

Court of Appeal Sitting

BVI

24th – 26th September 2007

24th September 2007

Date:

Coram:

Hon. Justice of Appeal Mr. Denys Barrow S.C.
Hon. Justice of Appeal Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards

**THE ATTORNEY GENERAL v EDWARD BREWLEY
[Civil Appeal No. 5 of 2006]**

Appearances:

Appellant: Mr. Terrence Williams, Director of Public Prosecution

Respondent: Unrepresented

Issues:

Appeal against acquittal of the offence of sexual intercourse

Result:

Matter adjourned to the next sitting of the Court in January 2008.

Reason:

Respondent advised that he will be seeking legal aid.

Coram:

Hon. Justice of Appeal Mr. Denys Barrow S.C.
Hon. Justice of Appeal Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards

APPLICATION

**Philemon Miller v The Queen
Criminal Appeal No. 2 of 2007**

Appearances:

Appellant: Unrepresented

Respondent: Ms. Tamia Richards, Senior Crown Counsel

Issues: Robbery and Conspiracy to Rob.

Result: Appeal Dismissed

Reason: Court of Appeal is not conducting a new trial and cannot put itself place of the Jury to determine questions of fact.

Coram: Hon. Chief Justice (Ag.) Sir Brian Alleyne, S.C.

APPLICATION

NORGULF HOLDING LIMITED

Appellant

AND

MICHAEL WILSON & PARTNERS LIMITED

Respondent

[Civil Appeal No. 8 of 2007]

Appearances:

Appellant: Mr. John Jarvis and Mr. Paul Dennis

Respondent: Mr. James Drake and Mr. Christopher Young

Issues: Application is for interim costs order. Court of Appeal gave judgment in favor of Applicant and ordered that Respondent pay costs to Applicant.

Preliminary Objections: Court questioned why the Application was made to this Court. Mr. Jarvis indicated that it was the Court of Appeal that made the order and it is best if the Court that made the order deals with the Application.

Result: Application sent to the full Court for hearing.

Reason: The decision of a single judge is reviewable by the full Court. It appears likely that any decision will result in an application for

review and in order to conserve costs and the resources of the Court, the Court ordered that the application be heard by full Court.

Coram: Hon. Chief Justice (Ag.) Sir Brian Alleyne, S.C.

APPLICATION

**TIFFERN HENLEY v THE QUEEN
[Criminal Appeal No. 6 of 2007]**

Appearances:

Applicant: Ms. Michelle Worrell

Respondent: Ms. Tiffany Scatliffe

Issues: Application for extension of time to file Notice of Appeal.

Result: Leave granted to file Notice of Appeal out of time. Court indicated that there is no need to await transcript before filing Notice of Appeal as Applicant could file Notice and reserve the right to add further grounds when transcript is available.

Reason: No objection from the Respondent

Coram: Hon. Justice of Appeal Mr. Denys Barrow, SC
Hon. Justice of Appeal Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards

APPLICATION

**IPOC INTERNATIONAL GROWTH FUND LTD. v LV Finance
[Civil Appeal No. 30 of 2006]**

Appearances:

Appellant: Mr. Joan Cunningham

Respondent: Mr. Jeffrey Elkinson

Issues: Leave to Appeal to Her Majesty in Council

Result: Matter adjourned to the sitting of the Court of Appeal in January 2008.

Reason: Parties expect to settle and there will be no need to appeal.

Coram: Hon. Justice of Appeal Mr. Denys Barrow, SC
Hon. Justice of Appeal Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards

**DEVON DAWSON v THE QUEEN
[Civil Appeal No. 1 of 2007]**

Appearances:

Appellant - Unrepresented

Respondent - Mrs. Grace Henry McKenzie

Issues: Appeal against Conviction & Sentence
Attempted Murder and Wounding with Intent

Result: Appeal Dismissed

Reason: Matters put forward do not entitle Appellant to succeed in the appeal which are questions of facts which can only be determined by a jury.

Coram: Hon. Justice of Appeal Mr. Denys Barrow, SC
Hon. Justice of Appeal Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards

**GREGORY FORBES
FREDDY TALIE
JOSE GOMEZ GARCIA v THE COMMISSIONER OF
POLICE
[Magisterial Appeal Nos. 1, 2, 5 of 2007]**

Appearances:

Appellant Mr. Herbert McKenzie for Talien & Garcia, Dane Hamilton QC for Gregory Forbes

Respondent: Mr. Terrence Williams, Director Public Prosecution

Issues: Appeal against Conviction. Unlawful possession of a controlled substance.

Results: Matter adjourned to the next sitting of the Court of Appeal in January 2008. Bail Application on behalf of Forbes refused.

Reason: DPP is not opposed to the adjournment.

**Coram: Hon. Justice of Appeal Mr. Denys Barrow, SC
Hon. Justice of Appeal Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards**

APPLICATION

DEVIN MADURO v THE QUEEN [Criminal Appeal No. 3 of 2005]

Appearances:

Appellant - Mr. Paul Webster, QC

Respondent Mrs. Grace Henry McKenzie

**Issue: 1. Application for leave to Amend Notice of Appeal
2. Appeal against Conviction. Murder**

**Result: Matter adjourned to next sitting of the Court in January 2008.
Respondent to file submission by 31st October 2007.**

Reason: On 5th September, Respondent was served with new grounds of appeal. Did not have sufficient time to file submission. Appellant is not opposed to adjournment being granted.

**Coram: Hon. Justice of Appeal Mr. Denys Barrow, SC
Hon. Justice of Appeal Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards**

COMMISSIONER OF POLICE v DESMOND ALPHONSO

[Civil Appeal No. 29 of 2006]

Appearances:

Appellant: Mr. Terrence Williams, Director of Public Prosecution

Respondent: Mrs. Tana'ania Small-Davis

Issues:

Appeal against Costs Order.

Whether the learned judge erred in law in finding that the period for which a person may be detained without being charged cannot exceed 24hrs.

Reasons:

Counsel have agreed to settle matter on basis that the Police Amendment Act was not in force at the time the Order was made by the Court below.

Coram:

Hon. Justice of Appeal Mr. Denys Barrow, SC

Hon. Justice of Appeal Mr. Hugh Rawlins

Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards

APPLICATION

LAWRENCE WHEATLEY V RAISHAUNA WHEATLEY

[CIVIL APPEAL No. 6 of 2007]

Appearances:

Appellant: Mrs. Tana'ania Small-Davis

Respondent: Ms. Susan Demers

Issue:

1. Application for leave to appeal against Order

2. Application for review of decision of single judge relating to Stay of Execution of Trial Judge's Order.

Result:

Adjourned to Tuesday 25th September 2007.

Reason:

Papers are presently not before the Court in respect of Application for review. Counsel to prepare a bundle with all the documents that were filed by the end of the day.

Coram: Hon. Chief Justice (Ag.) Sir Brian Alleyne, SC.

APPLICATION

**ALFA TELECOM TURKEY LIMITED v CUKUROVA
FINANCE INTERNATIONAL LIMITED
[Civil Appeal No. 11 & 12 of 2007]**

Appearances:

**Applicant: Mr. Foote for Telia Sonera Finland
Mr. Robert Levy for Alfa Telecom Turkey Limited**

Respondent: Ms. Cowell for Cukurova Finance International Ltd.

**Issues: Application for adjournment of the hearing of the Application for
Leave to Appeal**

**Preliminary
Objections: No objections**

**Results: Hearing of Application adjourned to be heard at the end of the list
and not before Wednesday 26 September 2007.**

**Reasons: All parties agree that matter should not come for hearing before
Wednesday morning 26 September 2007 because there is a 3 day
hearing with the same parties before Justice Olivetti.**

Coram: Hon. Chief Justice (Ag.) Sir Brian Alleyne, SC.

APPLICATION

**GREGORY HODGE v PATSY LAKE
[Civil Appeal No. 22 of 2007]**

Appearances:

Applicant: Mr. William Hare

Respondent: Mrs. Tana'ania Small-Davis

Issues: 1. Application for leave to appeal.
2. Application for Order dated 20 August 2007 be set aside.

Preliminary Objections: Leave is not required
Court has no such jurisdiction to set aside order pending appeal.

Result: Matter adjourned to 25 of September 2007.
Parties to present Consent Order to Court.

Reasons: Leave is not required when party wishes to appeal interlocutory order relating to injunctive relief. Court has no jurisdiction to set aside order pending appeal. Stay cannot be granted as the action to be stayed is already performed.

Coram: Hon. Chief Justice (Ag.) Sir Brian Alleyne, SC.

APPLICATION

SONIA O'NEAL v FIRST BANK (PUERTO RICO) LIMITED [Civil Appeal No. 23 of 2007]

Appearances:
Applicant: Mr. William Hare
Respondent: Mrs. Hazel-Ann Hannaway-Boreland

Issues: 1. Application for leave to appeal
2. Application to set aside order dated 24 August 2007
3. Application that the Respondent be restrained from exercising its purported power of sale over the Applicant's property pending the grant of leave to appeal and if leave is granted the hearing of the intended appeal.

Preliminary Objections: No objections

Result: Matter adjourned to 25 September 2007.

Reasons: Parties to draft order and take to the next hearing for approval.

Date:

25th September 2007

Coram:

Hon. Justice of Appeal Mr. Denys Barrow, SC.
Hon. Justice of Appeal Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards

**NORGULF HOLDINGS LIMITED AND OTHERS v MICHAEL
WILSON & PARTNERS LIMITED
[Civil Appeal No. 8 of 2007]**

Appearances:

Appellant: **Mr. John Jarvis QC for the Respondent with Mr. Paul Dennis**

Respondent: **Mr. James Drake & Christopher Young for the Respondent**

Issues:

**Power of Court to order Interim Costs
Whether part 17.6 or 65.11 applies.**

Results:

Decision reserved.

Reasons:

**Counsel to send submission to Deputy Registrar and Chief
Registrar of the Court of Appeal electronically.**

Coram:

Hon. Justice of Appeal Mr. Deny Barrow, SC.
Hon. Justice of Appeal Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards

APPLICATION

**LAWRENCE WHEATLEY V RAISHAUNA WHEATLEY
[CIVIL APPEAL No. 6 of 2007]**

Appearances:

Appellant: **Mrs. Tana'ania Small-Davis**

Respondent: **Ms. Susan Demers**

Issue:

**Application to review decision of a single judge and Stay of
Execution of Order pending the decision of the Court of Appeal**

Decision: Leave to appeal is granted. Application for stay granted in relation to paragraphs 4 and 2 of the Court's Order entered on the 1.5.07 and also in relation to paragraph 9 of the Order. The sum of \$1,000 to be substituted for \$3,700 per week. Costs to the Appellant on the Application for Leave to Appeal and costs in the appeal on the Application for Stay of Execution.

Reason: Court finds there is a reasonable prospect of succeeding in the appeal.

Coram: Hon. Justice of Appeal Mr. Denys Barrow, SC.
Hon. Justice of Appeal Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards

APPLICATION

**Elena Collongues v. Andrew Lynch
[Civil Appeal No. 1 of 2007]**

Appearances:

Appellant: Mrs. Tana'ania Small- Davies

Respondent: Mr. Terrence Neal with him Mr. Kevon Swan

Issues: Leave to adduce further evidence. Whether learned judge erred in the factual findings made.

Result: Decision reserved.

Coram: Hon. Justice of Appeal Mr. Denys Barrow, SC.
Hon. Justice of Appeal Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Ola Mae Edwards

APPLICATION

**The British Virgin Islands Electricity Corporation v
Satyaprakash Rajmangal
[Civil Appeal No. 4 of 2007]**

Appearances:

Appellant: Mr. Paul Dennis

Respondent: Mr. Terrence Neal with him Mr. Kevon Swan

Issues:

Appeal against the finding of the Master that there was no reasonable prospect of success. Wrongful dismissal claim.

Result:

Master's Order is set aside. Defendant has leave to file defence setting forth all matters by October 10, 2007. Costs to the Claimant of \$5000 to be paid forthwith.

Coram:

Hon. Chief Justice (Ag.) Sir Brian Alleyne, SC.

APPLICATION

**SONIA O'NEAL v FIRST BANK (PUERTO RICO) LIMITED
[CIVIL APPEAL No. 23 of 2007]**

Appearances:

Applicant: Mr. William Hare

Respondent: Mrs. Hazel-Ann Hannaway-Boreland

Issues:

- 1. Application for leave to appeal.**
- 2. Application to set aside order dated 24 August 2007.**
- 3. Application that the Respondent be restrained from exercising its purported power of sale over the Applicant's property pending the grant of Leave to Appeal and if leave is granted the hearing of the intended appeal.**

Result:

**Applications withdrawn
Costs be in the Appeal**

Reasons:

Applicant through her counsel gave undertaking to file and serve a

Notice of Appeal within 7 days here of. The Respondent, through its counsel undertook that pending the determination of such appeal, it will not seek to exercise any alleged power of sale in respect of the property situate at and known as Parcel 56, Block 2539B, Central Registration Section Tortola, BVI.

Coram: Hon. Chief Justice (Ag.) Sir Brian Alleyne, SC.

APPLICATION

**KENSINGTON INTERNATONAL LIMITED v MONTROW
INTERNATIONAL LIMITED
(In Provisional Liquidation)
[Civil Appeal No. 7 of 2007]**

Appearances:

Applicant: Mr. Stephen Moverley Smith, QC with him Mr. Jonathan Tarboton and Mr. Stephen Dougherty

Respondent: Mr. Michael Black QC and with him Mr. William Hare

Issues:

- 1. Application for leave to amend Notice of Application.**
- 2. Application for Leave to Appeal.**
- 3. Application for Stay of Order dated 2 August 2007 requiring the Applicant to disclose certain documents to Respondent.**

**Preliminary
Objections:**

Application for leave to amend Notice of Application will cause delay and will place the date for hearing of the matter in jeopardy.

Result:

- 1. Leave granted to amend Notice of Application.**
- 2. Decision in relation to the Application for Leave to Appeal and Stay of Order reserved.**

Reasons:

- 1. The omission in the Notice of Application of ground A of the Grounds of Appeal was an oversight on the part of the Applicant's counsel as it was clearly referred to in the draft Grounds of Appeal.**

2. The Amendment will not place the hearing date which is set for February 2007 in jeopardy and no prejudice will be caused to Respondent.

Coram: Hon. Chief Justice (Ag.) Sir Brian Alleyne, SC.

APPLICATION

**TELIA SONERA FINLAND OYJ v ALFA TELECOM
TURKEY LIMITED - CUKUROVA FINANCE
INTERNATIONAL LIMITED & OTHERS
[Civil Appeal No. 11 & 12 of 2007]**

Appearances:

Applicant: Mr. Robert Foote

**1st
Respondent: Mr. Robert Levy**

**Other
Respondent: Ms. Joan Cunningham**

Issues: Application for leave to appeal

**Results: Permission to Appeal denied
Costs to be assessed if not agreed.**

Reasons: This is not a case in which the principle of open justice applies. The learned Judge correctly identified the principle to be applied. The Applicant has failed to show that the learned Judge failed to consider relevant considerations, took into account irrelevant considerations or that she incorrectly applied the principles.

Date: 26th September 2007

Hon. Justice of Appeal Mr. Denys Barrow, SC.
Hon. Justice of Appeal Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards

APPLICATION

ALFA TELECOM TURKEY LIMITED v CUKUROVA FINANCE INTERNATIONAL LIMITED [Civil Appeal No. 15 of 2007

Appearances:

Applicant: Robert Levy

Respondent: Joan Cunningham for Respondent

Issues:

**Whether Disclosure of documents pursuant to CPR 28.5 would exacerbate costs
Whether documents were not directly relevant
Whether they were not necessary for fair disposal of case
Whether Rule 28.16, 28.17 or 28.17 (b)(2) is the appropriate section**

Decisions:

Appeal dismissed with costs to Respondent. Costs to be assessed if not agreed.

Reasons:

**Case was decided on the very narrow basis that the first normal Case Management Conference in this matter is yet to be held. It was open to the judge to decide that what she called advance discovery was not appropriate. Court finds no basis for interfering with that exercise of discretion.
The disclosure of the partial award whether pursuant to Rule 28.16 or 28.17 is a matter that can be dealt with at the first Case Management Conference.**

Edison Aguilar Segundo et al v The Commissioner of Police [Civil Appeal No. 1 of 2007

Appearances:

Appellant: Mr. Herbert McKenzie

**Respondent Mr. Terrence Williams for Director of Public Prosecution with
Jamie Richards, Senior Crown Counsel**

Issue: Unlawful possession of a controlled substance.

Decision: Appeal dismissed. Sentence affirmed to run from date of conviction of each Appellant.

Reason: Evidence adduced at trial was sufficient to support conviction. Sentence of 7 years is appropriate.

GREGORY HODGE v PATSY LAKE & ITF Investment Group
[Civil Appeal No. 22 of 2007]

Appearances:

Applicant: Mr. Robert Nader

2nd Respondent: Mrs. Tana'ania Small-Davis

Issues: Application for leave to appeal.
Application to set aside Order dated 20 August 2007.

Preliminary Objections: Leave is not required.

Result: Application withdrawn
Costs awarded to Second Respondent in the sum of \$1,000.00.

Reasons: Leave is not required to appeal interlocutory order relating to injunctive relief. Court has no jurisdiction to set aside order pending appeal. Applicant has undertaken to file and serve Notice of Appeal within 7 days hereof.