

COURT OF APPEAL SITTING

**ANTIGUA & BARBUDA
14TH TO 18TH MARCH 2016**

JUDGMENT

Case Name: [1] Zorin Sachak Khan
[2] Afaque Ahmed Khan
[3] Sasheen Anwar
v
[1] Gany Holdings [PTC] SA
[2] Asif Rangoonwala

[BVIHCMAP2014/0018]

Date: Monday, 14th March 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:

Appellants:	Ms. Kamilah Roberts holding papers for Ogier
Respondents:	Mr. Hugh Marshall Jr. holding papers for Maples and Calder for the first respondent Mr. Kwame Simon holding papers for Appleby for the second respondent

Issues: Commercial appeal – Whether trial judge made incorrect factual findings – Discretionary Trust – Responsibilities of trustees – Duty of disclosure to beneficiaries – Account of trust assets by trustee – Burden of proof – Breach of Trust – Personal liability to account – Knowing Receipt

Type of Oral Delivery/Order Delivered: Oral Judgment

Result & Reason: Held: allowing the appeal and making the orders as set out in paragraph 130 of the judgment and ordering Gany to pay Zorin the costs in this Court and in the court below to be agreed within 21 days, failing which costs was assessed by the commercial court as follows:

1. The law is well settled in relation to the approach an appellate court will take on an appeal against the trial judge's findings of fact. An appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion. The appellate court may take the view that without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence. The appellate court, however, either because the reasons given by the trial judge are not satisfactory or because it is unmistakably so appears from the evidence or it may be satisfied that judge has not taken proper advantage of having seen and heard the witnesses and the matter will then become one at large for the appellate court.

Thomas and Thomas [1947] AC 484 applied; Central Bank of Ecuador et al v Conticorp South American et al [2015] UKPC 11 applied; Beacon Insurance Company Limited v Maharaj Bookstore Limited [2014] UKPC 21 applied; re B (A Child) (Care Proceedings) [2013] 1 WLR applied.

2. In the case at bar, there was overwhelming evidence before the judge to indicate that in addition to the ECL HK shares Gany held shares in ECL BVI, Cedilla Investment SA and Schweitzer Holdings. It is clear that the ZVM Trust contained assets that were significantly more than US\$100. Accordingly, the learned judge made an incorrect finding of fact when he stated that there was no evidence that Gany held shares in these companies.

3. Trustees as legal owner of properties for the benefit of the beneficiaries have control over the trust assets. The trustees have a fiduciary duty to the beneficiaries with respect to the trust property and the trustees usually have all management and also functions in respect of the trust property. The beneficiaries' only remedy is to ensure that the trust property is properly administered in accordance with its terms and the trustee's fiduciary duty. Trustees must maintain accurate accounts of the trust property and it is the first duty of the trustee to be constantly ready with his accounts. The trustee's duty to account is therefore the irreducible core minimum of trusteeship.

Armitage v Nurse [1988] Ch 241 applied; Davis v Administrator-General (1969) 14 WIR 111 applied.

4. If a settlor of a trust subsequently transfers to or vests further monies or assets in the trustee then a presumption arises that those further assets are to be held by the trustee on the same terms as the original trust. Similarly, if a person purchases property in the name of the trustees of a settlement previously made by him, there is a presumption that he had meant to add the property to the trust fund.

Re Curteis' Trusts (1872) LR 14 Eq 217 applied.

5. On the evidence before the learned commercial court judge it was clear that there were assets vested in Gany which it held as trustee of the ZVM Trust. The learned trial judge's view that if Zorin wished to challenge that the only assets in the ZVM Trust, aside from the immaterial US\$100, were the shares of the ECL HK, the onus must be on them to show that the account is deficient was an incorrect view. This was an error of law committed by the judge. Instead of placing the burden on Gany to rebut the presumption that the assets forms part of the ZVM Trust, the learned judge incorrectly places the burden of proof on Zorin. Gany ought to be held liable to account to Zorin for all the assets that have been held or held by as trustee of the ZVM Trust together with all assets which came into possession from either MAR or anyone else on his behalf since Gany failed to lead any evidence in rebuttal of the presumption.

6. The failure of a trustee to consider a relevant consideration or factor can give rise to a breach of trust. Trustees are to take the interest of the beneficiaries into account during the administration of the trust. The court will invalidate the exercise of discretion by trustees where it is clear that they would not have acted as they did had they not fail to take into account considerations which they ought to have taken into account. In this case, the uncontroverted evidence was that the directors of Gany in making the decision to appoint the assets of the ZVM Trust to Asif did so under false or mistaken belief that the assets that forms the ZVM Trust was only US\$100. The ECL HK shares had a significant value unlike the view that the learned trial judge held. In addition, it is clear that the trustees acted under the misconception that the ZVM Trust was only

valued at US\$100 when they appoint out the assets to Asif. The trustee therefore clearly acted under a misconception and in so doing the learned trial judge in coming to a contrary conclusion erred.

7. In the case at bar, there was no evidence that the trustees acquainted themselves properly with all of the relevant matters one of which was the nature of the assets that formed part of the ZVM Trust. The trustees did not take into account interest of the beneficiaries when they exercised the discretion to appoint the assets of the ZVB trust to Asif. Accordingly, Gany's decision is vitiated due to his failure to exercise his discretion properly.

Re Hastings Bass [1974] 2 All ER 33 applied; Pitt v Holt and Futter v Futter [2013] UKSC 26 applied.

8. In this case, in order to establish a constructive trust claim based on knowing receipt Zorin would have had to satisfy the judge of the three things: (1) that there were significant assets in Gany at the time of the deed of appointment; (2) that in breach of trust owed by Gany as trustee to the beneficiaries they have appointed out those assets to Asif, and (3) that Asif received those assets with the knowledge of breach of trust. On the evidence, there was no basis upon which the learned judge could have concluded that Asif was guilty of knowing receipt. Accordingly, the learned judge quite correctly rejected her contention and did not err.

9. Even though there was no basis upon which the judge could have held that Asif was personally liable, the justice of the case requires that Asif returns the ZVM Trust assets that he has in his possession which were improperly transferred to him by Gany. It is not sufficient for him to simply assert that he has parted with the assets. If he asserts that the assets are now in the hands of a third party, the trustees should be able to trace them with a view to determining the veracity of his contention.

STATUS HEARING

Case Name:

**Haynes Browne
v
Lena Carr, deceased
by her personal representative, Buell Carr
[ANUHCVP2014/0007]**

Date:

Wednesday, 16th March 2016

Coram:

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

Appearances:

Appellant:

Ms. C. Debra Burnette

Respondent:

Dr. David Dorsett with him, Mr. Jarid Hewlett

Issue:

Status of the matter

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

Directions

Result / Order:

- 1. The registrar is to furnish a transcribed copy of notes taken of the proceedings from the Judge's notebook and to give notice to the parties when the same is available for collection.**
- 2. The matter is placed for further status hearing at the next sitting of the Court in Antigua during the week commencing 24th October 2016.**

Reason:

Counsel for the respondent indicated that the main issue is the availability of the notes of evidence from the previous proceedings and that she had received a notice from the registrar stating that said notes are unavailable.

The Court noted that it was an analog system that was used to record the trial and that something has now gone wrong with the tapes which have resulted in the unavailability of the evidence.

Unfortunately, counsel for the respondent had not taken written notes and counsel for the appellant was not counsel retained in the proceedings below and previous counsel is not in a position to assist at all.

The Court however understands that the Justice Harris had taken notes and it is hoped that they are legible enough in order for them to be transcribed and delivered to the parties.

Case Name: [1] Garfield Morrison
v
[1] Chief Magistrate
[2] Ivan Walters
[3] The Commissioner of Police

[ANUMCRAP2010/0002]
(Antigua & Barbuda)

Date: Wednesday, 16th March 2016

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

Appearances:
Appellant: Dr. David Dorsett with him, Mr. Jarid Hewlett
Respondent: Ms. Rilys Adams, Crown Counsel II

Issue: Status of the matter

Type of Order Directions
Delivered:

Order:

1. The appellant is to produce, file and serve an affidavit of the witness Brenda Furlong who gave evidence before the Chief Magistrate Mr. Ivan Walters in respect of the charges brought against the appellant and the subject of appeal number [ANUMCRAP2010/0002]. The said affidavit to be filed and served by Wednesday, 18th May 2016.
2. The respondent shall have liberty to file an affidavit in reply if deemed necessary by Friday, 17th June 2016.
3. The notes taken by the prosecutor together with the affidavit evidence referred to in paragraphs 1 and 2 shall together be deemed the record of the proceedings and a bound

copy shall be filed and served by the appellant by Friday, 15th July 2016.

4. The appellant shall then file and serve written submissions in support of the appeal not later than Friday, 19th August 2016.
5. The respondent shall file and serve written submissions in response by Friday, 30th September 2016.
6. The appeal thereafter shall be listed for court for the week commencing 24th October 2016.

Reason:

Counsel was furnished by the Office of the DPP with notes taken by the prosecutor in the matter. Having reviewed same, instructions from the appellant are that the notes do not contain evidence of one of his witnesses, Ms. Brenda Furling. Thus counsel regards the notes as incomplete and unsatisfactory.

The Court enquired of counsel of the appellant whether this witness was still available and in a position to give evidence by way of affidavit setting out what her evidence was. The Court also enquired as to whether the notes provided were of use to counsel. Having responded affirmatively, an order was made for the witness to provide affidavit evidence to be served on the respondent.

Case Name:

[1] Vere Bird Jr.
[2] Lester Bryant Bird
[3] Gaston Browne
[4] Mary Claire Hurst
[5] Molywn Joseph
[6] Sharon Kent
[7] Jim Galloway

v

[1] The Commissioner of Police

[ANUMCRAP2010/0015]

Date:

Wednesday, 16th March 2016

Coram:

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

Appearances:

Appellant:

No appearance

Respondent: Ms. Rilys Adams, Crown Counsel II

Issue: Status of the matter

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

Result / Order:

1. Noting that a copy of the transcript of the proceedings has been furnished by the respondent to the registrar it is hereby ordered and directed that the registrar prepares a bound copy of the said transcripts properly paginated and notify the parties of its availability no later than Friday, 15th April 2016.
2. The appellants shall file and serve written submissions in support of the appeal by Friday, 20th May 2016.
3. The respondent shall file and serve written submissions in response by Friday, 24th June 2016.
4. The appeal shall then be placed on the hearing list for the next sitting of the court in Antigua and Barbuda during the week commencing 24th October 2016.

Reason: No appearance for the appellant despite being given notice. Efforts made to contact counsel for the appellant proved futile.

Counsel for the respondent indicated that the Office of the DPP did in fact receive records of the transcript; however, this was given to the Registrar of the High Court to photocopy and furnish said copy on the appellant on 17th December 2015. The copy belonging to the Office of the DPP has still not yet been returned to them. An order was thus made for copies to be bound, paginated and served on the parties.

APPLICATIONS & APPEALS

Case Name:

**Myrna Norde
v
Jacqueline Mannix**

[ANUHCVAP 2015/0034]

Date:

Monday, 14th March 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. Ralph Francis

Respondent:

Ms. Kema Benjamin with her, Mr. Hugh Marshall Jr.

Issues:

Leave to appeal – Extension of time to appeal

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

Directions

Result/Order:

- 1. Having heard counsel for the parties and the Court being satisfied that the applicant has demonstrated a realistic prospect of succeeding on the appeal which in our view weighs heavily in the Court's consideration in exercising its discretion hereby grants to the applicant extension of time to seek leave to appeal and hereby further grants leave to appeal.**
- 2. The notice of appeal shall be filed no later than Wednesday, 30th March 2016. The cost of this application shall be borne by the applicant in the sum of \$750.00 to be paid by Friday, 18th March 2016.**

Reason:

The Court accepted that the application is in time based on counsel for the applicant's computation. However, counsel needed to satisfy the Court and give a good explanation for not applying in time in the first place.

Counsel for the applicant demonstrated to the Court that this matter raises issues of trust and thus the

claim should not have been struck out due to it being statute barred.

The Court was minded to grant an extension of time and leave to appeal as there is a realistic prospect of success on the applicant's claim but will not treat this as the actual appeal, so that the applicant and respondent would have full opportunity to put further submissions to the Court on appeal. The applicant is to bear the costs of application for leave to appeal in the amount of \$750.00.

Case Name: **Montpellier Farm Ltd.**
v
Antigua Commercial Bank
[ANUHCVP2011/0007]

Date: **Monday, 14th March 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. Clement Bird**
Respondent: **Ms. Kamilah Roberts**

Issue: **Conditional leave to appeal to Her Majesty in Council**

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

Result/Order:

1. The application by motion for conditional leave to appeal to Her Majesty in Council having been made out of time is refused.
2. That the applicant bears the cost of the application agreed in the sum of \$1,500.00 to be paid within fourteen days.

Reason: Application for conditional leave to appeal to Her Majesty in Council was made out of time. Counsel noted the written submissions filed by the respondent and conceded.

Case Name: [1] Pavlo Lazarenko aka Pavel Lazarenko
[2] Firstar Securities Limited
[3] Nemuro Industrial Group Limited
[4] Guardian Investment Group Limited
[5] Orby International Limited
[6] Lady Lake Investments Corporation
[7] Fairmont Group Limited
[8] Eurofed Bank Limited (in Liquidation)
v
The Supervisory Authority
[ANUHCVP2016/0002]

Date: Monday, 14th March 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. Colin Derrick
Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Alicia Aska, Crown Counsel I (watching brief from the Attorney General's Chambers) and Mr. Curtis Bird, Supervisory Authority

Issue: Leave to appeal

Type of Oral Result / Order Delivered: Directions

Result/Order: 1. The application for leave to appeal is dismissed.
2. There shall be no order as to costs on the application.

Reason:

This is an application for leave to appeal an order from Justice A. Redhead on interlocutory proceedings in which he refused to restore the sum of approximately US\$66 million into the custody of the Registrar of the High Court pending an application to set aside and discharge his order made on an without notice application. Counsel for the applicant finds that this is a gross procedural irregularity.

The Court enquired as to whether the matter has not been yet dealt with in an inter partes hearing which is set for a date later in the month. The Court found that the application is premature as there are a lot of issues to address. The Court found itself in a peculiar situation as the matter is still pending in the court below. Thus, the Court did not wish to say anything at this level which would somehow prejudice the position of the matter as it is still pending.

Case Name:

Errol Porter

v

The Queen

[ANUHCRA2009/0003]

Date:

Monday, 14th March 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:

Dr. David Dorsett

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions

Issues:

Appeal against conviction – Application for adjournment to file and serve submissions

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

Directions

Result / Order: The hearing of this appeal is adjourned to the next sitting of the court commencing during the week of 24th October 2016. The Court noting that the appellant's submissions have been filed and served, grants further time to the respondent to file and serve said submissions in response to be filed and served no later than Friday, 29th April 2016.

Reason: Counsel for the respondent indicated that at CMC he requested an adjournment in the matter. Due to extenuating circumstances and owing to the fact that the written submissions from learned counsel was served on his office but didn't come to his attention until a later date has thus prompted him to request an adjournment in the matter to prepare and file submissions.

Case Name: Jay Marie Chin
v
The Queen

[ANUHCRA2012/0005]

Date: Monday, 14th March, 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. Dane Hamilton, QC
Respondent:	Mr. Anthony Armstrong, Director of Public Prosecutions

Issues: Appeal against conviction – Application for an adjournment

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

Result/Order: 1. The hearing of this appeal is adjourned to the

next sitting of the court in Antigua and Barbuda during the week commencing 24th October 2016.

2. The appellant shall file and serve written submissions with authorities in support of the appeal no later than 29th July 2016.
3. The respondent shall file and serve submissions with authorities within 28 days after service of the appellant.

Reason:

Counsel for the appellant indicated to the Court by letter and verbally that because of the delay in receiving the record of proceedings he was unable to file his submissions. However, having read them now he is now in a position to file said submissions shortly and thus would like for the matter to be adjourned to the next sitting of the Court.

Case Name:

**Simon Davis
v
The Queen**

[ANUHCRA2012/0007]

Date:

Monday, 14th March 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. Sherfield Bowen

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions

Issues:

Appeal against conviction – Application for extension of time to file submissions

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

Directions

Result/Order:

1. The hearing of this appeal is adjourned to the

next sitting of the Court to the week of 24th October 2016.

2. The appellant shall file and serve written submissions with authorities by Wednesday, 15th June 2016.
3. The respondent shall file and serve written submissions with authorities by 29th July 2016.

Reason:

Counsel for the appellant indicated that he is appearing pro bono and that he spoke with the Learned DPP in respect with the submissions not being ready and received his consent to an extension of time for filing of submissions.

Case Name:

**Trevor Lando
v
The Queen**

[ANUHCRA2014/0015]

Date:

Monday 14th March, 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. Dane R. Hamilton, Snr. Q.C. holding papers for Mr. Dane Hamilton, Jr.

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions

Issues:

Appeal against conviction – Application to withdraw appeal

**Type of Order
Delivered:**

Oral judgment or decision

Order:

The appeal herein is hereby discontinued and accordingly dismissed.

Reason:

Counsel indicated that he has received instructions

to have the matter withdrawn.

Case Name:

Washington Bramble

v

Jo-Anne Walsh

[ANUMCVAP2013/0002]

Date:

Monday, 14th March 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:

In person

Respondent:

**Mr. Anthony Armstrong, Director of Public
Prosecutions**

Issues:

**Appeal against conviction – Application for
adjournment**

**Type of Order
Delivered:**

Directions

Order:

- 1. The hearing of this appeal is adjourned to the next sitting of the Court in the state of Antigua & Barbuda during the week commencing 24th October 2016.**
- 2. The respondent shall have until 30th June 2016 to file and serve affidavit evidence in response to the affidavit and submissions made by the appellant.**
- 3. This shall be the final adjournment in this appeal.**

Reason:

Counsel for the respondent stated that when the record of appeal became available the appellant made certain submissions indicating that the record was inadequate for several reasons. Thus he wrote to the prosecutors for their notes to assist in providing information in relation to what took place in the trial

below. Chief prosecutor replied in writing by stating that said notes were unavailable as they cannot be located. Counsel further contacted the appellant's attorney at the time, the now Hon. Attorney General Mr. Steadroy Benjamin to provide his notes on the matter who also indicated that his notes are also unavailable.

Having received submissions for the appellant on 1st February, 2016, counsel stated that the submissions contained several curveballs which were alien to what the appellant complained of, that are not included in the transcript which presented him with the difficulty in responding to said submissions. Counsel for the crown stated that the appellant's submissions implied collusion between his then attorney and the Chief Magistrate. Counsel then wrote to the individuals affected by said submissions for them to provide an affidavit in response to said submissions. Counsel was assured that these affidavits would have been provided in very short order but to date they are still outstanding.

The Court was minded to allow an opportunity to the respondent to seek to acquire evidence to answer the statements and allegations particularised by the appellant. However, this is the final adjournment no matter the circumstances.

Anthony Browne

v

The Commissioner of Police

Case Name:

[ANUMCRAP2012/0005]

Date:

Monday, 14th March 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. Justin Simon, QC

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions

Issue:	Appeal against conviction
Type of Order Delivered:	Directions
Order:	1. The chief magistrate, Mrs. Jo-Anne Walsh shall cause to be produced the corrected record of the proceedings before her in relation to the appeal herein no later than 30th May 2016. The said record of proceedings to be sent to the registrar of the High Court of Antigua & Barbuda. 2. The chief magistrate, Mrs. Jo-Anne Walsh shall also provide written reasons for the decision in respect of the said matter, the subject of this appeal not later than 30th May 2016. The same to be furnished to the registrar of the High Court of Antigua and Barbuda. 3. The hearing of this appeal is accordingly adjourned to the next sitting of the Court in the state of Antigua and Barbuda during the week commencing 24th October 2016. 4. This order shall be personally served by the registrar on the chief magistrate by 30th March, 2016 and the registrar shall produce for this Court's record a certificate of service of said order.
Reason:	Counsel for the appellant contends that there is a lot of information missing from the record of proceedings (police statement, reasons from the magistrate for decision) thus the record is insufficient to be used. Counsel further indicated that this has been pending since 2015 where the Magistrates' Court has been reluctant in complying with orders from the Court of Appeal. The court indicated that it is a recurring theme in appeals emanating from the magistrates court.
Case Name:	James Pelle v The Commissioner of Police

Date: Monday 14th March, 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. Damien Benjamin

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

Issues: Appeal against conviction – Application for adjournment

Type of Order Delivered: Directions

Order:

1. The hearing of this appeal is adjourned to the next sitting of the Court in the state of Antigua and Barbuda during the week commencing 24th October 2016.
2. The registrar is to furnish a copy of the transcript of the proceedings to counsel for the appellant.
3. The appellant has 28 days from the date of receipt to file and serve submissions.
4. The respondent shall have 28 days from the receipt of said submissions to respond.

Reason: Counsel for the appellant has indicated that he has not received any documentation regarding the matter. The Court however stated that there is record from the chief magistrate comprising four legal sized pages which was filed on 6th February 2015.

Case Name: Milton Pringle
v
[1] Hon. Molwyn Joseph
[2] The Attorney General

Date: Monday, 14th March 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. Justin Simon, QC

Respondent: Ms. Alicia Aska, Crown Counsel I holding for Mr. Astaphan, QC

Issue: Application for adjournment

Type of Order Delivered: Directions

Result / Order: This matter is hereby adjourned to the next sitting of this Court in Antigua during the week commencing the 24th October 2016.

Reason: Counsel for the respondent indicated that she has not yet filed submissions in response and as such seeks an adjournment in the matter.

Case Name:

[1] Xavier Mason
[2] Cornell Humphreys
[3] Colin Barnes
[4] Cameron Thomas
[5] Lyndon Greene
v
Antigua Port Authority
[ANUHCVP2011/0027]

Date: Tuesday, 15th March 2016

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

Appearances:

Appellants: Mr. Kendrickson Kentish

Respondent: Mr. Craig Jacas

Issues: Application for adjournment

**Type of Order
Delivered:** Directions

Order:

1. The appellant shall file and serve written submissions with authorities no later than 20th April 2016.
2. The respondent shall file and serve written submissions in response no later than 20th May 2016.
3. In reply submissions shall be filed and served no later than 3rd June 2016.
4. The hearing of this appeal is adjourned to the next sitting of the court in Antigua & Barbuda during the week commencing 24th October 2016.

Reason: Counsel for the respondent recently filed a notice of change. Thus counsel for the appellant having received some indication that there would have been a change in representation did not file submissions and is seeking the Court's indulgence to have the matter adjourned and a grant of directions for the filing.

Case Name: Hilroy Humphreys
v
Ian Peters

[ANUHCVP2011/0031]

Date: Tuesday, 15th March 2016

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

Appearances:

Appellant: Mr. Septimus Rhudd

Respondent: No appearance

Issues: Counsel for the appellant is currently experiencing difficulty in locating the respondent in order to personally serve him with the notice of appeal and record of appeal; thus requesting an adjournment until the next sitting.

Type of Oral Result : N/A

Result / Order: ANUHCVP2011/0031 is hereby delisted.

Reason: The Court will not give any directions of any kind until proof has been given that the respondent has been personally served and given notice of the impending proceedings.

This appeal ought not to have been listed at all. In the circumstances, this matter will be delisted until the respondent has been served.

Case Name: Sundry Workers
v
Antigua Commercial Bank
[ANULTAP2015/0005]

Date: Tuesday, 15th March 2016

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

Appearances:

Appellant:	Mr. Justin Simon, Q.C. with him, Mr. Kwame Simon
Respondent:	Ms. Kamilah Roberts with her, Mrs. Andrea Roberts-Nicholas

Issue: Validity of contract - Validity of a collective agreement

signed on the 19th November, 2009 between Antigua Commercial Bank (Employer) and Antigua & Barbuda Workers Union (Bargaining Unit)

Type of Oral
Result / Order
Delivered:

N/A

Result / Order:

The court reserves its decision in this matter and a notice will be sent when the decision is ready.

Case Name:

**Antigua Real Estates Limited
v
Rupert Kenlock**

[ANUHCVP2010/0046]

Date:

Tuesday, 15th March 2016

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal, [Ag.]

Appearances:

Appellant:

Mrs. Andrea Roberts–Nicholas with her, Ms. C. Kamilah Roberts

Respondent:

Mr. John Fuller

Issues:

Error of law – Whether trial judge erred in concluding that share purchase agreement had not been concluded – Error of fact – Whether learned trial judge confused issue of whether purchase agreement existed with the issue of completion of the purchase agreement

Type of Oral
Result / Order
Delivered:

Oral Judgment

Result/Order:

1. The appeal dismissed.
2. Respondent shall have the cost of this appeal fixed at two-thirds of the prescribed cost, referable to the claim in the court below

pursuant to CPR 65.13.

Reason:

The Court was of the view that it was open to the learned trial judge to find that no concluded share purchase agreement had occurred. The basic principle in contract law is that there must be consensus ad idem on all terms in order for a binding contract to come about. The evidence adduced by the appellant fell short of establishing that the respondent and the prospective purchaser were ad idem on all the terms as last preferred by the prospective purchaser. Accordingly, notwithstanding the seeming inconsistencies in some of the language used by the learned trial judge, the Court saw no good reasons for disturbing his eventual conclusion that no share purchase agreement had been concluded, that is, entered into.

The appellant's entitlement to a commission arises only on the basis of a concluded contract. The evidence falls short of establishing that there was a concluded contract. The Court accordingly concluded that given the insufficiency of the evidence on the critical issue as to whether there was agreement reached on all terms the appellant's appeal must fail.

Case Name:

Errol C. Barnes
v
The Commissioner of Police
[ANUMCRAP2013/0001]

Date:

Tuesday, 15th March 2016

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal, [Ag.]
The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal, [Ag.]

Appearances:

Appellant:

Mr. Lawrence Daniel

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions

Issues: Appeal against sentence – Application for adjournment

Type of Oral Result / Order Delivered: Directions

Result / Order: In the circumstances, the hearing of this appeal is adjourned to the next sitting of the Court here in Antigua in the week commencing 24th October 2016.

Reason: The adjournment is at the request of counsel for the appellant to avail himself of documents. Appellant previously represented by another attorney. Counsel for the appellant having been recently instructed to represent the appellant is not in possession of any files or documents in relation to the matter.

Case Name: Mandella Victor Spencer
v
The Commissioner of Police
[ANUMCRAP2011/0002]

Date: Tuesday, 15th March 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. Lawrence Daniel
Respondent:	Mr. Anthony Armstrong, Director of Public Prosecutions

Issues: Appeal against sentence – Application for adjournment

Type of Oral Result / Order Delivered: Directions

Result / Order: The appeal is adjourned at the request of counsel for the appellant to the sitting of the Court in October

2016 to enable counsel for the appellant to avail himself of the record of proceedings and all other necessary documents for prosecuting the appeal.

Reason:

Appellant previously represented by another attorney. Counsel for the appellant having been recently instructed to represent the appellant is not in possession of any files or documents in relation to the matter.

Case Name:

**Troy Robinson
v
The Commissioner of Police**

[ANUMCRAP2012/0001]

Date:

Tuesday, 15th March 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. Cosbert Cumberbatch

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions

Issue:

Jurisdiction – Whether the Chief Magistrate exceeded her jurisdiction

**Type of Order
Delivered:**

Oral Decision

Order:

- 1. This appeal is allowed and the conviction and sentence imposed by the learned chief magistrate is hereby quashed on the basis that the magistrate had no jurisdiction to try or to deal with the charge grounded under s.37(1) of the Larceny Act which makes the offence triable on indictment only.**
- 2. S. 32 Small Charges Act does not include s. 37 of the Larceny Act as one of the offences which**

may be tried summarily by a magistrate.

Reason:

The Court noted that an affidavit of service was filed indicating that service of a certificate of an order of the court of appeal was served on Mr. Titus, the chief clerk of the Magistrates' Court.

The learned DPP submitted that from the transcript provided from the Magistrates Court it appears that the chief magistrate fell into grave error. The Magistrate Court being a court of summary jurisdiction can only try matters by statute for her consideration. S. 37(1) of the Larceny Act is an indictable offence and thus could not have dealt with it.

The Court thus stated that in the circumstances the matter ought to be disposed of now as the chief magistrate clearly exceeded her jurisdiction. The Court is minded to allow the appeal and quash the conviction and sentence.

The Learned DPP directed the Court to look at the Small Charges Act CAP 405 s. 32 which allows summary trial of certain offences of the Larceny Act but did not include s. 37(1) under which the appellant was charged.

Case Name:

Romar Graham
v
Chief Immigration Officer
[ANUMCVAP 2012/0006]
and
Christian D. Hinds
v
Chief Immigration Officer
[ANUMCVAP 2013/0003]

Date:

Tuesday, 15th March 2016

Coram:

The Hon. Mde. Janice Pereira, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal, [Ag.]
The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal, [Ag.]

Appearances:

Appellant: Dr. David Dorsett

Respondent: Ms. Bridget Nelson

Issue: Application for extension of time to file submissions

**Type of Order
Delivered:** Directions

Order: Having regard to the late filing of submissions in the magisterial civil appeals ANUMCVAP2012/0006 and ANUMCVAP2013/0003 the time for the respondent to file submissions in accordance with the rules of court has not yet expired. Accordingly, the appeals are not ready for hearing and the hearing of the appeals are adjourned to the next sitting of the Court during the week commencing 24th October 2016 by which time all timelines set out by the rules would have expired.

Case Name: Everton Welch
v
The Queen

[ANUHCRA2015/0005]

Date: Wednesday, 16th March 2016

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Anthony Armstrong, QC, Justice of Appeal, [Ag.]

Appearances:

Appellant: Dr. David Dorsett with him, Mr. Fitzmore Harris

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

Issues: Appeal against conviction – Murder – Validity of sentence – Absence of appellant at sentencing hearing – Whether sentence invalid and in violation of appellant's constitutional rights

**Type Order
Delivered:**

Directions

Result / Order:

The hearing of the appeal is adjourned in order to enable the appellant to pursue the fundamental right point in the appropriate court.

Reason:

Counsel for the appellant's first ground of appeal was that the appellant was not present when he was sentenced, thus the sentence handed down was invalid and in violation of the appellant's constitutional rights.

The Court then quoted Privy Council decision of *Hunte and Khan v State of Trinidad and Tobago* [2015] UKPC 33 which clearly states that if one seeks to rely on an alleged breach of a person's fundamental rights then the correct forum to entertain that argument is the high court.

Counsel for the respondent indicated that learned counsel should have been aware of the decision by the Privy Council as the said case was used in his submissions. Further, that there are other points of appeal that the Court can proceed to hear. Counsel further submitted that this would not be the first time counsel for the appellant has done the very same thing.

The Court was of the unilateral view that the matter be suspended to allow the appellant to pursue the fundamental rights point in the appropriate court.