

COURT OF APPEAL SITTING

**SAINT LUCIA
19TH TO 23RD SEPTEMBER 2016**

JUDGMENTS

Case Name:

**Kenute Lynch
v
The Queen**

**[SVGHCRA2012/0006]
(Saint Vincent and the Grenadines)**

Date:

Monday, 19th September 2016

Coram:

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

Appearances:

Appellant:

Mr. Alberton Richelieu holding papers for Ms. Kay Bacchus-Browne

Respondent:

Mrs. Brender Portland-Reynolds holding papers for Mr. Colin John

Issues:

Criminal appeal – Murder – Inconsistencies in evidence of prosecution witnesses – Whether sufficiently material to render verdict unsafe and unsatisfactory – Questions by jury – Whether proviso should be applied in the circumstances

**Result &
Reason:**

Held: dismissing the appeal against conviction and confirming the sentence of thirty years save that the sentence shall run from the date of remand, that:

- 1. While it is an established practice in the courts of the Eastern Caribbean for the trial**

judge to invite the jury to ask questions of witnesses if the jury is unclear about a particular matter and would like clarification on it from the witnesses, it is recommended that the foreman of the jury forward the questions in writing to the judge who, being familiar with the rules of evidence, would decide whether the question is a proper one for the witness to answer. Care must be taken to ensure that jury questions, if allowed, follow the correct procedure which would eliminate the danger of eliciting evidence which may be prejudicial to an accused. The trial judge clearly erred in allowing questions, which may have, in some instances, been prejudicial or at least inappropriate, to be put directly to the defence witnesses. Notwithstanding this error, it is highly unlikely that the jury would have returned a different verdict. The other evidence in the case was not discredited in any material respect. Further, there was compelling eye witness evidence. As such, it cannot be said that the trial was unfair.

Maureen Peters v The Queen
BVIHCRA2009/0005 (delivered 1st October 2010, unreported) followed.

2. In relation to the various inconsistencies, the question which this Court must ask itself is whether these inconsistencies are sufficiently serious in light of the other evidence adduced by the prosecution, to render the verdict unsafe. There was a significant amount of direct evidence given by the prosecution witnesses which accorded with each other. The strong eyewitness evidence coupled with the expert evidence was critical, and pointed only to the appellant as the shooter. Further, the learned judge drew all of these inconsistencies to the attention of the jury in his summation and instructed them on how to treat with these inconsistencies. The jury would have been fully aware of the

inconsistencies. Accordingly, the verdict of guilty cannot be said to be unsafe and unsatisfactory.

3. The sentence imposed is not outside the range for this type of offence in the context of the circumstances of its committal. In arriving at a sentence however, a court should take into account the time the accused spent on remand. The learned trial judge gave no indication that the time the appellant spent on remand had been taken into account. Accordingly, the learned trial judge erred only to this extent as the sentence ought to have been recorded as running from the date of remand.

Case Name:

**THE PROPRIETORS, CONDOMINIUM
PLAN NO. 2/1989**

V

**TRINITY INVESTMENT COMPANY
LIMITED**

**[1] TRINITY INVESTMENT COMPANY
LIMITED**

[2] OREST BEDRIJ

[3] OKSANA BEDRIJ

[4] CHRYSTYHNA BEDRIJ

[5] ROKSSANA BEDRIJ

V

**[1] THE PROPRIETORS, CONDOMINIUM
PLAN NO. 2/1989**

[2] JOHN FIRTH

[3] TOM KEPLER

[4] JOHN GREAVES

[5] SAL ROSA

[ANUHCVP2008/0009]

(Antigua and Barbuda)

Date: Monday, 19th September 2016

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

Appearances:

Appellant:	Mr. Alberton Richelieu holding papers for Mr. Dane Hamilton, QC
Respondent:	Mr. Daniel Francis holding papers for Mr. Kendrickson Kentish

Issues: Civil appeal – Breach of statutory duty – Section 5(1)(d) of the Registration of Condominium Titles Act – Whether directors personally liable for breach of statutory duty by Corporation – Liability for breach of trust as constructive trustee – Claimant’s entitlement to unspecified special damages – Obligation by unit holders of a condominium to pay homeowners fees – Power of proprietor of a condominium to impose penalties on homeowners

Result & Reason: Held: Allowing the appeals in part and making the orders contained in paragraph 72 of this judgment, that:

1. When a defendant raises the Statute of Limitations in a claim instituted against him, the onus is on the claimant to prove that the cause of action accrued within the period of limitation. However, where the claimant provides evidence which leads to a reasonable inference that the cause of action accrued within the limitation period, the burden passes to the defendant to establish that the apparent accrual of the cause of action within the limitation period is misleading and that in reality the cause of

action accrued at an earlier date. In the present case, the Appellants, as defendants in the court below, did not discharge the burden of establishing that the cause of action in fact accrued before the commencement of the period of limitation.

Cartledge (Widow and Administratrix of the Estate of Fred Hector Cartledge (*deceased*)) and Others v E. Jopling & Sons, Ltd [1963] 1 All ER 341 applied.

2. Section 4 of the Registration of Condominium Titles Act provides that a proprietor of condominium lots acquires its own legal personality separate from that of its members or directors. Further, section 5(1)(d) of the Act places the obligation on the body corporate to apply insurance proceeds in rebuilding and reinstating property. Accordingly, any failure to do so results in a breach by the body corporate. Consequently, in this case, the Corporation, by virtue of section 5(1)(d) of the Act had an obligation to apply the insurance proceeds in rebuilding and reinstating the property, however, the directors of the Corporation had no such statutory duty to use insurance proceeds for any purpose. Therefore, the learned trial judge erred when she assimilated the position of the Corporation with that of the directors of the Corporation.

Section 5(1)(d) of the Registration of Condominium Titles Act applied.

3. A person who assists with knowledge in a dishonest and fraudulent design on the part of trustees of a trust will be liable for the breach of trust as a constructive trustee. Therefore, where a fraudulent breach of trust known by a director to be fraudulent is done by a company at the direction of the director, so that the director is not only a party to it but the instigator of the fraudulent breach of trust and benefits from it, he is to be held

liable. In the present case, the learned trial judge found that the directors acted honestly and in the best interests of the homeowners when, as directors of the Corporation, they facilitated the use of the insurance proceeds to liquidate some of the Corporation's debts. Accordingly, there was no fraudulent breach of trust known by the directors to be fraudulent and perpetrated by the Corporation at the direction of its directors.

Glenko Enterprises Ltd v Keller and Another 2000 MBCA 7 applied; Barnes v Addy (1874) LR 9 Ch App 244 applied; Scott and Scott v Riehl and Schumak (1958) 15 DLR (2d) 67 (BCSC) applied.

4. If a claimant is to be awarded a sum of money claimed in special damages, he must substantiate it by evidence on which the court can rely. However, if the claimant fails to do so, he or she does not become disentitled to damages for loss suffered by him or her, but the court is entitled to disregard the specific amounts claimed by him or her and make such award in respect of the losses suffered by the claimant as the court considers reasonable in the circumstances. This is what the learned trial judge did in the present case. There was no basis therefore to interfere with the learned trial judge's award of damages to the Respondents against the Appellants.
5. An appellate court should not reverse the finding of a trial judge as to the quantum of damages because it thinks that it would have awarded a different sum if it tried the case at first instance. An appellate court will only be justified in reversing the amount of damages awarded by a trial judge where the appellate court is convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small so as to make it an entirely erroneous estimate of the damages

to which a claimant is entitled. In the present case, there was no basis upon which it could be said that the trial judge acted on any wrong principle of law, or that the amounts she awarded for the costs associated with the reinstatement and refurbishment of Villa 21 were so extremely high or so very small so as to make it an entirely erroneous cost estimate of the damages to which the Respondents were entitled. Accordingly, there was no basis to interfere with the trial judge's award with respect to those claims.

Flint v Lovell [1934] All ER Rep 200 applied.

6. In this case, the learned trial judge heard the evidence of the witnesses, had the opportunity to observe their demeanour and to make assessments of their credibility. She also had several documents before her in relation to the condition of Villa 21 after the passage of a hurricane and the removal of its roof. On this basis the learned trial judge made the factual findings that she did in relation to Villa 21. Accordingly, there was no basis to interfere with the factual findings made by the learned trial judge.
7. Unit holders in a condominium cannot lawfully refuse to pay fees that are levied against their property on the basis of any perceived grievance they may have with the proprietors of the condominium. In the present case, the alleged breaches of duty by the Corporation did not justify the unit holders withholding of the common charges payable by them. Accordingly, the learned trial judge did not err in declining to decide that Trinity Investment's obligation to pay the maintenance fees, late fees and assessments and interest had been suspended.

Towers Condominium Association v Lawrence 32 V.I. 185, 188 (V.I. Terr. Ct. 1995);

1995 VIR 185 applied.

8. Neither section 5 of the Act nor section 1(b) of the First Schedule of the Act gives power to the Corporation to impose any kind of penalties on the homeowners whether by way of late penalty fees or late interest. The imposition of penalties and special rates of interest could only be justified if authorised by applicable legislation or by agreement between the party owing and the party claiming. In the present case, the applicable legislation does not authorise the imposition of any penalties or special rates of interest, nor was there agreement between the Corporation and the Respondents. Consequently, there was no justification for the claim by the Corporation for late penalty and late interest or any basis for an award to the Corporation in respect of this claim.

STATUS HEARING

Case Name:

David Ferguson

v

Carol Gideon Clovis

[SLUHCVAP2015/0001]

Date:

Wednesday, 21st September 2016

Before:

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

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

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

Appearances:

Appellant:

Mr. Eghan Modeste holding papers for Mr. Daarsrean Greene

Respondent: No appearance

Issue: Status of the matter

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

Result / Order: [Oral delivery]
The matter is adjourned to the next status hearing of the Court of Appeal sitting in Saint Lucia during the week commencing 16th January 2017.

Reason: There was no appearance or representation for or on behalf of the respondent. The transcript was requested on 18th May 2016 and to date is yet to be received.

Case Name: Timothy Greene
v
Anthony Paul
[SLUHCVP2009/0032]

Date: Wednesday, 21st September 2016

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

Appearances:
Appellant: Mr. Sahleem Charles

Respondent: Mr. Eghan Modeste

Issue: Status of the matter

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

Result / Order: [Oral delivery]
The appeal is hereby discontinued with costs to the respondent fixed in the sum of \$1,000.00.

Reason: Counsel for the appellant indicated that the appellant did not wish to proceed with the appeal.

Case Name: Roane Magloire
v
Rohan Joseph
[SLUHCVAP2005/0019]

Date: Wednesday, 21st September 2016

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

Appearances:

Appellant: No appearance

Respondent: Mr. Alvin St. Clair

Issue: Status of the matter

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

The appeal is hereby struck out for want of prosecution.

Reason:

The appeal was struck out for want of prosecution. It was filed in 2005. Mr. Alvin St. Clair indicated that he was not instructed in relation to the appeal.

Case Name:

**Christine George
v
Patrick Daniel Jn. Baptiste
[SLUHCVP2005/0046]**

Date:

Wednesday, 21st September 2016

Before:

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

Appearances:

Appellant:

Ms. Ann-Alicia Fagan

Respondent:

No appearance

Issue:

Status of the matter

Type of Oral

N/A

**Result / Order
Delivered:**

Result / Order:

[Oral delivery]

- 1. The respondent shall be served with the notice of appeal and all other documents relating to the appeal.**
- 2. Proof of service to be filed with the Court.**

Reason:

Mr. Vern Gill represented the appellant in the lower court but was not retained in relation to the appeal. The appellant served counsel, Mr. Vern Gill, with documents. The appellant failed to serve the respondent personally. The Court advised that is it prudent to serve parties personally.

Case Name:

**Jesse St. Cyr
v
The Queen**

[SLUHCRAP2013/0001]

Date:

Thursday, 22nd September 2016

Before:

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

Appearances:

Appellant:

In person (Mr. Shawn Innocent appearing amicus curiae)

Respondent:

Mr. Stephen Brette

Issue:

Status of the matter

Type of Oral
Result / Order
Delivered:

Oral Judgment or Decision

Result / Order /
Reason:

[Oral Delivery]

The appeal is dismissed, it having already been dealt with comprehensively by the Court in a judgment delivered on 14th December 2011. The Court has no jurisdiction to deal with the appeal against sentence.

Case Name:

Jeanette Augustin
v
The Commissioner of Police

[SLUMCRAP2009/000]

Date:

Thursday, 22nd September 2016

Before:

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

Appearances:

Appellant:

Mr. Ramon Raveneau

Respondent:

Mr. Stephen Brette

Issue:

Status of the matter

Type of Oral
Result / Order
Delivered:

Oral Judgment or Decision

Result / Order /
Reason:

[Oral delivery]

1. There being no compliance with clause 1 of the order dated 30th day of October 2015 in

that the record of appeal has not been prepared within 3 months, the appeal is allowed.

2. The sum of \$300.00 paid by the appellant in respect of this matter is to be returned to the appellant.

APPLICATIONS AND APPEALS

Case Name:

**[1] Terentia Nigel Toussaint and the
Heirs of Thelma Toussaint**

v

[1] The Attorney General

**[2] Hon. Stanley Felix, The Minister
responsible for the administration of the
Land Registration Act in respect of Land
Registration Act Section 35**

[3] Gemyma Norville, Registrar of Lands

[SLUHCVAP2015/0028]

Date:

Monday, 19th September 2016

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

**Applicant / Intended In person
Appellant:**

Respondent: Mrs. Brender Portland-Reynolds

Issue:

Application for leave to appeal

Type of Oral
Result / Order
Delivered:

N/A

Result / Order:

Matter stood down to allow the appellant to ascertain power of attorney document.

Case Name:

[1] NG Man Sun
v
[1] Peckson Limited
[2] Chen Mei-Huan

[BVIHCMAP2013/0026]
Territory of the Virgin Islands

Date:

Monday, 19th September 2016

Coram:

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

Appearances:

Appellant:

Mr. Christopher Parker, QC with him Mr. Peter Tyers-Smith instructed by Harneys for NG Man Sun

Respondent:

Mr. John McDonnell, QC with him Mr. David Welford instructed by Maples & Calder

Issues:

Commercial appeal – Section 7 Virgin Islands (Appeals to the Privy Council) Order, 1967 – Whether majority shares in BVI company should be re-transferred to Madam Chen pending the hearing and determination of appeal to Privy Council – Interim management and control of company

Type of Oral
Result / Order
Delivered:

N/A

Result / Order:

Judgment reserved.

Case Name:

**[1] Terentia Nigel Toussaint and the
Heirs of Thelma Toussaint
v
[1] The Attorney General
[2] Hon. Stanley Felix, The Minister
responsible for the administration of the
Land Registration Act in respect of Land
Registration Act Section 35
[3] Gemyma Norville, Registrar of Lands

[SLUHCVAP2015/0028]**

Date:

Monday, 19th September 2016

Coram:

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

Appearances:

Appellant:

In person

Respondent:

Mrs. Brender Portland-Reynolds

Issue:

Application for leave to appeal

Type of Oral
Result / Order
Delivered:

N/A

Result / Order: [Oral delivery]
Matter adjourned to Wednesday, 21st September 2016.

Case Name: [1] Terentia Nigel Toussaint and the
Heirs of Thelma Toussaint
v
[1] The Attorney General
[2] Hon. Stanley Felix, The Minister
responsible for the administration of the
Land Registration Act in respect of Land
Registration Act Section 35
[3] Gemyma Norville, Registrar of Lands
[SLUHCVAP2015/0028]

Date: Wednesday, 21st September 2016

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

Appearances:
Appellant: In person
Respondent: Ms. Jans Drysdale holding papers for Mrs.
Brender Portland-Reynolds

Issue: Application for leave to appeal

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

Result / Order: [Oral delivery]

1. The application for leave to appeal the decision of the learned trial judge refusing permission to file judicial review is dismissed.
2. The ruling at paragraph 3 of the learned trial judge's order is set aside.

Reason:

The application for leave to appeal the decision of the learned trial judge refusing permission for judicial review was dismissed on the basis that there was an alternative remedy under the Land Registration Act, Cap. 5.01, Revised Laws of Saint Lucia 2008 section 105 which would have afforded a remedy to challenge the decision of the Registrar and which was not pursued by the applicant.

In relation to the finding at paragraph 3 of the learned judge's order which relates to the challenge to the constitutionality of the provision contained in the Land Registration Act, the Court was of the view that the ruling in the paragraph seemed to have been premature. In order to bring a constitutional motion leave of the court is not required where one wishes to challenge and has sufficient interest in challenging a law in terms of whether it accords with the provision of the Constitution. On that basis the Court set aside the ruling the learned judge made in paragraph 3 of his order.

The Court went further to state that the applicant, as she may deem necessary, is open to pursue properly a claim, specifically the constitutional claim which challenged constitutionality of the provision, in the court below in relation to the provision of the Land Registration Act which is challenged.

Case Name:

Claudia Vida James

V

Cuthbert James

[SLUHCVAP2016/0010]

Date: Wednesday, 21st September 2016

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

Appearances:

Appellant: Mr. Ramon R. Raveneau

Respondent: Ms. Ann-Alicia Fagan

Issues: Interlocutory appeal – Whether the learned judge misdirected herself by applying the wrong test to the application before the court – Whether the learned judge never addressed her mind to the proper considerations to be weighed by a court when considering an application for striking out of a claim or of pleadings for abuse of process and therefore misdirected herself with respect to what principles she used to determine the application

Type of Oral Result / Order Delivered: N/A

Result / Order: [Oral delivery]
By consent:

1. The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 16th January 2017.
2. The parties will seek to mediate the issues arising in the substantive matter prior to the next sitting of the court if possible.

Reason: Counsel who appeared on behalf of the respondent informed the Court that Ms. Renee St. Rose, counsel who has conduct of the matter, had a medical emergency and requested an adjournment. The appellant agreed to an adjournment and counsel for both parties agreed to attempt mediation before the next sitting of the Court of Appeal in Saint Lucia.

Case Name: **Wauneen Louis Harris**
V
Lazarus Paul
[SLUHCVP2015/0032]

Date: **Wednesday, 21st September 2016**

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

Appearances:
Applicant / Intended Appellant: **In person**
Respondent: **Mr. Gerard Williams**

Issue: **Application for leave to appeal**

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

Result / Order: **[Oral delivery]**
1. By consent, the parties are referred to

mediation with an agreed mediator being Ms. Cynthia Combie-Martyr.

2. The parties shall report to the Court on the outcome of the matter at the next sitting of the Court of Appeal in Saint Lucia during the week commencing 16th January 2017.

Reason:

The applicant/appellant informed the Court that the parties have consented to mediation.

Case Name:

[1] Andrew Benjamin
[2] Maria Desir
V
[1] The Attorney General
[SLUHCVAP2016/0011]

Date:

Wednesday, 21st September 2016

Coram:

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

Appearances:

Applicant / Intended Appellant: Mr. Horace Fraser

Respondent: Mrs. Karen Bernard

Issue:

Application for leave to appeal

Type of Oral Result / Order Delivered:

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. Leave to appeal is hereby refused, as it has not been shown that the issues raised have a realistic prospect of success.**
- 2. No order as to costs on this application.**

Reason:

The Court found that the master did not err in the exercise of the discretion not to strike out the paragraphs. The police had information to search for drugs at premises. Section 623 of the Criminal Code of Saint Lucia, Cap. 3.01 confers authority on the police to seize items not listed in the warrant.

Case Name:

[1] Fannicia Gilbert

v

[1] Johnny Frederick

[2] Joseph William

[3] Philomene Edward

[SLUHCVAP2016/0009]

Date:

Wednesday, 21st September 2016

Coram:

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

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

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

Appearances:

Appellant:

Ms. Diana Thomas with her Ms. Tesca Mathurin

Respondent:

No appearance

Issues:

Interlocutory appeal – Application for adjournment

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

N/A

Result / Order:

[Oral delivery]

- 1. This appeal is adjourned for the notice of appeal and record of appeal to be served on the respondents.**
- 2. Upon service, the appellant shall file proof of service.**

Reason:

The Court had no proof of service on the respondent. Counsel who had appeared for the respondent in the lower court, Mr. Daarsrean Greene, had no instructions in the appeal matter.

Case Name:

**[1] Stephen Delaire
[2] Brian Delaire
[3] Lorraine Delaire
All by their duly Constituted Attorney
Larie Dularie
v
[1] Dominique Fassal
[2] Marie Delaire
[3] George Delaire**

[SLUHCVAP2015/0025]

Date:

Wednesday, 21st September 2016

Coram:

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

Appearances:

Appellant: Mr. Gerard Williams for all appellants

Respondent: Mr. Horace Fraser for the first named respondent

Second named respondent in person

Third named respondent in person

Issues:

Interlocutory appeal – Case management – Whether there was a breach of natural justice principles – Vesting deed

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

1. The appeal is allowed.
2. The orders made by the court below, ex parte, on 4th November 2013 and 11th November 2013 are hereby, as a matter of justice, set aside in their entirety.
3. It is further ordered that the appellants shall be joined as parties to the claim below as defendants and served with the said claims.
4. Dominique Fassal, currently recorded as owner in vesting deed, namely Parcel 1 Block 1646B, is also hereby joined as a party to the claim below as a defendant and shall be served with the claim.
5. The claim shall be served on the 1st National Bank of Saint Lucia, which bank is recorded on the land register of the subject parcel as a chargee of the said land.
6. Liberty is hereby given to the 1st National Bank to be joined as a party to the claim below.
7. The Registrar shall serve a copy of this order on the 1st National Bank.

Reason:

The Court concluded that there was an egregious breach of the principles of natural justice in relation to the appellants in this appeal and in respect of the underlying claim in which the appellants were neither named as parties nor given notice thereof notwithstanding that the claim sought to affect their interest in respect of land namely Parcel 1 Block 1646B registration quarter Dauphin, the subject of a vesting deed in their favour.

The Court was satisfied that the breach in natural justice was sufficient to set aside any order made in breach of same.

Case Name:

Lawrence Elford

V

Herman Sidonie

[SLUMCVAP2015/0002]

Date:

Wednesday, 21st September 2016

Coram:

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

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

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

Appearances:

Appellant:

No appearance

Respondent:

Mr. Jeannot Michel-Walters

Issues:

Civil appeal – Whether learned magistrate erred in exercise of discretion

Type of Oral

Oral Judgment or Decision

**Result / Order
Delivered:**

Result / Order:

[Oral delivery]

- 1. The appeal is hereby struck out and accordingly dismissed.**
- 2. Costs awarded to the respondent in the sum of \$500.00.**

Reason:

All efforts were made to locate the appellant to no avail.

Case Name:

Jean Fontenelle

V

The Queen

[SLUHCRA2016/0001]

Date:

Thursday, 22nd September 2016

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:

Mr. Stephen Brette

Issue:

Application for leave to appeal against sentence

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

1. Leave to appeal is granted.
2. The appellant is to file and serve his notice of appeal within 30 days of this order, thereafter the Crown will follow the usual procedure for filing.

Reason:

The Crown indicated that they had no objection to the application for leave to appeal.

Case Name:

**Kim John
v
The Queen**

[SLUHCRA2015/0008]

**Francis Phillip
v
The Queen**

[SLUHCRA2015/0007]

Date:

Thursday, 22nd September 2016

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:

Mr. Tiyani Behanzin

Respondent:

Mr. Stephen Brette

Issue:

Application for leave to appeal out of time

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

N/A

Result / Order:

[Oral delivery]

There being no objection by the Crown to the oral request to file and serve an affidavit in support of the notice of application together with supporting skeleton arguments, leave is granted to the applicants to file and serve their affidavits in support together with skeleton arguments and authorities within 8 weeks from the date of this order.

Reason

Counsel failed to file supporting affidavit and submissions and requested time to file the necessary documentation.

Case Name:

Alius Charlemagne

V

PC 695 Kendal Bicar

[SLUMCRAP2012/0009]

Date:

Thursday, 22nd September 2016

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:

Mr. Huggins Nicholas

Respondent:

Ms. Tamara Foster

Issue:

Application to strike out notice of appeal

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

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
The appeal is allowed.**

Reason:

The learned prosecutor withdrew the application to strike out the notice of appeal.

Moreover, the Court held that the learned magistrate acted outside of her jurisdiction and exceeded her jurisdiction when she purported to determine a matter which arose in the second district in circumstances in which she was presiding in the first district. The learned magistrate was in clear breach of section 6 of the District Court Act, Cap. 2.02 Revised Laws of Saint Lucia 2013.

Case Name:

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

[SLUHCRA2016/0003]

Date:

Thursday, 22nd September 2016

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:

Applicant / Intended Appellant: Mr. Horace Fraser

Respondent: Mr. Stephen Brette holding papers for Ms. Jeanin Kisna

Issue:	Application for leave to appeal
Type of Oral Result / Order Delivered:	N/A
Result / Order:	[Oral directions] 1. The hearing of this appeal is adjourned and traversed to the next sitting of the Court of appeal in Saint Lucia during the week which commences on 16th January 2017. 2. The respondent is granted 2 months leave to file and serve skeleton submissions together with authorities.
Reason:	Counsel who appeared for the respondent informed the Court that the prosecutor who has conduct of the appeal is on certified sick leave. Counsel requested an adjournment. There was no objection from learned counsel for the applicant.
Case Name:	Boniface Christophe v The Queen [SLUHCRA2010/0002]
Date:	Thursday, 22nd September 2016
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:	Mr. Colin Foster

Respondent:	Mr. Stephen Brette
Issues:	Criminal appeal against conviction – Rape and Robbery
Type of Oral Result / Order Delivered:	N/A
Result / Order / Reason:	Matter is stood down until 3:00 p.m. this afternoon in order to enable the Crown to review the skeleton arguments that were provided by the appellant on the morning of the 22nd September 2016.
Case Name:	Shawn Walters v PC 765 Imran Remy (The Police) [SLUMCRAP2013/0009]
Date:	Thursday, 22nd September 2016
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:	Mr. Daarsrean Greene
Respondent:	Ms. Khadya Florius
Issues:	Criminal appeal against conviction – Possession of a controlled drug / attempt to supply an inmate at Bordelais Correctional Facility with a prohibited item to wit cannabis

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

N/A

**Result / Order /
Reason:**

**Matter is stood down until 4:00 p.m. to allow
prosecuting counsel some time to review
submissions filed by defence counsel on
Thursday, 15th September 2016.**

Case Name:

**Stephen Daniel
v
PC 738 Dennie Antoine

[SLUMCRAP2014/0004]
[SLUMCRAP2014/0006]
[SLUMCRAP2014/0007]**

Date:

Thursday, 22nd September 2016

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: Mr. Shawn Innocent

Respondent: Ms. Khadya Florius

Issues:

**Criminal appeal against conviction – Attempt to
introduce into Bordelais Correctional facility
prohibited articles – Possession of a controlled
drug**

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The appeal against conviction is dismissed in relation to the conviction under section 44 (1)(b) of the Correctional Services Act, No. 24 of 2003.**
- 2. The appeal is allowed in relation to the conviction under section 44 (1)(c) of the Correctional Services Act, No. 24 of 2003.**
- 3. The appeal is dismissed in relation to the conviction under section 8 (2) of the Drug Prevention (Misuse) Act, Cap. 3.02, Revised Laws of Saint Lucia 2013.**
- 4. The appeal against sentence is dismissed, all sentences to run concurrently.**

Reason:

The appellant, Stephen Daniel, was convicted in the magistrate court on four counts. Two of the charges were under the Correctional Services Act, No. 24 of 2003 and under the Drug Prevention (Misuse) Act, Cap. 3.02, Revised Laws of Saint Lucia 2013. The prosecution conceded that there was no evidence to support the charge under section 441(c) of the Correctional Services Act and so they agreed to that extent that the appeal should be allowed in relation to that charge.

The Court considered the submissions of learned counsel for appellant who submitted to the Court that the main thrust of the appellant's appeal was three fold: (i) that the learned magistrate erred in failing to address her mind to the good character of the appellant; (ii) that the learned magistrate failed to address mind to the defence of appellant; and (iii) the learned magistrate placed too much emphasis of the demeanour of the witnesses in determining issues of credibility.

The Court stated that they have looked at the reasons for decision of the learned magistrate and the evidence which was led by both sides and have considered the written and oral

submissions.

The Court was of the view that while the learned magistrate did not specifically indicate in her reasons that she had addressed her mind to the appellant's good character even though she made a general statement that she considered the evidence, they noted the evidence which was led. The prosecution had led evidence of the appellant's good character, the appellant himself led evidence of his good character. The Court went on to state that the failing to give a good character direction is not fatal to a conviction where the evidence is overwhelming.

The Court examined the evidence and was of the view that the evidence was overwhelming in relation to the offences. They therefore dismissed the appeal in relation to that ground.

Concerning the second ground, the Court was of the view that the defences that were advanced by the appellant were alive to the learned magistrate; she had outlined his case in her reasons. The Court was satisfied that the trial was not unfair in those circumstances.

In relation to the third issue, the demeanour of witnesses, this was not the sole reason having regard to the full reasons given by the magistrate as to why the magistrate accepted the reasons by the prosecution. The learned magistrate preferred the prosecution's version of events as opposed to the version given by defence. The Court saw no reason to upset the findings by the learned magistrate. The Court therefore dismissed the appeal.

In relation to sentence the Court noted the submission by learned counsel whether the sentences were to run concurrent or consecutive as it appeared not to be clear. The Court therefore made an order to clarify the order that the sentences of 6 months and 1 year ought to run concurrently so that the totality of the sentence would be 1 year.

Case Name:

James Doxilly

V

The Police

[SLUMCRAP2006/0007]

Date:

Thursday, 22nd September 2016

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:

Mr. Daarsrean Greene

Respondent:

Mr. Leon France

Issues:

Criminal appeal against conviction – Possession of unlicensed firearm and ammunition

Type of Oral Result / Order Delivered:

N/A

Result / Order:

[Oral delivery]

- 1. Based on the application of the appellant for an adjournment and for leave to file and serve skeleton arguments within 21 days and there being no objection by the Crown, it is hereby ordered that the appellant is granted 21 days leave from the date of this order to file and serve skeleton submissions in support of the appeal.**
- 2. The respondent is hereby granted 14 days leave thereafter, if necessary, to file and serve skeleton arguments in response.**

3. The hearing of this appeal is adjourned and traversed to the next sitting of the court in Saint Lucia during the week which commences on 16th January 2017.

Reason:

Counsel for the appellant was recently retained and needed time to familiarise himself with the file.

Case Name:

Boniface Christophe

V

The Queen

[SLUHCRA2010/0002]

Date:

Thursday, 22nd September 2016

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:

Mr. Colin Foster

Respondent:

Mr. Stephen Brette

Issues:

Criminal appeal against conviction – Rape and Robbery

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

N/A

Result / Order:

[Oral delivery]

1. The Office of the DPP shall file and serve further skeleton submissions exhibiting the minutes of conviction and sentence in

relation to the sentence of 25 years imposed on the appellant on the 23rd February 2005 and the minute of conviction and sentence in relation to the offence of indecent assault of Ann Marie Felix, within 21 days of this order.

2. The appellant has leave to file further submissions within 14 days of receipt of the submissions of the crown.
3. The hearing of this appeal is adjourned and traversed to the next sitting of the Court of Appeal in the State of Saint Lucia commencing the 16th of January 2017.
4. This is the final adjournment of this appeal.

Reason:

The Court was informed that there is a possibility that the case concerned two incidents, that is, two offences involving two virtual complainants. The Court needed further documentation in order to determine whether the sentence passed in the lower court was excessive in the circumstances.

Case Name:

Shawn Walters

V

PC 765 Imran Remy (The Police)

[SLUMCRAP2013/0009]

Date:

Thursday, 22nd September 2016

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:

Mr. Daarsrean Greene

Respondent:

Ms. Khadya Florius

Issues:	Criminal appeal against conviction – Possession of a controlled drug / attempt to supply an inmate at Bordelais Correctional Facility with a prohibited item to wit cannabis
Type of Oral Result / Order Delivered:	Oral Judgment or Decision
Result / Order:	[Oral delivery] The appeal is allowed and the conviction and sentence are both set aside.
Reason:	The Crown conceded on the failure to prove that the nature of the substance recovered on the appellant was in fact cannabis. Reference was made to section 2, 4 and schedule 4 of the Drug Prevention (Misuse) Act, Cap. 3.02, Revised Laws of Saint Lucia 2013. There was also no exhibit tendered into the court to substantiate the charges. As a result, there was no degree of certainty that the substance recovered on the appellant was in fact cannabis. The Crown noted that the Act provides for a certificate of analysis by virtue of section 39 and this would allow for expert opinion on the nature of the substance. Without such an essential document the Crown conceded that the substance recovered on the appellant could not be held to be cannabis as a matter of fact and law.