

COURT OF APPEAL SITTING

SAINT KITTS AND NEVIS

12th – 16th June 2017

STATUS HEARING

Case Name:

Alistair Isaac

V

The Director of Public Prosecutions

[SKBHCRAP2012/0023]

Date:

Monday, 12th June 2017

Before:

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

Appearances:

Appellant:

In person

Respondent:

Ms. Greatess Gordon

Issues:

Status of matter – Whether transcript complete

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

N/A

Result / Order:

Matter set down with notification that matter should be on the list for the December sitting.

Reason:

The transcript was still in the process of being prepared.

Case Name:

Alistair Isaac

V

The Director of Public Prosecutions

[SKBHCRAP2014/0002]

Date: Monday, 12th June 2017

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

Appearances:

Appellant: In person

Respondent: Ms. Greatess Gordon

Issues: Status of matter – Whether transcript complete

Type of Oral Result/Order Delivered: N/A

Result / Order: Matter is set for further status hearing on the 4th December 2017.

Reason: The transcript had not been completed.

Case Name:

Ezroy Mills
v
The Queen

[SKBHCRAP2013/0009]

Date: Monday, 12th June 2017

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

Appearances:

Appellant: In person

Respondent: Ms. Greatess Gordon

Issues: Status of matter – Whether the transcript complete – appellant intends to prosecute appeal

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The appellant shall prepare, file and serve written skeleton arguments in support of his appeal, to be filed by the 15th August 2017.
2. The respondent shall file and serve written skeleton arguments in reply by 15th September 2017.
3. The appeal is fixed for hearing by the Court during the week commencing 4th December 2017 in the Federation of St. Christopher and Nevis.

Reason: The Court was not at the time seized with the record and the appellant also needed time to retain counsel.

Case Name: Akeem Foster
v
The Director of Public Prosecutions
[SKBHCRA2014/0001]

Date: Monday, 12th June 2017

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

Appearances:

Appellant: In person

Respondent: Ms. Greatess Gordon

Issue: Status of matter – Whether transcript of sentencing hearing prepared

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

Directions

Result / Order:

1. The matter is fixed for hearing during the week of 4th December 2017.
2. Transcript to be prepared and served on the appellant and the Chambers of the Director of Public Prosecutions.

Reason:

The transcript was not prepared.

Case Name:

The Director of Public Prosecutions

V

[1] Amal Whyte

[2] Devon Fyfield

[SKBHCRA2014/0005]

Date:

Monday, 12th June 2017

Before:

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

Appearances:

Appellant:

Ms. Greatess Gordon

Respondents:

**Ms. Marsha Henderson (for Amal Whyte)
No appearance of or on behalf of Devon Fyfield**

Issues:

Status of matter – Whether transcript had been prepared and served

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

Directions

Result / Order:

1. The appellant shall file and serve written skeleton arguments by Friday, 4th August 2017.

2. The respondent, Amal Whyte, shall file and serve written skeleton arguments by Friday, 8th September 2017.
3. The appeal is fixed for hearing during the week commencing 4th December 2017 by the Court in the Federation of St. Christopher and Nevis.

Case Name:

Jomi Rawlins

V

The Director of Public Prosecutions

[SKBHCRAP2015/0001]

Shenroy Francis

V

The Director of Public Prosecutions

[SKBHCRAP2015/0002]

Glenroy Rondell Smithen

V

The Director of Public Prosecutions

[SKBHCRAP2015/0003]

Nelson Challenger

V

The Director of Public Prosecutions

[SKBHCRAP2015/0004]

Moses Gardener

V

The Director of Public Prosecutions

[SKBHCRAP2015/0005]

Date: Monday, 12th June 2017

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

Appearances:

Appellant: Mr. John Cato for Jomi Rawlins
Ms. Natasha Grey for Glenroy Smithen
Mr. Fitzroy Eddy for Shenroy Francis
No appearance of or on behalf of Nelson Challenger
No appearance of or on behalf of Moses Gardener

Respondent: Ms. Greatess Gordon

Issues: Status of matter – Whether transcript complete

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

Result / Order:

1. The Court hereby appoints Mr. Fitzroy Eddy on behalf of Mr. Shenroy Francis.
2. The Court appoints Ms. Natasha Grey on behalf of Mr. Glenroy Smithen.
3. The Court will not appoint a new Counsel for Jomi Rawlins unless reasons can be shown that the previous counsel is incompetent.

Reason: The matter is set for case management for the week of 4th December 2017.

Case Name: Gerard Stapleton
v
The Commissioner of Police

[SKBMCRAP2015/0010]

Date: Monday, 12th June 2017

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

Appearances:

Appellant: In person

Respondent: Ms. Greatess Gordon

Issues: Status of matter – Court awaiting transcript from Her Honour Mrs. Hill-Hector

Type of Oral Result / Order Delivered: N/A

Result / Order: Matter stood down for Thursday 15th June 2017.

Reason: Her Honour Mrs. Hill-Hector had not complied with the Court's order to prepare the transcript.

Case Name:

Ramsbury Properties Limited
v
Ocean View Construction Limited

[SKBHCVAP2011/0020]

Date: Monday, 12th June 2017

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

Appearances:

Appellant: Ms. Emily Prentice of Cozier and Associates

Respondent: No appearance

Issues: Status of matter – Whether transcript complete

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

Directions

Result / Order:

The matter is fixed for further status report during the week commencing 4th December 2017. However counsel for the appellant may write earlier to indicate the readiness of the transcript so that the matter may then be listed for hearing.

Reason:

The transcript had been typed. It just needed to be proofread.

Case Name:

[1] Kimberly Ward
[2] Joel Daniel
[3] Kashif Daniel
v
[1] Chief of Police
[2] The Attorney General

[SKBHCVAP2014/0004]

Date:

Monday, 12th June 2017

Before:

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

Appearances:

Appellant: Ms. Nisharma Rattan-Mack

Respondent: No appearance

Issues:

Status of matter – Whether transcript completed

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

Directions

**Result / Order
& Reason:**

Transcript is completed. Counsel to make arrangements for payment. Having regard to the readiness of all portions of the transcript of the proceedings it is hereby directed that:

1. The appellant files and serves written submissions by Monday, 31st July 2017.
2. The respondent shall file and serve written submissions in response by Friday, 1st September 2017. The appellant may if necessary file and serve submissions in reply by Monday, 18th September 2017 for the appeal.
3. The appeal is fixed for hearing before the Court sitting in the Federation of St. Christopher and Nevis during the week commencing 4th December 2017.

Case Name:

**Rudolph Duggins
v
Phoebe Smithen
aka
Phoebe Smithen-Ngumbah
[SKBHCVAP2014/0008]**

Date:

Monday, 12th June 2017

Before:

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

Appearances:

Appellant: Ms. Midge Morton

Respondent: In person

Issues:

Status of matter – Whether judge's notes have been prepared

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

Order

Result / Order:

1. The respondent shall file and serve skeleton

- arguments by Thursday, 31st August 2017.
2. The hearing of the appeal shall be fixed for the week commencing 4th December 2017.

Reason: Her Ladyship to complete her notes on the hearing of the matter. The appellant's skeleton arguments were already filed and served.

Case Name:

[1] Hon. Shawn Richards
[2] Timothy Harris
[3] Eugene A. Hamilton
[4] Mark Brantley
v
[1] The Constituency Boundaries Commission
[2] The Prime Minister of St. Christopher & Nevis
[3] The Attorney General of Saint Christopher & Nevis

[SKBHCVAP2014/0022]

Date: Monday, 12th June 2017

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

Appearances:

Appellants: Mr. MacClure Taylor holding papers for Ms. Talibah Byron led by Douglas Mendes, SC

Respondents: Ms. Angelina Gracy Sookoo holding papers for Mr. Anthony Astaphan, SC (representing the first respondent)
Ms. Nisharma Rattan-Mack holding papers for Ms. Simone Bullen Thompson, Solicitor General (representing the third respondent)

Issues: Status of matter – Whether transcript prepared and served – Whether matter ready to proceed in light of fact that there is second Boundaries Commission

Report of 2015 and a High Court challenge to this report which is pending

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

Directions

Result / Order:

- 1. The appellants shall file and serve the record of appeal to the Court by Monday, 31st July 2017.**
- 2. The appellant shall file and serve written submissions by 10th August 2017.**
- 3. The respondent shall file and serve written submissions or make any application to the Court by Friday, 8th September 2017.**
- 4. The appellant shall reply if necessary by Monday, 25th September 2017.**
- 5. The appeal shall be set down for hearing before the Court during the week commencing 4th December 2017.**

Reason:

The transcript was prepared and served. The matter is ready to proceed.

Case Name:

**Myrna Liburd
v
Lorna Hunkins**

[SKBHCVAP2014/0023]

Date:

Monday, 12th June 2017

Before:

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

Appearances:

Appellant: Ms. Emily Prentice

Respondent: Ms. Dia Forrester

Issues:

Status of matter – Whether transcript complete

Type of Oral Result / Order Delivered:	N/A
Result / Order:	Matter set for week of 4 th December 2017 for further status report.
Reason:	The transcript had not been completed.
Case Name:	Wingrove George v Cherita Clarke [SKBHCVAP2014/0024]
Date:	Monday, 12 th June 2017
Before:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice
Appearances:	
Appellant:	Ms. Nisharma Rattan-Mack
Respondent:	No appearance
Issues:	Status of matter – Whether transcript completed
Type of Oral Result / Order Delivered:	N/A
Result / Order:	Matter to be fixed for further status hearing during the week of the 4 th December 2017.
Reason:	Transcript not yet completed.

Case Name:

**Michael Shaw
v
Joseph Hendrickson
[SKBMCVAP2012/0010]**

**Michael Shaw
v
Joseph Hendrickson
[SKBMCVAP2012/0011]**

Date:

Monday, 12th June 2017

Before:

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

Appearances:

Appellant: Mr. Nassibou Butler (appellant not present)

Respondent: No appearance

Issues:

Status of matter

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

Directions

Result / Order:

Upon the Court noting that the record of appeal was filed with the court office on 12th June 2017 and the said record to be served upon the appellant and counsel for the respondent, the Court orders that:

- 1. The appellant shall be personally served to appear before the Court at the next hearing of the Court commencing the week of 4th December 2017.**
- 2. The appellant shall file and serve written submissions in support of his appeal by Friday, 11th August 2017.**
- 3. The respondent shall file and serve written submissions in respect of the appeals by Friday, 15th September 2017.**
- 4. The appeals are fixed for hearing by the Court during the week commencing on the 4th December**

2017.

5. Copy of this Order shall be served upon the appellant at the time of serving the record on him.

6. Appeal nos. 10 and 11 are hereby consolidated.

Reason:

The transcript was only received today, 12th June 2017.

Case Name:

Winston Skeete

v

Terry Regis

[SKBHCVAP2013/0009]

Date:

Monday 12th June 2017

Before:

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

Appearances:

Appellant:

Mr. MacClure Taylor led by Dr. Henry Browne, QC

Respondent:

No appearance

Issues:

Status of matter – Whether the respondent served

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

N/A

Result / Order:

Matter to be removed from the list and served and proof of service to be filed with the Court.

Reason:

The respondent had never been served with this appeal.

JUDGMENTS

Case Name: Dmitry Vladimirovich Garkusha
v
Ashot Yegiazaryan
[BVIHCMAP2015/0010]

Date: Monday, 12th June 2017

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

Appearances:

Appellant:	Ms. Keisha Spence
Respondent:	Ms. Dia Forrester

Issues: Application for leave to appeal to Her Majesty in Council – Whether decision of this Court raised questions of great general or public importance which ought to be referred to Privy Council for resolution

Result & Reason: Held: dismissing the application for leave to appeal and ordering that costs be assessed if not agreed, that:

1. The Court of Appeal did not declare any principle concerning the construction of exclusive jurisdiction clauses which in any way departed or was intended to depart from the guidance given by the House of Lords in the Fiona Trust case, nor has the law in this area been plunged into a state of uncertainty. There is no passage in the Court of Appeal's judgment in which a different approach was offered to that taken by Lord Hoffmann in the Fiona Trust case, nor was that judgment criticised in any way. It follows therefore that there is no question, far less one of great general or public importance, to be referred to the Privy Council for resolution.

Premium Nafta Products Limited and Others v Fili Shipping Company Limited and Others [2007] UKHL

40 (“the Fiona Trust case”) applied.

2. There is no complaint that the Court made no attempt to construe the exclusive jurisdiction clauses in the SPAs. It accepted that for this purpose there was no distinction to be made between an arbitration clause and an exclusive jurisdiction clause,⁶ and it is clear that it intended to follow the approach taken by the Privy Council in the Fiona Trust case and by Ellis J in *Richard D. Vento v Martin Kenney & Co*, who had expressly followed Fiona Trust, as is apparent from the opening words of his paragraph 35: “Following the guidance in the English and BVI cases”. It is also clear that when the Court declared the “general principle” that “tort claims for inducing a contract with an exclusive jurisdiction clause fall within the terms of that clause” it intended no more than to restate in its own words the assumption of Lord Hoffmann in the Fiona Trust case that the signatories to an arbitration clause intended all disputes arising out of their contractual relationship to be decided by the same tribunal, unless the contrary intention is expressly stated. The concluding statement that the parties’ intention that disputes should be referred to the court identified in the exclusive jurisdiction clause ought to be followed, “unless there are exceptional circumstances”, was nothing but the foreshadowing of the discretion which the Court accepted to be reposed in it to deny a party access to the jurisdiction chosen in the exclusive jurisdiction clause, where there are “strong grounds” for so doing.

Premium Nafta Products Limited and Others v Fili Shipping Company Limited and Others [2007] UKHL 40 (“the Fiona Trust case”) applied.

3. In relation to the second question, the Court, in exercising its overriding discretion in deciding whether to refuse permission, did take into account that the disputes connected with the 2008 agreement, if pursued, would have to be litigated elsewhere. This is readily apparent from the fact that the Court asked itself the question whether

there were any “strong reasons” or “exceptional circumstances” to deny the appellant access to the BVI courts to resolve his claim. In this regard, the respondent’s submission that “the 2008 Agreement was the commercial centre of the overall transactions”, that Russia was the appropriate jurisdiction for that agreement, and that accordingly Russia should also be the jurisdiction for the SPAs, was noted. In rejecting the submission, the Court observed that the 2008 Agreement did not have an exclusive jurisdiction clause and that there was accordingly no conflict in this respect between that agreement and the SPAs; that the SPAs were contemplated in the 2008 Agreement; and that since the 2008 Agreement preceded the SPAs, the selection of the BVI courts to resolve disputes could not be supplanted by an earlier agreement which made no choice of jurisdiction at all.

Case Name:

David George

v

Albert Guye

[DOMHCVAP2012/0013]

Date:

Monday, 12th June 2017

Before:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Ms. Keisha Spence

Respondent: Ms. Natasha Grey

Issues:

Civil appeal – Indefeasibility of title – Real Property Limitation Act, Chap. 54:07 – Title by Registration Act, Chap. 56:50 – Adverse possession – Proper procedure for claiming title to land acquired by prescription – s. 33 of Title by Registration Act – Whether respondent’s

title to disputed land superseded by appellant's title acquired under Real Property Limitation Act

**Result &
Reason:**

Held: dismissing the appeal and ordering that the appellant pay the respondent costs of this appeal, being two thirds of the costs of \$7,500.00 awarded below, as well as the costs in the court below, that: Section 33 of the Title by Registration Act provides the procedure by which a claim to a title acquired by prescription in respect of registered land is to be made. The appellant not having invoked section 33, the respondent's title was not superseded by the title acquired by the appellant under the Real Property Limitation Act. In the absence of the court directing the Registrar to issue a certificate of title to the appellant pursuant to section 33, there could be no superseding of the respondent's title. The respondent is protected by his indefeasibility of title and no issue can arise as to his right to recover the land being barred or his title being extinguished. In the circumstances, his right to recover the disputed strip from the appellant was not barred nor was his title to the land extinguished.

***Graham-Davis and Another v Charles and Others* (1992) 43 WIR 188 followed.**

APPLICATIONS AND APPEALS

Case Name:

Marilyn Maynard

v

Violet Jeffers

[SKBHCVAP2015/0013]

Date:

Monday, 12th June 2017

Before:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Ms. Jerri-Lee Bussue

Respondent: Mr. Glenford Hamilton

Issues:

Undue influence – Whether learned judge erred in law in holding that transaction in question was procured by undue influence – Whether learned judge erred in law in holding that appellant failed to rebut presumption of undue influence

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

N/A

Result / Order:

Matter adjourned for report on Wednesday, 14th June 2017 for consent order to be signed and presented to the Court.

Reason:

The parties were able to reach a settlement at mediation held on 25th March 2017.

Case Name:

**Ellia Jeffers
v
The Chief of Police**

[SKBMCRAP2015/0015]

Date:

Monday, 12th June 2017

Before:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Ms. Marsha Henderson

Respondent: Mr. Teshaun Vasquez

Issues: Appeal against conviction and sentence – Importation of cocaine – Appellant fined sum of EC\$65,000.00 to be paid forthwith in default 4 years imprisonment – Whether legal evidence substantially affecting merits of case rejected by court – Whether decision unreasonable or cannot be supported having regard to evidence – Whether decision erroneous on point of law – Whether sentence passed based on wrong principle or was such that magistrate viewing the circumstances reasonably could not properly have so decided – Whether sentence imposed was unduly severe – Application for counsel to be removed from record –

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

Result / Order:

1. Leave is granted to Henderson Law Chambers to be removed from the records as the attorney for the appellant.
2. Leave is granted to Ms. Ellia Jeffers to file and serve written submissions together with authorities on or before 28th September 2017.
3. Leave is granted to the respondent to file and serve skeleton arguments together with authorities on or before 31st October 2017.
4. The hearing of the appeal is fixed for the sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week which commences on the 4th December 2017.

Reason: Counsel for the appellant made an application to be removed from record.

Case Name: Clayton Laws v The Director of Public Prosecutions

[SKBHCRAP2013/0001]

**Jermaine Riley v The Director of Public
Prosecutions**

[SKBHCRAP2013/0002]

**Ali Percival v The Director of Public
Prosecutions**

[SKBHCRAP2013/0003]

**Jahmana Walters v The Director of Public
Prosecutions**

[SKBHCRAP2013/0004]

Date: Monday, 12th June 2017

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

Appearances:

Appellants: Mr. Jason Hamilton (for Clayton Laws)
Mr. Hesketh Benjamin (for Jermaine Riley)
Dr. Henry Browne, QC, with him, Mr. O’Grenville
Browne and Ms. Marissa Hobson-Newman (for Ali
Percival)
Ms. Marsha Henderson (for Jahmana Walters)

Respondent: Mr Valston Graham, Director of Public Prosecutions,
with him Mr. Teshaun Vasquez, Crown Counsel

Issue: Appeal against conviction and sentence - Kidnapping

Clayton Laws:
Insufficient evidence – Whether judge erred in telling
jurors not to pay attention to very crucial evidence in
case that could have aided in appellant’s exculpation

Jermaine Riley:
Whether judge allowed presentation of uncorroborated
evidence without any specific warning given to jurors –

Whether judge erred in refusing to allow arguments for no case submission – Whether judge erred in allowing admission of statements by co-accused as evidence against appellant – Whether suppression of oral evidence from the accused unfair

Ali Percival:

Whether judge erred in unlawfully usurping function of jury – Whether judge erred in law in failing to adequately and properly direct jury on law of circumstantial evidence and joint enterprise – Whether learned judge erred in failing to fairly, fully and properly address jury on the caution statement made to police by the appellant

Jahmana Walters:

Sufficiency of evidence – Whether judge used incriminating words against appellant in front of the jurors that should not have been used

Type of Oral
Result/Order
Delivered:

N/A

Result / Order:

Matter adjourned to Friday, 16th June 2017 for hearing of the appeal.

Reason:

Mr. Jason Hamilton requested an adjournment because of the late service of respondent's submissions. There were no objections to his request.

Case Name:

Keithlyn Bergan

v

Sheryl Evans

[SKBHCVAP2014/0021]

Date:

Monday, 12th June 2017

Before:

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

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

Appearances:

Appellant: Ms. Keisha Spence
Respondent: Ms. Angelina Gracy Sookoo

Issue:

Application for leave to appeal to Her Majesty in Council – Personal injury claim – Admissibility of expert evidence – s. 163 of the Evidence Act, 2011 – Part 32 of the Civil Procedure Rules 2000 – Whether learned trial judge erred in law when he ruled that the objectives of CPR Part 32 are not interfered with by the ‘clear operation’ of s. 163 of the Evidence Act, 2011 – Admissibility in civil proceedings of prior criminal conviction as evidence of conduct constituting offence – s. 91(2) of the Evidence Act, 2011

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

Oral Judgment or Decision

Result / Order:

1. Leave to appeal to Her Majesty in Council granted.
2. Appellant has carriage of order and order should be filed by Tuesday, 13th June, 2017 for approval by the Court.

Reason:

Based on the application of counsel to appeal to Her Majesty in Council, in making the order to appeal an interlocutory decision where the question involved was one of great or general public importance, guidance should be received in order to ensure the proper administration of justice from Her Majesty in Council.

The Court, reviewed the submission of learned counsel for the applicant and respondent, and in particular, had regard to the fact that learned counsel for the applicant urged the Court that the effect of the decision of the Court is of a draconian nature that the guidance of Her Majesty in Council ought to be provided. *Pacific Wire & Cable Company Limited v Texan Management Limited et al* relied on.

The Court was of the unanimous view that applying the principles set out in *Pacific Wire*, leave to appeal to Her Majesty in Council ought to be granted in order for the Privy Council to provide guidance on the issues that were dealt with in the appeal.

Case Name: **Troy Hendrickson**
v
The Director of Public Prosecutions
[SKBHCRAP2011/0004]

Date: **Monday, 12th June 2017**

Before: **The Hon. Mde. Louise E. Blenman, Justice of Appeal**
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: **Mr. John Cato**
Respondent: **Mr. Teshaun Vasquez**

Issues: **Appeal against conviction and sentence – Unlawful carnal knowledge – Whether evidence was sufficient to prove conviction – Whether sentence was too harsh given that it was first time appellant was convicted**

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

Result / Order:

- 1. Appeal against conviction is hereby dismissed. Conviction is affirmed.**
- 2. Appeal against sentence is allowed to the extent that the sentence of 20 years by the trial judge is reduced to 10 years imprisonment.**

Reason: **The conviction was safe. The sentence of 20 years imposed by the trial judge was excessive, bearing in**

mind the circumstances of the offence and those of the offender, including the fact that the offender had no previous convictions. The Court also took into account the sentencing guidelines in making a determination on the matter.

Case Name: Neil Jeetlall
v
Sheryl Jeetlall

[SKBMCRAP2016/0018]

Date: Tuesday, 13th June 2017

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Terence Byron
Respondent: Ms. Natasha Grey

Issues: Whether the learned magistrate had jurisdiction to hear matter under s. 126 of Magistrate's Code of Procedure Act

Type of Oral Result / Order Delivered: N/A

Result / Order:

1. This appeal is adjourned at the request of counsel for the appellant with costs agreed to be paid by the appellant to the respondent in the sum of \$500.00, same to be paid within 7 days.
2. Matter is adjourned generally.

Reason: Counsel needed to make the proper application. On an application where the issue is the jurisdiction of the court, the Court stated that it was not minded to

entertain any application that had not been properly made in writing.

Case Name:

**Anne Hendricks Bass
v
Director of Physical Planning**

[SKBHCVAP2017/0001]

**Director of Physical Planning
v
Anne Hendricks Bass**

[SKBHCVAP2017/0002]

Date:

Tuesday, 13th June 2017

Coram:

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

Appearances:

**Appellant: Mr. Garth Wilkin for appellant in SKBHCVAP2017/0001
and for respondent in SKBHCVAP2017/0002**

**Respondent: Ms. Rhonda Nisbett-Browne for respondent
SKBHCVAP2017/0001 and for appellant in
SKBHCVAP2017/0002**

Issues:

Whether appeal SKBHCVAP2017/0001 is a nullity based on s. 33(3)(f) of Cap 3.11 of the Laws of St. Christopher and Nevis which says that where leave is required and not sought on the issue of costs it renders the appeal a nullity – Meaning and scope of s. 47 of the Nevis Development Land Ordinance – Whether decisions and actions of Director of Physical Planning breached s. 47 of Ordinance – Whether Director of Physical Planning made improper decision contrary to law in failing to allow copies of the documents to be made

Type of Oral
Result / Order
Delivered:

N/A

Result / Order:

The decision is reserved until Thursday 15th June 2016.

Reason:

The Court stated that in relation to appeal SKBHCVAP2017/0001 it was not prepared to breathe life into an appeal which, on many authorities, is a nullity.

STATUS HEARING

Case Name:

Nelson Challenger

v

The Director of Public Prosecutions

[SKBHCRAP2015/0004]

Moses Gardener

v

The Director of Public Prosecutions

[SKBHCRAP2015/0005]

Date:

Tuesday, 13th June 2017

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Fitzroy Eddy

Respondent: Mr. Teshaun Vasquez

Issue:

Status of matters – Appeals against conviction and sentence

Moses Gardener:

Whether evidence is in discord and unsubstantial to prove conviction – Whether in sentencing appellant due consideration given to his reformation and rehabilitation courses and clean record prior to conviction

Nelson Challenger:

Whether there was evidence that appellant was part of common plan or design to murder – Whether there was evidence that appellant was part of common plan to capture, hold and inflict grievous bodily harm on Gregory Zakers, causing his death

Type of Oral
Result / Order
Delivered:

N/A

Result / Order:

The two appeals are adjourned to the next sitting of Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 4th December 2017.

Reason:

The transcript was not completed.

Case Name:

The Director of Public Prosecutions

v

[1] Darel Sutton

[2] Kenrick Phillip

[3] Keithroy Phillip

[4] Nicholas Riley

[SKBHCRAP2015/0007]

Date:

Tuesday, 13th June 2017

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. Teshaun Vasquez

Respondent: Mr. Fitzroy Eddy

Issues: Status of matter – Whether learned judge misdirected herself in law and misapplied s. 58 of the Criminal Procedure Act, Cap. 4.06 of the Revised Laws 2009 – Whether learned judge misdirected herself in law in holding that ss. 38 and 42 of the new Evidence Act is not re-enactment of ss. 14, 15 and 16 of the old Evidence Act – Whether learned judge misdirected herself in law and wrongfully held that provisions of s. 8(1) of the Interpretation Act did not assist the prosecution – Whether learned judge erred in upholding the submission of no case to answer on behalf of respondents

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

Result / Order:

1. The Registrar of the High Court is directed to cause the transcript of the proceedings in this matter to be prepared and the parties notified thereof prior to the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis in December 2017.
2. The matter is adjourned for further status hearing at the next sitting of Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 4th December 2017.

Reason: The transcript was not completed.

Case Name: Denver Fyfield
v
The Director of Public Prosecutions
[SKBHCRAP2015/0009]

Date: Tuesday, 13th June 2017

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

Appearances:

Appellant: In person

Respondent: Mr. Teshawn Vasquez

Issue: Status of matter – Appeal against conviction and sentence – Whether verdict can be supported by the evidence – Whether sentence imposed unduly severe

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

Result / Order:

1. The appellant is directed to file and serve skeleton arguments in support of this appeal on or before 13th September 2017.
2. The respondent is hereby directed to file and serve skeleton argument in response on or before 13th November 2017.
3. The hearing of this appeal is fixed for the next sitting of Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 4th December 2017.

Reason: Transcripts completed and all parties are in receipt of same.

Case Name:

Jamal Phillip
v
The Director of Public Prosecutions
[SKBHCRAP2015/0011]

Charles Bowry
v
The Director of Public Prosecutions
[SKBHCRAP2015/0012]

Date: Tuesday, 13th June 2017

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

Appearances:

Appellant: In person

Respondent: Mr. Teshawn Vasquez

Issues: Status of matter – Appeals against conviction and sentence – Whether summing up was in accordance with the law – Whether verdict can be supported having regard to the evidence

Type of Oral Result / Order Delivered: Directions

Result / Order:

1. Criminal Appeals 11 of 2015 and 12 of 2015 are hereby consolidated and will be heard together.
2. The Registrar of the High Court is hereby directed to cause the transcript of the proceedings in these matters to be prepared and the parties notified thereof on or before 15th July 2017.
3. The appellants are hereby directed to file and serve skeleton arguments in support of their appeals on or before 29th September 2017.
4. The respondent is hereby directed to file and serve skeleton arguments in response on or before 13th November 2017.
5. The hearing of these consolidated appeals is fixed for the next sitting of Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 4th December 2017.

Reason: The transcript was not completed.

Case Name:

Samuel Tyson
v
The Director of Public Prosecutions

[SKBHCRAP2011/0012]

Date: Tuesday 13th June 2017

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

Appearances:

Appellant: No appearance

Respondent: Mr. Teshawn Vasquez

Issues: Status of matter – Appeal against conviction and sentence – Indecent assault – Appellant first time offender – Whether sentence too harsh

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The Registrar of the High Court is hereby directed to cause the transcript of the proceedings in this matter to be prepared and the parties notified thereof on or before the 31st July 2017.
2. The appellant shall be notified of the availability of transcript and shall be served with a copy of this order by 31st July 2017.
3. The appellant is directed to file and serve skeleton arguments or submissions in writing in support of his appeal on or before 30th September 2017.
4. The respondent is hereby directed to file and serve skeleton arguments in response on or before 14th November 2017.
5. The hearing of this appeal is fixed for the next sitting of Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 4th December 2017.

Reason: Transcripts were not completed. To be completed by July 2017.

Case Name: Joseph Gardener
v
The Queen

[SKBHCRAP2011/0018]

Date: Tuesday, 13th June 2017

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

Appearances:

Appellant: No appearance

Respondent: Mr. Teshaun Vasquez

Issues: Status of matter – Appeal against conviction and sentence – Mistaken identity – Insufficient evidence

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

Result / Order: The appellant has served out his sentence in full and has not appeared to prosecute his appeal, which is accordingly dismissed.

Reason: The accused had served his sentence.

Case Name: Judith Ann Bruton Titley
v

[1] First Fidelity Deposit Corporation
[2] Andrew Michael Austin Titley
[3] Caribbean Trust Company Nevis Ltd.

[SKBHCVAP2015/0014]

Date: Tuesday, 13th June 2017

Before:	The Hon. Mr. Mario Michel, Justice of Appeal
Appearances:	
Appellant:	No appearance
Respondent:	No appearance
Issue:	Whether trial judge erred in law in denying appellant the right to be heard on the application – Whether trial judge erred in law in finding that appellant was not properly before the Court and did not have any standing to bring the application – Whether judge erred in law in failing to provide parties with written reason – Whether trial judge erred in awarding costs against a party found to be improperly before the Court
Type of Oral Result/Order Delivered:	Oral Judgment or Decision
Result / Order:	Leave to appeal having being granted to the appellant on 21st December 2015 with a direction for the filing of a Notice of Appeal within 21 days, and no Notice of Appeal having being filed, the appeal is accordingly struck off.
Reason:	No Notice of Appeal was filed as ordered on 21st December 2015.
Case Name:	Murtland Watterton v [1] Nigel Landreath-Smith [2] WYN Aggregate Ltd. [3] Halcrow Trinidad & Tobago [4] Professional Technologies Anguilla Ltd. [5] The Chief Engineer of Public Works [6] The Attorney General of Saint Christopher & Nevis

[SKBHCVAP2016/0001]

Date: Tuesday, 13th June 2017

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

Appearances:

Appellant: Ms. Marsha Henderson

Respondent: Mr. Delano Bart, QC, with him, Ms. Miselle O'Brien for 4th defendant Professional Technologies (Anguilla) Ltd.
Ms. Angelina Gracy Sookoo for the 1st respondent Halcrow Trinidad and Tobago
Ms. Nisharma Rattan-Mack for the 2nd and 3rd respondents The Chief Engineer of Public Works and The Attorney General of St. Christopher and Nevis

Issue: Status of matter – Whether learned judge took wrong account of each of the relevant factors stipulated by rule 26.8(2) – Whether learned judge failed to reasonably consider or at all genuineness of appellant's explanation – Whether learned judge failed to consider and give sufficient weight to fact that respondent did not provide any evidence as to what prejudice would result by granting the relief – Whether judge gave too much weight to the respondent's interpretation of the law allowing for variance of orders – Whether learned judge took wrong account of rule 20.1(3) in considering whether to grant permission to amend the defence of the 5th and 6th defendant.

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The appellant is hereby directed to file and serve the record of appeal on or before 30th June 2017.
2. The appellant is hereby directed to file and serve skeleton arguments in support of his appeal on or before 24th July 2017.
3. Leave is granted to the respondents to file and serve skeleton arguments in response on or before 5th September 2017.
4. Hearing of the appeal is fixed for the next sitting of

Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 4th December 2017.

Reason: **Directions were requested in the matter.**

Case Name: **Angela Inniss-Hodge**
v
The Disciplinary Committee of the
St. Kitts and Nevis Bar Association
[SKBHCVAP2014/0034]

Date: **Tuesday, 13th June 2017**

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

Appearances:
Appellant: **Mr. Terence Byron**
Respondent: **Ms. Liska Hutchinson**

Issues: **Status of matter**

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

Result / Order **In accordance with CPR 62.25, the appeal having been**
& Reason: **dismissed by virtue of the filing of a Notice of**
Discontinuance on 21st November 2016, civil appeal No.
34 of 2014 is accordingly struck off.

Case Name: **Carino Hamilton Development Ltd.**

v
Miranda Fellows

[SKBHCVAP2015/0022]

Date: Tuesday, 13th June 2017

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

Appearances:

Appellant: Ms. Marsha Henderson holding papers for Dr. Henry Browne, QC

Respondent: Ms. Marlene Uter

Issues: Status of matter – Whether the learned master failed to appreciate that respondent made no attempt to set aside either the contract or the transfer of Unit C1 – Whether learned master failed to appreciate that there was no evidence demonstrating any loss or damage as a consequence of alleged false misrepresentation which allegedly induced the respondent to enter into the contract for the purchase of Unit B7 – Whether learned master failed to appreciate that respondent was only entitled, if at all, to recover only any loss suffered if any up to date/time when respondent discovered alleged false misrepresentation – Whether learned master failed to appreciate that based on evidence produced at assessment there was no proof of loss attributed to alleged tortious acts or omission on part of appellant – Whether learned master erred when she purported to construe terms and conditions of contract agreed to in relation to B7 and apply same speculatively to the contract made in relation to C1

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

Directions

Result / Order:

The appellant is hereby directed to file and serve skeleton arguments in support of its appeal on or before 13th August 2017.

The respondent is hereby directed to file submissions in response on or before 13th October 2017.

The hearing of this appeal is fixed for the next sitting of

Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 4th December 2017.

Reason: **Directions in the matter were requested.**

Case Name: **[1] Richard Rowe and Mark Secrist (and those
whom they represent)
[2] Roy and Gen Benton
v
[1] The Attorney General of St. Christopher and
Nevis
[2] The Authorised Officer for the Angelus
Resort
[SKBHCVAP2011/0014]**

Date: **Tuesday, 13th June 2017**

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

Appearances:

Appellant: **Ms. Elizabeth Harper**

Respondent: **Ms. Nisharma Rattan-Mack**

Issue: **Status of matter – Whether learned judge erred in law and in fact in assessing swimming pool for the property as a value of US\$243,509.26 – Whether learned judge erred in law and in fact in finding that appellants did not advance sufficient basis to disturb the determination by the board that Block D of the condominium was condominium land – Whether learned judge erred in law and in fact in concluding that he would not disturb board finding that condominium was failing development – Whether learned judge erred in fact and in law in finding the he would not disturb board decision to apply discount**

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

N/A

**Result/Order &
Reason:**

Status hearing of this matter is adjourned to the next sitting of Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 4th December 2017, for report on the outcome of settlement discussions between parties.

Case Name:

Anthony Glasford

v

[1] Jeffer Douglas

[2] Jacqueline Jeffers

[SKBHCVAP2012/0014]

Date:

Tuesday, 13th June 2017

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Ms. Emily Prentice

Issues:

Status of matter – Whether learned judge erred in law in having found for appellants on issue of liability and having made award to appellants in respect of loss of use of damaged chattel – Whether learned judge erred in law having found that appellants had not strictly proved the cost of repairs to chattel and failed to make award for nominal damages in respect of the same

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

Directions

Result / Order:

1. The Registrar of the High Court is directed to cause the transcript of the proceedings in the court below

- to be prepared and to notify the parties accordingly on or before 31st July 2017.
2. In the event that the complete transcript is not able to be produced the Registrar shall provide to the parties, at no costs to them, such portion(s) of the transcript as are able to be produced by 31st July 2017.
 3. The appellant is directed to file and serve skeleton arguments in support of her appeal on or before 30th September 2017.
 4. The respondent is hereby directed to file and serve skeleton arguments in response on or before 14th November 2017.
 5. The hearing of this appeal is fixed for the next sitting of Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 4th December 2017.

Reason: The transcript was not completed.

Case Name: Ermine Daniel
v
[1] Kirthley Sutton
[2] Lorna Sutton
[SKBHCVAP2012/0022]

Date: Tuesday, 13th June 2017

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

Appearances:

Appellant:	Ms. Emily Prentice
Respondents:	No appearance

Issues: Status of matter – Whether judge did not come to the only possible conclusion based on the evidence before the Court despite her findings – Whether learned judge

was plainly wrong in law when she held that particulars of fraud need not be pleaded as this is contrary to well established common law principles – Whether judge was wrong in law when she cancelled the certificate of title in name of appellant based on fraud

Type of Oral
Result/Order
Delivered:

Directions

Result / Order:

1. The Registrar of the High Court is directed to cause the transcript of the proceedings in the court below to be prepared and to notify the parties accordingly on or before 31st July 2017.
2. In the event that the transcript is not able to be produced, the Registrar shall provide to the parties at no costs to them, such portion(s) of the transcript that can be produced by 31st July 2017.
3. The appellant is directed to file and serve skeleton arguments in support of her appeal on or before 30th September 2017.
4. The respondent is hereby directed to file and serve skeleton arguments in response on or before 14th November 2017.
5. The hearing of this appeal is fixed for the next sitting of Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 4th December 2017.

Reason:

The transcript was not completed.

Case Name:

Eustace Nisbett

v

[1] Alexis Jeffers

[2] Cardell Rawlins

[3] Leon Lescott

[4] Melissa Seabrooks

[5] Dexter Boncamper

[6] Juletta Jeffers

[SKBHCVAP2016/0018]

Date: Tuesday 13th June 2017

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

Appearances:

Appellant:	No appearance
Respondents:	Mr. Terence Byron

Issues: Status of matter – Whether learned judge erred in failing to take into account or proper account material facts and circumstances – Whether decision of learned judge to discontinue claim and statement of claim based on para. 41 was wrong in that learned judge failed to take into account sufficiently or at the facts in exercising her discretion – Whether decision by learned judge to strike out amended claim and statement of claim was wrong in law – Whether decision by judge to strike out appellant's claim and statement of claim in keeping with the overriding objective to deal with cases justly was draconian and wrong and constituted an abuse of her discretion

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

Result / Order:

1. The draft notice of appeal filed on 10th January 2017 is hereby deemed to have been duly filed as a Notice of Appeal.
2. The Registrar of the High Court shall cause to be prepared the transcript of proceedings in the court below and parties to be notified thereof on or before 31st July 2017.
3. The appellant is hereby directed to file and serve skeleton arguments in support of his appeal and in response to the cross appeal, on or before 14th August 2017.
4. The respondent is hereby directed to file and serve submissions in response to the appellant's submissions and in support of the cross appeal on

or before 28th September 2017.

5. The hearing of the appeal is fixed for the next sitting of Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 4th December 2017.

Reason: The transcript was not completed.

Case Name: Hesketh Trevor Chapman
v
Nevis Co-operative Credit Union Ltd.
[SKBHCVAP203/0032]

Date: Tuesday 13th June 2017

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

Appearances:
Appellant: No appearance
Respondent: No appearance

Issues: Status of matter

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

Result / Order & Reason: There being no appearance of the parties the appeal is dismissed for want of prosecution.

Case Name: Nigel Carty
v
Alston Williams

[SKBMCRAP2014/0012]

Date: Tuesday, 13th June 2017

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

Appearances:

Appellant: Ms. Angelina Gracy Sookoo

Respondent: No appearance

Issues: Whether decision of learned magistrate is unreasonable or cannot be supported having regard to the evidence – Whether decision of magistrate was erroneous in point of law

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The Senior Magistrate is hereby directed to cause the transcript of the proceedings in the court below to be prepared and the parties notified thereof on or before 31st July 2017.
2. Leave to the appellant to file and serve skeleton arguments in support of his appeal within 6 weeks of being notified of the availability of the transcript.
3. Leave to the respondent to file and serve skeleton arguments in response within 6 weeks of being served with the appellant's skeleton arguments.
4. Hearing of this appeal is set for the next sitting of Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 4th December 2017.

Reason: The transcript was not completed.

Case Name: Junior McFarlane
v

Desdomona Henry

[SKBMCRAP2015/0005]

Date: Tuesday, 13th June 2017

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

Appearances:

Appellant: Ms. Natasha Grey

Respondent: No appearance

Issues: Status of matter – Whether the learned magistrate had no jurisdiction to proceed with the case – Whether the Appellant was denied the opportunity to be heard.

Type of Oral Result/Order Delivered: N/A

Result / Order: Status hearing of this appeal is adjourned to Wednesday 14th June 2017 at 8:30 a.m.

Reason: Counsel for the appellant to provide Court with a copy of the notice of appeal.

JUDGMENTS

Case Name: Cukurova Holdings A.S.
v
Sonera Holdings B.V.

[BVIHCMAP2016/0005]

Date: Wednesday, 14th June 2017

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

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

Appearances:

Appellant: Ms. Keisha Spence holding papers for counsel for the appellant

Respondent: Mr. Vaughan Woodley holding papers for counsel for the respondent

Issue:

Commercial appeal – Arbitral award – Enforcement of Final Award – Enforcement judgment definitively determined by Courts at all levels – Partial Award by subsequent arbitral tribunal – Whether the decisions to enforce the Final Award issued by the first arbitral tribunal are capable of being re-opened or qualified by the DSPA Partial Award issued by the second arbitral tribunal – Whether the learned judge failed to recognize that the issue of the DSPA Partial Award was live – Whether the learned judge failed to give any (or any proper) effect to the DSPA Partial Award – Whether the learned judge failed to deal with the Appellant’s case that there had been a material change of circumstances – Whether the learned judge’s approach to the exercise of discretion was manifestly flawed.

**Result &
Reason:**

Held: dismissing the appeal and awarding costs of two-thirds of the costs below to be assessed if not agreed within twenty-one days from the date of this judgment, that:

- 1. The learned judge’s approach to unimpeachability cannot be impugned as he quite comprehensively and correctly examined the factual matrix and determined the application that was put before him having given deliberate consideration to the contesting views. A close reading of the judgment as a whole indicates that the learned judge was at all times seized of all the factors including the fact that the DSPA Partial Award was a live matter based on Cukurova’s case irrespective of how he may have expressed himself in passing on the issue of the DSPA Partial Award in the judgment. The fact that the DSPA Partial Award was a live issue is immaterial and cannot assist Cukurova’s case and**

any alleged omission on the part of the learned judge to expressly refer to this issue does not take Cukurova's case any further. It is clear that this fact was not the basis for the learned judge's disposition of the case and that he reasoned that the DSPA Partial Award was of no moment and could not and did not detract from the court's judgment. The DSPA Partial Award could not supersede the Final Award neither could it in any way undermine the correctness of decision of this Court and Privy Council. Therefore, the unimpeachability of the court's judgment prevailed. Accordingly, the learned judge did not err and this ground of appeal fails.

2. Judicial certainty is a pre-requisite of any civilized system of justice. There is great public interest in the stability, coherence and certainty of the law. Decisions on points of law from higher courts have to be accepted by lower courts. The Final Award rendered by the LA Arbitral Tribunal has been held to be valid and enforceable by the High Court, this Court and the Privy Council. It is trite that this Court is not in a position to review the decision by the Board, which is binding on it; neither was the judge at first instance in any better position. The learned judge was therefore correct in holding that the Enforcement Judgments of all our courts were unimpeachable. Moreover, the learned judge quite properly examined the nature of the DSPA Partial Award in the context in which our courts have definitively pronounced on the validity of the LA Arbitral Tribunal and its jurisdiction to give the Final Award. The learned judge comprehensively dealt with the issues that were raised and more importantly examined whether there was any scope for him to disregard the decision of not only this Court but also that of the Privy Council on the jurisdiction of the LA Arbitral Tribunal. The Enforcement Judgment on the Final Award remains in full force and it was not opened to the learned judge to seek to review, revise, revisit or undermine the authoritative pronouncements of our hierarchy of courts. Therefore, the learned judge did not err in his treatment of the DSPA Partial Award.

Willers v Joyce et al [2016] UKSC 44 applied;
Attorney General of St. Christopher and Nevis and Anguilla v Reynolds [1997] 43 WLR 108 applied.

1. Even in the face of a contractual obligation of Sonera to abide by the decision of the DSPA Partial Award, insofar as the learned judge correctly held that the Enforcement Judgment was unimpeachable, that contractual obligation cannot enable a lower court to ignore decisions of the Court of Appeal and the Privy Council. This is not a case where the parties have contracted out of a decision but rather one in which it is alleged by one party that due to a subsequent decision of the DSPA Arbitral Tribunal one party is free or obliged to ignore the decisions of the Court of Appeal and the Privy Council. It would be making a mockery of this justice system for a High Court judge to accept that higher courts namely the Court of Appeal and the Privy Council erred in rejecting the contention that the LA Arbitral Tribunal exceeded its jurisdiction in making the Final Award and to hold that the DSPA Arbitral Tribunal was correct in allegedly holding any contrary view. Accordingly, the ground of appeal that the learned trial judge did not recognize the contractual consequences of the DSPA Partial Award fails.

Kimberly Construction Ltd v Mermaid Holdings Ltd.
[2004] 1 NZLR 386 distinguished.

2. Section 84 of the Arbitration Act of the British Virgin Islands cannot apply to the circumstances of the case in order to derail the decisions of this Court and the Privy Council. This Section does not provide a facility for a judge at first instance to ignore judgments of higher courts which are binding on that court. Insofar as the Privy Council's decision of May 2014 held that the Final Award of the LA Arbitral Tribunal was made by that Tribunal with jurisdiction and therefore the award was enforceable within this jurisdiction. There is nothing in Section 84 of the Arbitration Act that can have the effect of derogating from that decision.
3. Section 84 Arbitration Act, 2013, Act No. 13 of 2013,

Laws of the Virgin Islands considered.

4. It is self-evident that neither the DSPA Partial Award nor the DSPA Final Award can rise to the threshold to amount to a material change of circumstance, moreso to one which would warrant any court revisiting its earlier order. Therefore, the learned judge was correct in not giving any weight to Cukurova's alleged material change of circumstance based on the DSPA Partial and Final Awards.
5. 6. The learned judge's decision was undoubtedly a matter that was within the exercise of his discretion. It is trite that an appellate court will only interfere with the exercise of discretion by a lower court in very limited circumstances, none of which are present in this case. The learned judge took into account all the relevant factors in relation to the LA Arbitral Tribunal's Final Award, the Enforcement Judgment and the DSPA Partial Award and in a closely reasoned judgment concluded that Sonera is entitled to enforce the Enforcement Judgment. As the learned judge carefully considered the relevant matters and reached a conclusion that was opened to him, this ground of appeal fails.

APPLICATIONS AND APPEALS

Case Name:

Marilyn Maynard

v

Violet Jeffers

[SKBHCVAP2015/0013]

Date:

Wednesday, 14th June 2017

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Ms. Jerry Lee Bussue

Respondent: Ms. Deidre Williams holding papers for Mr. Jeffrey Nisbett

Issues: Undue influence – Whether transfer of land by respondent to appellant was procured by undue influence – Whether mediation between the parties would better serve justice of this case having regard to all of the familial circumstances

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

Result / Order: The Consent Order which has been provided to the Court and now dated 14th June 2017 is hereby made an order of this Court.

Reason: The parties had signed a consent order.

Case Name: Brian Brookes
v
Shelda Webster

[SKBMCVAP2015/0018]

Date: Wednesday 14th June 2017

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Ms. Camilla Cato

Respondent: Ms. Miselle O'Brian

Issues: Application for an adjournment

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

N/A

Result / Order:

- 1. It is hereby ordered by consent that the appeal stands adjourned to the next sitting of the Court of Appeal in this jurisdiction during the week which commences on 4th December 2017.**
- 2. Should there be no settlement between the parties by the 15th July 2017, leave is hereby granted to the Appellant to file their submissions by the 30th July 2017, and by the 13th August 2017 for the Respondent; and**
- 3. No order as to costs.**

Reason:

The parties were in the process of working towards a settlement of this matter.

Case Name:

**[1] Kauesi Hanley
[2] Shakespeare Southwell
v
The Chief of Police
[SKBMCRAP2015/0008A]**

Date:

Wednesday 14th June 2017

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

**Kauesi Hanley in person
Dr. Henry Browne, QC representing Shakespeare Southwell**

Respondent:

Ms. Greatess Gordon

Issues:

Application for adjournment

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

Directions

Result / Order:

1. Based on the application of the 1st respondent in person and Dr. Browne, QC, for the 2nd respondent the hearing of this appeal is adjourned to the next sitting of the Court of Appeal during the week of 4th December 2017.
2. Leave is granted to the appellants to file and serve submissions in support of the appeal on or before 15th September 2017.
3. Leave is granted to the respondent to respond if necessary on or before the 30th September 2017.

Reason:

The 1st appellant and senior counsel needed more time to prepare for the appeal.

Case Name:

**Akiel Harris
v
The Director of Public Prosecutions
[SKBHCRAP2015/0008]**

Date:

Wednesday, 14th June 2017

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

In person

Respondent:

Ms. Greatess Gordon

Issue:

Application for an adjournment

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

Directions

Result / Order:

1. The Registrar of the High Court shall provide the appellant with a copy of the record of appeal.
2. The appellant shall file and serve written submissions with authorities on or before 15th September 2017.
3. The respondent to serve submissions in response with authorities on or before the 30th October 2017.
4. The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in the Federation of St. Kitts and Nevis during week commencing 4th December 2017.

Reason:

Matter adjourned so that the appellant could be served with the record of appeal.

Case Name:

Quincy Davis
v
The Director of Public Prosecutions
[SKBMCRAP2013/0005]

Date:

Wednesday, 14th June 2017

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:	Dr. Henry Browne, QC, Mr. Hesketh Benjamin and Mr. John Cato
Respondent:	Ms. Greatess Gordon

Issues:

Application to amend the grounds of appeal – Whether learned trial judge erred in law in failing to adequately and properly direct the jury on the alibi defence preferred by the appellant – Whether learned trial judge misdirected the jury on law of corroboration – Whether the learned trial judge erred in law in failing to direct the jury on question of identification – Whether trial

judge misdirected the jury on the doctrine of recent complaint and erroneously approximated same to corroboration in law – Whether trial judge erred in law in failing to adequately address jury on defence case especially as he was unrepresented at trial

Type of Oral
Result/Order
Delivered:

Oral Judgment or Decision

Result / Order:

1. Leave to amend the grounds of appeal is granted.
2. Appeal against conviction and sentence is allowed. Conviction quashed. Sentence set aside. Retrial is ordered. Leave is granted to the Director of Public Prosecutions to retry the appellant if he so determines.

Reasons:

The Court has read the submissions of Dr. Browne, QC, and those of the Director of Public Prosecutions. Dr. Browne, QC proceeded on issues of recent complaint. The Court agrees that there is no evidence of recent complaint at the trial. The evidence the judge relied on was not there. The person who was supposed to have received the recent complaint was not a witness in this trial.

The Court is of the view that there are several errors on issues of law in the summation therefore rendering the conviction unsafe. The proviso cannot be applied in this case.

Having regard to principles for retrial set out in the case of *Sherfield Bowen v The Queen* (ANUHCRA2005/0004 (delivered 20th June 2007, unreported)) this Court grants permission to the Director of Public Prosecutions to do a retrial if the learned DPP so determines.

Case Name:

[1] Zambo Heath
[2] Marlon Heath
[3] Joycelyn Ishackey Hodge

V
Chief of Police

[SKBMCRAP2014/0015]
[SKBMCRAP2014/0016]
[SKBMCRAP2014/0014]

Date: **Wednesday, 14th June 2017**

Coram: **The Hon. Mde. Louise E. Blenman, Justice of Appeal**
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: **Ms. Vadeesha John**

Respondent: **Mr. Tessaun Vasquez**

Issues: **Appeals against conviction and sentence – Possession of controlled drug – Possession of controlled drug with intent to supply – Whether decision of learned magistrate unreasonable and cannot be supported having regard to evidence – Whether judgments passed based on wrong principle and were such that a magistrate viewing the circumstances reasonably could not properly have reached those decisions – Whether the analyst certificate was improperly admitted as evidence – Whether crack cocaine known to law as illegal substance**

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

Oral Judgment or Decision

Result / Order:

The appeal against the 1st appellant is allowed to the extent that the charge of possession of crack cocaine and possession of crack cocaine with intent to supply is dismissed.

The other convictions and sentences are affirmed thus:

Zambo Heath – Possession of cocaine, fined \$10,000.00 in one month or 6 months imprisonment.

Marlon Heath – Convicted and ordered to pay a fine of \$500.00 in one month or one month imprisonment.

Jocelyn Ishackey Hodge – Convicted and ordered to pay a fine of \$200.00 in 7 days or 7 days imprisonment.

Reason:

The law does not say crack cocaine is illegal and as such all charges dealing with crack cocaine are dismissed.

However, the Court can see no reason to disturb the conviction and sentences of the learned magistrate in relation to the other charges.

Case Name:

Halfmoon Bay Home Owners Company Limited

v

Platinum Properties Inc.

[SKBHCVAP2014/0003]

Date:

Wednesday, 14th June 2017

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Ms. Keisha Spence

Respondent: Mr. Fitzroy Eddy (Ms. Sonia Carr, Director of the Company also present)

Issues:

Whether learned trial judge erred in finding that defendant was not indebted to claimant despite defendant not paying any maintenance fees – Whether learned trial judge erred in finding that there was no basis for the recovery of maintenance fees in absence of signed maintenance agreement by defendant – Whether learned trial judge erred in failing to find that defence was premised on respondent who thereby

admitted to being bound by the Standard Maintenance Agreement – Whether learned trial judge erred in failing to find that in striking out several paragraphs of Ms. Carr’s Witness Statement the Court held that the defence filed on behalf of the defendant was premised upon the Standard Maintenance Agreement of the Half Moon Bay Villa Development being binding upon the defendant – Whether learned trial judge erred when he dismissed the principle that there is no principle of law which avoids a binding agreement by a party to do any of the matters referred to in the declaration sought without any evidence from defendant to so do – Whether the learned trial judge erred in holding that Easement A (ii) endorsed on the defendant’s certificate of title has attached to it a methodology to enforce payment of maintenance fees as prescribed under the Standard Maintenance Agreement which does not include preventing the use of the sewage system by defendant

Type of Oral
Result/Order
Delivered:

N/A

Result / Order:

Decision reserved.

STATUS HEARING

Case Name:

Junior McFarlane

v

Desdomona Henry

[SKBMCRAP2015/0005]

Date:

Wednesday, 14th June 2017

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Ms. Natasha Grey

Respondent: No appearance

Issues: Status of matter – Whether learned magistrate had no jurisdiction to proceed with case – Whether appellant was denied opportunity to be heard

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The Senior Magistrate is hereby directed to cause the transcript of the proceedings in the Magistrate's Court in relation to this matter heard on 7th May 2014 to be prepared and the parties be notified thereon on or before 14th August 2017.
2. The appellant shall file and serve skeleton arguments in support of his appeal within 6 weeks of receipt of transcript.
3. The respondent shall file and serve skeleton argument within 6 weeks of being served with a copy of the appellant's skeleton argument.
4. The hearing of this appeal shall be fixed for hearing at the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 4th December 2017.

Reason: The transcript was not completed.

APPLICATIONS AND APPEALS

Case Name:

**Anne Hendricks Bass
v
Director of Physical Planning
[SKBHCVAP2017/0001]**

Director of Physical Planning

v

Anne Hendricks Bass

[SKBHCVAP2017/0002]

Date: Thursday 15th June 2017

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal (Ag.)

Appearances:

Appellant: Mr. Garth Wilkin for appellant in SKBHCVAP2017/0001
and for respondent in SKBHCVAP2017/0002

Respondent: Ms. Rhonda Nisbett-Browne for respondent
SKBHCVAP2017/0001 and for appellant in
SKBHCVAP2017/0002

Issue: Whether appeal SKBHCVAP2017/0001 is a nullity based
on s. 33(3)(f) of Cap 3.11 of the Laws of St. Christopher
and Nevis which says that where leave is required and
not sought on the issue of costs it renders the appeal a
nullity – Meaning and scope of s. 47 of the Nevis
Development Land Ordinance – Whether decisions and
actions of Director of Physical Planning breached s. 47
of Ordinance – Whether Director of Physical Planning
made improper decision contrary to law in failing to
allow copies of the documents to be made

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

Result / Order:

1. The appellant to bear the respondent's costs, to be assessed by a master in 21 days if not agreed. Appeal no. 1 of 2017 is struck out and deemed a nullity.
2. Appeal No. 2 is dismissed. The orders of the learned trial judge are affirmed with the exception of sub paragraph 6 of paragraph 6 to 8 of the trial judge's judgment.

Reason:

In appeal No. 1 of 2017 the appeal was filed without the leave of the Court pursuant to s. 33(3)(f) of the Eastern Caribbean Supreme Court Act for St. Christopher and Nevis (Cap 3.11) which requires the leave of the Court where the appeal is for costs only.

Having regard to Part 56 of the CPR 2000, the Court will not award costs against an unsuccessful party where the Court is of the opinion that the appellant did not act reasonably and as such make no order as to costs in this matter as the Court do not view this appellant as being unreasonable.

In appeal No. 2 of 2017, this Court is of the view that there is nothing in the Nevis Development and Land Ordinance that contradicts the preamble to the Act. This Court will apply a literal approach to the meaning of section 47 of the Act. We are of the view that the public should be able to have access to enough information to be able to make certain assessments as it so wishes and the information cannot be limited to what the Director of Physical Planning wants.

The Court is also of the view that the public should have a right to take copies of the documents under section 47 of the Ordinance. The Director of Physical Planning is in breach of the Ordinance and his actions are therefore unlawful. This Court is of the view that this appeal is unmeritorious.

Case Name:

**[1] Kevin Horstwood
[2] Exclusive Hotels Limited**

v

**[1] First Caribbean Bank International
[2] Belmont Resorts Limited
[3] The Registrar of the High Court
[4] The Attorney General
[5] Kate Walwyn
[6] Lemon Grove Company Ltd.**

[SKBHCVAP2016/0013]

Date: Thursday, 15th June 2017

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Terence Byron

Respondent: Ms. Marlene Uter (for the 1st respondent)
Ms. Camilla Cato for Belmont Resort Limited and Kate Walwyn (the 2nd and 5th respondents)
Ms. Eshe Hendrickson (for the 3rd and 4th respondents
6th respondent – unrepresented

Issues: Application by Mr. Terence Byron to be removed as Counsel on the record for the 6th respondent.

Type of Oral Result/Order Delivered: N/A

Result / Order: This appeal 13 of 2016 and the application filed on 22/5/2017, that application filed on June 12, 2017 and June 15, 2017 are all adjourned generally having regard to the underlying dispute and the company Lemon Grove Company which is part and parcel of the dispute below in the Court.

All applications filed in this appeal and the substantive appeal are hereby stayed pending the determination of the matter in the court below because they are contingent on the dispute in the court below.

Reason: The Court stated that it will not entertain any application while the ownership of these companies is in dispute in the court below. Until these issues are settled in the court below, this Court will no application will be entertained from these parties.

Case Name:

**Donley Saunders
v
The Director of Public Prosecutions**

[SKBHCRAP2012/0007]

Date:

Thursday, 15th June 2017

Coram:

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

Appearances:

Appellant:

Mr. Terence Byron

Respondent:

Mr. Valston Graham, The Director of Public Prosecutions, with him, Mr. Teshaun Vasquez

Issues:

Application to amend grounds of appeal

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

Directions

Result / Order:

- 1. Counsel for the appellant furnish to the Court and the respondent with proper grounds of appeal as required by the rules of court within 28 days by Friday, 14th July 2017.**
- 2. The appellant shall furnish to the respondent a list detailing all documents or parts missing from the record of appeal by Friday, 14th July 2017.**
- 3. In the event there is agreement with the respondent as to the missing documents or parts of the record, the appellant shall file and serve a supplemental bundle to the record by Friday, 28th July 2017.**
- 4. In the event that there is no agreement in respect of the documents or parts of the record, the appellant shall file a list of those documents for the consideration of the Court by Friday, 28th July 2017.**
- 5. The appellant shall file and serve skeleton arguments together with copies of authorities to be relied on by Thursday, 31st August 2017.**

6. The respondent shall file and serve skeleton arguments together with copies of authorities relied on in response by Friday, 29th September 2017.
7. The appellant shall file and serve reply submissions if necessary by Friday, 13th October 2017.
8. Hearing of this appeal is adjourned to the next sitting of the Court during the week commencing 4th December 2017.

Case Name: **Julian Clarence Charles**
v
The Director of Public Prosecutions
[SKBHCRA2013/0015]

Date: **Thursday, 15th June 2017**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:	Dr. Henry Browne, QC, Mr Hesketh Benjamin, Ms. Marissa Hobson-Newman
Respondent:	Mr. Teshaun Vasquez

Issues: **Appeal against conviction and sentence – Unlawful carnal knowledge – Application to amend grounds of appeal – Whether trial judge failed to adequately direct jury on doctrine of recent complaint – Whether learned trial judge failed to comply with mandatory terms of s. 143 of the Evidence Act (No. 30 of 2011) to direct the Jury on unreliable evidence**

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

Result / Order: **1. Appeal on conviction is dismissed and affirmed.**

2. Appeal on sentence is allowed to the extent that the sentence of 25 years is varied to 15 years.

Reason:

The Court is of the opinion that this case is an egregious abuse of duty.

The Court agrees with counsel for the appellant that the sentence of the appellant was unduly harsh, but that the aggravating factors in this case are very serious.

The aggravating factors are that the virtual complainant was a minor in police custody at a police station.

The police officer was charged with care and custody of the minor and as such sentence of the appellant must reflect the seriousness of this offence.

The Court is of the view that the judge's summation on recent complaint does not render the conviction unsafe.

Case Name:

**Wendell Welcome
v
The Director of Public Prosecutions
[SKBHCRAP2014/0003]**

Date:

Thursday, 15th June 2017

Coram:

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

Appearances:

Appellant: Mr. Vaughan Woodley, with him, Ms. Marsha Henderson

Respondent: Mr. Teshawn Vasquez

Issues:

Appeal against sentence – Unlawful carnal knowledge

– Oral application for leave to appeal sentence based on Section 41(c) of Cap 3.11 of the laws of St. Kitts and Nevis

Type of Oral
Result/Order
Delivered:

Oral Judgment or Decision

Result / Order:

Appeal against sentence is allowed to the extent that sentence is varied from 16 years to 14 years.

Reason:

The Court is of the view that even though the learned trial judge says that he paid regard to the mitigating factors in this case, the record does not reflect this in his calculation towards the sentence.

The Court has given consideration to the aggravating factors that far outweigh the mitigating factors because of the age of the child; the age difference between the child and the appellant, and also the fact that the child seems to have been traumatised by this event and which seems to have affected the behaviour of the child thereafter.

In the circumstances this Court is of the opinion that the learned trial judge was right to start with a notional sentence of 10 years.

However, the Court considers that a small discount should be given to the appellant for his previous good character. The Court is, however, of the view that matters concerning minor children are serious and ought to be discouraged because of the scourge that they are to society.

Case Name:

Sankofa Maccabbee

v

The Chief of Police

[SKBMCRAP2015/0007]

Date:	Thursday, 15th June 2017
Coram:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Ms. Greatess Gordon
Respondent:	In person
Issues:	Appeal against conviction and sentence – Possession of cannabis – Possession of cannabis with intent to supply – Cultivation of cannabis – Whether learned judge’s decision unreasonable or cannot be supported having regard to evidence – Whether sentence imposed unduly severe – Inconsistencies in evidence before learned magistrate – Whether learned magistrate failed to take appellant’s good character into consideration during trial – Handling of evidence by police – Application to stay this matter in order to allow appellant to make an application to the High Court for constitutional redress
Type of Oral Result / Order Delivered:	N/A
Result / Order:	1. Hearing of this appeal at the request of the appellant is hereby stayed pending the making of an application in the appropriate form seeking constitutional redress. 2. Such application to be made no later than Monday, 31st July 2017. 3. In the event that the appellant fails to make application for constitutional redress in the time stipulated, the appeal shall come up for hearing at the next sitting of the Court scheduled for the week commencing 4th December 2017. 4. The appellant shall take all steps to diligently prosecute his application to the High Court once made and following the making of the application. This appeal shall be listed before this Court in

December 2017 for a report as to the status of the application in the Court below.

5. The report can be made by the appellant as well as by the respondent.

Reason: The appellant wished to have the matter stayed in order to file a constitutional motion in the Court below.

Case Name: Gerard Stapleton
v
The Commissioner of Police
[SKBMCRAP2015/0010]

Date: Thursday, 15th June 2017

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Ms. Greatess Gordon

Issues: Appeal against sentence – Possession of firearm and ammunition

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

Result / Order: Appeal against sentence is dismissed.

Reason: The Court can see no basis to trouble the sentence of the learned magistrate. Firearm offences are very serious and this has to be reflected in the sentence imposed on the offenders.

The learned magistrate took all the proper factors into consideration and so this Court can see no reason to disturb the sentence of the appellant.

Case Name: **Choice FM Limited**
v
Nevis Island Administration

[SKBHCVAP2016/0007]

Date: **Thursday, 15th June 2017**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:	Ms. M. Angela Cozier, with her, Ms. Emily Prentice
Respondent:	Ms. Rhonda Nisbett-Browne

Issues: **Assessment of damages in the sum of \$37,500.00 equivalent to 3 months payment under the contract for compensation to Choice FM for provision of broadcast service provided by the appellant to respondent – Whether learned master erred in law in her judgment and incorrectly assessed the damages due to appellant as a result of failing to take into account fact that contract between parties was contract for a fixed duration, a year to year contract**

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

Result / Order: **1. Appeal is allowed. Appellant awarded prescribed costs in the amount of \$62,500.00 which on an application of appendix B of rule 65 of CPR amounts to \$9,375.00 in the court below.**

2. The appellant's success on this appeal is 1/3 and is entitled to costs of \$2,084.00.

Reasons:

The Court, having heard the parties, is of the view that the master's finding that the contract between the parties was one of indefinite duration and are therefore subject to termination by the giving of reasonable notice cannot be faulted.

Her approach of considering payment in the equivalent sum of 3 months under the contract may be taken as an indication that 3 months' notice was reasonable in order to terminate the contract by a party.

Accordingly, her award of the sum of \$37,500.00 being the equivalent of 3 months' pay under the contract ought not to be disturbed. However, in the pleaded case and the evidence it was not disputed that the respondent had not made payment for the months of January and February 2013 which sums were clearly due under the contract which at that time still subsisted. The learned master ought to have taken into account the sum then due in respect of those 2 months which would have brought the total award to \$62,500.00.

Accordingly, the Learned Master's award is hereby substituted for the total award due to the appellant in the sum of \$62,500.00. The learned master ordered costs under a prescribed basis. No issue has been taken with this basis. Accordingly the appellant is entitled to prescribe costs on the award of \$62,500.00 which on an application of appendix B of Rule 65 of CPR amounts in the court below to a sum of \$9,375.00 by way of costs on the claim.

In respect of costs on this appeal, the general rule is that the successful party is usually entitled to 2/3 of the costs as prescribed in the court below. The Court does not consider however that the appellant was wholly successful in his appeal and is of the view that a sum equivalent to 1/3 of the 2/3 which would normally be payable on appeal would reflect proportionality the appellant's success on the appeal. That sum of 1/3 amounts to \$2,084.00.

Accordingly, the appellant shall have his costs of the appeal to be paid by the respondent in the sum of \$2,084.00. To this extent the appeal herein is allowed.

Case Name: Eugene Hamilton
v
[1] Cedric Liburd
[2] Leroy Benjamin
[3] Wayland Vaughn
[SKBHCVAP2011/0025]

Date: Friday, 16th June 2017

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

Appearances:
Appellant: Mr. Terence Byron
Respondent: Mr. Delano Bart, QC, with him, Ms. Vadeesha John (for the 1st respondent)
Ms. Violet Williams (for the 2nd and 3rd respondents)

Issues: Application to add ground of appeal – Application for extension of time

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

Result / Order: 1. The application to amend the ground of appeal to include that “the learned judge had no jurisdiction to enforce the order of costs to be taxed if not agreed awarded to the 1st respondent and this allowance to the 1st respondent in the sum of \$225,000.00 is a nullity and should be set aside” is

granted.

2. The appellant's submissions filed on July 2nd 2017 are deemed properly filed.
3. The appellant is to file and serve written authorities on or before the 8th July 2017.
4. The 1st respondent is to file and serve submissions in reply and authorities on or before 8th August 2017.
5. The appellant to pay costs to the 1st respondent of \$3,000.00.
6. The hearing of the appeal is adjourned to the sitting of the Court of Appeal during the week commencing the 4th December 2017.

Reason:

The Court has heard the submissions of both counsel for the appellant and the respondent on the application of the amendment to the grounds of appeal and it is of the view that the application should be granted.

Case Name:

Clayton Laws

v

The Director of Public Prosecutions

[SKBHCRAP2013/0001]

Jermaine Riley

v

The Director of Public Prosecutions

[SKBHCRAP2013/0002]

Ali Percival

v

The Director of Public Prosecutions

[SKBHCRAP2013/0003]

Jahmana Walters

V
The Director of Public Prosecutions

[SKBHCRAP2013/0004]

Date: Friday, 16th June 2017

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

Appearances:

Appellant: Mr. Jason Hamilton (for Clayton Laws)
Mr. Hesketh Benjamin (for Jermaine Riley)
Dr. Henry Browne, QC, with him, Ms. Marissa Hobson-Newman (for Ali Percival)
Ms. Marsha Henderson (for Jahmana Walters)

Respondent: Mr. Valston Graham, The Director of Public Prosecutions with Ms. Greatess Gordon and Mr. Teshawn Vasquez

Issues: Whether learned trial judge erred in law by erroneously and unlawfully usurping function of jury thus resulting in unfair trial of appellant who was not represented by counsel at trial – Whether learned trial judge erred in law in failing to adequately and properly direct jury on law of circumstantial evidence – Whether learned trial judge erred in law in failing to adequately and properly direct the Jury on the law of joint enterprise – Whether judge erred in law by failing to fairly, fully and properly address jury on caution statement made to police by appellant Ali Percival

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

Result / Order: Appeal against Jahmana Walters is allowed. The Court is of the view that there is a great public interest in ordering a re-trial. The Court also considered the interest of the appellant. But the public interest is best served by prosecuting those reasonably suspected of a serious crime on the evidence available if the

prosecution can be conducted without unfairness to the accused. We do not discern any unfairness to the accused, if a trial has to be ordered. The main problems arising in this case were really errors as opposed to evidential difficulties. In the circumstances it is ordered that all 3 appellants, that is, Clayton Laws, Ali Percival and Jermaine Riley are to be re-tried.

Reasons:

Jahmana Walters' appeal was allowed on the basis that the trial judge ought to have stopped the case against him because of the lack of evidence against him at the close of the prosecution's case.