**Judgment 44/2004** **Henry v Veloso – Royal Court – 14 October, 2004**

**Civil appeal from the Magistrate's Court – dismissal of claim for £736.66 in respect of damage to a motor cycle – general duty on a judge or magistrate to give reasons for his decision – review of the Guernsey and English authorities – appeal dismissed.**

**IN THE ROYAL COURT OF GUERNSEY**

The 14th day of October, 2004 before Alan Robin Winston Hancox, Esquire, E.G.H., C.B.E. Lieutenant Bailiff; sitting alone

JOHN D. HENRY (Appellant)

V.

LINDA VELOSO (Respondent)

In the appeal of the Appellant from the decision of the Magistrate's Court on 22nd April 2004;

WHEREAS THE COURT on the 7th October, 2004 heard the Appellant and the Respondent in person thereon and RESERVED its decision;

THE COURT THIS DAY handed down judgment in the terms attached hereto and DISMISSED the appeal.

C. S. WEETMAN
Her Majesty's Deputy Greffier

**Approved**
**14th October 2004**

**IN THE ROYAL COURT OF GUERNSEY**
**ORDINARY DIVISION**

**Between:**

**JOHN. D. HENRY……Appellant/**
**Original Plaintiff**

**and**

**LINDA VELOSO……...…….Respondent/**
**Original Defendant**

**[Appeal from the decision of S.E.F. Le Poidevin Esq:,**
**Assistant Magistrate, dated 22nd April, 2004.]**

Judgment.

1. The facts giving rise to this appeal were that non-alcoholic birthday celebrations for the sister-in-law of Michael, or Mick, Bichard, the partner of the Respondent to this Appeal, were being held at a house called Bethany on the Grand Fort Road, Vale, during the late afternoon of Thursday, 18th September, 2003. There is no dispute that the parties to this case were guests and that the host was a man named Mark. As with many houses in Guernsey there was a small forecourt to the front of the premises and therefore the space for those attending the party to park their vehicles was limited.

2. There is also no dispute that Linda Veloso, the Respondent and the Defendant in the proceedings before the Magistrate on 22nd April, 2004, arrived first and parked her car facing the garage, and according to the plan produced when this Appeal was listed on 12th August, behind another vehicle. According to the Appellant and former Plaintiff, John Henry, when he arrived the parking was 'very tight', so he parked his Yamaha motor cycle Number 1369 in the remaining space, athwart the rear of Mrs. Veloso's car, 1 to 1½ metres from it and roughly 2 metres in from the pavement which runs alongside the main road. He positioned the machine on its retractable stand which was on its left hand side, that is the side away from Mrs.Veloso's car.

3. There was a conflict between the parties as to whether the 'up and over' garage door was open: Mr Henry saying that the parking was so tight that the garage door could not be opened, and Mrs Veloso saying that it was open when she arrived and that she saw Mark's motor cycle inside the garage. The only relevance of this is that there was evidence from the Appellant's sister-in-law, Tracey Henry, that Linda had admitted knocking Mark's motor cycle over. Linda, however, has maintained from the outset of this case that she was not responsible for having knocked over anybody's motor cycle.

4. After about an hour Mr. Henry's 11 year old daughter, Stephanie, came in to the house and spoke to her father. As a result he went out to find the Yamaha on its side with fuel pouring from its tank and the car 'almost touching' the fallen bike. It would have required pressure to knock the machine down, and he said that it was 'jacked up' against the stand, which had apparently snapped. Moreover, the offside mirror was pushed about 180° round from its correct position. Apart from Mr. Henry, two supporting witnesses were called, Tracey Henry, who said Linda had admitted to her after the incident that she had knocked Mark's (not Mr.Henry's) motorbike over, and had said that 'it was a stupid place to put it.'

5. The other witness was Stephanie, whom the Magistrate heard after a proper enquiry as to understanding her duty to tell the truth. She said that she saw her Dad's motorbike was tipped over and the reversing lights of the car in front of it illuminated. Linda denied both before the Magi- strate and in this Court that she had knocked the motorbike over, and maintained she would cheerfully have paid the £45 then claimed, a relatively small amount, had she done so. Her only witness was Michael Bichard who could not give material evidence regarding the incident, but said afterwards that Mr. Henry had offered to accept £45 for minor damage and to 'call it quits.'

6. The damage to Mr. Henry's motor cycle, according to the estimate exhibit P3, was not £45 but £736.66, which he claimed in the Petty Debt Court from Mrs. Veloso. After considering the evidence (and it must be said that he heard all the witnesses that each side then wished to call) in his finding at the conclusion of the case the Magistrate said he was not satisfied on the question of identity. The evidence being contradictory he could not say that it had been proved up to the standard required in a civil case that Linda had caused the damage to Mr. Henry's machine. Accordingly he dismissed the action.

7. Mr. Henry is dissatisfied with that decision and appeals to this Court on the grounds that he wished to present a proper plan of the scene to the Court, to call witnesses to whom Linda is alleged to have admitted that she was responsible for the damage and to refer to the unaddressed letter she wrote (Exhibit P 8 before the Magistrate) containing, as Mr. Henry maintains, the incriminating postscript: 'Hope you don't make a habit of parking so close behind cars.' He also wishes to adduce character evidence from the three witnesses who have provided references to the Court. Finally he submitted that the hearing was a trifle rushed and that he wished to have sufficient time to organise his side of the case properly.

8. The central, undisputed, fact in this case was that Mr. Henry's motorcycle was parked in the forecourt behind another vehicle, and that while the guests were inside it was knocked over. There was also credible evidence from Mr. Henry that it was parked securely on its stand. Mrs. Veloso did not seriously challenge the evidence that the car in front was hers, but her case was that the bike was already down when she came out of the house. The only issue of fact for the magistrate to decide was the identity of the person responsible for knocking the bike over and causing damage to it, an issue which he correctly addressed in his finding.

9. It would appear that the parties had plenty of time in which to prepare for the case. After the summons was served on the Defendant, by way of 'A' service, both parties came before the same Magistrate on 26th Nov-ember, 2003, when it was set for hearing some five months later on 22nd April, 2004. At the outset the Magistrate carefully explained the procedure that would be followed and asked the names of the witnesses each wished to call. He stressed that he knew nothing about the case, that he was wholly im- partial and that it would be up to the Plaintiff to prove his case. That being so he, the Plaintiff, would have the right to make the final address to the Court.

10. The parties and their respective witnesses were then called. Each side was afforded an opportunity to question the other's witnesses and to address the Court. Towards the end of his address the Plaintiff, Mr. Henry, said:

> "As far as I can see it it's just – it must be one of the most straightforward cases of this kind you can get, with only one car actually having access to the bike and so I think on the evidence we've already heard, I'm quite content to leave you make your mind up. I haven't got anything extra to add."

My emphasis.

11. Again and again the Magistrate said that too many side issues were coming in to the case, and that what he needed was evidence to establish how and by whom the motorcycle was knocked over. Despite this neither party sought an adjournment in order to call further evidence, as Mr. Henry now says he wishes to do.

12. In my judgment the Appellant, having expressed himself as being content that the Magistrate should decide the case on the evidence before him cannot complain afterwards if he failed to bring certain pieces of evidence to the Court's attention. In Nouvion v. Freeman [1889] 15 App.Cas. 1 at pages 9 –10 Lord Herschell L.C said:

> "In a court of competent jurisdiction where, according to its established procedure the whole merits of the case were open, at all events, to the parties, however much they may have failed to take advantage of them, or may have waived any of their rights, a final adjudication has been given……which cannot thereafter be disputed, and can only be questioned in an appeal to a higher tribunal."

13. I have, however, been troubled by the fact that the judgment, while it addressed correctly the issue for decision, was very brief, with no analysis of the evidence before the Court, other than the statement that it was contradictory. This, of course, was a Petty Debt case, even though it was not based on contract but on tort, namely the tort of negligence. The tort involves
broadly speaking, a duty to exercise care towards one's neighbour or his pro-perty, and a culpable failure to observe that duty.

14. Petty Debt actions are no longer brought for small amounts, as in former times (the definition being unimportant or trivial). Maybe there are some who would say that the upper limit of £2,500 (and *a fortiori* £736.66) is a trivial sum, but there are many in Guernsey who would not. It follows that it is of some importance that the loser, at least, in Lord Phillips' words *(infra,)* should be crystal clear as to why he or she has lost. Such clarity can often only be achieved by a statement of reasons by the decision maker.

15. It is clear from the authorities in recent years that there is a general duty on a Judge or Magistrate to give reasons for his decision. As was stated by the Divisional Court in R v. Harrow Crown Court *ex parte* Dave [1994] 1 WLR 98, at page 107, the reasoning required will depend on the circumstances of the case. In the later case of Flannery v. Halifax Estate Agencies Ltd [2000] 1 WLR 377 at page 382 the Court of Appeal said that in a simple case, for example, of a dispute as to who hit the first blow on an assault charge, it may well be sufficient for the presiding judicial officer to say which evidence he or she prefers with brief reasons.

16. The cases in which a duty to give reasons for a judicial decision has been expressed, and the tribunals or courts whose decision was under consideration, vary greatly. In Capital Properties Ltd v. Swycher [1976] Ch 319 the Judge ordered the forfeiture of a property purchaser's deposit without giving any reasons. Buckley L.J said at page 325-326:

> "The judge unfortunately gave no reasons for his decision. This I consider a most unsatisfactory practice. There are some sorts of interlocutory applications, mainly of a purely procedural kind, upon which a judge exercising his discretion on some such question as whether a matter should be expedited or adjourned or extra time should be allowed for some party to take some procedural step. Or possibly whether relief by way of an injunction should be granted or refused, can properly make an order without giving any reasons. This, being an application involving questions of law, is in my opinion clearly not such a case. Litigants are entitled to know on what grounds their cases are decided."

17. In R v. Immigration Appeal Tribunal *ex parte* Khan (Mahmud) [1983] 1 QB 790, where the issue was whether the marriage which was said to entitle the applicant to remain in Britain was genuine or one of convenience and the tribunal had given very brief reasons for refusal of permission, Lord Lane C.J. said at page 794-5:

> "A party appearing before a tribunal is entitled to know, either expressly stated by it or inferentially stated, what it is to which the tribunal is addressing its mind. In some cases it may be perfectly obvious without any express reference to it by the tribunal; in other cases it may not."

Further on in the judgment Lord Lane said this:

> "[The decision]' 'does not satisfactorily delineate those parts of the evidence which it accepts and those parts which it does not. The tribunal state:
>
> > " 'We regret to say that there are aspects of the appellant's evidence which we are unable to believe—notably that he was unaware of Cynthia Mitchell's character when he married her…'
>
> "But that remark is pregnant with the suggestion that there are other aspects of his evidence, and indeed that of other witnesses, which they did believe and they do not vouchsafe which is which."

18. In Mahmud Khan's case the Court of Appeal was considering an earlier decision, in relation to the Industrial Relations Court, of Sir John Donaldson P. in Alexander Machinery (Dudley) Ltd v. Crabtree [1974] 2 AER 120, in which he had said at page 122:

> "In the present case it is clear that the whole argument which the employers wish to address to us depends on the tribunal's evaluation of the evidence relating to the reasons for the employee's dismissal and the reasonableness of the employers' conduct in all the circumstances in dismissing him on the basis of those reasons. The tribunal said they were not satisfied with the reasons set out but gave no detailed explanation of why they were not satisfied."

Further down page 122 he said:

> "We do not think that the brief reasons set out here suffice for that purpose."

19. What, then, if some reasons have been given if a ground of appeal (and I hasten to say there is none such here) alleges that those reasons, appearing in the decision appealed from, are inadequate? This matter was addressed recently in the local case of Christopher John Gallienne [2003] 1st December, in which the Appellant had been convicted of an assault on the female complainant inside a flat. Advocate Barnes, appearing for the appellant, had submitted that there were serious inconsistencies and conflicts in the prosecution evidence which the Magistrate had failed to explain or address in his judgment. At paragraph 14 of the Judgment Day L.B said:

> "The appeal structure in England and Wales is different, being by way of re-hearing before the Crown Court or by way of case stated. In the latter case a fuller statement of reasons can be requested and provided, though that does not derogate from the requirement for justices to provide initial basic reasons for their decisions. Neither of these two alternative routes for appeal are available in Guernsey. It could be, therefore, that the obligation for the Magistrate to give reasons in this jurisdiction (as there is no

> remedy by way of case stated) is somewhat wider than it might be for justices in England and Wales."

Day L.B . concluded by saying:

> "In my view the Assistant Magistrate sufficiently identified the issues, and ultimately the basic one – did the Appellant assault Mrs. Brassell at the place and on the evening as alleged? The reasons for reaching the conclusion which he did were more than adequate."

The appeal was accordingly dismissed.

20. No great elaboration is necessary in the reasons which a Court gives for arriving at its decision (see Sir John Donaldson in Norton Tool Co v. Tewson [1973] 1AER 183 at page 187), nor does it have to mention every scrap of evidence given: see Griffiths L.J in Eagil Trust v. Pigott-Brown & Taylor[1985] 3 AER 119 at page 122, where he said:

> "I cannot stress too strongly that there is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. It is sufficient if what he says shows the parties, and, if need be, the Court of Appeal the basis on which he has acted…

This passage was expressly approved by Lord Phillips in English v. Emery *(infra)* at page 393. The extent of the duty to give reasons depends very much on the subject matter of the case (see Flannery's case (*supra)* at page 382 and the European Court's decision in Torija v.Spain [1994] 19EHRR553 at page 562, cited in English v. Emery Reimbold & Strick Ltd *(infra).*

21. It was suggested in Flannery's case that there was an exception to the general duty to give reasons 'which did not always or even usually apply in the magistrate's court': however in English v. Emery Reimbold & Strick Ltd [2002] 3 AER 385 (an authority cited with approval by Day L.B in Gallienne's case *(supra)*) in which he referred (at page 392f-g) to the general recognition in the common law jurisdictions that it is desirable for judges to give reasons for their decisions, Lord Philips M.R. said at page 390:

"*Flannery's* case was decided before the Human Rights Act 1998 came into force. It is clearly established by the Strasbourg jurisprudence that the right to a fair trial guaranteed by art 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (as set out in Sch 1 to the 1998 Act), which includes the requirement that judgment shall be pronounced publicly, normally carries with it an obligation that the judgment should be a reasoned judgment. In response to this requirement *magistrates' courts now give reasons for their decisions."* My italics.

22. In Gallienne's case Day L.B drew attention to the differences between the practice followed in the English and Guernsey jurisdictions. He, nevertheless, having cited at length from English v Emery Reimbold & Strick continued at paragraph 24:

"I conclude that it is incumbent on the Magistrate to give adequate reasons for his decisions, adequacy in the circumstances of any particular case being the crux. Those circumstances will vary widely, from those in which reasons for a decision will be implicit in the decision itself (probably so, for example in the vast majority of simple traffic offences) to those in which, as in Diment, the evidence and legal argument is lengthy. A defendant is entitled to know why he has been found guilty, in no more than simple, but clear, terms appropriate to his case."

23. I am in respectful and complete agreement with that passage, and in view of Lord Phillips' statement, at page 393, that:

> "[16] We would put the matter at its simplest by saying that justice will not be done if it is not apparent to the parties why one has won and the other has lost"

I am equally of the view that there is a similar requirement under the modern law that adequate reasons, appropriate to the circumstances of the particular case, should be given in magistrates' courts' civil cases.

24. I am far from saying that judicial pronouncements as to the reasons that should be given by statutory tribunals, when statutory procedures often have to be followed (see the Alexander Machinery and Mahmud Khan cases above) are necessarily, in themselves, authoritative, but it is evident from recent high judicial authority in England, and the Gallienne case in Guernsey, that the requirement to give adequate reasons for a judicial decision in a disputed matter is now of general application.

25. Reverting to the instant case, on an examination of the record, it does not seem to me that there is justification for the complaint that the hearing was rushed. It has not been suggested that the hearing did not begin at the allocated time of 2.30 p.m. It concluded at 3.48 p.m. In that period the Plaintiff and two short witnesses (one being Stephanie) were called on his side and the Defendant and one medium length witness on her side, a total of five witnesses.

26. Nine exhibits were produced by the Plaintiff, and one, the letter from Jordan Veloso, for the defence. The latter was, of course, unsworn, but no complaint has been made that the Magistrate took it into account in reaching his decision. Both parties made submissions, and the Magistrate gave each a fair opportunity to question the other's witnesses. The interjections he made from time to time were, in my opinion, quite proper. A further indication of the care with which he tried the case was to ensure that Stephanie understood the nature of an oath and the duty to tell the truth

27. As I have commented the final judgment was brief but it is evident from it and the Magistrate's comments during the case that he had the salient issue well in mind and arrived at a decision which was open to him on the evidence before the Court. As Goddard L.J said in Mahon v. Osborne [1938] 2 KB 14 at page 52:

> "The most that can be required is that the learned judge, in addition to stating the law correctly, should give a fair summary of the evidence and of the contentions of either side."

28. The Magistrate was at pains to explain the procedure shortly after the commencement of the hearing, and in particular emphasised that the burden of proof was on the Plaintiff, and that that was why he would have the last word. Given that explanation, and that the Magistrate said in his short judgment that he was not satisfied that the burden of proof had been discharged, then, applying Lord Phillips' test above, it is apparent from the record that the Plaintiff could have entertained no doubt as to why he had lost.

29. A Court on appeal is not entitled to interfere with a decision of the Court appealed from simply because, had it been trying the case, it would have reached a different conclusion on the facts. It can only so interfere if the decision was perverse (in the sense that no reasonable tribunal, properly dir- ecting itself, could have arrived at that decision); or that there was an error of
law affecting the result; or it is shown that there was a failure of justice.

30. Neither of these things happened in this case. The only point of law which was involved was as to the burden of proof, and that was stated correctly. The Magistrate also directed himself correctly as to the factual issue to be resolved namely, as I said earlier, the identity of the person responsible for the damage to the motor cycle. Having done so he was not satisfied the case was proved up to the standard required in a civil case, namely on the balance of probabilities. In these circumstances the appeal is dismissed.

A.R.W.Hancox.
Lieutenant Bailiff
14th October 2004