

Court of Appeal Sitting
Saint Lucia
13th to 17th June 2005

APPLICATIONS/MOTIONS

Coram: Hon. Chief Justice (Ag) Brian Alleyne, SC
Hon. Justice of Appeal Michael Gordon, QC
Hon. Justice of Appeal (Ag) Murray Shanks

Date: Monday 13th June 2005

Parry Husbands v Warefact Limited et al
Civ. App. No. 7 of 1997

Appearances:

Appellant: Mr. Parry Husbands, QC (in person)
Respondent: Mr. Dexter Theodore

Issue: Set aside decision of a single Judge

Result: The matter of costs to the Privy Council prior to February 1st 2003 incurred outside of England referred back to the Chief Registrar. Costs of this application to the Appellant and to be determined at the same time by the Chief Registrar.

Reason: In an appeal to the Privy Council costs incurred in St. Lucia must be determined by the Proper Officer in St. Lucia.

Date: Monday 13th June 2005

**Felicia A. George v Eagle Air Services
Civ. App. No. 1 of 2002**

Appearances:

**Appellant: Mrs. Wauneen Louis-Harris
Respondent: Ms. Delia Daniel**

Issue: Application for Extension of Time to seek leave to appeal to Her Majesty In Council

Result: **Application dismissed. No order as to Costs.**

Reason: The application is out of time. The application was filed outside of the 21 day time period. The court has no jurisdiction or discretion to extend the time period.

Date: Monday 13th June 2005

**B. Leriche v L. Cherry
Civ. App. No. 4 of 2003**

Appearances:

**Appellant: Mr. Kenneth Foster, Q.C.
Respondent: Mr. Leonard Ogilvy**

Issue: Motion for Leave to appeal to Her Majesty In Council

Result: **Leave granted to appeal to Her Majesty in Council. The Appellant to deposit a sum of 500 pounds or its EC equivalent within 90 days. Appellant to take steps for the preparation of the record.**

Reason: Application is unopposed.

HIGH COURT CIVIL APPEALS

Coram: Hon. Chief Justice (Ag) Brian Alleyne, SC
Hon. Justice of Appeal [Ag.] Denys Barrow, SC
Hon. Justice of Appeal (Ag.) Ola Mae Edwards

Date: Monday 13th June 2005

**Jamie St. Louis et al v Jn Marie & Sons Ltd. Et al
Civ. App. No. 15 of 2005**

Appearances:

Appellant: Mr. Leonard Ogilvy with Ms. Isabella Shillingford
Respondent: No appearance on behalf of the 1st and 2nd
Respondent. Ms. Leandra Verneuil for the Third
Named Respondent

Issue: Whether the master was right in striking out a claim brought as administratrix of the estate and for the benefit of a minor where the claimant did not have the capacity to sue as administratrix.

Result: **Appeal allowed. Appellant must now comply with CPR Part 23. The Learned Master's order is affirmed in relation to Article 609 of the Civil Code. In relation to Article 988 of the Code the Master's order is discharged. The matter is remitted to the Master for Case Management. The Appellant is to pay costs to the Respondent up to this point. Such Costs have to be considered and determined by the Trial Judge.**

Reason: Master erred in deciding that the claim did not disclose a cause of action.

Date: Monday 13th June 2005

**Monica Plummer et al v Conway Bay Limited et al
Civ. App. No. 21 of 2003**

Appearances:

Appellant: Mr. Parry Husbands QC
Respondent: Mr. Anthony McNamara QC with Bota McNamara

Issue: Quantum of damages

Result: Appeal dismissed. Costs to the Respondent to be calculated as two-thirds of the amount awarded in the court below.

Reason: No basis on which to interfere with trial judge's decision. Judge appreciated the evidence and applied the law correctly.

Coram: Hon. Chief Justice (Ag) Brian Alleyne, SC
Hon. Justice of Appeal [Ag.] Denys Barrow, SC
Hon. Justice of Appeal (Ag.) Ola Mae Edwards

Date: Monday 13th June 2005

**Roger St. Ange v F. Soolal et al
Civ. App. No. 21 of 2004**

Appearances:

Appellant: Mr. Bota McNamara
Respondent: Mr. Dexter Theodore

Issue: Whether master right in striking out claim.

Result: Appeal allowed. Matter remitted to Case Management. Costs in the Cause, Quantum of costs to be assessed by trial judge.

Reason: Conviction of one driver on complaint arising out of the same circumstances is not determinative of the issue of negligence on the part of the other driver.

MAGISTERIAL CRIMINAL APPEALS AGAINST SENTENCE

Coram: Hon. Justice of Appeal Michael Gordon QC
Hon. Justice of Appeal [Ag.] Denys Barrow, SC
Hon. Justice of Appeal (Ag.) Ola Mae Edwards

Date: Tuesday 14th June 2005

Bernard Monroe v The Police
Magisterial Criminal Appeal No. 12A of 2004

Appearances:

Appellant: Mr. Jeannot Walters
Respondent: Mrs. Raquel Willie Trotman

Issue: Possession of firearm without licence

Result: The appeal against sentence is allowed. Sentence is varied to a fine of \$15,000 or 2 years imprisonment in default. As Appellant has already served one year in prison the balance of \$7,500 to be paid within 3 months.

Reason: The defendant has already served 1 year in prison.

Date: Tuesday 14th June 2005

**Garvin Andrew v Commissioner of Police
Magisterial Criminal Appeal No. 11 of 2004**

Appearances:

Appellant: No appearance
Respondent: Mr. Leslie Mondesir

Issue: Unlawful wounding

Result: Matter adjourned to the next sitting of the Court.

Reason: Appellant was not served.

Date: Tuesday 14th June 2005

**Aaron Gaillard v The Police
Magisterial Criminal Appeal No. 1 of 2005**

Appearances:

Appellant: Mr. Colin Foster
Respondent: Ms. Charon Gardner, Crown Counsel

Issue: Possession of unlicensed firearm

Result: Appeal allowed. Sentence is varied to time served.
Appellant is free to go.

Reason: The sentence was excessive. The DPP's Office does not oppose the appeal on grounds that the sentence imposed was wrong in principle.

MAGISTERIAL CRIMINAL APPEALS AGAINST CONVICTION

Date: Tuesday 14th June 2005

Karshama George v The Police
Magisterial Criminal Appeal No. 3 of 2004

Appearances:

Appellant: Mr. Kenneth Foster, QC
Respondent: Mr. Leslie Mondesir

Issue: Possession of ammunition without licence

Result: **Appeal dismissed. Surety to forfeit one half of \$5,000 bail.
Appellant to serve sentence when found.**

Reason: Appellant has absconded.

Date: Tuesday 14th June 2005

Kurt Satney v the Police
Magisterial Criminal Appeal No. 12 of 2004

Appearances:

Appellant: No appearance
Respondent: Ms. Raquel Willie Trotman

Issue: Dangerous Driving

Result: **Adjourned to the next sitting.**

Reason: The Appellant was not served.

Date: Tuesday 14th June 2005

**Development Control Authority v Wireless Ventures (St. Lucia) Ltd et al
Magisterial Criminal Appeal No. 4 of 2005**

Appearances:

Appellant: Mrs. Cynthia Hinkson-Ouhla
Respondent: Ms. Diana Thomas

Issue: Displaying advertisement without permission

Result: **Appeal allowed. Matter remitted to magistrate for trial.**

Reason: The crime is not the putting up of the advertisement but the displaying of same. The Magistrate dismissed the complaint on a point in *limine*.

Date: Tuesday 14th June 2005

**Christopher Vidal v The Police
Magisterial Criminal Appeal No. 5 of 2005**

Appearances:

Appellant: Mr. Richard Frederick
Respondent: Mrs. Victoria Charles-Clarke, DPP (Ag.)

Issue: Damage to Property – No mens rea.

Result: **Appeal dismissed.**

Reason: No reason to disturb magistrate's decision. Under the Criminal Code of St. Lucia recklessness is defined. This was the basis of 'mens rea'.

Date: Tuesday 14th June 2005

**Alexander George v Development Control
Authority
Magisterial Criminal Appeal No. 6 of 2005**

Appearances:

Appellant: Mr. Richard Frederick
Respondent: Mrs. Cynthia Hinkson Ouhla

Issue: Causing Injury to amenity of area.

Result: **Appeal against conviction dismissed. Conviction reaffirmed. Appeal against sentence allowed. Sentence varied to a fine of \$2500 and fine of \$250 for each day beyond 1st July 2005 that the material remains on the road.**

Reason: Although the evidence for the prosecution is not as clear as it could have been nevertheless, the prosecution established all the ingredients of the offence.