

COMMONWEALTH OF THE BAHAMAS 2025/APP/MAG/00027

IN THE SUPREME COURT

APPEALS DIVISION

IN THE MATTER of the Magistrate's Court Order given on the 13th November,
2025, in the matter of Yvonne Brown and anor and Kira Coleby, No. 7749 of 2024

BETWEEN

Keira Coleby

Appellants

and

Darrion Brown
Yvonne Brown

Respondents

Before: The Honourable Madam Justice Joyann Ferguson

Appearances: Mr. Osmond Johnson of Counsel for the Appellants

Mr. Ian Cargill for the Respondents

Hearing date: 28th July, 2026

Ruling

Introduction

[1]. This is an application filed on 18th December, 2025 by Keira Coleby ("the Appellant") to Appeal the ruling of Magistrate Mr. K. Myles Parker (Actg.), in the matter no. 7749/2024.

[2]. By that ruling, the learned Magistrate found:

"...that there was no damage to the premises as provided for in the security deposit clause of the lease. I also find that the water and sewage bill or any portion thereof is not recoverable pursuant to the terms of the lease between the parties, nor are the charges paid to Munroe's for plumbing or plumbing services. As such the Defendant is not entitled to retain the security deposit or any portion thereof.

The Plaintiffs are granted judgement in the amount of \$1,300.00 representing the refund of the security deposit paid by the Plaintiffs to the Defendant.

The Plaintiffs are awarded their cost in the amount of \$1,000.00. "

- [3]. The Appellant now seeks a determination by this Court to set aside the judgement of the lower court and dismiss the claim of the Respondents, or in the alternative, that the damages awarded be substantially reduced to account for the Respondents own breaches.
- [4]. Counsel for the Appellant, submitted that the learned Magistrate failed properly to apply the legal obligations imposed upon tenants under a lease and erred in law by concluding that the Respondents bore no responsibility for the increased water charges. Counsel relied principally upon *Warren v Keen* [1954] 1 QB 15, *Meux v Cobley* (1892) 2 Ch. 253 and *British Westinghouse Electric & Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd* [1912] AC 673 in support of the proposition that the Respondents were liable for the losses allegedly occasioned by their conduct.
- [5]. Counsel for the Respondents, submitted that this appeal disclosed no error of law but sought instead rather to challenge findings of fact properly made by the learned Magistrate after hearing the witnesses. Counsel referred the Court to paragraphs 18 through 20 of the Magistrate's judgment and submitted that those findings were fully supported by the evidence. He further submitted that the learned Magistrate expressly considered the provisions of the lease, including the security deposit clause and the landlord's reserved right to amend the rent to reflect increases in water charges.

Issue

- [6]. The principal issue before this Court is whether the learned Magistrate erred in law or principle in finding that the Appellant failed to establish an entitlement under the lease to retain the Respondents' security deposit by reason of the alleged excessive water consumption and cesspit expenses.

The Law and Analysis

- [7]. It is well established that an appeal is not an opportunity for an appellate court simply to substitute its own assessment of the evidence for that of the trial judge. Where findings of fact are based upon the evaluation of oral testimony, credibility, and the weight to be attached to the evidence, considerable deference is owed to the adjudicator who had the advantage of seeing and hearing the witnesses.
- [8]. In *Beacon Insurance Co Ltd v Maharaj Bookstore Ltd* [2014] UKPC 21, the Privy Council reaffirmed that an appellate court may interfere with findings of fact only where it identifies a material error in the trial judge's evaluation of the evidence. The question is not whether the appellate court would itself have reached a different conclusion, but whether it was reasonably open to the trial judge to reach the findings that were made on the evidence before the court.
- [9]. Likewise, in *Watt (or Thomas) v Thomas* [1947] AC 484, it was emphasised that findings based upon credibility and the assessment of witnesses should not be disturbed unless the trial judge has acted upon a wrong principle of law, misapprehended the evidence, overlooked material evidence or reached a conclusion that was plainly wrong.

- [10]. Having carefully considered the grounds of appeal, and the submissions of both Counsel, and the record of the proceedings below together with the reasons given by the learned Magistrate, I am not persuaded that the learned Magistrate has demonstrated any error of law or principle warranting appellate intervention.
- [11]. The gravamen of the Appellant's complaint is that the learned Magistrate failed to conclude that the Respondents were responsible for excessive water consumption and that the Appellant was therefore entitled to retain the Respondents' security deposit. In my judgment, that complaint is directed primarily to the factual findings made by the learned Magistrate rather than to any identifiable error of law.
- [12]. The learned Magistrate expressly found that the parties shared a common water supply, a single water meter, and a common cesspit servicing the duplex premises. He further found that the Appellant produced no evidence demonstrating how she determined that the increased water consumption was attributable solely to the Respondents, nor was there any evidence establishing the basis upon which the water charges or cesspit expenses were apportioned between the respective occupants of the property. Those findings were plainly open to the learned Magistrate on the *prima facie* evidence before him.
- [13]. I also accept the Respondents' submission that the learned Magistrate carefully considered the relevant provisions of the tenancy agreement before arriving at his decision. In particular, as noted at paragraph 9(a) of his judgment, the learned Magistrate considered the Security Deposit Clause together with the provision reserved to the landlord which was the right to amend the lease by adjusting the rental to accommodate any increase in the water billing. Notwithstanding those provisions, he found that the Appellant had failed to establish, by cogent evidence, that the increased water charges were attributable to the Respondents. Alternatively that the lease entitled her, in the circumstances of this case, to retain the Respondents' security deposit. Those findings were plainly open to the learned Magistrate on the face of the evidence before him.
- [14]. Counsel for the Appellant relied upon *Warren v Keen* [1954] 1 QB 15 in support of the proposition that tenants are under an implied obligation to use leased premises in a tenant-like manner. There can be no dispute as to that principle. However, the learned Magistrate did not reject that legal obligation. Rather, he found that the Appellant had failed to establish, on the evidence, that the Respondents had caused the alleged excessive water consumption or that any resulting financial loss was properly and solely attributable to them. In this regard, the principle articulated in *Warren v Keen (supra)* does not advance the Appellant's case.
- [15]. Likewise, the Appellant relied upon *British Westinghouse Electric & Manufacturing Co. Ltd. v Underground Electric Railways Co. of London Ltd. (supra)* concerning the assessment of damages. While the principles governing compensatory damages are well established, those principles become relevant only where liability has first been established. The learned Magistrate was not satisfied that the Appellant had proved the factual basis upon which

liability depended. Consequently, that authority does not disclose any error in the Magistrate's reasoning.

[16].I have also considered the Appellant's reliance on *Meux v Cobley* (1892) 2 Ch. 253. That decision concerns the common law doctrine of waste and the obligations of a tenant in relation to the use of leased property. It does not materially assist in resolving the issue before this Court, namely whether the learned Magistrate erred in law in finding that the Appellant failed to prove an entitlement to retain the Respondents' security deposit.

[17].An Appellate court must guard against substituting its own view of the evidence for that of the trial court merely because another conclusion may also have been available. The learned Magistrate had the benefit of hearing the witnesses, assessing their credibility and evaluating the entirety of the evidence presented before him. The Appellant has not demonstrated that the learned Magistrate misapprehended the evidence, failed to consider any material evidence, applied an incorrect legal principle, or arrived at a conclusion that was plainly wrong. In these circumstances, there is no proper basis upon which this Court may interfere with his findings.

Conclusion

[18]. I have considered the submissions of both Counsel as well as the ruling of the learned Magistrate. I find that this appeal amounts to no more than a disagreement with the factual conclusions reached by the learned Magistrate. Those conclusions were supported by the evidence before the court and disclose no error of law or principle. The Appellant has therefore failed to satisfy this Court that the judgment should be disturbed.

[19].Accordingly, the appeal is dismissed and the judgment of the learned Magistrate delivered on 13 November 2025 is affirmed.

[20].Costs is granted to the Respondents in the amount of \$2,500.00. This represents the aggregate of the cost of the Supreme Court and the Court below, to be taxed if not agreed.

Dated this 13th day of August, 2026



The Honourable Madam Justice Joyann Ferguson
Justice of the Supreme Court