

COURT OF APPEAL SITTING
SAINT CHRISTOPHER AND NEVIS
12th – 16th October 2015

JUDGMENTS

Case Name:

**Margaret Blackburn
v
James A.L. Bristol**

[GDAHCVAP2012/0019]

Date:

Monday, 12th October 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Ms. Daisy Joseph Andall holding papers for counsel for the appellant

Respondent:

Ms. Keisha Spence holding papers for Mr. Leslie Haynes, QC

Issues:

Civil appeal – Motor vehicle accident – Whether the learned trial judge erred in making factual findings – Approach of appellate court on review of trial judge’s factual findings – Negligence – Whether the learned judge erred in finding that the appellant was negligent

Result and Reason:

Held: Appeal dismissed and costs to the Respondent on the appeal in the sum of \$24,500.00 representing 2/3 of the prescribed costs of \$36,750.00 awarded by the Judge in the court below.

- 1. There is a well-recognized reluctance by appellate courts to interfere with a Judge’s findings of primary fact, especially when they depend to a significant extent upon the Judge’s assessment of witnesses**

that he or she has seen and heard give evidence. Accordingly, the correct approach of an appellate court with respect to interfering with a Judge's factual findings is that an appellate court should not interfere with the Trial Judge's conclusions on primary facts unless satisfied that the Judge was plainly wrong. Further, the restraint against an appellate court interfering with findings of fact applies not only to findings of primary fact, but also the Trial Judge's evaluation of those facts and the inferences drawn from them.

Landau and The Big Bus Company Limited and Another [2014] EWCA Civ 1102 applied; *Assicurazioni Generali Spa v Arab Insurance Group (BSC)* [2002] EWCA Civ 1642 applied; *Piglowska v Piglowski* [1999] 1 WLR 1360 applied; *McGraddie v McGraddie and another* [2013] 1 WLR 2477 applied; *Fage UK Ltd. v Chobani UK Ltd.* [2014] EWCA Civ 5 applied.

2. The phrase 'plainly wrong' does not address the degree of certainty of the appellate judges that they would have reached a different conclusion on the facts. Rather, it directs the court to consider whether it was permissible for the judge at first instance to make the findings of fact which he or she did in the face of the evidence as a whole. The appellate court is required to make this judgment bearing in mind that it has only a printed record of the evidence. Thus, to interfere with a judge's decision, the appeal court is required to identify a mistake in the judge's evaluation of the evidence that is sufficiently material to undermine the judge's conclusions.

Beacon Insurance Company Limited v Maharaj Bookstore Limited [2014] UKPC 21 applied; *In re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] 1 WLR 1911 applied; *Central Bank of Ecuador and others v Conticorp SA and others* [2015] UKPC 11 applied; *Thomas v Thomas* [1947] AC 484 applied; *Langsam v Beachcroft LLP* [2012] EWCA Civ 1230 applied.

3. Where the application of a legal standard such as

negligence or obviousness involves no question of principle but is simply a matter of degree, an appellate court should be very cautious in differing from a judge's evaluation. A determination of whether or not the standard of care was met by a defendant involves the application of a legal standard to a set of facts, that is, a question of mixed fact and law. Accordingly, unlike questions of pure law, an appellate court must be cautious in finding that a trial judge erred in his or her determination of negligence, as it is often difficult to extricate the legal questions from the factual. In this appeal, the trial judge made a number of factual findings which led to the conclusion that Mrs Blackburn was at fault in the accident. In all the circumstances, the trial judge found no evidence of liability on the part of Mr. Bristol. The trial judge's conclusion as to the cause of the accident was a finding of fact and it was open to her on the evidence to so find. The judge's conclusion was reasonably justifiable on the evidence and it could not be said that the judge was plainly wrong.

Biogen Inc v Medeva Plc [1997] RPC 1 applied; *Housen v Nikolasien* 2002 SCC 33 applied; *Thomas v Thomas* [1947] AC 484 applied.

4. Expert evidence does not stand alone and cannot be considered by a court in a vacuum. It is to be considered in the context of all the evidence before the court which the judge accepts. The weight to be attached to various pieces of evidence is essentially the preserve of the trial judge. In this appeal, there was conflicting expert evidence on the issue of Mr. Bristol's speed and although the learned trial judge did not explain why she preferred the evidence of Mr. Bristol's expert over that of Mrs Blackburn, the judge's assessment of Mr. Bristol's speed was a reasonable inference based on the evidence and was not plainly wrong.
5. The trial process ought not to ordinarily reach a conclusion which has never been canvassed during the trial and on the implications of which neither the lay witness nor the expert witness have had the opportunity to give comment, nor the parties the

opportunity to martial their arguments. In this appeal, although the trial judge did not make a finding as to the point of impact, the evidence was that Mrs. Blackburn turned across the path of Mr. Bristol. In the circumstances, the absence of a finding as to the point of impact was not very material. Accordingly, it cannot be said that the trial judge's conclusion was based on an alternate scenario or was not supported by evidence.

Faunch v O'Donoghue and another [2013] EWCA Civ 896 applied; *Sahal and Suri and another* [2012] EWCA Civ 1064 applied.

6. In an action for negligence, the claimant must allege, and has the burden of proving, that the accident was caused by negligence on the behalf of the defendant. It is the duty of the trial judge to examine all the evidence at the end of the case and decide whether on the facts he or she finds to have been proved and on the inferences that he or she is prepared to draw, that he or she is satisfied that negligence has been established. In this appeal, there was nothing in the judgment of the learned judge that was so erroneous so as to warrant appellate inference, as the conclusions reached by the trial judge could fairly be reached on the evidence.

Henderson v Henry E Jenkins and Sons and Evans [1970] AC 282 applied.

Case Name:

[1] Halliwell Assets Inc
[2] Panikos Symeou
[3] Marigold Trust Company Limited
Appellants / Defendants

v

Hornbeam Corporation

Claimant

Vadim Shulman

Respondent

[BVIHCMAP2015/0001]

Date: Monday, 12th October 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellants: Ms. Keisha Spence holding papers for counsel for the appellants

Respondent: No appearance

Issues: Civil appeal – Ex parte hearing – Court’s costs jurisdiction – Service out of jurisdiction of non-party costs application – Whether judge erred in dismissing application to serve party out of the jurisdiction – Rule 7.3 of the Civil Procedure Rules 2000 – Rule 7.14 of the Civil Procedure Rules 2000 – Section 11 of the Eastern Caribbean Supreme Court (Territory of the Virgin Islands) Act

Result and Reason: Held: Appeal allowed; and applications remitted to the court below.

1. The court’s jurisdiction to make costs orders are derived from statute. This jurisdiction is grounded in section 50 (1) of the Supreme Court of Judicature (Consolidation) Act 1925 imported into the Virgin Islands by virtue of Section 7 of the Supreme Court Act, and further buttressed by rules of court namely the ECSC CPR which by rule 64.10 (1) specifically empowers the court to make costs orders against non-parties.
2. CPR 7.3 provides gateways for service out. The appellants must be able to show that the claim form is one which qualifies under one or more gateways contained in CPR 7.3 for service out to be affected.

Rule 7.3 of the Civil Procedure Rules 2000 applied.

3. CPR 7.14 contemplates service of an application out of the jurisdiction where the claim form itself qualifies for service out of the jurisdiction and where permission may be granted by the court. For CPR 7.14 to be engaged, Mr. Shulman must have been a party to the original claim. A claim for cost against Mr. Shulman pursuant to rule 64.10 does not without more make him a party to the claim.

Rule 7.14 of the Civil Procedure Rules 2000 applied.

4. The application to join Mr. Shulman as a party is inextricably linked to the non-party costs application. The appropriate course therefore is for the court below to consider the joinder application and determine it on its merits along with the non-party costs applications and permissions to serve out.

Part 19 of the Civil Procedure Rules 2000 applied.

5. Section 11 of the Supreme Court Act is a procedural empowering provision and is not one which may be relied upon as a basis for importing a substantive jurisdiction.

Section 11 of the Eastern Caribbean Supreme Court (Territory of the Virgin Islands) Act. Cap. 80, Revised Laws of the Virgin Islands 1991 applied.

STATUS HEARING

Case Name:

Evans Amory

v

The Director of Public Prosecutions

[SKBHCRAP2012/0016A]

Date: Monday, 12th October 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Tashaun Vasquez, Crown Counsel

Issues: Status of matter – Appeal against conviction and sentence – Indecent assault

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The Registrar of the High Court shall cause to be prepared within one (1) month of the date of this Order a transcript of proceedings of trial of this matter including summing up by the learned trial judge and the sentencing hearing;
2. The Registrar shall notify the parties within seven (7) days of the preparation of transcript that the transcript is available for collection and shall transmit a copy thereof to the appellant at Her Majesty's Prison;
3. The appellant may file a skeleton argument within twenty-eight (28) days of receipt of record, a copy of which shall be served on the respondent;
4. The respondent may file a skeleton argument within twenty-eight (28) days of receipt of the appellant's skeleton argument or within twenty-eight (28) days of the time limited for the filing of a skeleton argument by the appellant;
5. The appeal shall be fixed for hearing at the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 6th June 2016;
6. Liberty to the appellant to apply to a judge of the High Court for bail pending the hearing and determination of the appeal.

Reason: The transcripts were almost completed.

Case Name:

**Sylvester Merchant
v
The Director of Public Prosecutions**

[SKBHCRAP2013/0014]

Date:

Monday, 12th October 2015

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. John Cato holding papers for Dr. Henry Browne, QC

Respondent:

Mr. Tashaun Vasquez, Crown Counsel

Issues:

Status of matter – Appeal against conviction and sentence – Unlawful carnal knowledge

**Type of Oral
Result/Order
Delivered:**

Directions

Result / Order:

- 1. The Registrar of the High Court shall cause to be prepared within six (6) weeks of the date of this Order a transcript of the proceedings of trial of this matter including notes of evidence, the summing up of the learned trial judge and sentencing hearing;**
- 2. The Registrar shall notify the parties within seven (7) days of the receipt of transcript of its availability and shall transmit a copy thereof to the appellant at Her Majesty's Prison;**
- 3. The appellant shall file a skeleton argument within twenty-eight (28) days of being notified of the availability of transcript and shall cause a copy of the skeleton argument to be served on the respondent;**
- 4. The respondent shall file a skeleton argument in response within twenty-eight (28) days of receipt of appellant's skeleton argument;**

5. The appeal shall be fixed for hearing at the next sitting of Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 6th June 2016.

Reason: Transcripts had not been completed as yet.

Case Name: **Sandy Nisbett**
v
The Director of Public Prosecutions

[SKBHCRAP2012/0014]

Date: Monday, 12th October 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Tashaun Vasquez, Crown Counsel

Issues: Status of matter – Appeal against sentence – Manslaughter

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The Registrar of the High Court shall cause to be prepared within one (1) month of date of this Order a transcript of proceedings in Court below;
2. The Registrar shall notify the parties within seven (7) days of the receipt of transcript of its availability and shall transmit a copy thereof to the appellant at Her Majesty's Prison;
3. The appellant shall file a skeleton argument and any other document(s) relevant to this appeal within twenty-eight (28) days of being notified of the

- availability of the transcript;
4. The respondent shall file a skeleton argument in response within twenty-eight (28) days of receipt of appellant's skeleton argument and or other relevant document(s);
 5. The appeal shall be fixed for hearing at the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 6th June 2016.

Reason: The transcripts had not been completed as yet.

Case Name: Clayton Laws
v
The Director of Public Prosecutions
[SKBHCRAP2013/0001]

Date: Monday, 12th October 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Teshawn Vasquez, Crown Counsel

Issues: Status of matter – Appeal against conviction and sentence – Kidnapping

Type of Oral Result/Order Delivered: Directions

Result / Order: 1. The Registrar of the High Court shall cause to be prepared within six (6) weeks of the date of this order a transcript of proceedings at the trial of this matter including notes of evidence, judge's summing up and sentencing hearing;

2. The Registrar shall notify the parties of availability of transcript within seven (7) days of receipt of the transcript and shall transmit a copy thereof to the appellant at Her Majesty's Prison.
3. The appellant shall file skeleton argument in support of this appeal within twenty-eight (28) days of his receipt of the transcript and shall transmit a copy thereof to the appellant at Her Majesty's Prison;
4. The respondent shall file and serve skeleton argument in response within twenty-eight (28) days of receipt of the appellant's skeleton argument;
5. The hearing of this appeal shall be set down for the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 6th June 2016;
6. Liberty to the appellant to apply to a judge of the High Court for bail pending the hearing and determination of this appeal.

Reason: The transcript had not been completed as yet.

Case Name: Julian Clarence Charles
v
The Director of Public Prosecutions
[SKBHCRAP2013/0015]

Date: Monday, 12th October 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Tashaun Vasquez, Crown Counsel

Issues: Status of matter – Appeal against conviction and sentence – Unlawful carnal knowledge

**Type of Oral
Result/Order
Delivered:**

Directions

Result / Order:

1. The Registrar of the High Court shall cause to be prepared within six (6) weeks of date of this order a transcript of proceedings for trial of the matter including the notes of evidence, summing up by the trial judge and sentence hearing;
2. The Registrar shall notify all parties within seven (7) days of the receipt of transcript that same is available for collection and shall cause a copy thereof to be transmitted to the appellant at Her Majesty's Prison;
3. The appellant may file a skeleton argument within twenty-eight (28) days of receipt of transcript and shall cause a copy thereof to be served on respondent;
4. The respondent may file skeleton argument in response within twenty-eight (28) days of receipt of the appellant's skeleton argument or within twenty-eight (28) days of time limited for filing of appellant's skeleton argument;
5. The appeal shall be set down for hearing at the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 6th June 2016;
6. Liberty to the Appellant to apply to a judge of the high court for bail pending the hearing and determination of this appeal.

Reason:

The transcript had not been completed as yet.

Case Name:

**The Attorney General of St Christopher and
Nevis**

v

[1] Hon. Sam Condor

[2] Hon. Shawn K. Richards

[SKBHCVAP2013/0003]

Date: Monday, 12th October 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances

Appellant: Ms. Violet Williams, Crown Counsel

Respondents: No appearance

Issues: Status of matter

Type of Oral Result/Order Delivered: Directions

Result / Order: The matter shall be delisted and the Registrar of the High Court shall cause a correct case to be placed on list for status hearing at the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 6th June 2016.

Reason: The number listed and parties do not correspond.

Judgment was already given in the case of *The Attorney General of St. Christopher and Nevis v Hon. Sam Condor and Hon Shawn K. Richards*.

Case Name:

Joan Slack
v
[1] Billy Slack
[2] Camella Slack-Josephs
[3] Ian Slack
[4] Monica Slack-Haynes
[5] Yvonne Slack-Louisy

[SKBHCVAP2011/0019]

Date: Monday, 12th October 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: No appearance

Respondents: No appearance

Issues: Status of matter

**Type of Oral
Result/Order
Delivered:** Directions

Result / Order:

1. Matter adjourned for further status hearing to the next sitting of Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 6th June 2016.
2. Notice of status hearing of matter is to be served on all parties.

Reason: The Court was informed that counsel for the appellant has passed away and there was no one in office to carry on the matter and that the respondents were being represented by overseas counsel.

Case Name:

Ramsbury Properties Limited
v
Ocean View Construction Limited

[SKBHCVAP2011/0020]

Date: Monday, 12th October 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Ms. M. Angela Cozier

Respondent: No appearance

Issues: Status of matter

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The Registrar of the High Court shall cause to be prepared a transcript of proceedings in the court below within six (6) months of the date of this order;
2. The Registrar shall notify the parties of the availability of transcripts for collection upon the payment of prescribed fee;
3. The appellant shall file and serve skeleton argument in response within fifty-two (52) days of being notified of the availability of transcript;
4. The respondent shall file and serve skeleton argument in response within twenty-eight (28) days of receipt of the appellant's skeleton argument;
5. The matter is adjourned for further status hearing and shall be set down for the next sitting of Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 6th June 2016.

Reason The transcript had not been completed as yet.

The Registrar was called in and she informed the Court about the preparation of transcripts by the Registry. She requested that a longer time period be given for the preparation of transcripts, given the difficulties encountered with matters heard in Nevis.

Case Name:

Delta Petroleum (Nevis) Limited
v
[1] OOJJ's LTD (Doing business as OOJJ's Service Station)
[2] Othneil Hyliger

[SKBHCVAP2013/0016]

Date: Monday, 12th October 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. John Carrington, QC, with him, Mr. Adrian E. Scantlebury

Respondent: Ms. Sherry-Ann Liburd-Charles

Issues: Status of matter

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The transcripts having been filed and served on respondent, the matter shall proceed in accordance with CPR 62.9, 62.11 and 62.12;
2. The appeal shall be set down for hearing at the next sitting of Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 6th June 2016.

Case Name: Resenda Browne
v
[1] Nigel Romney
[2] Lionel Patrick

[SKBHCVAP2011/0026]

Date: Monday, 12th October 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Perry Joseph holding papers for Ms. Angelina Gracy Sookoo

Respondents: Mr. Adrian E. Scantlebury

Issues: Status of matter – Appeal against decision of trial judge on issues of liability

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The parties having being notified of availability of transcripts, the appellant shall prepare, file and serve copies of record on or before 21st January 2016;
2. The appellant shall file and serve skeleton argument on or before 24th March 2016;
3. The respondent shall file and serve skeleton argument in response on or before 20th April, 2016;
4. Leave to appellant to file a skeleton argument in reply within fourteen (14) days of service of the respondent's skeleton argument;
5. The hearing of the appeal shall be fixed for hearing at the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 6th June 2016.

Case Name: The Democrat Printing Company Limited
v
The Right Honourable Dr. Denzil Llewellyn Douglas

[SKBHCVAP2013/0026]

Date: Monday, 12th October 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Jonel Powell

Respondent: Mr. Perry Joseph holding papers for Ms. Angelina Gracy Sookoo

Issues: Civil appeal

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The Registrar of the High Court shall cause to be prepared within two (2) months of the date of this order a transcript of proceedings in the court below and the Registrar shall notify the parties of availability of transcripts upon payment of required prescribed fee;
2. The appellant shall file and serve skeleton argument within fifty-two (52) days of being notified of availability of transcript;
3. The respondent shall file and serve skeleton argument within twenty-eight (28) days of being served with a copy of the appellant's skeleton argument;
4. The appellant shall be at liberty to file and serve skeleton argument in reply within fourteen (14) days of being served with a copy of the respondent's skeleton argument;
5. The appeal shall be set down for hearing at the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 6th June 2016.

Lynn Bass

v

St. Kitts-Nevis-Anguilla National Bank Limited

Case Name:

[SKBHCVAP2009/0004]

Date: Monday, 12th October 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Ms. Rivi Warner-Lake

Respondent: Ms. Keisha Spence

Issues:

Type of Oral Result/Order Delivered: Directions

Result / Order: Upon notification to the Court by counsel for the appellant that the appellant will file an application to discontinue the appeal, the appeal is hereby delisted.

Reason: Counsel for the appellant indicated that she would file necessary documents to have matter discontinued.

APPLICATIONS AND APPEALS

Case Name:

Mark Brantley
v
Dwight C. Cozier

[SKBHCVAP2014/0027]

Date: Monday, 12th October 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal (Ag.)

Appearances:

Appellant: Ms. Keisha Spence holding papers for Ms. Angela

Cozier

Respondent: No appearance

Issue: Applications for leave to appeal to Her Majesty in Council – Application to correct judgment – Application for adjournment of application for leave to appeal

Type of Oral Result/Order Delivered: N/A

Result / Order: Matter adjourned to Wednesday, 14th October 2015.

**Case Name: Emmanuel Mills
v
The Director of Public Prosecutions
[SKBHCRAP2011/0007]**

Date: Monday, 12th October 2015

**Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:
Appellant: Dr. Henry Browne, QC, with him, Ms. Cynthia Marissa Hobson-Newman and Mr. O’Grenville S. H. Browne
Respondent: Mr. Dane Hamilton, QC, Mr. Arudranauth Gossai, Director of Public Prosecutions [Ag.] and Mr. Giovanni James and Ms. Greatess Gordon

Issues: Appeal against conviction and sentence – Rape – Attempted robbery – Burglary – Application to amend grounds of appeal – Error of trial judge – Error in law – Whether learned judge failed to adequately direct jury on alibi defence – Whether learned judge failed to direct jury on law of circumstantial evidence – Whether verdict

unsafe – Whether there was miscarriage of justice

**Type of Oral
Result/Order
Delivered:**

Directions

Result / Order:

- 1. The appellant shall file and serve additional submissions by Tuesday, 13th October 2015.**
- 2. The hearing of the appeal is adjourned until Wednesday, 14th October 2015.**

Reason:

To allow the appellant to file and serve additional grounds of appeal.

Case Name:

Denrick Jeffers

v

The Director of Public Prosecutions

[SKBHCRAP2012/0013]

Date:

Monday, 12th October 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Dr. Henry Browne, QC, with him, Ms. Cynthia Marissa Hobson-Newman and Mr. O’Grenville S. H. Browne

Respondent:

**Mr. Dane Hamilton, QC, Mr. Arudranauth Gossai,
Director of Public Prosecutions [Ag.] and Mr. Giovanni James**

Issues:

**Appeal against conviction and sentence – Rape –
Application to file additional grounds of appeal – Error
of trial judge – Error in law – Failure to adequately and
properly address issue of corroboration – Failure to
adequately and properly address issue of circumstantial
evidence – Failure to put case for defence adequately,**

fairly and in balanced manner

Type of Oral
Result/Order
Delivered:

Directions

Result / Order:

The appellant shall amend the application to include the three additional grounds of appeal.

Case Name:

Denrick Jeffers
v
The Director of Public Prosecutions
[SKBHCRAP2012/0013]

Date:

Monday 12th October 2015

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant:

Dr. Henry Browne, QC, with him, Ms. Cynthia Marissa Hobson-Newman and Mr. O’Grenville S. H. Browne

Respondent:

Mr. Dane Hamilton, QC, Mr. Arudranauth Gossai, Director of Public Prosecutions [Ag.] and Mr. Giovanni James

Issues:

Appeal against conviction and sentence – Rape – Application to file additional grounds of appeal – Error of trial judge – Error in law – Failure to adequately and properly address issue of corroboration – Failure to adequately and properly address issue of circumstantial evidence – Failure to put case for defence adequately, fairly and in balanced manner

Type of Oral
Result/Order
Delivered:

Oral Judgment or Decision

1. Appeal against conviction is allowed.

2. The conviction is quashed and the sentence is set aside.
3. There will be no retrial of the appellant.

Reason:

The Court reviewed the grounds of appeal advanced by Dr. Henry Browne, QC. The central issue in this case was whether there was consensual sex. The Court held that the learned trial judge erred in law in relation to the manner in which he treated the appellant's defence on the issue of consent and that this error was fatal.

The jury ought to have been put in a position to fairly and properly weigh both the defence's case and the prosecution's case. Furthermore, the learned trial judge ought to have impressed upon the jury that even if they rejected the defence's case it is important for them assess the prosecution's case in order to determine whether they proved their case. The learned trial judge's treatment of the evidence presented by the defence left a lurking doubt in the mind of the jury as this evidence was not fairly and properly put to them. This failure put the safety of the conviction in question and accordingly, the Court stated that it could not uphold the appellant's conviction.

Where the only issue was consent, the learned trial judge ought to have indicated to the jury that there was no burden on the appellant to prove consent but that the onus was on the prosecution to negative consent. Furthermore, he did not assist the jury to properly assess and evaluate the evidence that was led by the appellant on the issue of consent. The learned trial judge's failure to do the aforementioned was a fatal error.

The Court further held that the learned trial judge's treatment of the circumstantial evidence could have led to the jury being misled or confused as to whether the appellant was guilty or that there was corroborative evidence when there was none. The case before the judge neither dealt with corroboration nor circumstantial evidence. The Court was of the opinion that the learned trial judge misdirected the jury on the issue of corroboration and circumstantial evidence,

thereby undermining the conviction and rendering it unsafe.

The Court held that it would be in the public interest, the interest of the virtual complainant and interest of the defendant not to order a retrial

Andre Bennett and Another v The Queen [2001] UKPC 37 applied; *Sherfield Bowen v The Queen* ANUHCRA2005/0004 (delivered 20th June 2001, unreported) applied.

Case Name:

**Troy Hendrickson
v
The Director of Public Prosecutions**

[SKBHCRAP2011/0004]

Date:

Monday, 12th October 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. John Cato

Respondent: Mr. Giovanni James, Crown Counsel

Issues:

Appeal against conviction and sentence – Unlawful carnal knowledge – Application for adjournment

Type of Oral Result/Order Delivered:

Directions

Result / Order:

- 1. The appellant by his counsel shall:
 - a) File and serve his amended grounds of appeal no later than Monday, 19th October 2015.**
 - b) File and serve skeleton arguments together with copies of the authorities relied on by Friday, 30th****

October 2015.

2. The respondent shall be at liberty to file skeleton submissions in reply by Friday, 13th November 2015.
3. The hearing of this appeal is adjourned at the request of the appellant to the next sitting of the Court in the Federation of St. Christopher and Nevis during the week commencing the 6th June 2016.

Case Name:

**Dwight Jacobs
v
The Chief of Police**

[SKBMCRAP2014/0017]

Date:

Monday, 12th October 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Dr. Henry Browne, QC

Respondent: Mr. Giovanni James

Issues:

Application to have matter traversed

**Type of Oral
Result/Order
Delivered:**

Directions

Result / Order:

By consent, the matter is traversed to next sitting of the Court in June 2016.

Case Name:

Razba Matthew

v
The Director of Public Prosecutions

[SKBHCRAP2011/0021]

Date: Monday, 12th October 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Marsha Henderson

Respondent: Mr. Arudranauth Gossai, Director of Public Prosecutions [Ag.] and Mr. Giovanni James

Issues: Appeal against conviction and sentence – Manslaughter – Application to amend grounds of appeal

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The appellant by his counsel shall file and serve amended grounds of appeal by 31st October 2015.
2. The appellant shall file and serve skeleton arguments together with copies of authorities relied on by 30th November 2015.
3. The respondent shall file and serve skeleton submissions with copies of authorities relied on by 31st December 2015.
4. The hearing of this appeal is adjourned to the next sitting of the Court in the Federation of St. Christopher and Nevis commencing during the week 6th June 2016.
5. The Court directs that the Registrar issue a warrant to the Superintendent of Police to release the appellant forthwith.

Case Name:

Lindsay Fitz Patrick Grant

v

[1] Rupert Herbert

[2] Leroy Benjamin

[3] Wentford Rogers

[SKBHCVAP2012/0001]

Date:

Tuesday, 13th October 2015

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant:

Ms. Marguerite A. Foreman, with her, Ms. Teshari A. J. John

Respondents:

Ms. Angelina Gracy Sookoo for the 1st respondent, Ms. Simone Bullen Thompson for 2nd and 3rd respondents

Issues:

Interlocutory appeal – Application to have consent order approved in terms

**Type of Oral
Result/Order
Delivered:**

Directions

Result / Order:

- 1. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 6th June 2016.**
- 2. Costs agreed at \$2,500.00 to be payable by the first respondent.**
- 3. The consent order is approved in terms:**
 - a) The 2nd and 3rd respondents shall not pursue payment by the appellant of the costs claimed by them (the applicants) as set out in paragraph 2(b) of the said Order.**
 - b) Each of the parties shall bear their own costs on this appeal, appeal of the consolidated matters
SKBHCR2004/0182 (Grant) and
SKBHCV2004/0183 (Hamilton) and
SKBHCV2004/0182 Grant v Rupert Herbert, Leroy**

Benjamin & Wentford Rogers.
c) The appellant shall discontinue this matter against the 2nd and 3rd respondents.

Reason: Counsel for the first respondent filed her submissions late and the parties agreed by a consent order.

Case Name: Allister Forde
v
The Director of Public Prosecutions

[SKBHCRAP2011/0024]

Date: Tuesday, 13th October 2015

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. John Cato
Respondent: Mr. Giovanni James, with him, Ms. Greatess Gordon and Mr. Arudranauth Gossai, Director of Public Prosecutions [Ag.]

Issues: Appeal against sentence – Shooting with intent – Application to amend grounds of appeal

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The appellant is to file amended grounds of appeal on or before the 14th November 2015. The amended grounds are to be served on the respondent on or before 21st November 2015.
2. The appellant is to file and serve skeleton submissions and authorities on or before 31st December 2015.

3. The respondent is to file and serve skeleton submissions and authorities on or before 31st January 2016.
4. Hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing the 6th June 2016.

Reason: The submissions of the appellant, as filed, were unsatisfactory.

Case Name: **Eartis Harris**
v
The Director of Public Prosecutions

[SKBHCVAP2013/0010]

Date: Tuesday, 13th October 2015

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances

Appellant: In person

Respondent: Mr. Arudranauth Gossai, Director of Public Prosecutions [Ag.]

Issues: Appeal against conviction – Indecent assault – Application for an adjournment

Type of Oral Result/Order Delivered: Directions

Order/Result:

1. Application by the appellant for an adjournment to the next sitting of the Court of Appeal to instruct counsel is granted.
2. Hearing of the appeal is adjourned to the next sitting

of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 6th June 2016.

Reason: The adjournment was granted in order to facilitate the appellant in obtaining counsel to conduct the appeal on his behalf.

Case Name: Mark Brantley
v
Dwight C. Cozier

[SKBHCVAP2014/0027]

Date: Wednesday, 14th October 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. M. Angela Cozier
Respondent: Ms. Dia Forrester

Issues: Applications for leave to appeal to Her Majesty in Council – Application to correct judgment – Application for adjournment of application for leave to appeal

Type of Oral Result/Order Delivered: N/A

Result / Order: Both applications are adjourned to the next sitting of the Court in the Federation of St. Christopher and Nevis commencing the week of 6th June 2016.

Reason: To allow the applications to be heard at the same time.

Case Name:

**[1] Exzavier Elliott
[2] Jervin Rawlins
[3] Philip Jones**

v

The Director of Public Prosecutions

**[SKBHCRAP2011/0033]
[SKBHCRAP2011/0032]
[SKBHCRAP2011/0031]**

Date:

Wednesday, 14th October 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

Appellants:

**Mr. Nassibou Butler for Exzavier Elliott
Mr. John Cato for Jervin Rawlins
Dr. Henry Browne, QC for Philip Jones**

Respondent:

Mr. Dane Hamilton, QC, with him, Mr. Arudranauth Gossai, Director of Public Prosecutions [Ag.] and Mr. Tashaun Vasquez

Issues:

Appeal against conviction and sentence – Robbery – Assault with intent to rob – Whether learned trial judge erred in law in failing to adequately or sufficiently or at all direct jury on defence of alibi raised in case – Whether learned trial judge erred in law in failing to adequately or accurately address jury on identification evidence and circumstantial evidence – Whether summation was unbalanced and unfair – Whether learned trial judge failed to properly address jury on law of joint enterprise – Application to amend grounds of appeal

**Type of Oral
Result/Order
Delivered:**

Directions

Result / Order:

1. There being no objection to amend the grounds of appeal the application to amend is granted.
2. The submissions filed on behalf of the 3rd named appellant shall also be treated as submissions of the 1st and 2nd appellants (filed on 11th August 2015).
3. The respondent shall file and serve submissions in response to the submissions of the appellants together with copies of authorities relied on no later than 15th December 2015.
4. Hearing of this appeal is adjourned to the next sitting of the Court in the Federation of St. Christopher and Nevis fixed for the week commencing 6th June 2016.

Reason:

To allow counsel for the respondent some time to respond to the new grounds of appeal.

Case Name:

[1] Exzavier Elliott
[2] Jervin Rawlins
[3] Philip Jones

v

The Director of Public Prosecutions

[SKBHCRAP2011/0033]
[SKBHCRAP2011/0032]
[SKBHCRAP2011/0031]

Date:

Wednesday, 14th October 2015

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellants:

In person

Respondent:

Mr. Dane Hamilton, QC, with him, Mr. Arudranauth Gossai, Director of Public Prosecutions [Ag.]

Issues: Appeal against conviction and sentence – Robbery – Assault with intent to rob – Whether learned trial judge erred in law in failing to adequately or sufficiently or at all direct jury on defence of alibi raised in case – Whether learned trial judge erred in law in failing to adequately or accurately address jury on identification evidence and circumstantial evidence – Whether summation was unbalanced and unfair – Whether learned trial judge failed to properly address jury on law of joint enterprise – Application for adjournment

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The application to adjourn is granted.
2. Hearing of the appeal is adjourned to the next sitting of this Court in the Federation of Saint Christopher and Nevis during the week commencing 6th June 2016.
3. The respondent to file and serve submissions on the appellants by 15th December 2015.
4. If the appellants obtain counsel they are to file and serve submissions on the Crown by 31st January 2016.

Reason: To give the appellants an opportunity to secure counsel.

Case Name: Emmanuel Mills
v
The Director of Public Prosecutions
[SKBHCRAP2011/0007]

Date: Wednesday, 14th October 2015

Coram The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. O’Grenville S. H. Browne, with him, Dr. Henry Browne, QC and Ms. Cynthia Marissa Hobson-Newman

Respondent: Mr. Dane Hamilton, QC, Mr. Arudranauth Gossai, Director of Public Prosecutions [Ag.], Ms. Greatess Gordon and Mr. Tashaun Vasquez

Issues: Appeal against conviction and sentence – Rape – Attempted Robbery – Burglary – Whether conviction sound in law – Whether conviction safe having regard to evidence – Whether learned trial judge gave proper directions to the jury on the issue of identification – Whether learned trial judge gave proper directions to the jury on the issue of alibi – Whether learned trial judge gave proper directions to the jury on the issue of circumstantial evidence

Type of Oral Result/Order Delivered: Oral Judgment or Decision

Result / Order:

1. The appeal is allowed.
2. Conviction quashed for failure to give proper and adequate directions to the jury on the issues of identification and alibi evidence.
3. The Court directs that the appellant be retried.

Reason: The Court was of the view that the conviction was unsafe and that there was insufficient evidence to allow it to apply the proviso. However, the Court held that it was in the interests of justice for there to be a retrial before a different judge. The majority of the Court was of the view that a jury, properly directed, could properly come to a decision on the case.

Case Name: Sankofa Maccabee
v
The Chief of Police

[SKBMCRAP2015/0007]

Date: Wednesday, 14th October 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. Henry Browne, QC, with him, Mr. O’Grenville S. H. Browne and Ms. Cynthia Marissa Hobson-Newman

Respondent: Ms. Greatess Gordon, with her, Mr. Arudranauth Gossai, Director of Public Prosecutions [Ag.]

Issues: Appeal against conviction and sentence – Possession of a controlled drug – Whether conviction sound in law having regard to the evidence – Whether sentence imposed was unduly severe – Application for an adjournment

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. Counsel for the appellant be at liberty to file and serve amended or additional grounds of appeal by Friday 13th November 2015 and to file skeleton arguments by 30th November 2015.
2. The respondent shall be at liberty to file and serve supplemental submissions by 31st December 2015.
3. Hearing of the appeal to be listed for the next sitting of the Court in the Federation commencing 6th June 2016.

Reason: To allow counsel for the appellant who was only recently instructed time to prepare this appeal.

Case Name: Theodore Browne
v

Cheryl Henry

[SKBMCRAP2013/0020]

Date: Wednesday, 14th October 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Marsha Henderson, with her, Ms. Rhonda Nisbett-Browne

Respondent: Mr. Ricaldo V. Caines

Issues: Whether learned magistrate misinterpreted s. 5 of Maintenance of Children Act, 2012 (Act No. 42 of 2012, Laws of the Federation of Saint Christopher and Nevis) – Whether award for maintenance ordered by learned magistrate was reasonable

Type of Oral Result/Order Delivered: Oral Judgment or Decision

Reason:

1. The appeal is dismissed.
2. Costs in the sum of \$300.00 to be paid by the appellant to the respondent in 14 days.

The Court was of the view that the Maintenance of Children Act, 2012 (“the Act”) was clear with regard to the definition of the child. Section 2 of the Act clearly encompasses a child who is 18 years or older but under 25 years, who is receiving instruction at an educational institution or undergoing training for a trade, profession, or vocation, whether or not he will also be in gainful employment. If the definition of child in the Act was limited only to one who is under the age of 18 years and in an educational institution, this would have been clearly stated in the Act.

The Court opined that the purpose of the Act is to ensure that financial assistance is afforded to children

undergoing educational training up to age 25. The learned magistrate did not make any error of law in her interpretation of the statute. The evidence was clear and where words are clear they must be given effect.

The Court saw no reason to interfere with the order of the learned magistrate. No good reason was put forward to interfere with the order of \$165.00 per week and accordingly, the Court held that it should stand.

Case Name:

**Jason Thomas
v
The Chief of Police**

[SKBMCRAP2013/0008]

Date:

Wednesday, 14th October 2015.

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant:

**Dr. Henry Browne, QC, with him, Ms. Cynthia Marissa
Hobson-Newman and Mr. O’Grenville S. H. Browne**

Respondent:

**Mr. Teshawn Vasquez, Office of the Director of Public
Prosecutions**

Issues:

**Appeal against conviction – Using threatening
language/assault – Application to add grounds of
appeal – Whether learned magistrate erred in law –
Whether learned magistrate misdirected herself in trying
the case ex-parte believing that defendant willingly
chose not to present himself at court rather than
considering that he was ill**

**Type of Oral
Result/Order
Delivered:**

Oral Judgment or Decision

1. Application to amend by adding an additional ground is granted.
2. In respect of the appeal against conviction the appeal is dismissed.
3. In respect of sentence the Court will substitute a fine in place of a custodial sentence. Accordingly, the sentence imposed is varied to the extent that a fine in the total sum of \$3,500.00 is hereby imposed in place of the custodial term in respect of both offences.
4. The said fine shall be paid by the appellant no later than Tuesday, 17th November 2015. In default of payment of the fine, the appellant shall be imprisoned for the period of 6 months.
5. The restraining order imposed by the learned magistrate is that the defendant is ordered to remain at least 100 feet away from the virtual complainant and her mother and their house, and to have no contact with them for the next 2 years, in default to serve a further month in prison.

Reason:

The Court was of the view that the learned magistrate had before her ample evidence on which she could reasonably have concluded that the commission of the offences of assault and using threatening language had been proven. Further, the Court did not consider that good reason had been given for disturbing the learned magistrate's discretion to proceed to hear the matter ex-parte, having regard to the circumstances of the case.

With respect to sentence, the Court took into account the urges of counsel for the appellant, as well as the prior convictions which the appellant had for a similar offence. The Court also had regard to the fact that the offences amounted to summary offences.

JUDGMENTS

[1] Richard Vento

[2] Lana Vento

**[3] Gail Vento
[4] Renee Vento
[5] Nicole Mollison
[6] First Nevis Trust Company Ltd
(as trustee of
Much Love International Dynasty Trust
Vita International Dynasty Trust
Loki International Dynasty Trust
Founders International DV Dynasty Trust)**

v

**[1] Keithley Lake
[2] Fidelity Insurance Co, Ltd
[3] Alliance Royalties, Inc.
[4] Westminster Hope & Turnberry Ltd.
[5] Waterberry Ltd.**

[AXAHCVAP2014/0004]

Date: Thursday, 15th October 2015

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellants: Ms. Camilla Cato holding papers for the firm of Webster Law (acting for the appellants)

Respondents: Mr. Damian Kelsick holding papers for the firm of Keithley Lake and Associates (acting for the respondents)

Issues: Arbitration agreement – Foreign arbitral award – Enforcement of foreign arbitral award in jurisdiction – Error in law – Whether the trial learned judge erred in dismissing the appellants’ application to register and enforce final arbitral award in jurisdiction – Arbitration Act 1996 (UK) – Means of enforcement of arbitral awards under Arbitration Act 1996 (UK) – Whether the learned judge misdirected herself as to the correct interpretation of Arbitration Act 1996 (UK) as imported into the laws of Anguilla – Whether the learned judge erred in the construction of s. 66 of Arbitration Act 1996

– Whether the learned judge had jurisdiction under s. 66 of Arbitration Act 1996 to direct that judgment be entered in terms of final arbitral award

Result and Reason:

Held: allowing the appeal and setting aside the orders of the learned judge; ordering that the arbitration award be registered so that it may be enforceable as if it were an order of the court; ordering that the said award be enforced as if it were an order of the court; and awarding costs to the appellants in the court below of US\$7,000.00 and costs on the appeal to be assessed if not agreed within 21 days, that:

1. The Arbitration Act 1996 sets out the important principles of the law of arbitration in Anguilla in a logical order and in clear language that is user-friendly and free from technicalities. The court is therefore enjoined to construe the Act in a manner that follows and gives effect to its clear language.

Lesotho Highlands Development Authority v Impregilo SpA and Others [2005] UKHL 43 applied; *National Ability SA v Tinna Oils & Chemicals Ltd* [2009] EWCA Civ 1330 applied.

2. Section 66 of the Arbitration Act 1996 applies generally to any arbitration under the Act. It is a statutory provision which provides a procedure for enabling an award made in consensual arbitral proceedings to be enforced. There are four different means of enforcing an arbitral award under section 66. The victorious party has the option of: (i) enforcing the award by an ordinary action in the High Court pursuant to section 66(4); (ii) enforcing the award under the Geneva Convention; (iii) enforcing the award under the New York Convention; or (iv) enforcing the award in the same manner as a judgment, pursuant to section 66 (1) and (2) of the Act. This last alternative is a summary process which is by far the most common form of enforcing an award because of its convenience. Section 66 provides in subsections (1) and (2), a means by which the successful party can obtain the benefit of the award other than by suing on it. The arbitral award in the present case is not a Geneva

Convention award, the New York Convention does not apply to Anguilla, and the appellants have not instituted an action on the award. What the appellants have sought to do is invoke section 66 (1) and (2) of the Arbitration Act 1996.

West Tankers Inc v Allianz Spa and Another [2012] EWCA Civ 27 applied; *National Ability SA v Tinn Oils & Chemicals Ltd* [2009] EWCA Civ 1330 applied.

3. Section 2(2)(b) of the Arbitration Act 1996, states that section 66 applies even if the seat of the arbitration is outside England and Wales or Northern Ireland or no seat has been designated or determined. This section is clear and unambiguous and the court must give effect to its clarity. It expressly provides for the application of section 66 irrespective of the seat of the arbitration or even if no seat has been determined or designated. Therefore, section 66 is not expressly or by necessary implication limited in its purview to the enforcement of domestic awards only. The learned judge accordingly erred in finding that section 66 does not apply to the enforcement of “foreign” awards. The fact that the seat of the arbitration is the USVI, does not derogate from the applicability of section 66.

APPLICATIONS AND APPEALS

Case Name:

Steven Berkeley

v

Cable & Wireless

[SKBMCVAP2014/0006]

Date:

Thursday, 15th October 2015

Coram:

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

Appearances:

Appellant: No appearance

Respondents: Ms. Felicia Johnson

Issues:

Civil appeal

**Type of Oral
Result/Order
Delivered:**

N/A

Result / Order:

Hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Federation of St. Kitts and Nevis during the week of 6th June 2016.

Reason:

The matter was adjourned because notice of the appeal hearing had not been served on the appellant

Case Name:

Jervan Swanston

v

Licensing Authority

[SKBMCRAP2015/0009]

Date:

Thursday, 15th October 2015

Coram:

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

Appearances:

Appellant: No appearance

Respondent: Mr. Teshawn Vasquez, with him, Mr. Arudranauth Gossai, Director of Public Prosecutions [Ag.]

Issues: Discontinuance of appeal – Notice of discontinuance filed by appellant

Type of Oral Result/Order Delivered: Oral Judgment or Decision

Result / Order: The appeal is dismissed.

Reason: The appellant filed a notice of discontinuance.

Case Name: Nagico Insurance Company Limited

v

[1] Travia Douglas
[2] Shivoughn Warde
[3] Dwight Warde

[SKBHCVAP2014/0007]

Date: Thursday, 15th October 2015

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Thomas W. R. Astaphan, QC, with him, Mr. Damian E. S. Kelsick

Respondents: Ms. Anesta Weekes, QC for the 1st respondent
Mr. John Cato for the 2nd and 3rd respondents

Issues: Appeal against decision of Thomas J on assessment of damages – Whether Thomas J erred in finding appellant to be jointly and severally liable with 2nd and 3rd respondents to pay damages to 1st respondent – Whether it was open to learned judge on assessment of the quantum of damages to determine any issue of

liability – Whether delay was an issue – Application to strike out notice of appeal

Type of Oral Result/Order Delivered:

Oral Judgment or Decision

Result / Order:

- 1. Appeal allowed.**
- 2. Paragraph 99 of the judgment of Thomas J is set aside.**
- 3. By consent of the parties, there are no orders as to costs.**
- 4. Costs awarded in the amount of \$750.00 to the appellant on the withdrawal of application to strike out the notice of appeal.**

Reason:

Counsel for 2nd and 3rd respondents filed a notice of application to withdraw their counter notice of appeal. Counsel for the appellant suggested that costs be ordered in the amount of \$2,500.00, given the circumstances of case. The Court, however, was of the view that an appropriate sum would be \$750.00.

This was an appeal against the decision of Thomas J in which he determined that the appellant was jointly and severally liable with the 2nd and 3rd respondents to pay damages to the 1st respondent, when the issue before him was not liability but quantum of damages. The Court stated that it could find no basis for Thomas J to have determined an issue of liability in the matter.

Belle J found the 2nd and 3rd respondents were liable to the 1st respondent with respect to injuries suffered by the negligence of the 2nd respondent.

Belle J ruled in paragraph 36 of his judgment that the matter be scheduled for assessment of damages. There was no appeal from Belle J to determine liability; therefore, it was not open for Thomas J to do this.

The Court stated that it was therefore constrained to allow the appeal and to set aside paragraph 99 of the judgment of Thomas J.

The question of delay was dealt with by a single judge granting leave out of time.

Case Name:

Shawnason Prentice
v
[1] The Chief of Police
[2] The Director of Public Prosecutions
[SKBMCRAP2015/0004]

Date:

Friday, 16th October 2015

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Ms. Keisha Spence, with her, Ms. Rhonda Nisbett-Browne

Respondents:

Ms. Greatess Gordon, Crown Counsel

Issues:

Appeal against conviction and sentence – Possession of firearm and ammunition without licence – Application to amend grounds of appeal

Type of Oral Result/Order Delivered:

Oral Judgment or Decision

Result / Order:

- 1. Appeal against conviction and sentence is allowed.**
- 2. The conviction is quashed and sentence is set aside.**

Reason:

The Court read the intimation of Ms. Gordon, Crown Counsel, that the Crown had no objections to the application to amend the grounds of appeal.

Case Name:

**Collette Hanley
v
Nevis Co-operative Credit Union Limited**

[SKBMCVAP2015/0007]

Date:

Friday, 16th October 2015

Coram:

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

Appearances:

Appellant: Mr. John Cato

Respondent: No appearance

Issues:

Mortgage agreement – Appellant’s mortgage payments to respondent in arrears – Whether learned magistrate erred in law in concluding that court had jurisdiction under Cooperative Services Act, 2011 to try matter – Application for an adjournment

**Type of Oral
Result/Order
Delivered:**

Directions

Result / Order:

- 1. The appellant shall file and serve his skeleton argument within 2 months of the date of this order.**
- 2. The respondent to file and serve his skeleton argument within 2 months of being served with the appellant’s skeleton argument.**
- 3. The hearing of this matter is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 6th June 2016.**

Reason:

To give counsel time to prosecute the appeal.

Case Name:

**Clinton White
v
Austin Buchanan**

[SKBMCVAP2014/0008]

Date:

Friday, 16th October 2015

Coram:

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

Appearances:

Appellant: Mr. John Cato

Respondent: Ms. Marsha Henderson

Issues:

Civil appeal – Application to withdraw appeal

**Type of Oral
Result/Order
Delivered:**

Oral Judgment or Decision

Result/Order:

**Leave to withdraw the appeal is granted, accordingly
appeal stands dismissed.**

Case Name:

**Ronald Isaac
v
Patricia Samuel**

[SKBMCVAP2014/0011]

Date:

Friday, 16th October 2015

Coram:

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

Appearances:

Appellant: Ms. Natasha S. Grey

Respondent: Dr. Henry Browne, QC holding papers for Mr. Hesketh Benjamin

Issues: Civil appeal – Assault and battery – Whether decision of learned magistrate unreasonable having regard to the evidence – Findings of fact made by learned magistrate – Application for adjournment

Type of Oral Result/Order Delivered: N/A

Result / Order: The hearing of this matter is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 6th June 2016.

Reason: The Court granted the adjournment because Mr. Benjamin was unwell.

Case Name: Mc Laren Pemberton
v
Chief of Police
[SKBMCRAP2014/0013]

Date: Friday, 16th October 2015

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

Appearances:

Appellant: Dr. Henry Browne, QC holding papers for Mr. Hesketh Benjamin

Respondent: Mr. Giovanni James with Mr. Arudranauth Gossai, Director of Public Prosecutions [Ag.] and Ms. Greatess Gordon

Issues: Appeal against conviction and sentence – Stealing – Whether decision of learned magistrate is unreasonable or cannot be supported having regard to the evidence – Whether sentence imposed was unduly severe – Application for leave to file notice of appeal out of time

Type of Oral Result/Order Delivered: Oral Judgment or Decision

Result / Order: Based on the application for leave to file notice of appeal out of time, leave is granted and time is extended.

The appeal against conviction having been withdrawn by the appellant, the conviction of the appellant stands. The appeal against sentence having been pursued, the Crown conceded that the Magistrate's fine was excessive. The fine is set aside and the amount of \$1000.00 substituted. The appellant is hereby ordered to pay a fine of \$1,000.00 within 2 months of the date of this order in default the appellant shall serve 2 months in prison.

Reason: The Crown conceded that the fine imposed by the Magistrate was excessive in light of the fact that the item was recovered and that the appellant had no previous convictions.