

COURT OF APPEAL SITTING

**SAINT LUCIA
13th – 17th April 2015**

JUDGMENTS

Case Name:

Rashid A. Pigott

v

The Queen

[ANUHCRA2009/0009]

Date:

Monday, 13th April 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: No appearance

**Respondent: Mr. Horace Fraser holding papers for the Director of
Public Prosecutions**

Issues:

Appeal against conviction and sentence – Building breaking and larceny – Record of appeal received by appellant over 4 years after notice of appeal filed – Appeal heard only after appellant had completely served custodial sentence – Whether delay inordinate – Whether appellant’s constitutional right to a fair hearing within a reasonable time as guaranteed by s. 15(1) of Antigua and Barbuda Constitution Order 1981 breached – If appellant’s constitutional right was breached, whether quashing conviction is appropriate remedy – Whether wrong in law and as a matter of procedure to raise in Court of Appeal for first time as ground of appeal that constitutional right breached – Whether issue ought to have first been raised in High Court in accordance with s. 18(1) of Constitution

**Result and
Reason:**

Held: dismissing the appeal against conviction and sentence, affirming the appellant's conviction and sentence, and making a declaration that the inordinate delay in the preparation of the record of appeal constituted an infringement of the appellant's constitutional right to a fair trial within a reasonable time as guaranteed by section 15(1) of the Constitution of Antigua and Barbuda, that:

1. Section 18 of the Constitution of Antigua and Barbuda does not make it mandatory for a person contending that his/her constitutional rights have been infringed to seek redress in a separate action before the High Court. The right to seek redress under section 18 in the High Court is without prejudice to any other action that is lawfully available to an aggrieved person. It is an alternative remedy. Where there is inordinate delay in the trial of an accused person, the issue of infringement of his/her constitutional right to a fair hearing within a reasonable time guaranteed under section 15(1) of the Constitution may be raised at the criminal trial. Similarly, where there is inordinate delay between conviction and the hearing of the appeal it may be raised in the Court of Appeal as a ground of appeal against both conviction and sentence.

Chokolingo v Attorney-General (1980) 32 WIR 354 considered; *Ramesh Lawrence Maharaj v Attorney-General of Trinidad and Tobago (No. 2)* (1978) 30 WIR 310 considered; *Alfred Flowers v The Queen* [2000] UKPC 41 applied; *Melanie Tapper v Director of Public Prosecutions* [2012] UKPC 26 applied; *Hassen Eid-En Rummun v The State of Mauritius* [2013] UKPC 6 applied.

2. In determining whether there has been an inordinate delay in affording a person charged with or convicted of a criminal offence a fair hearing (such as would constitute an infringement of section 15(1) of the Constitution), the factors to be considered are: (i) the complexity of the case; (ii) the conduct of the accused/appellant; and (iii) the conduct of the

administrative and judicial authorities. The present case was not unduly complex, and the delay in the hearing of the appeal was due solely to the record of appeal not being prepared in a timely manner, which had nothing to do with the appellant. The administrative and judicial authorities were solely responsible for the preparation of the record of appeal, and no explanation was provided for the delay in its preparation. In the circumstances, the delay of over 4 years to prepare the record of appeal was inordinate, and was sufficient to constitute an infringement of the appellant's rights under section 15(1) of the Constitution.

Prakash Boolell v The State [2006] UKPC 46 applied; *Joseph Stewart Celine v The State of Mauritius* [2012] UKPC 32 applied.

3. The appellant having abandoned his original grounds of appeal against his conviction and sentence, no issue arose concerning the fairness of the trial or the safety of his conviction. It would not be appropriate to set aside the appellant's conviction absent these issues and solely on the basis that there was inordinate delay between the period of the conviction and the hearing of the appeal. Further, it would not be appropriate to make an order for monetary compensation where a conviction is affirmed. Accordingly, the most appropriate order would be a declaration that the appellant's constitutional right to a fair trial within a reasonable time guaranteed by section 15(1) of the Constitution has been infringed.

Attorney General's Reference (No. 2 of 2001) [2004] 2 AC 72 applied; *Haroon Rashid Elaheebocus v The State of Mauritius* [2009] UKPC 7 applied; *Prakash Boolell v The State* [2006] UKPC 46 applied; *Gangasing Aubeeluck v The State of Mauritius* [2010] UKPC 13 applied.

STATUS HEARING

Case Name:

Re: Bryan Stephen

[SLUHCVAP2010/0041]

Date:

Monday, 13th April 2015

Before:

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

Appearances:

Appellant: No appearance

Respondent: No appearance

Issues:

Status of matter

Result / Order:

The matter is stood down.

Reason:

There was no appearance of counsel for either party so the matter was stood down to allow counsel for at least one of the parties to arrive at court.

Case Name:

[1] Mario Reyes

[2] Nannette Reyes

v

**[1] Prestige Auto Holdings Limited (In
Receivership)**

[2] Frank Vernon Meyers

[3] Brian Albert Glasgow

[SLUHCVAP2014/0001]

Date:

Monday, 13th April 2015

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

Appearances:
Appellants: Ms. Renée St. Rose

Respondents: No appearance

Issues: Status of matter – Winding-up proceedings – Without notice application for appointment of provisional liquidators – Whether application wrong in procedure and therefore unlawful – Whether learned judge erred in failing to hear appellants on application before the court or to give appellants opportunity to present their case to the court – Whether learned judge erred in failing to consider whether assets of company should be protected by independent provisional liquidators until determination of petition for winding-up – Whether learned judge was wrong in principle when he took into consideration irrelevant facts and failed to take into consideration relevant factors in arriving at his decision – Whether learned judge erred in failing to consider evidence of provisional liquidators or to acknowledge that provisional liquidators were officers of the court against whom allegations had been made and to which they were entitled to respond – Application to withdraw notice of appeal

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:
Leave to withdraw the appeal is granted and accordingly, the appeal stands dismissed.

Reason: The appellant made an application to withdraw the appeal.

Case Name: Re: Bryan Stephen

[SLUHCVP2010/0041]

Date: Monday, 13th April 2015

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

Appearances:

Appellant: No appearance

Respondent: Ms. Brender Portland-Reynolds, Solicitor General [Ag.], holding a watching brief for the Attorney General's Chambers

Issues: Status of matter

Result / Order & Reason: [Oral delivery]
IT IS HEREBY ORDERED THAT:
The matter is adjourned for further status hearing on a date to be determined by the Chief Registrar in order for the Attorney General to take the requisite steps.

Reason: There was no appearance on behalf of Mr. Bryan Stephen. A request was made on behalf of the Attorney General for an adjournment in order to seek leave to be granted time to file an application to dismiss the appeal.

Case Name:

David Ferguson
v
Carol Gideon Clovis

[SLUHCVAP2015/0001]

Date: Monday, 13th April 2015

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

Appearances:

Appellant: In person

Respondent: No appearance

Issues: Status of matter

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:

1. Mr. Daarsrean Greene is appointed to appear amicus as counsel for the appellant in the prosecution of his appeal, and is allowed time to review the file and take instructions from the appellant.
2. The matter is adjourned for further status hearing at the next sitting of the Court of Appeal in Saint Lucia during the week commencing 26th October 2015.

Reason: Due to the complexity of the appeal process and the procedural steps which the Civil Procedure Rules 2000 require an appellant to follow, the Court was of the view that the appellant should have the assistance of legal counsel to prosecute his matter. Consequently, the Court appointed Mr. Daarsrean Greene to represent the appellant amicus in the prosecution of his appeal, and allowed him time to review the file and take instructions from the appellant.

Further, Mr. Al Elliot indicated to the Court that the respondent could not be present because she was ill. In any event, she had not been served with the notice of hearing of the appeal.

Case Name: Sheldon Peter
v
WPC 365 Faucher

[SLUMCRAP2006/0000]

Date: Monday, 13th April 2015

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

Appearances:

Appellant: No appearance

Respondent: Ms. Tamara Foster-Calderon

Issues: Status of matter

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:

1. The matter is adjourned for further status hearing at the next sitting of the Court of Appeal in Saint Lucia during the week commencing 26th October 2015.
2. The Registrar is directed to send a reminder to the Senior Magistrate within 21 days of this order requesting a response on the position of the transcript of the proceedings.

Reason: The Registrar (of the High Court) informed the Court that she had received no response from the Senior Magistrate on the position of the transcript of the proceedings, notwithstanding that several inquiries had been made about it.

Case name: Morris Francois
v
Fitzroy Alexander

[SLUMCRAP1993/0001]

Date: Monday, 13th April 2015

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

Appearances:

Appellant: In person

Respondent: In person

Issues: Status of matter – Criminal appeal against conviction and sentence – Whether sentence imposed by learned magistrate was excessive

Result / Order & Reason: [Oral delivery]
IT IS HEREBY ORDERED THAT:
1. The matter is adjourned for further status hearing during the next sitting of the Court of Appeal in Saint Lucia during the week commencing 26th October 2015.
2. The Registrar is to send a reminder to the Senior Magistrate requesting a response on the status of the transcript of proceedings.

Reason: The parties intimated to the Court that notwithstanding that the matter in the lower court was disposed of in excess of 20 years ago, the appellant, Mr. Francois, was still desirous of pursuing his appeal.

Case name: Constable Vincent Marcel
V
Constable 257 Hendricks Constable
[SLUMCRAP2007/0012]

Date: Monday, 13th April 2015

Before: The Hon. Mde. Louise Esther Blenman, Justice of Appeal

Appearances:
Appellant: Ms. Isa Cyril
Respondent: Ms. Khadya Florius

Issues: Status of matter – Appeal against conviction and sentence – Use of insulting words – Whether decision of learned magistrate against weight of evidence presented by the prosecution

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:
1. The matter is adjourned for further status hearing to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 26th October 2015.
2. The Senior Magistrate is directed to obtain the reasons for the decision.

Reason: The reasons for the decision had not been received as yet.

Case name: Constable Vincent Marcel
v
Sargeant 375 Mark Evariste
[SLUMCRAP2007/0011]

Date: Monday, 13th April 2015

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

Appearances:

Appellant: Ms. Isa Cyril

Respondent: Ms. Khadya Florius

Issues: Status of matter – Appeal against conviction and sentence – Disorderly behavior – Whether learned magistrate erred by not providing reasons for decision – Whether decision of learned magistrate against weight of evidence presented by prosecution

– Whether sentence excessive

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The Senior Magistrate is directed to seek to obtain the reasons for the decision from the learned magistrate within 28 days of this order.**
- 2. The matter is fixed for further status hearing at the next sitting of the Court of Appeal in Saint Lucia during the week commencing the 26th day of October 2015.**

Reason:

The Court noted that the reasons for the decision had not yet been obtained from the learned magistrate. However, the Court stated that in cases where it is difficult for the parties to obtain the notes of evidence, lawyers involved in the matter in the lower court could seek to agree on a note and an application can be made to the court to include the note as part of the record.

Case Name:

Ricky Mercedes

V

Jn Baptiste PC572

[SLUMCRAP2000/0000]

Date:

Monday, 13th April 2015

Before:

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

Appearances:

Appellant:

Ms. Isa Cyril

Respondent:

No appearance

Issues:

Status of matter – Appeal against conviction – Whether decision of learned magistrate against weight of evidence

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:
The matter is adjourned for further status hearing to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 26th October 2015.

Reason: The transcript of the proceedings had not yet been prepared and there was no evidence on file confirming that the appellant had been served with notice of the day's hearing by publication in the newspaper.

Case Name: Nicky Isidore
v
PC 532 Albert Charlery
[SLUMCRAP2003/0009]

Date: Monday, 13th April 2015

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

Appearances:
Appellant: No appearance
Respondent: Ms. Tamara Foster-Calderon

Issues: Status of matter – Appeal against conviction and sentence – Whether verdict against weight of evidence led – Whether sentence manifestly excessive

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:
The matter is adjourned for further status hearing to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 26th October 2015.

Reason: The record of appeal was not available as yet. The Registrar of the High Court indicated that she had not received any response from the Senior Magistrate to her correspondence on the position of the transcript of the proceedings in relation to this matter.

Case Name: Jeannette Augustin
v
Cassius Randolphe Constable 663
(Vulnerable Persons Team)
[SLUMCRAP2009/0000]

Date: Monday, 13th April 2015

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

Appearances:
Appellant: Mr. Ramon Raveneau
Respondent: Ms. Khadya Florius

Issues: Status of matter – Appeal against conviction and sentence – Whether conviction and sentence manifestly wrong in principle

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:
1. The matter is adjourned for further status hearing to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 26th October 2015.
2. The Registrar of the High Court is to send a reminder to the Senior Magistrate requesting a response on the position of the transcript of proceedings.

Reason: The transcript of proceedings was not yet available.

Case Name: Timothy Dupres
V
Corporal 398 George
[SLUMCRAP2008/001B]

Date: Monday, 13th April 2015

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

Appearances:

Appellant: No appearance

Respondent: Ms. Tamara Foster-Calderon

Issues: Status of matter – Criminal appeal against conviction
– Whether decision altogether unsupported by evidence – Whether learned magistrate erred in law in refusing to uphold appellant’s submission of no case to answer

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:
1. The respondent undertakes to serve a notice of the adjourned hearing on the appellant and to file an affidavit of service.
2. The matter is adjourned for further status hearing at the next sitting of the Court of Appeal in Saint Lucia during the week commencing 26th October 2015.

Reason: There was no evidence of service of notice of the day’s hearing on the appellant.

APPLICATIONS AND APPEALS

Case Name: Bernard Auguste
v
Ian Joseph
[SLUHCVAP2013/0008]

Date: Monday, 13th April 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant / Applicant: Mr. Horace Fraser
Respondent: In person

Issues: Personal injury – Whether appellant proved nature and extent of his injuries – Whether learned trial judge misdirected herself by failing to apply overriding objective and by applying rule 29.5(1) of the Civil Procedure Rules 2000 – Application for leave to amend grounds of appeal – Request by respondent for adjournment

Result / Order: [Oral delivery]
1. The notice of appeal filed herein on 27th March 2013 is amended in terms of the draft amended notice of appeal filed with the application to amend on 7th November 2014.
2. The amended notice of appeal shall be filed and served on the respondent on or before Wednesday, 15th April 2015.
3. The respondent shall file and serve skeleton arguments in response to the appellant's skeleton argument together with copies of any authorities

cited in the said skeletons on or before Friday, 8th May 2015.

4. The appellant shall be at liberty to file and serve a reply by Friday, 22nd May 2015.
5. The hearing of the substantive appeal is adjourned by consent to the next sitting of the Court scheduled for the week commencing 26th October 2015.

Reason:

Counsel for the applicant indicated to the Court that the sole ground of appeal which was contained in the original notice of appeal was premised on something that the judge had never applied her mind to at the assessment hearing in the court below. If left unamended, the appeal would be futile.

Case Name:

Denys Barrow

V

The Attorney General of Saint Lucia

[SLUHCVAP2013/0001]

Date:

Monday, 13th April 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

**Appellant /
Applicant:**

Ms. Renée St. Rose

Respondent:

Ms. Cagina Foster-Lubrin

Issues:

Civil appeal – Judicial review – Interpretation of ‘pensionable circumstances’ within section 3(1) of the Eastern Caribbean Supreme Court (Rates of Pension) (Judges) Act – Whether section 3(1) of the Eastern Caribbean Supreme Court (Rates of Pension) (Judges) Act entitles a judge to be paid a

pension on retirement as a judge having served in the public service of Saint Lucia for less than 10 years – Applicability of rule in *Pepper v Hart* – Legitimate expectation – Whether a judge has a legitimate expectation that a pension would be paid to him upon retirement at age 56 based on previous practices of the Judicial and Legal Services Commission – Pensions Act – Pensions Regulations – Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order – Application for final leave to appeal to Her Majesty in Council

Result / Order:

[Oral delivery]

Final leave to appeal to Her Majesty in Council is hereby granted.

Reason:

Counsel for the appellant/applicant confirmed that all conditions had been satisfied for the grant of final leave to appeal to Her Majesty in Council. Furthermore, there was no objection by the respondent to the appellant/applicant being granted final leave to appeal – a notice of non-objection to the application had been filed by the Attorney General’s Chambers the previous week

Case Name:

Jennifer Prescott

v

[1] Aldrick Parris

[2] John H. Primus

[SLUHCVP2013/0013]

**John H. Primus by his Next Friend Aldrick
Parris**

v

Jennifer Prescott

[SLUHCVAP2013/0025]

Date: Monday, 13th April 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellants: Ms. Lydia Faisal, with her, Mr. Bernick Faisal for Ms. Jennifer Prescott (in SLUHCVAP2013/0013)
Mr. Eghan Modeste for Mr. John Primus (in SLUHCVAP2013/0025)

Respondents: Mr. Eghan Modeste for Mr. Aldrick Parris, and also, Mr. John Primus, by his next friend, Mr. Aldrick Parris (in SLUHCVAP2013/0013)
Ms. Lydia Faisal, with her, Mr. Bernick Faisal for Ms. Jennifer Prescott (in SLUHCVAP2013/0025)

Issues: Road traffic accident – Personal injury – Quantum of damages – Loss of earnings – Whether learned judge’s decision on award for loss of earnings was in keeping with established principle that special damages must be specifically pleaded and proved – Whether learned judge erred in allowing Ms. Prescott’s claim for loss of wages in sum of \$33,600.00 only, when as a claim for special damages, the loss of \$55,000.00 had been proved to the court’s satisfaction and was unchallenged at trial – Interest awarded by learned trial judge – Whether learned trial judge erred in awarding interest but not specifying period when it took effect in accordance with article 1009A of the Civil Code (Cap. 4.01, Revised Laws of Saint Lucia 2008) which provides for interest awarded to run for period between accrual of cause of action to the date of judgment, and article 1008 of the Civil Code, which provides for interest to run from the date of judgment until payment – Whether learned judge erred in failing entirely to deal with or consider issue of costs to Mr. John Primus – Whether learned trial judge erred in not awarding costs to Mr. Primus, after having held appellant not vicariously liable for accident and damages claimed – Case management – Application

to consolidate appeals

Result / Order:

[Oral delivery]

- 1. The appellant for the purposes of SLUHCVAP2013/0013 shall be Jennifer Prescott in relation to the notice of appeal filed on 25th July 2013.**
- 2. The notice of appeal filed by Mr. John Primus on 26th July 2013 shall be treated as a counter-notice and Mr. Primus shall be the respondent for the purpose of the appeal in SLUHCVAP2013/0013.**
- 3. Appeal numbers SLUHCVAP2013/0013 and SLUHCVAP2013/0025 shall be consolidated and heard together.**
- 4. The consolidated appeals shall be listed for further case management at the chamber hearing of the Court scheduled for June 2015.**

Case Name:

Lazarus Paul

v

[1] Raquel Willie-Trotman

[2] Douglas Trotman

**[3] Teferi Trotman minor acting herein and
represented by his mother Raquel Willie-
Trotman**

[SLUHCVAP2013/0028]

Date:

Monday, 13th April 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

**Appellant /
Respondent:**

Mr. Gerard Williams

**Respondents /
Applicants:**

Ms. Wauneen Louis-Harris

Issues:

Terms for payment omitted in judgment order on assessment – Whether learned judge erred in law in concluding that said judgment order on assessment upon which committal proceedings based sufficient to meet strict requirements of rules 53.2 and 53.7 of the Civil Procedure Rules 2000 – Whether learned judge erred in law in finding that CPR 42.8 which deems order of the court effective as at date it was given sufficient in its application to order on assessment which omitted terms for payments upon which committal proceedings were based – Whether learned judge erred in dismissing appellant's application to set aside respondents' default judgment which was irregular – Whether learned judge erred in not adjudicating on issue of subrogation which formed basis of respondents' arguments in defending appellant's application to strike out committal proceedings and appellant's application to set aside default judgment – Whether learned judge erred in failing to determine appellant's means before making order for payment by monthly installments – Alternatively, whether evidence before the court as to appellant's means supported order of learned judge for installment payments – Application to correct record of appeal

Result / Order:

[Oral delivery]

1. The appellant, Mr. Paul, requests from the Court office a transcript of the proceedings before the court below which took place on 17th October 2013 and that the transcripts of 10th, 17th and 21st October 2013, be included in the record of appeal.
2. The appellant is to file 8 copies of the order of the Court dated 21st October 2013, being the order on appeal on or before Friday, 17th April 2015.
3. The letter from Financial Services Regulatory Authority dated 26th February 2015 at pages 130-131 Core bundle 3 and the document stated as Client Record, the Law Offices of Williams and Fraser at pages 150-151 of Core Bundle 3 is to be deleted from the record.
4. The hearing of the substantive appeal is to take place at the next sitting of the Court in the State

of Saint Lucia scheduled to commence during the week of 26th October 2015.

5. Costs of the application in the sum of \$750.00 to the respondents to be paid on or before Monday, 20th April 2015.

Reason:

Transcripts which the respondent had specifically requested be included in the record of appeal had been omitted from it. With regard to the letter dated 26th February 2015 which the applicants wished to have removed from the record, this letter was not before the learned judge in the court below and as such, should not have formed part of the record.

Case Name:

[1] Dr. Martin G.C. Didier
[2] Dr. Kannan Mathiprakasam
[3] Dr. Guruswamy Ramachandrappa
V
Royal Caribbean Cruises Ltd
[SLUHCVAP2014/0024]

Royal Caribbean Cruises Ltd
V
[1] Medical Associates Ltd
[2] Dr. Martin C. Didier
[3] Dr. Kannan Mathiprakasam
[4] Dr. Guruswamy Ramachandrappa
[SLUHCVAP2015/0004]

Date:

Monday, 13th April 2015

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

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

Respondent: Mr. Alvin St. Clair holding papers for Mr. Dexter Theodore

Issues: Medical professional negligence – Indemnity – Contribution – Restitution – Article 2121 of the Civil Code (Cap. 4.01, Revised Laws of Saint Lucia 2008) – Whether learned master erred in applying ejudem generis principle to interpret article 2121(7) of the Civil Code rather than principle stated in *St Rose v Lafitte* (1992) 42 WIR 113 and accordingly failed to properly interpret and apply said article – Whether learned master erred in holding that article 2121(7) is drafted in sufficiently wide terms that an action in negligence against a medical practitioner is not excluded from its confines such that medical negligence is prescribed by 6 years as opposed to 3 years under article 2122 of the Civil Code – Whether learned master erred regarding proper test to be applied and/or application of such test in relation to striking out of a case at preliminary stage – Whether learned master erred in considering only pleadings filed and affidavit evidence in context of a striking out application and further failed to consider existence of a contractual relationship between Royal Caribbean Cruises Ltd and the doctors as potentially providing such relationship of proximity even in absence of further evidence – Whether learned master misconstrued significance of doctrine of forum non conveniens – Whether learned master erred in depriving Royal Caribbean Cruises Ltd of the right to trial on basis of summary consideration of a single authority regarding recoverability of damages of an entirely different nature from those claimed in present action – Whether learned master erred in striking out Royal Caribbean Cruises Ltd's claims for indemnity and/or contribution and/or restitution at common law – Application for extension of time and relief from sanctions – Notice of appeal filed by Royal Caribbean Cruises Ltd subsequent to doctors engaging appeal process – Both appeals relating to same judgment of court below – Whether respondent

(to first appeal) ought to have filed counter notice rather than new separate appeal – Consolidation of appeals – Naming of parties

Result / Order:

[Oral delivery]

- 1. The appeals herein, SLUHCVAP2014/0024 and SLUHCVAP2015/0004 be and are hereby consolidated. The doctors shall be the appellants and Royal Caribbean Cruises Limited shall be the respondent in both appeals.**
- 2. The parties' joint application for an extension of time to file written submissions in SLUHCVAP2015/0004 and relief from sanctions be and is granted.**
- 3. The application of the respondent/appellant, Royal Caribbean Cruises Limited (hereafter "RCC"), filed on 7th April 2015 for an extension of time to file written submissions in reply and relief from sanctions be and is hereby granted.**
- 4. The written submissions with List of Authorities filed and served by RCC on 26th March 2015 be deemed properly and timely filed.**
- 5. The written submissions in Reply, Chronology and List of Authorities filed and served by RCC on 26th March 2015 be deemed properly and timely filed.**
- 6. The appellants/respondents, Doctors Martin Didier, Kannan Mathiprakasam and Guruswamy Ramachandrappa (hereafter "doctors"), be and are hereby granted an extension of time to file and serve written submissions in response to the submissions of RCC on or before 15th May 2015.**
- 7. RCC be and are hereby granted an extension of time to file and serve written submissions in reply (save and except on the issue of prescription) on or before 15th June 2015.**
- 8. Leave is hereby granted that the parties jointly file and serve a Consolidated Record of Appeal to include all items required by each party respectively, on or before 15th June 2015.**
- 9. The consolidated interlocutory appeals herein are to be fixed for an oral hearing before the Full Court at the next sitting in Saint Lucia in October 2015.**

Reason:

The Court clarified the procedure to be followed when a party, against whom an appeal has been brought, wishes itself to bring an appeal arising from the same facts and based on the same judgment or order as the first appeal brought. The party who first files a notice of appeal is the appellant and the party against whom the appeal is brought is the respondent. At that point, the appeal process has been commenced and if the respondent wishes to challenge other points in relation to proceedings in the court below which were not raised by the initial appeal, it is free to do so, but only by way of counter notice. New appeal proceedings ought not to be commenced by the filing of a new notice of appeal.

This will be the procedure notwithstanding that it might be the case that the respondent would have ordinarily required leave to bring the appeal which it commenced by way of counter notice. If that is the case and it turns out that the appeal brought by the respondent is entirely unmeritorious and as such, would have made it no further than the leave stage had it gone through the regular channel, then this will be dealt with by the Court during the appeal proceedings initially commenced by the appellant.

Case Name:

Bryan James
v
The Attorney General
[SLUHCVAP2013/0023]
consolidated with
James Enterprises Limited
v
The Attorney General
[SLUHCVAP2013/0024]

Date: Monday, 13th April 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Ms. Brender Portland-Reynolds, Solicitor General [Ag.]

Issues: Civil appeal – Appeal against decision of single Justice of Appeal – Proper party to institute proceedings against in claims involving public officials – Attorney General substituted as defendant in place of Comptroller of Customs – Whether notice of intended suit was required to be served on Attorney General pursuant to article 28, Code of Civil Procedure (Cap. 243, Revised Laws of Saint Lucia 1957) – Whether Justice of Appeal erred in law by arriving at conclusion that Attorney General was required to be served with notice of intended suit and that failure to serve said notice was fatal to appellant’s claim – Whether Justice of Appeal erred by concluding that amended claim was prescribed on ground that it was new claim beyond the substitution of parties – Application (by respondent) for adjournment

Result / Order: [Oral delivery]

1. The hearing of the appeals is adjourned to the next sitting of the Court in Saint Lucia during the week commencing 26th October 2015.
2. The respondent shall file and serve written submissions together with copies of any authorities referred to on or before Friday, 29th May 2015.
3. The appellants shall be at liberty to file and serve submissions in reply with copies of authorities relied on, on or before Friday, 12th June 2015.

Reason: The respondent had not yet filed its written submissions in response to the appellant's submissions. The appellant did not oppose the respondent's application for an adjournment of the hearing of the appeal to next sitting of the Court of Appeal in Saint Lucia.

Case Name: Fast Kaz Auto Supplies Limited
v
The Attorney General

consolidated with

Curtis Hudson
v
The Attorney General

[SLUHCVAP2014/0021]

Date: Monday, 13th April 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellants (in both appeals):	Mr. Horace Fraser
Respondent:	Ms. Brender Portland-Reynolds, Solicitor General [Ag.]

Issues: Notice of intended suit not served on Attorney General – Whether article 28 of the Code of Civil Procedure (Cap. 243, Revised Laws of Saint Lucia 1957) augmented by ss. 14 and 14 of the Crown Proceedings Act (Cap. 2.05, Revised Laws of Saint Lucia 2008) – Whether effect of ss. 4 and 14 of the Crown Proceedings Act is that notice of intended suit required to be served on Attorney General –

Whether learned master erred by applying a law which is not the law of the land – Whether learned master erred in principle by directing enquiry of issue of service of notice of intended suit which issue was not before her or advanced by respondent – Lack of jurisdiction – Whether order vitiated as a result

Result / Order:

[Oral delivery]

- 1. Having regard to the issues raised in appeal numbers SLUHCVAP2013/0023 and SLUHCVAP2013/0024 and appeal number SLUHCVAP2014/0021 requiring the Court's determination on the issues common to these appeals, the hearing of the consolidated appeals is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 26th October 2015.**
- 2. Any further submissions required to be filed and served by the parties shall, on behalf of the appellant, be filed and served on or before Friday, 15th May 2015, and the respondent, on or before Friday, 29th May 2015.**
- 3. The appellants shall be at liberty to file and serve a reply on or before Friday, 12th June 2015.**

Case Name:

**Marie Madeleine Marshall aka Marie
Madeleine Augustin**

V

Paul Jason Auguste

[SLUHCVAP2013/0033]

Date:

Monday, 13th April 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Mr. Evans Calderon

Respondent: Mr. Robert Barrow, with him, Ms. Ellaine French (the respondent was also present in court)

Issues: Contract – Specific performance of contract for sale of property to respondent – Whether learned judge erred in granting specific performance of contract in favour of individual who was not party to said contract – Whether letters of administration granted and appeal ready to proceed

Result / Order: [Oral delivery]
This appeal is removed from the cause list and may be restored on the application of any of the parties.

Reason: The property which was the subject of the contract in this matter, formed part of the estate of the late Francis Clovis, in relation to which letters of administration had not yet been granted. The Court stated that the appeal could proceed no further until this was done. It had no option but to delist the appeal and order that it be possible to have the appeal restored once the necessary steps have been taken and the appeal is properly constituted.

Case Name: Neil Alvin Peter
v
The Queen

[SLUHCRA2012/0003]

Date: Tuesday, 14th April 2015

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. Leslie Prospere

Respondent: Ms. Tina Mensah

Issues: Appeal against conviction – Manslaughter – Whether verdict was against weight of evidence

Result / Order: [Oral delivery]

1. Leave is granted to the appellant to amend his grounds of appeal to include misdirection on the part of the learned judge on the issue of self defence.
2. The appellant is to file and serve the amended grounds of appeal on or before 20th April 2015.
3. The respondent is granted leave to file submissions in reply to the filed submissions of the appellant and to the amended grounds on or before 30th May 2015.
4. The hearing of the appeal is traversed to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 26th October 2015.

Reason: The notice of appeal filed by the appellant contained a single ground of appeal. However, the Court pointed out that one of the submissions made by the appellant in further written submissions filed by him, raised a separate issue altogether which should have been set out as an additional ground of appeal. Counsel for the appellant therefore made an oral application to amend his grounds of appeal, which application was not opposed by the respondent.

Case Name: Boniface Christophe
v
The Queen

[SLUHCRA2010/0002]

Date: Tuesday, 14th April 2015

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: In person (no appearance of counsel on record as acting for the appellant, Mr. Colin Foster)

Respondent: Ms. Tina Mensah

Issues: Appeal against conviction and sentence – Rape – Robbery – Whether trial was fair – Whether learned trial judge failed to put case across to jury during summation – Whether learned trial judge failed to consider evidence of “ongoing love relationship and absence of force necessary to commit such an offence” – Whether sentence too harsh and against guidelines set by Chief Justice Sir Dennis Byron

Result / Order: [Oral delivery]

1. The appellant is to file and serve skeleton arguments on or before 17th June 2015.
2. The respondent is granted leave to file further submissions, if necessary, on or before 30th July 2015.
3. The hearing of the appeal is traversed to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 26th October 2015.

Reason: Mr. Foster wrote the court saying that he was unwell and therefore was not in a position to conduct the hearing during this sitting.

Case Name: Kim Florent
v
The Queen

[SLUHCRA2012/0001]

Date: Tuesday, 14th April 2015

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: Ms. Isa Cyril

Respondent: Ms. Tina Mensah

Issues: Appeal against conviction and sentence – Rape –
Unlawful sexual connection – Record of appeal only
received by appellant during previous week –
Application for adjournment

Result / Order: [Oral delivery]
1. The appellant is to file and serve skeleton
submissions on or before 29th May 2015.
2. The respondent is to file skeleton submissions in
reply on or before 15th July 2015.
3. The hearing of the appeal is adjourned to the next
sitting of the Court of Appeal in Saint Lucia
during the week commencing 26th October 2015.

Reason: Counsel for the appellant indicated to the Court that
the appellant had only received the record of appeal
the previous week and so was not in a position to
proceed with the appeal.

The respondent had no objection to the matter being
adjourned to the next sitting of the Court of Appeal.

Case Name: Valentine James
v
The Bank of Nova Scotia
[SLUHCVAP2013/0029]

Date: Wednesday, 15th April 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Ms. Wauneen Louis-Harris

Respondent: No appearance

Issues: Repayment of loan taken by appellant from respondent bank – Appellant’s motor vehicle which formed security for loan confiscated and sold below market value leaving outstanding balance on loan – Whether seizure of vehicle lawful – Whether learned master erred in failing to consider appellant’s counterclaim which could possibly have been set off against sum claimed by respondent in court below – Whether learned master erred in law in concluding that respondent’s actions were triggered by default of applicant within meaning and context of Bill of Sale and in finding that actions of respondent in confiscating applicant’s vehicle were not premature in the circumstances – Whether learned master erred in arriving at determination that procedure employed by respondent in obtaining market value of vehicle and procedure used to secure best price on sale was just in the circumstances

Result / Order: [Oral delivery]
The matter is stood down.

Reason: To allow Ms. Louis-Harris to furnish the court with the affidavit of service of the notice of appeal (on the respondent).

Case Name: [1] Moses Joseph

[2] St. Lawrence Matty

[3] Matthew Matty

[4] Patrick Lubrin

[5] Earl Bernard

[6] Antoine Fanis

v

Alicia Francois

**(Administratrix of the Estate of the late Jacob
Fanus of Desruisseaux, Micoud)**

[SLUHCVAP2011/0025]

consolidated with

[1] St. Torrence Matty

[2] Matthew Matty

[3] Peter Fanus

[4] Raymond Fanis

**(Representatives of the estate of Louis
Seraphin)**

v

**Alicia Francois (Administratrix of the Estate
of the late Jacob Fanus of Desruisseaux,
Micoud)**

[SLUHCVAP2012/0037]

Date: **Wednesday, 15th April 2015**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellants (in both appeals):	Mr. Horace Fraser
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Respondents (in both appeals):	Mr. Vern Gill
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Issues: **Ownership of property – Land adjudication process –**

Whether error made by adjudicator in saying that deceased Jacob Fanus was person in sole possession of the property at material time – Whether there had been mistake in adjudication process – Obtaining title to property by prescription – Adverse possession – Whether learned trial judge misdirected himself on matter of land adjudication process and therefore asked himself wrong question which renders his decision on issue of mistake wrong in law – Whether learned trial judge erred in law by making findings of fact based on no evidence and arriving at conclusions without reasons to support said conclusions – Whether judgment of learned trial judge wholly unsupported by evidence

Result / Order:

**[Oral delivery]
Matter stood down for lunch adjournment.**

Case Name:

**[1] Moses Joseph
[2] St. Lawrence Matty
[3] Matthew Matty
[4] Patrick Lubrin
[5] Earl Bernard
[6] Antoine Fanis**

v

**Alicia Francois
(Administratrix of the Estate of the late Jacob
Fanus of Desruisseaux, Micoud)**

[SLUHCVAP2011/0025]

consolidated with

**[1] St. Torrence Matty
[2] Matthew Matty
[3] Peter Fanus
[4] Raymond Fanis**

(Representatives of the estate of Louis

Seraphin)
v
**Alicia Francois (Administratrix of the Estate
of the late Jacob Fanus of Desruisseaux,
Micoud)**

[SLUHCVP2012/0037]

Date: Wednesday, 15th April 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant (in both appeals):	Mr. Horace Fraser
Respondent (in both appeals):	Mr. Vern Gill

Issues: Ownership of property – Land adjudication process – Whether error made by adjudicator in saying that deceased Jacob Fanus was person in sole possession of the property at material time – Whether there had been a mistake in the adjudication process – Obtaining title to property by prescription – Adverse possession – Whether learned trial judge misdirected himself on matter of land adjudication process and therefore asked himself wrong question which renders his decision on issue of mistake wrong in law – Whether learned trial judge erred in law by making findings of fact based on no evidence and arriving at conclusions without reasons to support said conclusions – Whether judgment of learned trial judge wholly unsupported by evidence

Result / Order: [Oral delivery]
1. Both appeals are dismissed.
2. Costs to the respondents in the sum of \$3,000.00
3. Written reasons shall be furnished at a later date.

Case Name:

**Valentine James
v
The Bank of Nova Scotia
[SLUHCVAP2013/0029]**

Date:

Wednesday, 15th April 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant:

Ms. Wauneen Louis-Harris

Respondent:

**Mr. Deale Lee holding papers for Mr. Jonathan
McNamara**

Issues:

Repayment of loan taken by appellant from respondent bank – Appellant’s motor vehicle which formed security for loan confiscated and sold below market value leaving outstanding balance on loan – Whether seizure of vehicle lawful – Whether learned master erred in failing to consider appellant’s counterclaim which could possibly have been set off against sum claimed by respondent in court below – Whether learned master erred in law in concluding that respondent’s actions were triggered by default of applicant within meaning and context of Bill of Sale and in finding that actions of respondent in confiscating applicant’s vehicle were not premature in the circumstances – Whether learned master erred in arriving at determination that procedure employed by respondent in obtaining market value of vehicle and procedure used to secure best price on sale was just in the circumstances

Result / Order:

[Oral delivery]

- 1. The appeal is allowed save and except in relation to ground 10 contained in the notice of appeal.**
- 2. The orders of the master dated 19th January 2012,**

11th October 2013 and 25th October 2013 are hereby set aside.

3. The appellant shall have his costs in the appeal and in respect of the application of the court below agreed in the sum of \$1,750.00.
4. The matter is remitted to the court below for case management.

Reason: The parties consented to the above order.

JUDGMENTS

Case Name: Jewel Thornhill
v
The Attorney General

[SLUHCVAP2012/0035]

Date: Thursday, 16th April 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:	Mr. Horace Fraser
Respondent:	Mr. Andie George holding papers for the Attorney General's Chambers

Issues: Civil appeal – Police Act – Claimant injured by off duty police officer – Whether police officer was at the relevant time acting as an officer of the Crown – Whether claim prescribed by Civil Code – Bad faith – Whether bad faith had been established in relation to police officer's actions

**Result &
Reason:**

Held: dismissing the appeal and ordering each party to bear their own costs; that

1. An appellate court will not impeach the finding of facts by a first instance or trial court that saw and heard witnesses give evidence except in very limited circumstances. Where a trial judge misdirects himself and draws erroneous inferences from the facts, an appellate court is in as good a position as the trial judge to evaluate the evidence and determine what inference should be drawn from the proved facts. In the present case, the learned trial judge paid undue regard to the fact that PC Taliam was at the supermarket performing private security services. In that regard, he came to the wrong conclusion as to the nature of the relationship between PC Taliam and the Crown. On that basis, the appellate court is in as good a position to evaluate the evidence and determine what inference should be drawn from the proved facts.

East Pine Management Limited v Tawny Assets Limited et al BVIHCVAP2012/0035 (delivered 24th March 2014, unreported) followed.

2. A police officer is not a servant or agent of the Crown in the strict sense, merely by virtue of his office or in respect of the performance of his general duty to serve, and protect the citizenry by enforcing the law of the land. Nonetheless, he or she is an officer or an employee of the Crown in the sense that he or she performs a very important public duty – that of peace officer charged with enforcing the law of the land by protecting citizens as they go about their daily lives in peace within a community. Therefore, the Crown would be liable for any acts in the nature of a delict or quasi-delict committed by a police officer in the performance or purported performance of his police duties.

Section 4(3) of the Crown Proceedings Act Cap. 2:05, Revised Laws of Saint Lucia 2008 applied; *R v Commissioner of Police of the Metropolis, Ex parte Blackburn* [1968] 1 All ER 763 applied;

***Thornhill v The Attorney General* (1976) 31 WIR 498 applied; Section 94 of the Constitution of Saint Lucia Cap. 1.01, Revised Laws of Saint Lucia 2008.**

- 3. The evidence was that PC Taliam acted on the premise that he was in every respect a police officer at the time that he observed a breach of the peace was imminent at which time he assumed the full character and responsibilities of a police officer and acted in a manner to prevent a breach of the peace. At the relevant time, there was no doubt that he was acting as a police officer and was therefore an officer of the Crown. His action in discharging the firearm was closely connected with the acts he was authorised to do which include his duty to preserve the public peace. On the facts and circumstances of this case, the Crown, barring any limiting circumstances, would be liable for PC Taliam's actions if the performance of the functions he performed or purported to perform amounted to a delict or quasi-delict.**

Section 4(3) of the Crown Proceedings Act Cap. 2.05, Revised Laws of Saint Lucia 2008 applied; *Attorney General of the British Virgin Islands v Hartwell* [2004] UKPC 12 applied.

- 4. The liability of the Crown however is circumscribed by the requirement of bad faith where the action is commenced after six (6) months. In order to determine whether an act was done in good faith, one may look at the conduct not only at the time of the act amounting to the violation but also at the actions before and after as bad faith is usually to be inferred from a certain state of things which may include conduct not only at the specific point in time of the action complained of but also actions taken before and after, as all of these may be relevant in divining bad faith in respect of the act. The mere telling of a lie does not in and of itself amount to bad faith; it all depends on the circumstances of the case. The evidence in this case showed that PC Taliam's actions were as a result of perceived**

danger to life or limb. His actions could not be said to amount to gross recklessness or gross carelessness. On the particular facts of this case, PC Taliam's evidence and actions, when weighed with all the relevant circumstances surrounding the incident, does not meet the threshold requirement for a finding of bad faith. The learned trial judge was correct in his conclusion that bad faith had not been proven. There is therefore no reason to disturb that finding.

Article 2124 of the Civil Code of Saint Lucia Cap 4.01, Revised Laws of Saint Lucia 2008 applied; *R v Dara M. Wilder* 1997 CanLII 1616 (BC SC) applied; *Finney v Barreau du Quebec* 2004 SCC 36; [2004] 2 SCR 17 distinguished.

5. The learned trial judge, although he erred on the nature of the relationship between PC Taliam and the Crown, was nonetheless correct in his finding that bad faith had not been proven. Accordingly, the appeal fails for the reason that by the time the claim was brought it was time barred.

Article 2124 of the Civil Code of Saint Lucia Cap 4.01, Revised Laws of Saint Lucia 2008 applied.

APPLICATIONS AND APPEALS

Case Name:

Owen Lamontagne

v

417 CPL Didier

[SLUMCRAP2006/0016]

Date:

Thursday, 16th April 2015

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Mr. Leon France

Issues: Criminal appeal against conviction – Indecent assault – Whether there was miscarriage of justice – Whether there was sufficient evidence to convict appellant

Result / Order: [Oral delivery]

1. The Registrar of the High Court shall cause to be served upon the appellant, personally, a notice of hearing of this appeal which shall be fixed for the week commencing 26th October 2015 and shall provide to the Court, proof of such service on the appellant.
2. The appeal is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the said week commencing 26th October 2015.

Reason: There was no record of service of notice of the day's hearing on the appellant.

Case Name: Bain Nathaniel
v
PC 738 Antoine

[SLUMCRAP2008/0101]

Date: Thursday, 16th April 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Mr. Leon France

Issues: Appeal against conviction and sentence – Assault – Whether verdict of learned magistrate against weight of evidence – Whether sentence excessive

Result / Order: [Oral delivery]
1. The Registrar of the High Court shall cause to be served upon the appellant, personally, a notice of hearing of this appeal which shall be fixed for the week commencing 26th October 2015 and shall provide to the Court, proof of such service on the appellant.
2. The appeal is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the said week commencing 26th October 2015.

Reason: Having examined the case file, the Court noted that there was no indication that the appellant had been made aware of the day's hearing.

Case Name: Randa Prospere
v
The Police

[SLUMCRAP2009/0001]

Date: Thursday, 16th April 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: No appearance
Respondent: Ms. Victoria Charles-Clarke, Director of Public Prosecutions

Issues: Appeal against conviction – Possession of controlled drug

Result / Order: [Oral delivery]
1. The Registrar of the High Court shall cause to be served upon the appellant, personally, a notice of hearing of this appeal which shall be fixed for the week commencing 26th October 2015 and shall provide to the Court, proof of such service on the appellant.
2. The appeal is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the said week commencing 26th October 2015.

Reason: The Court noted that there had been no appearance of appellant at last sitting of the Court of Appeal. It was also noted that there was no evidence of service of notice of the day's hearing on the appellant (personally).

Case Name: James Doxilly
v
Sean Alexander Corporal 476
[SLUMCRAP2006/0007]

Date: Thursday, 16th April 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: In person
Respondent: Ms. Victoria Charles-Clarke, Director of Public Prosecutions

Issues: Appeal against conviction and sentence – Possession of firearm and ammunition without valid license – Assault with deadly instrument (firearm) – Whether evidence supported finding of guilt – Whether conviction wrong in law – Whether sentence excessive

Result / Order: [Oral delivery]
The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 26th October 2015, on the request by the appellant and for completing the notes of evidence.

Reason: The appellant was clearly interested in pursuing his appeal. However, the Court was informed that the notes of evidence were still missing from the record of appeal; the notes needed to be proofread before being inserted in the record.

Case Name: Alius Charlemange
V
PC 695 Kendel Bicar
[SLUMCRAP2012/0009]

Date: Thursday, 16th April 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: No appearance
Respondent: Ms. Victoria Charles-Clarke, Director of Public Prosecutions

Issues: Whether appeal ready to proceed

Result / Order: [Oral delivery]
 1. The Registrar of the High Court shall cause to be served upon the appellant, personally, a notice of hearing of this appeal which shall be fixed for the week commencing 26th October 2015 and shall provide to the Court, proof of such service on the appellant.
 2. The appeal is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the said week commencing 26th October 2015.

Reason: The Court was informed that the reasons for the decision in this matter had not been obtained as yet. It was noted that the appellant did not appear at the last hearing of this matter during the Sitting of the Court in January 2015. Furthermore, there was no evidence that notice of the day's hearing had been served on the appellant, in person.

Case Name: Cagina Foster
 V
 PC 364 Danny Flavius
 [SLUMCRAP2013/0024]

Date: Thursday, 16th April 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
 The Hon. Mde. Louise E. Blenman, Justice of Appeal
 The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: Mr. Daarsrean Greene
Respondent: Ms. Tina Mensah

Issues: Appeal against conviction and sentence – Driving

without due care and attention – Driving without policy of insurance in force – Whether decision altogether unwarranted by and against weight of evidence – Whether sentence excessive

Result / Order:

[Oral delivery]

1. The Senior Magistrate is hereby directed to use her best endeavours to obtain the remaining notes of the proceedings in respect of the trial conducted by then Magistrate Walker, in order to complete the record.
2. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 26th October 2015.

Reason:

The record of appeal was incomplete; it was missing the learned magistrate's notes of evidence.

Case Name:

Constable Henry PC #302

V

Edward Radmore

[SLUMCRAP2001/0009]

Date:

Thursday, 16th April 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: No appearance

Respondent: No appearance (deceased)

Issues:

Appeal against conviction – Whether decision altogether unwarranted by evidence – Whether learned magistrate erred in law in overruling submission that charge was duplicitous and

therefore bad in law and proceeding to hear evidence in respect of that charge – Whether learned magistrate erred in permitting duplicitous charge to be amended – Alternatively, whether learned magistrate wrongly exercised his discretion in amending charge to delete two of the complainants' names after no case submission had been made to effect that there was no evidence to support charge as filed by the three complainants – Whether amendment of charge substantially altered basis of prosecution's case, requiring appellant to answer charge which was substantially different from that which he had come to meet and which, given its lateness, was likely to and did cause injustice to him – Inability to obtain notes of proceedings in respect of trial conducted by learned magistrate – Record incomplete

Result / Order:

[Oral delivery]

The Senior Magistrate is hereby directed to use her best endeavours to obtain the remaining notes of the proceedings in respect of the trial conducted by then Magistrate Walker, in order to complete the record.

Case Name:

Richard Almaguer Osorio

v

PC 611 Kieran Thompson

[SLUMCRAP2013/0016]

Date:

Thursday, 16th April 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

No appearance

Respondent:

Ms. Victoria Charles-Clarke, Director of Public Prosecutions

Issues: Appeal against conviction – Prohibited immigrant – Appellant declared prohibited immigrant for remaining in State of Saint Lucia for longer period than that initially granted by immigration department – Whether decision altogether supported by evidence – Whether appellant still has intention of prosecuting appeal

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

Reason: The Court was informed that this appeal was filed as part of a set of appeals which all had similar factual backgrounds and issues. All of the other appeals in this set however, had been withdrawn. The Court was further informed that the appellants have all left the State of Saint Lucia.

Case Name: Constable Henry PC #302
v
Edward Radmore
[SLUMCRAP2001/0009]

Date: Thursday, 15th April 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:	No appearance
Respondent:	No appearance (deceased)

Issues: Appeal against conviction – Whether decision

altogether unwarranted by evidence – Whether learned magistrate erred in law in overruling submission that charge was duplicitous and therefore bad in law and proceeding to hear evidence in respect of that charge – Whether learned magistrate erred in permitting duplicitous charge to be amended – Alternatively, whether learned magistrate wrongly exercised his discretion in amending charge to delete two of the complainants' names after no case submission had been made to effect that there was no evidence to support charge as filed by the three complainants – Whether amendment of charge substantially altered basis of prosecution's case, requiring appellant to answer charge which was substantially different from that which he had come to meet and which, given its lateness, was likely to and did cause injustice to him – Inability to obtain notes of proceedings in respect of trial conducted by learned magistrate – Record incomplete

Result / Order:

[Oral delivery]

The appeal herein stands dismissed for want of prosecution.

Reason:

The Court was satisfied that the appellant had been given notice of the proceedings (a bailiff of the High Court was sworn in and confirmed that he had served the appellant with notice of the day's hearing at 8:48 a.m. on 2nd March 2015 on Peynier Street in Castries).

Case Name:

Benny Samuel

V

PC 663 Randolphe

[SLUMCRAP2011/0008]

Date:

Thursday, 16th April 2015

Coram:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances:	
Appellant:	Ms. Antonia Auguste
Respondent:	Ms. Tina Mensah
Issues:	Appeal against conviction and sentence – Breach of protection order – Assault – Whether learned family court magistrate had jurisdiction to hear criminal matter which was wrongfully consolidated with matter under Domestic Violence Act – Whether learned magistrate erred in failing to give appellant opportunity to be heard and to put forward his defence – Whether learned magistrate deprived appellant of his right to legal representation – Breach of principles of natural justice – Whether learned magistrate was biased – Whether punishment excessive – Appellant only pursuing appeal against sentence
Result / Order & Reason:	[Oral delivery] 1. The compensation order made in respect of the assault in the sum of \$1,000.00 is affirmed, there being no justifiable reason for interfering with this award having regard to the facts of the matter. 2. In respect of the breach of the protection order, the Court notes that a maximum fine was awarded and that it is disproportionate in all circumstances in the case and that sum is varied to \$500.00 as an appropriate punishment reflecting the breach of the protection order in the circumstances. 3. The appeal against sentence is allowed to the extent as set out in the above two (2) orders. 4. The sum of \$1,000.00 to be paid to the virtual complainant in full by 31st July 2015, in default three (3) months imprisonment and the \$500.00 fine is to be paid by 31st August 2015, in default, one (1) month imprisonment.

Case Name:

**Christopher Smith
V
Hilary Emmanuel CPL 305
[SLUMCRAP2006/0000]**

Date:

Thursday, 16th April 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

Mr. Daarsrean Greene

Respondent:

Ms. Jenin Samuel-Kisna

Issues:

**Appeal against conviction and sentence –
Possession of controlled drug – Whether conviction
unwarranted by evidence – Whether sentence
excessive**

Result / Order:

[Oral delivery]

- 1. The appellant is to file and serve written submissions together with copies of authorities relied on within 2 weeks of receipt of the notes of evidence relating to the testimony of Corporal Emmanuel.**
- 2. The respondent shall be at liberty to file and serve supplemental submissions with authorities within 2 weeks of receipt of the appellant's submissions.**
- 3. The appeal is adjourned for hearing at the next sitting of the Court of Appeal in Saint Lucia scheduled for the week commencing 26th October 2015.**

Reason:

Counsel for the appellant informed the Court that the appeal was not ready to proceed. The appellant was still awaiting the notes of evidence relating to the testimony of Corporal Emmanuel from the learned

magistrate.

Case Name:

WPC 529 Collinthia Thomas

v

Thomas Colin Boulton

[SLUMCRAP2013/0023]

consolidated with

CPL 708 Shervon Matthew

v

Sylvester Michael Joseph

[SLUMCRAP2013/0022]

Date:

Thursday, 16th April 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

**Mr. Leon France, led by Ms. Victoria Charles-Clarke,
Director of Public Prosecutions**

Respondent:

No appearance

Contributing party:

Mr. Andie George for the Saint Lucia Bar Association

Issues:

Appeal by way of case stated – Dismissal of summary case by court if charge pending for more than 180 days pursuant to rule 7.4 of the Criminal Procedure Rules – What constitutes “exceptional reasons” for which a case should not be dismissed under said rule 7.4 – Whether delays not occasioned by prosecution but caused by absence of defendant and/or defence counsel and absence of magistrate or

no sitting of the court should be included in 180 days stipulated by rule 7.4

Result / Order:

[Oral delivery]

- 1. The appellant shall be at liberty to reply to the Bar Association's submissions filed and served on 9th April 2015 and to any submissions filed by counsel for the respondent Thomas Colin Boulton on or before Friday, 24th July 2015.**
- 2. Having regard to the illness of counsel for the respondent, Thomas Colin Boulton, the hearing of the appeal on the cases stated is adjourned to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 26th October 2015.**
- 3. This shall be the final adjournment.**

Reason:

Learned counsel for Mr. Thomas Colin Boulton was unable to be present at the day's hearing due to illness. In the circumstances, the Court was of the view that the matter should be adjourned to allow for all parties concerned to make oral and written submissions on the cases stated.

Case Name:

**Anthony Whitter
v
Nerville George PC 409
[SLUMCRAP2015/0002]**

Date:

Thursday, 16th April 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Mr. David P. Moyston

Respondent: Mr. Leon S. France

Issues:

Criminal appeal against sentence – Attempting to export controlled drug – Possession of controlled drug – Appellant pleaded guilty to both offences at first available opportunity – Appellant sentenced to one year imprisonment on each charge, to run consecutively – Whether learned magistrate erred in his application of sections 1096 and 1102 of the Criminal Code (Cap. 3.01, Revised Laws of Saint Lucia 2008) in handing down consecutive custodial sentences on the appellant – Whether learned magistrate erred in ordering that sentences run consecutively rather than concurrently

Result / Order:

[Oral delivery]

1. The appeal is allowed.
2. The sentence is varied to read:
“The sentence of one year imposed in respect of the charges shall run concurrently from the date of the sentence.”

Reason:

Having regard to the mitigating factors in the case, namely, that the appellant was a first time offender and he pleaded guilty at the first available opportunity, the Court accepted that the learned magistrate’s order which imposed two consecutive terms of imprisonment on the connected charges of being in possession of a controlled drug and attempting to export a controlled drug, ought to be varied so that the two sentences imposed run concurrently rather than consecutively. The respondent conceded that this aspect of the learned magistrate’s order did appear wrong in principle.

Case Name:

**Peter Charles
v
WPC 131 Edmund**

[SLUMCRAP2013/0001]

Date: Thursday, 16th April 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Alfred Alcide

Respondent: Mr. Stephen Brette

Issues: Appeal against conviction – Possession of controlled drug – Cultivation of controlled drug – Possession with intent to supply

Result / Order: [Oral delivery]

1. It is directed that the respondent file and serve submissions on the application to amend the grounds of the appeal on or before 29th May 2015.
2. The appeal is adjourned to the next hearing of the Court of Appeal in Saint Lucia during the week commencing 26th October 2015. This adjournment has been necessitated by the appellant's late filing and late application served on the respondent today, 16th April 2015.

Reason: Counsel for the respondent informed the Court that he had had sight of the appellant's additional grounds of appeal for the first time, that very morning. The Court held that the respondent deserved a fair opportunity to respond to the appellant's application to amend his grounds of appeal.

Case Name: Constable Vincent Marcel
V
Inspector Andrew Stanislaus

[SLUMCVAP2007/0013]

Date: Thursday, 16th April 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Andie George

Respondent: Ms. Tina Mensah

Issues: Appeal against conviction – Assaulting police officer whilst in execution of his duty – Whether decision of learned magistrate against weight of evidence presented by prosecution at trial

Result / Order: [Oral delivery]

1. The appellant shall be at liberty to file additional grounds of appeal in this matter within 28 days of receipt of the magistrate's reasons for decision.
2. The appellant shall also file and serve submissions in the appeal within 28 days of receipt of the reasons for the decision.
3. The respondent shall file and serve submissions in response within 28 days of service of the appellant's submissions.
4. The Senior Magistrate shall be requested to furnish the written reasons for the magistrate's decision by Monday, 18th May 2015.
5. The hearing of the appeal is fixed for the week commencing 26th October 2015.
6. It is further ordered that this appeal shall be heard together with SLUMCRAP2007/0011 and SLUMCRAP2007/0012.

Reason: The reasons for the decision of the learned magistrate had not been received as yet. The Court noted that this matter was related to two other magisterial criminal appeals which came up during the status hearing at this sitting of the Court (SLUMCRAP2007/0011 and SLUMCRAP2007/0012).

JUDGMENTS

Case Name: The Attorney General of St. Christopher and Nevis
v
[1] Hon. Sam Condor
[2] Hon. Shawn K. Richards
[SKBHCVAP2013/0005]
consolidated with
The Rt. Hon. Dr. Denzil L. Douglas – Prime Minister
v
[1] Hon. Sam Condor
[2] Hon. Shawn K. Richards
[SKBHCVAP2013/0006]

Date: Friday, 17th April 2015

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

Appearances:

Appellants: Mr. Sahleem Charles holding papers for counsel for the Attorney General of Saint Christopher and Nevis
Ms. Cynthia Hinkson-Ouhla holding papers for counsel for the Rt. Hon. Dr. Denzil L. Douglas – Prime Minister

Respondents: Mr. Stephen Williams holding papers for the respondents

Issues:

Civil appeal – Appointment of fourth Senator by Governor General on advice of Prime Minister at time when maximum of three Senators provided for by s. 26(2) of Saint Christopher and Nevis Constitution Order 1983 – Whether appointment valid – Senators (Increase of Number) Act, 2013 subsequently passed in National Assembly by one vote with newly appointed fourth Senator voting in favour of passage of Act – Whether passage of Act valid – Whether learned trial judge erred in finding that appointment of fourth Senator by Governor General on advice of Prime Minister justiciable – Whether learned judge failed to properly consider that s. 116(2) of Constitution operates as unequivocal ouster of jurisdiction of High Court to enquire into or review any act done or decision made by Governor General in exercise of his constitutional and prerogative powers under s. 52 of Constitution – Whether learned trial judge erred in making finding that s. 44(2) of Constitution does not save validity of Senators (Increase of Number) Act, 2013

**Result &
Reason:**

Held: dismissing the appeal, affirming the findings of the learned trial judge, and making no order as to costs, that:

1. At the time of the purported appointment of Mr. Hamilton as the fourth Senator, Parliament had prescribed that there be no more than three senators. Jason Hamilton – not being an elected representative and not being appointed Attorney General as a public officer on the advice of the Judicial and Legal Services Commission – could only have been appointed as Attorney General if he was a Senator at the time that he was appointed Attorney General, and the number of Senators could only increase to four when Mr. Hamilton, as a Senator, was appointed Attorney General. It is therefore not possible for him to have been appointed as the fourth Senator when a fourth Senator only comes about as a result of a person who is a Senator, meaning one of the three already existing Senators, is appointed Attorney General.

2. The court below did not enquire into the question of whether the Governor General exercised the function of appointing the Attorney General in accordance with the advice of the Prime Minister, which was beyond question, but rather, it enquired into whether the appointment of Jason Hamilton as Attorney General was permitted by the Constitution. The learned trial judge determined that the court was indeed permitted to enquire into that question and upon enquiry it was determined that the Governor General was not in fact permitted to do so because section 52 of the Constitution, which empowered him to appoint someone as Minister, permitted him only to appoint someone who was a member of the National Assembly and also, that Jason Hamilton was not, at the date of his purported appointment, a member of the National Assembly.

Re Blake (1994) 47 WIR 174 distinguished.

3. The words 'the presence or participation of any person not entitled to be present at or participate in the proceedings of the Assembly' used in section 44(2) of the Constitution should be interpreted narrowly so that the section would apply only to proceedings of the Assembly as constituted in accordance with the provisions of the Constitution itself. Section 44(2) would, therefore, apply to the Assembly provided for in section 26, consisting of such number of Representatives as corresponds with the number of constituencies for the time being established in accordance with section 50 (which at the material time was eleven) and such number of Senators as is specified in section 26(2) (which at the material time was three). Accordingly, on 29th January 2013, the body comprising, four Senators rather than three, would not have been the 'Assembly' referred to in section 44(2). As a result, this section could not apply to and protect from invalidation the proceedings held on that date. Consequently, the Senators (Increase of Number) Act, 2013 purportedly passed by the National Assembly on 29th January 2013, by virtue of the presence of and participation by Mr. Jason

Hamilton in the proceedings of the Assembly on that date, including by casting the deciding vote leading to the passage of the Act, is unconstitutional and/or invalid as being in contravention of sections 26 and 41 of the Constitution.

Regina v Hughes [2002] 2 AC 259 applied;
Anisminic Ltd. v Foreign Compensation Commission and Another [1969] 2 AC 147 applied.

Case Name:

**Montserrat Utilities Limited
v
Mildred Kirwan**

[MNILTAP2013/0002]

Date:

Friday, 17th April 2015

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant: Mr. Sahleem Charles holding papers for counsel for

Respondent: Mr. Stephen Williams holding papers for counsel for

Issues:

Employment law – Appeal from Montserrat Labour Tribunal by way of case stated – Unfair/unlawful dismissal – Employment Act Cap 15.03 – Labour Code 2012 – Interpretation Act – Whether Labour Tribunal erred in application of Labour Code instead of the Employment Act after Employment Act repealed – Whether Interpretation Act requires that Labour Code should apply – Heads of damages for unfair/unlawful dismissal under Labour Code

Result &

Held: agreeing with the conclusions reached by the

Reason:

Tribunal with respect to questions 1 to 4 of the case stated; with respect to question 5, varying the award of the Tribunal by disallowing the award of the pension and accrued interest and the award for injury to feelings and varying the award for loss of vacation pay; and ordering that the parties bear their own costs, that:

- 1. The provisions of the Labour Code, in respect of the unfair termination of employment and the seeking of remedies therefor, deals with matters that had previously been the subject of the Employment Act. The effect of the repeal of the Employment Act and its substitution with the Labour Code was, firstly, that the provisions of the Employment Act ceased to have effect save as provided by section 71 of the Interpretation Act or the Labour Code as the repealing Act. Secondly, on the facts of the instant case, the proceedings commenced by the respondent before the Labour Tribunal in November 2012 and any accrued right of the respondent or obligation of the appellant under the Employment Act continued to have effect notwithstanding its repeal. No question of the retrospective operation of the Labour Code therefore arises.**

Section 187(2) of the Labour Code applied; Sections 71 and 72 of the Interpretation Act applied.

- 2. It was consistent with the Labour Code that the proceedings initiated by the respondent under the Employment Act be continued under the Labour Code as both the Employment Act and the Code provided for the right of an employee not to be unfairly dismissed and for access to the Labour Tribunal for redress where there was an allegation of unfair dismissal and both provided for an obligation of an employer to pay compensation where they failed to discharge the onus to prove that the dismissal was in accordance with the legislative provisions. In addition, the procedure under the Labour Code could be adapted in relation to matters under the Employment Act and the enforcement of rights**

and obligations under the Employment Act. In the instant case it does not appear that significant procedural steps took place under the Employment Act between the commencement of proceedings in November 2012 and the repeal of the Employment Act in December 2012, therefore no concern about the adaptation of the procedure under the Labour Code arises.

Section 23(3) of the Labour Code applied.

3. The Labour Code requires a Tribunal to determine the fairness of the dismissal of any employee by an employer. In this appeal there was no reason to interfere with the conclusion of the Labour Tribunal on the fairness of the respondent's dismissal as the Tribunal properly directed itself on the law by considering the reasonableness of the actions taken by the employer in the circumstances to both the employer and the employee in determining whether the dismissal was fair. The Tribunal applied the ratio of *J Coulson v Felixstowe Dock Railway Co* to the facts of the present case and were correct in distinguishing the decision reached in the *J Coulson* case on different facts.

J Coulson v Felixstowe Dock Railway Co [1974] IRLR 11 applied.

4. Given the wide discretion vested in the Labour Tribunal under section 27 of the Labour Code, the consideration of gratuity and *ipso facto* a retirement benefit as part of the compensation due for unfair dismissal cannot be ruled out. However, the onus must be on the dismissed employee to prove the loss suffered as a result of the dismissal. If the employee can satisfy the Tribunal that as a result of the dismissal which has been determined unfair, that he/she lost a retirement benefit, it should be in the interests of the parties and the community as a whole to have the employee compensated for the loss of this benefit. In this appeal, the obligation to pay the respondent's retirement benefit was not the obligation of the appellant but that of a fund

operated by a third party. It could not be fair and just to make the award against the appellant unless it could be established that by reason of the dismissal the appellant had caused any loss of such entitlement, or possibly, where fairness and the substantial merits of the matter demanded that the appellant should make such payment initially with provision to recoup such payment from the fund. In the circumstances, the respondent did not discharge the onus on her to prove that she lost the retirement benefit as a result of her dismissal.

Section 27 of the Labour Code applied; *Antigua Village Condo Corporation v Jennifer Watt* ANUHCVP1992/0006 considered.

5. Section 68(2)(b) of the Labour Code permits a Labour Tribunal to take into account, inter alia, earnings lost by the employee on account of the dispute up to the date of determination of the issue by the Tribunal. However, this loss is recoverable subject to the employee's duty to mitigate such loss. Mitigation involves consideration of the steps taken to obtain alternative employment by the employee and, in principle, the length of time that the employee spends in bringing and prosecuting his or her claim. The onus of proof of failure to mitigate lies on a defendant and if a defendant intends to contend that a claimant has failed to act reasonably to mitigate his or her damage, notice of such contention should be pleaded or otherwise notice of the intention to take that point should clearly be given to the claimant in a timely manner before the hearing to enable the claimant to prepare to meet this issue.. In the present case, the appellant gave no notice to the respondent of its intention to take a point of mitigation and adduced no evidence to address the issue before the Tribunal. Accordingly, the appellant did not discharge the onus on it to prove that there had been unreasonable inaction on the part of the respondent in failing to commence the claim before the Labour Tribunal in November 2012, or that the respondent was

responsible for the length of time the proceedings took. Consequently, there was no basis on which to interfere with the Tribunal's award for loss of income.

Antigua Village Condo Corporation v Jennifer Watt ANUHC VAP1992/0006 applied; Section 68(2) of the Labour Code applied; *Geest plc v Lansiquot* [2002] 61 WIR 212 applied.

6. At common law, damages are not awarded for injury to feelings arising from wrongful dismissal. However, although injury to feeling is not a matter that the Tribunal is required to take into account under section 68 of the Labour Code, consideration under this head is not excluded by that section. To justify an award of damages for injury to feelings there should at the very least be a finding of an aggravating factor i.e. one which makes the dismissal so unfair in all the circumstances that a Tribunal acting in good conscience and applying the practices of good industrial relations is able to conclude that it is fair and just that compensation be awarded under this head or where there are financial consequences of the manner and circumstances of the dismissal. In the instant case, the Tribunal made no finding of aggravating factors in the dismissal of the respondent or that there were financial consequences of the injury to her feelings; accordingly, this award could not be upheld.

Addis v Gramophone Co Ltd [1909] AC 488 applied; Section 68 of the Labour Code applied; *Antigua Village Condo Corporation v Jennifer Watt* ANUHC VAP1992/0006 applied; *Mayan King Ltd v Reyes and other* [2012] CCJ 3 (AJ) distinguished.

7. Section 68(2)(b) of the Labour Code mandates that a Tribunal should take into account wages and other remuneration lost by the employee on account of the dispute. Contributions to pension funds and social security form part of "other remuneration" under this section. Consequently,

in this appeal, the respondent had a statutory right to the benefit of contributions to the pension fund and social security contributions as part of her compensation for unfair dismissal.

Section 68(2)(b) of the Labour Code applied.

APPLICATIONS AND APPEALS

Case Name:

[1] Aquaduct Limited

[2] Bertille Da Silva

v

[1] Faelesseje

**[2] Lesline Bess (Court Appointed
Representative of the Estate of Othneil R.
Sylvester Deceased)**

[SVGHCVAP2014/0017]

Date:

Friday, 17th April 2015

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant:

Mr. Frederick Gilkes, with him, Mr. Yuri Saunders

Respondent:

**Mr. Stephen Williams holding papers for Mr. Richard
Williams (for the first respondent)
Mr. G. Grahame Bollers (for the second respondent)**

Issues:

Interlocutory appeal – Whether court below had jurisdiction to try and/or could fairly and properly resolve, as part of ongoing charging proceedings, issue as to whether second named appellant owned 50% of shares in first named appellant, those being shares sought to be charged – Whether learned judge erred in dismissing appellants' preliminary

point objecting to court's jurisdiction to try said issue – Whether learned judge erred in failing to appreciate that first named respondent, as judgment creditor, would have no direct role to play in resolution of issue of ownership of Aquaduct's shares and ought not to play any or any direct or major role in proceedings to determine ownership of shares

Result / Order:

Judgment reserved.