

THE EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

ANGUILLA
VIDEOCONFERENCE

Tuesday 14th July 2026 – Thursday ,16th July 2026

JUDGMENT

Case Name:

ICM SPC

*(On behalf of Ancile Special Opportunity and Recovery Fund
Segregated Portfolio)*

V

[1] Ryan Paul Jarvis

[2] Rachell Frisby

*(as Joint Liquidators of Phoenix Commodities Pvt Ltd. (in
liquidation))*

[BVIHCMAP2024/0019]

Territory of the Virgin Islands

Date:

Tuesday, 14th July 2026

Coram:

The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal

Appearances:

Appellant:

Mr. Romauld Johnson

Respondents:

Mr. Andre McKenzie with Ms. Jhneil Stewart-Harneys

Issues:

Commercial Appeal - Statutory Interpretation - Section 49 of the Business Companies Act 2004 (“BCA”) - List of members settled by liquidators - Whether issue of shares imposing liability void in absence of written agreement to become holder - Whether section 49 required formal bilateral written subscription agreement - Whether contemporaneous email exchange and attachment sufficient to constitute written assent - Whether section 49 of the BCA requires the shareholder’s written assent to exist before or at the time of issue of the shares - Whether post-issue documents admissible only as corroborative evidence - Rule 28.18 of the Civil Procedure Rules 2023 (“CPR”) - Whether failure to

serve notice to prove material - Counter-notice - Whether, in the context of liquidation, relief analogous to rectification should in any event be refused

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The order of Mangatal J (Ag.) dated 30th May 2024, as amended on 11th June 2024, is affirmed.**
- 3. The respondents' counter-notice is dismissed insofar as it relates to the timing issue. Notwithstanding the dismissal of the counter-notice, the order of the court below shall remain undisturbed.**
- 4. The appellant shall pay the respondents' costs of the appeal, such costs to be assessed by a Judge of the Commercial Court if not agreed within 21 days of the date of this order.**
- 5. The costs order made by the court below shall remain undisturbed.**

Reasons:

- 1. The proper interpretation of section 49 of the Business Companies Act 2004 was a question of law for the appellate court. Whether the documents before the judge were capable, as a matter of law, of satisfying section 49 involved the application of that legal standard to the written record. To the extent that the judge's conclusion depended upon oral evidence, credibility, and the overall trial picture, the Appellate Court would be slow to interfere; but where the issue turned upon the objective meaning and legal sufficiency of undisputed documents, the appellate court was entitled to form its own view, while giving due weight to the judge's overall evaluation of the evidence.**

Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5 considered; Deutsche Bank AG v Sebastian Holdings Inc and another [2023] EWCA Civ 191 considered; Assicurazioni Generali SpA v Arab Insurance Group (BSC) [2002] EWCA Civ 1642 applied; Simetra Global Assets Ltd and another v Ikon Finance Ltd and others [2019] EWCA Civ 1413 considered.

- 2. Section 49 does not require a single formal bilateral subscription agreement executed by the company and the prospective shareholder. What it requires is a written record, whether in one document or in more than one contemporaneous document read together,**

from which the proposed holder's assent to becoming holder of the relevant share or shares could be established with sufficient clarity. The writing must identify or permit identification of: (i) the person who is to become the holder; (ii) the company whose share or shares are to be held; (iii) the shareholding to which the person is agreeing, at least with sufficient certainty to identify the relevant shares or class and number; and (iv) the fact that the person agreed to become the holder of that shareholding. Where liability depends on consideration or unpaid value, the written record must also be sufficiently clear to identify the liability being assumed or the basis upon which it can be ascertained.

Telecommunications Regulatory Commission v Cable & Wireless (BVI) Ltd, BVIHCVAP2016/0013 (delivered 30th May 2018, unreported) considered; Golden Ocean Group Ltd v Salgaocar Mining Industries Pvt Ltd [2012] EWCA Civ 265 considered; Gluck v Secretary of State for Housing, Communities and Local Government and another [2020] EWCA Civ 1756 considered.

3. The written assent required by section 49 had to exist before or at the time of issue of the shares. Post-issue documents cannot cure non-compliance with the statute if, at the moment of issue, there was no written assent of the kind required. They can be considered, however, insofar as they corroborate the existence of earlier assent. The respondents' counter-notice on timing therefore failed.

Global Asset Capital Inc and another v Aabar Block S.A.R.L and others [2017] EWCA Civ 37 considered; RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co [2010] UKSC 14 considered; DHL Project & Chartering Ltd v Gemini Ocean Shipping Co Ltd [2022] EWCA Civ 1555 considered.

4. The judge had been entitled to conclude that the May 2019 email exchange, read with its attachment and the surrounding contemporaneous steps, satisfied section 49 and evidenced ASOR's written assent to becoming the holder of the 440,935 shares. The attachment formed part of the relevant written record. The conclusion was not displaced by the absence of a later call or by correspondence showing that formal subscription documents and other approvals would ordinarily be required for the wider private equity

transaction, or by later communications and conduct said to be inconsistent with a completed share issue. The BNP Paribas certificate did not cure any defect at the moment of issue but was admissible as evidence corroborating the conclusion that ASOR had earlier agreed to be treated as a shareholder.

5. The learned judge's conclusion that BVI law did not recognise a temporary, provisional, or partial membership of the kind advanced by ASOR had not been displaced. Once the finding of sufficient written assent stood, ASOR could not both have agreed to be issued shares for the purposes of section 49 and escape the legal consequences of membership by invoking a private status unknown to the BVI company law framework. Additionally, the Cancellation Notice did not assist ASOR; it proceeded on the footing that there was a shareholding capable of cancellation or redemption and no effective redemption or cancellation occurred before liquidation.
6. It was unnecessary finally to determine the complaints founded upon CPR 28.18. Assuming in ASOR's favour that the respondents were not entitled to challenge the authenticity of the MOU, the Amendment Agreement or the Cancellation Notice in the manner alleged, and assuming that those documents were authentic in the sense of being genuine documents and not forgeries, those assumptions did not alter the result. Even if so treated, those documents did not undermine the sufficiency of the May 2019 written communications or establish that ASOR should be removed from the settled list.
7. Even if there had been doubt about the sufficiency of the May 2019 written assent, the court would have refused the relief sought. Although the application was brought under section 193(3) of the Insolvency Act and was not, strictly speaking, an ordinary rectification application the court could properly consider whether, immediately before liquidation, the applicant could have obtained removal or rectification of the register and whether it would be just to grant equivalent relief after the commencement of liquidation. Where the relief sought was, in substance, analogous to undoing a register position after the commencement of liquidation, the applicant's prior conduct, delay, third-party reliance,

and the effect on creditors and the liquidation were relevant considerations. ASOR had been entered on the register, had permitted itself to be represented to BNP Paribas as shareholder, had not sought removal before liquidation, and sought relief only after the commencement of the insolvency process. Those circumstances justified refusal of removal from the settled list.

Greenwich Millennium Exhibition Ltd v New Millennium Experience Company Ltd [2003] EWHC 1823 (Ch) quoting Re Sussex Brick Co Ltd [1904] 1 Ch 598 considered; Smith v Charles Building Services Ltd and another [2006] EWCA Civ 14 considered; Re Transatlantic Life Assurance Co Ltd [1980] 1 WLR 79 considered; Nilon Ltd v Royal Westminster Investments SA [2015] UKPC 2 considered

Case Name:

Mabel Venzen

v

[1] Hughward Daniel

[2] Amelia Daniel

[MNIHCVAP2025/0007]

Montserrat

Date:

Wednesday, 15th July 2026

Coram:

The Hon. Mde. Vicki Ann Ellis, Justice of Appeal

The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal

The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal

Appearances:

Appellants:

Dr. David Dorsett

Respondent:

Mr. Jean Kelsick

Issues:

Civil appeal - Interlocutory application - Application to add unadministered estate as defendant to amended counterclaim - Whether learned judge erred in dismissing application to add new party - Whether learned judge conflated Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 ("CPR") Part 19 and CPR Part 21 - Whether learned judge failed to disaggregate issue of joinder from issue of representation of estate - Whether learned judge erred in failing to apply and make findings

under CPR 19.2(3) - Whether it was desirable to add estate so that the court could resolve all matters in dispute - Whether there was an issue involving the estate connected to the matters in dispute which made joinder desirable - Whether learned judge erroneously relied on CPR 21.7 and failed to consider CPR 21.4 - Whether an unadministered estate can be joined as a party in the absence of a personal representative or representative order - Whether estate is a legal person capable of suing or being sued in its own name - Rectification of land register - Allegation of fraud - Proprietary consequences for estate - CPR 8.5(2), CPR 19.2(3), CPR 21.4 and CPR 21.7.

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed, and the decision and orders of the learned judge are affirmed.
2. The respondents shall have their costs of the appeal to be assessed by a judge or master of the High Court, if not agreed within 21 days of the date of delivery of this judgment.

Reasons:

1. Part 19 and Part 21 of the CPR serve distinct functions. Part 19 is concerned with whether it is desirable to add a party so that all matters in dispute, or an issue connected with those matters, may be resolved. Part 21 is concerned with the machinery by which a person or estate may be represented where ordinary representation is absent or impracticable. However, conceptual distinctness does not require practical isolation. Where the proposed party to be joined is the estate of a deceased person, the court is entitled to consider whether there is a legally effective means by which that estate can be brought before the court, participate in the proceedings, and be bound by the result. An estate is not a natural or legal person. It can participate in proceedings only through a personal representative or a representative appointed by the court. The learned judge therefore did not conflate Part 19 and Part 21 by considering the absence of representation when determining whether joinder was viable, workable and desirable.

Rules 19.2(3), 21.4 and 21.7 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 applied; *Millburn-Snell v Evans* [2012] 1 WLR 41 applied; *Heirs of Camselle St. Catherine*

(Represented by Agatha Jules) v Darius St Catherine et al SLUHCV2003/0444 (delivered 24th March 2017, unreported) considered; Millicent Bass v Julian Daniel MNIHCV2016/0024 (delivered 5th May 2017, unreported) considered.

- 2. There is no rigid sequencing requirement under the CPR which obliged the learned judge to determine joinder under rule 19.2(3) in complete isolation from the question of representation under Part 21. Where the very identity of the proposed party raises an immediate question as to legal capacity or representation, the court may consider that question as part of its overall assessment of whether joinder is appropriate. In practical terms, what must be joined is not the estate as an abstraction, but a legal person acting as representative of the estate for the purposes of the proceedings. In the absence of a grant of representation or a court-appointed representative, there was no legal person through whom the Estate could be heard, take procedural steps, or be bound by the result. The appellant did not seek the appointment of a representative and placed no evidence before the court identifying a personal representative, a proposed representative, or any factual basis upon which a representative order could realistically be made. The learned judge's conclusion that joinder simpliciter would be a nullity disclosed no error of principle.**

Rules 19.2(3), 21.4 and 21.7 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 applied.

- 3. Rule 19.2(3) undoubtedly supplies the criteria for the addition of a party. However, the rule does not require a judge in every case to produce formulaic findings under each limb where there is a prior and dispositive obstacle to joinder. The amended counterclaim, which sought rectification of the land register in favour of the Estate, plainly had a connection to the Estate and could have proprietary consequences for it. That connection, however, did not conclude the inquiry. Desirability under rule 19.2(3) is a practical and evaluative judgment. It is not exercised in the abstract. In the absence of evidence demonstrating why joinder of the Estate was necessary, workable and desirable, the learned judge was entitled to conclude that the application did not present a proper basis for joining the Estate. The omission of a**

discrete recital of each limb of rule 19.2(3) did not amount to a material error warranting appellate intervention.

Rule 19.2(3) of the Civil Procedure Rules (Revised Edition) 2023 applied; *Gurtner v Circuit and Another* [1968] 2 QB 587 considered; *National Union of Rail, Maritime and Transport Workers v Tyne and Wear Passenger Transport Executive* (trading as Nexus) [2024] UKSC 37 considered; *Fok Hei Yu v Basab Inc* BVIHCMAP2014/0010 (delivered 28th May 2014, unreported) considered.

4. The pleaded allegation of fraud against the appellant did not require a different conclusion. The allegation formed part of the respondents' case against the appellant, but it did not follow that the truth or falsity of that allegation could only be adjudicated if the Estate were joined. The immediate controversy remained whether the appellant's title and claim to possession could withstand the respondents' defences and the relief sought in the amended counterclaim. On the material before the learned judge, there was no clear evidential basis for finding that the Estate's participation was indispensable to the resolution of those issues.

In re Pablo Star Ltd [2018] 1 WLR 738 applied.

5. Rule 21.7 is not a freestanding bar to the joinder of an estate. It is an enabling provision. Rule 21.4 is similarly facilitative and permits the appointment of a representative in proceedings about the estate of a deceased person, where it is expedient to do so. The critical question was not whether either provision could, in theory, provide a route to representation, but whether there was material on which the learned judge could realistically have exercised the powers under either rule. The joinder application was framed solely as an application to add the Estate as a defendant to the amended counterclaim. It was not accompanied by any prayer for the appointment of a representative under rule 21.4 or rule 21.7, or by any material explaining the existence or absence of a grant, identifying a suitable representative, or demonstrating why it was expedient to appoint a representative for the Estate. The court's powers under Part 21 are discretionary and must be exercised on a factual foundation.

Rules 21.4 and 21.7 of the Civil Procedure Rules (Revised Edition) 2023 applied.

- 6. The learned judge's failure to refer expressly to rule 21.4 did not vitiate the ruling. While rule 21.4 may have been theoretically available because the proceedings touched on the estate of a deceased person, the availability of a jurisdictional route is not the same as the existence of material warranting its exercise. The decisive deficiency was the same under rule 21.4 and rule 21.7; there was no evidential or procedural basis upon which the court could join or appoint a representative for the Estate. The learned judge therefore committed no reversible error by referring to rule 21.7 or by not expressly citing rule 21.4.**

Rules 21.4 and 21.7 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 applied.

APPLICATIONS/APPEALS

Case Name:

Tomaz Slivnik

v

**[1] Martin Dinning (as Conservator)
[2] Shawn Williams (as Conservator)**

**[AXAHCVAP2025/0002]
(Anguilla)**

Date:

Tuesday, 14th July 2026

Before:

**The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal**

Appearances:

Appellant: Ms. Tana'ania Small, KC with her Mr. Kennedy Hodge and Ms. Kathryn Williams

Respondents: Mr. Paul Dennis, KC with him Ms. Nadine Whyte-Laing and Ms. Navine Fleming

Issues:

Interlocutory Appeal – Eastern Caribbean Supreme Court Civil Procedure Rules 2000 ("CPR 2000") – Whether the

learned judge erred in law by refusing the appellant's request for entry of judgment in default of defence – Whether the requirements of rules 12.5 and 12.9(2)(a) of CPR 2000 were satisfied, and, if so, whether the court had a residual discretion to refuse the request – Whether the learned judge erred in law in holding that default judgment could not be entered because the claim involved multiple defendants, allegations of civil conspiracy, declaratory relief and claims that were not severable. -Whether the judge erred in failing to apply the principles in *The Federal Republic of Nigeria v Tibit Ltd* and *Matthew Harris v Lindsay Mason* [GDAHCVAP2014/0028] – Whether the learned judge erred in law and in fact in holding that the appellant's claim was not for a specified sum, was not severable from the claims of the other claimants, and could not be determined independently – Whether the learned judge erred in law by holding that the CPR 2023, rather than the CPR 2000, governed the proceedings and applications, contrary to the transitional provisions in rule 75.3 of CPR 2023, and in failing to apply *Integral Petroleum SA v Melars Group Ltd* [BVIHCM2015/0087, consolidated with BVIHCM2015/0122] – Whether the learned judge erred in fact and law in holding that the April 2023 judgment struck out the claim against the second respondent and consequently erred in refusing to consider the appellant's request for default judgment against that respondent – Whether the learned judge erred in law or misapplied the facts by holding that the respondents had not waived their right to dispute jurisdiction and by distinguishing or failing to apply the principles in *Uphill v BRB (Residuary) Ltd*, *Hoddinott v Persimmon Homes (Wessex) Ltd* [2007] EWCA Civ 1203 and *B & J Equipment Rental Ltd v Joseph Nanco* [2013] JMCA Civ 2 – Whether the learned judge erred in law and in the exercise of his discretion by granting the first respondent an extension of time to file a defence, relying on judicial findings made in a connected matter in assessing the merits of the defence Whether the judge erred in using as one of the bases for the exercise of his discretion in favour of extending time, a finding that the parties had agreed to stay the proceedings pending hearing and determination of Appeal NO AXAHCVAP2023/0005, Whether the judge erred in failing to award the appellant the costs of the extension application pursuant to rule 65.11(3)(b) of CPR 2000 – Whether the learned judge erred in law and in the exercise of his discretion in granting a stay of proceedings against the first respondent by taking into account irrelevant considerations, failing to take into account relevant considerations, relying on erroneous findings of fact, or granting relief unsupported by the evidence.

Type of Order:	N/A
Result/Order:	[Oral Delivery] IT IS HEREBY ORDERED THAT: Judgment is reserved.
Reasons:	N/A
Case Name:	Rex v Kirkland Spencer (Anguilla) [AXAHCRA2022/0004]
Date:	Wednesday, 15 th July 2026
Before:	The Hon. Mde. Vicki Ann Ellis, Justice of Appeal The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal
Appearances:	Applicant: Mr. Terrence Williams KC with him Mr. Seth Levine Respondent: No appearance Amicus Curiae: Mr. Darshan Rhamdhani, KC for the Anguilla Bar Association
Issues:	Application by the Crown for leave to appeal - Section 35A(2)(a) and (c) of the Eastern Caribbean Supreme Court (Anguilla) (Amendment) Act as amended in 2021 - Whether the Attorney General under the amended Eastern Caribbean Supreme Court (Anguilla) (Amendment) Act, 2021 can seek leave to appeal an interlocutory order/ruling made in a criminal matter – Whether the trial judge erred in finding that section 35A(2) does not permit appeals against interlocutory orders/rulings in criminal proceedings- Whether the trial judge erred in not granting a stay of the proceedings in the face of the appellant having filed an application for leave to appeal- Appeal against the trial

judge's decision upholding the respondent's submission of no case to answer and directing an acquittal - Whether the decision of the lower court is erroneous in law - Whether the learned judge during the trial (indictment for murder) improperly excluded material evidence sought to be adduced by the prosecution - Whether there was material irregularity in the course of the trial - Whether granting leave to appeal is in the best interest of the Court's overriding objectives.

**Type of
Order:**

Oral Decision

Result/Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. Leave to appeal is granted.**
- 2. The notice of appeal in respect of the interlocutory rulings shall be filed and served within 14 days of today's date, and in any event, on or before 30th July 2026.**
- 3. The appeal in respect of the no case submission shall continue as AXAHCRA2022/0004.**
- 4. The notice of appeal in respect of the interlocutory rulings shall be filed as a new claim, and a notation shall be placed on the E-Litigation Portal that the previous number was AXAHCRA2022/0004.**
- 5. The Chief Registrar shall migrate all documents relating to the leave to appeal application to the new claim number.**
- 6. The appeals shall be case managed and heard together on a date to be fixed by the Chief Registrar in consultation with Counsel in the matter.**
- 7. A copy of this Order shall be served on the respondent personally.**
- 8. The Registrar of the High Court of Anguilla will liaise directly with the respondent and the relevant ministry and any other relevant agencies with a view to providing legal representation for the respondent in relation to the appeals.**

Reasons:

Before the Court is an application for leave to appeal interlocutory rulings of the court below by which the learned judge excluded certain evidence sought to be adduced by the prosecution and refused the prosecution's application for a stay of the proceedings pending the determination of an interlocutory appeal.

In determining the application, the Court considered:

- i. the appeal bundle filed on 30th April 2025 together with the supplemental hearing bundle filed on 13th July 2026;
- ii. the written submissions filed by the appellant in support of the application on 9th May 2022, the supplemental written submissions filed on 28th June 2022, and the speaking notes filed on 25th April 2026; and
- iii. the written submissions of the *amicus curiae*, the Anguilla Bar Association, filed on 30th January 2026.

The Court noted the absence of the respondent notwithstanding that he had been duly served with the application for leave to appeal, the notice of hearing and the final cause list, as evidenced by the returns of service filed by the Bailiff of the Court and the affidavits filed by the Registrar.

The Court considered the test for the grant of leave to appeal under rule 62.8 of the Eastern Caribbean Supreme Court Civil Procedure Rules and the authorities applying that rule. Having done so, the Court was satisfied that the appellant had demonstrated both a reasonable prospect of success and compelling reasons for the grant of leave. In particular, the Court accepted the submissions of the *amicus curiae* that the proposed appeal raises novel questions concerning the interpretation of the statutory provisions governing the prosecution's right to appeal interlocutory rulings in criminal proceedings, the proper construction of those provisions by the court below, and the exercise of the court's powers to stay criminal proceedings pending such an appeal. The Court considered that these issues warrant appellate guidance for both the parties and the courts of the Eastern Caribbean Supreme Court.

The Court also considered the appeal filed on 9th May 2022 against the learned judge's decision to uphold a no case submission and acquit the respondent pursuant to section 35A(1) of the Eastern Caribbean Supreme Court (Anguilla) (Amendment) Act as amended in 2021. Counsel submitted that the proposed interlocutory appeal and the appeal against the acquittal should be heard together, as the determination of one appeal may affect the viability of the other. The Court accepted those submissions and, in the exercise of its case management powers, ordered that the appeals proceed and be heard together.

Case Name:

Clive Hodge

v

Rex

(Anguilla)

[AXAHCRA2019/0002]

Date: **Wednesday, 15th July 2026**

Before: **The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal**

Appearances:

Applicant: **Mr. Darshan Rhamdhani, KC**

Respondent: **Mr. Seth Levine with Ms. Erica Edwards**

Issues: **Application to adduce fresh evidence on appeal - Admissibility of affidavit evidence - Guilty plea - Ladd v Marshall - Test for admitting fresh evidence - Whether appellant satisfied three limbed test for admitting fresh evidence - Whether the evidence could not have been obtained with reasonable diligence for use at trial - Whether the evidence, if given, would probably have an important influence on the result of the case, though it need not be decisive - Whether the evidence is apparently credible**

Type of Order: **N/A**

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

IT IS HEREBY ORDERED THAT:

Judgment is reserved

Reasons: **N/A**

Case Name: **Clive Hodge**

v

Rex

Date: Wednesday, 15th July 2026

Before: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal

Appearances:

Appellant: Mr. Darshan Rhamdhani, KC

Respondent: Mr. Seth Levine with Ms. Erica Edwards

Issues: Criminal Appeal - Appeal against conviction and sentence - Whether the appellant's constitutional right to a fair trial was breached - Change of plea to guilty by the appellant - Whether the learned trial judge engaged in discussions during the course of the trial on the appellant's change of plea in absence of the appellant which affected the fairness of the trial - Miscarriage of justice - Whether a miscarriage of justice occurred by virtue of ineffective assistance of the appellant's counsel - Whether the trial judge improperly, unreasonably and unfairly allowed the deposition evidence of the witness Nicole Estridge - Whether the trial judge incorrectly reversed the burden of proof on the appellant to prove in a voir dire, the lack of voluntariness or fairness in relation to the GSR evidence - Whether the trial was unfair in that the case was tried jointly against both the appellant and the co-accused when the co-accused pled guilty at the beginning of the trial in the presence of the jury - Whether the trial judge failed to give timely and proper directions to the jury in circumstances where the co-accused pleaded guilty in the presence of the jury at the beginning of the trial

Type of Order: N/A

Result/Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved

Reasons: N/A

Case Name:

Tosh Sharnii Carty-Bin Nasir

v

**Caribbean Commercial Bank (Anguilla) Ltd.
(In Receivership)**

**[AXAHCVAP2025/0008]
(Anguilla)**

Date:

Thursday, 16th July 2026

Before:

**The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal**

Appearances:

Appellant: In person

Respondent: Ms. Jacinth Jeffers

Issues:

Civil appeal – Limitation of actions – Finality of litigation – Whether the appellant was entitled to challenge the applicability of sections 17, 21 and 22 of the Limitation Act and sections 72(2) and 95 of the Registered Land Act where those matters had been determined at a preliminary hearing and the resulting order had not been appealed – Whether grounds 1 to 4 constituted an impermissible attempt to reopen issues conclusively determined below – Part-payment – Whether the learned judge erred in law and/or fact in treating internal ledger entries made in 2016 and 2017 as valid part-payments of the mortgage debt – Whether the evidence established that the alleged payments were made by or on behalf of the appellant in satisfaction of the mortgage debt – Evidential and procedural error – Whether the learned judge erred in admitting and/or relying upon the affidavit evidence filed on 4th April 2025 exhibiting KR2 and related materials – Whether the admission of and reliance upon that evidence occasioned procedural unfairness to the appellant – Whether the learned judge failed adequately to consider the appellant's objections concerning disclosure and admissibility – Costs – Whether the learned judge erred in the exercise of his discretion in awarding costs against the appellant.

**Type of
Order:**

Oral Decision

Result/Order:

**[Oral Delivery]
IT IS HEREBY ORDERED THAT:**

- 1. The appeal is dismissed.**
- 2. The Court shall provide full written reasons for its decision.**
- 3. The Chief Registrar will notify the parties when the decision is available.**

Reasons:

Before the Court was an Amended Notice of Appeal filed on 4th May 2026 challenging the Judgment and Order of the High Court dated 14th November 2025. In the amended grounds of appeal, filed on 31st March 2026, the appellant relied on seven grounds.

However, at the hearing of the appeal, the Court inquired from the appellant whether it was open to him to take the point on the limitation period which had been settled by previous order of the court and which had not been appealed. The appellant's response was that there were areas in which interpretation may be clarified to assist in the hearing of the appeal. Counsel for the respondent however submitted that the appellant could not raise arguments which were not appealed. The Court determined that the appellant could not raise arguments on the limitation point and accordingly did not entertain submissions on grounds 1-4.

Having heard oral submissions from the appellant and the respondent and the appellant's reply, the Court dismissed the appeal with written reasons for this decision to follow.

Case Name:

Elianny Romero

V

The Attorney General

**[AXAMCRAP2025/0002]
(Anguilla)**

Date:

Thursday, 16th July 2026

Before:

**The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal**

Appearances:

Appellant: Ms. Nakishma Rogers

Respondent: Mr. Seth Levine and Ms. Erica Edwards

Issues:

Magisterial Criminal Appeal - Section 197(2) of the Magistrate's Code of Procedure Act, 2014 - Whether the magistrate exceeded his jurisdiction by ordering forfeiture of the undeclared money - Section 89 of the Customs Act - Whether the judgment or sentence imposed by the magistrate was based on a wrong principle since section 89(3) of the Customs Act makes provision for the imposition of a fine only - Whether the magistrate erred in law by ordering forfeiture of US\$13,978.00 in the absence of any application by the Comptroller of Customs or the Crown for condemnation proceedings under the Customs Act - Whether the magistrate passed sentence based on a wrong principle of law when he misinterpreted the phrase 'liable to forfeiture' in section 89(4) of the Customs Act as conferring automatic jurisdiction to order forfeiture - Whether the magistrate took irrelevant matters into consideration when deciding that Parliament would have intended the money to be returned to the defendant it having been seized - Whether the magistrate took irrelevant matters into consideration when he deemed the supporting documents presented by the defendant to be compromised without informing the defence that he came to this conclusion thereby depriving the defence of an opportunity to present additional or further evidence in the defendant's medical appointment and treatment to satisfy the court of her mitigating circumstances before passing sentence - Whether the imposition of both a criminal penalty being the fine of EC\$20,000.00 and the forfeiture of the funds amount to an impermissible duplication of sanctions

Type of Order:

N/A

Result/Order:

IT IS HEREBY ORDERED THAT:

Judgement is reserved.

Reasons:

N/A

