Lucia was absent as a result of illness.

Case Name: **Georgette Aaron
v
The Queen**

[ANUHCRA2014/0014]

Date: Tuesday, 7th November 2017

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

Appearances:

Appellant: Mr. Ralph Francis

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

with him, Mrs. Shannon Jones-Gittens

Issue: Criminal appeal against sentence – Perverting the course of justice – Oral application for an extension of time to file submissions – Oral application to adduce fresh evidence

Type of Oral Result/Order delivered: Directions

Result / Order: [Oral delivery]

1. Leave is granted to the appellant to file and serve skeleton submissions with authority on or before the 14th December, 2017.
2. The respondent is to file and serve skeleton submissions with authorities on or before the 1st February, 2018.
3. The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.

Reason: Counsel for the appellant has indicated that due to a grave error on his behalf by misplacing the trial bundle now seeks an application for an extension of time.

Case Name: Alexis Thomas
v
The Queen

[ANUHCRA2015/0017]

Date: Tuesday, 7th November 2017

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

Appearances:

Appellant: Mr. Lawrence Daniels

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

Issues: Criminal appeal against conviction – Armed Robbery – Whether the evidence was inconsistent with the warnings given to the jury – Whether the learned trial judge misdirected himself by failing to give the LUCAS direction to the jury – Whether the conviction is unsafe and sentence manifestly excessive

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

Result/Order: [Oral delivery]
1. The appeal is accordingly dismissed against conviction.
2. The appeal is allowed against sentence to the extent that the sentence of 23 years imprisonment is varied to 18 years.

Reason: The appellant appeals his conviction and sentence of 23 years' imprisonment for the offence of armed robbery. The grounds of appeal advanced are that: i. the evidence was inconsistent and could not support a conviction; ii. the trial judge misdirected himself in law when he failed to give the Lucas warning; and iii. the sentence of 23 years' imprisonment was excessive in all the circumstances taking into account the appellant's age and other factors such as previous good character. The appellant's counsel in the course of his submissions withdrew the ground in relation to the Lucas warning. This ground is therefore dismissed.

In support of the appellant's ground of appeal that the evidence was inconsistent and could not support the conviction, counsel for the appellant submitted that the court referred to the evidence in respect to gunshot wounds, the number of bullet holes found on the hoody and on the grey T-shirt and advanced the view that the trial judge did not direct the jury properly on those issues which

counsel for the appellant said were quite critical. The appellant counsel submitted that the holes found on the hoody did not match those found on the t-shirt. Counsel also advanced an argument based on the timeframe of one minute within which the incident occurred. Apart from focusing on these matters the appellant's counsel did not advance any other arguments in respect to his contention that the evidence was inconsistent and could not support a conviction. At the end of counsels' submissions the court invited the learned director of public prosecutions to address it on the issue of sentencing. This of course foreshadowed the court's view as to the success of appeal against conviction.

The court is of view that the prosecutions' case against the appellant was a very strong one. It was compelling and there was cogent circumstantial evidence. The director referred in his submissions to the lengthy conversation that took place between the appellant after he returned to the casino and the main witness of the prosecution Henry Dick. During that conversation there was clear language spoken by the appellant to his colleague Henry Dick in which he effectively admitted to attempting to rob the casino and the reason for so doing. The Director of Public Prosecution in his written submissions also referred to words spoken by the appellant after he was shot multiple times and was about to leave the casino where he said I am sorry. So there is no doubt that the case brought by the prosecution against the appellant was a very convincing one. The evidence against the appellant was quite formidable and the jury undoubtedly brought the correct verdict. In his submission the DPP referred to two errors made by the learned trial judge when referring to the good character of the appellant and the lack of a credibility limb and also on voice ID. However, given the strength and cogency of the evidence presented by the prosecution, the court is not in doubt that if the jury was properly directed, they would have reached the same conclusion with respect to the guilt of the accused. Accordingly, the court finds no merit in the appeal and the appeal is accordingly dismissed against conviction.

With respect to the appeal against sentence counsel for the appellant submitted that 23 years was excessive and in his oral submissions suggested that a sentence of 13 years would have been appropriate. The aggravating factors in this case are overwhelming. The appellant was a police

officer. He did security work at the casino where his colleague worked also. He came to rob the casino armed with gun. The robbery was carefully planned. There was the issue of breach of trust by the appellant both in respect of his employment as a police officer and his employment at the casino doing security duties. The factors in mitigation that the appellant was of previous good character, had no prior conviction but these in fact pale in significance when one considers the nature and gravity of the factors in aggravation. The learned Director of Public Prosecutions advanced the view that the sentence was wrong in principle, in that it fell outside the range of sentences that would be imposed for offences of that nature and submitted that an appropriate range would be between 15 and 18 years. In his reply counsel for the appellant did agree with that range advanced by the learned Director of Public Prosecutions. In imposing the sentence of 23 years the learned trial judge would appear to have been guided by the law which provided a minimum/maximum penalty of 25 years for that offence. The law strongly frowns on minimum/maximum sentences to the extent that this appeared to have influenced the learned trial judge in arriving at 23 years there would be an error in principle.

Fitzroy Knight t/a Knight Enterprises

v

Patsy Neckles

[ANUHCVP2015/0006]

Date: Tuesday, 7th November 2017

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

Appearances:

Appellant: Dr. David Dorsett

Respondent: Mr. Ralph Francis

Issues: Whether the learned judge erred in law in holding that the defendant who made the contract with the tenant ostensibly as the agent for the claimant could be sued upon the contract

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

Result/Order: [Oral delivery]
1. The appeal is allowed and the orders of the learned judge set aside.
2. The appellant is awarded costs below in the amount of \$5,600.00 and on appeal two thirds of the cost below.

Reason: In the court below the claimant claimed damages for a breach of contract and negligence. The defendant failed to properly discharge his duty as rental agent for property situated at McKinnons. The claimant pled at paragraph 1 in the statement of claim that in or around July 15, 2010 the claimant and the defendant entered into an agreement whereby it was agreed that the defendant would act as agent for the claimant for the purpose of securing the rental of a three-bedroom house situated at Evanson Road, McKinnons in the parish of St. John. In the defense the defendant denies that there was any duty owed on the part of the defendant to enforce the term of the agreement for the termination of the agreement after payment for rent and utilities have been unpaid for a period of seven days and he says that there was no duty on his part to keep account and oversights of the furnishings in the house and secure their maintenance therein. The claimant had claimed that rent had been allowed to go unpaid for a period of eight months amounting to about \$20,000.00 and the lease agreement provided that if rent were unpaid for seven days and utilities were also unpaid for that time tenancy would have been determined. The learned judge heard the matter and found that the agreement between the parties was for the defendant to act as the property manager for the claimant. It is clear that his performance of his contractual duties left much to be desired. He permitted the tenant to accumulate \$20,000.00 in unpaid rents. This represents

some eight months. Under the agreement the defendant would have retaken control of the premises once rent was more than one month late. The learned judge also held that the defendant had an obligation to carry out his contractual duties to ensure the tenant performed his duties. The findings by the trial judge that the agreement between the parties was for the defendant to act as property manager for the claimant seems inconsistent with the case pled by the claimant. The case pleaded below was quite clear. The claimant and the defendant entered into an agreement whereby it was agreed that the defendant would be acting as agent for the claimant for the purpose of securing the rental of a three-bedroom house. Neither on the pleadings of the evidence is there any support for the finding of the judge that the defendant was to act as property manager for the claimant. Dr. Dorsett, the appellant's counsel, has appealed the order of the judge. The appellant challenges the finding that the defendant was liable for the rent uncollected and outstanding utilities incurred by the tenant. The ground of appeal states that judge erred in law in holding that the defendant who made the contract with the tenant ostensibly as the agent for the claimant could be sued upon the contract. In his submissions Dr. Dorsett posits that the appellant's case was that having secured the tenant for the property his principal function was to serve as a rental collection agent that is to collect rent and forward the same to the landlady after deducting the rental commission. The appellant's principal contention is that the nature of the contract dated 6th August 2010, was a lease contract between the lesser and the lessee. The lease contract was entered into by the landlady through the agency of the appellant and the said contract imposed no obligation upon the appellant who was no more than the agent of the landlady. The judgement entered in favour of the landlady against the appellant is one where the appellant is held liable for the contractual failings of the lessee arising under the lease contract. The appellant is not a party to the lease contract and on account of the doctrine of privity contract cannot be held liable for the lessee's breach. Mr. Francis appearing for the respondent seeks to uphold the judgment of the learned trial judge. Dr. Dorsett submitted that the lease contract between parties existed but rights and obligations under the contract do not extend to a third party as the appellant. This is the effect of the common law doctrine of privity. The court having heard the parties and the submissions advanced are of the view that the learned trial judge erred and came to a wrong

decision in this matter. As indicated earlier the case pleaded was very clear and evidence adduced in support thereof the judge could not have found that the defendant was the property manager. There is no evidence to support that conclusion. The judge clearly erred. It is to be noted that in his judgement the learned trial judge mentioned the absence of a written agreement between the parties. At page 108 of the appeal record the judge says that the contract in question was said by the claimant to have been made in writing but the defendant did not provide her with a copy. The defendant denies this. The judge noted that the parties agreed that there was a contract but without writing this court is left with only the oral recollection of the parties as to its terms. The judge went on to say fortunately this is not the only source of evidence as to the terms of the agreement between the parties. This court could look also at the actions of the parties to discern the terms of the agreement. The judge went on effectively to find the agreement by virtue of the terms of the lease. The court is of the view that the judge was not permitted in law to so do. Even when one looks at the terms of the agency, it is clear that the pleaded case clearly set out in paragraph 1 where it said that it was agreed that the defendant would act as agent for the claimant for the purpose of securing the rental of a three-bedroom house situated at Evanson Road in McKinnons. This sets out the very limited nature of the agency. The court having gone through the submissions, the case as pleaded and the evidence, is of the view that the appeal of the appellant must be allowed and the orders of the learned judge set aside. The judge had ordered judgment for the claimant in the amount claimed which was \$37,336.52 as well as cost in the amount of \$5,600.

Case Name:

Attley Alexander

v

The Queen

[ANUHCRA2016/0009]

Date:

Wednesday, 8th November 2017

Coram:

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

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

The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Dane Hamilton QC

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

Issues:

Criminal appeal against sentence – Murder – Oral application for an adjournment

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

Directions

Result/Order:

[Oral delivery]

- 1. The appellant is granted leave to file and serve skeleton submissions with authorities on or before the 8th of December, 2017.**
- 2. The Respondent is to file and serve submissions in reply if necessary on or before the 18th of January, 2018.**
- 3. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 12th February, 2018.**

Case Name:

**Tadj Williams
v
The Queen**

[ANUHCRA2013/0002]

Date:

Wednesday, 8th November 2017

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Lawrence Daniels

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

Issues:

Criminal appeal against conviction – Rape

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

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
The appeal against conviction and sentence is dismissed.**

Reason:

The appellant was convicted of six counts of unlawful sexual intercourse with a girl under the age of 14 years. He was sentenced to 10 years on each count, the sentences to run concurrently. He appealed against conviction and sentence but the appeal has been conducted against the sentence only. The Court has looked at the aggravating and mitigating circumstances in this case. A powerful mitigating circumstance is the age of the appellant at the time that the offences were committed. He also has no criminal record and is of good character. However there are some very significant aggravating circumstances in this case. First is the manner in which the offences were committed. It was over a period of a year and there were

six different offences. On each occasion the appellant had invited his friends over and there were multiple acts of sex committed with the victim. The appellant watched these acts being committed and then afterwards also had sex with the victim and deceptively told her that it was his way of checking whether she was pregnant or not. The victim is also his cousin. This is a very serious offence which carries a maximum sentence of life imprisonment.

Counsel for the appellant invited the court to use 8 years as a starting point for sentencing. The court has concluded that the aggravating circumstances far outweigh the mitigating circumstances even taking into account of the age of the appellant the result is that if the court is persuaded to start at the point of eight years, the sentence that imposed would be more than eight years which would bring it close to the ten years that the judge imposed. The court will not interfere with a sentence unless it is satisfied that the judge committed an error in the sentencing process or that the sentence imposed is manifestly excessive. Neither of those two circumstances apply in this case. The learned trial judge paid due regard to the important consideration of the age of the appellant and the record indicates that there may be one reason why he imposed a sentence of ten years and no more. The important consideration for the court is that the judge gave due regard to the age of the appellant. In all the circumstances, the court does not think that this is a case where we should interfere with the sentence that was imposed by the trial judge and therefore the appeal against sentence is dismissed.

Case Name:

Dave Roacher

v

The Queen

[ANUHCRA2015/0008]

Date:

Wednesday, 8th November 2017

Coram:

The Hon. Mde. Gertel Thom, Justice of Appeal

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

The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Lawrence Daniels

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

Issues: Criminal appeal against conviction – Armed Robbery

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

Result/Order: [Oral delivery]
The appeal is allowed. The conviction is quashed and sentence set aside. There is no order as to a retrial of the appellant.

Reason: The court has read the record of appeal and the submissions on both sides. The court notes the concessions made by the learned Director of Public Prosecutions on the issue of the voice identification and the failure of the learned trial judge to give the jury an adequate and proper direction on the voice identification evidence. The crown's case rested solely on voice identification and it was incumbent on the learned trial judge to give the jury a full direction along the lines of the Turnbull Direction on the issue of voice identification, which he failed to do. The result of such a failure rendered the conviction of the appellant unsafe and these principles have been well outlined in the case of Donald Phipps v R Privy Council No 0081 of 2011, and R v Flynn [2008] Crim LR 799 as referred to by the learned Director of Public Prosecutions. The omission to give the direction was fatal and the court agrees with the learned Director of Public Prosecutions that the appeal should be allowed, the conviction should be quashed and the sentence set aside. In relation to the issue of the retrial, the principles which the court would apply in determining whether to order a retrial are also well settled and they were stated by this court in Sherfield Bowen v R Criminal Appeals No, 4 of 2005 an appeal from this very jurisdiction. The court has

looked at the public interest as submitted by the learned director and also the interest of the appellant. The court notes that the evidence of the prosecution was not of the kind that could be described as being compellable, at best, it was tenuous. The words spoken on which the voice identification was alleged to have been made were a total of seven words -- "Relax, relax. Go up on the bed" -- by a person who was masked and armed with a gun in circumstances where the witnesses were terrified. The court is of the view that having regard to the nature of the evidence; the time that has elapsed since the commission of the offence and the trial; and the time spent in custody when balancing the public's interest and appellant's interest, the interest of justice would be best served in if there is no order for a retrial.

Case Name:

[1] Kenneth Meade

[2] Hilda Meade

v

**Cleaveland Seaforth and Brian Glasgow as Joint
Receivers of Antigua Overseas Bank Limited (In
Receivership)**

[ANUHCVP2017/0009]

Date:

Wednesday, 8th November 2017

Coram:

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]**

Appearances:

Applicants: Dr. David Dorsett with Mr. Hugh Marshall and with him, Ms. Kema Benjamin and Ms. Andrea Smithen

Respondents: Mr. Anthony Astaphan, QC. with him, Mr. Kendrickson Kentish and Ms. Kathleen Bennett

Issues:

Injunction against respondents/full court to reopen and reconsider application for leave to appeal – Whether the

transaction is unlawful contrary to the International Business Corporations Act CAP 222 – Whether the mode of security was a demand charge – Whether there was indeed a default of s.72 Registered Land Act (power of sale)

Type of Oral
Result / Order
Delivered:

Oral Judgment or Decision

Result/Order &
Reasons:

[Oral delivery]

This is an appeal against the judgment of Madam Justice Wilkinson made on 22nd March 2017 in which she dismissed the Claimants application for an injunction restraining the Defendant from selling the Claimants property pursuant to the terms of a legal charge dated 17 January 2007 and/or a further charge dated 4 July 2017.

The background to the matter is as follows:

- The Defendant (the “Bank”) is an offshore bank incorporated in Antigua & Barbuda pursuant to the International Business Companies Act (the “IBC Act”). The Bank went into liquidation in 2015, and the Defendants were appointed as its liquidators;
- Emerald Springs Villas Ltd is a company also incorporated in Antigua & Barbuda pursuant to the IBC Act (“Emerald”).
- The Claimants are the owners of the real estate registered at the Land Registry with as St. Phillip’s South, Block 32 3286A, Parcel 210 (the “Property”).
- The Bank agreed to lend Emerald the sum of USD 650,000 from the Bank. There were a number of facility letters setting out provisions relating to the loan. In particular, the facility letter dated 2 February 2009 provided that:
 - i. Its purpose was to refinance an existing facility – an earlier facility letter dated 19 July 2007 provided that the loan was being made as a bridging facility between the construction and sale of villa properties;

- ii. It was repayable by 120 equal monthly amortized installments of USD 8,741 to commence one month from the date of the facility letter. The earlier facility letter had provided that the loan was repayable on demand, and the letter dated 2 February 2009 also contained a provision permitting the Bank to demand repayment;
- iii. It was to be secured by:
 - 1. The two legal charges mentioned above – the first for US\$500,00 and the second for US\$150,000 over the Property
 - 2. a joint and several personal guarantee given by the Claimants for the sum of \$690,000
 - 3. a further legal charge over the Property for \$40,000
- It is important to note that it was Emerald and not the Claimants that were borrowing the money from the Bank.
- The facility letter was addressed to the Directors of Emerald. It was accepted on behalf of Emerald by the first Claimant acting as a director. Both the first and second claimants signed a statement on the facility letter confirming that they understood the terms and conditions of the facility and that they agreed to provide their joint and several guarantee.
- As I noted above, the Bank was put into liquidation in 2015, and the Defendants are its liquidators.
- On 29 August 2016, the solicitors acting for the liquidators served a document called a Notice to Pay Off Debt on each of the Claimants. The notice recited that it was given pursuant to section 72 Registered Land Act.

The essence of these proceedings is an attempt by the Claimants to prevent the Bank, acting through its liquidators, from enforcing the terms of the legal charges by selling the Property. The Claimants assert that the Bank should not be entitled to enforce the legal charges for the

following reasons:

- in paragraph 3 of the Amended Statement of Claim that *the facility is null and void and of no legal effect, it being a commercial banking transaction within the State of Antigua and Barbuda and contrary to the Defendant's license as an offshore bank*. They further assert that *The Defendant's involvement in banking business within the State of Antigua and Barbuda is both contrary to law and public policy*;
- in paragraph 4 of the Amended Statement of Claim that the second Claimant did not sign the guarantee, and that consequently neither she nor the first Claimant are bound by it. However, and somewhat at odds with the averment above, paragraph 4 also contains an admission that the loan facility was personally guaranteed by the first Claimant.
- In paragraph 5 of the Amended Statement of Claim that the guarantee is void ab initio and of no legal effect because it is part of an illegal transaction.
- At paragraph 6 of the Amended Statement of Claim that the Claimants assert that no demand has been made in accordance with the guarantee.
- At paragraph 7, of the Amended Statement of Claim it is averred that the guarantee was secured by the legal charges. It is further asserted that the second named claimant did not have the benefit of independent legal advice prior to its execution.
 - i. Unfortunately for the Claimants the first averment is not correct in that it was the obligations of Emerald pursuant to the bank facility, and not the obligation of the Claimants pursuant to the guarantee, that was secured by the legal charges.
 - ii. I also note that the Claimants do not provide any particulars as to why the second Claimant should had benefitted from independent legal advice prior to the execution of the legal charges. In particular, there is no averment that:
 1. The second Defendant was subject to

any undue influence from the first Defendant in respect of the execution of the legal charges;

2. Any of the circumstances existed that might have put the Bank upon enquiry as to the possibility of undue influence – such as an averment that the second Defendant was not a shareholder and/or a director and/or beneficially interested in Emerald and/or that the second Claimant had no interest or benefit in the facility being advanced to Emerald
- At paragraph 8 of the Amended Statement of Claim that the legal charges are of no legal effect and are void ab initio as they form part of an illegal transaction that is and was outside the legal authority of the Defendant to act.
 - Paragraph 9 of the Amended Statement of Claim recited the notices to pay I mentioned above.
 - At paragraph 10 the claimants challenged the legality of the demands for the following reasons:
 - i. The entire transaction is illegal and contrary to public policy;
 - ii. The guarantee which the charges secure is illegal and contrary to public policy – as I noted above the charges secure the liability of Emerald pursuant to the facility and not any obligation of the Claimants pursuant to the guarantees.
 - iii. Absent a demand having been made in writing against the first Claimant, there existed no default under the charges that continued for a month thereby authorizing the Bank to issue a section 72 notice
 - iv. The legal charges are not valid as against the interest of the second Claimant who as no obligation under the charges and who executed them without the benefit of independent legal advice.
 - v. The second claimant is not a party to the transactions between Emerald and the Bank, and gave no guarantee – it is said

that it follows that neither of the claimants is under obligation to the Defendant in respect of any sums of money.

vi. The notice to pay issued to the second Claimant is unlawful.

- Finally paragraph 11 of the Amended Statement of Claim avers that the second Claimant is under no obligation to make payment in accordance with section 64(2) RLA.

On 16 November 2016, the Claimants issued an application for an injunction to restrain the Bank from enforcing the legal charges. The grounds of the application were:

- CPR 17.4 – this is merely a procedural rule and cannot be a ground for the grant of an injunction
- The commercial transaction between the Bank and Emerald, with the first Claimant as guarantor, was unlawful and in direct contravention of the Bank's then banking license and remains unenforceable and void ab initio
- The Bank is not entitled to sell the Property having failed to issue any demand in writing under the Deed of Guarantee which has been in default for one month, which guarantee is secured by the legal charges
- The second Defendant is not a party to the transaction between Emerald and the Bank, and is under no commitment to the Bank
- The second Defendant did not have the benefit of independent legal advice prior to executing the legal charges.

The first Claimant swore an affidavit in support of the application for an injunction, but there was no evidence from the second Claimant.

- In particular neither of the Claimants gave evidence to the effect that the second Defendant was not a shareholder and/or a director and/or beneficially interested in Emerald and/or that the second Claimant had no interest or benefit in the facility being advanced to Emerald.
- The first Claimant stated that Emerald was incorporated pursuant to the Companies Act – in fact it transpires that it is incorporated under the

IBC Act.

- At paragraph 8 of his affidavit, the first Defendant states that *“At no time has the Respondent made a demand of me as guarantor to pay the monies under the Deed of Guarantee. Therefore, no demand under the Charges has been made and no default has been for one month giving the Bank a right to issue the [section 72 notice]”*. Unfortunately, the first Claimant has made the same error made in paragraph 7 of the Amended Statement of Claim in believing that the legal charges secured the sums payable under the guarantee rather than the sums due by Emerald pursuant to the bank facility.

The first Defendant swore an affidavit on behalf of the Bank. He had not direct knowledge of the event surrounding the transactions with Emerald and the Claimant and was obliged to rely on the Bank books and records.

- At paragraph 5 of his affidavit he states that the records of the Bank disclose that *the claimants acting for and on behalf of Emerald, a company owned and controlled by the Claimants or in which they have a beneficial interest ... applied for and received the loans.*
 - i. The first Defendant does not produce the Bank records showing that:
 - 1. the claimants, as opposed to the first Claimant who signed the facility letter on behalf of Emerald, acted for and on behalf of Emerald;
 - 2. Emerald was owned and controlled by the Claimants or that they had a beneficial interest in Emerald. The fact that this point is made in the alternative puts the Court on enquiry as to exactly what the records show.
- At paragraph 8 he states that the records show that Emerald defaulted on the loan and owed the approximate sum of \$765k in December 2016
- At paragraph 11 he produces a copy of the 2 February 2009 facility letter
- At paragraph 12 he produces a copy of the

certificate of incorporation of Emerald showing that it was incorporated pursuant to the IBC Act and not the Companies Act

- At paragraph 15 he notes that the execution clause of the charge recites that the second Claimant signed the charge before a witness in Antigua, and therefore doubts that the first Claimant's assertion that she signed it in Canada.
- The remaining paragraphs of his affidavit predominantly recites legal advice that he has been given, and do not take the matter much further.

The application for an injunction was argued before the Judge on 15 February 2017, and she delivered her oral judgment on 28 March 2017.

The Judge considered the following matters in her judgment:

- What weight should be placed on the statements of the first Claimant concerning the execution of the documents by the second Claimant in circumstances where the second Claimant had not sworn any evidence, and no good reason was offered for such failure to file evidence.
 - i. Hearsay evidence is admissible on an application for an injunction provided that the source of the knowledge is identified.
 - ii. It is a matter for the Judge to determine what weight, if any, she places on the hearsay.
 - iii. At paragraph 10 of her judgment 10 and 11 the Judge decided, in effect to place no weight on the evidence of the first Claimant concerning the circumstances of the execution of the charges by the second Claimant.
 - iv. In our opinion, that was a decision that the Judge was entitled to reach and we do not consider that there is any basis upon which we could interfere with that part of her judgment. The claim in undue influence, was on the pleading and on the evidence (or rather the lack of evidence) before the learned Judge was hopeless and she was

entitled to form the view that it did not give rise to a triable issue.

- The issue concerning the legality of the loan and the related security. In a lengthy part of her judgment starting at paragraph 34 and finishing at paragraph 50, the Judge noted that both Emerald and the bank were incorporated under the IBC Act and not the Companies Act, considered and set out the relevant law relevant to the illegality point taken by the Claimants.
- At paragraphs 37 to 43 the Judge stated that: [I do not intend to read paragraphs 37 to 43 of the Judgment in order to save time but they should be deemed to be incorporated into this judgment, and included in any transcript of it].
- At paragraphs 44 to 50 she considered the relevant case law including American International Bank v Woods Estates Holding Co Ltd (ANUHCv 2002/0074), Hughes v Asset Managers 1995 3 AER 669 and perhaps most importantly Patel v Mirza 2016 3WLR 399. [Again I do not intend to read paragraphs 48 to 50 of the judgment but they should be deemed to be incorporated into this judgment, and included in any transcript of it].

At paragraph 64 the learned judge held that she could not declare and deem the contract between the Bank and Emerald to be illegal and/or unenforceable and at paragraph 65 held that the bank is entitled to enforce the contract to secure repayment of the loan. It seems to us that it was not necessary for the Judge to go quite that far, but she was entitled to form the opinion that there was no triable issue with respect to the claim that any part of the facility, and/or the related security, was void ab initio and of no legal effect because it is part of an illegal transaction. We cannot fault the Judge's view in that respect.

The final limb of the Claimant's application for an injunction raised an issue as to whether any demand had been made pursuant to the guarantee. Unfortunately, that was a complete red herring because the Bank is not relying on the guarantee for the purposes of its claim to be entitled to sell the Property.

The relevant parts of the legal charge dated 19 January 2007 provide as follows:

We, [the Claimants] hereby jointly and severally charge our respective interests in the [Property] to secure the payment by [Emerald] to [the Bank] of the principal sum [sets out amount and interest] to be repaid on demand ... unless hereby negative modified or added to and also subject to the special terms and provisions hereinafter appearing.

The critical question is whether there has been (i) a demand on Emerald (if any such demand is required, and we do not express an opinion on whether such a demand is required), and (ii) a demand on the Claimants pursuant to the terms of the legal charge.

The Claimants do not plead that there has been no such demand made pursuant to the legal charge, as opposed to pursuant to the guarantee, and do not address the matter in the evidence. The burden was on the Claimant pursuant to the first part of the American Cynamide test was to plead a cause of action, and adduce sufficient evidence to show that there is a triable issue in respect of that cause of action. The Claimants have failed to do so, and in the circumstances, there is no basis upon which the Judge could have granted an interlocutory injunction. We expressly do not say anything about whether the Claimants might be able to plead such a cause of action, and adduce the necessary evidence to show that there is a triable issue, because it is not a matter before us. In those circumstances, we do not need to consider any issue relating to section 64 or 72 RLA.

We note that at paragraph 67 of her judgment, the learned Judge held that *the issues between the parties are indeed serious issues. The first hurdle of American Cynamide has been crossed.* We do not understand exactly what the Judge meant by that paragraph, but it is at odds with the remainder of her judgment (both before and after that paragraph) which effectively finds that no triable issue has been raised by the Claimants.

In the circumstances, we are satisfied that the Judge was right to refuse the injunction and the appeal is dismissed.

Agreed costs in sum of \$4,000.

Case Name:

Michael Josiah

v

Andrea Joseph

[ANUHCVP2015/0031]

Date:

Wednesday, 8th November 2017

Coram:

The Hon. Mde. Gertel Thom, Justice of Appeal

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

The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Andrea Smithen with her, Mr. Hugh Marshall Jr.

Respondent: Ms. Safia Roberts with her, Ms. Kamilah Roberts

Issues:

Whether the learned trial judge erred in the computation of damages

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

Oral Judgment or Decision

Result / Order:

- 1. The Appeal is allowed.**
- 2. By Consent:**
 - (i) The award of damages in the amount of EC\$1,050,000.00 is reduced to the sum of EC\$327,000.00.**
 - (ii) The Appellant shall pay the Respondent the costs of the High Court in the form of prescribed costs on the sum of EC\$327,000.00.**
- 3. By Order the Respondent's claim for consequential loss is not allowed.**
- 4. The costs of the Appeal are awarded to the Appellant assessed at 75% of two-thirds of the costs awarded in the High Court less the costs of the transcript in the amount of EC\$1,023.00.**

Case Name:

Hilroy Humphreys

v

Ian Peters

[ANUHCVP2011/0031]

Date:

Thursday, 9th November 2017

Coram:

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

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

The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Septimus Rhudd

Respondent: Mr. John Fuller

Issues:

Oral application for leave to withdraw as counsel on record

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

Directions

Result / Order:

[Oral delivery]

- 1. The hearing of the appeal is traversed to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.**
- 2. The respondent is to file and serve skeleton submissions with authority on or before the 22nd January, 2018.**
- 3. Costs to the appellant agreed at \$750.00.**

Reasons:

Counsel for the respondent appeared in the matter below for a different defendant who was successful. Counsel's

appearance now poses a conflict and as such makes an application to withdraw himself as counsel on record.

Case Name:

Kenard Byron
v
Eastern Caribbean Amalgamated Bank
[ANUHCVP2012/0010]

Date:

Thursday, 9th November 2017

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

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

Applicant/Respondent: **Ms. E. Ann Henry, QC. with her, Ms. C. Debra Burnette**

Issues:

Application for a stay of execution of judgment of the Court of Appeal dated 31st May, 2017

Type of Oral Result / Order Delivered:

Oral Judgment or Decision

Result/Order:

[Oral delivery]

- 1. The execution of the judgment of this court dated the 31st May, 2017 be stayed and the status quo be preserved pending the hearing of an application of special leave to appeal before Her Majesty in Council subject to the applicant/respondent making a payment either into court or into a joint account to be established by the two solicitors of the full amount of the judgment debt plus interest from today's date within 14 days.**
- 2. If payment is not made within 14 days then the stay**

shall lapse.

Reason:

This is an application by the Eastern Caribbean Amalgamated Bank for a stay of the order of this court pending an application for special leave to appeal and if that leave is granted pending the hearing of the court of appeal. The application is put on the basis that not to grant leave would cause financial ruin to the bank, because, the creditor has intimated an intention to use every means at his disposal to enforce the judgment including sending bailiffs into the bank to seize the bank assets during working hours. Additionally, Ms. Henry in her oral submissions noted that there is some concern of the bank that if the money is paid to the creditor and they are to win in the Privy Council then they would be at risk that they would not be able to recover the money from the creditor. It is the court's view that the evidence from the bank is very thin indeed. Ms. Henry has offered to pay the money into court as a security condition on obtaining leave. The court thinks that if the money is paid into court that is sufficient to satisfy that this is an appropriate case to exercise the court's jurisdiction to grant a stay until the hearing of the application for special leave and if the application for special leave is successful a further application must be made to the Privy Council for continuation of the stay pending the hearing of the appeal.

Case Name:

Carlisle Bay Resort

v

Berlinda Dowe

[ANUHCVP2015/0002]

Date:

Thursday, 9th November 2017

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Hugh Marshall, Jr. with him, Ms. Andrea Smithen

Respondent: Mr. Rushaine Cunningham

Issue: Oral application for leave to complete record of appeal and to file supplemental submissions

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

Result/Order: [Oral delivery]
1. The appellant is to file and serve amended submissions on or before the 19th December, 2017.
2. The respondent is to file and serve skeleton submissions in reply if necessary on or before the 19th January, 2018.
3. The adjournment is to facilitate the completion of the record of appeal.
4. Costs of \$750.00 to be paid on or before the 9th December, 2017.

Reasons: Counsel for the appellant recently recognised that the record was incomplete and as such his submissions incorrectly reflect what he intends to address the court on, thus made an oral application to file amended submissions.

Case Name: Leroy King
v
[1] The Attorney General of Antigua and Barbuda
[2] Minister of Foreign Affairs

[ANUHCVP2017/0011]

Date: Thursday, 9th November 2017

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

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

Respondents: Ms. Bridget Nelson

Issue: Application for an extension of time to file and serve skeleton arguments

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

Result/Order: [Oral delivery]
1. Leave is granted to the respondent to file and serve skeleton submissions with authorities on or before the 19th December, 2017.
2. The hearing of this appeal is traversed to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.
3. Costs to the appellant of \$1500.00 to be paid on or before the 19th December, 2017.

Reasons:

Case Name: Andre Michael
v
Kenneth Providence
[ANUHCVP2016/0018]

Date: Thursday, 9th November 2017

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Safia Roberts with her, Ms. Kamilah Roberts

Respondent: Mr. Sherfield Bowen

Issues:

Whether the learned judge erred in holding that the order dated September 24, 2015 was a consent order pursuant to CPR 42.7 – Whether the learned judge erred in its reasoning that simultaneous or consecutive enforcement proceedings could not be initiated by a judgment creditor where the debt remains unliquidated – Where the learned judge failed to take into account the relationship between the right to apply for an order for sale under the Judgments Act, and the procedural rules for the application of these provisions, and the other enforcement procedure laid down by the Civil Procedure Rules – Whether the learned judge erred in holding that an order on a judgment summons is a ‘final order’ which disposes of that particular judgments summons application.

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

1. The appeal is allowed and the application for judgment is remitted to the High Court.
2. Costs to the appellant in the amount of \$2,500.00 to be paid in installments over the period of 6 months.

Reasons:

This is an application for Andre Michael who is a judgment creditor in the proceedings in the High Court. It arises out of the refusal by the learned trial judge to exercise her discretion under part 55 of the Eastern Caribbean Civil Procedure Rules and Sections 3 and 4 of the Judgement Act of the laws of Antigua and Barbuda to order a sale of a piece of real estate owned by the judgment debtor Mr. Providence. The judge refused to exercise her discretion

because she took the view that there was no discretion for her to exercise. The trial judge was of the view that the consequence of an order for payment of installments with a default provision that the judgment debtor go to prison and the effect of depriving the judgment creditor of seeking any other form of enforcement would amount to a variation of the order made on the judgment summons. With respect to learned trial judge, the court disagrees with that analysis. The court does not take the view that either the judgment summons order amounted to a variation of the judgment nor did any order made for the sale of the land would amount to a variation of the consent order made on the judgment summons. In those circumstances, the court is of the view that the judge did have a discretion that she could and should have exercised. The court does not state that she should have exercised that discretion in favour of the judgment creditor. The court is asked to exercise that discretion in this court and decline to do so. This matter should be remitted to the High Court to exercise the discretion which we find the judge has to decide whether or not to make an order for sale of the property.

Case Name:

Johnny Charles

v

The Queen

[ANUHCRA2016/0005]

Date:

Friday, 10th November 2017

Coram:

The Hon. Mde. Gertel Thom, Justice of Appeal

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

The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Lawrence Daniels

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

Issues:

Criminal appeal against conviction – Assault with intent to

rob – Whether the sentence of 25 years on 3 counts of aggravated robbery and 20 years on the charges of assault with intent to rob was grossly excessive in all the circumstances taking into account mitigating factors – Whether the sentence imposed by the learned trial judge was grossly excessive in comparison to other cases within the jurisdiction

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The appeal against sentence is allowed to the extent in relation to the offence of the aggravated robbery on all 3 counts the sentence is varied by a substitution of 20 years imprisonment.**
- 2. In relation to the offence of assault with intent to rob the sentence is varied to 15 years imprisonment to run concurrently with the sentence imposed on with aggravated robbery.**

Reason:

The appellant Johnny Charles was convicted of three counts of aggravated robbery and one count of assault with intent to rob. He was sentenced on the counts of aggravated robbery to 25 years imprisonment and on the count for assault with intent to rob to imprisonment of 20 years. He appeals the sentence on the ground that the sentence was grossly excessive. The background to this appeal is that the appellant and three others during the evening of the 12th February, 2014, sometime around 9 to 9:30 p.m. three of them being armed with guns robbed the owner and occupants of the house of several items including cash. During the course of the robbery, in order to get the owner, Mr. Pilgrim, and the other occupants to hand over their valuables and cash, the appellant and the other men tied up one of the occupants and struck Mr. Pilgrim in his face. Mr. Pilgrim is an amputee and begged to be able to use his crutches, which they refused. The appellant ordered him to hop instead. Mr. Pilgrim and the other occupants were traumatized by the appellant and his co-accused. The 12th of February was a night of horror for the occupants of that home. Mr. Daniels on behalf of the appellant has submitted that in sentencing the appellant the

learned judge erred in stating that there were no mitigating factors when indeed there were two mitigating factors -- the age of the appellant being 25 years at the time of the offence and that he had no previous convictions. The court agrees that those are mitigating factors but having regard to the nature of the offence and the circumstances in which the offences were committed, the mitigating factors did not overpower the aggravating factors. This was a home invasion, the appellant and his friends were at Mr. Pilgrim's home at about 9:30 p.m. The appellant was armed, instilled fear in them by firing a shot in the house and they were violently assaulted. It is the court's view that the aggravating factors far outweigh the mitigating factor. The court puts very little weight on the issue that the learned judge erred in saying that there were no mitigating factors, there was not much weight to be placed on the mitigating factors. The court agrees with the learned judge that these offences are quite prevalent in this society and the court must show its abhorrence to this type of conduct which must be reflected in the sentence that the court imposes. The court having considered all of the circumstances of this case, is of the view that the justice of this case requires us to vary the sentences.

Case Name: Gerald A. Watt, QC Trading as Watt & Associates
v
Dr. Maxwell Francis
[ANUHCVP2012/0039]

Date: Friday, 10th November 2017

Coram: The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

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

Respondent: Mr. Clement Bird

Issue: Whether the learned trial judge erred in holding that he failed to decide if the fees set out in the bill of costs are fair and reasonable and to which extent the fees set out should be allowed or reduced – Whether the learned trial judge erred in holding that judgment should be for the sum already paid by the defendant which constituted a sum that was not claimed as the claim was not for a sum paid, but for a sum unpaid on a bill of costs – Whether the learned trial judge erred in failing to award costs to the appellant in that he failed to identify which rule was applied on the matter of costs and failed to give any proper reason why he exercised his discretion to make no order as to costs

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

Result/Order: [Oral delivery]
1. The appeal is allowed and the judge's order set aside.
2. The matter is remitted to the High Court for an assessment to be carried out by another judge.

Reasons: The appellant in this case is Learned Queen's Counsel who performed legal services for the respondent in connection with a procedure in the High Court and Court of Appeal. Prior to a very early engagement the appellant produced an estimate of the cost of proceedings at the High Court stage of \$135,000.00. Prior to filing of the action the respondent had paid over \$40,000.00 on the filing of the hearing. The matter proceeded to trial and eventually there was an appeal. Subsequent to the appeal it was two years later the appellant produced a bill of cost which was significantly higher than the estimate of 135,000.00. The bill was not agreed and was disputed by the respondent which prompted the appellant to file an application before a judge of the High Court for the matter to be assessed. The application of the hearing was pursuant to section 47 of the Legal Profession Act. Counsel for the appellant submitted that what was before the court was a statutory assessment of the fees. The leaned judge having heard the evidence stated that he had difficulty in undertaking the

quantification of the amount based on the bill of cost that had been submitted by the appellant. The learned judge further stated at paragraph 18 of judgment *"I have difficulty undertaking quantification of the amounts that may be due by the defendant to the claimant. I am not persuaded that the bill of costs forwarded to defendant by the claimant 2 years and 7 months after the filing of the notice of appeal against the judgment of Justice Blenman, which was the last item performed by the claimant on the instructions of the defendant provides any basis for me to do a quantification or variation exercise as might have been contemplated by the provisions of s.47(3) of the Legal Profession Act"*. Dr. Dorsett directed the court's attention to this part of the judgment in particular to say that it shows that learned judge did not do what was required of him as provided by s.47 (3) Legal Profession Act in that he failed to carry out an assessment of the cost based on the bill of cost that was before him. Counsel for the respondent submitted that the court should look at the entire judgment and also the evidence in the case which would demonstrate that the learned judge took everything into consideration including the bill of cost in coming to his conclusion that a reasonable amount was the amount paid by the defendant of \$132, 477.00. The court has reviewed both set of submissions and is of the view that the judge fell short of what was required of him under s.47 of the Act. Whatever view he may have on the bill of cost, still required him to conduct an assessment based on that bill which was not done and was required of him by the Act. Counsel drew our attention to section 20 of the judgment which shows that the judge did consider all the evidence in the case but it's still the court's view that there should have been specific reference to section 47 in how he carried out the assessment. What the judge did was exercise his undoubted discretion under section 47 to make what he describes as a reasonable award based on the work that was done by the appellant and resulted with the figure of \$132,000.00 which is the amount that was paid by the defendant. This court is always reluctant to interfere with the exercise of the discretion of a trial judge who has had the benefit of seeing witnesses and assessing them based on his observation. However in this case the court thinks that the judge erred in the way that he carried out his assessment notwithstanding the difficulty with the bill of costs. The court believes that more regard should have been given to it and his decision which may have been a happy coincidence of coming to the conclusion that the

reasonable cost in the matter is exactly the same as the amount of the money that was already paid, leaves the court with an unsettling feeling that he did not carry out a sufficient exercise of what is reasonable in the case. It should have been based on the work done and not simply what has been paid. In those circumstances, we will allow the appeal and set aside the judge's order.

Case Name: **Sundry Workers (Represented by the Antigua
Trades & Labour Union)
v
State Insurance Corporation
[ANULTAP2013/0002]**

Date: **Friday, 10th November 2017**

Coram: **The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant:	Mr. Cosbert Cumberbatch
Respondent:	Mr. Roger Forde, QC. with him, Ms. Kari-Anne Reynolds

Issue: **Application to revoke order of a Michel JA as a single
Judge and appeal be dismissed**

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

Result/Order: **[Oral delivery]
The application to revoke the order of a single judge made
on the 18th April, 2017 and the application to strike out the
appeal are withdrawn and there is no order as to costs.**

Reasons: Counsel for the appellant failed to serve skeleton arguments on the respondent.

Case Name: Sundry Workers (Represented by the Antigua
Trades & Labour Union)
v
State Insurance Corporation
[ANULTAP2013/0002]

Date: Friday, 10th November 2017

Coram: The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Cosbert Cumberbatch

Respondent: Mr. Roger Forde, QC. with him, Ms. Kari-Anne Reynolds

Issue: Whether the issue of vacation leave was not an issue that was before the Court for determination and the Court was wrong to make an order in respect of an issue that had been resolved between the parties – Whether the Industrial Court erred in finding that the employees of the respondent are not entitled to a non-contributory pension in line with the Pensions Act – Whether the Industrial Court erred in finding that it was not the intention of the negotiating parties to the collective agreement that the employees should have the benefit of two pensions – Whether the Industrial Court erred in reducing the vacation days of the employees as provided for in article 21 of the collective agreement.

Type of Oral N/A

**Result / Order
Delivered:**

Result/Order: Judgment is reserved.

Case Name: Special Security Services
v
Jamiel Jashon McDonald
[ANUHCVP2017/0001]

Date: Friday, 10th November 2017

Coram: The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. Fiona Murphy
Respondent: No appearance

Issue: Interlocutory appeal – Whether the learned master erred in law in determining that the claimant’s claim, is one to which s.29(5) Limitation Act applies – Whether the learned master erred in law in determining that paragraphs 8 and 9 of Carla Purcell’s affidavit and paragraph 9 of the defendant’s draft defence was sufficient evidence of and amounted to an acknowledgment by the defendant of the claimant’s claim for the purposes of s.29(5) of the Act or at all – Whether the learned Master failed to take into account several material facts, or failed to properly assess the factual and legal impact of said facts – Whether the learned Master erred in law in finding that there was sufficient evidence that the defendant acknowledged the claimant’s claim

Type of Oral
Result / Order
Delivered:

Oral Judgment or Decision

Result/Order:

[Oral delivery]

1. The appeal is allowed. The judgment in default of acknowledgment of service entered on the 11th January, 2016 is set aside.
2. The appellant has leave to file and serve a defence within 21 days of the date of this order. Thereafter the matter shall proceed in accordance with the Civil Procedure Rules 2000.
3. No order as to costs.

Reasons:

[The court notes that neither counsel on record nor the respondent is present. The court further notes that no opposition was filed to the appeal. No reason has been given to the court for the absence of the respondent or counsel. The court will proceed to hear the appeal.]

This is an appeal against the decision of learned master in which the learned master refused to set aside a default judgment for failure to file an acknowledgment of service. The learned judge found that the appellant did not satisfy either rule 13.3(1) and 13.3(2) of the Civil Procedure Rules 2000. The appellant has appealed the master's findings in relation to rule 13.3(2) of the CPR that there are no exceptional circumstances. The appellant submitted that learned master erred in the exercise of his discretion and that there were indeed exceptional circumstances in that they had a defense which in the words of learned counsel citing the decision of this court in Carl Baynes v Ed Meyer ECSC, Appeal decision dated 30th May, 2016 that their defense on the limitation issue was really a knock out point. The court looked at the submissions, the draft defense and the claim that was filed and is of the view that in this case the appellant has shown that there were indeed exceptional circumstances and that learned master erred when he found that there were none.

Case Name:

**Anthony Browne
v
The Commissioner of Police
[ANUMCRAP2012/0005A]**

Date: Friday, 10th November 2017

Coram: The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Justin Simon, QC.

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

Issue: Criminal appeal against conviction - Larceny – Oral
application for an adjournment

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

Result/Order: [Oral delivery]
1. The appellant has leave to file and serve written submissions with authorities on or before the 15th December, 2017.
2. The respondent shall file and serve written submissions with authorities on or before the 31st January, 2018.
3. The hearing of this appeal is set down for the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing the 12th February, 2018.

Reasons: Counsel for the appellant having been unable to file submissions as ordered due to the passage of hurricane Maria in Dominica.

Case Name:

[1] Antigua Flight Training Center Inc.

[2] Grace Norman

v

Eastern Caribbean Civil Aviation

[ANUHCVP2017/0015]

Date:

Friday, 10th November 2017

Coram:

The Hon. Mde. Gertel Thom, Justice of Appeal

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

The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.]

Appearances:

Applicants: In person

Respondent: Dr. David Dorsett with him, Ms. Nina Joseph

Issues:

Leave to appeal

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

Oral Judgment or Decision

Result/Order:

[Oral delivery]

- 1. The applicants Antigua Flight Training Center and Grace Norman are granted leave to appeal the decision of the learned judge made on the 22nd June, 2017.**
- 2. The applicants shall file the Notice of Appeal within 21 days from the date of this order, thereafter the appeal shall proceed in accordance with the Civil Procedure Rules 2000.**