

## COURT OF APPEAL SITTING

### Saint Lucia

Monday, 26<sup>th</sup> February, 2007 to Friday, 2<sup>nd</sup> March, 2007

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**Coram:** His Lordship, the Hon. Mr. Michael Gordon, QC - President  
His Lordship, the Hon. Mr. Denys Barrow, SC - Justice of Appeal  
His Lordship, the Hon. Mr. Hugh A. Rawlins - Justice of Appeal

#### **Judgment Delivered**

**Java Lawrence v The Director of Public Prosecutions**  
Criminal Appeal No.1 of 2005 Saint Christopher & Nevis

#### **Appearances:**

Appellant	Mrs. Victoria Charles Clarke DPP holding for DPP of Saint Christopher & Nevis
Respondent	Ms. Samantha Charles holding for Dr. Henry Browne

**Issue:** Judgment delivered

**Result:** Appeal Dismissed

**Reason:** None of the grounds succeed. The court found that at the end of the prosecutions case the jury had a classic jury question to answer, that is, was the witness telling the truth or not, and that it would have been wrong for the trial judge to withdraw that question from the jury, therefore, that ground of appeal fails. The evidence was such that it could sustain the verdict contrary to the contentions of the appellant, and the court did not find that the summation contained grave errors or was inadequate in its directions on crucial aspects of the law. The judge's summation was fair and balanced.

#### **Application/Motion**

**Sylvina Louisen v Joachim Rodney Jacob**  
Civil Appeal No.17 of 2004

#### **Appearances:**

Appellant:	Mrs. Edith Petra Nelson
Respondent:	Mr. Dexter Theodore

**Issue:** Application to appeal to Her Majesty in Council – The Appellant has not served the Respondent the notice of Appeal and the Respondent quotes from authorities that unless this is done with 21 days it is too late. The Respondent must not only file the notice but they must also serve the notice of the other side.

**Result:** Matter stood down to Wednesday 28<sup>th</sup> 2007.

**Reason:** To allow the parties to furnish the court with authorities in support of argument.

**Dr. Richardson St. Rose v Dr. David Carol Bristol**  
Civil Appeal No.16 of 2005

**Appearances:**

Appellant: Mr. Al Elliott holding papers for Mr. Alberton Richelieu  
Respondent: Mr. James Bristol

**Issues:** Motion for Final Leave to Appeal to Her Majesty in Council

**Result:** Matter stood down until Wednesday 28<sup>th</sup> February 2007.

**Reason:** To allow service of affidavit in reply to the application

**Jn Marie & Sons v Jamie St. Louis**  
Civil Appeal No.14 of 2006

**Appearances:**

Appellant: Mr. Mark Maragh  
Respondent: Mr. Horace Fraser

**Issue:** Application to discharge order of single judge

**Result:** Matter stood down until Wednesday. Gordon JA to recuse himself. Counsel to file their skeleton arguments

**Reason:**

**Great Northern Insurance (St. Lucia) Company v Jenny Fevrier et al**  
Civil Appeal No.29 of 2006

**Appearances:**

Appellant: Mr. Bota McNamara  
Respondent: Mr. Al Elliott

**Issue:** Application to discharge order of single judge

**Result:** Application dismissed

**Reason:** Applicant has withdrawn application

**High Court Criminal Appeals**

**Victor Paul v The Queen**

Criminal Appeal No.6 of 2003

**Appearances:**

Appellant: In person

Respondent: DPP

**Issue:** Appeal against conviction of unlawful carnal knowledge

**Result:** Appeal dismissed

**Reason:** Appellant wishes to withdraw appeal

**Peter Solomon v The Queen**

[Criminal Appeal No.4 of 2005]

**Appearances:**

Appellant: Mrs. Wauneen Louis Harris

Respondent: Mrs. Victoria Charles Clarke DPP and with her Ms. Vernessa Jn Baptiste

**Issue:** Appeal against conviction and sentence for murder – Learned trial judge misdirected the jury as to the law and the case for the defence was not properly put to the jury – The intention of the appellant at the time of the commission of the offence must have been to kill. Appeal against sentence - The punishment was excessive and contrary to law and the court failed to have due regard to the appellant's youth as he seemed to have been focusing on retribution and deterrence

**Result:** Decision reserved

**Reason:** The court will take time to consider.

**Urban St. Brice v The Queen**

Criminal Appeal No.4 of 2006

**Appearances:**

Appellant: Mr. Marcus Foster

Respondent: Ms. Charon Gardener

**Issue:** Appeal against conviction for murder

**Result:** Matter traversed to the next sitting of the court

**Reason:** Counsel has not had time to prepare skeleton arguments.

**Curvin J. Isaie v The Queen**  
Criminal Appeal No.6 of 2006

**Appearances:**

Appellant Mr. Sean Innocent  
Respondent Mrs. Victoria Charles Clarke DPP

**Issue:** Appeal against conviction for murder

**Result:** Matter traversed to the next sitting

**Reason:** Transcripts of proceedings are not yet ready.

**Johnson Thomas v. The Queen**  
Criminal Appeal No.7 of 2006

**Appearances:**

Appellant: Mr. Sean Innocent  
Respondent: Mrs. Victoria Charles Clarke DPP and with her Ms. Vernessa Jn. Baptiste

**Issues:** Appeal against conviction for manslaughter

Whether the trial judge failed to relate the facts in this case to the law of self-defence in his directions to the jury – and instead went into a discussion on self defence. Whether the judge did not analyse the relevant evidence in support of self-defence for the jury but left them on their own.

The appellant contended there is a statutory obligation to leave an alternative verdict open to the jury but there are certain cases when he shouldn't and the appellant feels that this is one of them – proper procedure was not followed for accepting majority verdict of the jury

The appellant also contended a good character direction was fitting in the circumstances and was not given to the jury by the trial judge

Appeal against sentence

Whether wrong factual basis was adopted for sentencing and did not reflect the the facts on which the conviction of manslaughter was based.

**Result:** Decision reserved

**Reason:** The court will take time to consider

**Tuesday, 27<sup>th</sup> February, 2007**

**Coram:** His Lordship the Hon. Mr. Brian Alleyne SC Chief Justice (Ag)  
His Lordship the Hon. Mr. Michael Gordon QC Justice of Appeal  
His Lordship the Hon. Mr. Hugh A. Rawlins Justice of Appeal

**High Court Civil Appeals**

**Jean Baptiste Petit Frere aka Jn Baptiste Montoute v Catherine Paul**  
Civil Appeal No.5 of 2004

**Appearances:**

Appellant: Edith Petra Jeffrey Nelson and with her Esther Greene Ernest  
Respondent: Mr. Winston Hinkson

**Issues:**

Does section 98 of the Land Registration Act allow for rectification of the Land Register only in cases of first registration of title made by mistake or does it extend to registration obtained by fraud in as well? Are the court's hands tied so that it must allow the fraudulent registration to stand or can the court allow for rectification of the register?

What type of order can the court make in this situation –

1. cancel registration of respondent?
2. Land be put in name of crown provisionally allowing both sides to make claim to the land?

**Result:**

Appeal allowed. Registration set aside. Costs awarded at 2/3 the amount awarded in the court below. Appellant to draw up terms of order to include amount of sale to be held on trust for rightful owner.

**Reason:**

**Robertina Regis v Alpheus George**  
Civil Appeal No.6 of 2004

**Appearances:**

Appellant: Mrs. Wauneen Louis Harris  
Respondent: No appearance

**Issues:**

**Result:**

Matter traversed to the next sitting of the court

**Reason:** Court cannot verify if the respondent was served with notice of the sitting and the Counsel for the appellant confirms that he was not served with skeleton arguments.

**Harris Stephen et al v Agatha Sonson**  
Civil Appeal No.26 of 2004

**Appearances:**

Appellant: Mrs. Wauneen Louis Harris  
Respondent: Mr. Hilford Deterville QC and with him Ms. Samantha Charles

**Issues:**

Appeal against decision of trial judge to order the appellant to surrender possession of the property upon which they reside.

Judge erred in dismissing counterclaim that the 2<sup>nd</sup> appellant enjoyed overriding interest under section 128 of Land Registration Act

Respondent purchased property in 1990 but the Appellant had been in occupation for almost 30 years – does Respondent purchase subject to the right of the appellant notwithstanding that the appellants right is not noted on the land register?

Application of section 28 of the Land Registration Act and section 394 of the Code – Articles

No evidence adduced in the trial to grant injunctive relief to the Respondent – were the appellants trespassers or tenants at sufferance? If trespassers then the notice is valid if tenants then the notice to quit is invalid

Was the respondent a bonafide purchaser for value without notice as they knew that the appellant was in occupation?

**Result:** Judgment Reserved

**Reason:** Court will take time to consider

**Wednesday, 28<sup>th</sup> February, 2007**

**Coram:**

His Lordship, the Hon. Mr. Brian Alleyne, SC - Chief Justice (Ag.)  
His Lordship, the Hon. Mr. Denys Barrow, SC - Justice of Appeal  
His Lordship, the Hon. Mr. Hugh A. Rawlins - Justice of Appeal

**v The Queen**  
Criminal Appeal No. of 2007

**Appearances:**

Appellant: Ms. Charon Gardner holding papers for Mrs. Victoria Charles Clarke DPP  
Respondent: No appearance

**Issue:** Application to revoke the bail granted by High Court

**Result:** Matter stood down

**Reason:** DPP and counsel for respondent are on their way.

**Dr. Richardson St. Rose v Dr. David Carol Bristol**  
Civil Appeal No.16 of 2005

**Appearances:**

Appellant: Mr. Al Elliott holding papers for Mr. Alberton Richlieu

Respondent: Mr. James Bristol

**Issues:** Motion for Final Leave to Appeal to Her Majesty in Council – Application to dismiss the application for final leave as all the conditions have not been fulfilled for the granting of final leave as there has been delay in the filing and settling of the record – applicant is not interested in prosecuting this appeal.

**Result:** Final Leave granted.

**Reason:** There has been compliance with all the requirements for granting final leave – the delay concerned a matter of form and not substance in the Chief Registrar asking for the number of bundles to be reduced.

**Nicholas Lansiquot v Ignatius Leon et al**  
Civil Appeal No. 29 of 2005

**Appearances:**

Appellant: Mr. Dexter Theodore

Respondent: Mr. Colin Foster

**Issues:** Appeal against decision of high court judge holding that respondents held a licence coupled with an equity within the meaning of *Inwards v Baker* (an English case) – on that basis the respondents enjoyed an overriding interest over the parcel and were entitled to be registered as owners of the part of the land that they occupied after it was partitioned from the rest of the property.

Judge erred as the concept of licensee is a concept alien to the laws of St. Lucia, the closest thing to that being what the Civil Code describes as a right of use under Article 437 of Civil Code. Right of use – right to enjoy a thing belonging to another and take fruits thereof but only to the extent of the requirements of the user and to his family.

Even if there is a concept of licensee – the court could not so conclude based on the facts of this case the situation was not that of a licensee.

- Person did not incur expenditure or act to his detriment – did not act on the belief that he owned rights to the property and justify expenditure and thought

he would have gained an interest. *Cabral v Alice King* Civil Appeal 4 of 94 of Belize.

Was the belief encouraged or created by the owner or his predecessor in title.

Article 2067 provide that those who hold under another or under acknowledgement that they hold for another can never prescribe.

Under land registration act – acts at sufferance cannot be a basis of possession or prescription.

Does a granting of right to live on land affect title to the land?

Respondent argues promissory estoppel or constructive trust – parties relied on the promise of the appellants predecessor to their detriment? Their detriment being the toiling of the land cultivating the land and building homes on the land

Section 1 of old evidence Act allows the reception of hearsay evidence and applied at the time of the matter was heard

**Result:** Decision reserved

**Reason:** Court will take time to consider

**Dwight Dookie v The Queen**  
Criminal Appeal No. of 2007

**Appearances:**

Appellant: Mrs. Victoria Charles Clarke DPP and Ms. Charon Gardner with her  
Respondent: Mr. Marius Wilson

**Issue:** Application to revoke the bail granted by High Court – application made under section 593 (4) and (5) and Rule #58 (7) and (8) Court of Appeal Rules 1968

Did the trial judge have jurisdiction to grant bail pending appeal and even if she did have jurisdiction she did not address her mind to the exceptional circumstances required when granting bail in these types of circumstances

**Result:** Application granted – order granting bail is revoked.

**Reason:**

**Vaughn Lewis v Kenny Anthony**

## Civil Appeal No.2 of 2006

**Appearances:**

Appellant: Sir Richard Cheltenham and Mr. Kenneth Monplaisir QC  
 Respondent: Mr. Anthony Astaphan SC and with him Mr. Dexter Theodore

**Issues:**

Appeal against the meaning given to words used in a speech which were held to have a defamatory meaning by the trial judge. Literal interpretation and meaning given to words were misapplied and resulted in a meaning which was unnatural and unreasonable

Was appellant entitled to the defence of fair comment?

The quantum is too large and the finding was wrong that the award should be based on exemplary or aggravated damages

**Result:**

Decision reserved

**Reason:**

The court will take time to consider

**Thursday, 1<sup>st</sup> March, 2007**

**Coram:**

His Lordship the Hon. Mr. Brian Alleyne SC Chief Justice (Ag)  
 His Lordship the Hon. Mr. Denys Barrow SC Justice of Appeal  
 His Lordship the Hon. Mr. Hugh A. Rawlins Justice of Appeal

**Jn Marie & Sons v Jamie St. Louis**

Civil Appeal No.14 of 2006

**Appearances:**

Appellant: Mr. Mark Maragh  
 Respondent: Mr. Horace Fraser

**Issue:**

Application to discharge order of single judge

Was the order made for summary judgment a final or interlocutory order? Was the decision arrived at based upon the merits of the case was it only an application which resulted in the end of the action without deciding the merits of the case

Is this an exception to the rule on the nature of the final order given the decision in the Remy case? - Can a decision without hearing the merits of the case give rise to res judicata thus making this case one that is a final decision although the merits of the case have not been discussed?

**Result:**

Decision reserved

**Reason:**

The court will take time to consider

**Winmark Ltd. v National Insurance Corporation**

## Civil Appeal No.7 of 2006

**Appearances:**

Appellant: Mr. Geoffrey Du Boulay and with him Mrs. Cheryl Goddard Dorville  
 Respondent: Mrs. Ann Kadie St. Rose Albertini and with her Mrs. Raquel Willie Trotman

**Issues:**

Appeal against decision that National Insurance Corporation is to be paid before other creditors

Does section 74 of the NIC act allow contributions owed to the corporation to outrank other debts secured before the contributions/debts became owing to the National Insurance Corporation

Are NIC contributions within the categories mentioned in the Constitution which are considered to rank first in preference to other secured debts registered before the contributions became owing

**Result:**

Decision reserved

**Reason:**

The Court will take time to consider

**Judgment Delivered****Hugh Wildman v The Judicial & Legal Services Commission**

Civil Appeal No. of 2005 Grenada

**Appearances:**

Appellant Mr. Alvin St. Clair holding for the Attorney General of Grenada  
 Respondent Ms. Dexter Theodore holding for Mr. James Bristol

**Issue:**

Judgment delivered

**Result:**

Appeal Dismissed

**Reason:**

There was no evidence of bias found on the part of the trial judge dealing with the review of the decision of the Commission.

Up to the point of the hearing and the decision-making there was no procedural unfairness that would entitle this court to interfere with the decision of the Judicial and Legal Services Commission.

The appellant was given an oral hearing, he knew in advance the case he had to meet and his appointment was considered by a tribunal whose impartiality has not been challenged.

The court is of the view that the particular circumstances of this case were not so extra-ordinary as to cause the Commission to depart from a practice of over 35 years

and give reasons for its decision. However, once the matter became the subject matter of litigation, the Commission was bound to disclose their reasons for the decision it took. This they did. The function of the court in judicial review is not to act as an appellate forum from the body whose decision is being challenged. If the process was fair and the decision not deviant, then the order sought under the judicial review must be refused.

**Sylvina Louisen v Joachim Rodney Jacob**  
Civil Appeal No.17 of 2004

**Appearances:**

Appellant: Mrs. Edith Petra Nelson  
Respondent: Mr. Dexter Theodore

**Issue:**

Application to appeal to Her Majesty in Council – The Appellant has not served the Respondent the notice of Appeal and the Respondent quotes from authorities that unless this is done with 21 days it is too late. The Respondent must not only file the notice but they must also serve the notice of the other side.

**Result:**

Application for conditional leave granted. Usual conditions apply deposit of 500 pounds, steps taken to settle the record within 90 days and thereafter the application for final leave must be made. Application of respondent is dismissed.

**Reason:**

Counter application of respondent is dismissed. No authority provided for the arguments that he proposes.

**Patrick Morille v Paul Pierre et al**  
Civil Appeal No.12 of 2006

**Appearances:**

Appellant: Mr. Horace Fraser  
Respondent: Mrs. Lydia Faisal

**Issues:**

Trial judge applied the wrong principles and used the wrong cases. Trial judge misdirected herself when dealing with the matter as if it were adducing fresh evidence when there was in fact no application before the court.

Trial judge applied wrong legal principles to the appellants application without finding any factual reasons for so doing and therefore failed to properly exercise her discretion.

There was no hearing of any of the applications. The appellant cannot therefore be said to be reopening his case on another issue which was available to him at the time when the matter was heard.

Respondents contend that appeal is an abuse of the process of the court and should be dismissed.

**Result:** Appeal allowed.

**Reason:** Prejudice suffered by Respondent pales in significance to that suffered by the appellant

**Simon Francis et al v Anthony Barnard**  
Civil Appeal No.22 of 2006

**Appearances:**

Appellant: Mr. Colin Foster  
Respondent: Mr. Alvin St. Clair

**Issues:**

**Result:** Matter traversed to the next sitting of the court.

**Reason:**