

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE
GRENADA
18TH MAY 2026 - 21ST MAY 2026

JUDGMENTS

Lloyd Rhenford Ryan

v

Neville Blake
(Representative of The State of Agnes Ryan)

[MNIHCVAP2022/0003]
(Montserrat)

Date: **Monday 18th May 2026**

Coram for Delivery: **The Hon. Mde Esco L. Henry, Justice of Appeal**
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: **In person**
Respondent: **Mr. Jean Kelsick**

Issues: **Civil appeal - Real property – Registered land – Joint proprietorship – Severance – Application for severance on the basis of mistake – Whether joint proprietorship can be severed or terminated without the consent of all proprietors – Sections 101(3) and 140 of the Montserrat Registered Land Act (Cap. 8.01) – Ex**

parte applications - Full and frank disclosure - Duty of applicant to disclose material facts - Substituted service – Whether service by advertisement in a local newspaper constitutes effective notice to a party known to be residing outside the jurisdiction – Purpose of service - Fresh evidence on appeal - Principles for admission of fresh evidence on appeal – Ladd v Marshall criteria – Whether evidence is “fresh” if it came into existence after the order under appeal

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appellant’s application to adduce fresh evidence is granted.
2. The respondent’s application to adduce fresh evidence is dismissed.
3. The appeal is allowed.
4. The order of the learned judge dated 20th September 2012 is set aside.
5. The matter is remitted to the High Court for such consequential directions, including any question of rectification or consequential relief affecting the register, as may be appropriate and just in light of this judgment.
6. The appellant shall have his costs on the appeal, to be assessed by a judge of the High Court if not agreed within 21 days.

Reason:

1. The appellant satisfied the requirements for the admission of fresh evidence, whereas the respondent did not. The appellant’s case was that he was completely unaware of the 2012 proceedings altogether and therefore had no fair opportunity to place relevant evidence before the court. The proposed evidence went to the central factual premises upon which the severance order appears to have been obtained and was plainly material and apparently credible. By contrast, the respondent sought to rely on documents and affidavits generated

years afterwards, which constituted subsequent evidence rather than fresh evidence within the contemplation of the first limb of the applicable test.

Ladd v Marshall [1954] 1 WLR 1489 applied; Golden Meditech Stem Cells (BVI) Company Limited v Blue Ocean Creation Investment Hong Kong Ltd BVIHCMAP2023/0022 (delivered 9th July 2025, unreported) followed.

- 2. The proceedings below were ex parte in substance and the duty of full and frank disclosure was engaged and breached. Publication in a local newspaper in Montserrat was not reasonably likely to notify a defendant known to be residing in the United States. Formal compliance with the order for substituted service was not, in itself, sufficient, where the mode of service lacked practical efficacy. The deceased failed to disclose material matters including her knowledge of the appellant's overseas residence, her ability to contact him directly, the absence of evidential support for claims of failed communication, and the existence of consideration for the appellant's interest. Those matters deprived the court of a fair picture of the case.**

Rule 7.8A of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 considered; Abela and others v Baadarani [2013] UKSC 44 applied; Flavio Maluf v Durant International Corp et al BVIHCMAP2021/0025 (delivered 13th January 2022, unreported) followed.

- 3. Section 140 of the Act did not empower the court to extinguish the appellant's registered joint proprietary interest. The rectification jurisdiction under section 140 is confined to**

correcting errors arising from fraud or mistake in the registration process itself and is not a mechanism for altering substantive proprietary rights in the absence of such mistake. The deceased's application did not identify any mistake in the creation or registration of the joint proprietorship but instead sought to remove the appellant's name on the basis of an alleged agreement between the parties. Such circumstances did not fall naturally within the concept of rectification for mistake or even fraud contemplated by section 140.

Section 140 of the Montserrat Registered Land Act (Cap. 8.01) considered; *NRAM Ltd v Paul Morgan Evans and Another* [2017] EWCA Civ 1013 applied; *Francis Chitolie et al v St. Lucia National Housing Corporation* SLUHCVP2020/0022 (delivered 13th January 2022, unreported) followed.

4. Any severance of the joint proprietorship required compliance with section 101(3) of the Act, which had not occurred. Section 101(3) contemplates a consensual act carried out in the prescribed form and entered upon the register. The statutory regime governing registered land is a comprehensive statutory code, and where the statute prescribes a particular method by which a proprietary interest may be altered, that method must ordinarily be followed. There was no evidence that the prescribed instrument had been executed or registered by both joint proprietors. Accordingly, the purported severance of the joint proprietorship cannot be regarded as having been effected in accordance with the statutory scheme governing registered land.

Section 101(3) of the Montserrat Registered Land Act (Cap. 8.01) considered; Mums Incorporated v Cayman Capital Trust Co 2000 CILR 131 applied; Williams v Hensman (1861) 70 ER 862 distinguished; Keithley Lake et al v Richard Vento et al AXAHCVAP2016/0012 (delivered 20th June 2019, unreported) distinguished.

- 5. The order of 20th September 2012 could not stand and the appellant's registered interest remained intact. The order was obtained in proceedings which were ex parte in substance, in circumstances where the appellant did not receive effective notice and where the duty of full and frank disclosure was engaged but not discharged. Further, the learned judge was not entitled, on an application framed under section 140 of the Act and on the facts then presented, to direct what effectively was the termination of the joint proprietorship and the removal of the appellant's name from the register absent compliance with section 101(3) of the Act. Consequently, the appellant's registered interest was not lawfully extinguished by that order.**

Case Name:

Antigua Wireless Ventures LTD. t/a Digicel

v

Karl Skepple

**[ANUHLTAP2023/0008]
(Antigua and Barbuda)**

Date: Tuesday 19th May 2026

Coram for Delivery: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Nicola Byer, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal

Appearances:

Appellant: Mr. Michael Koeiman

Respondent: Mr. Kendrickson Kentish KC

Issues: Civil appeal – Unfair dismissal claim – Trial proceeding in absence of the appellant - Right to appeal decisions of the Industrial Court – Section 17(1)(e) of the Industrial Court Act - Whether industrial court committed a specific illegality in the course of the proceedings – Whether the Industrial Court erred in exercising its discretion when it refused the appellant’s counsel’s request for an adjournment – Whether the Industrial Court failed to engage with and properly consider the reasons advanced for the request for an adjournment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The order of the Industrial Court dated 20th September 2023 is set aside.
3. The matter is remitted to the Industrial Court for rehearing before a differently constituted tribunal.

Reason:

1. A challenge, on appeal, to findings of fact made by the Industrial Court is precluded from being classed as a specific illegality under section 17(1)(e) of the Industrial Court Act. However where a finding of fact substantially affects the merits of the matter or where it is shown that the Industrial court erred in finding facts or drawing inferences which are not supported by the evidence, particularly where the facts so found

substantially affect the merits of the matter or where the court did not consider the facts in light of applicable principles or statutory provision, then this would fall within the ambit of a specific illegality in section 17(1)(e).

Section 17(1)(e) of the Industrial Court Act applied; *Jewelers Warehouse v Cecil Norde* Antigua and Barbuda Civil Appeal No. 29 of 2004 (delivered 27th November 2006, unreported) considered; *Leonart Matthias v Antigua Commercial Bank* ANULTAP2017/0002 (delivered 28th May 2020, unreported) considered; *West Indies Oil Company Limited v Janis James et al* ANUHCVP2022/0014 (delivered 14th January 2025, unreported) considered.

2. The appeal at bar is not concerned with any finding of fact, nor is it concerned with the substantive issues of the case save for the challenge to the awards made for costs and exemplary damages. It is concerned with the exercise of the court's discretion to proceed with the trial in the absence of the appellant. The appellant's contention that the tribunal's decision adversely affected its fundamental right to a fair hearing enshrined in section 15(8) of the Constitution in that the Industrial Court in refusing to grant an adjournment failed to consider relevant factors; gave undue weight to expediency; and substantially affected the fairness and the outcome of the trial, finds merit and properly falls within section 17(1)(e) as constituting 'some other specific illegality' affecting the merits of the matter.
3. The decision to grant or refuse an adjournment is a discretionary power which the appellate court is slow to interfere with unless it can be said that the decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong. A pertinent question and distinguishing factor in this appeal from the *Liat 1974 v Novella Shepherd* case, is whether the

Industrial Court considered the representations made by the appellant's counsel in the letter sent to the court and considered the request for an adjournment. There is no indication on the record that the learned tribunal considered the reasons for the request, save for a passing reference to communication with the respondent's counsel. Neither the contents of the letter from the appellant's counsel explaining his scheduling conflicts, nor his email to the court were addressed. This is an important relevant consideration that was ignored or insufficiently weighed. Instead, the court appears to have placed undue weight on whether opposing counsel had received the correspondence and whether he agreed to or consented to the adjournment. Ultimately, the tribunal was required to consider the substance of the adjournment request and the overall interests of justice, which extend beyond the presence or absence of such concurrence by opposing counsel.

Dufour v Helenair Corporation Ltd (1996) 52 WIR 188 followed; Multibank Fx International Corporation v Von Der Heydt Invest S.A BVIHCMAP2022/0024 (delivered 29th April 2022, unreported) considered; Ultramarine (Antigua) Limited v Peter Cochran ANUHCVP2025/0005 (delivered 13th January 2026, unreported) considered; Liat 1974 v Novella Sheppard Antigua and Barbuda Civil Appeal No. 6 of 1991 (delivered 22nd November 1993, unreported) distinguished.

4. Furthermore, while it is accepted that a degree of discourtesy was shown by the appellant's counsel towards both the Industrial Court and the respondent in that the appellant failed to file any evidence before the Industrial Court, which in those circumstances would have precluded him from presenting evidence at trial, the learned tribunal was required to weigh the discourtesy of counsel and the appellant's failure to file evidence against the actual consequence to the appellant as a litigant,

namely the denial of an opportunity to cross-examine the respondent and to advance legal submissions. The right to legal representation and the right to be heard are fundamental entitlements that a court must consider even where the conduct of a party has been discourteous. The appellant's counsel faced a genuine scheduling conflict, communicated that conflict to both the court and opposing counsel in advance, and was in any event short-served with notice of the trial date. In those circumstances, the refusal to grant an adjournment deprived the appellant of a meaningful opportunity to participate in proceedings. Accordingly, the appeal is allowed.

Case Name:

Andre West

v

The Commissioner of Police

[MNIMCRAP2023/0002]

(Montserrat)

Date:

Tuesday 19th May 2026

**Coram for
Delivery:**

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Nicola Byer, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal**

Appearances:

Appellant:

Mr. Kendrickson Kentish KC holding papers for Mr. Wendel Alexander

Respondent:

Ms. Allana Cumberbatch

Issues:

Magisterial criminal appeal – Sections 51, 52, 55, and 201 of the Criminal Procedure Code - Section 231 of the Penal Code – Sections 57, 61, 62 and 63 of the

Customs and Excise (Control and Management) Act - Whether the learned chief magistrate acted contrary to the Court of Appeal's Order for re-trial by allowing the amendments to the complaint and further whether she was lawfully entitled to hear and determine the matter contrary to section 201 of the Criminal Procedure Code having found that the matter was not statute barred – Whether the learned chief magistrate erred in admitting and relying upon inadmissible or insufficient evidence, including the statement of Hammish McCullin, and convicting the appellant on such evidence that was incapable of establishing the elements of the offence – Whether the learned chief magistrate erred in convicting the appellant in the absence of proof of the requisite criminal intent, notwithstanding her finding that there was no intention to commit a crime, contrary to the requirement that both actus reus and mens rea be proved beyond reasonable doubt

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The sentence and conviction is affirmed.**

Reason:

- 1. An order for retrial restores the proceedings to the stage prior to conviction, subject to any express limitations contained in the order itself. Nothing in the order before this Court purported to prescribe the form of the charges to be laid, nor to curtail the constitutional authority of the Director of Public Prosecutions to institute and conduct criminal proceedings. The substance of the order was that the appellant was to be retried on the offences that were the subject of the appeal. Provided that the complaints laid at the time of the retrial alleged those offences in substance, it must be accepted that there was compliance with the order of the court.**
- 2. Criminal procedure has long recognized that defects in form do not necessarily alter the nature of the offence alleged, particularly where the factual particulars remain unchanged and the accused is fully aware of the case he must**

meet. In any event, the Amended Certificate of Result of Appeal, which directed that the matter be remitted 'for the retrial of the Appellant Andre West for the three offences,' removed the earlier limitation referring to 'the three offences which he was originally charged with.' In those circumstances, the Amended Order permitted the learned chief magistrate to consider the exercise of her power to amend the complaints on which the appellant stood trial before her.

3. The crux of the applicability of section 201(1) of the Criminal Procedure Code must rest on the legal character of the offence at the time when proceedings were instituted. It is common ground that in the present case, the charges that were laid against the appellant were offences that were triable either way. The fact that the trial proceeded summarily cannot convert such offences into offences that are captured by the specific parameters of the section 201(1) as being offences that are 'triable only summarily'. The statutory language is clear and can admit no broader construction. This interpretation is reinforced by the very structure of the Criminal Procedure Code. Section 201 thereof establishes a specific limitation regime directed exclusively to summary-only offences which must be those offences that are specifically established under section 51 of the Criminal Procedure Code. Under section 51 'an offence is triable only summarily if any law states that the offence is to be: a) tried by the magistrate's court or b) tried summarily.' This is in direct contradistinction to section 52 under which the appellant was charged.

Sections 51, 52, and 201(1) of the Criminal Procedure Code Cap. 4.01 of the Revised Laws of Montserrat applied; section 231 of the Penal Code Cap 4.02 of the Revised Laws of Montserrat applied.

4. There being a clear distinction made between triable only offences and offences which are triable either way, which may result in an

offence being tried summarily, then the engagement of section 55 of the Criminal Procedure Code must be read in that context. Subsection 3 notes that if the mode of trial determined is to be summary trial that Parts 10,11, 24-30 apply which by general application includes the limitation provision under section 201. The reference to the mode of trial as determined by Parts 10,11, 24-30 cannot change the nature of the offence. That is, the offence was not one which is triable summarily only; those provisions which govern the mode of trial are general provisions which immediately raise the principle of interpretation that *generalia specialibus non derogant*, that is, specific laws or provisions take precedence over general ones when they cover the same subject. Thus, those general provisions cannot be construed as impliedly applying to that specific limitation regime enacted by section 201.

Sections 56 and 201 of the Criminal Procedure Code Cap. 4.01 of the Revised Laws of Montserrat applied; Benion, Bailey and Norbury on Statutory Interpretation Ch. 6.10 (8th ed. 2020) considered.

5. If the interpretation advanced by the appellant is accepted, an unbridled mischief would be unleashed. In other words, a litigant can wait until it is time to elect, not object to the matter proceeding in a summary manner and then raise the point at that time that the offence is statute-barred, when it would not have been if it had proceeded on indictment. The legislative intention behind section 201(1) of the Criminal Procedure Code could not have meant that it would operate in this manner. Indeed, if so, the entire scheme of hybrid offences would be undermined and lose its potency. It must therefore follow that it must only be those offences that are from their inception summary offences as defined in the Criminal Procedure Code at section 51 that are captured by the language of section 201(1). Such a provision must signal that there is expediency in police

and prosecutors not allowing trivial matters to clog a system by delaying the laying of charges and the trial of those matters. The case at bar cannot fall within that process and it has to be accepted that at the time the complaint was laid, the offence remained one capable of trial on indictment and was not an offence 'triable only summarily' within the meaning of section 201(1) and as such the six-month limitation period was therefore never engaged.

Sections 51 and 201 of the Criminal Procedure Code Cap. 4.01 of the Revised Laws of Montserrat applied.

6. Viewed cumulatively, the matters relied upon by the appellant do not disclose any absence of jurisdiction. Rather, they amount to an attempt to impose limitations on the re-trial which are not supported either by the terms of this Court's Order or by the governing statutory framework. The learned chief magistrate plainly had authority to try offences of this nature, to determine whether the proceedings were in fact time barred, and to amend defective complaints in accordance with the Criminal Procedure Code. The appellant has not demonstrated that the proceedings were a nullity or that the learned chief magistrate misdirected herself in law. There is no basis upon which this Court could properly interfere with the exercise of her jurisdiction. Accordingly, we are satisfied that the learned chief magistrate did not err in assuming jurisdiction to hear and determine the matter, in permitting the amendments to the complaints, or in concluding that the proceedings were not statute barred.
7. It is necessary to identify with some precision what the prosecution was required to prove under charge MNIMCR2017/0031. The charge alleged that the appellant, between 15th March and 20th May 2016, 'by deception dishonestly obtained an exemption from customs duty in the sum of EC\$1,113.89' on certain Nissan Navara parts, 'purporting that these items were

consigned to the Montserrat Fire and Rescue Service and on which duties were payable'. The elements therefore required proof that the goods were dutiable, that they were in fact cleared without duty being charged or paid, and that this result was achieved by deception and dishonesty on the part of the appellant. The issue for this Court is whether the evidence accepted by the learned chief magistrate was capable of establishing those matters. Considering the evidence as a whole, it was in fact capable of doing so. The documentary and oral evidence disclosed a coherent sequence. The appellant arranged for items intended for his personal vehicle to be shipped together with items for the Fire Department. The goods then arrived in a single crate. The documentation provided for clearance did not disclose the appellant's personal items as dutiable goods requiring separate declaration. The goods were then cleared through customs as part of what was treated as a government consignment. Thereafter, the appellant removed his personal items from the crate without accounting for them. That sequence was not merely capable of founding suspicion. It was in fact capable of supporting the conclusion that the appellant knew throughout that his personal items were not entitled to the treatment accorded to government goods and that, by allowing them to travel within that official shipment and by failing to disclose them at the point of clearance, he secured their release without payment of duty.

8. The learned chief magistrate's treatment of the evidence shows that she addressed precisely that point. She distinguished between the shipping count and the customs duty count. In relation to the shipping count, she concluded that the prosecution had not proved the requisite dishonesty. In relation to the customs duty count, however, she found that the appellant knew that duty was payable on the 12 items removed from the crate, made no attempt at the appropriate time to pay that duty, and acted in a manner which an ordinary person

would not have acted. That distinction made by the learned chief magistrate is significant as it demonstrates that she did not reason in a broad or impressionistic manner. On the contrary, she rejected one part of the prosecution's case where she found the evidence insufficient, but accepted the customs duty count because, in her assessment of the evidence, the appellant's knowledge and conduct in relation to the undisclosed dutiable items justified that conclusion. That tends to support, rather than undermine, the safety of the conviction.

9. The Court is unable to accept the appellant's contention that there was no proof of deception. Deception in a case of this kind need not necessarily take the form of an express verbal lie. It may arise from conduct, context and presentation. Where dutiable personal goods are knowingly allowed to pass through customs as though they were part of a duty exempt government consignment, and the person responsible for those goods does not disclose their existence to those effecting clearance, the tribunal is entitled to conclude that the exemption was obtained by deception as set out in the parameters of the offence in section 231(1)(c)(i) of the Penal Code. The respondent's case was that the appellant's conduct operated on two levels. Firstly, the appellant caused his personal items to travel in the same shipment as official departmental items and secondly, once the shipment arrived, he permitted the goods to be cleared on documentation which did not identify his own items for duty purposes. Whether those matters are analyzed as two separate acts of deception or as one continuing course of deceptive conduct, the essential point remains the same. The learned chief magistrate was entitled to find that the appellant withheld material information from those responsible for customs clearance and thereby procured the release of his goods without payment of duty.

Section 231(1)(c)(i) of the Penal Code Cap 4.02 of the Revised Laws of Montserrat considered.

10. The Court has considered with care the precise amount of duty stated in the charge, namely EC\$1,113.89 which was pleaded in the charge. At the same time, the learned chief magistrate expressly observed that the prosecution had not shown how this figure had been calculated. The Court therefore accepts that there was no detailed evidential breakdown in the record showing the method by which the customs duty figure was computed. There was, so far as the record discloses, no tariff calculation, no arithmetical explanation, and no precise evidence showing how the stated sum was reached. To that extent, the learned chief magistrate's concern was a proper one.
11. The question then becomes whether that evidential omission is fatal to the conviction and in the Court's view, it is not. There are three reasons for that conclusion. Firstly, the charge was not one which required the prosecution to prove, as an essential ingredient of liability, the exact mathematical correctness of the stated figure to the cent. The essence of the offence was that the appellant, by deception and dishonesty, obtained an exemption from customs duty on goods which were in fact dutiable. Once the tribunal was satisfied that duty was payable, that no duty was charged or paid, and that this result was procured dishonestly, the core of the offence was made out. The amount avoided was descriptive of the charge but did not constitute dishonesty. Secondly, the record does not suggest that the quantum of duty was squarely in issue at trial. The appellant's challenge was directed primarily to dishonesty, deception, payment arrangements, ownership of the goods, and the customs procedure. There is no indication in the portions of the record provided to the Court that the specific sum of EC\$1,113.89 was the subject of focused challenge in cross-examination, such as would have invited the prosecution to lead further evidence as to the calculation. In

those circumstances, the absence of a developed calculation cannot readily be elevated on appeal into a basis for treating the conviction as unsafe. Thirdly, although the charge specified EC\$1,113.89 as the customs duty allegedly avoided, it is important to differentiate between including a figure and the core elements of the offence. Under section 231(1)(c)(i) of the Penal Code the offence is complete if the accused through deception and dishonesty gained relief from duty on goods that were dutiable. Calculating the exact amount avoided is not by itself an element of culpability. Provided that the tribunal is convinced that duty was payable, remained unpaid and that the accused dishonestly caused this outcome the offence is proved.

Section 231(1)(c)(i) of the Penal Code Cap. 4.02 of the Revised Laws of Montserrat applied.

12. The appellant further challenged the admission and reliance upon the statement of Mr. Hammish McCullin. The Court does not consider that ground to advance the appellant's case in any material way on this count. Even leaving that statement to one side, there remained ample evidence upon which the learned chief magistrate could conclude that the appellant's personal items travelled within the official shipment, were not disclosed for duty purposes, were cleared without payment of duty, and were subsequently removed by the appellant. The conviction on MNIMCR2017/0031 did not depend exclusively, or even centrally, upon the impugned statement. The Court is also unable to accept the submission that *R v Preddy*; *R v Slade* and *Joseph Brice v Regina* undermined the conviction in the present case. Those authorities concern the characterization of property or choses in action in a different legal context. The present charge was not concerned with the obtaining of a chose in action in that sense. It concerned obtaining by deception and dishonesty an exemption from customs duty on goods which were otherwise dutiable. The legal

substance of the charge was therefore different. Having considered the matter as a whole, the Court is satisfied that the learned chief magistrate correctly identified the real issue on MNIMCR2017/0031, namely whether the appellant knowingly caused or allowed his personal dutiable goods to be cleared as part of a duty exempt government consignment without disclosure and without payment. The evidence was capable of supporting an affirmative answer to that question.

Starcy Huggins v The Commissioner of Police BVIMCRAP2021/0004 (delivered 25th April 2023, unreported) considered; R v Preddy; R v Slade [1996] AC 815 considered; Joseph Brice v Regina AXAHCRA2016/0001 (delivered 8th April 2020, unreported) considered.

13. The learned chief magistrate was entitled to infer dishonesty from the surrounding circumstances, including the arrangement for shipment, the failure to provide the relevant invoice for the appellant's personal items at the point of clearance, the clearance of the goods without duty, and the appellant's subsequent removal of those items from the crate without accounting for them. Those facts were also clearly capable of forming a coherent evidential chain. In the final analysis, this is not a case in which there was no evidence to support the conviction. Nor is it a case in which the learned chief magistrate can be said to have misunderstood the evidence or reached a conclusion outside the range reasonably open to her. On the contrary, the conviction on MNIMCR2017/0031 rested upon findings which were available on the evidence and which this Court is not entitled to disturb merely because other aspects of the prosecution's case were not accepted. The Court therefore concludes that, although the precise amount of customs duty stated in the charge was not explained by detailed calculation in the evidence, that omission does not render the conviction unsafe in circumstances where the learned chief

magistrate was entitled to find that duty was payable, that no duty was paid, and that the exemption was obtained by deception and dishonesty.

Kwok Kin Kwok v Yao Juan [2022] UKPC 52 considered.

- 14. The learned chief magistrate found that the appellant knew that customs duty was payable on the items in question. Knowledge of that obligation, coupled with the failure to disclose the items and ensure payment of duty prior to their removal, was plainly capable of establishing the mental element of the offence. This finding must also be read together with the learned chief magistrate's other conclusions that the appellant knew his personal items were included in a shipment presented as governmental, did not inform those responsible for customs clearance of their presence, and subsequently removed those items without notifying the relevant authorities. In particular, the learned chief magistrate found that the appellant returned to the Fire Station and removed the 12 personal items from the crate without any Customs process having been undertaken, and further accepted in his own caution statement that, instead of contacting customs to regularize the position, he removed and retained those items. The learned chief magistrate additionally found that the appellant was aware that it was his responsibility to pay customs duty on those items and failed to do so. Those findings, taken cumulatively, were therefore capable of supporting the inference that the non-disclosure was deliberate rather than inadvertent.**
- 15. The fact that the learned chief magistrate did not find deception established in relation to other offences does not and could not negate the presence of mens rea in relation to the customs duty offence. Different counts may turn on different factual matrices and evidential considerations. The rejection of one aspect of**

the prosecution's case does not preclude acceptance of another where the evidence supports it. The statutory framework reinforces this conclusion. The Customs (Control and Management) Act imposes a clear obligation on an importer to make a proper entry and to ensure that duty chargeable is paid before goods are removed from a warehouse. Knowledge that duty is payable, coupled with failure to ensure its payment, is directly relevant to culpability and to the mens rea necessary to support the elements of the charge. In the round, the learned chief magistrate was entitled to consider the appellant's conduct after delivery, including the removal of the items without the knowledge of the stores officer and the failure to notify customs. Such conduct could support an inference as to the appellant's state of mind at the material time, and she so found.

Sections 57, 61, 62 and 63 of the Customs and Excise (Control and Management) Act, Cap.17.04 considered.

When the judgment is read fairly and as a whole, the learned chief magistrate clearly made no finding of an absence of mens rea in relation to the offence concerning customs duty. On the contrary, she made an explicit finding that the appellant knew duty was payable on the items. There is therefore no inconsistency between her findings and the conviction entered nor any deviation from the fundamental prerequisite that both actus reus and mens rea be proven beyond reasonable doubt. In those circumstances, the appellant has not demonstrated that the learned chief magistrate misdirected herself as to the requirement of mens rea or that the conviction was unsupported on the evidence or the law. Further, while the appellant repeatedly asserted that the elements of the offence were not made out, he failed when pressed by the panel during oral submissions to identify with any precision which elements were allegedly absent or how, on the evidence, they were not satisfied. That

omission further undermines the substance of this ground of appeal.

APPLICATIONS AND APPEALS

Case Name:

Fort Jeudy Association Inc.

v

Augustine Telesford Jr.

**[GDAHCVAP2024/0001]
(Grenada)**

Date:

Monday 18th May 2026

Coram:

**The Hon. Mde Esco L. Henry, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant/Respondent Mrs. Linda Dolland

Respondent/Appellant: Mr. Kadeem Strachan and Ms. Chenelle Hyacinth

Issues:

Land law - Adverse possession - appeal against decision of the learned judge ordering that the appellant's claim for possession of the subject property is statute barred by operation of Sections 4 and 27 of the Limitations of Actions Act save and except the area demarcated as the guard hut - Whether the learned judge misinterpreted the law relative to adverse possession, particularly regarding the evidence that the respondent was in possession of the subject property with the consent/permission of the appellant's predecessor in title - Whether the learned judge misconstrued or did not have regard to the fact that the deceased did not have exclusive possession

of the property from 2002 to 2014 - Whether the learned judge misconstrued the provisions of sections 429 and 430 of the Companies Act regarding the status and powers of the Developer's Liquidator and the status of the Developer upon commencement of voluntary liquidation- Whether the learned judge failed to appreciate the documentary evidence before to the court relative to the deceased's possession being with the consent of the Developer and the Deceased's written acknowledgment of the Developer as paper title owner in 2009 and the effect of that written acknowledgment - Whether the learned judge failed to properly consider the effect of the conveyance of the property from the Liquidator to the appellant in 2014 - Whether the learned judge failed to consider or apply the correct weight to the untested evidence of the Deceased at the trial of the Claim - Whether the learned judge erred in finding that the deceased respondent's adverse possession of the property commenced only from 2004 when the appellant's predecessor in title commenced voluntary liquidation at which point the appellant's predecessor had no technical capacity to grant a licence to the deceased respondent - Whether the learned judge consequently erred in finding that by operation of sections 4 and 27 of the Limitation of Actions Act, the appellant's claim against the respondents for recovery of possession was statute barred by the year 2016 in respect of a portion of the property.

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The decision is reserved.
2. The Chief Registrar shall notify the parties of the date of delivery of the decision in this matter.

N/A

Case Name:

Garvin Clarke

v

**The King
[GDAHCRAP2022/0015]
(Grenada)**

Date: Monday 18th May 2026

Coram: The Hon. Mde Esco L. Henry, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Anselm Clouden

Respondent: Mr. Howard Pinnock

Issues: Criminal appeal - Appeal against sentence - Section 208 of the Criminal Code as enacted by Section 35 of the Criminal Code (Amendment) Act 2012 - Sentence of 10 years imposed - Whether the sentence imposed was manifestly excessive - Whether the learned judge erred in electing to rely on the principle of deterrence rather than rehabilitation and/or retribution - Whether the learned judge failed to give sufficient weight to the provocation the appellant faced - Whether the learned judge failed to explain why a custodial sentence was necessary - Whether the learned judge failed to give a further reduction on the ground of remorse

Type of Order: Oral Judgment

Result/Order: IT IS HEREBY ORDERED THAT:

1. The appeal against sentence is dismissed.
2. The sentence of 10 years' imprisonment of the learned judge is affirmed.

Reason: This is an appeal by Garvin Clarke filed on the 26th of October 2022 against the sentence of 10 years'

imprisonment imposed by the judge on 14th October 2022 on respect of his conviction for intentionally and unlawfully maiming the virtual complainant contrary to section 35 of the Criminal Code Act 2012. Mr. Clarke was found guilty by a jury on 14th June 2022 following a trial on an indictment charging him with two counts. On count 1, he was charged with the offence of maiming and on count 2, with the lesser offence of causing grievous bodily harm. He was convicted of the more serious offence.

The incident giving rise to the charges were that on 7th February 2016, the virtual complainant was at that time attacked with a cutlass by the appellant and as a result, sustained serious injuries including the loss of sight in his left eye and permanent disability to the left hand.

The sole ground of the appeal is that the sentence is manifestly excessive as permitted by an amendment to the notice of appeal on oral application by the appellant. The appellate court's jurisdiction to interfere with a sentence arises only where it is established that the sentence imposed is manifestly excessive in that it exceeds the sentence that is appropriate in all the circumstances of the case as regards to the offence and the offender. The Court considered the hearing bundle filed on 6th May 2026, the record of proceedings, the social inquiry report dated 5th October 2022, the written submissions of counsel for the appellant and counsel for the respondent as well as their oral submissions.

The Court was mindful of the settled legal principles that (1) an appellate court does not conduct a rehearing when an appeal is made against sentence, but instead evaluates the sentence and the methodology of sentencing to determine whether the sentencing judge misdirected himself or herself in crafting the sentence by committing an error of law and (2) that an appellate court will disturb the sentence of the trial judge only if satisfied that the sentence was manifestly excessive or wrong in principle even if it would have imposed a different sentence. The Court relied on the authorities 2009 Blackstone Criminal Practice paragraph D25.41 (as cited by the

respondent), R v Ball (1951) 35 Cr App 164 and Gurrie v R GDAHCRAP2013/004 (delivered 5th April 2022, unreported). The Court noted that appropriately the sentencing judge in this case considered the principles of sentencing and applied the Compendium Sentencing Guidelines of the Eastern Caribbean Supreme Court in respect of violent offences which came into effect in November 2021 in constructing the sentence that she studiously followed the procedures and arrived at a sentence below the sentencing range. The Court was satisfied that the learned judge did not err in principle by failing to consider and apply the applicable law including the guidelines and that the departure from the range of appropriate sentences was favourable to the appellant. The Court determined that the sentence imposed was not manifestly excessive and accordingly no justifiable basis as contended for by the appellant, exists in law to interfere with a sentence of 10 years' imprisonment. For all the foregoing reasons, the appellant has not met the threshold for appellate interference with the sentence.

Case Name:

Ryan Strachan

v

The King

**[GDAHCRAP2023/0021]
(Grenada)**

Date:

Monday 18th May 2026

Coram:

**The Hon. Mde Esco L. Henry, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Jerry Edwin

Respondent: Ms. Crisan Greenidge

Issues: Criminal appeal - Appeal against sentence - Sexual intercourse with a minor - Whether the imposition of consecutive terms violates Section 80(1) of the Criminal Code of Grenada which prohibits separate punishment for multiple criminal acts that form one continuous transaction - Whether two sexual offences which occurred in separate months were such that they do not legally constitute a single continuous transaction under Section 80(1) - Whether the full aggregate sentence violated the totality principle

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

1. Judgment is reserved.
2. The Chief Registrar will notify the parties of the date of delivery of the decision in this matter.

Case Name: Joshua Matheson

v

Pearl Albert nee Allert (Administratrix of the Estate of George Gordon and Louis Albert, deceased)

[GDAHCVAP2020/0010]
(Grenada)

Date: Tuesday 19th May 2026

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Nicola Byer, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal

Appearances:

Applicant/Respondent: Mr. Alban John and Ms. Hazel Hopkin-La Touche

Respondent/Appellant: Mr. Kristopher-Ross Fields

Issues:

Application to strike out notice of appeal - Whether the notice of appeal filed on 24th September 2020 ought to be struck out for want of prosecution for failure of the appellant to take any serious steps to prosecute the appeal since the filing of the notice of the appeal - Delay in requesting that the court's office produce the transcript of proceedings - Rule 62.12 of the Civil Procedure Rules, 2023 - Obligation of the appellant in circumstances where the appellant would have written on several occasions to the court office about the transcript but had received no response - – Whether notice of appeal should be struck out on the basis that it does not disclose any realistic prospect of success

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application to strike out is dismissed.
2. Costs to the appellant/respondent in sum of \$2,500.00
3. The Court shall provide a reasoned order in this matter.

Reason:

Coming on for hearing was a notice of application filed on 20th August 2025 to strike out the notice of appeal filed on 20th September 2020.

The Court, having regard to the affidavits in support of the notice of application; the affidavits in opposition; the written submissions and authorities of both parties; the oral submissions by both parties before the Full Court; the electronic bundle filed; the supplement bundle; and the further supplemental bundle, was of the view that the applicant had not met the threshold for a strike out of the appeal.

Accordingly, the application was dismissed and costs awarded to the respondent in the agreed sum of \$2,500.00.

The Court indicated that a reasoned order would be produced in this matter for the benefit of the parties.

Case Name: **The British Virgin Islands Christian Council**

v

[1] Kinisha Forbes
[2] Kirsten Lettsome
[3] Attorney General of the Virgin Islands

[BVIHCVAP2025/0021]
(Territory of the Virgin Islands)

Date: **Tuesday 19th May 2026**

Coram: **The Hon. Mde. Vicki Ann Ellis, Justice of Appeal**
The Hon. Mde. Nicola Byer, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal

Appearances:

Appellant: **Ms. Lorraine La Rose**

Respondents: **Mr. Terrance Lawrence KC for the 1st and 2nd respondents**
Ms. Maya Barry, Ms. J'Nae Hopkins and Ms. Shonice Warner for the 3rd respondent

Issues: **Interlocutory Appeal – Preliminary issue – Whether this Court has the jurisdiction to hear the interlocutory appeal – Eastern Caribbean Supreme Court Act 1967 s.30 - Whether the learned Chief Justice was acting as a High Court Judge when she directed that the High Court proceedings in BVIHCV2021/0054 be retried de novo before another judge of the High Court pursuant to CPR 2.5(8) – Whether this directive was**

administrative or judicial in nature and therefore capable of appeal – Adjournment

Type of Order:

Adjournment

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The preliminary point proceedings shall be adjourned to a date to be assigned by the Chief Registrar.**
- 2. Counsel for the British Virgin Islands Christian Council shall prepare, file and serve affidavit evidence setting out the objections to the panel as currently constituted in the matter on or before 29th May 2026.**
- 3. Counsel for the parties shall lodge and exchange legal submissions lodged and exchanged on or before 5th June 2026.**

Reason:

Before the Court was a preliminary issue which arose in an interlocutory appeal filed on 6th March 2026. The interlocutory appeal seeks inter alia to set aside the direction given by the Honourable Chief Justice as contained in the emailed letter of the Registrar of the High Court dated 16th October 2025 that the matter in claim BVIHCV2021/0054 be retried de novo before another judge of the High Court in the Territory of the Virgin Islands.

After hearing substantial oral submissions on behalf of the appellant and the 1st and 2nd respondents, counsel for appellant raised concerns about the impartiality of the panel as presently constituted. The Court considered it prudent to adjourn the matter to allow counsel for the appellant to properly present the objections before the Court together with any supporting evidence and submissions.

The matter was therefore adjourned to a date to be fixed by the Chief Registrar, and directions were given to the parties for the lodging and exchanging of submissions.

Case Name:

Penelope Beaumont

v

Ellen Radix

**[GDAHCVAP2025/0015]
(Grenada)**

Date: **Wednesday 20th May 2026**

Coram: **The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal**

Appearances:

Appellant: **Ms. Aloytha Thomas holding papers for Mr. Peter Foster KC**

Respondent: **Mr. Dylan Charles holding papers for Ms. Dancia Penn KC**

Issues: **Applications for Adjournment**

Type of Order: **Adjournment**

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

- 1. The oral applications for an adjournment of the hearing of the substantial appeal are granted.**
- 2. The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Grenada scheduled for the week commencing 16th November 2026.**
- 3. No order as to costs.**

Reason: **Before the Court was an appeal filed on 20th August 2019 challenging the learned judge's findings of contributory negligence in a personal injury claim.**

By application filed on 30th April 2026, previous counsel for the respondent sought leave to remove his name from the record and, subsequently on 15th May 2026 a Notice of Change of Legal Practitioner was filed.

Upon the appeal coming on for hearing on 20th May 2026, an oral application for an adjournment was advanced on behalf of the respondent. Counsel for the appellant indicated that there was no objection to the change of counsel or to the consequential adjournment sought.

Further, counsel for the appellant also orally applied for an adjournment on the basis that lead counsel in the matter was unavoidably unavailable to advance the matter. Counsel for the respondent similarly indicated that there was no objection to that application.

In the circumstances, the Court was minded to grant the adjournments sought by both parties.

Case Name:

Shaka Aaron Croney

v

The King

[GDAHCRAP2026/0001]

(Grenada)

Date:

Thursday 21st May 2026

Coram:

**The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal**

Appearances:

Applicant

Mr. George Prime

Respondent

Mr. Howard Pinnock

Issues: Application to adduce fresh evidence - Whether the Court is in a position to properly determine the application before it, in the absence of the transcripts of the proceedings in the court below - Adjournment

Type of Order: Adjournment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The hearing of the application to adduce additional evidence is adjourned to the next sitting of the Court of Appeal in Grenada week commencing 16th November 2026.
2. The application and the substantive appeal shall be heard together.
3. The Registrar of the High Court is directed to expedite the preparation of the transcript of proceedings and to serve it on the parties.
4. The parties are at liberty to file supplemental submissions within 14 days of receipt of the transcript of proceedings.

Reason: Before the Court was an application filed by the appellant on 2nd January 2026 to adduce fresh evidence. Upon it being agreed by the parties that the transcript of proceedings in the court below is indispensable for the determination of the application to adduce fresh evidence and indeed the substantive appeal to follow, the Court was of the view that an adjournment was required for the preparation and subsequent service of the transcript by the court office. The application was therefore adjourned to the next sitting of the Court of Appeal in Grenada, and it was determined that the application and the substantive appeal should be heard in tandem.

Case Name: Grenada Electricity Services Limited

v

Public Utilities

**[GDAHCVAP2024/0024]
(Grenada)**

Date: Thursday 21st May 2026

Coram: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal

Appearances:

Appellant: Ms. Afi Ventour and Ms. Yurana Phillip

Respondent: Mr. Ruggles Ferguson KC, with him Ms. Mckaeda Augustine

Issues: Civil appeal - Withdrawal of Appeal

Type of Order: Oral decision

Result/Order: IT IS HEREBY ORDERED THAT:

1. The appeal stands dismissed.
2. No order as to costs.

Reason: Before the Court was a Notice of Appeal filed on 6th December 2024. The Court noted the Notice of Withdrawal of the appeal filed on 21st May 2026 pursuant to rule 62.29 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023. The Court considered that there upon filing of the Notice of Withdrawal by the respondent the appeal stands dismissed without further order and no request for costs was made. In the circumstances, the court made no order as to costs.

Case Name: Martin Calliste

v

Cynthia Moses

**[GDAMCVAP2023/0003]
(Grenada)**

Date: Thursday 21st May 2026

Coram: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal

Appearances:

Appellant/ Respondent:	Ms. Deborah Mitchell
Respondent/ Applicant:	Mr. Henry Paryag

Issues: Magistrate Civil Appeal - Recovery of Possession -
Application to strike out Notice of Appeal - Withdrawal
application to strike out notice of appeal

Type of Order: Oral Decision

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

1. The application filed on 19th December 2025 to strike out the notice of appeal is withdrawn and dismissed.
2. The respondent shall file submissions in response to the appeal on or before 19th June 2026.
3. The appellant is at liberty to file submissions in reply on or before 13th July.
4. The appeal shall be listed for hearing at the next sitting of the Court in Grenada scheduled for the week commencing 16th November 2026.
5. No order as to costs.

Reason: Upon the application to strike out the Notice of Appeal filed on 19th December 2025 coming on for hearing and upon the Court hearing submissions from counsel

for both the appellant and the respondent, the Court accepted that the matter had not been case managed and that there had been inordinate delay, though such delay was not intentionally caused by the appellant.

The Court considered that, in light of the steps taken by the appellant to advance the appeal following the filing of the application to strike out, the appellant could either proceed with the strike out application or withdraw the application and be heard on the substantive appeal. The applicant elected the latter course and withdrew his application without seeking costs. Accordingly, the application was withdrawn and dismissed, and the Court proceeded to give directions for the filing of submissions and subsequent hearing of the appeal.