

## COURT OF APPEAL SITTING

### Saint Christopher Circuit

Monday, 2<sup>nd</sup> July to Friday, 6<sup>th</sup> July, 2007

**Coram:** His Lordship, the Hon. Mr. Denys Barrow, SC - Justice of Appeal  
His Lordship, the Hon. Mr. Hugh A. Rawlins - Justice of Appeal  
Her Ladyship, the Hon. Ms. Dancia Penn, QC - Justice of Appeal [Ag.]

### Judgments

**Josephine Gabriel & Co. v Dominica Brewery & Beverages Ltd.**  
Civ. App. No.10 of 2004; Dominica

### Appearances:

Appellant: Mr. Emile Ferdinand holding for Mrs. Francis Royer  
Respondent: Mr. Fitzroy Eddy holding for Ms. Singoalla Blomqvist-Williams

**Issue:** Law of Contract - Claim for wrongful termination of distributorship agreement - Duty of expert witnesses - Evidence of experts - Quantum of damages - Duty of professional legal advisors - Prescribed costs - CPR 2000.

Appeal by appellant from the decision of Thomas J against the award of damages in the sum of \$30,673.00.

**Result:** Entire appeal stands dismissed. Cross appeal allowed. Award of damages reduced from \$30,673.00 to \$26,017.24. Award of \$5000.00 for wasted expenditure on stationery upheld. Cost awarded below adjusted to \$7,805.17. Cost of this appeal to respondent in the sum of \$58,800.00.

**Reason:** The Court found that the expert evidence given in the matter failed to comply with the provision of the rules governing expert witness evidence. The trial judge was correct in not relying on the expert evidence presented. The claimant can only recover for losses he had established flowing from the breach of the contract. Claimant cannot recover what he had lost or suffered as a result of a bad contract. Prescribed costs in appeal matters are calculated on the amount claimed.

**Nicholas Lansiquot v Ignatius Leon et al**  
Civ. App. No. 29 of 2005; St. Lucia

**Appearances:**

Appellant: Mr. Sylvester Anthony holding for Mr. Dexter Theodore  
Respondent: Dr. Henry Browne holding for Mr. Colin Foster

**Issue:**

Possession of land - Whether the respondent had a good claim of right by prescription and/or equity - Compensation for improvements to property - Land Registration Act section 28(g) - Civil Code of St Lucia - Equitable Estoppel

**Result:** The appeal is allowed. Judgment and order of the Trial Judge set aside. The appellant Nicholas Lansiquot is entitled to have possession of the disputed land, and, accordingly, the respondents shall give up possession of it to him on 1<sup>st</sup> May 2008.

Nicholas Lansiquot is ordered to keep the improvements made by the respondents on the disputed lands.

Nicholas Lansiquot shall, on or before the day on which the respondent give up possession of the disputed land, pay the respondent the actual value of those improvements as determined by an Assessor appointed by agreements between the parties or upon the directions of a Master or Judge of the High Court.

For the purposes of the appointment of an Assessor under paragraph 4 of the Order, or for consequential directions, solicitors for the appellant, Nicholas Lansiquot and the Registrar of the High Court shall take such steps as are necessary to have the case scheduled forthwith for directions.

Unless the parties otherwise agree, the respondent shall pay to Nicholas Lansiquot prescribed costs in the court below and two thirds of those costs in the appeal proceedings.

**Reason:** The principles of proprietary estoppel do not apply to the facts of this case. The respondents did not and do not have a good claim under equity. One cannot gain a right by prescription if one is given permission from the owner. In this case there was evidence that those who were on the land were given permission to stay on the land by the owner in a manner in which the only interest they could possibly have had in that land was as tenants in sufferance or as licensees. Occupation by the respondents could not have entitled them to a prescriptive right to the disputed land. Based on the statutory provision of the Civil Code the respondent is entitled to fair compensation for improvements to the land.

**Ray A. George v British Virgin Islands Ports Authority**  
Civ. App. No.28 of 2006; BVI

**Appearances:**

Appellant: Ms Angela Inniss holding for Mr. Lewis Hunte  
Respondent: Ms Willa Liburd

**Issue:**

Contract of Employment - Breach of Contract - Wrongful Dismissal - Unfair Dismissal - What remedy available to employee who has been unfairly dismissed. Labour Code Ordinance Chapter 293 The Laws of the BVI.

**Result:** The appeal is dismissed. Cross appeal allowed and order made dismissing the entire claim and entering judgment for the respondent based on the value of the claim particularized in the statement of claim for \$74,964.21. Cost is calculated at \$12,578.95.

**Reason:**

The minimum employment standard established by the Code are relevant to termination. The termination clause in the employment contract which provided for a greater notice period than the Code required was a perfectly valid provision. The reason for which was an employer or (employee) may terminate an employment is not an employment standard. Accordingly, the Court found no basis for upsetting the conclusion reached by the Master that the dismissal was permitted by the termination clause in the contract and therefore the claim for damages for wrongful dismissal could not succeed. Under the Labour Code, conciliation is the only remedy for unfair dismissal and therefore damages may not be awarded for unfair dismissal.

**Motion/Applications**

**The Attorney General of St. Christopher and Nevis et al v Kaleel Jones**  
Civ. App. No.1 of 2004

**Appearances:**

Appellant: Ms Cynthia Hinkson-Ouhlah  
Respondent: Mr. Ronald Sciplo, Q.C. with him Mr. Chesley Hamilton

**Issue:**

Extension of time to file Skeleton arguments.

**Result:**

Leave granted to respondent.

**Reason:**

No objection by applicant.

**John Lowe v Comptroller of Inland Revenue**  
Civ. App. No.15 of 2006

**Appearances:**

Appellant: Mr. Damien Kelsick  
Respondent: Mr. Arudranauth Gossal

**Issue:** Leave to Appeal to Her Majesty in Council.

**Result:** Leave granted on the usual conditions.

**Reason:** There was no objection to application.

**St. Christopher Club Ltd. v St. Christopher Club Condominiums**  
Civ. App. No.5 of 2007

**St. Christopher Club Ltd. v St. Christopher Club Condominiums**  
Civ. App. No.7 of 2006

**Appearances:**

Appellant: Mr. Sylvester Anthony  
Respondent: Mr. Glenford Hamilton for intended respondents/interveners

**Issue:** Application for leave to intervene as respondents.

**Result:** Grant permission for applicants to be added as respondents. Appellant to draft order with consequential directions. Order to include notice of intention to apply for case management.

**Reason:** No objection to the application.

**Bank of Nevis International Ltd. v Millennium Financial Ltd.**  
Civ. App. No.8 of 2007

**Appearances:**

Appellant: Mr. Damien Kelsick  
Respondent: Mr. Adrian Scantlebury

**Issue:** Leave to appeal.

**Result:** Leave granted to applicants to withdraw appeal with no order as to costs.

**Reason:** No objection by respondent.

**High Court Criminal Appeals Against Sentence**

**Romona Hendrickson v The D.P.P.**  
Crim. App. No. 17 of 2003

**Appearances:**

Appellant: No appearance by or for appellant  
Respondent: Mrs. Pauline Hendrickson, (DPP), with her Ms Simone Bullen and Mr.Reynold Benjamin

**Issue:** Assault with Intent to Rob - Appeal against sentence.

**Result:** The appeal is dismissed for want of Prosecution.

**Reason:** Appellant was discharged from prison - Time served.

**Kenneth Mills v The D.P.P.**  
**Kurt Mills v The D.P.P.**  
**Antwan Thompson v The D.P.P.**  
**Leon Norford v The D.P.P.**

Crim. Apps. Nos.4, 5, 6 and 14 of 2006

**Appearances:**

Appellant: First, Second and Fourth Appellants in person Mr Chesley Hamilton for the Third Appellant  
Respondent: Mrs. Pauline Hendrickson, (DPP), with her Ms Simone Bullen and Mr. Reynold Benjamin.

**Issue:** Manslaughter - Appeal against sentence.

**Result:** Judgment reserved to Tuesday 3rd July 2007.

**Reason:** To allow Judges time to consider.

**Veon Sutton v The D.P.P.**  
Crim. App. No.26 of 2006

**Appearances:**

Appellant: In person  
Respondent: Mrs. Pauline Hendrickson, (DPP), with her Ms Simone Bullen and Mr. Reynold Benjamin.

**Issue:** House Breaking and Stealing - Appeal against sentence.

**Result:** The appeal is dismissed. Sentence affirmed.

**Reason:** There was no ground on which the Court could interfere with sentence.

**Gavin Williams v The D.P.P.**  
Crim. App. No.7 of 2004

**Appearances:**

Appellant: Dr. Henry Browne  
Respondent: Mrs. Pauline Hendrickson, (DPP), with her Ms Simone Bullen and Mr. Reynold Benjamin.

**Issue:** Manslaughter - Appeal against conviction and sentence.

**Result:** The matter stood down to Wednesday 4<sup>th</sup> July 2007.

**Reason:**

**Ashley Roberts v The D.P.P.**  
Crim. App. No.14 of 2004

**Appearances:**

Appellant: In Person  
Respondent: Ms Pauline Hendrickson, (DPP), with her Ms Simone Bullen and Mr. Reynold Benjamin.

**Issue:** Raping and Kidnapping - Appeal against conviction and sentence.

**Result:** The appeal is dismissed. Conviction and sentence affirmed on both counts.

**Reason:** The Court is of the view that there were no grounds upon which the Court could disturb the conviction. The Court looked at all the factors and found the sentencing to be fair and just. It adverted to the decision in the case of *Benedict Charles v The Queen* which established the guidelines for deciding what is the appropriate starting point of sentencing for offences. On the facts of the case the Court found the sentencing to be manifestly reasonable and saw no reason to depart from the learned trial judge's decision.

**Steven Thomas v The D.P.P.**  
Crim. App. No.2 of 2005

**Appearances:**

Appellant: In Person  
Respondent: Mrs. Pauline Hendrickson, (DPP), with her Ms Simone Bullen and Mr. Reynold Benjamin.

**Issue:** Wounding with Intent - Appeal against conviction and sentence.

**Result:** The appeal is dismissed: Conviction and sentence affirmed.

**Reason:** The Court was satisfied that the trial was fair. The Court considered all matters including the Judge's summing up and found no basis for interfering with the decision of the Jury and the sentence imposed by the learned trial judge.

**Davon Fyfield v The D.P.P.**  
Crim. App. No.10 of 2005

**Appearances:**

Appellant: In Person  
Respondent: Mrs. Pauline Hendrickson, (DPP), with her Ms Simone Bullen and Mr. Reynold Benjamin.

**Issue:** House Breaking - Appeal against conviction and sentence.

**Result:** The appeal is dismissed. Conviction and sentence confirmed.

**Reason:** The trial judge had sufficient evidence on which to find the appellant guilty. There was no ground on which the Court could reasonably interfere with the conviction and sentence.

**Sylvester Hodge v The D.P.P.**  
Crim. App. No.13 of 2005

**Appearances:**

Appellant: No appearance by or for appellant.  
Respondent: Mrs. Pauline Hendrickson, (DPP), with her Ms Simone Bullen and Mr. Reynold Benjamin.

**Issue:** Indecent Assault - Appeal against conviction and sentence.

**Result:** The appeal is dismissed for want of Prosecution.

**Reason:** The appellant was discharged from prison - Time served.

**Gavin Herbert v The D.P.P.**  
Crim. App. No.27 of 2006

**Appearances:**

Appellant: In person  
Respondent: Mrs. Pauline Hendrickson, (DPP), with her Ms Simone Bullen and Mr. Reynold Benjamin.

**Issue:** Robbery - Appeal against conviction and sentence.

**Result:** The appeal is dismissed. The conviction and sentence affirmed.

**Reason:** There was no ground to enable the Court to interfere with the decision of the Jury. Relying on the guidelines established in the case of *Desmond Baptiste v The Queen* the Court was of the view that in the circumstances of this case the sentence was reasonable.

### High Court Civil Appeals

**The Attorney General of St. Christopher & Nevis et al v Kaleel Jones (A minor by his next friend Leonie Hendrickson)**  
Civ. App. No.1 of 2004

**Appearances:**

Appellant: Ms Cynthia Hinkson-Ouhlah  
Respondent: Mr. Ronald Scipio, Q.C. with him Mr. Chesley Hamilton

**Issue:** Appeal against part of the decision of Mr Justice Davidson Baptiste contained in Judgment 10<sup>th</sup> December 2003 - Suspension from school - The Education Act 1975 - Section 15 of the Constitution of St. Christopher and Nevis.

**Result:** The matter is adjourned to the next sitting of the Court of Appeal.

**Reason:** Counsel for the applicant, Mr Delano Bart, Q.C. is out of jurisdiction. Extension of time granted to the applicant to respond to skeleton arguments of the respondent.

**3<sup>rd</sup> July, 2007**

**Coram:** His Lordship, the Hon. Mr. Denys Barrow, SC - Justice of Appeal  
His Lordship, the Hon. Mr. Hugh A. Rawlins - Justice of Appeal  
Her Ladyship, the Hon. Ola Mae Edwards - Justice of Appeal [Ag.]

### High Court Criminal Appeals Against Sentence

**Kenneth Mills v The D.P.P.**  
**Kurt Mills v The D.P.P.**  
**Antwan Thompson v The D.P.P.**  
**Leon Norford v The D.P.P.**  
Crim. Apps. Nos.4, 5, 6 and 14 of 2006

**Appearances:**

Appellant: First, Second and Fourth Appellants in person Mr. Chesley Hamilton for the Third Appellant

Respondent: Mrs. Pauline Hendrickson, (DPP), with her Ms Simone Bullen and Mr. Reynold Benjamin.

**Issue:** Manslaughter - Appeal against sentence - Whether the maximum sentence imposed was too severe. Attempted Murder - Whether the maximum sentence imposed was too severe.

**Result:** The sentence of life imprisonment is reduced to 27 years in relation to all the appellants except Kenneth Mills.

Sentence of 20 years for Kenneth Mills stands.

Sentence of 10 years for attempted murder for all appellants is affirmed.

Sentences to run from the date of detention.

**Reason:** Manslaughter cannot generally speaking be as morally culpable as murder. In principle, manslaughter should be sentenced differently from murder. Recognition must be given for a plea of guilty.

Commission of actual homicide at the same time that the murder was attempted puts the attempted murder in the worst category and capable of attracting the maximum sentence for that offence.

### **High Court Civil Appeal**

#### **Premier League Limited v The Attorney General**

Civ. App. No.10 of 2006

#### **Appearances:**

Appellant: Mr. John Fuller  
Respondent: Ms Cynthia Hinkson-Ouhlah

**Issue:** Constitution of St. Kitts and Nevis - Sections 8, 10 (8); 3 (a) (c) - Breach of Natural Justice - Remedy for breach - Judgment creditor - Provisional attachment of debt - What gives proprietary right in asset (fund).

**Result:** Judgment reserved.

**Reason:** To allow Judges time to consider matter.

### **Magisterial Civil Appeals**

#### **Jacqueline Williams v Brian Lapray**

Civ. App. No.1 of 2007

**Appearances:**

Appellant: No appearances by or for the appellant  
Respondent: No appearances by or for the respondent

**Issue:** Civil debt

**Result:** The matter is adjourned to Wednesday 4th July 2007.

**Reason:** To allow Registrar time to contact counsel.

**Samuel Eddy v Pricilla Norford**

Civ. App. No.2 of 2007

**Appearances:**

Appellant: Mr. Terence Byron  
Respondent: No appearance by or for respondent.

**Issue:** Arrears of Maintenance

**Result:** The matter is adjourned to Wednesday 4th July 2007.

**Reason:** To allow Registrar time to contact counsel.

**4<sup>th</sup> July, 2007**

**Coram:** His Lordship, the Hon. Mr. Denys Barrow, SC - Justice of Appeal  
Her Ladyship, the Hon. Ms. Dancia Penn, QC - Justice of Appeal [Ag.]  
Her Ladyship, the Hon. Ola Mae Edwards - Justice of Appeal [Ag.]

**High Court Criminal Appeal Against Conviction**

**Gavin Williams v The D.P.P.**

Crim. App. No.7 of 2004

**Appearances:**

Appellant: Dr. Henry Browne  
Respondent: Mrs. Pauline Hendrickson, (DPP), with her Ms Simone Bullen and Mr. Reynold Benjamin.

**Issue:** Manslaughter - Self defence - Accident - Appeal against conviction and sentence - Whether Judge's direction on accident adequate - Whether sentence imposed too severe.

**Result:** The appeal against conviction is dismissed. Conviction affirmed. Appeal against sentence allowed. Sentence is reduced from 10 years to 6 years. Sentence to run from the date of remand (15th September 2003).

**Reason:** The Court is of the view that there was no basis to quash the conviction and upset the verdict of the jury. Having considered all the circumstances of this case including antecedent, the Court found the sentence excessive.

### **High Court Civil Appeal**

#### **Premier League Limited v The Attorney General**

Civ. App. No.10 of 2006

**Appearances:**

Appellant: Mr. John Fuller  
Respondent: Ms Cynthia Hinkson-Ouhlah

**Issue:** Constitution of St. Kitts and Nevis - Sections 8, 10 (8); 3 (a) (c) - Breach of Natural Justice - Remedy for breach - Judgment creditor - Provisional attachment of debt - What gives proprietary right in asset (fund).

**Result:** Appeal against deprivation of property rights withdrawn - Decision on other issues reserved.

**Reason:** To allow Judges time to consider matter.

### **Magisterial Civil Appeals**

#### **Jacqueline Williams v Brian Lapray**

Civ. App. No.1 of 2007

**Appearances:**

Appellant: Mr. Terence Byron with him Ms Kamesha Graham  
Respondent: No appearance by or for the respondent

**Issue:** Civil debt - Magistrate Code of Procedure, Cap 46, Section 144 - Summary Jurisdiction Act, Cap78, Section 19 - Service of Summons

**Result:** The matter is traversed to next sitting of the Court of Appeal.

**Reason:** For service on respondent.

#### **Samuel Eddy v Pricilla Norford**

Civ. App. No.2 of 2007

**Appearances:**

Appellant: Mr. Terence Byron  
Respondent: Mr. Karlweis Liburd

**Issue:** Arrears of Maintenance

**Result:** The appeal will be compromised and is traversed to next sitting of the Court of Appeal.

**Reason:** Traversed pending mediation.