

COURT OF APPEAL SITTING

**ANTIGUA AND BARBUDA
25th – 28th November 2013**

JUDGMENTS

Case Name: Oliver Macdonna (Personal Representative of
Margaret Richardson (Widowed) deceased)
v
Benjamin Wilson Richardson (deceased)
[AXAHCVAP2005/0003]
(Anguilla)

Date: Monday, 25th November 2013

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

Appearances:

Appellant:	No appearance
Respondent:	Mr. Kenny Kentish holding for Mrs. Joyce Kentish-Egan

Issues: Civil appeal – Application to strike – Costs – Costs to be assessed – Special circumstances – Whether Court should award costs outside of the one-tenth prescribed limit per CPR 65.11

Result & Reason: Held: awarding costs in the sum of \$1,400.00, that:

1. The appellant's vigorous litigation of the matter along with (1) the respondent's hiring of senior counsel; (2) the preparation of the hearing of an appeal; and (3) the appellant's failure to file leave to appeal cannot be considered as special circumstances within the context of the CPR.
2. The Court should actively manage a case to give effect to the overriding objective of the CPR. In that regard, the cost orders ought to

further that objective. The Court must keep in mind what was reasonable and proportionate. In light of this, a costs order in the sum claimed by the respondent, for a striking out application, can neither be fair nor reasonable.

Rochamel Construction Limited v National Insurance Corporation Saint Lucia, High Court Civil Appeal SLUHCVAP2003/0010 (delivered 24th November 2003, unreported) followed.

Case Name: River Doree Holdings Limited
v
Attorney General of St. Lucia
[SLUHCVAP2012/0028]

Saint Lucia

Date: Monday, 25th November 2013

Coram: The Hon. Dame Janice Pereira, Chief Justice
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Stanley Marcus, SC

Respondent: Mr. Justin Simon, QC Attorney General holding for Mr. Raulston Glasgow

Issues: Civil appeal – Lease agreement – Lease of Crown lands to Danish owned and controlled company – Lease containing sub-clause providing for option to purchase property after specified term – Interpretation of sub-clause containing option to purchase – Whether proper construction of option clause in lease required that appellant should have satisfactorily carried out terms and conditions of lease in order to be able to either exercise option or

compel Government to execute Deed of Sale – Whether appellant rightly exercised option to purchase – Whether Government breached terms of lease agreement – Whether proper construction of sub-clause which provided for grant of Aliens Landholding Licence was that conditions stated therein were conditions precedent to grant of licence – Whether learned judge erred in finding that Government could not have bound itself in advance to issue Aliens Landholding Licence for purchase of remaining lands under lease

Result &
Reason:

Held: allowing the appeal and setting aside the order of the court below, that:

1. The operative words of a deed which are expressed in clear and unambiguous language are not to be controlled, cut down, or qualified by a recital or narrative of intention. In the instant case, the operative clauses 9(9)-(12) of the lease agreement appear to be unambiguous and complete so there is no need for recourse to recital E in the preamble to assist in their construction. The learned master and trial judge therefore erred in finding that the words of recital E should be incorporated in order to determine the proper construction of the option clauses 9(9)-(12) of the lease. There was therefore no requirement that the appellant should have satisfactorily carried out the terms and conditions of the lease including the Development Program in order to be able either to exercise the option or compel the Government to execute the Deed of Sale. Rather, the only condition precedent to the exercise of the option is that stated in sub-clause 9(9) itself, namely that the appellant should give notice to the Government of its desire to exercise the option to purchase the leasehold property. The notice given to the Government on 10th January 1997 was sufficient for this purpose.

Mackenzie and Others v The Duke of Devonshire and Others [1896] AC 400 applied;

Halsbury's Laws (4th edn. reissue, 2007) vol. 13, paragraphs 218 and 219 cited.

2. The proper interpretation of sub-clause 9(11) is that the conditions stated therein are conditions to be included in the grant of the Aliens Landholding Licence and not conditions precedent to the grant of the licence.
3. The transfer of the beneficial interest in the property to the appellant, which would occur on the date on which the option is exercised, is independent of the grant of the Landholding Licence to the appellant.

In re Marlay [1915] 2 Ch 264 applied; Ho Young and Another v Bess [1995] 1 WLR 350 applied.

4. There is no specific statutory provision in the Aliens (Landholding Regulation) Act 1973 that prohibits the Government from agreeing to the grant in the future of an Aliens Landholding Licence. The Government had exercised its statutory discretion to grant the licence to hold the title to the land in the event that the lessee were to enforce the option to purchase, prior to or at the time of the execution of the lease which included the option agreement, in 1986. This was not a case of agreeing to restrict the way in which Government would exercise its discretion in the future, but one of exercising that discretion in advance even if the result was that the discretion having been exercised, it was no longer available to be exercised in a different manner at a later date.

Regina v Hammersmith and Fulham London Borough Council, Ex parte Beddowes [1987] 1 QB 1050 applied.

STATUS HEARING

Case Name: [1] The Proprietors, Condominium Plan No.
2/1989
[2] John Firth
[3] Tom Kepler
[4] John Greaves
[5] Sal Rosa
v
[1] Trinity Investments Company Limited
consolidated with
Trinity Investment Company Limited
[2] Orest Bedrij
[3] Oksana Bedrij
[4] Chrystyhna Bedrij
[5] Rokssana Bedrij
[ANUHC VAP2008/0009]

Date: Monday, 25th November 2013

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

Appearances:

Appellant: No appearance

Respondent: Mr. Kendrickson Kentish

Issue: Status of the matter

**Result / Order
/ Reason:**

[Oral delivery]

1. The matter is adjourned based on an application made by counsel for the respondents for application to be made for notes of evidence.
2. The Registrar is directed to serve notice of adjourned hearing on the Appellants within one month of today's date.
3. Registrar is to provide proof of service.
4. A further status hearing of the matter will be scheduled for March 2014.

Case Name:

**Paulette Matthew
v
Antigua and Barbuda Port Authority Board of
Commissioners**

[ANUHCVP2008/0020]

Date:

Monday, 25th November 2013

Before:

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

Appearances:

Appellant:

Ms. Kamilla Roberts holding for Mr. Steadroy Benjamin

Respondent:

No appearance

Issue:

Status of the matter

Result / Order:

[Oral delivery]

- 1. Parties are directed to meet within 30 days of this order to prepare notes of evidence from personal notes.**
- 2. The notes of evidence so prepared shall be filed by the appellant on or before 24th January 2014 and shall form part of the record.**
- 3. The matter is fixed for further consideration in March 2014.**

Case Name:

**Gene B. Samuel
v
Sheron Whinfield**

[ANUHCVP2009/0005]

Date: Monday, 25th November 2013

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

Appearances:

Appellant:	Mr. John E. Fuller
Respondent:	No appearance

Issue: Status of the matter

Result / Order: [Oral delivery]

1. The status hearing is adjourned to the next sitting of the Court of Appeal in Antigua during the week commencing 10th March 2014.
2. The Registrar is directed to serve the respondent with notice of the status hearing.
3. The Registrar is to provide proof of service.

Case Name:

Marie Makhoul
v
Cicely Foster

[ANUHCVP2009/0014]

Date: Monday, 25th November 2013

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

Appearances:

Appellant:	Mr. Hugh Marshall Jr.
Respondent:	Mr. John Fuller holding papers for Dr. David Dorsett

Issue: Status of the matter

Result / Order: [Oral delivery]
Notice of availability of transcripts having been given on 4th November 2013, the appeal shall be prosecuted in accordance with CPR 2000.

Case Name: Richard Lam
v
Roxanne Frederick
[ANUHCVP2010/0039]

Date: Monday, 25th November 2013

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

Appearances:
Appellant: Mr. Hugh Marshall
Respondent: Mr. Cosbert Cumberbatch

Issue: Status of the matter

Result / Order: [Oral delivery]
Unless the appellant takes the requisite steps to continue the prosecution of this appeal in accordance with CPR 2000 within 30 days of this order, the appeal stands dismissed.

Reason: The Court noted that the transcripts/notes of evidence have been available from June 2013 and to date the appellant has done nothing to advance the appeal.

Case Name: **Antigua Real Estates Limited**
v
Rupert Kenlock

[ANUHCVP2010/0046]

Date: **Monday, 25th November 2013**

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

Appearances:

Appellant: **Ms. Kamilla Roberts**

Respondent: **Mr. Kendrickson Kentish**

Issue: **Status of the matter**

Result / Order: **[Oral delivery]**
In so far as transcripts have been collected, the prosecution of the appeal shall proceed in accordance with CPR 2000.

Case Name: **New Systems Ltd.**
v
Vincente Geraldo

[ANUHCVP2011/0014]

Date: **Monday, 25th November 2013**

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

Appearances:

Appellant: **Mr. Raymond Dexter Wason**

Respondent: **No appearance**

Issue: **Status of the matter**

**Result / Order
/ Reason:**

[Oral Delivery]

- 1. Leave to discontinue and withdraw the appeal is granted**
- 2. Accordingly, the appeal stands dismissed.**

Case Name:

Stanford Development Company Limited

v

OBM Development Limited

[ANUHCVAP2012/0041]

Date:

Monday, 25th November 2013

Before:

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

Appearances:

Appellant:

Mr. Craig Christopher with him Mr. Kwame Simon

Respondent:

Mr. Septimus Rhudd

Issues:

Status of the matter – Case management of appeal

**Result / Order
/ Reason:**

[Oral Delivery]

- 1. Leave to withdraw and discontinue the appeal is granted**
- 2. Accordingly, the appeal stands dismissed.**

Case Name:

Shawn Adams

v

**Marlon Browne trading as Marlon Browne
Construction**

[ANUHCVAP2011/0029]

Date: Monday, 25th November 2013

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

Appearances:

Appellant:	Ms. Denise Jonas-Parillon
Respondent:	Mr. Raymond Dexter Wason

Issue: Status of the matter

Result / Order: [Oral Delivery]
The prosecution of the appeal is to proceed in accordance with CPR 2000.

Reason: The parties were ready to proceed with the appeal.

Case Name:

**The Supervisory Authority
v
Cosbert Sargeant**

[ANUHCVP2013/0013]

Date: Monday, 25th November 2013

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

Appearances:

Applicant Intended Appellant:	/ Mr. Clement Bird
Respondent:	No appearance

Issues: Status of the matter – Request for stay of execution on an order pending the filing of an appeal

**Result / Order
/ Reason:**

**[Oral delivery]
The application for a stay is refused on the basis that
the applicant has failed to meet the requisite
threshold.**

Case Name:

**Hilroy Humphreys
v
The Queen**

[ANUHCRAP2011/0004]

Date:

Monday, 25th November 2013

Before:

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

Appearances:

**Appellant: Ms. Maureen Hyman-Payne holding papers for Mr.
John Fuller**

Respondent: Ms. Shannon Jones

Issue:

Status of the matter

**Result / Order
Reason:**

**[Oral Delivery]
1. Leave to withdraw and discontinue the appeal is
granted
2. Accordingly, the appeal stands dismissed.**

Case Name:

**Elmeade Jarvis
v
The Queen**

[ANUHCRAP2011/0003]

Date: Monday, 25th November 2013

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

Appearances:

Appellant:	Ms. Maureen Hyman-Payne holding papers for Mr. Ralph Francis
Respondent:	Ms. Shannon Jones

Issue: Status of the matter

Result / Order / Reason: [Oral Delivery]

1. In so far as a notice of availability of transcripts has been available since 26th June 2013, the appellant shall pay the sum required for the transcripts on or before the 14th December 2013.
2. Further proceedings shall be in accordance with the relevant rules.

Case Name:

Jennifer Joseph
v
The Queen

[ANUHCRA2011/0006]

Date: Monday, 25th November 2013

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

Appearances:

Appellant:	Ms. Maureen Hyman-Payne holding papers for Mr. John Fuller
Respondent:	Ms. Shannon Jones

Issue: Status of the matter

**Result / Order
/ Reason:**

[Oral Delivery]

- 1. Leave to withdraw and discontinue the appeal is granted.**
- 2. Accordingly, the appeal stands dismissed.**

Case Name:

Jamal Browne

v

The Queen

[ANUHCRAP2009/0011]

Date:

Monday, 25th November 2013

Before:

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

Appearances:

Appellant: No appearance

Respondent: No appearance

Issue:

Status of the matter

**Result / Order
/ Reason:**

[Oral Delivery]

The matter is dismissed based on the notice of discontinuance filed on 25th November 2013.

Case Name:

Wilbert Paul

v

The Queen

[ANUHCRAP2008/0020]

Date:

Monday, 25th November 2013

Before:

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

Appearances:

Appellant: Mr. John Fuller

Respondent: Ms. Shannon Jones

Issue: Status of the matter

Result / Order:

[Oral delivery]

1. Appeal to be fixed for the next hearing of the Court of Appeal in Antigua and Barbuda during the week of 10th March 2014.
2. Appellant to file and serve submissions within 30 days of this order.

Case Name:

Cornwall Ephraim

v

The Queen

[ANUHCRA2009/0001]

Date: Monday, 25th November 2013

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

Appearances:

Appellant: Ms. Maureen Hyman-Payne holding papers for Mr. Ralph Francis

Respondent: Ms. Shannon Jones

Issue: Status of the matter

**Result / Order
/ Reason:**

[Oral Delivery]

1. Leave to withdraw and discontinue the appeal is granted
2. Accordingly, the appeal stands dismissed.

Case Name:

**Latoya Sutherlands
v
The Commissioner of Police
[ANUMCRAP2011/0003]**

Date:

Monday, 25th November 2013

Before:

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

Appearances:

Appellant: Ms. Maureen Hyman-Payne holding papers for Mr. Steadroy Benjamin

Respondent: Ms. Shannon Jones

Issue:

Status of the matter

**Result / Order
/ Reason:**

**[Oral Delivery]
1. Leave to withdraw and discontinue the appeal is granted
2. Accordingly, the appeal stands dismissed.**

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
[ANUMCRAP2011/0003]**

Date: Monday, 25th November 2013

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

Appearances:

Appellant:	Ms. Maureen Hyman-Payne holding papers for Mr. Steadroy Benjamin
Respondent:	Ms. Shannon Jones

Issues: Status of the matter – Directions

Result / Order: [Oral Delivery]

1. The Chief Magistrate is directed to facilitate the production of the notes of evidence of His Worship Magistrate Ivan Walters.
2. The notes of evidence are to be provided to the parties within 42 days of this order.
3. The matter is adjourned for further status hearing during the week of 10th March 2014.

APPLICATIONS AND APPEALS

Case Name: Janice Reynolds-Greene
v
The Bank of Nova Scotia

[ANUHCVP2010/0037]

Date: Monday, 25th November 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:	No appearance
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Respondent: No appearance

Issue: Application for conditional leave to Her Majesty in Council

Result / Order: [Oral delivery]
The application is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda.

Reason: There was no appearance by either party.

Case Name: [1] The Prime Minister
[2] Juno Samuel
v
[1] Sir Gerald Watt, KCN, QC
[ANUHCVP2012/0005]

Date: Monday, 25th November 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Dr. David Dorsett with him Mr. Jared Hewlett
Respondent: Ms. Sheri-Ann Bradshaw

Issue: Application to correct court of appeal order

Result / Order: [Oral delivery]
1. Leave is granted to withdraw the application.
2. No order as to costs.

Reason: The matter was dealt with at the June sitting of the Court of Appeal.

Case Name: Charles Joseph
v
The Bank of Nova Scotia
[ANUHCVP2012/0011]

Date: Monday, 25th November 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Ms. Kamilla Roberts

Issues: Application for conditional leave to Her Majesty in Council – Application for stay of execution

Result / Order: [Oral delivery]
Matter adjourned to Wednesday, 27th November 2013.

Reason: The appellant requested time to file a response to documents recently served on him.

Case Name: Jumby Bay Resort
v
Kiston Browne

[ANULTAP2012/0019]

Date: Monday, 25th November 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mrs. Nelleen Murdoch

Respondent: Mr. Vere Bird III

Issue: Application to adduce fresh evidence

Result / Order: [Oral delivery]
The application is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda.

Reason: The appellant requested an adjournment in order to amend and serve the application.

Case Name:

[1] Marlon Ho-Tack
[2] Alice Ho-Tack
v
[1] British American Insurance Company Ltd.
(In Judicial Management)

[ANUHCVP2012/0027]

Date: Monday, 25th November 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Hugh Marshall with him Ms. Kema Benjamin

Respondent: Dr. David Dorsett with him Mr. Jarid Hewlett

Issues: Application for conditional leave to Her Majesty in Council – Application for stay

Result / Order / Reason: [Oral delivery]
1. The application for conditional leave to appeal to Her Majesty in Council is, with the leave of the Court, hereby withdrawn.
2. The respondent shall have the cost of this application agreed in the sum of \$500.00

Case Name: Stanford Development Company Limited
v
Stanford International Bank Ltd. (In Liquidation)

[ANUHCVP2013/0003]

Date: Monday, 25th November 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Raymond Dexter-Wason

Respondent: Mr. Craig Christopher with him Mr. Kwame Simon

Issues: Application for leave to appeal – Application for stay of execution

Result / Order / Reason: [Oral delivery]
1. The application for leave to appeal and the application for the stay, with leave of the Court,

- are hereby withdrawn.
2. There shall be no order as to costs.

Case Name: **FBO 2000 Antigua Limited**
v
Eastern Caribbean Civil Aviation Authority
[ANUHCVAP2013/0008]

Date: **Monday, 25th November 2013**

Coram: **The Hon. Dame Janice M. Pereira, Chief Justice**
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Kendrickson Kentish
Respondent:	Ms. Kamilla Roberts

Issue: **Application to discharge order of single judge**

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

1. The appellant to file a notice of discontinuance of the appeal on 26th November 2013.
2. The respondent withdraws the application to discharge the order of a single judge as filed on 7th August 2013.
3. The respondent's obligation to pay costs in the sum of EC\$800.00 to the appellant pursuant to the court order dated 23rd July 2013 on the application to strike out the appeal is hereby discharged.
4. There shall be no further order as to costs.

Case Name: Caribbean Developments(Antigua) Limited
v
Stuart Coleman

[ANUHCVP2013/0011]

Date: Monday, 25th November 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Fidela Corbin-Lincoln

Respondent: Ms. C. Debra Burnette

Issues: Application for leave to appeal – Application for stay of execution

**Result / Order
/ Reason:**

[Oral delivery]

1. The application having been discontinued by notice of discontinuance filed on 19th November 2013, the appellant shall pay to the respondents costs agreed in the sum of \$2,500.00.
2. The said sum to be paid within 14 days.

Case Name: Charles Joseph
v
Antigua Commercial Bank

[ANUHCVP2013/0013]

Date: Monday, 25th November 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Ms. Kamilla Roberts

Issue: Application for leave to appeal

Result / Order: [Oral delivery]
1. The application is dismissed.
2. No order as to costs.

Reason: The Court was of the opinion that the grounds of appeal that were advanced by the appellant were without any merit.

Case Name:

[1] Pascal Williams
[2] Gwennie Williams
[3] Reford aka Doc Williams
v
[1] Tyrone Herbert
[2] Gertrude Herbert

[ANUHCVP2009/0027]

Date: Monday, 25th November 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. E. Denecia Thomas

Respondent: Dr. David Dorsett

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

Result / Order: [Oral application]
The application filed on 13th September 2013 is hereby adjourned.

Reason: There were no exhibits attached to the application.

Case Name: [1] Glenroy Francis
[2] Acres Stowe
v
[1] Illuminat (Antigua) Limited
[ANUHCVP2013/0022]

Date: Monday, 25th November 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Dr. David Dorsett with him Mr. Jarid Hewlett
Respondent: Mrs. C. Deborah Burnette with her Mrs. Stacy Ann Saunders-Osbourne

Issues: Application for leave to appeal – Application for stay of execution

Result / Order: [Oral delivery]
1. The application for leave to appeal and for a stay of the order of sale of the land and a stay of the sale of the applicant's motor vehicles shall be fixed for hearing before a single judge in chambers.
2. Notice of hearing shall be given to the parties.
3. The interim stay of execution of the sale of the

applicant's motor vehicles by public auction pursuant to writ of execution made on the 14th November 2013 shall continue in effect pending the substantive hearing and determination of the main application for stay before a judge in chambers.

4. The application shall proceed in accordance with Practice Direction number 3 of 2008.

Reason:

The Court opined that it did not intend to deal with the substantive matter at the sitting as the time line between the filing of the documents and the sitting was insufficient.

Case Name:

Jamal Brooks

v

The Queen

[ANUHCRA2009/0011]

Date:

Monday, 25th November 2013

Coram:

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

Appearances:

Appellant: In person

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues:

Criminal appeal against sentence – Wounding with intent

Result / Order

[Oral delivery]

Reason:

1. The appeal against sentence is withdrawn, the appellant having served his time.

2. The appeal is accordingly dismissed.

Case Name:

Shavawn Roberts

v

The Queen

[ANUHCRAP2008/0004]

Junior Roberts

v

The Queen

[ANUHCRAP2008/0005]

Barbara Peters

v

The Queen

[ANUHCRAP2008/0006]

Date:

Monday, 25th November 2013

Coram:

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

Appearances:

Appellant:

Mr. Steadroy Benjamin

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues:

Criminal appeal against sentence – Murder

Result / Order:

[Oral delivery]

1. The appeal against sentence is allowed to the extent that the sentence of Shavawn Roberts is

reduced from 18 years to 17 years.

2. The sentence of Junior Roberts is reduced from 20 years to 18 years.
3. The sentence of Barbara Peters is reduced from 20 years to 15 years.

Reason:

Counsel for the respondent and counsel for the appellants both agreed to a reduction in the sentence of all three appellants.

Case Name:

**Timothy Kitt
v
The Queen**

[ANUHCRA2010/0003]

Date:

Monday, 25th November 2013

Coram:

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

Appearances:

Appellant:

Ms. Maureen Hyman-Payne

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues:

Criminal appeal against sentence – Aggravated Burglary

**Result / Order
/ Reason:**

[Oral delivery]

The appeal against sentence is withdrawn and accordingly dismissed.

Case Name:

Hilroy Nathaniel

v

The Queen

[ANUHCRA2008/0018]

Date:

Monday, 25th November 2013

Coram:

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

Appearances:

Appellant:

Mr. Steadroy Benjamin

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues:

**Criminal appeal against conviction and sentence –
Wounding with intent – Application for leave to
amend grounds of appeal**

Result / Order:

[Oral delivery]

- 1. The appeal against conviction, having been withdrawn, is accordingly dismissed.**
- 2. The application by the appellant's counsel to amend his appeal to include a ground of appeal against sentence is granted.**
- 3. The appeal against sentence is dismissed.**

Reason:

The Court found that there were several aggravating factors, a knife was used in the commission of the offence; the virtual complainant was stabbed 5 times; and the appellant had a prior conviction for a similar offence. The Court found that there was no mitigating factor in the case. Accordingly, there was no basis to disturb the sentence of 14 months imprisonment imposed on the appellant.

Case Name:

Daniel Nedd

v

The Queen

[ANUHCRA2008/0019]

Date:

Monday, 25th November 2013

Coram:

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

Appearances:

Appellant:

Mr. Ralph Francis

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions with Ms. Shannon Jones

Issues:

Criminal appeal against conviction – Rape – Serious Indecency

Result / Order:

[Oral delivery]

- 1. The application to amend the notice of appeal to include the ground that the sentence is too excessive is granted.**
- 2. The appeal against sentence is allowed to the extent that the sentence of 18 years for rape is set aside and the sentence of 14 years imprisonment is substituted for the offence of rape.**
- 3. The sentence of 7 years imprisonment for serious indecency is confirmed.**
- 4. The sentences are to run concurrently.**

Reason:

The Court found that the factors in aggravation outweighed the sole factor in mitigation. The offence was committed against a young person in which a relationship of trust existed. The incident/s had occurred over a period of time, from when the complainant was 7 until she was 15. The Court found that the only mitigating factor was that the

appellant had no previous convictions. The Court held that a departure from the benchmark of 8 years was justified. However, the Court still considered that the sentence of 18 years imprisonment to be excessive given all the circumstances.

Case Name: Ivor Bowman
v
The Queen

[ANUHCRA2009/0002]

Date: Monday, 25th November 2013

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

Appearances:
Appellant: Mr. John Fuller
Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues: Criminal appeal against conviction – Rape

Result / Order: [Oral delivery]
1. The application to withdraw the appeal against conviction is granted. The appeal against conviction is accordingly dismissed.
2. The application to amend the notice of appeal to include the ground that the sentence is too excessive is granted.
3. The appeal against sentence is allowed to the extent that the sentence of 16 years on each count of rape is set aside and the sentence of 12 years is substituted on each count of rape.
4. The sentence of 4 years imprisonment imposed for serious indecency is to run concurrently with

the sentence of 12 years on the counts of rape.

Reason:

The Court was of the opinion that the aggravating factors outweighed the mitigating factor. The aggravating factors were the age of the appellant at the time of the commission of the offence (47 years, 3 months) in comparison with the age of the virtual complainant (15 years, 9 months); the position of trust the appellant was in at the time; the numerous counts of rape. The only mitigating factor was the appellant's previously unblemished record.

The Court however found that the learned trial judge erred in so far as holding that the sentence for serious indecency was to run consecutively with the sentence for rape.

Case Name:

**Alwyn James Jr.
v
The Queen**

[ANUHCRA2009/0005]

Date:

Monday, 25th November 2013

Coram:

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

Appearances:

Appellant: Ms. Maureen Hyman-Payne holding papers for Mr. Ralph Francis

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues:

Criminal appeal against conviction – Case management – Murder

Result / Order:

[Oral delivery]

- 1. The appellant is to file and serve submissions and authorities in support of the appeal on or before 14th January 2014.**
- 2. The respondent is to file and serve skeleton submissions and authorities in response on or before 18th February 2014.**
- 3. The hearing of the appeal is traversed to the next sitting of the Court of Appeal in Antigua and Barbuda during the week of 10th – 14th March 2014.**

Case Name:

Atiba Francis

v

The Queen

[ANUMCRAP2008/0009]

Date:

Tuesday, 26th November 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]**

Appearances:

Appellant: In person

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues:

Criminal appeal against conviction – Wounding with intent to do grievous bodily harm

Result / Order:

[Oral delivery]

The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 10th March 2014.

Reason: The appellant indicated to the Court that he was unrepresented.

Case Name: Rudy Monelle
v
The Queen

[ANUHCRA2008/0017]

Date: Tuesday, 26th November 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Cosbert Cumberbatch

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues: Criminal appeal against conviction – Murder

Result / Order: [Oral delivery]
1. The appellant is hereby granted an extension of time for the filing and serving of written submissions in relation to the grounds of appeal no later than Friday, 20th December 2013.
2. The respondent shall be at liberty to file and serve further submissions in response as may be necessary no later than Friday, 31st January 2014.
3. The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in the State of Antigua and Barbuda during the week commencing 10th March 2014.

Reason: Counsel for the appellant requested an adjournment

to file and serve written submissions.

Case Name:

Ashworth Bunch

v

The Queen

[ANUHCRA2011/0001]

Date:

Tuesday, 26th November 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Jason Martin

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues:

Criminal appeal against conviction – Murder – Case management

Result / Order:

[Oral delivery]

- 1. The appellant shall file and serve written submissions in support of the grounds of appeal no later than 13th Monday January 2014.**
- 2. The respondent shall file and serve written submissions in response no later than Wednesday, 12th February 2014.**
- 3. The hearing of this appeal is adjourned to the next sitting of the Court in Antigua and Barbuda during the week commencing 10th March 2014.**

Reason:

Counsel for the appellant requested an adjournment of the matter to file and serve written submissions.

Case Name:

Michael Crooks

v

The Queen

[ANUHCRA2011/0002]

Date:

Tuesday, 26th November 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]**

Appearances:

Appellant: No appearance

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues:

Criminal appeal against conviction – Sexual intercourse with a female under the age of 14 – Case management – Directions

Result / Order:

[Oral delivery]

- 1. The appellant shall file and serve written submissions in support of the grounds of appeal by Monday, 13th January 2014.**
- 2. The respondent shall file and serve written submissions in response by Wednesday, 12th February 2014.**
- 3. The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda commencing the week of 10th March 2014.**

Case Name:

Noble Mayne

v
The Queen

[ANUHCRAP2011/0005]

Date: Tuesday, 26th November 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues: Criminal appeal against conviction – Indecent Assault – Case management

Result / Order: [Oral delivery]
The hearing of this appeal is adjourned to the next sitting of the Court in Antigua and Barbuda commencing 10th March 2014.

Reason: There was no appearance by the appellant or by counsel for the appellant.

Case Name: Rashid A. Pigott
v
The Queen

[ANUHCRAP2009/0009]

Date: Tuesday, 26th November 2013

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

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

Appearances:

Appellant: In person

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues:

Criminal appeal against conviction – Breaking and entering a building – Larceny – Case management

Result / Order:

[Oral delivery]

- 1. The appellant to file and serve written submissions in support of the grounds of appeal by Monday, 13th January 2013.**
- 2. The respondent shall file and serve written submissions in response by Wednesday, 12th February 2014.**
- 3. The hearing of this appeal is adjourned to the next sitting of the Court in Antigua and Barbuda during the week commencing 10th March 2014.**

Reason:

The appellant requested an adjournment to file and serve written submissions.

Case Name:

**Lystra Simon
v
Caribbean Star Airlines Limited**

[ANUHCVP2009/0017]

Date:

Tuesday, 26th November 2013

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant: Dr. David Dorsett with him Mr. Jarid Hewlett

Respondent: No appearance

Issues:

Civil appeal – Whether the Industrial Court erred in finding that the appellant was unfairly dismissed but made no award for the manner in which the appellant was dismissed or for exemplary damages – Whether the Industrial Court erred in allowing the consideration of misconduct on the part of the appellant despite the fact that the allegations were not part of the dismissal letter received by the appellant from the respondents

Result / Order:

[Oral delivery]

The appeal is allowed in so far as the judgment and decision of the Industrial Court are varied to provide for exemplary damages in the sum of \$25,000.00 for the appellant, and costs in the sum of \$10,000.00.

Reason:

The letter of termination, being a statutory letter, ought to be very clear and precise. Additionally, it creates an estoppel. The Court held that the employer, that is the respondent was debarred by subsection (4) of section C10(4) of the Antigua and Barbuda Labour Code, Cap. 27 of the Revised Laws of Antigua and Barbuda 1992 from introducing testimony of facts which could have been included in the letter of termination. The letter of termination served as the statutory reasons furnished by the employer. The respondent was bound by the reasons included in the letter of termination.

The Court applied the case of Margaret Berridge et al v Benjies Business Centre [1997] 1 WLR 53.

Case Name:

**Blandina Francis Negga
v**

**The Registered Proprietors of Lands
contained in the Registration Section Hodges
Bay & Thibou's Block 43 2197B
Jeff Hadeed**

[ANUHCVP2007/0024]

Date: Tuesday, 26th November 2013

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Ralph Francis

Respondent: No appearance

Issues: Civil appeal – Nuisance

Result / Order / Reason: The matter was stuck out on 19th November 2013.

Case Name: **Reginald Walter**
v
The Attorney General of Antigua and Barbuda

[ANUHCVP2010/0034]

Date: Tuesday, 26th November 2013

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Ralph Francis

Respondent: Ms. Bridgette Nelson

Issue: Civil appeal

Result / Order: [Oral delivery]
1. The appeal is dismissed and the judgment of the learned trial judge is affirmed.
2. No order as to costs.

Reason: The Court held that except in circumstances where the appellant is able to find that the trial judge made a blatant error, it is an uphill task to persuade an appeal Court to overturn findings of fact of a High Court Judge when that judge had the advantage of seeing and hearing the witnesses give their testimony. In this case, the appellant did not satisfy the threshold to warrant the Court to overturn the findings of the trial judge.

Case Name: Charles Joseph
v
The Antigua Commercial Bank
[ANUHCVP2012/0011]

Date: Wednesday, 27th November 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Ms. Kamilla Roberts

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

Result / Order / Reason: [Oral delivery]
1. The motion for leave to appeal to Her Majesty in Council filed on 11th July 2013 is hereby dismissed having failed to meet the requirements set out in section 122 of the Antigua and Barbuda Constitution Order 1981.
2. The application for a stay in the order for costs is denied.
3. The applicant shall pay costs to the respondents on the applications, fixed in the sum of \$1,500.00 to be paid on Monday, 30th December 2013.

Case Name: [1] Pascal Williams
[2] Gwennie Williams
[3] Reford aka Doc Williams
v
[1] Tyrone Herbert
[2] Gertrude Herbert
[ANUHCVP2009/0027]

Date: Wednesday, 27th November 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. E. Denecia Thomas
Respondent: Dr. David Dorsett

Issue: Application for final leave to Her Majesty in Council

Result / Order: [Oral delivery]
The order granting final leave to appeal to Her Majesty in Council is hereby granted.

Case Name: Jennings Buildings Products Ltd.
v
C.O. Williams Construction (Antigua) Limited
[ANUHCVAP2010/0045]

Date: Wednesday, 27th November 2013

Coram: The Hon. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. E. Denecia Thomas
Respondent: Ms. Gail Christian with her Ms. Sherrie-Ann Bradshaw

Issues: Civil appeal – Locus standi – Issue of agency

Result / Order / Reason: [Oral delivery]
1. To date no record of appeal having been filed in the matter and taking into consideration the application by the appellant for adjournment, the respondent having consented, the court hereby adjourns this appeal in order to enable the appellant to take the requisite steps to prosecute the claim.
2. The matter is taken off the list.
3. Costs agreed in the sum of \$1500.00 to be paid by the appellant to the respondent.

Case Name: [1] Verbin Bowen
[2] Javantia Bowen (by her next friend Verbin Bowen)
[3] Joshua Bowen (by his next friend Verbin Bowen)
v
[1] The Attorney General of Antigua and Barbuda
[2] The Chief Immigration Officer

[ANUHCVP2013/0016]

Date: Wednesday, 27th November 2013

Coram: The Hon. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. David Dorsett with him Mr. Jarid Hewlett

Respondent: Mr. Justin Simon, QC

Issue: Civil appeal

Result / Order: [Oral delivery]
An application in the matter will be heard on Thursday, 28th November 2013.

Reason: The Coram inquired of the parties as to whether they were prepared to come before the Court for the hearing of an application on Thursday, 28th November 2013.

Case Name: Arlene Winter

v
Stanford Development Limited

[ANUHCVAP2012/0014]

Date: Wednesday, 27th November 2013

Coram: The Hon. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. David Dorsett with him Mr. Jarid Hewlett

Respondent: Mr. Craig Christopher with him Mr. Kwame Simon

Issues: Civil appeal – Whether learned trial judge failed to have regard to rule 26.8(3)(a) of the Civil Procedure Rules 2000

Result / Order: [Oral delivery]

1. Leave is granted to withdraw ground no. 2 which deals with filing of a reference to the Industrial Court within 42 days.
2. Leave is also granted to the appellant to withdraw ground 3.
3. Leave is granted to proceed with the appeal.
4. The appeal is allowed and the order of the learned master which was made on 12th June 2102 and entered on the 29th June 2012 is set aside and the order made on 22nd December 2011 so far as judgment was entered for the appellant with costs to be assessed is reinstated.
5. In so far as the appeal before this Court is concerned by consent there is no order as to costs.

Reason: The Court was of the opinion that the learned master misapprehended the facts when she came to the conclusion that the judgment was granted on the 13th March 2012 instead of the correct date, being the 22nd December 2011. In so far as that was the basis

on which the learned judge exercised her discretion, the Court was of the view that the learned judge having acted on a misapprehension of the facts exercised her discretion incorrectly in setting aside the judgment that was granted. Under those circumstances, a court of appeal is in as good a position as the learned master to exercise its discretion.

Case Name: [1] Winston Derrick
[2] Observer Publications Limited
v
[1] Rolston Potter
[ANUHCVP2012/0029]

Date: Wednesday, 27th November 2013

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Dane Hamilton, QC
Respondent:	Ms. Samantha Marshall

Issue: Civil appeal

Result / Order: [Oral delivery]
1. Leave is given to the respondent to file and serve submissions in response to the submissions filed and served by the appellant since October 2012.
2. The submissions of the respondent shall be filed and served no later than 27th January 2014.
3. Hearing of the appeal is adjourned to the next sitting during the week 10th – 14th March 2014.

Case Name:

**Clive Oliveira
v
The Attorney General
[ANUHCVAP2010/0047]**

Date:

Wednesday, 27th November 2013

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul A. Webster, Justice of Appeal [Ag.]
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]**

Appearances:

Appellant: Dr. David Dorsett

Respondent: Mr. Justin Simon, QC

Issues:

Civil appeal – Whether the learned trial judge erred in failing to find that the time between the application for citizenship and the interview was not unnecessarily long – Whether the learned trial judge had consideration of irrelevant matters – Whether there appellant was entitled, upon application, to register as a citizen

Result / Order:

Judgment reserved.

Case Name:

**HMB Holdings Limited
v
The Attorney General of Antigua and Barbuda
[ANUHCVAP2012/0015]**

Date: Thursday, 28th November 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. John Carrington, QC with him Ms. Stacy Richards and Ms. Sandy Khoully

Respondent: Mr. Justin Simon, QC

Issues: Civil appeal – Damages for breach of constitutional rights – Whether learned trial judge erred in awarding costs to the respondent

Result / Order: [Oral delivery]
 1. The appeal is allowed.
 2. A declaration that the respondents continuing failure to satisfy the award of compensation made by the Board of Assessment amounts to a breach of a right guaranteed to the appellant's under section 9 of the Antigua and Barbuda Constitution Order 1981.
 3. The order as to costs in the court below is set aside.
 4. Costs of this appeal to the appellant to be assessed if not agreed within 21 days.

Reason: On 5th January 2010, the Board of Assessment, established to determine the quantum payable to the appellant for the compulsory acquisition made by the Government under the Land Acquisition Act, Cap. 233 of the Revised Laws of Antigua and Barbuda 1992, made an award of US\$23,820,999.00 in favour of the appellant. The Crown never appealed that order.

The appellant had appealed that quantum to the Court of Appeal. The appeal was pending before the Court of Appeal at the date of the institution of the claim from which this appeal is generated. The claim, claim number ANUHCV2010/0406, was for a

declaration that the continuing failure of the Government of Antigua and Barbuda to satisfy the compensation and costs awarded by the Board of Assessment in its ruling dated 5th January 2010 amounts to breach of the right guaranteed to the appellant under section 9 of the Antigua and Barbuda Constitution Order 1981 (“the Constitution”), that is breach of the right to protection from the deprivation of its property; an order compelling the Minister of Finance of the Government of Antigua and Barbuda to procure payment forthwith to the appellant of all sums awarded to the appellant including interest and costs; damages for breach of the appellant’s constitutional rights; costs; and such further or other relief as the court deems just. The Court of Appeal increased the amount awarded by the Board of Assessment to US\$45,199,102.09.

The Crown thereafter appealed this new amount to the Privy Council. This appeal is pending before that court.

In claim number ANUHCV2010/0406, delivered 23rd May 2012, the learned trial judge ruled that the amount to be paid by the respondent has not been finally settled due to the pending appeal in the Privy Council. The trial judge awarded costs to the Crown and no reason was given for that award. The appellant has now appealed those orders.

The Court was satisfied that an amount ordered by a Board of Assessment or a court is an amount that is finally settled and in the absence of a stay ordered by the court is an amount that is due and payable. In this case, there was no application for a stay of the order.

The Court held that the failure of the respondent to pay the monies owing amounts to a breach of the appellant’s rights under section 9 of the Constitution.

The Court was however of the view that a person who suffers delay in receiving an amount of compensation ordered by a Board of Assessment

would not be entitled to damages. The Court found that there was nothing in section 18 of the Constitution that would entitle a court to make an award for damages in respect of infringement of a claimant's (in this case the appellant's) rights under section 9 of the Constitution. There was no tort, breach of contract or other cause of action giving any right to additional damages.

The learned trial judge in the lower court, in awarding costs to the respondent, gave no reason for diverting from rule 56.13(6) of the Civil Procedure Rules 2000 which rule states that "the general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application. The Court found that the appellant did not act unreasonably in bringing the claim.

The Court applied the cases of *San Jose Farmers' Co-operative Society Ltd v Attorney General* (1991) 43 WIR 63 and *Erland Blomquist v Attorney General of the Commonwealth of Dominica* (1987) AC 489.

Case Name:

[1] Verbin Bowen
[2] Javantia Bowen (by her next friend Verbin Bowen)
[3] Joshua Bowen (by his next friend Verbin Bowen)
v
[1] The Attorney General of Antigua and Barbuda
[2] The Chief Immigration Officer

[ANUHCVP2013/0016]

Date:

Thursday, 28th November 2013

Coram:

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

The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. David Dorsett

Respondent: Mr. Justin Simon, QC

Issues:

Civil appeal – Non-compliance with rule 62.10(1) of the Civil Procedure Rules 2000

**Result / Order
/ Reason:**

[Oral delivery]

Matter is adjourned to allow time for the parties to compose and file a draft order.

Case Name:

Police Service Commission

v

Clifford Jackson

[ANUHCVP2012/0028]

Date:

Thursday, 28th November 2013

Coram:

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

Appearances:

Appellant: Dr. David Dorsett with him Mr. Jarid Hewlett

Respondent: Ms. Samantha Marshall

Issues:

Civil appeal – Judicial review proceedings

Result / Order:

[Oral delivery]

1. The appeal is allowed and the decision and orders of the trial judge are set aside.

2. There is no order as to costs.

Reason:

The respondent in this matter had been dismissed from the Police Force of Antigua and Barbuda on a charge of insubordination. He appealed the Commissioner of Police's decision to dismiss him from the Police Force. The appeal was made to the Police Service Commission. The Service Commission upheld the decision of the Commissioner. The respondent applied for and obtained leave to file judicial review proceedings against the decision of the Police Commissioner dated 7th November 2007 and confirmed by the Police Service Commission.

In its judgment the trial judge made various declarations and orders, including a declaration that the Police Service Commission's decision to affirm the Commissioner of Police's decision to dismiss the respondent from the Police Force was unlawful, null and void and of no effect. The trial judge made declarations against non-parties, including a declaration that the conviction of the appellant by the Hunt Tribunal was bad in law, null, void and of no effect, and a declaration that the Hunt Tribunal's decision to recommend the dismissal of the respondent was unlawful, null and void and of no effect.

The judge also made an order quashing the decision of the Police Service Commission affirming the dismissal of the respondent by the Commissioner of Police.

The Court was of the opinion that the learned trial judge reviewed the decision of the Hunt Tribunal to dismiss the respondent and thereby engaged in a rehearing of the case before the Hunt Tribunal.

It was clear to the Court that the respondent's submissions referred to his sentence and not his conviction for insubordination. The Court held that the trial judge erred in holding that the inadequacy of reasons given for the decision led to the conclusion that the members of the Tribunal did not give the

issues before them any or any adequate consideration before affirming the Commissioner's decision. The trial judge erred in so holding because it was not the respondent's case that the appellant's decision was unreasoned or lacked reasons or was insufficiently reasoned. Insufficiency of reasons was not a ground of review.

Further, the respondent did not allege or deduce any evidence of prejudice suffered by him.

The Court concluded that there was no allegation of bias made by the respondent. There was simply no evidence to support such a finding by the trial judge.