

COMMONWEALTH OF THE BAHAMAS 2025/APP/MAG/0013
IN THE SUPREME COURT
APPEALS DIVISION

BETWEEN

ALVASHAN GAITOR

Appellant

and

MEGEL TAYLOR

Respondent

Before: The Honourable Madam Justice Joyann Ferguson

Appearances: Mr. Desmond Bannister of Counsel for the Appellant
 No appearance for the Respondent

Hearing date: 23rd July, 2026; 6th August, 2026

Introduction

- [1]. This is an appeal filed on by the Alvashan Gaitor (“the Appellant”) filed on the 1st July, 2025, from the decision of the Magistrate delivered on 25 June 2025 in claim No. 8021 of 2024, whereby the Appellant's claim against Mr. Megel Taylor (“the Respondent”), was dismissed.
- [2]. The proceedings before the Magistrate arose from the Appellant's claim for the sum of \$1,527.00, being the alleged cost of repairing damages to the engine base pan of her motor vehicle. The Magistrate identified the issue for determination as whether the Respondent was liable to the Appellant for that sum. Having considered the evidence, the Magistrate concluded that the Appellant had failed to prove her case against the Respondent on a balance of probabilities and dismissed the claim.
- [3]. The Notice of Appeal was filed on 1 July 2025. The Court is further satisfied from the Affidavit of Service sworn by Mr. Tyrone Braynen, Deputy Provost Marshal, filed on 5 August 2026, that notice of the hearing of this appeal was served upon the Respondent at his residence on 27 July 2026.
- [4]. Notwithstanding that service, the Respondent did not appear at the hearing of the appeal and was not represented. The Court, being satisfied that the Respondent had been duly served and afforded an opportunity to be heard, proceeded to determine the appeal in his absence.

Grounds of Appeal

[5].The Appellant contends, in substance, that the Magistrate erred in his treatment of the evidence and the applicable of the burden of proof. The grounds advanced include the contention that the Magistrate failed properly to consider the Appellant's uncontradicted evidence; failed to give appropriate weight to the Respondent's alleged admission; and failed to consider what, if any, inference was properly available from the Respondent's failure to give evidence.

Jurisdiction and Applicable Principles

[6].The Court's jurisdiction on an appeal from the Magistrates' Court is governed by the **Magistrates Act, Ch. 54. Section 64** provides that an appeal by motion is not ordinarily a rehearing unless the Court considers that the justice of the case requires one. Section 66 permits the appellate court to draw inferences of fact from the evidence given before the Magistrate and to decide the appeal by reference to matters of both fact and law.

[7].**Section 68** further empowers the Court, upon hearing the appeal, to confirm, reverse, vary or modify the Magistrate's decision, remit the matter with its opinion to the Magistrate, or make such other order as the Court considers just. The Court may exercise any power which the Magistrate could have exercised at first instance.

[8].The Court nevertheless remains mindful of the established restraint exercised by an appellate court in relation to findings of primary fact.

[9].In **Henderson v Foxworth Investments Ltd [2014] UKSC 41; [2014] 1 WLR 2600**, at para. 67, Lord Reid states that:

in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified.

[10].That principle assumes particular significance in the present appeal because the Magistrate did not reject the Appellant's evidence on the basis that she lacked credibility. There is no adverse finding as to his credibility recorded in the ruling. Rather, having set out the evidence, including the evidence of the Respondent's alleged admission, the Magistrate then concluded that the Appellant had failed to establish her case on a balance of probabilities.

Burden and Standard of Proof

- [11].The Magistrate correctly directed himself to the general principle concerning the burden of proof. **Section 82 of the Evidence Act, Ch. 65**, as reproduced in the ruling, places upon a person seeking judgment dependent upon the existence of facts asserted by that person the burden of proving those facts. The applicable civil standard was therefore proof on a balance of probabilities.
- [12].The difficulty, in this Court's view, lies not with the Magistrate's statement of that general principle but with its application to the evidence which was actually before the Court. The question was not whether the Appellant had produced every conceivable form of corroborative evidence. Rather, the question was whether, upon the whole of the admissible evidence, had she established that it was more probable than not that the Respondent caused the damage argued and was therefore liable for the consequent loss suffered by the Appellant.
- [13].The Appellant's evidence was not confined to the fact that the vehicle developed an oil leak after it had been worked upon by the Respondent. Her evidence went materially further. She testified that another mechanic identified a hole in the base pan and, importantly, that when she returned to the Respondent, the Respondent admitted causing the damage and instructed her to ascertain the replacement cost and obtain a quotation. That evidence was expressly recorded by the Magistrate in his notes.
- [14].The alleged admission was therefore not peripheral to the Appellant's case. If accepted, it constituted direct evidence bearing upon the central question of responsibility for the damage. Yet the ruling does not disclose any finding that this evidence was disbelieved, unreliable or insufficiently credible. Nor does the ruling explain what feature of the evidence caused the Magistrate to reject, or attribute insufficient weight to, the alleged admission.
- [15].Evidence does not become conclusive merely because it is uncontradicted. A trial court remains required to evaluate it and determine whether the party bearing the burden has proved the case to the requisite standard. Equally, however, the court must evaluate the material evidence actually before it and sufficiently explain why evidence capable of establishing an essential fact has not satisfied that threshold.

Failure of the Respondent to Give Evidence

- [16].The Appellant relies upon the Bahamian Court of Appeal decision in ***Penn v First Caribbean Bank (Bahamas) Limited*** [2009] 3 BHS J No. 133 at paragraph 27, Longley JA stated
- And given that the appellant did not choose to give evidence it was in my opinion open to the court to draw such adverse inferences against the appellant as the circumstances warranted. [Emphasis added]

[17].The principle in *Penn*, however, must be considered in its proper context. The drawing of an adverse inference does not operate to relieve a Claimant of the burden of establishing her case on the evidence. Rather, such an inference forms part of the Court's overall evaluation of the evidence where there is already an evidential foundation upon which the inference may properly arise.

[18]. Accordingly, *Penn* (supra) does not establish that a Defendant's failure to give evidence, without more, automatically proves the Claimant's case. The legal burden remains upon the Claimant, and the significance to be attached to the Defendant's failure to give evidence must necessarily be assessed against the evidence which the Claimant has adduced in support of the claim.

[19].In the present case, however, there was evidence capable of supporting the Appellant's case independently of the Respondent's absence. The chronology of the vehicle being delivered to the Respondent for mechanical repair; the discovery of the oil leak immediately thereafter; the subsequent identification of a hole in the base pan; and, most significantly, the Appellant's sworn evidence of the Respondent's admission that he caused the damage and his instruction that she obtain a quotation.

[20].Against that evidential background, the Respondent's failure to give evidence was a matter which the Magistrate was entitled to take into account in determining whether the Appellant had discharged the civil burden. The Appellant's reliance upon *Penn* is therefore well placed.

Conclusion

[21].Having carefully reviewed the Magistrate's ruling and the evidence identified therein, this Court is satisfied that appellate intervention is warranted. The Magistrate correctly stated the general burden and standard of proof but, failed adequately to apply that standard to the material evidence which was before him and which he duly recorded.

[22].In particular, no adequate consideration appears to have been given to the Appellant's sworn evidence of the Respondent's admission of responsibility. There was no finding that the Appellant was not a credible witness; no rejection of the alleged admission on credibility grounds; and no explanation why that evidence, considered together with the surrounding circumstances, was insufficient to discharge the burden on a balance of probabilities.

[23].This is therefore not a case in which this Court merely prefers a different factual conclusion from that reached by the Magistrate. Rather, there was a failure to consider material evidence going directly to the dispositive issue. Such a failure provides a proper basis for appellate intervention

consistently with the principles articulated in *Henderson v Foxworth Investments Ltd.* (supra).

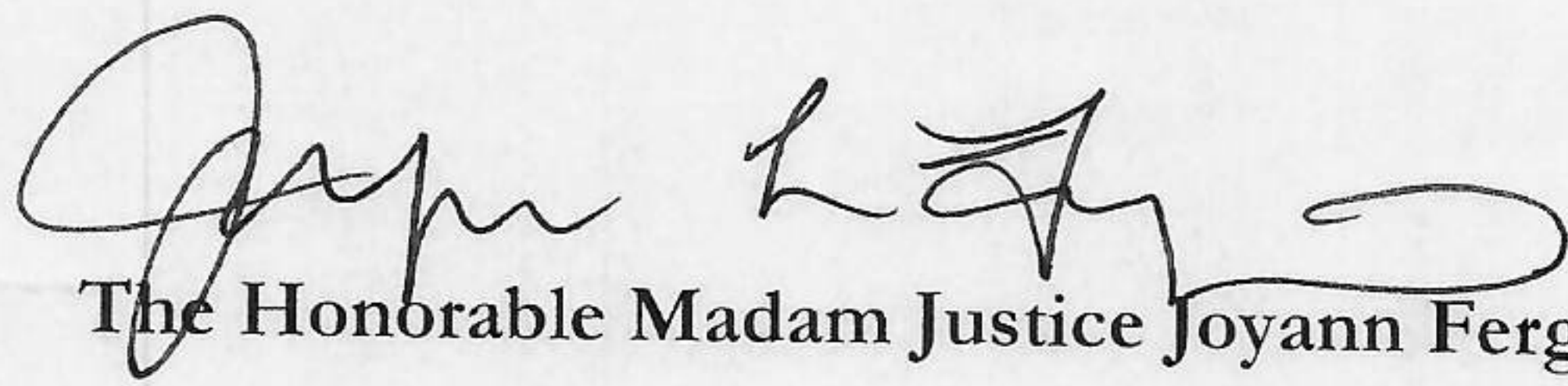
[24]. Further, section 66 of the Magistrates Act expressly permits this Court, on an appeal by motion, to draw inferences of fact from the evidence given before the Magistrate and to determine the appeal by reference to both fact and law. Section 68 empowers this Court to reverse, vary or modify the Magistrate's decision and to exercise any power which the Magistrate could have exercised.

[25]. Upon the evidence recorded in the ruling, and particularly the uncontradicted evidence of the Respondent's admission that he caused the damage, considered together with the circumstances in which the damage was discovered, this Court is satisfied of the Appellant's established liability on a balance of probabilities.

Accordingly, it is hereby **ORDERED** that:

- i. The appeal is **allowed**.
- ii. The decision of the Magistrate dated **25 June 2025**, dismissing the Appellant's claim, is **reversed and set aside**.
- iii. Judgment is entered for the **Appellant, Alvashan Gaitor**, against the **Respondent, Megel Taylor**, in the sum of **\$1,527.00**.
- iv. **Costs awarded to the Appellant in the sum of \$7,000.**

Dated *14th* of *October* 2026


The Honorable Madam Justice Joyann Ferguson
Justice of the Supreme Court