

Court of Appeal Sitting
Saint Lucia
20th to 24th October 2003

RESERVED JUDGMENTS DELIVERED

Coram: Hon. Chief Justice Sir Dennis Byron
Hon. Justice of Appeal Albert Redhead
Hon. Justice of Appeal Brian Alleyne SC

Date: Monday 20th October 2003

**Caroline Davies v Maundays Bay Management
Ltd**
Civil Appeal No. 7 of 2002
Anguilla

Appearances:

Appellant: Mr. Roulston Glasgow holds for Webster, Dyrud
and Mitchel
Respondent: No appearance

Issue: Civil Practice and Procedure – costs - exercise of discretion.

Result: **Written judgment:** Saunders JA. Appeal dismissed with costs to the respondent in the sum of \$750.00.

Reason: The learned magistrate in his reasons for decision clearly addressed his mind to the matter of whether or not to award costs. His decision not to award costs cannot be regarded as being arbitrary or unreasonable. Furthermore, the function of an appellate tribunal is not to substitute its own discretion for that of the court below. **See Eagil Trust v Piggot-Brown** (1985) 3 All ER 120.

Date: Monday 20th October 2003

**Sheldon Thomas v The Queen
Criminal Appeal No. 11 of 2002
Grenada**

Appearances:

Appellant: Mr. Collin Foster holds for Mr. Noel Lloyd
Respondent: Ms. Victoria Charles holds for the Director of Public Prosecutions Grenada

Issue: Criminal law - rape - weak evidence - wrongful exclusion of evidence - failure to put defence - recent complaint - accusations made in the appellant's presence.

Result: **Written judgment:** Byron Chief Justice. Appeal allowed. The appellant's conviction is overturned and his sentence is set aside.

Reason:

- The issue of the appellant's credibility is within the jury's purview. It is well settled that a conviction could be supported by the virtual complainant's evidence alone once the jury has been properly directed on the law.
- The record of appeal did not reveal that the learned trial judge had excluded the testimony of any of the defense's witnesses. No ancillary evidence was adduced on this point.
- A trial judge is duty bound to ensure that the defence's case is put to the jury in a manner that is fair and adequate **See R v Nelson [1997] Crim LR 234 CA**. This case fell far short of a case where the trial judge's summation to the jury was imbalanced.
- The learned trial judge erred in describing the complainant's testimony as a recent complaint because no evidence was adduced from the person to whom the complaint was made. It is necessary for not only for the complainant to testify as to making the complaint but its terms should be proved by the person to whom it was made **See Kory White v The Queen**.
- The judge did not give the jury any direction on the issue of

accusations made by the complainant in the presence of the appellant because there was a grave danger that they would not have known how to assess the related testimony and may have given it greater evidential value than it deserved
See 2003 Archbold at 15-316.

Date: Monday 20th October 2003

**Marie Adrural v Veronique Geead et al
Civil Appeal No. 22 of 2001
Saint Lucia**

Appearances:

Appellant: Mr. Evans Calderon

Respondent: Mr. Michael Gordon QC and with him Mrs. Julie

Charles

Issue: Land Law- weight of evidence adduced - inadequacy of consideration - acquiescence -rectification of the land register - prescription - overriding interests.

Result: **Written judgment:** Byron, Chief Justice.
Appeal dismissed and the order of the learned trial judge affirmed. The appellant to pay the respondent's costs in the sum of \$15 000.00 as agreed between counsel.

Reason:

- There was little controversy on the findings of fact during the trial and there was ample evidence to support the learned trial judge's findings.
- The appellant alleged by her pleadings that she had purchased the disputed land in good faith and it was desirable for the judge to make findings on the related evidence. He made it clear that he found against that pleading and his reasoning process included observations on the inadequacy of the consideration. His findings were not based upon the inadequacy of consideration.

- The learned trial judge's decision enforced the overriding interests of the heirs of Theresa Donaii (deceased) in accordance with section 28(g) of the Land Registration Act [1984]. Section 28 provides that registered ownership is subject to overriding interests and protects those interests without them being registered. The protection is against persons who became registered while these interests existed. The concept of acquiescence is inapplicable to overriding interests.
- The learned trial judge did not invoke the powers of rectification under the provisions of the Land Registration Act [1984] in making his findings. His use of the word "rectified" in his reasons for decision was in an untechnical context. He used the word to convey the meaning "to correct or put right." The language employed by him had the effect of making a declaration of title in the terms of relief prayed for by the respondents.
- Section 28(f) of the Land Registration Act [1984] refers to claims to prescriptive title by virtue of any the laws relating to the limitation of actions and prescription. Sections 94 to 96 of the same Act however, deal with the procedure that may be utilized by any person who wishes to make a claim to the Registrar of Lands for registration of title claimed to have been acquired by positive prescription. The parties had acquired rights to the land by virtue of the laws of prescription (See Art 2064 of the Civil Code Chapter 242) and it was the learned trial judge's duty to give effect to these rights.
- Section 28 (g) of The Land Registration Act [1984] specifically protects the rights of persons in actual occupation of the land (See **Ulina Jennifer George v Hilary Charlmagne** Civil Appeal No. 24 of 2001). The evidence indicated that there were persons in actual occupation of the land whose rights were protected by that provision.

APPLICATIONS/MOTIONS

Date: Monday 20th October 2003

**Noeline Prospere (Nee Madore) v Fredrick
Prospere et al
Civil Appeal No. 30 of 2001**

Appearances:

Appellant: Mr. Bernard Monplaisir Power of Attorney for the

Appellant

First Respondent: Mr. Frederick Prospere in person

Second Respondent: Mr. Roulston Glasgow holds for Mr. Hilford
Deterville QC

Issue: Application for:
Directions for the certification of the Record of Appeal; and
Final Leave to Appeal to Her Majesty in Council

Result: Final Leave to Appeal to Her Majesty in Council granted.

Reason: The Appellant had complied with the requirements for
Conditional Leave to Appeal of section 5 of the Judicial
Committee (Appeals to the Privy Council) Order No. 224 of
1967. The application was unopposed.

Date: Monday 20th October 2003

**Blakes Estates Ltd v The Government of
Montserrat
Civil Appeals Nos. 2 & 3 of 2000.**

Appearances:

Appellant: Mr. Marcus Foster holds for Mr. Dane Hamilton

Respondent: Mr. Anthony Mc Namara QC holds for the Attorney
General of Montserrat

Issue: Application for Final Leave to Appeal to Her Majesty in Council

Result: An order was entered in the following terms:
That final Leave is granted to the Appellant to appeal to Her Majesty in Council against the decision of the Court of Appeal delivered on 3rd April 2003;
That the Record of Appeal be settled and printed in London England in conformity with the Rules of Her Majesty's Privy Council; and
That the costs of this application shall be costs in the appeal.

Reason: The application is unopposed and the full court deals with applications of this nature. In the interest of expediting the matter, the pronouncement of the order was made by the full court at this sitting rather than its next sitting in Montserrat.

Date: Monday 20th October 2003

**Frank Mariette v George Emmanuel Civil Appeal
No. 5 of 2003**

Appearances:

Appellant: Mr. Evans Calderon
Respondent: Mr. Winston Hinkson

Issue: Application for an extension of time to file the Record of Appeal.

Result: Leave granted to file the Record of Appeal within 7 days

Reason: The application was unopposed

HIGH COURT CIVIL APPEALS

Date: Monday 20th October 2003

Garvin French v National Insurance Corporation Civil Appeal No. 9 of 2003

Appearances:

Appellant: Mr. Peter Foster

Respondent: Mrs. Ann Cadie Bruney

Issue: Company Law - liability of directors for a company's debts - exercise of due care and diligence by directors - sufficiency of evidence

Civil Practice and Procedure - order for costs

Result: Judgment entered in terms of the following Consent Order:

That the decision of the learned trial delivered on 21st January 2003 be varied as follows:

That the appellant do pay to the respondent the sum of \$190 000.00 together with interest thereon at the rate of 10% per annum (payable in equal monthly installments) commencing on the 1st day of November 2003, over a period of 24 months. That there be no order as to costs.

Reason: The parties agreed to the terms of a Consent Order.

Coram: Hon. Chief Justice Sir Dennis Byron
Hon. Justice of Appeal Albert Redhead
Hon. Justice of Appeal Brian Alleyne SC

RESERVED JUDGMENTS DELIVERED

Date: Tuesday 21st October 2003

**Noel Heath and Glenroy Matthew v The
Government of The United States of America
Civil Appeal No. 18 of 2003
Saint Christopher and Nevis**

Appearances:

Appellant: Mr. Rolston Glasgow holds for Brown and Associates

Respondent: Mr. Anthony Mc Namara QC holds for the respondent

Issue: Criminal Law - extradition proceedings - admissibility of evidence - delay in proceedings - continuation of proceedings before a new magistrate - opportunity to call witnesses.

Constitutional Law - Fundamental rights - freedom of movement - right to a fair hearing within a reasonable time

Result: **Written judgment:** Saunders JA. Appeal dismissed. Order of the trial judge affirmed.

Reason:

- The High Court and the Privy Council in judgments previously delivered in this matter have determined that tape recordings were admissible under the provisions of sections 14 and 15 of the Extradition Act 1870.
- These courts also determined that sections 14 and 15 of the Extradition Act (1870) did not contravene the provisions of section 14 of the Constitution that guarantees citizens freedom of movement. On these occasions, the appellants raised no question of sections 14

and 15 contravening section 10 of the constitution that guarantees citizens the right to a fair hearing within a reasonable time. The appellants proffered no satisfactory explanation as to why the issue now being raised under section 10 of the Constitution had not been so done previously.

- If the court now determines the point of constitutionality in the appellant' s favour it would be placed in the embarrassing position of rendering a decision in circumstances where a Higher Court albeit for different reasons had arrived at a contrary conclusion. Further, an extradition hearing is not a trial but is instead a hearing to determine whether there is sufficient evidence of an alleged extradition crime to warrant a government surrendering a fugitive to a foreign country for trial **See Canada v Schmidt (1987) 1 RCS 500**. The courts have consistently ruled that such hearings do not contravene the citizen' s constitutional rights **See Re United States of America v Smith 7 DLR (4th) 12**. Consequently, the rights guaranteed to the appellants by section 10 of the constitution do not apply to these proceedings.
- The issue of delay in the proceedings was rejected when the matter was before the Privy Council previously. Delay can therefore be addressed only in relation to the intervening period between the judgment of the Privy Council (handed down on 19th June 2002) and the present time. There has been no delay attributable to the state that would warrant the court in taking the view that the proceedings ought to be stayed. The right to a fair and speedy trial as guaranteed by section 10 of the constitution does not apply to extradition proceedings. **See Republic of Argentina v Mellino 33 CCC (3rd) 334, Jhirad v Ferrandina (1976) 536 F. 2d 478 (2d Cir) and Sabatier v Dabrowski (1978) 586 F 2d 866 (1st Cir)**.
- The issue of the order to commit the appellants before a new magistrate was argued before the Privy Council and was dismissed. The respondents had made out a prima facie case against the appellants. All that is left to be done in these extradition proceedings is of a ministerial nature, which is that a magistrate is required to formally

conclude the proceedings by making an order for the committal of the accused.

- At the hearing the appellants indicated that they had no evidence to offer when called upon by the learned magistrate to do so. Although they may have omitted to do so upon the false premise that the tape recordings were inadmissible, they should not for a second time be given an opportunity they once avoided. There was always a risk that the magistrate's decision to render the evidence inadmissible could be reversed on appeal. It is inappropriate that the appellants be offered an opportunity they had failed to avail themselves of. Failure of a magistrate at a preliminary inquiry to afford an accused the opportunity to call witnesses does not render a committal a nullity **See Tiwari v The State (2002) 61 WIR 452**. The right of an accused to call evidence at a Preliminary Inquiry is not as fundamental as was made out by the appellants. It must therefore be of even less significance at extradition proceedings where an accused is not charged with a criminal offence.

Date: Tuesday 21st October 2003

**Clendon Louis v Andrew Smith
Civil Appeal No. 13 of 2001**

Appearances:

Appellant: Mr. Kenneth Foster QC
Respondent: Mr. Vern Gill

Issue: Land Law - encroachment onto a right of way

Result: **Written decision of Redhead JA:** Appeal dismissed with prescribed costs to the respondent in the sum of \$9 333.00. It is ordered that the report of the Licensed Land Surveyor, Rufinus Baptiste presented to the Court together with the attached plan be made part of the Court Order.

Reason:

- It is in the interest of the people of any country that litigation is brought to an end and this principle is expressed in the well-known ancient Latin maxim *interest reipublicae ut sit finis litium*. This case before the Court for the application was unopposed fourth time and for the resolution of the same issue ie. the determination of the access road which adjoins the properties of the parties.
- Having visited the locus in quo, the court is satisfied with the accuracy of the Surveyor's report that there is an encroachment of the appellant's fence and vehicles upon the right of way. The Court is of the view having regard to the history of this matter that there is a stubborn refusal by the parties particularly the Appellant to accept its decision. The Court cannot be made a party to this conduct.

HIGH COURT CIVIL APPEALS

Date: Tuesday 21st October 2003

**Rochamel Construction Ltd v National Insurance Corporation
Civil Appeal No. 10 of 2003**

Appearances:

Appellant: Mr. Kenneth Monplaisir QC
Respondent: Mrs. Ann Cadie Bruney

Issue: Civil Practice and Procedure – costs - costs following the cause – judge's departure from established principle.

Result: Decision reserved

Reason:

Date: Tuesday 21st October 2003

**Saint Lucia Furnishings Limited v Saint Lucia Co-
operative Bank Limited and Frank Myers of
KPMG
Civil Appeal No. 15 of 2003**

Appearances:

Appellant: Mr. Kenneth Foster QC

First Respondent: Ms. Brenda Flemming Floissac with Ms. Shan Greer

Second Respondent: Mr. Kenneth Monplaisir QC

Issue: Civil Practice and Procedure - CPR 2000 - striking out proceedings for want of prosecution - opportunity to be heard.

Result: Decision reserved

Date: Tuesday 21st October 2003

**J Spooner v T Spooner
Civil Appeal No. 13 of 2002**

Appearances:

Appellant: Mr. Alberton Richelieu

Respondent: Mr. Anthony Mc Namara QC

Issue: Application for Leave to withdraw the application

Result: Appeal Withdrawn. No order as to costs.

Reason: Application is unopposed.

Date: Tuesday 21st October 2003

**Benoit Leriche v Leon Cherry
Civil Appeal No. 4 of 2003**

Appearances:

Appellant: Mr. Kenneth Foster QC
Respondent: Mr. Kenneth Monplaisir QC

Issue: Land Law - constructive trusts - mortgage- sufficiency of evidence
Civil Practice and Procedure - costs

Result: Decision reserved

MAGISTERIAL CIVIL APPEALS

Date: Tuesday 21st October 2003

**Jude Broomes v Shirley George
Magisterial Civil Appeal No. 2 of 2003**

Appearances:

Appellant: The Appellant in person
Respondent: No appearance

Issue: Family Law - paternity - sufficiency of evidence - burden of proof - maintenance
Civil Practice and Procedure - costs - magistrate's jurisdiction to order costs.

Result: The Order for costs is set aside. Appeal Dismissed. Arrears owed from 29th January 1999 to 29th October 2003, which

amounts to \$9,200.00 to be paid in six months. In default the Appellant is sentenced to six months imprisonment.

Reason:

- This matter has been in the system for about four years now and has not been resolved. The evidence put before the court by the Appellant is not sufficient to overturn the Magistrate's order. The Appellant admitted to having sex with the Respondent and therefore he could be the father of the child.
- The onus is on the appellant to show that he is not the father and not on the Respondent to show that he is. The Appellant has failed to pay the interim payments that have now accrued to \$9600.00. The Court examined the Appellant's means to ascertain his ability to pay the outstanding debt reasonably.