# EASTERN CARIBBEAN SUPREME COURT
# COURT OF APPEAL SITTING

**SAINT LUCIA**
**VIDEOCONFERENCE**
**7th December – 11th December 2020**

**JUDGMENTS**

**Case Name:**

**The Comptroller of Customs**
**v**

**China Town Inc.**

**[SLUHCVAP2018/0001]**
**(Saint Lucia)**

**Date:** **Tuesday, 8th December 2020**

**Coram for delivery:** **The Hon. Mde. Gertel Thom, Justice of Appeal**
**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**
**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant** **Ms. Karen Bernard on behalf of the Attorney General's Chambers**

**Respondent** **Mr. Alberton Richelieu holding papers for Mr. Vandyke Jude**

**Issues:**

**Civil appeal — Judicial review — Customs (Control and Management) Act — Power of the Comptroller of Customs to forfeit goods which were seized based on a reasonable suspicion — Reasonable time in which to initiate forfeiture proceedings — Delay in initiating forfeiture proceedings – – Who is the proper defendant to a judicial review claim involving a public body — Whether the failure to join and/or serve the Attorney General is fatal to the claim against a public body — Damages payable for breach of a**

**constitutional right — Whether the Comptroller of Customs is immune from an award of damages**

**Result and Reasons**

**Held: dismissing the appeal; remitting the case to the High Court to assess the quantum of vindicatory damages; and ordering costs of the appeal to be paid by the appellant at the rate of two-thirds of the amount assessed for the proceedings in the lower court; that:**

**1. An appellate court is generally reluctant to interfere with the findings of fact by a lower court and will interfere with those findings only where it is satisfied that the trial judge did not take proper advantage of having seen and heard the witnesses. An appellate court has a more flexible approach when dealing with challenges to findings of fact that are inferences drawn by the trial judge from his evaluation of oral and written evidence, but the court is still cautious especially where these inferences are drawn from disputed facts and/or the credibility of the witnesses. However, where the findings are based on undisputed facts or the interpretation of written evidence, an appellate court is more likely to conclude that it is in as good a position as the trial judge to evaluate the undisputed or written evidence, and, if it is satisfied that the wrong inference was drawn, it may be inclined to substitute its own finding.**

**Watt (or Thomas) v Thomas [1947] 1 All ER 582 applied; Henderson v Foxworth Investments Ltd and another [2014] 1 WLR 2600 applied; Beacon Insurance Co Ltd v Maharaj Bookstores Ltd [2014] UKPC 21 applied.**

**2. The Comptroller of Customs is the proper defendant where a party seeks to challenge a seizure. According to the Customs (Control and Management) Act ("the Act"), the Comptroller is**

**ultimately responsible for all major decisions made by the Department, including decisions to seize a person's property. This is confirmed by the fact that, procedurally, the notices of seizure are in a form to be signed by the Comptroller and, substantively, that it is the Comptroller who must give notice of seizure to the owner of the property seized.**

**Customs (Control and Management) Act Chapter 15.05, Revised Laws of Saint Lucia 2008 applied; Quorum Island (BVI) Ltd v the Attorney General and the Virgin Islands Environmental Council, HCVAP2009/021 (delivered 12th August 2011, unreported) considered.**

**3. While a claimant who seeks constitutional relief is under a mandatory requirement to serve the Attorney General with the claim in the court below, the failure to do so is a procedural defect. The point was not taken in the lower court, and, if taken, could have been cured by ordering service on the Attorney General. In any event, in the absence of clear authority showing that the failure to serve the Attorney General made the claim fatally defective, the appellant's challenge to the form of the proceedings is not sustainable.**

**Part 56.9(1) of the Civil Procedure Rules 2000 ("CPR") considered; Richard Frederick and another v Comptroller of Customs and another [2009] ECSCJ No. 98 considered.**

**4. It is not for the court, on a judicial review application, to second-guess the Comptroller's decision to issue notices of seizure, as its role is to ensure that the Comptroller followed the correct procedure, which the learned trial judge did correctly. Section 130 of the Act gives the Comptroller of Customs the power to detain, seize and condemn goods that are liable to forfeiture. The trial judge in determining whether the Comptroller followed the correct procedure, properly assessed the evidence and the**

**credibility of the witnesses in deciding whether the officers had enough evidence to form a reasonable suspicion that the Company was attempting to evade payment of duty. He concluded, initially, that the seizure of the containers was based on reasonable suspicion and was not unlawful or ultra vires the Act. This is a finding of mixed fact and law with which this Court will not lightly interfere as it does not appear to be plainly wrong.**

**Econo Parts Ltd. v The Comptroller of Customs SLUHCV2014/0309 consolidated with SLUHCV2016/0187 (delivered 10th May 2017, unreported) applied; Watt (or Thomas) v Thomas [1947] 1 All ER 582 applied.**

**5. Where goods are seized by the Comptroller based on a reasonable suspicion, proceedings for the forfeiture and condemnation of those goods must be initiated in a reasonable time. The finding of the learned judge that the initial period of six months of total inaction by the Comptroller was an unreasonable delay was one that he was entitled to make. Further, the judge was entitled to conclude from the delay that the Comptroller never had sufficient evidence to proceed to forfeiture. This was also a reasonable inference for the trial judge to have drawn based on the evidence. The learned judge did not err in concluding that the seizure of Container 2 was unlawful and ultra vires the provisions of section 130 and schedule 4 of the Act.**

**6. The detention or seizure of goods under the Act must be for only so long as is necessary to carry out the legitimate purposes of the Act. The Comptroller's delay in commencing condemnation proceedings of the goods in container 2 and not dealing with the Company's appeal against the restoration fee for Container 1, was unreasonable and breached the Company's constitutional right not to be**

**deprived of its property except in accordance with section 6 of the Constitution.**

**Customs (Control and Management) Act Chapter 15.05, Revised Laws of Saint Lucia 2008 applied; Constitution of Saint Lucia Chapter 1.01, Revised Laws of Saint Lucia 2008 applied.**

**7. When exercising its constitutional jurisdiction, the court is concerned to uphold or vindicate a constitutional right that has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases, more will be required than words to uphold or vindicate the dignity of the constitutional right that has been infringed. Having regard to all the circumstances of the case including but not limited to the length of deprivation and the conduct of the customs officers, this is a proper case for an award of vindicatory damages.**

**Attorney General of Trinidad and Tobago v Ramanoop [2005] UKPC 15 applied; Romauld James v The Attorney General of Trinidad and Tobago [2010] UKPC 23 applied; Inniss v the Attorney General of Saint Christopher and Nevis [2008] UKPC 42 applied; Sir Gerald Watt, KCN, QC v Prime Minister and another; [2013] ECSCJ No. 142 applied; Merson v Cartwright and another [2005] UKPC 38 applied.**

**8. Having found that there was no basis to disturb the trial judge's findings that there was unreasonable delay by the Comptroller of Customs in commencing proceedings for forfeiture, and that the Comptroller of Customs breached the respondent's constitutional right not to be deprived of its property, there is similarly no basis to disturb the award of special damages for losses occasioned by the actions of the Comptroller of Customs.**

**9. Section 133 of the Act gives the Comptroller of Customs immunity from an award of damages under the Act where (a) a certificate relating to**

**the seizure has been granted under subsection (1); or (b) the court is satisfied that there were reasonable grounds for seizing or detaining the thing seized. In this case a certificate was not issued under subsection 1 and there were no reasonable grounds for seizing the containers. The Comptroller is therefore not entitled to immunity in this case.**

**Customs (Control and Management) Act Chapter 15.05, Revised Laws of Saint Lucia 2008 applied**

**Case Name:**

**Manohardas Devidas Chandiramani**
**(In his capacity as Sole Executor of the Estate of Kishu Chandiramani – Deceased)**

**v**

**[1] Mark Brantley**
**(In his capacity as Minister of Finance in the Nevis Island Administration)**
**[2] The Attorney General of Saint Christopher and Nevis**

**[NEVHCVAP2020/0001]**
**(Saint Christopher and Nevis)**

**Date:** **Wednesday, 9th December 2020**

**Coram for delivery of judgment:**
**The Hon. Mde. Louise Esther Blenman, Justice of Appeal**
**The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]**
**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:** **Mr. Damian E.S. Kelsick**

**Respondents:** **Ms. Kimberly Hanley-Bello holding papers for Mrs. Rhonda Nesbitt-Browne for the First Respondent**
**Mrs. Simone Bullen-Thompson, Solicitor General for the Second Respondent**

**Issues:**

**Civil appeal – Compulsory acquisition of land – Procedure for compensation for compulsory acquisition – Nevis Land Acquisition Ordinance – Section 11 of Nevis Land Acquisition Ordinance – Constitutional law – Sections 3 and 8 of the Constitution of Saint Christopher and Nevis – Right to protection from deprivation of property – Whether the judge erred in concluding that fundamental rights under sections 3 and 8 of the Constitution of Saint Christopher and Nevis, were not infringed – Locus Standi – Whether appellant had standing to claim breach of constitutional rights – Whether learned judge erred in concluding that appellant was not entitled to the relief claimed – Alternative remedy – Whether judge erred in concluding that alternative remedy was available – Costs – Rule 56.13(6) of Civil Procedure Rules 2000**

**Result and Reason:**

**HELD (per Blenman JA, Farara JA [Ag.] and Carrington JA [Ag.]) : dismissing the appeal and ordering each party to bear their own costs, that:**

**1. It is trite that where Parliament has provided a legislative scheme for the resolution of a claim, it is not open to a claimant to avoid that scheme and seek to utilise another avenue. In the appeal at bar, Parliament has, by way of the Nevis Land Acquisition Ordinance, provided a comprehensive legislative scheme for the ventilation of issues relating to the compulsory acquisition of property, and that scheme must be adhered to. Under the Ordinance, Kishu was entitled to and ought to have asserted his right to compensation, and sought apportionment in the assessment before the Board, but failed to do so. In addition, if he was dissatisfied with the Board's decision, he had a direct right of appeal to the Court of Appeal.**

**Small v Saul and Saul (1965) 8 WIR 351 applied; Baldwin Spencer v The Attorney General of Antigua and Barbuda and others [1998] ECSCJ No. 19; Civ. App. No 20A of 1997 (delivered 8th April 1998) followed.**

**2. Section 11 of the Ordinance enables the Board of Assessment to determine all questions and claims for the payment of compensation and the apportionment of that compensation in relation to compulsorily acquired land. It is neither the function of the High Court on the basis of an originating motion alleging breach of constitutional rights, nor the Court of Appeal on an appeal flowing therefrom, to determine the amount of compensation that is owed to Kishu and to seek to apportion it. All of these matters fell**

**within the remit of the Board under the provisions of the Ordinance. In circumstances where Kishu participated in the Board of Assessment hearing, cross-examined witnesses, and failed to pursue any claim for compensation or apportionment, it is an abuse of the court's processes for Manohardas to then invoke the special fundamental rights jurisdiction of the High Court to allege breaches of Kishu's right not to be deprived of property without compensation.**

**Sections 3 and 8 of the Saint Christopher and Nevis Constitution Order Cap. 1.01, Revised Laws of Saint Christopher and Nevis 2009 applied; Section 11 of Nevis Land Acquisition Ordinance Cap. 4.02, Revised Laws of Saint Christopher and Nevis 2009 applied; Rosie Modest v The Attorney General and another [1989] ECSCJ No. 4; Civil Appeal No. 4 of 1988 (delivered 2nd May 1989) considered; Grande Anse Estates Limited v His Excellency Sir Leo Victor De Gale et al Grenada Civil Appeal No. 3 of 1976 (delivered 7th October 1977, unreported) considered; Kemrajh Harrikissoon v The Attorney-General of Trinidad and Tobago [1979] 3 WLR 62 considered.**

**3. It is well settled that the fundamental rights jurisdiction of the court is a special jurisdiction that should only be utilised in appropriate circumstances, namely, where there is or is likely to be a breach of a fundamental right. This special fundamental rights jurisdiction ought not to be misused or abused by litigants, and critically, should not be engaged if there is an adequate alternative remedy available. It is clear that Kishu had adequate alternative remedies available to him under the Ordinance, such as an appeal to the Court of Appeal against the Board of Assessment's award, a remedy of which he did not avail himself. Further, he was required to utilise the procedure, which was provided to him by the Ordinance, namely making a claim during the Board's hearing and obtaining an award in his favour together with the appropriate apportionment. In all the circumstances therefore, Manohardas' resort to the procedure of an originating motion, on behalf of Kishu's estate, was inappropriate.**

**Section 18(2) of the Saint Christopher and Nevis Constitution Order Cap. 1.01, Revised Laws of Saint Christopher and Nevis 2009 considered; Kemrajh Harrikissoon v The Attorney-General of Trinidad and Tobago [1979] 3 WLR 62 applied; Jaroo v The Attorney General of Trinidad and Tobago [2002] UKPC 5 applied;**

**Durity v Attorney General of Trinidad and Tobago [2009] 4 LRC 376 applied.**

**4. A litigant must prove that there is a sustainable allegation that his or her fundamental rights were breached or are likely to be breached, in order to assert standing to bring a claim under the fundamental rights jurisdiction of the court. In this case, Manohardas sought to assert that Kishu's fundamental rights had been breached as a result of the failure by the Nevis Island Administration to pay him the compensation allegedly assessed as due to him. However, the relief claimed was based on the false premise that the Board of Assessment made an award in Kishu's favour. The Board made no such order, Kishu having not asserted any claim before it for either compensation or apportionment. Given the totality of the circumstances, Manohardas does not have standing to bring the originating motion, as there was no sustainable allegation that Kishu's fundamental rights were breached.**

**Baldwin Spencer v The Attorney General of Antigua and Barbuda and others [1998] ECSCJ No. 19; Civil App. No 20A of 1997 (delivered 8th April 1998) applied.**

**5. It does not appear that either the Minister of Finance or the Attorney General sought costs in the High Court, and indeed the judge made no order as to costs. Furthermore, the Minister of Finance and the Attorney General have not sought to challenge the learned judge's costs order before this Court. Neither have they made an application to this Court to have their costs on the appeal. In those circumstances, the appropriate order is that each party is to bear their own costs.**

**Rule 56.13(6) of the Civil Procedural Rules 2000 considered.**

## APPLICATIONS AND APPEALS

**Case Name:**

**Bamboo Springs Bottled Water Ltd.**
**v**
**The Bank of Nova Scotia**

**[SLUHCVAP2020/0020]**
**(Saint Lucia)**

**Date:** **Monday, 7th December 2020**

**Coram:** **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
**The Hon. Mr. Mario Michel, Justice of Appeal**
**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

**Appearances:**

**Applicant** **Ms. Natalie DaBreo**

**Issues:** **Application for leave to appeal — Whether proposed appeal has realistic prospect of success — Proposed appeal against refusal of application to strike out acknowledgment of service, defence, counterclaim and reply to defence to counterclaim -— Whether respondent was capable of maintaining suit — Whether learned judge erred in relying on Certificate of Good Standing of respondent issued by Registrar of Companies and Intellectual Property**

**Type of Order** **Oral Decision**

**Result / Order:** **IT IS HEREBY ORDERED THAT:**

> **The application for leave to appeal is hereby refused.**

**Reason:** **The applicant sought leave to appeal the decision of St. Rose-Albertini J dated 29th July 2020, particularly the learned judge's refusal of an application by the applicant (the claimant in the court below) to strike out the acknowledgement of service, defence, counterclaim and reply to defence to counterclaim. The application to strike was made on the basis that the defendant to the claim in the court below, did not have the capacity under the *Companies Act, Cap 13:01 of the Laws of Saint Lucia* to defend the claim or to maintain its counterclaim, as it was no longer a validly incorporated and subsisting company in accordance with the *Companies Act*. The learned judge, in dismissing the application to strike, relied on a Certificate of Good Standing issued by the Registrar of Companies and Intellectual Property as evidence that the respondent was still a company on the register of companies with capacity to defend and maintain a claim.**

**On the application for leave to appeal, counsel for the applicant argued that the learned judge erred in dismissing the application, as the respondent, which had ceased to operate in Saint Lucia, no longer had legal standing or the capacity to maintain suit in the proceedings in the court below. Counsel for the applicant further argued that the learned judge erred in treating the respondent's Certificate of Good Standing as evidence that the respondent was still capable of being sued. On that basis, counsel for the applicant argued that the proposed appeal had a realistic prospect of success and therefore that leave should be granted.**

**The Court considered the written and oral submissions of the applicant, as well as the proposed grounds of appeal, and did not accept the applicant's argument that its proposed appeal had a realistic prospect of success. Particularly, the Court accepted, as the learned judge found, that there was no reason for the learned judge to go behind the Certificate of Good Standing issued to the respondent in the circumstances where, the decision to issue the certificate had not been challenged and the Registrar was not a party to the proceedings. In the circumstances, the Court was not of the view that the applicant had a realistic prospect of challenging the judge's decision to rely on the Certificate of Good Standing, and therefore to challenge the decision to refuse the application to strike. The Court therefore refused the application for leave to appeal.**

**Case Name:** **Urban St. Brice**
**v**
**The Attorney General**
**[SLUHCVAP2018/0036]**
**(Saint Lucia)**

**Date:** **Monday, 7th November 2020**

**Coram:** **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
**The Hon. Mr. Mario Michel, Justice of Appeal**
**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

**Appearances:**

**Applicant:** **Ms. Natalie Da Breo**

| | | |
|---|---|---|
| | **Respondent:** | **Mr. Seryozha Cenac and Mrs. Rochelle John-Charles** |
| **Issues:** | | **Civil appeal – Application for conditional leave to appeal to Her Majesty in Council – Challenge to decision of Court of Appeal making a declaration that appellant's breach of Constitutional right to fair trial within reasonable time without making award of vindicatory, exemplary or aggravated damages – Appeal as of right – Sections 108(1)(a) and (c) of Constitution of Saint Lucia – Whether decision on constitutional claim for vindicatory, exemplary and aggravated damages was a final decision in civil proceedings being of the value of $1,500 or more – Whether decision a final decision in criminal proceedings which involves a question as to interpretation of Constitution – Whether refusal by Court of Appeal to exercise its discretion to award vindicatory, exemplary or aggravated damages raises question of interpretation of sections 3, 5 and 8 of Constitution – Section 108(2)(a) of Constitution of Saint Lucia – Whether proposed appeal raises issue of great general or public importance – Challenges to findings of fact made by Court of Appeal as to causes of delay in completing criminal trial – Whether question of admissibility of evidence proposed to have been relied upon by appellant amounts to question of great general or public importance – Whether availability of vindicatory damages as a matter of law raises question of great general or public importance** |
| **Type of Order:** | | **Oral Decision** |
| **Result / Order:** | | **IT IS HEREBY ORDERED THAT:**<br><br>**The motion for Leave to Appeal to Her Majesty in Council is dismissed as not having met the threshold set out in section 108(1)(a), section 108(1)(c) or 108(2) of the Constitution.** |
| **Reason:** | | **This was an application for conditional leave to appeal to Her Majesty in Council against the decision of the Court of Appeal delivered on 31st July 2020. The Court of Appeal in its decision found that Mr. St. Brice's right to a fair hearing within a reasonable time under section 8 of the Constitution had been breached, granted the declaration sought by Mr. St. Brice to that effect, and also granted further relief by staying permanently the indictment brought against Mr. St Brice.** |

**The petition for conditional leave to appeal to Her Majesty in Council was presented firstly on the ground that the appeal is as of right under section 108(1)(a) which grants a right of appeal from final decisions in any civil proceedings where the matter in dispute on appeal to Her Majesty in Council is of the prescribed value ($1,500.00) or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards.**

**It was common ground that the decision of the High Court which was appealed to the Court of Appeal is a final decision in civil proceedings commenced by way of constitutional motion, in satisfaction of the first limb of section 108(1)(a). In relation to the value threshold however, the Court took the view that the claim did not involve a matter of the prescribed value or upwards, or that the appeal directly or indirectly pertains to a claim to or question respecting property or a right of the prescribed value or upwards. In relation to the value threshold, the Court considered and followed the decision of the Privy Council in *Zuliani and Others v Veira* (1995) 45 WIR 188 which was referred to and applied in the Court of Appeal decision in *The Supervisory Authority v Cresswell Overseas S.A. et al* ANUHCVAP2017/0003 (delivered 30th October 2020, unreported). Neither the decision of the learned judge of the High Court, nor that of the Court of Appeal specified any value in relation to the breaches claimed by Mr. St. Brice in the High Court. Furthermore, and in accordance with *Zuliani*, claims for damages which are of an unliquidated value are generally excluded from proceeding as appeals as of right. The Court noted that it would be speculative to engage in what the quantum of an award may or may not have been in the circumstances with a view to arriving at some value which could be ascribed to the claims.**

**The appellant also relied on section 108(1)(c) of the Constitution which grants a right of appeal from the Court of Appeal where the appeal raises a question of the interpretation of the Constitution. The appellant argued that the appeal raised issues as to the interpretation of sections 3, 5, 8 and 16 of the Constitution. The Court noted that there appeared to be common ground between the parties as to the meaning of sections 3, 5, 8 and 16, and that the proposed appeal to Her Majesty in Council was really a dispute as to application of the sections to circumstances of the case or, in other words, a question as to whether the circumstances of the case attracted the application or disapplication of the provisions. In all the**

**circumstances, the Court was of the view that there was no dispute as to what the provisions meant, and in any event, that the interpretation of those provisions by the Court of Appeal in its decision dated 31st July 2020 was favourable to the appellant. In this regard, the Court considered and followed the decision of the Privy Council in *Joseph v The State of Dominica* [1988] UKPC 20 which makes it clear that a question of application rather than interpretation of a provision of the Constitution is not one which finds it way grounded under section 108(1)(c) of the Constitution.**

**The appellant also argued that the Court of Appeal's conclusion that part of the delay in Mr. St. Brice's trial was caused by Mr. St. Brice, himself, factored into the interpretation of section 16 of the Constitution, and that, in any event, the Court's conclusion gave rise to questions of great general or public importance. The appellant also argued that the Court of Appeal's decision necessarily brings into focus the correlation between Mr. St. Brices' rights to personal liberty, to have been released on bail, and to a fair trial. The appellant argued that the correlation of those rights give rise to a question of great general or public importance, and further that the peculiar circumstances**

**The Court noted that the case of *Martinus Francois v Attorney General* Saint Lucia Civil Appeal No. 37 of 2003 (delivered 7thJune 2004, unreported) is instructive on the question of what amounts to a question of great general or public importance. In that case Sunders JA stated that "In construing the phrase 'great general or public importance', the Court usually looks for matters that involve a really serious issue of law; a constitutional provision that has not been settled; an area of law in dispute, or, a legal question the resolution of which poses dire consequences to the public." In the Court's view, none of the matters advanced in *Martinus Francois* were established in the present case. The Court therefore concluded that the circumstances did not give rise to any question of great general or public importance which should be referred to her Majesty in Council.**

**The Court concluded that the application for leave to appeal to Her Majesty had failed on all grounds.**

**Case Name:**

**Al's Investments Limited**
**v**
**Q Homes Limited**

**[SLUHCVAP2020/0005]**

**(Saint Lucia)**

| | | |
|---|---|---|
| **Date:** | | **Monday, 7th November 2020** |
| **Coram:** | | **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**<br>**The Hon. Mr. Mario Michel, Justice of Appeal**<br>**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]** |
| **Appearances:** | | |
| | **Applicant** | **Mrs. Wauneen Louis-Harris** |
| | **Respondent** | **Mr. Kerron Bruney** |
| **Issues:** | | **Application for leave to appeal against learned judge's order refusing grant of extension of time and relief from sanctions — Whether applicant met threshold for leave to appeal — Realistic prospect of success — Relief from sanctions — Failure to file witness statements in accordance with case management order — Relief from sanctions - Rule 26.2(b) of the Civil Procedure Rules 2000 — Good explanation for failure — Whether learned judge erred in holding that there was insufficient material upon which to be satisfied that relief from sanctions ought to be granted — Whether there were alternative sanctions available to be imposed by learned judge in circumstances** |
| **Type of Order** | | **Oral Decision** |
| **Result / Order:** | | **IT IS HEREBY ORDERED THAT:**<br><br>**The application for leave to appeal is refused.** |
| **Reason:** | | **The applicant sought leave to appeal the judgment of Cenac-Phulgence J dated 19th February 2020 by which the learned judge refused to grant the applicant's application for extension of time to file witness statements and relief from sanctions. The applicant submitted that on 23rd July 2018, the learned judge made a case management order directing that the applicant file witness statements by 6th January 2020. Further, the case management order also directed that the parties file applications to change the timetable of the case management directions on or before 31st January 2020. Counsel for the applicant submitted that due to a misapprehension of the case management** |

**order, the witness statements were not filed on 6th January 2020 and an application for an extension of time to file the witness statements and relief from sanctions was therefore filed by counsel for the applicant on 31st January 2020.**

**The applicant argued that the learned judge in her consideration of the application, did not exercise her discretion in an appropriate manner pursuant to CPR 26.8 (2). While the learned judge found favour with the applicant in relation CPR 26.8(2)(a) and (c), the learned judge did not accept that the applicant satisfied the criterion as laid out in CPR 26.8(2)(b), finding that the applicant's affidavit in support was deficient. The learned judge thereby refused to grant the application for extension of time and relief from sanctions.**

**In support of her argument, counsel for the applicant cited *St. Clair Investments et al v. David Holukoff and Marcus Wide* SVGHCV2015/0162 (delivered on 18th January 2017, unreported) which she argued illustrated that even where there was a failure to demonstrate a reason for delay or where the affidavit in support was deficient of a good explanation, the Court in the interest of justice, could grant an extension of time to file and impose a wasted costs order as the appropriate sanction. Counsel for the applicant argued that this option was available to the learned judge.**

**Counsel for the respondent relying on his written submissions, argued that the reasoning of the learned judge was sound and that she was entitled to her finding based on the particulars before her in the applicant's affidavit in support. Counsel for the respondent further argued that the applicant failed to provide a 'good explanation' in accordance with CPR 26.8(2)(b), providing only a bald statement. This counsel for the respondent argued was fatal. Counsel for the respondent also submitted that the Court should refuse the applicant's application for leave to appeal on this basis so as to prevent a floodgate of future litigants who did not comply with CPR 28.(2)(b).**

**The Court having carefully considered the arguments by both counsel for the applicant and respondent on the application for leave to appeal, and the Court having looked at the underlying proceedings, and the evidence before the learned judge, the Court found that that the appeal did not have a realistic prospect of success.**

**Accordingly, the application for leave to appeal was refused.**

**Case Name:**

**Two Seas Holdings Limited**
**v**
**The Landings Proprietors Unit Plan No. 2 of 2007**

**[SLUHCVAP2019/0012]**
**(Saint Lucia)**

**Date:** **Monday, 7th November 2020**

**Coram:** **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
**The Hon. Mr. Mario Michel, Justice of Appeal**
**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant** **Mr. Mark Maragh and Ms. Candace Fletcher**

**Respondent** **Mr. Peter Foster, QC with Ms. Renee St. Rose and Ms. Marie-Ange Simmons**

**Issues:** **Interlocutory appeal — Application to strike out notice of appeal — Application for an extension of time to file submissions and record of appeal — Reasons for delay – – Length of delay — Prejudice to the respondent — Chances of success on appeal — Action for Trespass — Locus standi to bring trespass action — Joinder of parties**

**Type of Order** **N/A**

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

**IT IS HEREBY ORDERED THAT:**

**The decision is reserved.**

| | |
|---|---|
| **Case Name:** | **Hippolyte Edgar**<br><br>**v**<br><br>**The Police**<br><br>**[SLUMCRAP2018/0009]**<br><br>**(SAINT LUCIA)** |
| **Date:** | **Monday, 7th December 2020** |
| **Coram:** | **The Hon. Mde. Louise Esther Blenman, Justice of Appeal**<br>**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**<br>**The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]** |
| **Appearances:** | |
| **Appellant:** | **Mr. Alberton Richelieu** |
| **Respondent:** | **Ms. Stacey-Anne St. Ville** |
| **Issues:** | **Magisterial Criminal Appeal – Appeal against conviction and sentence – Gross indecency contrary to section 132 of the Criminal Code of Saint Lucia – Failure of Magistrate to give warning required by section 136 of Evidence Act of Saint Lucia – Whether in these circumstances the interest of justice would be served by ordering a retrial** |
| **Type of Order** | **Oral Judgment** |
| **Result / Order:** | **IT IS HEREBY ORDERED THAT:**<br>**1. The appeal against conviction is allowed.**<br>**2. The conviction and sentence are set aside.**<br>**3. The matter is remitted to the Magistrates' Court to be tried before a different Magistrate.** |
| **Reason:** | **This was an appeal against conviction in circumstances where the appellant was convicted of the offence of gross indecency contrary to section 132 of the *Criminal Code of Saint Lucia, Cap. 3.01 of the Revised Edition of the Laws of Saint Lucia 2015*. The appellant filed an appeal in which he challenged a** |

**decision of the learned magistrate and the major complaint was that the learned magistrate, in her reasons for decision, did not indicate that she conducted the necessary warning which was required by section 136 of the *Evidence Act of Saint Lucia, Cap. 4.15 of the Revised Edition of the Laws of Saint Lucia 2015*. Mr. Richelieu, in his written submissions, indicated that that was fatal. The Crown, having read the submissions and the Record of Appeal, has quite professionally and properly conceded that the learned magistrate erred as a matter of law in her failure to indicate that she conducted the specific warning that was required of her. The only issue that arose to be addressed was whether or not a retrial ought to be ordered in this appeal.**

**The Court heard the submissions of Mr. Richelieu in which he urged the Court not to order a retrial on the basis that there were a number of adjournments and that the interest of justice would not be served by this Court granting a retrial. The Court also gave deliberate consideration to the written submissions of Ms. St. Ville and took the view that the principles which were enunciated in the case of *Andre Bennett v The Queen [2001] UKPC 37* and applied in the cases of *Sherfield Bowen v The Queen [2007] ECSCJ No. 89* and *Che Gregory Spencer v The DPP [2014] 5 LRC 613* are applicable. In determining whether or not the Court ought to grant a retrial, the Court must take into account the interest of justice and included in that are the circumstances of the appellant and the circumstances of the victim. The Court must also be careful to ensure that a person who might otherwise be guilty is not allowed to be set free on the basis of a technicality. The Court, having reviewed the recency of the alleged offence and having taken into account the strength of the prosecution's case in this matter, had no doubt that the interest of justice required that a retrial should be ordered.**

**Accordingly, the appeal against the conviction was allowed and the conviction and sentence were set aside, and a retrial was ordered to take place before a different magistrate.**

**Case Name:** **Lance Wilson**

**V**

**The Queen**

**[SLUHCRAP2015/0006]**

**(SAINT LUCIA)**

| | | |
|---|---|---|
| **Date:** | | **Monday, 7th December 2020** |
| **Coram:** | | **The Hon. Mde. Louise Esther Blenman, Justice of Appeal**<br>**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**<br>**The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]** |
| **Appearances:** | | |
| | **Appellant:** | **Mr. David Moyston** |
| | **Respondent:** | **Mr. Stephen Brette** |
| **Issues:** | | **Criminal Appeal – Appeal against conviction and sentence – Non-Capital Murder – Section 136 of Evidence Act – Whether learned judge's caution given under section 136 of the Evidence Act was insufficient so as to make the conviction unsafe – Whether the sentence was manifestly excessive** |
| **Type of Order** | | **Oral Judgment** |
| **Result / Order:** | | **IT IS HEREBY ORDERED THAT:**<br>**1. The appeal against conviction is dismissed.**<br>**2. The sentence is adjusted to take into account the 3 years and 8 months spent on remand resulting in a final sentence of 21 years and 4 months to run from the date the sentence was imposed.** |
| **Reason:** | | **The case for the appellant was that the learned trial judge erred in his directions to the jury concerning the way that the evidence of Kurty Wilson and his father Joseph Frederick should be approached. The Court found no merit in this complaint. The learned judge carefully, especially at pages 101 and 102 of the summing up, itemized the factors which could potentially render the evidence of these two witnesses unreliable. He admonished the jury to treat that evidence with caution, as Kurty Wilson claimed to have** |

**been oppressed. The judge also pointed out the potential weakness in the evidence of both men as possibly having an interest to serve. The Court was of the view that the summing up on this point complies fully with the requirements of section 136 of the *Evidence Act of Saint Lucia, Cap. 4.15 of the Revised Edition of the Laws of Saint Lucia* and therefore found no basis for finding that the conviction was unsafe on this ground.**

**On the point of sentence, the Court took the view that the trial judge did not commit any error of principle when he chose to sentence the appellant to 25 years. He adopted the correct starting point of 30 years and generously lowered this to 28 years. He set out the aggravating and mitigating features and he was content to depart downwards to 25 years. The Court saw no reason to disturb the sentence, except that the time spent on remand ought to have been deducted. The appellant spent 3 years and 8 months on remand and subtracting that from 25 years gives a sentence of 21 years and 4 months.**

**Accordingly, the appeal against conviction was dismissed and the sentence was adjusted to take into account the 3 years and 8 months spent on remand, making it a final sentence of 21 years and 4 months.**

**Case Name:**

**Debbion Elesia Crisp**
**(also known as Debbion Elisia Bowring)**
**v**
**Ross Bowring**
**[SLUHCVAP2017/0037]**
**(SAINT LUCIA)**

**Date:** **Tuesday, 8th December 2020**

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

**Appearances:**

**Appellant:** **Ms. Ann-Alicia Fagan**

**Respondent:** **Ms. Maureen John-Xavier**

| | |
|---|---|
| **Issues:** | **Civil appeal – Consent order – Withdrawal of appeal** |
| **Type of Order:** | **Oral decision** |
| **Result / Order:** | **IT IS HEREBY ORDERED THAT:**<br>**1. The appeal and counter appeal are withdrawn by consent.**<br>**2. There is no order as to costs.** |
| **Reason:** | **Counsel for the appellant indicated that the parties have submitted a consent order agreeing to withdraw the appeal and the counter appeal with no order as to costs.** |
| **Case Name:** | **Linus Felix**<br>**v**<br>**Hildree Edward**<br><br>**[SLUHCVAP2020/0012]**<br>**(formerly SLUHCVAP2014/0006)**<br>**(SAINT LUCIA)** |
| **Date:** | **Tuesday, 8th December 2020** |
| **Coram:** | **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**<br>**The Hon. Mr. Mario Michel, Justice of Appeal**<br>**The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]** |
| **Appearances:** | |
| **Appellant:** | **Ms. Wauneen Louis-Harris** |
| **Respondent:** | **No appearance** |
| **Issues:** | **Civil appeal** |
| **Type of Order** | **N/A** |
| **Result / Order:** | **[Oral Delivery]**<br><br>**IT IS HEREBY ORDERED THAT:** |

**The matter is stood down.**

**Reason:** **There was no appearance by the respondent. The Court enquired whether the respondent was served personally with the notice of hearing of the appeal. The matter was stood down to allow for the High Court to ascertain whether an affidavit of service showing proof of service of the notice of hearing of the appeal was filed.**

**Case Name:**

**[1] Durand Dorseide**
**[2] Marlins Dorseide**
**v**
**West Indies General Insurance Company Ltd.**
**[SLUHCVAP2016/0029]**
**(SAINT LUCIA)**

**Date:** **Tuesday, 8th December 2020**

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

**Appearances:**

**Appellant:** **Mr. Horace Fraser**

**Respondent:** **Mr. Dexter Theodore, QC with Ms. Sueanna Frederick**

**Issues:** **Civil appeal – Insurance law – Motor Vehicle Insurance (Third Party Risks) Act Cap. 8.02 of the Laws of Saint Lucia – Claim against insurance company by third-party for satisfaction of judgment against insured party – Requirement for notice to be given to insurance company of claim against insured under section 9(2)(a) of the Act – Whether learned judge erred in his conclusion that no proper notice of claim had been given in accordance with section 9(2)(a) of the Act – Claim for 'loss of use' of motor vehicle - Whether under Motor Vehicle Insurance (Third Party Risks) Act Cap. 8.02 of the Laws of Saint Lucia respondent was liable to pay balance of rental costs of motor vehicle under the head of 'loss of use' – Section 4 of the Act – Whether insurance company's statutory liability to third parties for damage to insured property under section 4 includes liability for loss of use of property –**

| | |
|---|---|
| | **Whether learned judge erred in dismissing claim for loss of use** |
| **Type of Order:** | **Oral judgment** |
| **Result / Order:** | **IT IS HEREBY ORDERED THAT:**<br>**1. The appeal is dismissed.**<br>**2. The respondent shall have their costs in the court below, that is prescribed costs pursuant to CPR 65.2(1)(a) on the sum of $36,250.00 and the costs in the appeal, not to exceed two-thirds of the costs of the court below, to be assessed by a judge of the court below.** |
| **Reason:** | **This is an appeal against the decision and judgment of a learned judge delivered on 3rd November 2016. The grounds of appeal are set out in an amended notice of appeal filed 7th June 2019. Ground 2 concerning the validity of a release signed by the appellants was not pursued by counsel at the hearing of the appeal.**<br><br>**The factual background arises out of a motor vehicle collision involving the appellants' vehicle and a vehicle owned by a third-party which was driven by someone else. The appellants brought a claim in the High Court against the owner and driver of the vehicle involved in the collision. That claim resulted in judgment in default of defence entered against the defendants in those proceedings for certain sums of money, which included a sum for the loss of use of the appellants' motor vehicle. The total amount which was awarded in that judgment relating to loss of use was $43,750.00.**<br><br>**The appellants then brought a claim in the High Court against the respondent to this appeal. The respondents were, at the time, the insurers of the motor vehicle of the defendants in the first claim. The claim the subject of this appeal was brought pursuant to the *Motor Vehicle Insurance (Third Party Risks) Act* Cap. 8.02 of the Laws of Saint Lucia ("the MVIA"). In the claim, the appellants sought to have the respondent pay the entirety of the sum for loss of use awarded in the first claim under the judgment in default, less an amount of $7,500.00 which had already been paid by the respondent with respect to the loss of use, resulting in a net claim of $36,250.00, plus interest. After a trial, judgment was delivered by the learned judge on 3rd November 2016. In that judgment, the learned judge** |

**made two primary findings or rulings. The first related to the question of notice which was required to be given to the respondent, by the appellants, of the first claim filed against the owner and driver of the vehicle, pursuant to section 9(2)(a) of the MVIA.**

**It is accepted by both sides, and was accepted by the learned judge, that the section 9(2)(a) notice which was given by the appellants to the respondent was outside the seven-day period specified in the MVIA.**

**The learned judge at paragraph 48 of the judgment stated: "Finally I noted that there is no evidence of service of [the] Claim for Damages on the insurance company within the required time. The affidavit of service produced speaks to service on Mr. Placide in January 2009. Thereafter there is proof of service of the letter in August of 2009. I have already referred to the Claimant's argument on this matter. In my view the service was late and cannot be fixed by creative argument or a claim that the Defendant should have said that it was not properly served."**

**And further at paragraph 49 of the judgment, the learned judge stated: "In conclusion I summarize my findings as follows. Firstly, pursuant to section 9(2)(a) of the MVIA, the claim was served out of time. I can find no reason in the circumstances to use my discretion to allow the Claimants to make the claim even though they were out of time."**

**As there was no issue with regard to finding by the judge that the notice was served outside the time required by the MVIA, the Court noted that the appellants' main complaint in relation to notice of the claim was that the learned judge did not refer to and consider certain relevant evidence as to service of the claim on the respondent; and that, at paragraph 48 of the judgment, the learned judge only speaks to service on Mr. Placide in January 2010 and to proof of service of a letter in August 2010, that letter coming after the judgment in default was entered against the owner and driver of the vehicle.**

**Having considered the submissions of counsel, the Court was satisfied that, in arriving at his conclusion that there were no reasons or circumstances to exercise his discretion to allow the appellants to make the claim against the respondent, even though the notice on the respondent was out of time, the learned**

**judge failed to consider the affidavit of service of the claim on the respondent company in January 2010. In the circumstances, the learned judge did not properly exercise his discretion.**

**However, as had been accepted by learned counsel for the appellants, the question of notice to the respondent was not dispositive of the appeal. The primary issue in the appeal concerned the second of the learned judge's main findings, which related to the claim by the appellants for loss of use. This issue was addressed by the learned judge at paragraphs 45, 46 and 47 of his judgment.**

**At paragraph 49, the learned judge said: "Thirdly, loss of use is limited to the relevant policy of insurance pursuant to which the claim was filed and the limitation of thirty days is quite proper. The MVIA does not override the insurance policy in this instance." Learned counsel for the appellant submitted that section 4(1)(b) of the MVIA specifies the matters which must be covered by a policy of insurance in relation to a motor vehicle, and that when reference is made by the section to "damaged property", that expression must be interpreted as including loss of use, as loss of use normally follows from damage to property. The Court noted that learned counsel for the appellants was unable to point to a specific authority in which it has been held that loss of use is embraced by the expression "damage to property" in section 4(1)(b) of the MVIA. Furthermore, learned counsel also accepted that the statutory provisions do not directly address loss of use as an element of damage that must be covered under the mandatory requirements under section 4(1)(b) of the MVIA. On this issue, learned counsel for the respondent submitted that a third-party making a claim against an insurance company under the MVIA in circumstances where a judgment against the tortfeasor has been obtained, is only entitled to be paid by the insurance company with respect to the matters which are required to be covered by a policy of insurance as specified under section 4(1) of the MVIA. In support of this contention, counsel referred to the case of *Mecheck Willis v Globe Insurance Company of Jamaican Limited* [2015] JMCA Civ 36.**

**At paragraph 63 of *Mecheck*, the Court of Appeal of Jamaica stated as follows, in relation to the equivalent section of the Jamaican Motor Vehicle Third-Party Insurance legislation: "...this section requires three**

**conditions to be met in order to activate the third party's right to recover from the insurer: (i) a certificate of insurance must have been issued by virtue of section 5(1) of the MVIA; (ii) the judgement must be in respect of liability which is required to be covered by a police under [the relevant provisions] and which has been obtained against the insured; and (iii) the liability must be a liability covered by the terms of the policy."**

**Having considered the arguments on both sides, the Court was in agreement that in order to recover against the respondent-company, the appellants would have to show that the liability was a liability which is required to be covered under the MVIA. The Court was firmly of the view that loss of use is not one such element of liability required to be covered under the MVIA or that loss of use is a head of damage falling under liability for damage to property. Accordingly, the learned judge was correct in coming to the conclusion that loss of use was not recoverable and that the appellants' claim for the sum of $36,250.00 for loss of use by virtue of the judgment in default was not a sum which was recoverable from the insurance company in the proceedings.**

**The appellants' appeal therefore failed on all grounds pursued before the Court.**

**Case Name:**

**Linus Felix**
**v**
**Hildree Edward**

**[SLUHCVAP2020/0012]**
**(formerly SLUHCVAP2014/0006)**
**(SAINT LUCIA)**

**Date:** **Tuesday, 8th December 2020**

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

**Appearances:**

**Appellant:** **Ms. Wauneen Louis-Harris**

**Respondent:** **No appearance**

| | |
|---|---|
| **Issues:** | **Civil appeal – Challenges to findings of fact made by learned trial judge –Appellate court's interference with findings of fact by a lower court – Whether learned judge erred in finding that the bus was sold by the respondent in the condition in which it was on the day that it was towed and that the appellant knew of this condition – Whether learned judge erred in finding that the appellant took delivery of the bus from the respondent in satisfaction of the requirements of Articles 1401, 1402, 1403 and 1408 of the Civil Code of Saint Lucia Cap. 4.01** |
| **Type of Order** | **Oral judgment** |
| **Result / Order:** | **IT IS HEREBY ORDERED THAT:**<br>**1. The appeal is dismissed.**<br>**2. No order as to costs.** |
| **Reason:** | **This was an appeal against the judgment of a learned judge of the High Court dated 31st December 2013. The notice of appeal, filed on 11th February 2014, contained several grounds of appeal on the basis of which the appellant sought to urge this Court to disturb the findings made by the trial judge. The Court noted that although certain grounds of appeal purported to deal with issues of law, they were in fact challenges to factual findings by the trial judge though some of them appear to be dressed up in the garment of findings of law.**<br><br>**The principles upon which the Court may determine issues involving issues of finding of fact by the trial judge have been well set out in many cases and are well known. However, the case of Beacon Insurance Company Limited v Maharaj Bookstore Limited [2014] UKPC 21, a decision of the Privy Council in an appeal originating from Trinidad and Tobago best captures the principles, that case having reviewed several previous cases addressing the issue of fact finding. At paragraph 12 of Beacon Insurance, the following is quoted from the judgment of Lord Thankerton in Thomas v Thomas [1947] AC 484:** |

> **"Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion…"**

**Under that same paragraph, the Privy Council quoted the following words of Lord Greene MR, in Yuill v Yuill [1945] P 15, 19:**

> **"It can, of course, only be on the rarest occasions, and in circumstances where the appellate court is convinced by the plainest of considerations, that it would be justified in finding that the trial judge had formed a wrong opinion."**

**Further, at paragraph 16 of Beacon Insurance, the Privy Council also quoted words of Lord Hoffmann from the case of Piglowska v Piglowski [1999] 1 WLR 1360, 1372 wherein he stated thusly:**

> **"The need for appellate caution in reversing the trial judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecisionas to emphasis, relative weight, minor qualification and nuance … of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation."**

**The Privy Council also found instructive, at paragraph 17, the words of Lord Bridge of Harwich, as follows:**

> **"[T]he importance of the part played by those advantages in assisting the judge to any particular conclusion of fact varies through a wide spectrum from, at one end, a straight conflict of primary fact between witnesses,**

> **where credibility is crucial and the appellate court can hardly ever interfere, to, at the other end, an inference from undisputed primary facts, where the appellate court is in just as good a position as the trial judge to make the decision."**

**Upon reviewing the principles emanating from the cases which were nicely summarised in Beacon Insurance, the Court was of the view that the findings of fact made by the trial judge are quite clear. The trial judge had before him the evidence of the parties and their witnesses and made very definitive findings on the factual issues which were before him. Principally, the judge determined, at paragraph 19, that:**

> **"On the issue of the condition of the bus during negotiations and on entering into the agreement and the date of payment, I accept the evidence of the Defendant and reject the evidence of the Claimant, for the reasons set out in paragraphs [16] to [19] above, and, having observed both the Claimant and the Defendant in the witness box, I find the Defendant to be a more credible witness than [sic] the Claimant."**

**The learned judge, at paragraph 23, stated further: "Having accepted this as fact, I have no difficulty finding that the vehicle needed to be towed from Gros Islet to wherever the Claimant wanted to take it"; and at paragraph 24 he stated: "I accept the evidence of the Defendant whom I found to have been a forthright and credible witness, and I reject that of the Claimant, whose evidence I found very difficult to accept as being truthful."**

**He ultimately concluded his findings that:**

> **"(a) the bus was sold by the Defendant to the Claimant in the condition in which it was on the day that it was towed to Paix Bouche, and that the Claimant knew of this condition and agreed to purchase it as is, and (b) the Claimant took delivery of the bus from the Defendant in full satisfaction of the requirements of Articles 1401, 1402, 1403 and 1408 of the Civil Code of St. Lucia."**

**Throughout the judgment, the judge indicated what evidence he accepted, what evidence he rejected, and why he accepted or rejected the individual findings that he made. Therefore, the Court had no doubt about the fact that the judge had the evidence before him upon which he made the findings that he did. Further, the authorities above-mentioned show clearly that it was his role as the trial judge, and accordingly there is no basis upon which the Court felt it could interfere with the decision of the learned trial judge.**

**Case Name:** **Yanne Drysdale**

**v**

**The Queen**

**[SLUHCRAP2017/0003]**
**(Saint Lucia)**

**Date:** **Tuesday, 8th December 2020**

**Coram:** **The Hon. Mde. Gertel Thom, Justice of Appeal**
**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**
**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:** **In person, unrepresented**

**Respondent:** **Mrs. Tanya Alexis-Francis**

**Issues:** **Criminal appeal — Appeal against sentence — Murder — Request for counsel to be assigned to appellant**

**Type of Order:** **Adjournment**

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

**IT IS HEREBY ORDERED THAT:**

1. **The Registrar of the High Court shall assign an attorney-at-law practising in the State of Saint**

**Lucia to represent the appellant at the hearing of his appeal.**

2. **The appeal is adjourned for case management on a date to be fixed by the Chief Registrar during the month of January 2021.**
3. **The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the State of Saint Lucia during the week commencing 8th March 2021.**

**Reason:**

**The Court noted the offence of which the appellant was convicted, being the offence of murder, and further that there was a request for the appellant to be assigned counsel for the prosecution of his appeal against sentence.**

**Being satisfied that, in the circumstances, an attorney ought to be assigned to the appellant for the prosecution of his appeal, the Court gave directions for counsel to be appointed to the appellant and adjourned the matter to case management for the Chief Registrar to give directions in relation to the time when submissions on the appellant's behalf ought to be filed and the timeline in which the Crown ought to respond to those submissions.**

**Case Name:**

**Gael Daria**

**v**

**The Queen**

**[SLUHCRAP2017/0012]**
**(Saint Lucia)**

**Date:** **Tuesday, 8th December 2020**

**Coram:**

**The Hon. Mde. Gertel Thom, Justice of Appeal**
**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**
**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

**Appearances:**

| | | |
|---|---|---|
| | **Appellant** | **Mr. Alberton Richelieu and Mr. Leslie Mondesir** |
| | **Respondent** | **Mr. Bernick Faisal** |
| **Issues:** | | **Criminal appeal — Appeal against conviction — Rape — Recent complaint — Corroboration warning — Section 136 of Evidence Act, Cap 4:15 of the Revised Laws of Saint Lucia 2015 — Whether learned judge failed to adequately put the defence to the jury — Whether learned judge failed to consider section 136 of the Evidence Act and properly relate the laws therein to the facts of the case — Whether the learned judge sufficiently satisfied the requirements in section 136(2) of the Evidence Act in the summing up of the evidence of the virtual complainant — Whether in the circumstances the conviction is unsafe — Whether a retrial would be appropriate** |
| **Type of Order:** | | **N/A** |
| **Result / Order:** | | **[Oral Delivery]**<br><br>**IT IS HEREBY ORDERED THAT:**<br><br>**Judgment is reserved.** |
| **Case Name:** | | **Duncan Charles**<br>**v**<br>**The Commissioner of Police**<br><br>**[SLUMCRAP2018/0006]**<br>**(Saint Lucia)** |
| **Date:** | | **Tuesday, 8th December 2020** |
| **Coram:** | | **The Hon. Mde. Gertel Thom, Justice of Appeal**<br>**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**<br>**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]** |
| **Appearances:** | | |
| | **Appellant:** | **Mr. Marius Wilson** |

| | |
|---|---|
| **Respondent:** | **Ms. Stacey-Anne St. Ville** |
| **Issues:** | **Magisterial criminal appeal — Appeal against sentence — Possession of a controlled drug — Sections 1096 and 1102 of the Criminal Code of Saint Lucia, Cap. 3.01 of the Revised Edition of the Laws of Saint Lucia, 2015 — Failure of magistrate to order pre-trial report before imposition of sentence — Whether sentence imposed was manifestly excessive — Whether Court should exercise discretion afresh taking into account sections 1096(2) and 1102 of the Criminal Code — Variation of order pursuant to section 754 of Criminal Code** |
| **Type of Order:** | **Oral Judgment** |
| **Result / Order:** | **[Oral Delivery]**<br><br>**IT IS HEREBY ORDERED THAT:**<br><br>**1. The appeal is allowed.**<br>**2. The decision of the learned magistrate is set aside.**<br>**3. The appellant is to pay a fine of $500.00 on or before 15th December 2020.**<br>**4. The sum of $593.00 seized from the appellant by the order of the magistrate shall be returned to the appellant forthwith.** |
| **Reason:** | **The appellant was 29 years old at the time of the commission of the offence with no previous conviction. He was arrested at his dwelling house and charged with possession of 38 grams of cannabis which the prosecutors said had an estimated street value of $250. He pleaded guilty to possession of cannabis and was sentenced to 3 months imprisonment. He has appealed on the basis that the sentence imposed by the learned magistrate was manifestly excessive and relied on sections 1096(1) and (2) and 1102 of the *Criminal Code of Saint Lucia, Cap. 3.01 of the Revised Edition of the Laws of Saint*** |

***Lucia 2015*** **in support of his submission. He urged this Court to vary the order of the learned magistrate pursuant to section 754 of the Criminal Code having regard to the guilty plea of the appellant, his having no previous convictions, the quantity of the drugs and the magistrate's failure to order a pre-sentence report in accordance with section 1096(2) of the Criminal Code.**

**Upon hearing counsel for the appellant and counsel for the respondent and upon reading the submissions filed by counsel on both sides, the appellant having pleaded guilty to the offence of possession of cannabis, the appellant having no previous convictions and the magistrate failing to order a pre-sentence report in accordance with section 1096(2) of the Criminal Code, the Court found that the sentence in the circumstances was excessive and that the offence did not warrant a custodial sentence. The Court noted the concession made by the Crown that the learned magistrate erred in making an order forfeiting the sum of $593.00 which was seized from the appellant since there was no evidence to show that the sum was connected to the offence of possession of cannabis. The Court was of the view that this concession was properly made. As a result, the Court set aside the decision of the learned magistrate and substituted an order that the appellant pay a fine of $500.00 by 15th December 2020. The Court further ordered that the sum of $593.00 seized from the appellant by the order of the magistrate be returned to him forthwith.**

**Case Name:** **Anne Margaret Henry**

**v**

**Dr. Horatius Jeffers**

**[SLUHCVAP2019/0010]**
**(Saint Lucia)**

**Date:** **Wednesday, 9th November 2020**

| | | |
|---|---|---|
| **Coram:** | | **The Hon. Mr. Mario Michel, Justice of Appeal**<br>**The Hon. Mde. Gertel Thom, Justice of Appeal**<br>**The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]** |
| **Appearances:** | | |
| | **Appellant** | **Mr. Dexter Theodore, QC with Ms. Sueanna Frederick** |
| | **Respondent** | **Ms. Patricia Augustin** |
| **Issues:** | | **Civil appeal — Medical negligence — Test of informed consent in Chester v Afshar [2004] UKHL 41 — Disclosure of risks to satisfy the criteria of informed consent — Montgomery v Lanarkshire Health Board [2015] UKSC 11 — Whether learned judge's finding that the appellant gave informed consent was wrong in law and on the facts — Whether respondent had a duty to warn the appellant of post-operative risk — Whether there is evidence that post-operative risk was known and/or unavoidable — Whether there was a breach of duty to warn — Whether respondent's failure to warn the appellant of post-operative risk amounted to negligence — Causation — Whether the learned judge failed to consider the test of successive causes in Williams v The Bermuda Hospitals Board [2016] UKPC 4 — Whether learned judge erred in finding that the standard of care in conducting the surgery and post-operative management of the appellant was in accordance with the standard expected of an orthopedic surgeon — Duty of an expert witness — Role of the court when considering expert evidence** |
| **Type of Order** | | **N/A** |
| **Result / Order:** | | **IT IS HEREBY ORDERED THAT:**<br><br>**Judgment is reserved.** |
| **Case Name:** | | **Anne Margaret Henry**<br><br>**v**<br><br>**Dr. Horatius Jeffers**<br><br>**[SLUHCVAP2019/0010]** |

**(Saint Lucia)**

| | | |
|---|---|---|
| **Date:** | | **Wednesday, 9th December 2020** |
| **Coram:** | | **The Hon. Mr. Mario Michel, Justice of Appeal**<br>**The Hon. Mde. Gertel Thom, Justice of Appeal**<br>**The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]** |
| **Appearances:** | | |
| | **Applicant** | **Mr. Dexter Theodore, QC with him Ms. Sueanna Frederick** |
| | **Respondent** | **Ms. Patricia Augustin** |
| **Issues:** | | **Application for assessment of costs** |
| **Type of Order** | | **N/A** |
| **Result / Order:** | | **IT IS HEREBY ORDERED THAT:**<br><br>**N/A** |
| **Reason:** | | **Mr. Theodore, QC indicated to the Court that the application for an assessment of costs had lost its urgency. He requested that the appeal be heard first, acknowledging that based on the result of the appeal, the application for an assessment of costs may be deemed moot. The Court was inclined to hear the appeal first and thus obliged.**<br><br>**Upon hearing the appeal, the Court intimated to Mr. Theodore, QC that the Court of Appeal was not the appropriate forum to hear the said application. Mr. Theodore, QC therefore indicated to the Court that he would make an application to withdraw the said application and refile it in the High Court.** |
| **Case Name:** | | **Kent Marcus Joseph**<br>**v**<br>**[1] Colin Ian Gaspard**<br>**[2] Seguin Tobias also known as**<br>**Seguin Denis Tobias trading as Colly's Car Wash** |

**[SLUHCVAP2018/0035]**
**(Saint Lucia)**

**Date:** **Wednesday, 9th December 2020**

**Coram:** **The Hon. Mde. Louise Esther Blenman, Justice of Appeal**
**The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]**
**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:** **Mr. Alberton Richelieu**

**Respondents:** **Ms. Wauneen Louis-Harris**

**Issues:** **Civil Appeal — Application to dismiss appeal — Order by consent**

**Type of Order:** **Oral Decision**

**Result / Order:** **IT IS HEREBY ORDERED (BY CONSENT) THAT:**

**The notice of appeal filed on 16th October 2018 is dismissed with costs to the respondents agreed in the sum of $1,500.00.**

**Reason:** **Counsel for the appellant indicated that the parties, by consent, agreed to have the notice of appeal dismissed with costs to the respondents.**

**Case Name:** **Charles Anthony**

**v**

**Gerard Williams**

**[SLUHCVAP2020/0001]**
**(Saint Lucia)**

**Date:** **Wednesday, 9th December 2020**

| | | |
|---|---|---|
| **Coram:** | | **The Hon. Mde. Louise Esther Blenman, Justice of Appeal**<br>**The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]**<br>**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]** |
| **Appearances:** | | |
| | **Appellant:** | **Mr. Horace Fraser** |
| | **Respondent:** | **Ms. Renee St. Rose and Ms. Marie-Ange Symmonds** |
| **Issues:** | | **Civil appeal - Appeal against order striking out claim on the basis that claim prescribed — Application to strike out notice of appeal — Whether leave to appeal was required - Section 26(2) of Eastern Caribbean Supreme Court (Saint Lucia) Act Cap 2.01 of the Laws of Saint Lucia — Whether order on appeal interlocutory or final — Application test — Rule 62.1(3)(a) of the Civil Procedure Rules 2000** |
| **Type of Order** | | **Oral Decision** |
| **Result / Order:** | | **IT IS HEREBY ORDERED THAT:**<br>**1. The appeal is struck out.**<br>**2. The appellant is to pay costs to the respondent assessed in the sum of $2,500.00.** |
| **Reason:** | | **This was an application to strike out the notice of appeal filed on 23rd March 2020 on the basis that the order which was appealed was an interlocutory order for which leave to appeal was required in accordance with section 26(2)(g) of the Eastern Caribbean Supreme Court (Saint Lucia) Act, Cap 2.01 of the Laws of Saint Lucia.**<br><br>**The notice of appeal challenged an order of a learned master granting the respondent's application to strike out the appellant's claim on the basis that the claim was prescribed under the relevant provisions of the Civil Code of Saint Lucia.**<br><br>**On the application to strike, the respondent contended that the appeal was a nullity and ought to be struck out on the basis that the learned master's order was an interlocutory order, as defined by rules 62.1(3)(a) and** |

**(b), and 62.2(1) of the Civil Procedure Rules 2000, and in line with the consistent jurisprudence of this Court evidenced in the cases of *Oliver MacDonna v Benjamin Wilson Richardson*, Civil Appeal No.3 of 2005 (delivered 29th June 2007, unreported); *Cukurova Holdings A.S. v Sonera Holding B.V,* BVI HCVAP2012/029 (delivered 5th December 2012); [2012] ECSCJ No. 362 and, the judgment of Rawlins CJ in *TSJ Engineering Consulting Ltd v Al-Rushaid Petroleum Investment Co*, BVI HCVAP 2010/013 (delivered 27th July 2010); ECSCJ No. 199, all of which indicate that the application test is to be utilised in the determination of whether or not the underlying decision is final or interlocutory and therefore whether or not leave is required.**

**The Court considered the decision of the learned master and concluded that, in light of the aforementioned Civil Procedure Rules and the consistent jurisprudence of the Court, the learned master's decision was not a final order as, had the learned master decided the application to strike in the appellant's favour, the claim would not have been finally determined and would have continued. Accordingly, the appellant was required to have first sought and obtained the leave of the court to appeal against the order of the learned master. The appeal therefore was a nullity, having been filed without leave.**

**The respondent applied for costs in the sum of $2,500.00. That application was not resisted by the appellant.**

**Case Name:** **R.G. Investments Inc.**

**v**

**Comptroller of Customs and Excise**

**[SLUHCVAP2020/0001]**
**(Saint Lucia)**

**Date:** **Wednesday, 9th December 2020**

**Coram:** **The Hon. Mde. Louise Esther Blenman, Justice of Appeal**
**The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]**

**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:** **Mr. Leslie Prospere, Mr. Alberton Richelieu and Ms. Kristian Henry**

**Respondent:** **Mr. Rene Williams and Mr. George K. Charlemagne, on behalf of the Attorney General**

**Issues:** **Civil appeal — Seizure and forfeiture of property under Customs (Control and Management) Act, Cap. 15.05 of the Laws of Saint Lucia — Sections 125, 131 and 135 of the Customs (Control and Management) Act — Imposition of restoration fee — Whether Comptroller of Customs and Excise was empowered under Customs (Control and Management) Act to levy a restoration fee against the appellant — Whether learned judge erred in determining that contents of container were liable to forfeiture and that seizure by Comptroller of Customs and Excise was lawful — Whether learned judge placed unduly literal interpretation on section 131(1)(b) in concluding that contents of container were liable to forfeiture — Whether learned judge erred in applying section 55(3) of Evidence Act, Cap. 4.15 of the Revised Laws of Saint Lucia 2015 and concluding that documents relied upon by the respondent were admissible at trial — Whether learned judge erred in placing insufficient weight to unchallenged evidence of appellant's witnesses — Whether learned judge erred in concluding that there were objectively ascertainable facts upon which to conclude that the container should have been condemned as forfeited — Whether learned judge erred in concluding that appellant had made untrue declaration thus rendering the appellant's property liable to forfeiture**

**Type of Order** **N/A**

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

**IT IS HEREBY ORDERED THAT:**

1. **Leave is granted to both parties to file and serve additional written submissions with authorities, of not more than 3 pages, within 14 days of the date of this order, dealing with the interpretation and application of sections 125, 131 and 135 of**

**the Customs (Control and Management) Act, Cap. 15.05 of the Laws of Saint Lucia or provisions which are in pari materia to those sections from England or any Commonwealth jurisdiction.**

2. **Judgment is reserved.**

**Case Name:**

## Michael Joseph
## v
## RBTT Bank Caribbean Limited

## [SLUHCVAP2018/0027]
## (Saint Lucia)

**Date:** **Thursday, 10th December 2020**

**Coram:** **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**
**The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:** **Mr. Horace Fraser**

**Respondent:** **Mr. Mark Maragh and Ms. Loriann Tugwell**

**Issues:** **Civil Appeal — Application to strike out appeal — Consent order**

**Type of Order** **Oral Decision**

**Result / Order:** **IT IS HEREBY ORDERED BY THE CONSENT OF THE PARTIES THAT:**

1. **Civil Appeal No. SLUHCVAP2018/0027 Michael Joseph v RBTT Bank Limited is withdrawn with no order as to costs.**
2. **Notice of Application to Strike Out Civil Appeal No. SLUHCVAP2018/0027 Michael Joseph v RBTT Bank Limited filed on 27th November 2020 is withdrawn with no order as to costs.**

**Reason:** **The appeal and an application to strike out the notice of appeal filed by the respondent were withdrawn by consent of the parties. The parties agreed that there should be no order as to costs.**

**Case Name:**

**The Attorney General**
**v**
**[1] Anthony Henry**
**[2] Francis Noel**

**[SLUHCVAP2020/0004]**
**(Saint Lucia)**

**Date:** **Thursday, 10th December 2020**

**Coram:** **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**
**The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:** **Mr. Garth Patterson, QC with Ms. Taylor Laurayne, Mrs. Tina Louison and Mrs. Rochelle John-Charles**

**Respondent:** **Ms. Lydia Faisal**

**Issues:** **Civil appeal — Constitutional motion — Right not to be deprived of liberty — Protection against inhuman treatment — Sections 3 and 5 of Constitution of Saint Lucia — Detention of accused persons deemed not fit to plead — Section 1021(1) of Criminal Code of Saint Lucia — Section 31 of Mental Hospitals Act — Power of court to order detention of mentally ill accused person in a manner and place deemed fit — Whether learned judge erred in concluding that detention of respondents in a prison as opposed to a mental health facility breached constitutional right to liberty — Periodic assessment by State of detained persons' fitness to plead — Whether learned judge erred in concluding that detention of appellants without periodic reviews as to fitness to plead amounted to inhuman treatment — Whether there was sufficient evidence in relation to appellants' living conditions in prison upon which to conclude that right to protection from inhuman treatment was breached — Whether learned judge erred in concluding that detention order was unlawful — Constitutional redress — Whether**

**there was sufficient evidential basis to support awards for damages — Whether judge erred in exercising his discretion as to quantum of damages awarded — Whether learned judge erred in utilising a daily rate of $500.00 per day to quantify damages due to appellants**

**Type of Order:** **N/A**

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

**IT IS HEREBY ORDERED THAT:**
**Judgment is reserved.**

**Case Name:**

## Chaney Clerice

**v**

## The Queen

## [SLUHCRAP2017/0009]
## (Saint Lucia)

**Date:** **Thursday, 10th December 2020**

**Coram:** **The Hon. Mr. Mario Michel, Justice of Appeal**
**The Hon. Mde. Gertel Thom, Justice of Appeal**
**The Hon. Mr. Gerard St. C Farara, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant** **Mr. Alberton Richelieu**

**Respondent** **Ms. Isa Cyril**

**Issues:** **Criminal appeal — Appeal against conviction — Buggery — Oral application for appeal to be withdrawn**

**Type of Order** **Oral Decision**

**Result / Order:** **IT IS HEREBY ORDERED THAT:**
**The appeal, having been withdrawn by the appellant, is accordingly dismissed.**

| | |
|---|---|
| **Reason:** | **Counsel for the appellant made an oral application for leave to withdraw the appeal, upon prior agreement with both the appellant and counsel for the respondent. The Court therefore dismissed the appeal.** |

**Case Name:**

## Mervin Wellington

**v**

## Samuel Joseph PC 241

## [SLUMCRAP2018/0008]
## (Saint Lucia)

| | | |
|---|---|---|
| **Date:** | | **Thursday, 10th December 2020** |
| **Coram:** | | **The Hon. Mr. Mario Michel, Justice of Appeal**<br>**The Hon. Mde. Gertel Thom, Justice of Appeal**<br>**The Hon. Mr. Gerard St. C Farara, Justice of Appeal [Ag.]** |
| **Appearances:** | | |
| | **Appellant** | **Mr. Andie George and Ms. Sherene Francis** |
| | **Respondent** | **Mr. Linton Robinson** |
| **Issues:** | | **Magisterial criminal appeal — Appeal against conviction and sentence — Driving without due care and attention — Whether the learned magistrate erred in finding that appellant drove the motorcycle below the standard of a reasonable, prudent and competent driver in all the circumstances of the particular case — Whether learned magistrate failed to apply correct test for driving without due care and attention — Whether learned magistrate erroneously concluded that appellant drove without due care and attention and that there was some degree of carelessness in light of evidence presented — Whether conviction is unsafe – – Whether sentence is excessive** |
| **Type of Order** | | **Oral Judgment** |

**Result / Order:**

**IT IS HEREBY ORDERED THAT:**

1. **The appeal is dismissed.**
2. **The conviction and sentence imposed by the magistrate is affirmed.**

**Reason:**

**This was an appeal against the decision of the learned magistrate sitting in the traffic court, pronounced on 7th May 2018. The magistrate made a finding of guilt against the appellant for three offences, namely, driving without due care and attention, driving a vehicle without it being first registered and driving a vehicle which was not covered by a policy of insurance. The appellant had pleaded not guilty to all three charges and after a full trial the magistrate found him guilty of all three offences and imposed sentences of fines with prison alternatives with respect to each offence.**

**The appellant appealed his conviction and sentence on twelve (12) different grounds of appeal. Counsel for the appellant informed the Court that the appellant would not proceed with his appeal against the offences and sentences with respect to non-registration of the vehicle and the absence of third-party insurance coverage on the vehicle, leaving the sole issue on appeal being whether the magistrate had erred in finding the appellant guilty of the offence of driving without due care and attention and imposing a sentence on him. Counsel for the appellant did retain the excessive sentence ground but did not, however, pursue it. Counsel also consolidated a number of the grounds of appeal but in the end pursued principally the ground of the magistrate failing to apply the correct test in determining whether the appellant was driving without due care and attention. Counsel for the appellant submitted that the magistrate may have conflated the test for driving without due care and attention with the test for dangerous driving and/or she applied the wrong test, meaning that she applied the test for dangerous driving while dealing with the offence of driving without due care and attention.**

**The Court noted that in fact the magistrate did look at the two tests and that the magistrate determined that**

**the evidence sufficed to establish that the appellant had driven below the standard expected of a reasonable, prudent and competent driver in all the circumstances and therefore had driven the motorcycle, on the day and time in question, without due care and attention. The Court was satisfied that there was ample evidence on the basis of which the magistrate could have reached her decision. The Court recognised that the magistrate was the trier of fact in the court below and it was the responsibility of the magistrate to assess and examine the evidence and to satisfy herself, beyond a reasonable doubt, whether the appellant had in fact committed the offence. There was evidence on which she could have done so. The Court therefore saw no reason, and was provided with none by counsel for the appellant, as to why it should interfere with the finding of the magistrate. Having satisfied itself that it was open to the magistrate to find as she did, and that there was no basis on which to interfere with the magistrate's decision, the Court accordingly dismissed the appeal and affirmed the conviction and sentence imposed by the learned magistrate.**

**Case Name:** **Joseph Cadet**
**v**
**St. Lucia Motor & General Insurance Company Limited**

**[SLUHCVAP2018/0039]**
**(Saint Lucia)**

**Date:** **Friday, 11th December 2020**

**Coram:** **The Hon. Mde. Louise Esther Blenman, Justice of Appeal**
**The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]**
**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:** **Mr. Leslie Prospere, Ms. Kristian Henry and Mrs. Megan Duboulay-Lee**

| | | |
|---|---|---|
| | **Respondent:** | **Mr. Dexter Theodore, QC, with him, Ms. Sueanna Frederick** |
| **Issues:** | | **Civil appeal — Sections 4(2), 9(1) and 11 of Motor Vehicles Insurance (Third Party Risks) Act, Cap 8.02 of the Revised Laws of Saint Lucia 2012 — Approach to be taken by a court when interpreting legislative intent — Whether learned master correctly construed and applied provisions of sections 4(2) and 9(1) of Motor Vehicles Insurance (Third Party Risks) Act in light of provisions of section 11(1) and (2) of the Act — Whether respondent may rely on any contractual defences under terms of policy of insurance in its defence of appellant's claim against it** |
| **Type of Order:** | | **N/A** |
| **Result / Order:** | | **[Oral Delivery]**<br><br>**IT IS HEREBY ORDERED THAT:**<br>**Judgment is reserved.** |

| | |
|---|---|
| **Case Name:** | **The Commissioner of Police**<br>**v**<br>**Karema Senora Gumbs**<br><br>**[AXAHCVAP2020/0016]**<br>**(Anguilla)** |
| **Date:** | **Friday, 11th December 2020** |
| **Coram:** | **The Hon. Mde. Gertel Thom, Justice of Appeal**<br>**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**<br>**The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]** |
| **Appearances:** | |
| **Applicant/ 3rd Defendant** | **Mr. Dwight Horsford, Attorney General of Anguilla** |
| **Respondent** | **Ms. Merlanih Lim** |

**Issues:**

**Leave to appeal – Stay of execution – Stay of proceedings – Whether Commissioner of Police proper defendant in proceedings in court below – Whether learned master erred in refusing to strike out claim against Commissioner of Police – Whether applicant's intended appeal has a realistic prospect of success – Whether applicant's intended appeal would be rendered nugatory without a stay**

**Result / Order:**

**IT IS HEREBY ORDERED THAT:**

1. **The application for leave to appeal paragraph 2 of the order in the judgment of Master Sandcroft [Ag.] dated 8th October 2020, by the 3rd defendant, is granted.**
2. **The 3rd defendant shall file and serve the notice of appeal within 21 days of this order.**
3. **The execution of the judgment of Master Sandcroft [Ag.] dated 8th October 2020 is stayed until the hearing and determination of the appeal.**
4. **The proceedings in Claim No. AXAHCV2020/0033 are stayed pending the hearing and determination of the appeal.**

**Reason:**

**The Court upon considering the principles for the grant of leave to appeal, determined that the applicant/3rd defendant's intended appeal has a realistic prospect of success. The Court therefore granted the application for leave to appeal against paragraph 2 of the order in the judgment of the learned master.**

**In relation to the application for the stay, the Court considered the principles for stay and was of the view that the appeal would be rendered nugatory if a stay was not granted. The Court therefore granted the stay sought by the applicant/3rd defendant.**

**Case Name:**

**Karema Senora Gumbs**
**v**
**[1] Jose Vanterpool**
**[2] Attorney General of Anguilla**
**[3] Commissioner of Police**

**[4] Health Authority of Anguilla**
**[5] Government of Anguilla**

**[AXAHCVAP2020/0017]**
**(Anguilla)**

| | | |
|---|---|---|
| **Date:** | | **Friday, 11th December 2020** |
| **Coram:** | | **The Hon. Mde. Gertel Thom, Justice of Appeal**<br>**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**<br>**The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]** |
| **Appearances:** | | |
| | **Applicant** | **Ms. Merlanih Lim** |
| | **Respondent** | **Mr. Dwight Horsford, Attorney General of Anguilla** |
| **Issues:** | | **Leave to appeal – Stay of execution – Whether Attorney General and Government of Anguilla are proper defendants in proceedings in court below where action brought against police officer – Section 3(2) of Crown Proceedings Act Cap C160 of the Revised Laws of Anguilla – Whether learned master erred in striking out claim against Attorney General and the Government of Anguilla – Whether applicant's intended appeal has a realistic prospect of success – Whether applicant's intended appeal would be rendered nugatory without a stay** |
| **Result / Order:** | | **IT IS HEREBY ORDERED THAT:**<br>**1. The application for leave to appeal paragraph 1 of the order in the judgment of Master Sandcroft [Ag.] dated 8th October 2020 is granted, in relation to the 2nd defendant.**<br>**2. The applicant shall file and serve the notice of appeal within 21 days of this order.**<br>**3. The application for leave to appeal paragraph 1 of the order in the judgment of Master Sandcroft [Ag.] dated 8th October 2020, in relation to 5th defendant, is refused.**<br>**4. The execution of the judgment of Master Sandcroft [Ag.] dated 8th October 2020 is stayed** |

**pending the hearing and determination of the appeal.**

**Reason:**

**The Court upon considering the principles for the grant of leave to appeal and section 3(2) of the Crown Proceedings Act Cap C160 of the Revised Laws of Anguilla, determined that the applicant's intended appeal has a realistic prospect of success only against the Attorney General. The Court therefore granted the application for leave to appeal against paragraph 1 of the order in the judgment of the learned master against the Attorney General and refused leave to appeal against the Government of Anguilla.**

**In relation to the application for the stay, the Court considered the principles for stay and was of the view that the appeal would be rendered nugatory if a stay was not granted. The Court therefore granted the stay sought by the applicant.**

**Case Name:**

**Jonathan David Christenbury**
**(substituted by his Administrator R. Michael Allen by Order of the Court)**
**v**
**[1] Keithley F. T. Lake**
**[2] First Fidelity Trust Limited**

**[SKBHCVAP2020/0025]**
**(Saint Christopher and Nevis)**

**Date:** **Friday, 11th December 2020**

**Coram:**

**The Hon. Mde. Gertel Thom, Justice of Appeal**
**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**
**The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]**

**Appearances:**

**Applicant** **Ms. M. Angela Cozier**

**Respondent** **Mr. Brian J. Barnes**

**Issues:**

**Leave to appeal – Whether learned judge was *functus officio* when varying order – Re L and B (Children) [2013] UKSC 8 – Whether learned judge entitled to reverse decision – Whether applicant's intended**

**appeal has a realistic prospect of success – Whether applicant's intended appeal would be rendered nugatory without a stay**

**Result / Order:**

**IT IS HEREBY ORDERED THAT:**

1. **Leave to appeal against the order of Moise J dated 16th October 2020 is refused.**
2. **The application for the stay of execution of paragraphs 1 and 2 of the order of Moise J dated 16th October 2020 is dismissed.**

**Reason:**

**The Court upon considering the principles in Re L and B (Children) [2013] UKSC 8 was of the view that the applicant had no realistic prospect of success and had not met the requirement for the grant of leave to appeal. The Court therefore refused the applicant leave to appeal.**

**With the application for the grant of leave to appeal being refused, the application for the grant of the stay of execution therefore fell away.**

**Case Name:**

**Verna Johnson**
**v**
**Mary Hogan**

**[MNIHCVAP2020/0025]**
**(Montserrat)**

**Date:** **Friday, 11th December 2020**

**Coram:**

**The Hon. Mde. Gertel Thom, Justice of Appeal**
**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**
**The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]**

**Appearances:**

| | |
|---|---|
| **Applicant** | **Mr. Warren Cassell** |
| **Respondent** | **Mr. Jean Kelsick** |

**Issues:**

**Leave to appeal –– Whether learned master erred in law in dismissing application to discharge default judgment –– Whether applicant's intended appeal has**

**a realistic prospect of success — Whether applicant's intended appeal would be rendered nugatory without a stay**

**Result / Order:**

**IT IS HEREBY ORDERED THAT:**

1. **The application for leave to appeal against the order of Master Jan Drysdale dated 25th September 2020 is granted.**
2. **The applicant shall file and serve the notice of appeal within 21 days of this order.**
3. **The proceedings in the claim in the court below, are stayed pending the hearing and determination of the appeal.**

**Reason:**

**The Court upon considering the principles for the grant of leave to appeal and upon being of the view that the applicant's intended appeal had a realistic prospect of success, granted the application for leave to appeal.**

**Further, the Court upon considering the principles for stay and upon being satisfied that the appeal would be rendered nugatory if a stay was not granted, granted the application for stay.**

**Case Name:**

**Qin Hui**
**v**
**[1] Goldteam Group Limited**
**[2] Dayspring Investments Limited**
**[3] King Fame Trading Ltd**

**[BVIHCMAP2020/0023]**
**(Territory of the Virgin Islands)**

**Date:**

**Friday, 11th December 2020**

**Coram:**

**The Hon. Mde. Gertel Thom, Justice of Appeal**
**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**
**The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]**

**Appearances:**

| | |
|---|---|
| **Applicant/1st Defendant** | **Mr. Michael J. Fay, QC** |
| **Respondent** | **Mr. Richard Baird for the 1st respondent** |

**Issues:**

**Leave to appeal – Whether in course of his judgment learned judge demonstrated a bias towards 1st defendant – Whether applicant's intended appeal has a realistic prospect of success – Whether applicant's intended appeal would be rendered nugatory without a stay**

**Result / Order:**

**IT IS HEREBY ORDERED THAT:**

1. **The application for leave to appeal the order Jack J [Ag.] dated 12th October 2020, by the 1st defendant, is granted.**
2. **The 1st defendant shall file and serve the notice of appeal within 21 days of this order.**
3. **Pending determination of the appeal, no application in these proceedings shall be listed before or determined by Jack J [Ag.].**
4. **Pending determination of the appeal, the assessment of costs against the 1st defendant pursuant to the order made by Jack J [Ag.] on 12th October 2020 be stayed.**
5. **The costs of the application for leave to appeal be costs in the appeal.**

**Reason:**

**The Court upon being satisfied that the 1st defendant's intended appeal had a realistic prospect of success and had met the requirement for the grant of leave to appeal, granted the said application.**
**Further, the Court upon having regard to the nature of the matter, was of the view that the learned judge should not continue to determine applications in this matter pending the hearing and determination of the appeal, granted the application for stay.**