

COURT OF APPEAL SITTING
TERRITORY OF THE VIRGIN ISLANDS
29th September – 3rd October 2014

JUDGMENTS

Case Name: [1] Yang Hsueh Chi Serena
[2] Mong Sien Yee Cynthia
[3] Mong Tak Yeung David
[4] Mong Wai Yee Viola
[5] Mong Tak Fun Stephen
[6] Mong Jo Yee Josephine

v

[1] Equity Trustee Limited
[2] Wong Pui Fan
[3] Mong Pui Yee Perlie

[BVIHCMAP2013/0012]

Date: Monday, 29th September 2014

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Ian R. C. Kawaley, Justice of Appeal
[Ag.]
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

Appearances:

Appellants:	Mr. Raymond Davern
Respondents:	Mr. Mungo Lowe for the 1 st respondent Mr. Brian Lacy for the 2 nd & 3 rd respondents

Issues: Commercial appeal – Trust fund – Entitlements of beneficiaries – Construction of provisions of trust deed – Whether trustee had power to effect variation of trust deed in accordance with wishes of settlor – First appellant removed from list of beneficiaries and entitlements of remaining beneficiaries altered by settlor – Whether ‘words of entitlement’ in annexure

of trust deed by which appellants were initially made beneficiaries conveyed immediate, absolute and indefeasible interest in trust assets in favour of appellants – Whether any power granted in deed to trustee to change beneficiaries and/or percentage entitlements rendered otiose

**Result and
Reason:**

Held: dismissing the appeal, and confirming the decision of the learned judge that the questions raised in the claim were to be answered in the affirmative, that:

1. The learned judge rightly held that ‘the words of entitlement’ in item (26) were incapable of being, and were not declaratory of, any trusts enforceable in law. While no particular form of words need be used to declare a trust, ‘the words of entitlement’ do not speak to a ‘trust’ being created or pretend to pertain or attach to any particular asset or property of the trust. In item (26), there was no mention of any property, like the corpus or income of the trust, to which other provisions of the Trust Deed expressly applied in declaring various trusts. ‘The words of entitlement’ were intended to and could only have been meant to operate to name the initial persons constituting the class of ‘Specified Beneficiaries’, as instructed by Dr. Mong, and the percentage opposite each name was not intended to confer on those persons a fixed and absolute interest in any specific trust property or assets.
2. The ‘words of entitlement’ fall to be construed by ascertaining what a reasonable person with all the relevant background knowledge at the time of execution of the Trust Deed, and construing the words in their natural and ordinary meaning within the overall context of the scheme of the trust, would conclude was the intention of the parties. The appellants sought to attach too much importance and significance to the natural and ordinary meaning of ‘the words of entitlement’ (particularly, the word ‘entitlement’) used in item (26). Their interpretation failed to attach enough weight or importance to the

context in which those words were used, in a provision, which, pursuant to clause S(46), was clearly intended to provide a definition of the initial 'Specified Beneficiaries', and not to declare any new trusts which, on any construction, would be clearly in contradiction to and in derogation of the other trusts of the corpus and income declared elsewhere in the Trust Deed. Furthermore, the appellants' approach to the construction of 'the words of entitlement', disregards the second part of item (26), which clearly makes the constituting of the class of Specified Beneficiaries, subject to the powers granted to the trustee under clauses Q1 and Q5 of the Trust Deed, to add to or remove persons from that class. The entire provision at item (26) falls to be construed, and the second part cannot be disregarded.

Re Sigma Finance Corporation (in administrative receivership) [2010] 1 All ER 571 applied.

3. Where specific words are shown by evidence to have been inserted into what is otherwise a standard precedent or document, at the request or behest of one or more of the parties, then a court ought, as a means of determining the intention of the parties, to give some weight to the chosen words or provisions of the parties, especially where other 'standard' provisions may conflict with or be inconsistent with the chosen words or provisions, and, where appropriate, to accord precedence to those words. These are all relevant factors which form the factual and contextual background and, accordingly, fall to be taken into account by a court in construing the relevant provisions of the document.

Homburg Houtimport BV v Agrosin Private Ltd (The Starsin) [2003] UKHL 12 considered.

Case Name:

Andre Penn

V
The Queen

[BVIHCRAP2013/0006]

Date: Monday, 29th September 2014

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Wayne Rajbansie, Director of Public Prosecutions

Respondent: Mr. Jack Husbands

Issues: Application to set aside Court of Appeal's retrial order – Whether the Criminal Appeal Act 1968 (UK) forms part of the law of the Virgin Islands – Whether order for retrial ought to be set aside – Unlawful sexual intercourse – Indecent assault

Result and Reason: Held: dismissing the application, that:

1. In the Virgin Islands, the procedure following a retrial ordered by the Court of Appeal is provided for in the Supreme Court Act and the Criminal Procedure Act. The Court of Appeal having ordered a retrial, the jurisdiction of the High Court is engaged. The High Court's jurisdiction is to be exercised in accordance with the Criminal Procedure Act and any other law in force in the Territory. Therefore, it would be impermissible to import into the laws of the Virgin Islands, the Criminal Appeal Act 1968 (UK) with its provision for a two month period of arraignment after the order for a retrial, and the consequences which flow from non-compliance. Such an importation is not sanctioned by section 48 of the Criminal Procedure Act. The Court therefore lacks jurisdiction to entertain the application.

2. Where there is a local statute or statutory regulation relating to a particular subject matter and there is an English statute or statutory regulation made pursuant to statute relating to the same subject matter, the English statute would be inapplicable to that particular subject matter.

Eversley Thompson v The Queen [1998] UKPC 6 followed.

APPLICATIONS AND APPEALS

Case Name:

**Delta Petroleum (Caribbean) Limited
v
Commissioner of Customs**

[BVIHCVAP2013/0008]

Date:

Monday, 29th September 2014

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, QC, Justice of Appeal [Ag.]**

Appearances:

**Appellant /
Respondent:**

Mr. Terrance Neale

**Respondent /
Applicant:**

Dr. Christopher Malcolm, Attorney General

Issues:

Application for final leave to appeal to Her Majesty in Council – Application for final leave to cross-appeal to Her Majesty in Council

Result / Order:

[Oral delivery]

1. The [respondent/applicant] is granted final leave to appeal to Her Majesty in Council.
2. The [appellant/respondent] is granted final leave to cross-appeal to Her Majesty in Council.
3. The [respondent/applicant] shall transmit the record to the Registrar of the Judicial Committee of the Privy Council within 21 days of the date of this order.
4. The costs of and incidental to this application shall be the costs in the appeal to Her Majesty in Council.

Case Name:

Vendort Traders Inc.

v

Evrostroy Grupp LLC

[BVIHCMAP2012/0041]

Date:

Monday, 29th September 2014

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, QC, Justice of Appeal [Ag.]**

Appearances:

**Appellant /
Applicant:**

Mr. Marcus Staff, with him, Mr. Jeremy Child

Respondent:

Ms. Tamara Cameron

Issues:

Application for conditional leave to appeal to Her Majesty in Council

Result / Order:

[Oral delivery]

1. The applicant in Civil Appeal No. BVIHCMAP2012/0041 shall have conditional leave to appeal to Her Majesty in Council from the decision of the Court of Appeal delivered on 26th

May 2014 in the matter upon the following conditions:

- a) The applicant shall within 30 days from the date of this order enter good and sufficient security in the sum of £500 sterling for the due prosecution of the appeal and the payment of all such costs that may become payable in the event of it not obtaining an order granting it final leave to appeal or of the appeal being dismissed for want of prosecution, or of the Privy Council ordering it to pay the costs of the appeal;**
 - b) The applicant shall within 8 weeks from the date of this order take the necessary steps to settle the record with the solicitors for the respondent and to prepare and file the record with the Registrar of the Court of Appeal;**
 - c) The parties shall abide by rules 18 to 20 of the Judicial Committee (Appellate Jurisdiction) Rules 2009 and its Practice Directions 4 and 5 and the record shall be transmitted to the Registrar of the Judicial Committee without delay once final permission to appeal has been granted; and**
 - d) The applicant shall within 14 days from the date within which the record is filed with the Registrar of the Court of Appeal make application to the Court for final leave to appeal to Her Majesty in Council supported by the Certificate of the Registrar of payment for security for costs of the prosecution of the appeal as prescribed in this order.**
- 2. The respondent shall not make an application for liquidators to be appointed over the applicant arising out of or in connection with the respondent's statutory demand to the applicant of 24th May 2012 or the order of this Court of 26th May 2014 and corresponding judgment (or the Order and corresponding judgment below) UNTIL 56 days have expired from the date of this order UNLESS within that time the applicant has applied to Her Majesty in Council to appeal the order of this Court dated 26th May 2014 in which case the Restraint shall continue until further order or the final order of Her Majesty in Council on the substantive appeal.**

3. The costs of the application shall be costs in the appeal.

Case Name:

**Joseph Rosan
v
Valerie Stephens**

[BVIHCVAP2013/0009]

Date:

Monday, 29th September 2014

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, QC, Justice of Appeal [Ag.]**

Appearances:

Applicant:

In person

Respondent:

Ms. Tamara Cameron

Issues:

Leave to appeal decision of learned master to strike out applicant's defence and dismiss his application to strike out respondent's claim and statement of case – Whether applicant's defence was defective – Whether learned master erred in finding that applicant's defence did not disclose any reasonable ground for defending respondent's claim in court below

Result / Order:

[Oral delivery]

- 1. Leave to appeal is refused.**
- 2. The applicant is to pay respondent's costs on or before 30th September, 2014 in the amount of \$2,000.00.**

Reason:

The Court was not satisfied that the appeal had a real prospect of success.

Case Name:

**IN THE MATTER of an application for a writ
of habeas corpus ad subjiciendum**

AND

**IN THE MATTER of an Order for Committal
for the purpose of extradition in respect of
EARL HODGE made in relation to crimes
alleged in North Carolina by the Senior
Magistrate for the Territory of the British
Virgin Islands**

AND

**IN THE MATTER of the Extradition Act, Cap.
121 of the Revised Laws of the Virgin Islands**

AND

**IN THE MATTER of the Constitution Order
2007**

[1] Superintendent of Prison

[2] The Attorney General

v

Earl Hodge

[BVIHCVAP2012/0034]

Date:

Monday, 29th September 2014

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, QC, Justice of
Appeal [Ag.]**

Appearances:

Appellants /

Dr. Christopher Malcolm, Attorney General, with him,

Respondents: Ms. Natalie Sandiford, Senior Crown Counsel

Respondent / Applicant: Mr. Julian Knowles, QC, with him, Mr. Patrick Thompson

Issues: Application to strike out notice of appeal – Lack of jurisdiction – Whether Court had jurisdiction to hear appeal against grant of writ of habeas corpus in respect of proceedings in North Carolina – Preliminary objection to appeal

Result / Order: [Oral delivery]

1. The application to strike out the appeal is granted.
2. Costs awarded to the respondent as agreed in the amount of \$7,500.00.

Reason: The Court had no jurisdiction to entertain the appeal because there is no right of appeal to the Court of Appeal against the grant of a writ of habeas corpus by the High Court under the West Indies Associated States Supreme Court (Virgin Islands) Ordinance (Cap. 80, Revised Laws of the Virgin Islands 1991), or any other law. Extradition proceedings are criminal in nature and thus, orders on applications for habeas corpus in extradition proceedings are orders in a criminal cause or matter. Accordingly, no appeal lies to the Court of Appeal against such orders by virtue of section 30(2)(a) of the West Indies Associated States Supreme Court (Virgin Islands) Ordinance. (See *Attorney-General of Antigua and Barbuda and Another v Lewis (Artland)* (1995) 51 WIR 89).

Case Name: Irvin Fletcher Scatliffe
v
Dora Scatliffe

[BVIHCVAP2012/0004]

Date: Monday, 29th September 2014

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, QC, Justice of Appeal [Ag.]

Appearances:

Appellant / Applicant:	Ms. Tamara Cameron
Respondent:	Ms. Akilah Anderson

Issues: Application for final leave to appeal to Her Majesty in Council

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

1. Final leave to appeal to Her Majesty in Council against the decision and judgment made by the Court of Appeal on 16th September, 2013 is granted.
2. The costs of and occasioned by this application be costs in the appeal to Her Majesty in Council.

Case Name:

[1] Anzen Ltd.
[2] Lund 3 APS
[3] Travellab Global AB
v
Hermes One Ltd.

[BVIHCMAP2014/0013]

Date: Monday 29th September, 2014

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, QC, Justice of

Appeal [Ag.]

Appearances:

**Appellants /
Applicants:**

Mr. Khawar Qureshi, QC, with him, Mr. James Dixon

Respondent:

Mr. Robert Nader

Issues:

Application for conditional leave to appeal to Her Majesty in Council

Result / Order:

[Oral delivery]

- 1. The applicants/appellants shall have conditional leave to appeal to Her Majesty in Council and the decision of Court of Appeal in this matter upon the following conditions:**
 - a) The applicants/appellants shall within a period not exceeding 90 days from the date of this order enter good and sufficient security in the sum of £500 sterling for the due prosecution of the appeal and the payment of all such costs that may become payable in the event of it not obtaining an order granting it final leave to appeal or of the appeal being dismissed for want of prosecution, or of the Privy Council ordering it to pay the costs of the appeal;**
 - b) The applicants/appellants shall within 45 days of this order take the necessary steps to settle the record with the solicitors for the respondent and to prepare and file the record with the Registrar of the Court of Appeal;**
 - c) The parties shall abide by rules 18 to 20 of the Judicial Committee (Appellate Jurisdiction) Rules 2009 and its Practice Directions 4 and 5. The record shall be transmitted to the Registrar of the Judicial Committee without delay once final permission to appeal has been granted.**
 - d) The applicant shall within 14 days from the date on which the record is filed with the Registrar of the Court of Appeal make application to the Court for final leave to appeal to Her Majesty in Council supported by the Certificate of the Registrar of payment for**

security for costs of the prosecution of the appeal as prescribed in this order.

2. The proceeding taking place before the Commercial Division of the High Court of Justice in the Territory of the Virgin Islands, case no. BVIHCMAP2014/0013, be stayed pending the final determination of the applicants'/appellants' appeal to Her Majesty in Council.
3. Costs in the appeal.

Case Name:

**Citco Trustees (BVI) Limited
v
Appleby Corporate Services (BVI) Limited
(as Trustee of the Clef Trust)**

**[BVIHCMAP2014/0004]
[BVIHCMAP2014/0008]**

Date:

Tuesday, 30th September 2014

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 /
Applicant:**

Mr. Kissock Laing

Respondent:

Mr. Andrew Willins

Issues:

Approval of consent order

Result / Order:

[Oral delivery]

BY CONSENT, IT IS ORDERED:

1. The hearing on 30th September 2014 be vacated.
2. That Citco Trustees (BVI) Limited has permission to withdraw its appeal in BVIHCMAP Number 4 of 2014 and its counter notice in BVIHCMAP 8 of

2014 and the same be treated as having been withdrawn.

3. That Appleby Corporate Services (BVI) Limited has permission to withdraw its appeal in BVIHCMAP Number 8 of 2014, and the same be treated as having been withdrawn.
4. The appellant has carriage of this order.
5. There be no order as to costs in either appeal.

Case Name:

Liao Hwang Hsiang

V

Liao Chen Toh

[BVIHCVAP2014/0002]

Date:

Tuesday, 30th September 2014

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. Paul Dennis, QC, with him, Ms. Nadine Whyte

**Respondent /
Applicant:**

Mr. Jeremy Child

Issues:

Interlocutory appeal – Application to set aside previous order of Court of Appeal in matter

Result / Order:

[Oral delivery]

1. The order of the Court of Appeal made on 4th August 2014 is set aside.
2. The skeleton submissions that were filed on 7th August 2014 are deemed properly filed and served.
3. Costs in the appeal.

Reason: The justice of the matter required that the previous order of the Court, dated 4th August 2014, be set aside.

Case Name: [1] Staray Capital Limited
[2] Marlon Ray Chen
v
Cha, Yang (also known as Stanley)
[BVIHCMAP2013/0009]

Date: Tuesday, 30th September 2014

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. Oliver Clifton
Applicants:
Respondent: Mr. Ian Mann

Issues: Application for conditional leave to appeal to Her Majesty in Council – Application to amend judgment/order of Court of Appeal under the slip rule

Result / Order: [Oral delivery]
Application to amend judgment/order of Court of Appeal under the slip rule

1. The first sentence of the headnote of the appeal judgment be amended to state “The second appellant, Mr. Chen, is a Canadian national and an entrepreneur with expertise in the coal mining industry.”
2. Paragraph 3 of the appeal judgment be amended

to state “Mr. Marlon Ray Chen (“Mr. Chen”) is a Canadian national and an entrepreneur with expertise in the coal mining industry.”

3. The second sentence of paragraph 54 of the appeal judgment be amended to state “Mr. Atherton QC’s challenge to the learned judge findings is twofold. Firstly the learned judge erred in finding that the representation of Mr. Cha that he was qualified to practise both in the PRC and the US were not misrepresentations, and secondly that the learned judge erred in finding that none of the representations of which Mr. Chen/Staray complain were material misrepresentations.”
4. The first sentence of the paragraph 59 be amended to state “In addition to the evidence in the witness statement the learned judge also had before him Mr. Chen’s testimony under cross-examination which included evidence that when he met with Mr. Cha on 20th March 2010 he only intended Mr. Cha to act as legal advisor of the Project.”
5. Costs in the appeal.

Application for conditional leave to appeal to Her Majesty in Council

1. The applicants do have conditional leave to appeal to Her Majesty in Council against the order made by the Court of Appeal delivered on 14th July 2014;
2. The applicants shall within 90 days of the date of this order lodge with the Registrar of the High Court the US dollar equivalent of £500 as security for the prosecution of the appeal to Her Majesty in Council and the payment of all such costs as may become payable by them in the event of them not obtaining an order granting final leave to appeal or of the appeal being dismissed for non-prosecution, or of the Judicial Committee ordering them to pay the costs of the appeal (as the case may be);
3. The record shall be prepared in accordance with rules 18 to 20 of the Judicial Committee (Appellate Jurisdiction) Rules Order 2009 and its Practice Directions 4.2.1 to 4.3.2 and 5; the same

to be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay once final permission to appeal has been granted; and

4. The applicants shall make an application for final leave to appeal to Her Majesty in Council supported by the Certificate of the Registrar of the High Court that the security for costs of the prosecution of the appeal ordered herein has been given to the satisfaction of the Registrar within the time prescribed in this order.
5. The costs of and occasioned by this application be costs in the appeal to Her Majesty in Council.

Case Name:

Craig Stoddard

v

The Queen

[BVIHCRAP2010/0008]

Date:

Wednesday, 1st October 2014

Coram:

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

Appearances:

Appellant:

Mr. Patrick Thompson holding papers for Mr. Anthony L. Johnson

Respondent:

Ms. Tiffany Scatliffe, Principal Crown Counsel, Office of the Director of Public Prosecutions

Issues:

Appeal against conviction – Aggravated burglary – Robbery – Wounding with intent – Whether learned trial judge erred in failing to accept appellant's submission of no case to answer – Whether conviction unsafe and unsatisfactory

Result / Order:

[Oral delivery]

The hearing of appeal is adjourned to Friday, 3rd October 2014.

Reason: **Counsel for the appellant was ill.**

Case Name: **Roro Edourre**
v
The Queen

[BVIHCRAP2014/0005]

Date: **Wednesday, 1st October 2014**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Applicant:	Mr. Michael Maduro
Respondent:	Ms. Tiffany Scatliffe, Principal Crown Counsel, Office of the Director of Public Prosecutions

Issues: **Application for leave to appeal against conviction and sentence out of time – Manslaughter – Smuggling of migrants**

Result / Order: **[Oral delivery]**

- 1. Application for leave to appeal out of time is granted.**
- 2. Appellant to file his notice of appeal on or before Friday, 17th October 2014.**

Case Name: **Jason Stevens**

V
The Queen

[BVIHCRA2014/0001]

Date: Wednesday, 1st October 2014

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Applicant: Mr. Patrick Thompson

Respondent: Ms. Tiffany Scatliffe, Principal Crown Counsel, Office
of the Director of Public Prosecutions

Issues: Application for extension of time to appeal against
sentence and/or conviction – Robbery – Possession
of firearm with intent to endanger life

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

1. That time be extended for the appellant to file a notice of appeal against his sentence and/or conviction for the offences of robbery and possession of a firearm with intent.
2. That the appellant is to file and serve the notice of appeal within seven (7) days of the date of this order on the respondent.
3. That the appellant is to file and serve his skeleton arguments in support of the notice of appeal on the respondent no later than 42 days from the date of making this order.
4. That the respondent is to file and serve its skeleton arguments on the appellant's legal practitioners no later than 42 days from the date that the appellant's skeleton arguments are served upon their Chambers.

Case Name:

Rodney Simmonds Jr.

v

The Queen

[BVIHCRA2014/0004]

Date:

Wednesday, 1st October 2014

Coram:

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

Appearances:

Applicant:

Mr. Michael Maduro

Respondent:

**Ms. Tiffany Scatliffe, Principal Crown Counsel, Office
of the Director of Public Prosecutions**

Issues:

**Application for an extension of time to appeal
against conviction and sentence – Conspiracy to
commit murder**

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED:

- 1. That time be extended for the appellant to file a notice of appeal against his sentence and/or conviction for the offence of conspiracy to commit murder.**
- 2. That the appellant is to file and serve the notice of appeal within seven (7) days of the date of this order on the respondent.**
- 3. That the appellant is to file and serve his skeleton arguments in support of the notice of appeal on the respondent no later than 42 days from the date of making this order.**
- 4. That the respondent is to file and serve its skeleton arguments on the appellant's legal practitioners no later than 42 days from the date that the appellant's skeleton arguments are served upon their Chambers.**

Case Name:

[1] Sheikh Mohamed Ali Alhamrani
[2] Sheikh Siraj Ali Alhamrani
[3] Sheikh Khalid Ali Alhamrani
[4] Sheikh Mohamed Ali Alhamrani (as
representative of the late Sheikh Abdulaziz
Ali Alhamrani)
[5] Sheikh Ahmed Ali Alhamrani
[6] Sheikh Fahad Ali Alhamrani
v
Sheikh Abdullah Ali Alhamrani

[BVIHCMAP2013/0005]

Date:

Wednesday, 1st October 2014

Coram:

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

Appearances:

Appellants /
Applicants /
Respondents:

Mr. Lynton Tucker, with him, Mr. James Brightwell
and Ms. Colleen Farrington

Respondent /
Applicant:

Mr. Simon Hattan

Issues:

Application (by appellants) for release of funds
belonging to appellants provided as fortification for
undertakings made by them to the court – Funds
given as fortification being only known assets of
appellants in the jurisdiction – Costs orders made
against appellants expected to be well in excess of
funds provided as fortification – Costs orders made
in this jurisdiction not enforceable in Saudi Arabia
where other assets of appellants located – Risk of
dissipation of assets – Application for freezing order
(by respondent) pursuant to rule 17.1(1)(j) of Civil
Procedure Rules 2000 – Requirements to be satisfied
to justify grant of freezing injunction

Result / Order:

[Oral delivery]

Given the reasoning handed down by the Court and its acceptance of the appellant's position relative to the release of the \$3,000,000.00 in so far as it represents a fortification for the undertakings, and the clear position of the Court that the freezing order should be granted, the parties are invited to agree and submit by Friday, 3rd October 2014, a draft order for the Court's approval together with the relevant draft order as to costs.

Reason:

The Court held that the balance of justice weighed heavily in favour of the granting of the freezing order to Sheikh Abdullah.

The Court, having perused the applications, affidavits, skeleton arguments and exhibits, and having listened to the detailed oral submissions of counsel on behalf of the parties and taken note of the authorities referred to by counsel, agreed with counsel for the appellants that the payment by the appellants of the sum of \$3,000,000.00 into a bank account of Harneys was to provide fortification for undertakings made by them to the court, and that the undertakings having been discharged by the Privy Council, the \$3,000,000.00 ought no longer to be retained by Harneys as fortification for discharged undertakings.

The evidence however, was that: the sum of \$3,000,000.00 held in the Harneys bank account was the only known asset of the appellants in this jurisdiction; that there were existing costs orders made against the appellants in the matter which, although not yet quantified, were expected to be well in excess of \$3,000,000.00; and that costs orders made against the appellants in this jurisdiction could not be enforced against the appellants in Saudi Arabia where the appellants' assets were located. The application by the respondent was for the grant of a freezing order provided for under CPR 17.1(1)(j).

The principles on the basis of which a court will determine whether to exercise its jurisdiction under Rule 17.1(1)(j) have been set out in the case of

***Mareva Compania Naviera SA v International Bulk Carriers SA (The Mareva)* [1975] 2 Lloyd's Rep 509** which has been extensively followed in the British Virgin Islands. The applicant for a Mareva Injunction must satisfy the court that:

- 1) He has a cause of action justiciable in the BVI;
- 2) There is a good arguable case on the merits;
- 3) There is prima facie evidence that the respondents (who are the appellants in this case) have assets within the jurisdiction; and
- 4) Unless the order is made, there is a real risk that the assets will be dissipated and that judgment will go unsatisfied.

If all four of these requirements are satisfied, there is a fifth factor which comes into play – which has been referred to as the balance of convenience or the balance of justice – which requires the court to exercise a discretion whether or not to make the order, which discretion the court will exercise taking account of all the circumstances and basing its assessment on the overall justice of the case.

The Court was satisfied in this case that the respondent had a cause of action in terms of the application for a freezing order with respect to the \$3,000,000.00 on the Harneys bank account, which was justiciable in the BVI; that the respondent did have a good arguable case on the merits; that the appellants had assets within this jurisdiction, in particular, the sum of \$3,000,000.00 in the Harneys bank account; and that there was a real risk of dissipation of the aforesaid \$3,000,000.00.

The evidence of the risk of dissipation of the \$3,000,000.00, which was the central issue in this matter, was borne out by several factors, including:

- a) The apparent eagerness of the appellants to remove the \$3,000,000.00 from the BVI nearing the time when they would be required to satisfy the costs orders;
- b) The appellants' previous disregard of orders of other courts, in particular, the Saudi courts in judgments in 1080 and 1220;

- c) The evidence of previous conduct of the appellants in seeking to put misleading evidence before the courts, in particular, the Saudi courts; and
- d) the findings of both the High Court and the Court of Appeal in this case that the appellants were prepared to give untruthful evidence in the Court in the proceedings in the BVI in support of their claim that they were the owners of the Chemtrade shares.

In terms of the balance of convenience, or the balance of justice, the Court accepted the submission of the respondent that the balance weighed heavily in favour of making the order sought by him, because the order was likely to cause no serious prejudice to the appellants and no cogent argument was advanced by them (the appellants) to the contrary. The appellants would, in any event, shortly be required to satisfy the costs orders against them. It was difficult therefore to see what prejudice they could suffer by the \$3,000,000.00 remaining with Harneys until the quantification of the costs was completed, or, as advanced by counsel for the respondent, if the funds were paid to the respondent against the costs which the appellants would have to pay to them to save themselves at least a portion of the interest payable on the costs award.

On the other hand, there was indeed potential for serious prejudice to the respondent if the order was not granted and he then had difficulty recovering the substantial costs payable to him, especially having regard to the evidence that the court orders would not be enforceable in Saudi Arabia against the appellants.

Case Name:

C-Mobile Services Limited
v
Huawei Technologies Co. Limited

Date: Monday, 29th September 2014

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

Appearances:

Appellant / Applicant:	Mr. Grant Carroll
Respondent:	Mr. Mungo Lowe

Issues: Application (by appellant) for stay of respondent's liquidation proceedings pending outcome of substantive appeal – Appeal against learned judge's refusal to set aside statutory demand and grant stay on basis that debt was disputed and dispute was subject to resolution by arbitration – Arbitration proceedings in respect of same debt issued and ongoing in Paris – Entire sum of debt contested – Whether if stay not granted there would be real risk that liquidators could be appointed by the time appeal was determined and appeal could be rendered nugatory – Whether respondent should be deprived of benefit of judgment in its favour – Whether entire amount of disputed debt should be paid into court by appellant pending determination of appeal – Oral application for adjournment of hearing of application for stay

Result / Order: [Oral delivery]

1. The application for an adjournment is refused.
2. The application for a stay of the judgment of Bannister J is granted pending the hearing and determination of the appeal;
3. By consent, costs on this application are reserved.

Reason: The Court stated that applications for a stay are normally paper applications. This hearing was held at the request of the parties and scheduled for their convenience. The Court had read the papers. It was held that in light of the issues to be determined

(which were not complex and had already been addressed in written submissions) it did not appear that an adjournment was required to deal with the matter and counsel had put forth no cogent reasons for requiring one.

Having considered to the principles to be applied in relation to the appellant's application for a stay of proceedings, summarised in the judgment of Mr. Justice Mostyn in *NB v Haringey LBC* [2011] EWHC 3544, the Court was of the view that in this matter, where there was a dispute as to the existence of the debt and the Court was satisfied that the appointment of liquidators would have a dramatic effect on the appellant and render the appeal nugatory, in order to do justice between the parties, the stay should be granted. The Court further held that the appeal would involve very serious matters which ought to be resolved before liquidators can be appointed.

Case Name:

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

[BVIHCMAP2013/0026]**

Date:

Thursday, 2nd October 2014

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Christopher Parker, QC, with him, Mr. Ian Mann

Respondents:

Mr. John McDonnell, QC, with him, Mr. Raymond Davern

Issues: Ownership of shares in 1st respondent company – Whether it was open to learned judge to find that beneficial interest in shares had been transferred to 2nd respondent – Whether learned judge was entitled to reject appellant’s explanation as to why he had transferred legal title in shares to 2nd respondent – Whether shares were held on resulting trust for appellant

Result / Order: Judgment is reserved.

Case Name: [1] Moshe Saraga
[2] Pnina Shruga
[3] China Furniture Group Limited
[4] EM Export Limited
v
Reem Mayer
[BVIHCVAP2014/0016]

Date: Friday, 3rd October 2014

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]
The Hon. Mde. Joyce Kentish-Egan, QC, Justice of Appeal [Ag.]

Appearances:
Appellants / Respondents: Mr. Andrew Emery
Respondent / Applicant: Mr. Ian Mann

Issues: Application for interim payment of costs

Result / Order: [Oral delivery]
The application for interim payment is adjourned to the next sitting of the Court of Appeal in the Territory of the Virgin Islands during the week commencing 12th January 2015.

Reason: The application had been short served.

Case Name: Mukhtar Ablyazov
v
JSC BTA Bank
[BVIHCMAP2013/0010]

Date: Friday, 3rd October 2014

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Ian R. C. Kawaley, Justice of Appeal [Ag.]
The Hon. Mde. Joyce Kentish-Egan, QC, Justice of Appeal [Ag.]

Appearances:

Appellant / Applicant:	Mr. Jonathan Addo
Respondent:	Ms. Tameka Davis

Issues: Application for conditional leave to appeal to Her Majesty in Council

Result / Order & Reason: [Oral delivery]
1. The applicant shall have conditional leave to appeal to Her Majesty in Council from the Order of the Court of Appeal made on 29th April 2014 upon the following conditions:
a) The applicant shall within 90 days from the date of this order enter into good and sufficient security in the sum of £500 sterling

for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of it not obtaining an order granting it final leave to appeal or of the appeal being dismissed for non-prosecution, or of the Privy Council ordering it to pay the costs of the appeal;

- b) The applicant shall within 45 days of the date of this order take the necessary steps to settle the record with the solicitors for the respondent and take the necessary steps to prepare and file the record with the Registrar of the Court of Appeal;
 - c) The parties shall abide by Rules 18-20 of the Judicial Committee (Appellate Jurisdiction) Rules Order 2009 and its Practice Directions 4 and 5 and the record shall be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay once final permission to appeal has been granted.
 - d) The applicant shall within 14 days from the date on which the record is filed with the Registrar of the Court of Appeal make application for final leave to appeal to Her Majesty in Council supported by the certificate of the Registrar of the payment for security for costs for the prosecution of the appeal as prescribed in this order; and
2. The costs of this application shall be costs in the appeal.

Case Name:

[1] United Best Developments Limited

[2] Mr. Chen Bin

V

[1] Noble Field Overseas Limited

[2] Offshore Incorporations Limited

[BVIHCMAP2013/0025]

Date:

Friday, 3rd October 2014

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Ian R. C. Kawaley, Justice of Appeal
[Ag.]
The Hon. Mde. Joyce Kentish-Egan, QC, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Jonathan Ward

Respondents: Mr. Ian Mann

Issues: Discontinuance of appeal

Result / Order: [Oral delivery]
The appeal stands dismissed.

Reason: A notice of discontinuance was filed on 24th September 2014.

STATUS HEARING

Case Name: Earl “Bob” Hodge
v
The Director of Public Prosecutions

[BVIMCRAP2013/0006]

Date: Friday, 3rd October 2014

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

Appearances:

Appellant: Mr. Patrick Thompson

Respondent: Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues: Status of matter – Appeal against confiscation order of learned senior magistrate – Whether senior magistrate acted ultra vires in making confiscation order

Result / Order: [Oral delivery]
1. Leave to withdraw the appeal granted.
2. Appeal stands dismissed.

Case Name: Glenroy Pierre
V
Commissioner of Police
[BVIMCRAP2014/0008]

Date: Friday, 3rd October 2014

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

Appearances:
Appellant: Mr. Patrick Thompson
Respondent: Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues: Status of matter – Appeal against conviction – Importation of a controlled drug – Offering to supply a controlled drug – Possession of a controlled drug – Illegal entry

Result / Order: [Oral delivery]
1. The transcripts of the trial are to be completed no later than 25th November 2014.
2. The notice of the availability of the transcripts is to be served personally on the appellant.
3. The parties will comply with the Civil Procedure Rules 2000.
4. The matter is to be listed for further status

hearing during the sitting of the Court of Appeal in the Territory of the Virgin Islands during the week commencing 12th January 2015.

Reason: The transcripts of the trial were incomplete.

Case Name: [1] Patrick Facey
[2] Michael Facey
v
The Queen

[BVIHCRA2013/0009]

Date: Friday, 3rd October 2014

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

Appearances:
Appellant: Mr. Patrick Thompson
Respondent: Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues: Status of matter – Appeal against sentence – Grievous bodily harm

Result / Order: [Oral delivery]
1. The appellants are to file and serve skeleton arguments by 30th October 2014.
2. The respondent is to file skeleton arguments in reply on or before 28 November 2014.
3. The appeal is listed for hearing during the week commencing 12th January 2015 when the Court of Appeal will sit in the Territory of the Virgin Islands.

Reason: The parties indicated that the transcripts were

available and therefore the record of appeal would soon be available.

Case Name:

Alcedo Tyson

v

The Queen

[BVIHCRAP2013/0008]

Date:

Friday, 3rd October 2014

Before:

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

Appearances:

Appellant:

Mr. Patrick Thompson

Respondent:

Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues:

Status of matter – Appeal against conviction and sentence – Murder

Result / Order:

[Oral delivery]

- 1. The Registrar of the High Court is to ensure that the transcripts of the trial are prepared within 45 days of the date of this order and that the notice of availability of the transcripts is served thereafter.**
- 2. The appellant to file and serve skeleton arguments by 15th December 2014.**
- 3. The respondent to file and serve skeleton arguments no later than 27th February 2015.**
- 4. The appeal is set down for hearing in the week commencing 18th May 2015 during that sitting of the Court of Appeal in the Territory of the Virgin Islands.**

Reason:

The acting senior court reporter undertook to make the transcripts available to the Court within 45 days.

Case Name:

**Allen Baptiste
v
The Queen**

[BVIHCRAP2013/0003]

AND

**Yan Edwards
v
The Queen**

[BVIHCRAP2013/0004]

Date:

Friday, 3rd October 2014

Before:

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

Appearances:

**Appellants /
Applicants:**

**Mr. Patrick Thompson for Allen Baptiste
Mr. Stephen Daniels for Yan Edwards**

**Respondent /
Applicant:**

**Mr. Wayne Rajbansie, Director of Public
Prosecutions**

Issues:

**Status of matters – Joint application to consolidate
appeals – Appeals against conviction and sentence
– Murder**

Result / Order:

[Oral delivery]

- 1. The joint application is granted and BVIHCRAP2013/0003 and BVIHCRAP2013/0004 are consolidated.**
- 2. The Registrar of the High Court is to ensure that the transcripts of the trial are completed and provided to the parties no later than 45 days from today's date.**

3. The appellant is to file and serve skeleton arguments within six (6) weeks of receipt of the transcripts.
4. The respondent is to file and serve skeleton arguments in reply within 28 days of receipt of the appellants' skeleton arguments.
5. The appeal is set down for hearing in the week commencing 18th May 2015 during that sitting of the Court of Appeal in the Territory of the Virgin Islands.

Case Name:

Royden Sebastian

v

The Queen

[BVIHCRA2013/0002]

Date:

Friday, 3rd October 2014

Before:

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

Appearances:

Appellant:

Mr. Richard Rowe

Respondent:

Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues:

Status of matter – Appeal against sentence – Robbery

Result / Order:

[Oral delivery]

1. The Registrar of the High Court is to ensure that the transcripts of the trial are prepared no later than 45 days from today's date.
2. The notice of the availability of transcripts is to be served on the appellant on or before 17th November 2014.
3. The appellant is to file and serve skeleton arguments in support of the appeal no later than within 9th January 2015.

4. The respondent is to file and serve skeleton arguments in reply no later 16th February 2015.
5. The appeal is set down for hearing in the week commencing 18th May 2015 during that sitting of the Court of Appeal in the Territory of the Virgin Islands.

Case Name:

**Ryan Chirlon Robin
v
Commissioner of Police
[BVIMCRAP2013/0011]**

Date:

Friday, 3rd October 2014

Before:

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

Appearances:

Appellant:

**No appearance of or on behalf of the appellant
Mr. Richard Rowe (as amicus curiae)**

Respondent:

**Mr. Wayne Rajbansie, Director of Public
Prosecutions**

Issues:

**Status of matter – Appeal against sentence –
Production of controlled drug – Importation of
controlled drug**

Result / Order:

[Oral delivery]

1. The matter is to be fixed for further status hearing in the week commencing 12th January 2015.
2. The transcripts of the trial are to be prepared and made available to the appellant on or before 25th November 2014.
3. The notice of availability of transcripts is to be served on the appellant personally.

Reason:

Mr. Rowe had not been officially retained but assisted the Court by indicating that the appellant

intended to proceed with his appeal.

Case Name: **Jerome Allen**
v
The Commissioner of Police
[BVIMCRAP2014/0001]

Date: **Friday, 3rd October 2014**

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

Appearances:
Appellant: **Mr. Stephen Daniels**
Respondent: **Mr. Wayne Rajbansie, Director of Public Prosecutions**

Issues: **Status of matter – Appeal against sentence – Whether sentence imposed was excessive having regard to sentences imposed for similar offences in courts of equal jurisdiction**

Result / Order: **[Oral delivery]**
1. The matter is to be fixed for further status hearing in the week commencing 12th January 2015.
2. The transcripts of the trial are to be prepared and made available to the appellant on or before 25th November 2014.
3. The notice of the availability of transcripts is to be served on the appellant personally.

Case Name: **Ralph James**
v
The Queen

[BVIMCRAP2013/0008]

AND

Adrian Arthur

v

The Queen

[BVIMCRAP2013/0009]

Date: Friday, 3rd October 2014

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

Appearances:

Applicants/ Appellants:	Mr. Michael Maduro for Ralph James and Adrian Arthur
Applicant/ Respondent:	Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues: Status of matters – Joint application to consolidate appeals – Appeals against sentence – Possession of a controlled drug with intent to supply – Possession of a controlled drug – Importation of a controlled drug – Offering to supply a controlled drug – Whether sentences imposed by learned magistrate were unduly severe

Result / Order: [Oral delivery]

1. The joint application is granted and BVIMCRAP2013/0008 and BVIMCRAP2013/0009 are consolidated.
2. The consolidated appeal is fixed for further status hearing in the week commencing 12th January 2015 when the Court of Appeal will sit in the Territory of the Virgin Islands.
3. The transcripts of the trial are to be prepared and made available to the appellants on or before 25th November 2014.
4. The notice of availability of the transcripts is to be served on the appellants personally.

Case Name:

**Keno Allen
v
The Queen**

[BVIHC RAP2013/0005]

Date:

Friday, 3rd October 2014

Before:

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

Appearances:

Appellant:

Mr. Stephen Daniels

Respondent:

Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues:

Status of matter – Appeal against conviction – Robbery – Attempting to choke – Indecent assault

Result / Order:

[Oral delivery]

- 1. The Registrar of the High Court is to ensure that the transcripts of the trial are prepared within 45 days of the date of this order.**
- 2. The notice of availability of the transcripts is to be served on the appellant personally.**
- 3. The appellant is to file and serve skeleton arguments in support of the appeal within six (6) weeks of receipt of the notice of availability of the transcripts, or on or before 9th January 2015.**
- 4. The respondent is to file and serve skeleton arguments in reply on or before 16th February 2015.**
- 5. The appeal is to be set down for hearing in the week commencing 18th May 2015 during the sitting of the Court of Appeal in the Territory of the Virgin Islands.**

Reason:

The acting senior court reporter undertook to make

the transcripts available to the Court within 45 days.

Case Name:

Julian Christopher

v

The Queen

[BVIHCRA2012/0009]

Date:

Friday, 3rd October 2014

Before:

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

Appearances:

Appellant:

Mr. Patrick Thompson

Respondent:

Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues:

Status of matter – Appeal against conviction and sentence – Indecent assault – Rape

Result / Order:

[Oral delivery]

- 1. The Registrar of the High Court is to ensure that the transcripts of the trial are prepared within 45 days of the date of this order.**
- 2. The notice of availability of the transcripts is to be served on the appellant personally.**
- 3. The appellant is to file and serve skeleton arguments in support of the appeal within six (6) weeks of receipt of the notice of the availability of the transcripts, or on or before 9th January 2015.**
- 4. The respondent is to file and serve skeleton arguments in reply on or before 16th February 2015.**
- 5. The appeal is to be set down for hearing in the week commencing 18th May 2015 during the sitting of the Court of Appeal in the Territory of the Virgin Islands.**

Reason: The acting senior court reporter undertook to make the transcripts available to the Court within 45 days.

Case Name: Renold Plaisimond
v
The Queen

[BVIHCRA2012/0008]

Date: Friday, 3rd October 2014

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

Appearances:
Appellant: Mr. Patrick Thompson
Respondent: Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues: Status of matter – Appeal against conviction and sentence – Manslaughter – Smuggling of migrants

Result / Order: [Oral delivery]
1. The Registrar of the High Court is to ensure that the transcripts of the trial are prepared on or before 10th October 2014.
2. The notice of the availability of the transcripts is to be served on the appellant personally.
3. The appellant is to file and serve skeleton arguments in support of the appeal on or before 14th November 2014.
4. The respondent to file and serve skeleton arguments in reply on or before 18th December 2014.
5. The appeal is to be set down for hearing in the week commencing 12th January 2015 during the sitting of the Court of Appeal in the Territory of the Virgin Islands.

Reason	The transcripts of the trial were ready.
Case Name:	Leonard Sprauve v The Queen [BVIHC RAP2012/0006]
Date:	Friday, 3 rd October 2014
Before:	The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:	
Appellant:	Mr. Patrick Thompson
Respondent:	Mr. Wayne Rajbansie, Director of Public Prosecutions
Issues:	Status of matter – Appeal against conviction and sentence – Robbery – Possession of firearm with intent to endanger life
Result / Order:	[Oral delivery] 1. The Registrar of the High Court is to ensure that the transcripts of the trial are prepared on or before 3rd November 2014. 2. The notice of availability of the transcripts is to be served on the appellant personally. 3. The appellant is to file and serve skeleton arguments in support of the appeal on or before 17th November 2014. 4. The respondent is to file and serve skeleton arguments in reply on or before 19th December 2014. 5. The appeal is to be set down for hearing in the week commencing 12th January 2015 during the sitting of the Court of Appeal in the Territory of the Virgin Islands.

Reason: The acting senior court reporter undertook to make the transcripts available to the Court within 30 days.

Case Name: Kareem Simon
v
The Queen

[BVIHCRA2012/0003]

Date: Friday, 3rd October 2014

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

Appearances:

Appellant: Mr. Richard Rowe

Respondent: Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues: Status of the Matter – Appeal against sentence – Aggravated burglary – Whether sentence imposed was unduly severe

Result / Order: [Oral delivery]
The status hearing is adjourned to the week commencing 12th January 2015 when the Court of Appeal will sit in the Territory of the Virgin Islands to allow the appellant to be present and/or represented.

Reason: The assistant superintendent of Her Majesty's Prisons, Mr. Royston L. Percival, reported that the prisoner was ill.

Case Name: Sheila Callwood-Schulterbrandt

v
[1] Lucien Callwood
[2] Urman Callwood
[3] Gertrude Callwood-Coakley
[4] Wendell Callwood

[BVIHCVAP2012/0009]

Date: Friday, 3rd October 2014

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

Appearances:

Appellant: Mr. Richard Rowe

Respondent: Ms. Patricia Archibald-Bowers

Issues: Status of matter – Ownership of property

**Result / Order
& Reason:** [Oral delivery]
The matter is adjourned for status hearing to the week commencing 12th January 2015 when the Court of Appeal will sit in the Territory of the Virgin Islands for the parties to be able to report on the possibility of a settlement.

Case Name:

[1] Henry Osmond Hodge
[2] Reuben Rufus Hodge
[3] Elliot McKinley Hodge

v
[1] Sylvia Hodge
[2] Gordon M. Phillip
[3] Ruby Jacinta Phillip

[BVIHCVAP2012/0030]

Date: Friday, 3rd October 2014

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

Appearances:

Appellants: Ms. Patricia Archibald-Bowers

Respondents: No appearance of any of the respondents
Ms. Marie-Lou Creque (as amicus curiae)

Issues: Status of matter – Whether learned judge erred in finding that there was agreement between parties for settlement of proceedings BVIHCV2004/0065

**Result / Order
& Reason:**

[Oral delivery]

The status hearing appeal is adjourned to the week commencing 12th January 2015 when the Court of Appeal will sit in the Territory of the Virgin Islands, to enable counsel for the appellants to contact the appellants to ascertain their position in relation to the prosecution of the appeal.

Case Name:

Petra Cooper (nee Klvacova)

v

Peter Cooper

[BVIHCVAP2012/0010]

Date: Friday, 3rd October 2014

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

Appearances:

Appellant: Ms. Marie-Lou Creque

Respondent: No appearance

Issues: Status of matter – Whether learned judge erred in holding that sum of £50,000.00 amounted to money loaned to appellant by the respondent which ought to be repaid

Result / Order:

[Oral delivery]

- 1. Leave is granted to the appellant to file and serve additional grounds of appeal on or before 31st October 2014.**
- 2. The appellant undertakes to file and serve skeleton arguments on or before 28th November 2014.**
- 3. The respondent shall file and serve skeleton arguments on or before 26th January 2015.**
- 4. The appeal shall be set down for hearing during the week commencing 18th May 2015 when the Court of appeal sits in the Territory of the Virgin Islands.**
- 5. The appellant is to serve a copy of this order on the respondent personally.**

Case Name:

Rosan Law

v

**[1] Hugh Anthony Rawlins (Chairman of the
Judicial and Legal Services Commission)**

AND

**[2] William Boyd McCleary (Governor of the
British Virgin Islands)**

**[3] The Attorney General of the British Virgin
Islands**

[BVIHCVAP2012/0027]

Date:

Friday, 3rd October 2014

Before:

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

Appearances:

Appellant:

Ms. Charmaine Rosan-Bunbury

Respondent:

Ms. Maya Barry, Senior Crown Counsel

Issues:

Status of matter – Dismissal of appellant's

application for mandamus in court below

**Result / Order
& Reason:**

[Oral delivery]

1. The appeal is dismissed based on the notice of withdrawal and discontinuance filed.
2. No order as to costs.

Reason:

A notice of discontinuance was filed on 26th September 2014.

Case Name:

**Nolan Davis
dba
AN Davis Plumbing and Electrical Service
V
McArthur Engineering Co. Ltd.**

[BVIHCVAP2012/0032]

Date:

Friday, 3rd October 2014

Before:

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

Appearances:

Appellant:

Mr. Richard Rowe

Respondent:

Ms. Kamika Forbes

Issues:

Status of matter – Contract – Whether learned judge erred in ordering appellant to pay respondent sum of \$15,000.00 plus prescribed costs – Whether there was reliable basis established on evidence by respondent justifying entitlement to said sum

Result / Order:

[Oral delivery]

1. The Registrar of the High Court is to ensure that the transcripts of the trial are prepared within 45 days of the date of this order and made available

no later than 16th November 2014.

2. The notice of availability of the transcripts is to be served on the appellant personally.
3. The appellant is to file and serve skeleton arguments on or before 9th January 2015.
4. The respondent is to file and serve skeleton arguments in reply on or before 16th February 2015.
5. Hearing of the appeal shall be set down for the week commencing 18th May 2015 during the sitting of the Court of Appeal in the Territory of the Virgin Islands.

Reason

The acting senior court reporter undertook to make the transcripts available to the Court within 45 days.

Case Name:

[1] Sylvia Maduro-Dale

[2] Lucia Chalwell

v

The Registrar of Lands

[BVIHCVAP2010/0022]

Date:

Friday, 3rd October 2014

Before:

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

Appearances:

Appellant:

Ms. Patricia Archibald-Bowers

Respondent:

Ms. Jo-Ann Williams-Roberts, Solicitor General

Issues:

Status of matter – Ownership of land – Prescriptive title

Result / Order:

[Oral delivery]

1. The Registrar of the High Court is to ensure that the transcripts of the trial are prepared within 45

days of the date of this order and made available no later than 16th November 2014.

2. The notice of the availability of the transcripts is to be served on the appellant personally.
3. The appellant is to file and serve skeleton arguments on or before 9th January 2015.
4. The respondent is to file and serve skeleton arguments in reply on or before 16th February 2015.
5. Hearing of the appeal shall be set down for the week commencing 18th May 2015 during the sitting of the Court of Appeal in the Territory of the Virgin Islands.

Reason

The acting senior court reporter undertook to make the transcripts available to the Court within 45 days.

Case Name:

**James Anthony
(as Personal Representative of the Estates of
Abraham, deceased and Clarita Anthony,
deceased)**

v

**[1] Eileen Papone
[2] Lourie Anthony
(claiming on their own behalf and also as
Personal Representatives of the Estates of
Abraham Anthony, deceased and Clarita
Anthony)**

[BVIHCVAP2011/0038]

Date:

Friday, 3rd October 2014

Before:

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

Appearances:

Appellant:

Mr. Glenroy Forbes (making application for his firm to be removed from the record)
Ms. Charmaine Rosan-Bunbury (new counsel)

representing the appellant)

Respondents: Mr. René Butcher

Issues: Status of matter – Application for solicitor (for the appellant) to be removed from record – Withdrawal of application (by respondent) to strike out appeal

Result / Order: [Oral delivery]

1. Leave is granted for Forbes Hare to be removed from the record as solicitors for the appellant.
2. Leave is granted to the respondents to withdraw their application to strike out the appeal.
3. The Registrar of the High Court is to ensure that the transcripts of the trial are prepared and made available no later than 16th November 2014.
4. The notice of availability of the transcripts is to be served on the appellant personally.
5. The appellant is to file additional grounds of appeal on or before 15th December 2014, if necessary.
6. The appellant is to file and serve skeleton arguments no later than 20th February 2015.
7. The respondent is to file and serve skeleton arguments in reply on or before 19th March 2015.
8. Hearing of the appeal shall be set down for the week commencing 18th May 2015 during the sitting of the Court of Appeal in the Territory of the Virgin Islands.

Reason: The acting senior court reporter undertook to make the transcripts available by 16th November 2014.

Case Name: The Commissioner of Police
v
Stephen France
[BVIMCRAP2013/0007]

Date: Friday, 3rd October 2014

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

Appearances:

Appellant:	Mr. Wayne Rajbansie, Director of Public Prosecutions
Respondent:	No appearance (attempts to effect service proved futile)

Issues: Status of matter – Appeal against decision of learned magistrate to dismiss case against respondent – Assault occasioning actual bodily harm

Result / Order: [Oral delivery]

1. The appellant is to file and serve skeleton arguments on the respondent personally on or before 9th December 2014.
2. The respondent is to file and serve skeleton arguments in reply on or before 27th January 2015.
3. A copy of this order together with the notice of availability of the transcripts is to be served by the Registrar of the High Court on the respondent personally.
4. The matter is set down for report during the status hearings scheduled to be heard during the sitting of the Court of Appeal in the week commencing 12th January 2015 in the Territory of the Virgin Islands.

Case Name:

The Commissioner of Police
v
[1] Lester Terrence DeCastro
[2] Isaac Bellony Caena

[BVIMCRAP2013/0016]

Date: Friday, 3rd October 2014

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

Appearances:

Appellant: Mr. Wayne Rajbansie, Director of Public Prosecutions

Respondents: No appearance (attempts to effect service proved futile)

Issues: Status of matter – Appeal against the decision of learned senior magistrate to uphold no case submission in favour of respondents – Possession of cocaine – Conspiracy to import heroin – Unlawful possession of heroin with intent to supply – Unlawful possession of heroin

Result / Order: [Oral delivery]

1. The transcript is to be prepared by 22nd December 2014.
2. Notice of availability of the transcript is to be served on both respondents personally.
3. The matter is to be fixed for further status hearing during the sitting of the Court of Appeal in the week commencing 12th January 2015 in the Territory of the Virgin Islands.

Case Name: Richard Hearnshaw
v
Commissioner of Police
[BVIMCRAP2013/0017]

Date: Friday, 3rd October 2014

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

Appearances:

Appellant: Mr. Richard Rowe

Respondent: Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues: Appeal against conviction – Driving without due care and attention

Result / Order: [Oral delivery]

1. The transcript is to be made available on or before 9th December 2014.
2. The matter is to be fixed for further status hearing during the sitting of the Court of Appeal in the week commencing 12th January 2015 in the Territory of the Virgin Islands.

Case Name: The Commissioner of Police
v
[1] Denzil Flax
[2] Kelon Browne
[3] Kareem Hillhouse
[BVIMCRAP2014/0007]

Date: Friday, 3rd October 2014

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

Appearances:

Appellant: Mr. Wayne Rajbansie, Director of Public Prosecutions

Respondents: Mr. Patrick Thompson

Issues: Status of matter – Appeal against the decision of learned (acting) senior magistrate to uphold no case submission in favour of respondents – Gross indecency with a child

Result / Order:

[Oral delivery]

- 1. The transcript is to be made available on or before 9th December 2014.**
- 2. The matter is to be fixed for further status hearing during the sitting of the Court of Appeal in the week commencing 12th January 2015 in the Territory of the Virgin Islands.**

Case Name:

**Bevinton Linton
V
The Commissioner of Police
[BVIMCRAP2012/0005]**

Date:

Friday, 3rd October 2014

Before:

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

Appearances:

Appellant:

**Ms. Patricia Archibald-Bowers
(the appellant was not present)**

Respondent:

Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues:

Status of matter – Appeal against sentence – Unlawful possession of cannabis with intent to supply – Whether learned magistrate took guilty plea into account when sentencing appellant – Application by solicitors acting for the appellant to be removed from the record

Result / Order:

[Oral delivery]

The application to remove the law firm of J.S. Archibald & Co from the record is adjourned for further consideration by the Court of Appeal during its sitting in the week commencing 12th January 2015 in the Territory of the Virgin Islands.

Reason: The appellant had not been contacted by his solicitors and neither had he been served with the application as he had left the Territory since his release from Her Majesty's Prison and his whereabouts were uncertain.

Case Name: Eddie Medina Thomas Baez
V
Commissioner of Police
[BVIMCRAP2012/0002]

Date: Friday, 3rd October 2014

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

Appearances:
Appellant: Ms. Marie-Lou Creque
Respondent: Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues: Status of matter – Appeal against conviction

Result / Order: [Oral delivery]
1. The transcript shall be prepared and made available on or before 9th December 2014.
2. The matter is fixed for further status hearing at the sitting of the Court of Appeal during the week commencing 12th January 2015 in the Territory of the Virgin Islands.

Reason: The transcript was not ready.

Case Name:

**Bentley Roach
v
Commissioner of Police
[BVIMCRAP2012/0004]**

Date:

Friday, 3rd October 2014

Before:

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

Appearances:

Appellant:

Mr. Patrick Thompson

Respondent:

Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues:

Status of matter – Appeal against conviction and sentence – Indecent assault – Whether sentence of 12 months imprisonment imposed by learned magistrate was unduly severe

Result / Order:

[Oral delivery]

- 1. The transcript shall be prepared and made available on or before 9th December 2014.**
- 2. The matter is fixed for further status hearing at the sitting of the Court of Appeal during the week commencing 12th January 2015 in the Territory of the Virgin Islands.**

Reason:

The transcript was not ready.

Case Name:

**Andres Bailey
v
Commissioner of Police
[BVIMCRAP2012/0008]**

Date: Friday, 3rd October 2014

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

Appearances:

Appellant: Mr. Patrick Thompson

Respondent: Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues: Status of matter – Appeal against sentence – Unlawful possession of cannabis – Being concerned in the supply of cannabis – Whether sentence imposed by learned magistrate was unduly severe

Result / Order: [Oral delivery]

1. The transcript shall be prepared and made available no later than 8th December 2014.
2. The notice of availability of the transcripts is to be served on the appellant personally.
3. The matter is fixed for further status hearing at the sitting of the Court of Appeal during the week commencing 12th January 2015 in the Territory of the Virgin Islands.

Reason: The transcript was not ready.

Case Name: Commissioner of Police
v
Desmond Jardine
[BVIMCRAP2014/0005]

Date: Friday, 3rd October 2014

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

Appearances:

Appellant: Mr. Stephen Daniels

Respondent: Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues: Status of matter – Appeal against decision of learned (acting) senior magistrate to acquit respondent – Indecent assault

Result / Order & Reason: [Oral delivery]
A notice of discontinuance having been filed, the matter stands dismissed.

Case Name: Clinton Romney
v
Commissioner of Police

[BVIMCRAP2013/0001]
[BVIMCRAP2013/0002]
[BVIMCRAP2013/0003]

Date: Friday, 3rd October 2014

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

Appearances:

Appellant: Mr. Stephen Daniels

Respondent: Mr. Wayne Rajbansie, Director of Public Prosecutions

Issues: Status of matter – Joint application to consolidate appeals – Appeals against conviction

Result / Order: [Oral delivery]
1. The joint application is granted and BVIMCRAP2013/0001, BVIMCRAP2013/0002 and BVIMCRAP2013/0003 are consolidated.

2. The transcript shall be prepared and made available on or before 22nd December 2014.
3. The notice of availability of the transcript is to be served on the appellant personally.
4. The matter is fixed for further status hearing at the sitting of the Court of Appeal during the week commencing 12th January 2015 in the Territory of the Virgin Islands.

Case Name:

The Commissioner of Police

v

Sydney Watson

[BVIMCRAP2013/0012]

Date:

Friday, 3rd October 2014

Before:

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

Appearances:

Appellant:

Mr. Wayne Rajbansie, Director of Public Prosecutions

Respondent:

No appearance

Issues:

Status of matter – Appeal against decision of learned magistrate to acquit respondent – Assault occasioning actual bodily harm

Result / Order:

[Oral delivery]

The matter is fixed for further status hearing at the sitting of the Court of Appeal during the week commencing 12th January 2015 in the Territory of the Virgin Islands.

Case Name:

Commissioner of Police

v

Carlton Herbert

[BVIMCRAP2014/0011]

Date:

Friday, 3rd October 2014

Before:

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

Appearances:

Appellant:

Mr. Wayne Rajbansie, Director of Public Prosecutions

Respondent:

Ms. Marie-Lou Creque

Issues:

Status of matter – Appeal against decision of learned senior magistrate to acquit respondent – Procuring acts of indecency – Wrongful confinement

Result / Order:

[Oral delivery]

- 1. The transcript shall be prepared and made available on or before 9th December 2014.**
- 2. The matter is fixed for further status hearing at the sitting of the Court of Appeal during the week commencing 12th January 2015 in the Territory of the Virgin Islands.**

Reason:

The transcript was not ready.

Case Name:

The Commissioner of Police

v

Sasha Hodge

[BVIMCRAP2013/0010]

Date:

Friday, 3rd October 2014

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

Appearances:
Appellant: Mr. Wayne Rajbansie, Director of Public Prosecutions

Respondent: Mr. Patrick Thompson

Issues: Status of matter – Appeal against decision of learned senior magistrate to acquit respondent – Acquisition, possession or use of proceeds of criminal conduct

Result / Order: [Oral delivery]
1. The transcript shall be prepared and made available on or before 22nd December 2014.
2. The matter is fixed for further status hearing at the sitting of the Court of Appeal during the week commencing 12th January 2015 in the Territory of the Virgin Islands.

Reason: The transcript was not ready.

Case Name: Brian Blyden
v
Denise Stanley

[BVIMCVAP2012/0003]

Date: Friday, 3rd October 2014

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

Appearances:
Appellant: Mr. Stephen Daniels holding papers for Ms. Marie-Lou Creque

Respondent: Mr. Patrick Thompson

Issues: Status of matter – Family proceedings – Maintenance payments

Result / Order: [Oral delivery]
The appeal stands dismissed.

Reason: Mr. Daniels informed the Court that the appellant intended to withdraw the appeal.

APPLICATIONS AND APPEALS

Case Name: Craig Stoddard
v
The Queen

[BVIHCRAP2010/0008]

Date: Friday, 3rd October 2014

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:	Mr. Anthony L. Johnson
Respondent:	Ms. Tiffany Scatliffe, Principal Crown Counsel, Office of the Director of Public Prosecutions

Issues: Appeal against conviction – Aggravated burglary – Robbery – Wounding with intent – Whether learned trial judge erred in failing to accept appellant's submission of no case to answer – Whether conviction unsafe and unsatisfactory

Result / Order:

[Oral delivery]

The appeal is allowed, the conviction quashed and the sentence set aside.

Reason:

The Court, having read the written submissions of counsel on both sides, having heard the oral submissions in relation to the ground that the learned judge erred in rejecting the appellant's submission of no case to answer, and having considered the principles in the cases *Regina v Galbraith* [1981] 2 All ER 1060, *Director of Public Prosecutions v Selena Varlack* [2008] UKPC 56 and *Taibo (Ellis) v R* (1996) 48 WIR 74, opined that there was not sufficient evidence upon which a jury, properly directed, could have arrived at a guilty verdict in the present case; the learned trial judge ought to have accepted the submission of no case to answer.

The appeal was allowed on this ground. Accordingly, there was no need to hear arguments on the other grounds advanced.

Case Name:

**The Commissioner of Police
v
Treston Browne**

[BVIMCRAP2014/0002]

Date:

Friday, 3rd October 2014

Coram:

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

Appearances:

Appellant:

Ms. Tiffany Scatliffe, Principal Crown Counsel, Office of the Director of Public Prosecutions

Respondent:

**In person (unrepresented)
Mr. Patrick Thompson (as amicus curiae)**

Issues: Appeal against decision of learned (acting) senior magistrate to dismiss charge of unlawful possession of explosives against respondent on basis that 'ammunition' or bullets found in respondent's possession did not fall within definition of 'explosive' in the Explosives Ordinance (Cap. 124, Revised Laws of the Virgin Islands 1991) – Whether learned magistrate erred in dismissing charge

Result / Order: [Oral delivery]
The appeal is allowed.

Reason: Based on the prior decision of this Court in the case of *John Schulterbrandt v. The Commissioner of Police* BVIMCRAP2008/0005 (delivered 13th January 2010, unreported), the appeal is allowed and the case is remitted to the magistrate to receive evidence to determine whether ammunition falls within the definition of explosive in the Explosives Ordinance (Cap. 124 of the Revised Laws of the Virgin Islands 1991).

Case Name: Elroy O'Kieffe
v
The Queen

[BVIMCRAP2013/0004]

Date: Friday, 3rd October 2014

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: Mr. Richard Rowe
Respondent: Ms. Tiffany Scatliffe, Principal Crown Counsel, Office

of the Director of Public Prosecutions

Issues: Appeal against sentence – Possession of a controlled drug with intent to supply – Possession of a controlled drug – Whether learned magistrate erred in imposing 5 year prison sentence on appellant

Result / Order: [Oral delivery]
1. Appeal against sentence allowed.
2. Sentence of time served is substituted for the offence of possession with intent to supply.

Reason: Including time spent on remand, the appellant had been imprisoned since 18th April 2012. The Court, having heard the submissions of counsel on both sides and having reviewed the record, was of the opinion that the learned magistrate erred in failing to take into account the mitigating factors in the case.

The Court therefore set aside the sentence of 5 years and substituted a sentence of time already served.

Case Name: The Commissioner of Police
v
Glen Callwood

[BVIMCRAP2014/0004]

Glen Callwood
v
The Commissioner of Police

[BVIMCRAP 2014/0006]

Date: Friday, 3rd October 2014

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

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

Appearances:

Appellant: Ms. Tiffany Scatliffe, Principal Crown Counsel, Office of the Director of Public Prosecutions (in BVIMCRAP2014/0004)
Mr. Stephen Daniels (in BVIMCRAP2014/0006)

Respondent: Mr. Stephen Daniels (in BVIMCRAP2014/0004)
Ms. Tiffany Scatliffe, Principal Crown Counsel, Office of the Director of Public Prosecutions (in BVIMCRAP2014/0006)

Issues:

Criminal appeal against sentence (BVIMCRAP2014/0004) – Criminal appeal against conviction (BVIMCRAP2014/0006) – Indecent assault – Whether appellant was properly convicted of indecent assault – Whether learned (acting) senior magistrate erred in law in not recording a conviction and in ordering compensation – Whether sentence of learned magistrate unduly lenient

Result / Order:

[Oral delivery]
1. The appeal against conviction is dismissed.
2. The appeal against sentence is allowed.
3. The appellant is fined \$1,500.00 payable in 2 months and in default six (6) months imprisonment.

Reason:

The clear and cogent evidence of 3 witnesses established that there was physical contact between the appellant and virtual complainant which would have given rise to an apprehension of harm. Uninvited contact with the genitals would constitute indecency. The evidence clearly established an assault committed in circumstances of indecency.

It was common ground that the magistrate erred in law in imposing compensation and in not recording a conviction against the appellant. The order of the magistrate is accordingly set aside. It is appropriate that a conviction be recorded against the appellant.

Case Name:

**Tony Alphonso
v
Masley Allan**

[BVIMCVAP2013/0001]

Date:

Friday, 3rd October 2014

Coram:

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

Appearances:

Appellant:

Mr. Stephen Daniels

Respondent:

In person

Issues:

Application by appellant for adjournment – Appellant to retain new counsel and not in position to proceed with appeal – Matter previously adjourned because counsel not properly retained – Whether respondent would suffer prejudice if adjournment granted

Result / Order:

[Oral delivery]

- 1. Hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Territory of the Virgin Islands during the week commencing the 12th January 2015.**
- 2. The respondent is granted costs of \$500.00.**

Reason:

The adjournment was at the request of the appellant to allow him to instruct new counsel. The Court noted that this was the second adjournment being granted at the behest of the appellant. It was held that this would be the final adjournment of this matter.

