

COURT OF APPEAL SITTING

ANTIGUA AND BARBUDA

13th – 17th July 2015

		<u>STATUS HEARING</u>
Case Name:		Simon Davis v The Queen [ANUHCRA2012/0007]
Date:		Monday, 13th July 2015
Before:		The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:		
	Appellant:	No appearance
	Respondent:	Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones-Gittens
Issue:		Status of the matter
Result / Order:		[Oral delivery] 1. The Registrar of the High Court is directed to comply with the order dated 9th March 2015 within two (2) months of this order. 2. The matter is placed for further consideration at the next sitting of the Court during the week which commences on the 7th December 2015.
Reason:		There was non-compliance with the order of 9th March 2015.
Case Name:		Ultramarine (Antigua) Ltd. v

		Sunsail (Antigua) Ltd.
		[ANUHCVP2012/0023]
Date:		Monday, 13th July 2015
Before:		The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:		
	Appellant:	Mr. Jarid Hewlett holding papers for Dr. David Dorsett
	Respondent:	No appearance
Issue:		Status of the matter
Result / Order / Reason:		[Oral delivery] The appeal shall proceed in accordance with CPR 2000 based on the indication of the availability of the transcript given on 8th June 2015.
Case Name:		[1] Colin George [2] Iva May George v [1] Morriel Jenneth George-Carr [ANUHCVP2012/0016]
Date:		Monday, 13th July 2015
Before:		The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:		
	Appellant:	No appearance
	Respondent:	Ms. Sherrie-Ann Bradshaw

Issues:		Status of the matter – Application to strike out notice of appeal
Result / Order / Reason:		[Oral delivery] 1. The appeal is dismissed for want of prosecution. 2. Costs to the respondent in the sum of \$1,000.00.
Case Name:		Leroy Silston v Ruthlyn Chambers [ANUHCVP2012/0008]
Date:		Monday, 13th July 2015
Before:		The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:		
	Appellant:	Mr. Kendrickson Kentish
	Respondent:	Ms. Eleanor Clarke-Solomon
Issue:		Status of the matter
Result / Order:		[Oral delivery] The appeal shall proceed in accordance with CPR 2000.
Case Name:		[1] Jessica Hood v [1] Free Trade and Processing Zone Commission

		[2] Houghton Forde [3] Vere Carbon [4] Angella Gonsalves [ANUHCVAP2012/0018]
Date:		Monday, 13th July 2015
Before:		The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:		
	Appellant:	Mr. Jarid Hewlett holding papers for Dr. David Dorsett
	Respondent:	No appearance for the 1st and 2nd respondents Ms. Kema Benjamin for the 3rd respondent No appearance for the 4th respondent
Issue:		Status of the matter
Result / Order:		[Oral delivery] The appeal shall proceed in accordance with CPR 2000.
Case Name:		Saffron Limited v Angel Estates Limited [ANUHCVAP2012/0045]
Date:		Monday, 13th July 2015
Before:		The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:		
	Appellant:	Mr. Jarid Hewlett holding papers for Dr. David

		Dorsett
	Respondent:	Mr. John Fuller
Issue:		Status of the matter
Result / Order:		[Oral delivery] The appeal shall proceed in accordance with CPR 2000.
Case Name:		Troy Robinson v The Commissioner of Police [ANUMCRAP2012/0001]
Date:		Monday, 13th July 2015
Before:		The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:		
	Appellant:	Mr. Cosbert Cumberbatch
	Respondent:	Ms. Shannon Jones-Gittens holding papers for Mr. Anthony Armstrong, Director of Public Prosecutions
Issue:		Status of the matter
Result / Order:		[Oral delivery] 1. The Registrar of the High Court is directed to obtain from the Chief Magistrate the reasons for her decision in relation to sentence based on the information that the appellant will only be pursuing an appeal against sentence. 2. The Chief Magistrate is directed to provide the reasons for the decision within thirty (30) days of this order.

		3. The appellant is directed to file and serve skeleton arguments within twenty-one (21) days of the receipt of the reasons for decision. 4. The respondent is granted leave to file and serve skeleton arguments in answer within twenty-one (21) days of receipt of the appellant's submissions. 5. The matter is adjourned for hearing during the week which commences on the 7th December 2015.
Case Name:		Romar Graham v The Commissioner of Police [ANUMCRAP2012/0006]
Date:		Monday, 13th July 2015
Before:		The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:		
	Appellant:	Mr. Jarid Hewlett holding papers for Dr. David Dorsett
	Respondent:	Ms. Shannon Jones-Gittens holding papers for Mr. Anthony Armstrong, Director of Public Prosecutions
Issue:		Status of the matter
Result / Order:		[Oral delivery] Unless the appeal is prosecuted within two (2) months of this order, the Court shall consider the appropriate order to be made at the next sitting of the Court scheduled for Antigua and Barbuda during the week which commences 7th December 2015.

Case Name:		Mandella Victor Spencer v The Commissioner of Police [ANUMCRAP2011/0002]
Date:		Monday, 13th July 2015
Before:		The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:		
	Appellant:	No appearance
	Respondent:	Ms. Shannon Jones-Gittens holding papers for Mr. Anthony Armstrong, Director of Public Prosecutions
Issue:		Status of the matter
Result / Order:		[Oral delivery] 1. The Registrar of the High Court is directed to obtain from the Chief Magistrate reasons for her decision within thirty (30) days of this order. 2. The appellant is granted leave to file and serve skeleton arguments within twenty-one (21) days of receipt of the reasons for decision. 3. The respondent is granted twenty-one (21) days leave after the receipt of the appellant's submissions to file and serve skeleton arguments. 4. The matter is fixed for further consideration at the next sitting of the Court in Antigua and Barbuda during the week which commences on the 7 th December 2015.
Case Name:		[1] Garfield Morrison v

		[1] Chief Magistrate [2] Ivan Walters [3] The Commissioner of Police [ANUMCRAP2010/0002]
Date:		Monday, 13th July 2015
Before:		The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:		
	Appellant:	Mr. John Fuller
	Respondent:	Ms. Shannon Jones-Gittens holding papers for Mr. Anthony Armstrong, Director of Public Prosecutions
Issue:		Status of the matter
Result / Order:		[Oral delivery] Matter is fixed for further consideration at the next sitting of the Court in Antigua and Barbuda on the 7th December 2015.
Case Name:		Robert Anthony Browne v The Commissioner of Police [ANUMCRAP2012/005A]
Date:		Monday, 13th July 2015
Before:		The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:		
	Appellant:	No appearance
	Respondent:	Ms. Shannon Jones-Gittens holding papers for Mr. Anthony Armstrong, Director of Public Prosecutions

Issue:		Status of the matter
Result / Order:		[Oral delivery] 1. The Registrar of the High Court is directed to obtain from the Chief Magistrate the reasons for the decision which should be made available within one (1) month of the date of this order. 2. The appellant is directed to file and serve skeleton arguments on the Director of Public Prosecutions within twenty-one (21) days of the receipt of the reasons for decision. 3. The Director of Public Prosecutions is granted leave to file and serve skeleton arguments in answer within twenty-one (21) days from receipt of the appellant's submissions. 4. The matter is fixed for further consideration on the 7th December 2015.
Case Name:		Washington Bramble v The Commissioner of Police [ANUMCRAP2013/0002]
Date:		Monday, 13th July 2015
Before:		The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:		
	Appellant:	In person
	Respondent:	Ms. Shannon Jones-Gittens holding papers for Mr. Anthony Armstrong, Director of Public Prosecutions
Issue:		Status of the matter

Result / Order:		[Oral delivery] 1. The Registrar of the High Court is directed to obtain from the Chief Magistrate the reasons for the decision within fourteen (14) days of this order. 2. The Record of Appeal shall be filed which contains the documents that were before the Court below together with the notes of evidence and the affidavit of the appellant deposed on the 5 th April 2015 and the reasons for the decision. 3. The appellant is to file and serve the Record of Appeal within forty-five (45) days of this order. 4. Thereafter the appellant is granted forty (40) days leave to file and serve skeleton arguments on the Office of the Director of Public Prosecutions. 5. The respondent is granted twenty-one (21) days leave thereafter to file and serve skeleton submissions. 6. The appeal is fixed for further consideration during the week which commences on the 7 th December 2015 during the sitting of the Court of Appeal in Antigua and Barbuda.
Case Name:		Errol Cleofoster Barnes v The Commissioner of Police [ANUMCRAP2013/0001]
Date:		Monday, 13th July 2015
Before:		The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:		
	Appellant:	No appearance
	Respondent:	Ms. Shannon Jones-Gittens holding papers for Mr. Anthony Armstrong, Director of Public Prosecutions
Issue:		Status of the matter

Result / Order:		[Oral delivery] 1. Notice of hearing to be served on the appellant personally. 2. Affidavit of service to be filed with proof of service. 3. The matter is fixed for further consideration during the sitting of the Court in Antigua and Barbuda during the week which commences on the 7 th December 2015.
Case Name:		Christan Devon Hinds v The Commissioner of Police [ANUMCRAP2013/0003]
Date:		Monday, 13th July 2015
Before:		The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:		
	Appellant:	Mr. Jarid Hewlett holding papers for Dr. David Dorsett
	Respondent:	Ms. Shannon Jones-Gittens holding papers for Mr. Anthony Armstrong, Director of Public Prosecutions
Issue:		Status of the matter
Result / Order:		[Oral delivery] The matter is fixed for further consideration during the sitting of the Court of Appeal in Antigua and Barbuda during the week which commences on the 7 th December 2015.

Case Name:		[1] Vere Bird Jr. [2] Lester Bryant Bird [3] Gaston Browne [4] Mary Claire Hurst [5] Molywn Joseph [6] Sharon Kentish [7] Jim Galloway v [1] The Commissioner of Police [ANUMCRAP2010/0015]
Date:		Monday, 13 th July 2015
Before:		The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:		
	Appellant:	No appearance
	Respondent:	Ms. Shannon Jones-Gittens holding papers for Mr. Anthony Armstrong, Director of Public Prosecutions
Issue:		Status of the matter
Result / Order:		[Oral delivery] The matter is fixed for further consideration on the 7th December 2015.
		<u>APPLICATIONS AND APPEALS</u>
Case Name:		Hawksbill Limited trading as Hawksbill by Rex Resorts Hotel v Edna Parker

		[ANUHCVP2015/0021]
Date:		Monday, 13th July 2015
Coram:		The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. Justin L. Simon, QC with Ms. Fiona Murphy
	Respondent:	Mr. Jose Laurent
Issues:		Application for leave to appeal – Application for stay of further proceedings
Result / Order:		[Oral delivery] 1. The application for leave is hereby dismissed. 2. No order as to costs.
Reason:		The learned master did not err in the exercise of his discretion not to strike out the claimant's/respondent's claim. It is a well-established principle of law that where a case raises serious live issues of fact, which can only be resolved by hearing oral evidence, it would not be a case that is suited for striking out. In these circumstances, the Court finds that the issue of limitation is one which does raise serious issues of fact to be determined after the consideration of evidence.
Case Name:		Everton Welch v The Queen [ANUHCVP2015/0005]

Date:		Tuesday, 14th July 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:	Dr. David Dorsett with him Mr. Fitzmore Harris
	Respondent:	Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones-Gittens
Issue:		Application for leave to appeal
Result / Order:		[Oral delivery] 1. Leave is granted to the appellant to file and serve the notice of appeal together with skeleton submissions within fourteen (14) days of today's date. 2. The respondent is granted thirty (30) days leave to file and serve skeleton submissions after receipt of the appellant's submissions. 3. Thereafter the appeal shall proceed in accordance with CPR 2000.
Reason:		The requisite threshold for leave to appeal has been satisfied.
Case Name:		Elmeade Jarvis v The Queen [ANUHCRA2011/0003]
Date:		Tuesday, 14th July 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. Ralph Francis
	Respondent:	Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones-Gittens
Issues:		Criminal appeal against conviction – Conspiracy – Conversion – Obtaining money under false pretence – Whether the learned trial judge erred in not upholding the no case submission – Whether the trial judge erred in putting the case before the jury – Whether the trial judge erred in sentencing.
Result / Order:		[Oral delivery] 1. The appeal against conviction is dismissed. 2. The appeal against sentence is allowed to the extent that the sentence of two (2) years is varied to three (3) months' time served and the appellant shall pay a fine of \$5,000.00 within one (1) month of the date of this order, in default three (3) months imprisonment.
Reason:		The appellant has appealed his conviction on three counts of conversion. Several grounds were filed by the appellant but the appeal was advanced on three grounds. (a) The learned judge erred in not upholding the no case submission (b) the deficiencies in the learned trial judge's submission and (c) sentencing. The appellant's counsel in his submissions stated that there was no evidence of any agreement between the appellant and other persons, no evidence to establish an element of the offence, mens rea, and there was nothing to suggest how the jury could conclude that the appellant had acted fraudulently. The respondent submits that there was adequate evidence before the jury for the case to have gone on

		and that the judge acted properly in rejecting the no case submission. The Court held that the basic rule in deciding on a submission of no case to answer at the end of the evidence adduced by the prosecution is that the judge should not withdraw the case if a reasonable jury, properly directed, could on that evidence find the charge in question proved beyond reasonable doubt. This principle is derived from the case of the <i>R v Burrows</i>, [1970] Crim LR 419. The Court was of the view that, applying the basic rule, the judge in fact was quite right in rejecting the submission that there was no case to answer. The Court noted that the prosecution's case against the appellant consisted of several types of evidence including direct and circumstantial, as well as documentary. These included cheques, cheque stubs, journal and ledger entries all written by the appellant. The evidence also disclosed that the cheques were written by the appellant and were all used to defraud the Medical Benefits Scheme. The evidence at the trial showed that cheques were issued to Jennifer Joseph and Joseph White. These persons did not receive medical treatments abroad or applied to the Medical Benefits Scheme for any benefits, or were approved or authorized by the Cabinet of Antigua or the Medical Benefits Board for any such treatments abroad or payment for such treatments. Therefore, the Court rejected that particular ground. The second ground was that the learned trial judge did not properly put the case of the appellant before the jury. In his summation the trial judge referred to the unsworn statement of the appellant which statement essentially contained his defense. The jury therefore were quite aware of the defense led by the appellant as the judge clearly put to the jury what the defense was. Again, the Court found no basis on that ground. With respect to the third ground on sentencing, the Court was of the view that the sentence of two years imposed upon the appellant was manifestly
--	--	---

		excessive when one considered the circumstances of the matter. While it was true that he played a central role in the operation, one also has to consider that other persons who were charged and who received substantial sums of money, who benefitted from the money, were fined and ordered to pay compensation. This was the appellant's first offense and he was given a two-year conviction. There were other factors in mitigation which ought to have been given more weight. The Court was also perturbed by the trial judge's comment in the sentencing wherein he clearly penalized the appellant for essentially not pleading guilty. The judge clearly erred in that regard. The Court was notified that the appellant served a term of three months' imprisonment before being bailed. In all the circumstances of the case, the Court was of the view that that time period served of three months, coupled with a fine of \$5000.00 would be appropriate. This sum must be paid in one month, and in default, three months imprisonment.
Case Name:		[1] Ethlyn Simon v [1] The Industrial Development Board [2] The Minister of Government Responsible for Industry [3] The Attorney General [ANULTAP2015/0001]
Date:		Tuesday, 14 th July 2015
Coram:		The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]
Appearances:		

	Appellant:	Ms. Safiya Roberts
	Respondent:	Ms. Carla Brooks-Harris with him Ms. Rose Ann Kim
Issues:		Whether the Court erred in reducing the appellant's overall award by 15% - Whether the Court erred in failing to make an award for future loss
Result / Order:		[Oral delivery] 1. The appeal is allowed. 2. The appellant's award is varied to include the sum of six months' salary for future loss, discounted by 15 percent. The deduction of 15 percent on the overall sum is set aside. The appellant is also awarded the sum representing unpaid salary for the period October 1 – October 17 2002. 3. In light of the findings of this Court and the concessions made by the respondents, the award of the Industrial Court should be varied as follows: (i) Immediate loss: award increased from EC\$32,543.36 to EC\$44,167.36; (ii) Basic Award: award increased from EC\$65,086.72 to EC\$88,334.72; (iii) Notice Pay: Award increased from EC\$4,067.92 to EC\$ 5,520.92; (iv) Vacation Pay: award increased from EC\$24,741.86 to EC\$47,150.16; (v) Future loss: sum of EC\$28,156.69 (six months' salary less 15%) is awarded; (vi) Unpaid salary for period October 1 – October 17 2002 to be awarded in the sum of EC\$3,807.36 (EC\$254.81 x 14 in addition to travel allowance of EC\$240.00); (vii) Award of pension and gratuity entitlement payable pursuant to the Pension (Non-Established Government Employee) Act, Cap 310. 4. The appellant is therefore entitled to an award of EC\$220,977.21 in addition to her pension and gratuity entitlements payable pursuant to the Pension (Non-Established Government Employee) Act, Cap. 310.

		5. The total amount varied on this appeal in respect of the Industrial Court judgment is the sum of EC\$217,137.21 in addition to pension and gratuity entitlements payable pursuant to the Pension (Non-Established Government Employee) Act, Cap 310. 6. The appellant is therefore entitled to a total award of EC\$220,977.21 (which includes travelling allowance in the sum of EC\$3,840.00 awarded by the Industrial Court) in addition to her pension and gratuity entitlements payable pursuant to the Pension (Non-Established Government Employee) Act, Cap 310. 7. The respondents having paid EC\$110,737.89 to the appellant in or about February 2015, the appellant is entitled to the balance of the award varied by this Court in the amount of EC\$110,239.32 in addition to pension and gratuity entitlements pursuant to the Pension (Non Established Government Employee) Act, Cap 310. 8. No order as to costs.
Reason:		This is an appeal from the judgment of the Industrial Court where the Court awarded the appellant \$110,737.89 as compensation and damages for unfair dismissal from the employer of the respondent. Several grounds of appeal were advanced. The respondent has conceded many of them. The issues which arose were: 1. Did the Court err in calculating the compensation under the various heads by applying 15 percent reduction to the total award to the appellant - grounds 1 and 6. 2. Did the Court err in the basic wage used to calculate the appellant's compensation, - ground 4. 3. Did the Court err in failing to make an award of future loss - ground 2. 4. Did the Court err in the calculation of the Appellant's future pay, - ground 3. 5. Did the Court err in failing to take into account the different entitlements of the appellant, that is, unpaid salaries, pensions and gratuity, emoluments, - ground 5.

		As the respondent has conceded on grounds 3, 4 and 5, the live issues of this appeal concerned the 15 percent reduction on the total sum awarded and failing to award future loss, and the payment for the period October 1st to October 17th. In fact, the respondent also conceded on this point. The Court was of the view, after having read the submissions of both sides and listened to oral submissions and the authorities cited, that there was no proper basis for the 15 percent reduction awarded on the total sum. The Court was of the view that any deduction ought to apply to a sum in respect of future loss. The Court considered the facts and circumstances of the case and held that there was adequate basis on which the court could and should have awarded a sum in respect of future loss. Consequently, the sum representing six months' salary ought to have been awarded to the appellant in respect of future loss and that this sum ought to be discounted by 15 percent.
Case Name:		Kenard J. Byron v Eastern Caribbean Amalgamated Bank (ECAB) [ANUHCVP2012/0010]
Date:		Wednesday, 15th July 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:	Sir Gerald Watt, QC with him Mr. David Dorsett and Mr. Jarid Hewlett

	Respondent:	Ms. E. Ann Henry, QC with her Ms. Tracy Benn Roberts
Issues:		Employment law – Employee dismissal – Severance pay
Result / Order:		Judgment reserved.
Case Name:		Charlesworth Theophilus Harrigan v Gwendolyn King [ANUHCVP2012/0031]
Date:		Wednesday, 15th July 2015
Coram:		The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Ms. E. Denescia Thomas
	Respondent:	Mr. Hugh Marshall, Jr. holding papers for Ms. Kema Benjamin
Issues:		Civil appeal – Licenses Irrevocable – License – Proprietary estoppel – Equity
Result / Order:		[Oral delivery] 1. The declaration in paragraph 44 of the judgment is varied and substituted by a declaration that the claimant/respondent holds a life interest in the house and the portion of land on which the house sits and which is contained in the overall parcel. 2. Paragraph 45 of the judgment is set aside.

		3. Each party shall bear its own costs.
Reason:		This is an appeal from the judgment of Mr. Justice Astaphan. In this appeal, the appellant has sought to challenge the decision of the learned trial judge which is contained in paragraphs 44 and 45 of the judgment. By paragraph 44, the learned trial judge declared that the respondent Miss King, her son, Swain Burton and her daughter, Jamica Burton, held revocable licenses over parcel 14 and that they did so jointly. Also, that these revocable licenses constituted in the judge's words, an interest in parcel 14 that was perpetual and capable of being noted on the register for parcel 14. The learned trial judge also ordered that the Registrar of Lands is entitled to make the necessary notations on the register for parcel 14. Having read the submissions of counsel, having heard all arguments of counsel, and having considered the material before the Court, the Court held that the appeal in relation to that part of the declaration of the learned trial judge contained in paragraph 44 of the judgment, referring to Swain Burton and Jamica Burton is allowed on the basis that there was no claim made against them and, therefore, it was not open to the learned trial judge to make any order in relation to them. Accordingly, the Court set aside the order in relation to Swain Burton and Jamica Burton. Having considered the judgment of the learned trial judge and the evidence that was before him, the Court was satisfied that a proprietary estoppel arose in the circumstances in favor of Miss King on the basis that a clear promise was made to her that she would be permitted to reside on the property for life. Based on that promise she acted to her detriment. Miss King moved from Potters to Bendals at the request of Mr. King. She gave up her home there which home was vandalized shortly thereafter. She stayed with Mr. King, performed services for which the Court found that he would have benefited and carried out certain activities on the land and did this for 18 years with the attendant opportunity cost

		thereon. In the circumstances, the Court was satisfied that the appropriate award in order to satisfy the equity that consequently arose would be a grant of a life interest in the house and the particular portion of land on which that house sits which is contained in the overall parcel to Miss King. In the circumstances the declaration in paragraph 44 of the judgment was varied. The Court granted a declaration that Miss King holds a life interest in the house and in the portion of land on which the house sits and which is contained in the overall parcel.
Case Name:		[1] The Hon. Attorney General [2] The Hon. Michael Brown v [1] D. Gisele Isaac [ANUHCVP2015/0014]
Date:		Wednesday, 15 th July 2015
Coram:		The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]
Appearances:		
	Applicant Intended Appellant:	Sir Gerald Watt, QC with him Mr. David Dorsett and Mr. Jarid Hewlett
	Respondent:	Mr. Justin L. Simon, QC with him Mr. Kwame Simon
Issues:		Application for leave to appeal – Application for stay of proceedings – Section 3, 15, 18 of the Constitution of Antigua and Barbuda – Application for judicial review

Result / Order:		[Oral delivery] 1. The applicant is granted leave to file and serve notice of appeal together with skeleton arguments within twenty-one (21) days of the date of this order 2. The respondent is granted twenty-one (21) days leave to file and serve skeleton arguments in reply. 3. Thereafter the appeal shall proceed in accordance with CPR 2000.
Reason:		The applicant/intended appellant met the threshold in order for leave to appeal to be granted against the decision of the learned trial judge.
Case Name:		Ashworth Bunche v The Queen [ANUHCRA2011/0001]
Date:		Thursday, 16 th July 2015
Coram:		The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. Jason Martin
	Respondent:	Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones-Gittens
Issues:		Application for leave to admit fresh evidence – Criminal appeal against conviction

Result / Order:		[Oral delivery] 1. The appeal against conviction is allowed. 2. The conviction and sentence are set aside. 3. No order for re-trial.
Reason:		Having read the very comprehensive written submissions of the learned Director of Prosecutions and the submissions of learned counsel for the appellant, and based on the very professional and objective concession that was made by the learned DPP in relation to the errors that were made by the learned trial judge in the summation, and the very proper concession of the learned DPP insofar that he has indicated that the conviction of Mr. Bunche is unsafe, given the submissions and given the nature of the evidence that was before the Court, the Court was of the view that the appeal against conviction should be allowed, and the sentence and the conviction should be set aside. Insofar as the retrial of the appellant was concerned, the Court noted that this was an offense which was allegedly committed in 2007, and the appellant was convicted in 2010. Based on the information that was very helpful to indicate to the Court insofar as to the challenges the Crown faces in prosecuting this matter, taking also into account the interest of the community, the interest of the virtual complainant, and the countervailing circumstance of the appellant, the Court was of the view that no useful purpose would be served in ordering a retrial.
Case Name:		Montpellier Farms Limited v Antigua Commercial Bank [ANUHCVP2011/0007]
Date:		Thursday, 16th July 2015

Coram:		The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. Frederick Gilkes with him Ms. Laurie Freeland-Roberts holding papers for Mr. Clement Bird
	Respondent:	Ms. Kamilah Roberts with her Ms. Safiya Roberts
Issues:		Civil appeal – Letter of credit – Pre-contractual negotiations – Quantum of interest due on loan
Result / Order:		Judgment reserved.
Case Name:		[1] Mackenzie Frank v [1] The Attorney General [2] The Barbuda Council [ANUHCVP2015/0007]
Date:		Thursday, 16th July 2015
Coram:		The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]
Appearances:		
	Applicant Intended Appellant:	Mr. Ralph Francis with him Ms. Sylvester Carrott
	Respondent:	Mr. Anthony Astaphan, QC with him Ms. Alicia Aska

Issue:		Application for leave to appeal
Result / Order:		[Oral delivery] 1. The applicant is granted leave to appeal. 2. The applicant shall file and serve notice of appeal together with skeleton arguments within twenty-one (21) days of the date of this order. 3. The respondent is granted twenty-one (21) days leave thereafter to file and serve skeleton arguments in reply. 4. The appeal shall thereafter proceed in accordance with CPR 2000.
Reason:		The applicant/intended appellant satisfied the threshold that is required for leave to appeal to be granted.
Case Name:		Luke Rover Joseph v The Queen [ANUHCRA2013/0001]
Date:		Thursday, 16th July 2015
Coram:		The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. Sherfield Bowen
	Respondent:	Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones-Gittens
Issues:		Criminal appeal against sentence – Possession of cocaine with intent to supply

Result / Order:		[Oral delivery] The appeal against sentence is allowed to the extent that a default sentence of one (1) year is substituted for the sentence of two (2) years imposed.
Reason:		The Court was of the view that the learned trial judge did not err in imposing a sentence of six years imprisonment on the appellant for that specific charge together with the fines that were impose, which fines were to run consecutively. Accordingly, it had no basis for interfering with the fine and the sentence.
Case Name:		[1] The Attorney General of Antigua and Barbuda [2] David Matthias v [1] HMB Holdings Limited [ANUHCVP2015/0025]
Date:		Thursday, 16th July 2015
Coram:		The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]
Appearances:		
	Applicant:	Ms. Cherissa Roberts Thomas
	Respondent:	Mr. John Carrington, QC with him Ms. Stacey Roach
Issues:		Application for leave to appeal – Application for stay of execution

Result / Order:		[Oral delivery] 1. The application for leave to appeal is dismissed. 2. Costs to the respondent of \$5,000.00.
Reason:		The Court was satisfied that the applicant did not meet the required threshold for the grant of leave to appeal. The Court was also satisfied that the trial judge did not err in principle or in any way in the exercise of his discretion. There was no realistic prospect of success; it could not be said that the judge failed to consider relevant evidence when one considered the evidence that was led before him.
Case Name:		[1] Melvin David Anderson v [1] The Attorney General of Antigua and Barbuda [2] Commissioner of Police [ANUHCVP2013/0018]
Date:		Friday, 17th July 2015
Coram:		The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Dr. David Dorsett with him Mr. Jarid Hewlett
	Respondent:	Ms. Carla Brooks-Harris with her Ms. Rose-Ann Kim
Issues:		Application to discharge order of single judge – Application for stay of execution – Section 16 of the Police Act – Section 82 of the Police Act – Removal or Suspension of an officer – Damages for breach of

		bonds
Result / Order:		[Oral delivery] 1. Application for a discharge of order from the order of Justice Mario Michel dated 2nd June 2015 is dismissed. 2. Costs to the respondent of \$500.00.
Reason:		The appellant has applied for an order to discharge the order made on 2nd June 2015, by Michel JA and that there be a stay of execution of the judgment of Madame Justice Remy dated 15th August 2013, until the determination of this appeal or further order of the Court. Michel JA in his order stated among other things, that upon it appearing that the applicant has not satisfied the threshold requirements for the grant of a stay including by providing evidence that the applicant will be seriously prejudiced by and might suffer ruination if a stay is not granted, the application for a stay of execution of the judgment of Remy J is refused. It is well known that a stay of application is a matter which calls for the exercise of the discretion of the court. The principles which are applicable to a stay of execution are very well settled. The applicant submitted that in the interest of justice a stay ought to be granted. The principles applicable to the grant of a stay are summarized in the judgment of Clark LJ in the Hammond Suddards Solicitors v Agrichem International Holdings Ltd. [2001] EWCA Civ. 2065 case. Essentially, the court needs to balance the risks of injustice which may be occasioned by the grant or refusal of a stay. The obvious risk of injustice if a stay is refused is that the appeal maybe stifled. The obvious risk if it is granted is that after an unsuccessful appeal the respondent will be unable to enforce the judgment. In the Hammond Suddards Solicitors case, the court emphasized the need for cogent evidence in support of a stay. The evidence has to be full, frank and

		clear. The full, frank and clear evidence referred to must go to the extent of the risks of injustice which the withholding of a stay would engage. The Court in that context perused the affidavit evidence of the applicant presented in support of the application for a stay. Having perused the evidence the Court was of the clear and firm opinion that there was no evidential basis in support of the application for a stay. It failed the test of evidence being full, frank, and clear. The applicant in its submissions dwelt heavily on what he said was the success of the appeal, the prospects of success, but as the respondents have pointed out with the support of authority of the case <i>Marguerite Desir et al v Sabina James Alcide</i> (SLUHCVP2011/030, delivered 18th September 2012, unreported): "That the Court's jurisdiction to grant a stay is based upon the principle that justice requires that the court should be able to take steps to ensure that judgments are not rendered valueless ... The normal rule is for no stay and if a court is to consider a stay the applicant has to make out a case by evidence which shows special circumstances for granting one. The mere existence of arguable grounds of appeal is not by itself, good enough reason." The Court in the exercise of its discretion saw no reason to upset or discharge the order of Michel JA. The Court found that he properly exercised his discretion. The Court was ultimately of the view that the requisite threshold for the grant of a stay was not met by the applicant and in those circumstances the application was refused.
Case Name:		Ithron Howell v The Queen [ANUHCRA2014/0017]

Date:		Friday, 17th July 2015
Coram:		The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. Ralph Francis
	Respondent:	Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones-Gittens
Issues:		Criminal appeal against sentence – Robbery
Result / Order:		[Oral delivery] The appeal against sentence is allowed to the extent that the sentence of ten (10) years is substituted by a sentence of thirty-two (32) months being time spent in custody.
Case Name:		Alwyn James Jr. v The Queen [ANUHCRA2009/0005]
Date:		Friday, 17th July 2015
Coram:		The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. Ralph A. Francis
	Respondent:	Mr. Anthony Armstrong, Director of Public

		Prosecutions with him Ms. Shannon Jones-Gittens
Issues:		Criminal appeal against conviction – Murder
Result / Order:		[Oral delivery] Appeal against conviction is dismissed.
Reason:		The appellant was convicted on 10th March 2009 for the murder of his roommate Mitch Ralph between the 1st May and 19th June 2006 and was sentenced to life imprisonment. The appellant appealed his conviction on various grounds. The prosecution's case was that the appellant and his roommate shared a dwelling house in the village of Potters. The appellant occupied the bedroom and the deceased slept on the floor in the living room. The evidence showed that the deceased was responsible for cleaning the house and its surroundings. Sometime between the 1st May and 19th June neighbors and friends of the deceased observed that he was missing. During that time period, many persons inclusive of tenants, neighbors, and friends noticed that the appellant was behaving strangely. The strange behaviour included the appellant cleaning of the yard and throwing garbage into a large cast iron drum that was in the back of the yard and smoke was coming from the drum as if there was some burning taking place there. Prior to this apparent change in the behaviour of the appellant, the drum was previously lying on its side and was then place further away in a corner of the backyard close to the fence. Following on from this, it was noticed that there was a very foul smell emanating from the area of the drum. It was also observed that the appellant had stop using his front door and would enter and exit his apartment through a back door. The witness for the prosecution who was a frequent visitor to the home of the appellant and the deceased testified that during the time the deceased was

		missing he went to visit. On that visit, he noticed that the appellant was acting strange and had even tried to bar him for entering the house. The witness importantly testified that he noticed a very foul scent emanating from the bathroom area of the house. On mentioning that foul smell to the appellant on one occasion he denied smelling or observing it. On another occasion the appellant explained that the very foul scent might have been coming from his shoes. On a different visit, the witness observed that the appellant was smoking a lot of cigarettes something that he had not done before. The smell which emanated from the cast iron drum led a tenant living in the house to investigate, and the burnt remains of the deceased were discovered and several articles of the deceased clothing were also found in the drum. While the other persons became worried and concerned about the deceased disappearance and even went in search of him, the appellant never expressed any such concern or worry. When inquiries were made of him relating to his roommate's disappearance, he simply said that he had not seen him. On the other hand, the appellant told his landlord Gregson Gardner that he had not seen the deceased since he gave him the rent money which was to be paid to Gardner. Mr. Gardner asked the appellant why he did not make a report to police. Essentially, he replied that the deceased usually had smoke so he did not want the police to pick up the deceased and find him with the smoke which would result in his arrest. When the appellant was interviewed by the police in relation to the disappearance of his roommate, he stated that he left one night in a white car and never returned. There was no mention of rent money that he said he gave to the deceased. The postmortem examination revealed that the deceased had died from third degree burns to 100 percent of his body. The police executed a search at the appellant's home and found in his room at the bottom of his closet two pillows in pillow cases. These items belonged to the deceased. The police observed what appeared to be bloodstains on the
--	--	--

		pillow cases. Tests revealed that the stains were in fact that of human blood and that it came from a male who was the sibling of a female (a sister) whose blood sample was also tested. The appellant filed various grounds of appeal one of which was that there was no case to answer. The basic rule in deciding on a submission of no case to answer at the end of the evidence adduced by the prosecution, is that the trial judge should not withdraw the case if a reasonable jury, properly directed, could on that evidence find the charge in question proved beyond reasonable doubt. The appellant contended that the learned trial judge erred in rejecting the no case submission. The Court did not find that there was any error committed by the judge in rejecting the no case submission proffered at the end of the case of the prosecution. The Court was of the view that the prosecution presented a compelling case against the appellant. This was based on the circumstantial evidence as well as direct and forensic evidence. The prosecution had presented the evidence upon which the judge was obliged to allow the matter to go to the jury. So, therefore, there was no basis in part or in law to uphold the submission in respect of the ground of no case to answer. Another ground proffered by the appellant was that the trial judge did not put the case for the appellant clearly before the jury. A judge has a fundamental duty to ensure that the accused receives a fair trial, and he is duty bound in the interest of the trial process to put squarely before the jury the nature of the defense arising at the trial. The judge's obligation is to put the defense's case wholly, clearly and cogently to the jury so that they would be positioned to properly consider and appreciate the issues raised on behalf of the defendant. The respondent submitted that the trial judge did not fall short of his duty when one examines the various extracts from his summation. The extracts demonstrated that the judge did put the appellant's
--	--	---

		defense clearly to the jury. The appellant's defense was not one which was complicated. It was essentially that he had nothing to do with the deceased's disappearance. It would have been very clear to the jury what the nature of the defense of the appellant was. The Court was not of the view that the judge failed in his duty to adequately present the case of the defendant. The appellant also complained about the order of speeches, the order of address to the jury and suggests that there was some unfairness occasioned to the accused by virtue of the order of speeches. This issue did attract comments from this Court in the case of <i>Maureen Peters v The Queen</i> (BVIHCRAP2009/0005, delivered 1st October 2010, unreported) where a kindred ground was advanced by the appellant in seeking to impugn the safety of the conviction. It is important that when such complaints are made for the Court to examine the effect of the irregularity, if one is found, on the safety of the conviction. An irregularity of such a nature does not and would not by itself render a conviction unsafe. This was in fact demonstrated and held by this Court in the case of <i>Maureen Peters</i>. The Court asked the question, "Does it render the conviction unsafe?" If the irregularity had not occurred, would a reasonable jury necessarily and inevitably have brought in a verdict of guilty? The Court was of the view that absent the irregularity, the jury would inevitably have brought the same verdict. The Court did not, therefore, find the conviction to be unsafe. The prosecution referred to the evidence supporting of the charge against the appellant and the inferences which could have been drawn. There was no specific matter that was pointed out by the appellant which would render the verdict unsafe by reason only of the sequence of speeches. The Court in fact applied the learning in the <i>Maureen Peters</i> to this case and therefore found no merit in this ground. The appellant also complained that the trial judge
--	--	--

		erred in admitting into evidence the blood stained pillow cases and in essence submitted that this was prejudicial to the accused and unfair. He submitted that there was no nexus between the death and the evidence which was presented in those pillow cases. The learned Director of Public Prosecutions noted that the case proffered by the prosecution was one essentially of circumstantial evidence and this particular evidence was just one strand essentially in the whole train of circumstance which was being used by the prosecution to satisfy the jury beyond reasonable doubt of the guilt of the accused. The Court was of the view that the evidence being challenged by the appellant concerning the discovery of the blood stained pillows, and pillow cases was a relevant piece of evidence in seeking to show that the appellant was responsible for the disappearance and ultimate death of his roommate. On that basis the arguments of the appellant were rejected. The appellant also complained that the learned trial judge erred in law in ruling that the evidence of the harmonious relationship between the accused and the deceased was of no significance. The trial judge in his summation reviewed the evidence given, evidence which learned counsel had elicited in cross-examination as to the harmonious relationship between the deceased and the appellant. It does not appear from the transcripts that the judge suggested to the jury that this harmonious relationship was of no moment or indicated what weight the jury ought to attach to that evidence. The jury as the finders of fact and those who are charged with drawing inferences from the facts would have decided what weight or importance to attach to that evidence. There was no substance in that complaint. The appellant also complained about the alleged prejudice suffered by him. The complaint here was that the trial judge prejudiced the appellant by putting the event in sequence when the prosecution's evidence of dates, time and sequence were unclear, vague, and confusing. When one looks at the indictment, it is saying that the count
--	--	--

		against the accused was framed between the 1st May and 19th June. The prosecution was not alleging a specific time, but framed the indictment to encompass the time referenced. The Court did not find any merit in that complaint made by the appellant in respect of that ground. The appellant also complained that the verdict was unsafe and unsatisfactory. For all the reasons which were previously mentioned the Court found no basis or no merit in this ground.
Case Name:		[1] Sylvia O'Mard v [1] ABI Bank Ltd [2] The Eastern Caribbean Central Bank [3] Dwight Venner [ANUHCVP2015/0001]
Date:		Friday, 17 th July 2015
Coram:		The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. David Dorsett with him Mr. Jarid Hewlett
	Respondent:	Mr. Emile Ferdinand QC with him Ms. E. Ann Henry QC and Ms. C. Debra Burnett
Issue:		Interlocutory appeal
Result / Order:		[Oral delivery] Matter is adjourned to the next sitting of the Court in Antigua and Barbuda during the week commencing

		7th December 2015.
Case Name:		Sonera Holding BV v Cukurova Holding AS [BVIHCMAP2015/0005]
Date:		Friday, 17th July 2015
Coram:		The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:		
	Appellant:	Mr. Ben Valentin with him Mr. John Carrington, QC
	Respondent:	Mr. Kenneth McClean, QC with him Ms. Arabella Dilorio and Mr. David Caplan
Issue:		Civil appeal
Result / Order:		Judgment reserved.
Case Name:		Kerry Oliver v The Queen [ANUHCRA2015/0010]
Date:		Friday, 17th July 2015
Coram:		The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

		The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. Sherfield Bowen
	Respondent:	Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones-Gittens
Issues:		Application for extension of time – Criminal appeal against sentence
Result / Order:		[Oral delivery] 1. Application for an extension to time to file appeal against sentence granted. 2. Notice of appeal to be filed within fourteen (14) days of the date of this order.
Reason:		There was no objection to the application by the learned Director of Public Prosecution. The Court was also of view that it was an appropriate case in which to grant leave for the applicant to be allowed time.
Case Name:		Hezekiah Parker v The Queen [ANUHCRA2013/0002] Arthur James v The Queen [ANUHCRA2013/0003]

Date:		Friday, 17th July 2015
Coram:		The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. Sherfield Bowen
	Respondent:	Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones-Gittens
Issues:		Criminal appeal against sentence – Shooting with intent
Result / Order:		[Oral delivery] The appeal against sentence is allowed to the extent that the sentence of twelve (12) years imprisonment is varied to a sentence of ten (10) years imprisonment.
Reason:		The appellants were convicted of the offense of shooting with intent and sentenced to a term of ten years imprisonment. They appealed their sentence on the ground that the sentence was excessive. Learned counsel Mr. Bowen has referred the Court to the mitigating factors in favour of the appellants and has submitted that the aggravating factors were not very grave in this case. While he agreed that the offense was a serious offense, he pointed out to the Court that no one received any serious injury. The Court considered the submissions of the learned DPP in which the learned DPP pointed out the importance of the protection of the public interest. The learned DPP also pointed out that a period of ten years would also address this issue. Having considered the submissions and the mitigating factors and the aggravating factors, the Court was of the view that a period of imprisonment

		of ten years would meet the justice of the case.
--	--	---